# PUBLICATION

## New Loans: Harder to Make, Easier to Keep?

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*Stringent lending rules aim to ensure borrowers have the ability to repay, and hold lenders accountable at origination*

The new CFPB mortgage rules are tough on lenders, beginning with the loan application process. In order to issue a mortgage, lenders must collect information about income and assets, employment status, credit history, monthly payments for the mortgage and other debts, and the borrower's debt-to-income ratio. The lender may also look at how much money a consumer will have left over after debts are paid monthly. Some lending requirements may be relaxed if a lender is assisting a consumer by refinancing them out of a risky mortgage and into a more stable loan.

The good news for lenders is that they have the benefit of an automatic presumption that they have complied with these requirements when a Qualified Mortgage is issued. In order to earn the label of a Qualified Mortgage, the loan generally may have no "toxic" features, such as an interest-only period, balloon payment or loan term shorter than 30 years (an exception is made for balloon payments in rural or underserved areas). Negative amortization loans also do not qualify. Qualified Mortgages also limit the amount of income which can go toward paying monthly debts. Specifically, monthly debt (including a mortgage) may not be more than 43% of a consumer's gross income. While not all new loans must be Qualified Mortgages, lenders who make these loans get some legal protection, even if the loan goes into default. Consumers can still assert that the subject loan did not comply with Qualified Mortgage requirements, but they will have to overcome the presumption in favor of the lender.

In addition to rules which require heightened scrutiny of borrowers prior to extending credit, lenders are now obligated to abide by record-maintenance requirements aimed at increasing transparency and accountability.

Loan originators are assigned an identification number by the Nationwide Mortgage Licensing System and Registry (NMLSR ID). Pursuant to the new rules, this number must appear on the credit application, note or contract, and security instrument (for example, a mortgage). The name and ID of the individual loan originator with primary responsibility for the mortgage must also be included.

But restrictions don't end at the application stage. Once credit approval is obtained, creditors may no longer include terms that require arbitration or other non-judicial procedures to resolve any controversy or dispute. The parties may – by agreement – utilize non-judicial means when a dispute arises, but this cannot be a standard term.