



Sun West
Mortgage Company, Inc. NMLS ID 3277

ABILITY TO REPAY AND QUALIFIED MORTGAGE UNDERWRITING REFERENCE

January 1, 2021

In case of any queries regarding the information available in this guide, please reach us at 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 01/01/2021, 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 \$110,260. For loan amounts less than \$109,898, higher percentage thresholds are allowed as shown below:

Loan Amount	Point and fees cap
Loan Amount \geq \$110,260	3% of the total loan amount
\$66,156 \leq Loan Amount $<$ \$110,260	\$3,308
\$22,052 \leq Loan Amount $<$ \$66,156	5% of the total loan amount
\$13,783 \leq Loan Amount $<$ \$22,052	\$1,103
Loan Amount $<$ \$13,783	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 \$110,260.

- 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-priced¹ 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.

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

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)¹ plus 115 basis points plus ongoing annual MIP.

¹ 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>



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](#).

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 Interim Final rule on 9th May 2014 which provides Safe harbor Qualified Mortgage status to all VA loans with exception of certain VA Interest Rate Reduction Loans.

Following additional requirements must be met on a VA Interest rate reduction loan for it to be considered a “Safe harbor” QM:

- The loan being refinanced was originated at least 6 months before the new loan’s closing date
- The veteran has not been more than 30 days past due during the 6 months preceding the new loan’s closing date.
- The recoupment period for all allowable fees and charges (see 38 CFR 36.4313) financed as part of the loan or paid at closing does not exceed thirty-six (36) months.

VA Interest Rate Reduction Loans not meeting aforementioned requirement will be considered to have a rebuttable presumption and will require income to be documented.

Furthermore these loans with rebuttable presumption may qualify for income waiver if all of the following requirements are met:

1. The veteran is not 30 days or more past due on the loan being refinanced.
2. The proposed streamlined refinance does not increase the principal balance outstanding on the prior existing residential mortgage loan, except to the extent of fees and charges allowed by VA.
3. Total points and fees payable in connection with the proposed streamlined refinance loan are in accordance with 12 CFR 1026.32, will not exceed 3 percent of the total new loan amount, and are in compliance with VA’s allowable fees and charges found at 38 CFR 36.4313.
4. The interest rate on the proposed streamlined refinance is lower than the interest rate on the loan being refinanced, unless the borrower is refinancing from an adjustable rate to a fixed-rate loan, under guidelines that VA has established.
5. The proposed streamlined refinance is subject to a payment schedule that will fully amortize the IRRRL in accordance with VA regulation.
6. The terms of the proposed streamlined refinance do not result in a balloon payment, as defined in TILA.



7. Both the residential mortgage loan being refinanced and the proposed streamlined refinance satisfy all other VA requirements.

SWMC POLICY:

- Sun West will accept loans under [Temporary QM](#).
- VA IRRRL's that do not qualify for Safe Harbor will need income to be documented if all the requirement of Income Waiver could not be met.

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](#).

Conventional

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

An ATR Covered Loan² 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).

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

- Minimum FICO of 620
- Maximum DTI must not exceed 45%

High LTV Refinance programs include:

² 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.



- FNMA High LTV Refinance
- FHLMC Enhanced Relief Refinance

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 will not allow any amount of borrower-paid conventional MI premiums to be excluded from the points and fees calculations.

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.

Non Agency / Non GSE Qualified Mortgage

Certain loans with Loan amount exceeding National Conforming limits are ineligible for purchase or guarantee by Fannie Mae or Freddie Mac (the government sponsored enterprises (GSEs)) or for insurance or guarantee by certain federal agencies.

These loans do not qualify for Temporary QM exception and must meet General QM requirements which include limitation on points and fees, No risky features, Maximum loan term of 30 years, maximum debt-to-income ratio of 43% and underwriting as per Appendix Q

SWMC POLICY:

- All Non Agency/GSE Qualified Mortgage must meet General QM requirements
- Debt-to-income ratio must not exceed 43%
- Ability to repay must be documented as per Appendix Q



Non Qualified Mortgage (Non-QM)

For Non QM loans made for a personal, family or household purpose covered by the federal Truth in Lending Act (“TILA”), the ATR rule requires lenders to demonstrate they have made a good faith determination based on verified third-party records that the borrower has sufficient income and assets to repay the loan according to its terms, generally considering following eight criteria:

1. Current or reasonably expected income or assets (other than the value of the property that secures the loan) that the consumer will rely on to repay the loan;
2. Current employment status (if you employment income is used when assessing the consumer’s ability to repay)
3. Monthly payment on the covered transaction, using the introductory or fully indexed rate, whichever is higher,; and monthly, fully-amortizing payments that are substantially equal.
4. Monthly payment on any simultaneous loans secured by the same property
5. Monthly payments for property taxes and insurance, and certain other costs related to the property such as homeowners association fees or ground rent
6. Current debt obligations, alimony and child support; and
7. Credit history
8. Debt-to-Income Ratio / Residual Income

SWMC POLICY:

- Non QM loan must have documented Ability to repay
- Sun West may require borrower to sign “Ability to Repay” certification on certain Non QM Loans

