

Quick Look at H.R. 3915

Minimum Standards for All Originators and All Loans

- **Registration and Licensing** - All loan originators – defined as those individuals, who take mortgage applications, assist consumers in obtaining mortgage loans or offer or negotiate terms of loans – required to be registered with, and maintain a unique identifier through, a Nationwide Mortgage Licensing System and Registry. All licensing laws for state licensed loan originators required to meet specified standards for registration and license issuance, as well as testing and continuing education requirements. HUD shall develop a backup licensing system for states that do not enact laws that meet such standards.
- **Duty of Care Standard** - All originators required to diligently work to present the consumer with a range of loan products for which the consumer likely qualifies and which are “appropriate” to the consumer’s existing circumstances, based on information known by or obtained in good faith by the originator, make full and timely disclosures to each consumer of comparative costs and benefits of each loan product offered or discussed, the nature of the originator’s relationship to the consumer (including the costs of the services provided to the originator including and disclose to the consumer whether the originator is or is not acting as an agent. “Appropriate” means that a borrower has a reasonable Ability to Repay and a refinance loan, in addition, provides a Net Tangible Benefit (see below).
- **Ability to Repay Standard for All Loans** – Under regulations prescribed by the federal banking regulators, all lenders must make a good faith determination in underwriting a loan, based on verified and documented information, that at the time the loan was consummated the consumer had a reasonable ability to repay the loan.
- **Net Tangible Benefit Standard for Refinance Loans** – Also, under regulations prescribed by the federal banking agencies, a lender must make a reasonable and good faith determination based on information known to or obtained in good faith that a refinance loan will provide a net tangible benefit to the consumer.
- **Categories of Loans** – The bill divides mortgages into three major categories: **Qualified Mortgages** (prime, Alt. A, FHA and VA with the least regulation; **Not Qualified Mortgages** (nonprime) with greater regulation; and **HOEPA Mortgages** with the greatest regulation and restrictions. These groupings have been called Green Light, Yellow Light and Red Light Mortgages respectively and are designated that way on this chart. Note that **Qualified Safe Harbor Mortgages** are a subset within Not Qualified Mortgages that may present less liability and risk.

Qualified Mortgages

- Qualified mortgages are loans with APRs less than 3% over comparable Treasuries or 175 basis points over the Federal Reserve H.15 for first lien loans, and 5% over comparable Treasuries or 375 basis points over the Federal Reserve H.15 rate for non-first lien loans. Also all FHA and VA loans.
- Qualified Mortgages are presumed to meet the ability to repay and net tangible benefit standard. The presumption is not rebuttable.

Not Qualified Mortgages

- Not Qualified Mortgages are loans with APRs equal to or greater than 3% over comparable Treasuries or 175 basis points over the Federal Reserve H.15 for first lien loans, and 5% over comparable Treasuries or 375 basis points over the Federal Reserve H.15 rate for non-first lien loans.
- Not Qualified Mortgages are subject to greater scrutiny than Qualified Mortgages.
- Prepayment penalties are prohibited for these mortgages.
- Yield spread premiums or any equivalent incentive compensation that varies with the terms of the mortgage may not be given or received by originators under these mortgages. Costs, however, may be financed for these mortgages if they are fully and clearly disclosed to the consumer earlier in the application process and do not vary based on the terms of the mortgage.

Qualified Safe Harbor Mortgages

Qualified Safe Harbor Mortgages are the category of Not Qualified Mortgages that meet the following standards:

- 1) Documented consumer income and financial resources;
- 2) Underwritten to fully-indexed rate taking into account taxes and insurance;
- 3) Repayment schedule does not result in negative amortization;
- 4) Meets other rule(s) as may be set by federal regulators:

and one of the following:

- a) Fixed payment for principal and interest for at least 5 years; or
- b) For ARMs, APR that varies less than 3% over generally accepted interest-rate index that is the basis for determining the mortgage interest rate; or
- c) DTI % no greater than prescribed by regulation.

Liability

- **Liability Generally** - Loans that do not qualify as “Qualified Safe Harbor Mortgages” or Qualified Mortgages can expose assignees and lenders to liability. Plaintiff can seek rescission or damages as well as attorney’s fees.
- **Rescission** – Where the Ability to Repay and Net Tangible Benefit Standards are not met, a consumer may rescind the loan. The bill permits only individual actions for rescission.
- **Other Damages** – The bill also permits damages for any failure by a mortgage originator to comply with any requirement up to a maximum amount of three times the direct and indirect compensation or gain accruing to the originator for the loan involved in the violation.
- **Assignee Liability** - Assignees will not be held liable for damages or rescission if within 90 days after receipt of a claim that a loan violates the Ability to Repay and Net Tangible Benefit Standards the Assignee or Seller provides a cure or the assignee or securitizer:
 1. Has a policy against buying loans that are not Qualified Mortgages or Qualified Safe Harbor Mortgages.
 2. Policy is intended to verify seller or assignor compliance with the representations and warranties that the seller is not selling any loan that is not a Qualified Mortgage or Qualified Safe Harbor Mortgage.
 3. Conducts due diligence per regulations issued by SEC and banking regulators including through adequate, through and consistently applied sampling procedures.
- **Lender Liability** - Lenders will not be held liable where a loan meets the Qualified Safe Harbor standards. However, for lenders and assignees, a borrower can rebut the presumption that the loan meets those standards. A lender will not be liable if the loan is cured within 90 days of receiving notice from the consumer.
- **Cure** - For a violation of the Ability to Repay or Net Tangible Benefit standard, a cure requires modification or refinancing of the loan at no cost to the consumer to provide terms that would have satisfied the Ability to Repay and Net Tangible Benefit standards.

HOEPA High Cost Mortgages

The bill would:

- Change the current HOEPA definition of “high cost mortgages” to include a consumer credit transaction that is secured by the consumer’s principal dwelling, other than a reverse mortgage.
- Maintain APR trigger at 8% above Treasury securities.
- Lower point and fee trigger from 8% of the total loan amount to 5%. The definition of points and fees would be amended to include all compensation paid directly or indirectly by a consumer to a broker (including YSPs in table funded transactions); and prepayment penalties actually charged in a refinance by the original lender or an affiliate of the original lender.
- Create a third trigger for HOEPA coverage for mortgage that permits collection of a prepayment penalty more than 36 months after closing or a penalty that in the aggregate, exceeds more than 2% of amount prepaid.

Current HOEPA Assignee and other liability concerns pertain.

Other Provisions in H.R. 3915

The above points were in Titles I, II and III of H.R. 3915. Note H.R. 3915 includes several other titles including, for example, provisions that would:

Counseling –Establish an Office of Housing Counseling within HUD to provide research, public outreach, policy development and up to \$45 million in grants.

Consumer Disclosures – Amend RESPA to provide a new disclosure on the good faith estimate that attempts to simplify a consumer’s understanding of key loan terms. In addition, other portions of H.R. 3915 provide for disclosures that address variable rate loans, taxes and insurance, settlement charges, and notice of reset for hybrid ARM loans.

Loan Administration and Escrows – Require escrows for taxes and insurance for five years for first lien mortgages on principal dwellings for certain borrowers including subprime borrowers. Requires disclosure to borrowers who decline to escrow of their responsibility to pay non-escrowed fees. Prohibits servicers from obtaining force-placed insurance unless the servicer has a reasonable basis to believe the borrower has failed to comply with a requirement to maintain property insurance.

Appraisal Requirements – Requires physical appraisals to be performed by a certified, licensed appraiser for HOEPA loans. Requires creditors to provide one free copy of appraisal conducted for such a loan. Prohibits any person with an interest in the loan transaction to influence the judgment of the appraiser by coercion, collusion, etc.