



**Sun West**  
Mortgage Company, Inc. NMLS ID 3277

# ABILITY TO REPAY AND QUALIFIED MORTGAGE UNDERWRITING REFERENCE

January 1, 2019

In case of any queries regarding the information available in this guide, please reach us at [qmteam@swmc.com](mailto:qmteam@swmc.com).

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## OVERVIEW

In July 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) gave Consumer Financial Protection Bureau (CFPB) the responsibility to adopt mortgage rules. This document summarizes the ATR/QM Rules applicable as per loan type.

**SWMC POLICY:** All loans submitted for purchase to Sun West with application date or FHA case assignment date (for FHA loans) on or after January 10, 2014 must be QM compliant.

Correspondent Clients must submit an executed copy “TotalQM Validation Form” with every closing package certifying that the loan meets ATR/QM rules. This form can be printed through SunSoft within Print Docs screen. If you have any questions, please contact your Account Executive at (855) OK-SUNWEST or (855) 657-8693.

## Qualified Mortgages

Effective from 01/01/2019, Qualified mortgages need to meet the following requirements:

- Points and fees are less than or equal to 3% of the loan amount for loan amount greater than \$107,747. For loan amounts less than \$107,747, higher percentage thresholds are allowed as shown below:

Loan Amount	Point and fees cap
Loan Amount $\geq$ \$107,747	3% of the total loan amount
\$64,648 $\leq$ Loan Amount $<$ \$107,747	\$3,232
\$21,549 $\leq$ Loan Amount $<$ \$64,648	5% of the total loan amount
\$13,468 $\leq$ Loan Amount $<$ \$21,549	\$1,077
Loan Amount $<$ \$13,468	8% of the total loan amount

The maximum points and fees cap for VA IRRRL loans will be 3% of the total loan amount irrespective of the loan amount. VA guidelines do not provide higher points and fees cap on VA IRRRL loans with loan amount less than \$107,747.

- No risky features like negative amortization, interest-only, or balloon loans.
- Maximum loan term is less than or equal to 30 years.



**Temporary QMs:** Any loan that meets the above requirements and is eligible for purchase, guarantee, or insurance by a GSE, FHA, VA, or USDA is QM.

**SWMC POLICY:** Sun West will accept loans under Temporary QM.

All loans insured by FHA, VA, or USDA are presumed to have met the ATR requirements.

**Safe Harbor v/s Rebuttable Presumption:** QMs that are not higher-priced<sup>1</sup> have a safe harbor, meaning that they are conclusively presumed to comply with the ATR requirements. QMs that are higher-priced have a rebuttable presumption that they comply with the ATR requirements, but consumers can rebut that presumption.

**SWMC POLICY:** In order to establish a rebuttable presumption, all Higher Priced Covered Transactions (HPCT) must pass the residual income test, evidencing that the borrower(s) have the ability to repay the mortgage obligation as required. This is not applicable for FHA Streamline Refinance loans. HARP loans that are determined to be Higher Priced Covered Transactions (HPCT) must meet specific requirements as published [here](#).

## HUD Qualified Mortgage

On or after January 10, 2014, all non-manufactured housing Title II loans must:

- Have Periodic Payments.
- Have Terms To Not Exceed 30 Years.
- Not have points and fees greater than 3% of the original unpaid principal balance (UPB) for most loans. HUD Upfront Mortgage Insurance Premium (UFMIP) is NOT included in the points and fees.
- Be insured or guaranteed by HUD.

## HUD Qualified Mortgage – Two Categories

<sup>1</sup> A loan is “higher priced” if:

- It is a first lien mortgage and:
  - Is a jumbo loan with an APR that exceeds the Average Prime Offer Rate (APOR) by 2.5% or more
  - Is a non-jumbo, non-FHA loan with an APR that exceeds the APOR by 1.5% or more
- Is a subordinate mortgage with an APR that exceeds the APOR by 3.5% or more.

A loan is a jumbo loan when the principal balance exceeds the limit in effect as of the date the transaction’s rate is set for the maximum principal obligation eligible for purchase by Freddie Mac.

Online APOR rate spread calculator is available at <http://www.ffiec.gov/ratespread/newcalc.aspx>



## 1. Safe Harbor

Mortgage does not exceed limits on upfront points and fees; has an APR for a first lien mortgage that is equal to or less than the average prime offer rate (APOR)<sup>1</sup> plus 115 basis points plus ongoing annual MIP.

## 2. Rebuttable Presumption

Mortgage does not exceed limits on upfront points and fees; has an annual percentage rate (APR) that exceeds the APOR as of the date the interest rate is set plus 115 basis points plus the annual ongoing Mortgage Insurance Premium (MIP) for a first lien mortgage.

## Qualified Mortgage Exceptions

The following loan programs are excluded from HUD Qualified Mortgage rule because their requirements are deemed to satisfy the Ability-to-Repay standard:

- Home Equity Conversion Mortgages (HECM reverse mortgages),
- Construction to permanent loans for 12 months or less for the construction phase,
- Extension of credit by a Housing Finance Agency

The following programs are exempted from the up-front point and fee limit and are deemed Safe Harbor Qualified Mortgages (with no specific points and fees or APR limits):

- PowerSaver loans
- Title II Manufactured Housing Loans
- Section 184 Indian Housing Loan Guarantee Program

### SWMC POLICY:

- All loans with case assignment date on or after January 10, 2014 must be [QM compliant](#).
- Sun West will accept loans under [Temporary QM](#).
- Sun West requires all loans under [rebuttable presumption](#) to meet the [residual income requirements](#).

## FHA Streamlined Refinancing

FHA streamlined refinances are required to comply with HUD's Qualified Mortgage rule. Section 129C(a)(5) of TILA grants HUD the authority to exempt streamlined refinancing from the income verification requirements of section 129C(a)(4) as long as such refinances meet certain requirements like:



- Consumer is not 30 days or more past due on the prior existing residential mortgage loan,
- The loan does not increase the principal balance,
- The points and fees do not exceed 3 percent, and
- The new interest rate on the refinanced loan is lower than the current rate. If refinancing an ARM to a fixed rate, the FHA net tangible benefit as per HUD HB 4000.1 II.A.8.d.vi.C.4.c.ii applies.

Specifically, HUD's qualified mortgage rule would require streamlined refinances to meet the points and fees requirements and the HUD requirements for FHA streamlined refinances.

**SWMC POLICY:**

- All loans with case assignment date on or after January 10, 2014 must be [QM compliant](#).
- Sun West will accept loans under [Temporary QM](#).

## VA

VA released an announcement on January 9, 2014 that the CFPB's ATR/QM Rule becomes effective on January 10, 2014. Until VA's rule on ATR/QM is in place, all lenders must comply with the requirements of TILA, as established by CFPB's ATR/QM Rule.

VA is expected to publish its regulations regarding this rule in the near future. However, and until then all loans made in compliance with existing VA requirements will continue to be guaranteed by VA, regardless of their QM status.

**SWMC POLICY:**

- All loans with application date on or after January 10, 2014 must be [QM compliant](#).
- Sun West will accept loans under [Temporary QM](#).
- Sun West requires all loans under [rebuttable presumption](#) to meet the [residual income requirements](#).

## USDA

USDA Rural Housing Service (RHS) Section 502 guaranteed loans that comply with the CFPB's points and fees limits are considered qualified mortgages under this new rule until January 10, 2021, or until USDA publishes its own qualified mortgage rule, whichever occurs first. USDA is expected to publish a rule in the foreseeable future.

**SWMC POLICY:**

- All loans with application date on or after January 10, 2014 must be [QM compliant](#).
- Sun West will accept loans under [Temporary QM](#).
- Sun West requires all loans under [rebuttable presumption](#) to meet the [residual income requirements](#).



## Conventional

The following provisions apply to loans with application dates on or after January 10, 2014.

An ATR Covered Loan<sup>2</sup> must meet the following requirements in addition to the other underwriting and eligibility requirement:

- Have a loan term not exceeding 30 years;
- Be a fully amortizing loan, as defined in Regulation Z
- Have total points and fees not in excess of 3% of the total loan amount (or such different amount as provided in Regulation Z) as described below under Points and Fees Limitations

FNMA and FHLMC have published requirements for any Home Affordable Refinance Program (HARP) loan that is determined to be a Higher Priced Covered Transaction (HPCT). The requirements are:

- Minimum FICO of 620
- Maximum DTI of 45%

HARP programs include:

- FNMA Refi Plus
- FNMA DU Refi Plus
- FHLMC Relief Refinance Same Servicer
- FHLMC Open Access

### SWMC POLICY:

- All loans with application date on or after January 10, 2014 must be [QM compliant](#).
- Sun West will accept loans under [Temporary QM](#).
- Sun West requires all loans under [rebuttable presumption](#) to meet the [residual income requirements](#).
- Sun West will not allow any amount of borrower-paid conventional MI premiums to be excluded from the points and fees calculations.

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<sup>2</sup> An ATR Covered Loan is a mortgage loan that is subject to the TILA's ability to repay requirements under Regulation Z and is otherwise not an ATR Exempt Loan.





## Adjustable Rate Mortgage (ARM)

Per ATR/QM Rule, loan is qualified based on the maximum rate permitted under the loan terms during the period of first 5 years.

Conventional loans must be qualified based on the maximum of initial rate plus 2% or fully-indexed rate.

FHA and VA loans must be qualified based on the initial rate.

**SWMC POLICY:** Sun West will continue to underwrite loans based on FHA, VA and Conventional guidelines as described above if the loan is a safe harbor. If the loan qualifies for a rebuttal presumption then the underwriting must be done as per the ATR/QM rule described above.

For example, consider the following scenario:

- Amortization type: 3/1 ARM
- Caps: 1/1/5
- Initial interest rate: 3.250%
- Margin: 2.250%
- Current index: 0.573%

The interest rate to be used to qualify loans under each of the loan types is as shown below:

- FHA loan with Safe Harbor: 3.250% (initial interest rate)
- VA loan with Safe Harbor: 3.250% (initial interest rate)
- Conventional loan with Safe Harbor: 5.250% (initial interest rate plus 2%)
- FHA / VA / Conventional loan with Rebuttal Presumption: 5.250% (Maximum rate permitted under the loan during first 5 years).

## Mortgage Insurance Premium (MIP) / Private Mortgage Insurance (PMI)

All Federal or state government-sponsored MIPs (i.e. up-front and annual FHA premiums, VA funding fees, and USDA guarantee fees) are excluded from points and fees.

**SWMC POLICY:** While MIP premiums to HUD, and funding fee to VA, and guaranty fee paid to USDA is excluded, Sun West will not allow any amount of borrower-paid conventional MI premiums to be excluded from the points and fees calculation.



## Residual Income Requirements

The residual income is the qualified gross monthly income less the gross monthly debt. The debt and income used to calculate the debt to income ratio will also be used for the residual income test.

Lenders must be able to document that the consumer has sufficient residual income to meet monthly living expenses after paying their mortgage and other debts.

The minimum residual income thresholds and reserve requirements (regardless of loan amount) must be applied to QM ATR rebuttable presumption loans.

Occupancy Type	Monthly Residual Income	Guideline
Primary Residence	\$2500 or greater	Lenders must simply comply with the minimum reserve requirements for the loan program.
	Greater than \$800 and less than \$2500	Greater of: <ul style="list-style-type: none"> <li>• Three (3) months liquid* PITI reserves are required, OR</li> <li>• Minimum reserve requirements for the base Loan program.</li> </ul> Note: Lenders should consider requiring additional reserves for loans with higher layered risks
	Less than \$800	The loan is not eligible for purchase.
Second Homes and Investment Properties	\$2500 or greater	Loan is eligible for purchase with acceptable residual income evaluation in file.
	Less than \$2500	The loan is not eligible for purchase.

**SWMC POLICY:** Sun West requires a residual income test on all Qualified Mortgages (QM) that have a rebuttable presumption.

