

	Conditions & Requirements													
<b>DODD-FRANK "ABILITY TO REPAY" COMPLIANCE ALTERNATIVES</b> <b>Rule: All covered loans require a reasonable &amp; good faith determination of borrower's repayment ability by lender ("ATR"). 1026.43 (c) [ATR p647]</b> Note: Publication=804 pages. See actual regulations on pages 639-663 (25 pages)	Must Have Substantially Equal Payments [ATR p655]	No Negative Amort [ATR p656]	No Balloons [ATR p656]	30yr Max Amort	3% Max Fees & Points 43(e)(3) [ATR p656 and 657]	Appendix Q underwriting etc. [ATR p656]	43% Max DTI (Using ALL MRO & all Simultaneous Loans	1-8 Underwriting Cond. (43)(c)(2)(i)-viii [ATR p647]	Verification Using 3rd Party Records 43(c)(3) [ATR p648]	Balloon/Interest Only/Neg Amort Underwriting 43(c)(5)(ii) [ATR p648]	Rural Lender Test [ATR p659]	Rural Balloon Underwriting [ATR p660]	Interest Rate Can't Increase [ATR p660]	5Yr Min Balloon Term [ATR p660] 61 months
<b>QM-General 43(e)(2) [ATR p655]</b>	X	X	X	X	X	X	X		X					
<b>QM GSE or GSE Eligible 43(e)(4) [ATR p658]</b>	X	X	X	X	X				Per GSE					
<b>QM Balloon - Payment by "Small" and "Rural" Creditor 43(e)(5) [ATR p659]</b>		X		X	X			X	X		X	X	X	X
<b>QM "Small Creditor"</b>	X	X	2 yr transition	X	X			X	X					
<b>Non QM "General or "Standard" ATR Requirement" ATR Compliance 43(c) [ATR p647]</b>								X	X	X				

**ATR Coverage 43(a) [ATR p644]**

- Consumer
- Owner occupied dwelling (Principle, 2nd Home & Vacation)
- Purchase & Refinances
- 1st and Subordinate Liens

**ATR Exemptions [ATR p644]**

- HELOCS 43(a)(1)
- Timeshares 43(a)(2)
- Reverses 43(a)(3)(i)
- Temporary/Bridge if 1yr or less 43(a)(3)(ii)
- Initial construction if 1yr or less 43(a)(3)(ii)
- Refinance of "Non-standard mortgage" to "Standard mortgage" 43(d) [ATR p651]
- Investment properties
- HFAs, DFIs, DAs, CHDOs, and certain non-profits

**HOEPA (12 CFR § 226.32) "Section 32 Loans"****High-Cost Mortgage Loans**

- Consumer primary dwelling including HELOC
- Exemptions: Reverse mortgage, initial construction of dwelling, USDA Direct Lending, Housing Finance Authority
- Lower percentage for APR vs. APOR
  - 6.5% first lien \$50,000 or more
  - 8.5% first lien under \$50,000
  - 8.5% for subordinate

**Section 32 Points & Fees**

- 5% for loan \$20,000 or more
- 8% for less than \$20,000
- No balloon unless "rural lender"
- No negative amortization, default rate increase, limited prepayment penalty
- Homeownership counseling required

**HPML (12 CFR § 226.35) "Section 35 Loans"****Higher-Priced Mortgage Loans [ATR p645]**

- First lien: APR equal or exceeds APOR by 1.5% 43(b)(4)\*
- Subordinate Lien: APR equal or exceeds APOR by 3.5%
- APOR link: <http://www.ffiec.gov/ratespread/aportables.htm>
- APOR 4-1-13 examples: 30yr rate=3.6%, 15yr rate=2.82% \*3.5% for QM Balloon Payment by "Small" and "Rural" Creditors, and QM "Small Creditor"

**Max Points and Fees Known At or Before Consummation**

- Includes 1026.32(b)(1)(i)-(vi) [ATR p640]
  - MAX: <12.5=8%, 12.5k-20k=1k, 20k-60k=5%, 60k-100k=3k, >100k=3%
- 1026.4(a)&(b) previous TILA fin charges + "mortgage broker fees" not already included in TILA fin charges
  - 1026.4(c)(7) All real estate related fees unless they are
    - a) reasonable, b) creditor receives no direct/indirect compensation, and c) not paid to an affiliate (iii)
  - credit life (iv)
  - prepayment penalty on current loan in 1<sup>st</sup> 36 months (v)
  - prepayment penalty on loan being paid off if paid to note holder, servicer or affiliate (vi)

**Excludes 1026.32(b)(1)(i)(A)-(F)**

- interest or time price differential (A)
- gov mort insurance or guaranty (B)
- non-gov mort ins or guaranty if post-closing (C)(1)
- non-gov mort ins or guaranty at closing if a) does not exceed government rate and b) prorated refund on early payoff (C)(2)
- bona fide 3rd party real estate fees not retained by the creditor, loan originator or affiliate if not specifically required to be included above (D)
- up to 2 discount points if rate does not exceed APOR by more than 1%(E)\*\*
- up to 1 discount point if rate does not exceed APOR by more than 2% (F)\*\*

\*\*rate must be reduced according to "established industry practices" (i.e. ¼% interest rate per 1 discount fee)

**Presumptions of Compliance**

- QM-Non-HPML (Prime loans) = Safe harbor and presumption of compliance. 43(e)(1)(i) [ATR p654]
- QM-HPML (Sub Prime loans) = Rebuttable presumption of compliance. 43(e)(1)(ii) [ATR p655]
- Non-QM = No presumption of compliance.

**Consequences of Non Compliance**

- Damages-Actual [TILA 130\(a\)](#)
  - Can "emotional distress" be part of TILA "actual damages"? See dicta in unpublished [Butler v. Sterling, Inc., 210 F.3d 371, 2000 WL 353502 \(6th Cir. 2000\)](#)
- Damages-Attorney fees & court costs TILA 130(a)
- Damages-2 x amount of finance charges TILA 130(a)
- Defense to foreclosure TILA 130(k)
- Assignee liability [TILA 131](#)
- Regulatory scrutiny

**Miscellaneous**

**Record Retention:** 3 years after disclosures if secured by a dwelling [ATR p639]

**Mortgage Related Obligation ("MRO") for 43% Limit Includes:**

- Property taxes
- Property insurance
- Condo/Co-op/HOA dues
- Ground lease and leasehold payments

**Prepayment Penalties Only Permitted in a Covered Transaction if:**

- APR cannot increase post-closing
- QM loan
- Not an HPML
- 2% allowed within first 2 years
- 1% allowed during 3<sup>rd</sup> year
- Not allowed at all after 3 years

**Small Creditor definition**

- Assets of 2B or less at end of previous year
- Together with affiliates, originate 500 or fewer 1<sup>st</sup> lien loans
- Exemption would apply only to loans held in portfolio

**Rural definition** – see: [Definition](#)