



# CFPB FINAL RULES

## SUN WEST IMPLEMENTATION GUIDE

January 1, 2021

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

Sun West Mortgage Company, Inc. (NMLS ID 3277) in California holds a Finance Lenders Law License (#6030119) approved by the California Department of Business Oversight, Phone: (866) ASK-CORP, and a BRE Real Estate Corporation License (#00793885) approved by the California Bureau of Real Estate, Phone: (877) 373-4542. Please refer to [www.swmc.com](http://www.swmc.com) and [www.nmlsconsumeraccess.org](http://www.nmlsconsumeraccess.org) to see where Sun West Mortgage Company, Inc. (NMLS ID 3277) is a license lender and servicer. In all jurisdictions, the principal (Main) licensed location of Sun West Mortgage Company, Inc. is 6131 Orangethorpe Avenue, Suite 500, Buena Park, CA 90620, Phone: (800) 453-7884.

## Introduction

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 regulatory changes made by Consumer Financial Protection Bureau (CFPB) to the 2013 mortgage rules under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z).

Information provided within this document is intended to offer awareness of the various regulatory changes. It is not a legal document and does not provide legal or compliance advice. Please contact your compliance officer, consultant or attorney for advice as appropriate.

[Click here](#) to access the final rules published by CFPB.

**This document also summarizes changes implemented by Sun West to ensure compliance with the Final Rules issued by CFPB.**

## Ability to repay & qualified mortgage

- These rules are applicable for all loans with application date on or after January 10, 2014.

### **SWMC POLICY:**

**Non-FHA Loans:** All non-FHA loans submitted under the wholesale channel with application date on or after January 10, 2014, must be QM compliant.

**FHA Loans:** All FHA loans submitted under the wholesale channel with case assignment date on or after January 10, 2014, must be QM compliant.

- Ability to Repay (ATR) and Qualified Mortgage (QM) rule applies to closed end consumer credit transactions secured by a dwelling. The rules applies to all lien positions (first lien, second lien etc.) and all occupancy types (owner occupied, second homes, investment properties etc.)

**SWMC POLICY:** Using its TotalQM™ Worksheet feature, Sun West's LOS, SunSoft, will confirm the eligibility of your loan with QM requirements, with just one click!



- Lenders must consider and document at least the following 8 underwriting factors in determining borrower’s ability to repay (ATR) the loan:
  - Current or reasonably expected income or assets;
  - Current employment status;
  - The monthly payment on the covered transaction;
  - The monthly payment on any simultaneous loan;
  - The monthly payment for mortgage-related obligations e.g. taxes, insurance, HOA etc.;
  - Current debt obligations, alimony, and child support;
  - The monthly debt to income (DTI) ratio or residual income; and
  - Credit history
  
- Qualified Mortgages (QM) have the following requirements:
  - Restriction on risky features and practices such as negative amortization, interest only periods and loan terms longer than 30 years
  - Points and fees paid by the consumer must fall within the threshold for QM
  - Loan must meet underwriting standards as specified in [Appendix Q](#)
    - A key underwriting requirement is that the borrower’s DTI ratio cannot exceed 43%
    - Loans that meet underwriting requirements of Fannie Mae, Freddie Mac, FHA, VA or USDA are currently exempt from 43% maximum DTI rule
    - Non agency (Jumbo) loans are subject to maximum DTI of 43%

**SWMC POLICY:** Loans that meet FHA, VA, USDA, FNMA, or FHLMC underwriting guidelines are exempt from the 43% maximum DTI rule.

- QM points and fees threshold for loans originated on or after 01/01/2021:

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

**SWMC POLICY:** Underwriting Fee and Supplemental Origination Fee is not required to be disclosed in the Box 1 of the GFE.

The pricing adjustment for "No Lender Fee" indicated on the rate sheet now applies for all loan programs except FHA streamlines, VA IRRRLs, and HECMs.

- QM points and fees calculation:
  - In order to calculate QM points and fees, consider all finance charges (including processing fee and underwriting fee) except:
    - Daily Interest
    - Federal or state government sponsored mortgage insurance premiums (MIP): For e.g. FHA MIP, VA Funding Fee, USDA Guarantee Fee etc.
    - Exclude monthly or annual PMI premiums. Exclude amount of upfront private mortgage insurance if the premium is refundable on a prorated basis and a refund is automatically issued upon loan satisfaction. However, even if the premium is excludable, any portion that exceeds the up-front MIP for FHA loans must be included.

**SWMC POLICY:** Sun West will not allow any amount of borrower paid conventional MI premiums to be excluded from the Points and Fees calculation.

- Bona fide third-party charges not retained by the creditor, loan originator, or an affiliate of either.
- Bona fide discount points
  - Exclude up to two bona fide discount points if the interest rate before the discount does not exceed the Average Prime Offer Rate (APOR) for a comparable transaction by more than one percentage point, or
  - Exclude up to one bona fide discount point if the interest rate before the discount does not exceed the APOR for a comparable transaction by more than two percentage points.

Loan originator compensation - Include compensation paid directly or indirectly by a consumer or creditor to a loan originator other than an employee of a creditor or of a mortgage broker. This includes:

- Compensation paid directly by a borrower to a mortgage broker
- Compensation paid by a creditor to a mortgage broker
- Compensation paid by a consumer or creditor to a manufactured home retailer
- Compensation included in the sales price of a manufactured home



**SWMC POLICY:** Maximum Lender Paid Compensation allowed is 2.75% for all loans with submission date on or after January 10, 2014. New compensation addendums would be distributed by January 9, 2014. All wholesale brokers must sign and submit the new compensation addendum before submitting their first loan to Sun West under the new QM rule. If signed addendum is not submitted prior to the submission of first loan under the new QM rule effective 01/10/2014, the compensation would automatically default to 2.00%.

- Real estate related fees (e.g., title insurance, title examination, survey, loan-related document preparation such as deeds and mortgage, notary, credit report fee, property appraisal, property inspection, amount paid in to escrow account, etc.) should be included in points and fees calculations unless:
  - The charge is reasonable,
  - Creditor does not receive direct or indirect compensation with the charge, and
  - The charge is not paid to an affiliate of a lender
- 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.

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<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>



## ECOA Valuation

- These rules are applicable for all loans with applications date on or after January 18, 2014.
- ECOA valuation rule applies to both open end and closed end transactions secured by a first lien on a dwelling.
- All borrowers must be provided a disclosure that outlines their right to receive copies of all appraisals and written valuations within three business days of application.

**SWMC POLICY:** Sun West's LOS, SunSoft, will print the 'Right to Receive Copy of Appraisal Disclosure' as part of the Initial Application Package.

- Creditor must deliver free copies of home appraisals and other written valuations promptly upon completion, or three business days before consummation, whichever is earlier.

## 2013 HOEPA Rule

- These rules are applicable for all loans with applications date on or after January 10, 2014.
- This regulation applies to consumer credit transactions that are secured by a consumer's principal residence.
- If a transaction meets any one of the following three independent tests, then it is considered as a high cost mortgage and it will be subject to 2013 HOEPA rules:
  - The APR test:
    - A first lien transaction on consumer's principal dwelling will be considered as high cost mortgage if APR<sup>2</sup> is 6.5% above APOR.
    - A first lien transaction secured by a personal property for less than \$50,000 will be considered as high cost mortgage if APR is 8.5% above APOR.
    - A junior lien transaction will be considered as high cost mortgage if APR is 8.5% above APOR.

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<sup>2</sup>APR must be measured as of the date the interest rate for the transaction is set. In other words, the date on which interest rate was locked.





- The Points and Fees test:
  - A transaction with loan amount less than \$22,052<sup>3</sup> will be considered as high cost mortgage if total points and fees<sup>4</sup> exceed 8% of total loan amount or \$1,103, whichever is less.
  - A transaction with loan amount greater than or equal to \$22,052 will be considered as high cost mortgage if total points and fees exceed 5% of the total loan amount.
- The Prepayment Penalty test: A transaction is a high cost mortgage if creditor charges a prepayment penalty:
  - Payable more than 36 months after consummation or account opening; or
  - In an amount more than 2% of the amount prepaid
- If the transaction is high cost loan, creditor must comply with additional requirements, such as, specific disclosure requirements, restrictions on transaction terms, restrictions on fees and practices, ability to repay requirements and a pre loan counseling requirement.

**SWMC POLICY:** Sun West does not accept high cost loans.

- The final rule contains a new requirement that the creditor must give applicants for federally related mortgages (whether or not a high cost mortgage) a written list of homeownership counseling organizations within three business days of receiving an application.

**SWMC POLICY:** Sun West's LOS, SunSoft, will print 'List of Homeownership Counseling Organizations' as part of the Initial Application Package on all applicable loans.

<sup>3</sup>The \$22,052 and \$1,103 amounts will be adjusted annually for inflation by CFPB. The updated figures will be published every year in the commentary to Regulation Z.

<sup>4</sup>For the type of fees to be included / excluded in calculation of total points and fees, please refer to ATR and QM Rule section.

