**Policy 7351: Small Creditor Ability to Repay**

**Model Policy Revised Date: 01/03/2024**

***[Note: CU PolicyPro contains two “Ability to Repay” Policies – Policy 7350, Ability to Repay and Policy 7351, Small Creditor Ability to Repay. The credit union should use only one of these policies, based on whether the credit union meets the Small Creditor Definition.]***

**General Policy Statement:**

[[CUname]] (Credit Union) will comply with the Ability to Repay Rule published by the Consumer Financial Protection Bureau (CFPB) and the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Ability to Repay Rule requires that the Credit Union make a reasonable, good-faith determination before or when a mortgage loan is consummated that the member has a reasonable ability to repay the loan, considering such factors as the member’s income or assets and employment status. The rule permits the Credit Union to make a determination on a member’s ability to repay based on a general ability to repay test or by making one or more types of qualified mortgages.

1. **SMALL CREDITOR.**

	1. **Small Creditor Definition**. The Credit Union qualifies as a small creditor if:

		1. The Credit Union and its affiliates had assets below $2.640 billion (adjusted annually for inflation by the CFPB each year) at the end of the last calendar year; **AND**
		2. The Credit Union extended no more than 2,000 closed-end covered residential mortgage transactions secured by first-lien that were sold, assigned or otherwise transferred to another person (non-portfolio loans).
2. **COVERED TRANSACTIONS.**

	1. **Determination**. The Credit Union will determine if a mortgage loan transaction is a Covered Transaction according to the Ability to Repay rule.
	2. **Covered Transaction**. A Covered Transaction is defined as a closed end consumer credit transaction that is secured by a dwelling, other than:

		1. A mortgage loan on a timeshare;
		2. A reverse mortgage;
		3. A temporary bridge loan with a term of 12 months or less;
		4. A construction loan with a term of 12 months or less;
		5. An extension of credit made through a program administered by a Housing Finance Agency;
		6. An extension of credit made through a program authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008; or
		7. A modification of an existing covered loan transaction, as long as the modification is not a refinance.
	3. **Determination.** If the transaction is a Covered Transaction the Credit Union will determine a member’s ability to repay the loan based on the requirements of this policy.
	4. **Exemption.** If the transaction is not a Covered Transaction it is exempt from the Ability to Repay Rule and the Credit Union will use the underwriting policies, procedures and standards that apply to that type of transaction.
3. **ABILITY TO REPAY STANDARD.**

	1. **Good Faith Determination.**The Credit Union must make a reasonable, good-faith determination before or when a covered mortgage loan is consummated that the member has a reasonable ability to repay the loan.
	2. **Eight Underwriting Factors.**A reasonable, good-faith Ability to Repay evaluation must include eight ATR underwriting factors including:

		1. Current or reasonably expected income or assets that the member relies on to repay the loan (other than the value of the property that secures the loan);
		2. Current employment status;
		3. Monthly mortgage payment of the loan under consideration;
		4. Monthly payment on other simultaneous loans secured by the same property;
		5. Monthly payments for mortgage related obligations that could include (but is not limited to) property taxes, insurance, and homeowners' association fees;
		6. Debts, alimony, and/or child support obligations;
		7. Monthly debt-to-income ratio and/or monthly residual income, calculated using the total of all of the mortgage and non-mortgage obligations listed in factors i. through vi. above, as a ratio of gross monthly income; **AND**
		8. The member’s credit history.
	3. **Verification of Information.** The Credit Union will verify the information it relies on to evaluate a member’s ability to repay a covered transaction using reasonable reliable third-party records.
4. **QUALIFIED MORTGAGES**

	1. **Safe Harbor.**Qualified mortgages that are not higher-priced have an Ability to Repay safe harbor, meaning that they are conclusively presumed to comply with the rule.
	2. **Requirements.**For a member’s mortgage to be considered a qualified mortgage the transaction will need to meet all of Ability to Repay safe harbor requirements, which, for all Qualified Mortgage categories include limits on points and fees for the transaction. Points and fee caps are:

		1. 3% of the total loan amount for a loan greater than or equal to $130,461;
		2. $3,914 for a loan greater than or equal to $78,277 but less than $,130,461;
		3. 5% of the total loan amount for a loan greater than or equal to $26,092 but less than $78,277;
		4. $1,305 for a loan greater than or equal to $16,308 but less than $26,092; or
		5. 8% of the total loan amount for a loan less than $16,308.
5. **HIGHER PRICED QUALIFIED MORTGAGES.**
	1. **Rebuttable Presumption.**Qualified Mortgages that are higher-priced have a rebuttable presumption that they comply with the Ability to Repay requirements if the Credit Union meets all of the requirements of the General Qualified Mortgages, but consumers can rebut that presumption.
	2. **Higher Priced Definition.** A Qualified Mortgage for small creditors or for balloon-payment QMs under the General or Temporary definition is higher-priced if:

		1. It is a first or subordinate lien mortgage for which, at the time the interest rate on the loan was set, the APR was 3.5 percentage points or more over the Average Prime Offer Rate (APOR).
	3. **Seasoned Qualified Mortgages**. Higher-priced first lien mortgages may be considered a qualified mortgage, if the mortgage meets the seasoning period criteria and requirements.
6. **SMALL CREDITOR QUALIFIED MORTGAGES.**

	1. **Requirements.**For a member’s mortgage to be considered a small creditor qualified mortgage the transaction will need to meet all of Ability to Repay small creditor safe harbor requirements, which include:

		1. Loan is underwritten based on a fully-amortizing schedule using the maximum rate permitted during the first five years after the date of the first periodic payment;
		2. Loan term cannot exceed 30 years;
		3. Loan does not negatively amortize or contain interest-only payments;
		4. Loan does not include a balloon payment;
		5. Loan must not be subject to a forward commitment;
		6. The member’s income or assets, and debts, alimony, and child support must be considered and verified;
		7. The member’s debt obligations, alimony, and child support must be considered and verified;
		8. The member’s debt-to-income ratio (DTI) or residual income must be considered and verified (in compliance with the ratio and calculation within the regulation (1026.43(c)(7)); and
		9. Points and fees for the transaction cannot exceed the Ability to Repay points and fees caps found in Section 4.B.
	2. **Sale of Small Creditor Qualified Mortgages.** Small Creditor Qualified Mortgages generally lose their Qualified Mortgage status if the Credit Union sells or otherwise transfers them less than three years after consummation. However, a Small Creditor Qualified Mortgage keeps its Qualified Mortgage status if it meets **ONE** of these criteria:

		1. The loan is sold more than three years after consummation;
		2. The loan is sold to another creditor that meets the small creditor criteria regarding number of originations and asset size, at any time.
		3. The loan is sold pursuant to a supervisory action or agreement, at any time.
		4. The loan is transferred as part of a merger or acquisition of or by the creditor, at any time.
7. **BALLOON PAYMENT QUALIFIED MORTGAGES.**
	1. **Balloon Payment Qualified Mortgages.**

		1. Credit unions that meet the small creditor definition and extended at least one covered transaction on a property that is located in a rural or underserved area, as determined by the CFPB in the previous calendar year or if the application was received before April 1 of the current calendar year, during either of the two preceding calendar years are eligible for the Balloon Payment Qualified Mortgage safe harbor.
	2. **Requirements.**For a member’s mortgage to be considered a small creditor balloon payment qualified mortgage the transaction will need to meet all safe harbor requirements, which include:

		1. Loan does not negatively amortize or contain interest-only payments;
		2. Loan has a term of five years or longer;
		3. Loan must have a fixed interest rate and periodic payments (other than the balloon payment) that would fully amortize the loan over 30 years or less;
		4. Loan must not be subject to a forward commitment;
		5. The member must be able to make the scheduled periodic payments (including mortgage-related obligations) other than the balloon payment;
		6. The member’s income or assets, and debts, alimony, and child support must be considered and verified.
		7. The member’s debt-to-income ratio (DTI) or residual income must be considered and verified (in compliance with the ratio and calculation within the regulation (1026.43(c)(7)); and
		8. Points and fees for the transaction cannot exceed the Ability to Repay points and fees caps found in Section 4.B.vii.
	3. **Sale of Small Creditor Balloon Payment Qualified Mortgages.** Small Creditor Balloon Payment Qualified Mortgages generally lose their Qualified Mortgage status if the Credit Union sells or otherwise transfers them less than three years after consummation. However, a Small Creditor Balloon Payment Qualified Mortgage keeps its Qualified Mortgage status if it meets **ONE** of these criteria:

		1. The loan is sold more than three years after consummation;
		2. The loan is sold to another creditor that meets the small creditor criteria regarding number of originations and asset size, at any time.
		3. The loan is sold pursuant to a supervisory action or agreement, at any time.
		4. The loan is transferred as part of a merger or acquisition of or by the creditor, at any time.
8. **SEASONED LOANS QUALIFIED MORTGAGES**.

	1. **Safe Harbor**. Seasoned loans are first-lien qualified mortgages that have an Ability to Repay safe harbor, meaning that they are conclusively presumed to comply with the rule, even if they are higher-priced.
	2. **Seasoning Period**. For a loan to be considered a seasoned qualified mortgage, the loan must be held in the Credit Union’s portfolio for the seasoning period. The seasoning period is 36 months beginning on the date on which the first periodic payment is due after consummation.
	3. **Requirements.** For a member’s mortgage to be considered a seasoned loan qualified mortgage, it must meet the all the criteria listed above for a small-creditor qualified mortgage (Section 7) along with the following:

		1. First-lien, fixed rate loan with fully amortizing payments;
		2. Not a high-cost mortgage;
		3. Have no more than 2 delinquencies of 30 or more days and no delinquencies of 60 or more days at the end of the seasoning period;
		4. Held in portfolio where legal title is not sold, assigned, or otherwise transferred to another person before the end of the seasoning period, except:

			1. Pursuant to a capital restoration plan;
			2. Pursuant to a merger;
			3. A one-time option before the end of the seasoning period provided that the transaction is not securitized as part of the sale, assignment, or transfer or at any other time before the end of the seasoning period.
	4. **Temporary Payment Accommodations**. The seasoning period does not include any period during which the member is in a temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency, provided that during or at the end of the temporary payment accommodation there is a qualifying change, or the consumer cures the loan’s delinquency under its original terms.
9. **SUCCESSOR-IN-INTEREST**. If a member obligated on a consumer credit transaction secured by a dwelling passes away, the Credit Union may add a successor as obligor on the loan without having to meet the requirements of the Ability-to-Repay Rule.