

**Department of Veterans Affairs Qualified Mortgage Interim Final Rule
Frequently Asked Questions**

1. What is the Ability to Repay (ATR)?

A1. In the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), Congress required that, for residential mortgages, creditors must make a reasonable and good faith determination based on verified and documented information that the consumer has a reasonable ability to repay the loan according to its terms.

2. What is a Qualified Mortgage (QM) in VA’s home loan program?

A2. VA defines QM to mean any loan that is guaranteed, insured, or made by VA; however, certain limitations apply to Interest Rate Reduction Refinance Loans (IRRRLs). These limitations are discussed below.

3. As of what date did VA’s Ability to Repay (ATR) standards and Qualified Mortgage (QM) definition become effective?

A3. VA’s ATR standards and QM definition were published in the Federal Register as an Interim Final Rule (IFR) on May 9, 2014. See 79 FR 26620. The IFR became effective on the date of publication.

4. Are there different types of QMs in VA’s home loan program?

A4. All VA purchase-money loans that meet the QM requirements established in 38 C.F.R. § 36.4300(b) are Safe Harbor QMs. In order for an IRRRL to have Safe Harbor QM status, it must meet the requirements of 38 CFR § 36.4300(c)(1), further explained below. If an IRRRL does not meet the Safe Harbor requirements, but it meets the basic requirements for guaranty, it is a QM with the rebuttable presumption that the borrower has the ability to repay the loan.

5. Did the IFR require substantial changes to the way lenders underwrite VA-guaranteed loans?

A5. No, the IFR did not result in substantial changes to the way lenders underwrite VA-guaranteed loans. The purpose of the IFR was not to change the way loans are processed for guaranty, but to establish whether a loan would be a QM and, if so, which type.

6. What is required for an IRRRL to be a Safe Harbor QM?

A6. If the IRRRL meets the three requirements listed below, it will be considered a Safe Harbor QM and the lender is not required to perform credit underwriting:

1. The loan being refinanced was originated at least 6 months before the new loan's closing, at least 6 payments have been made on the original loan, and the Veteran has not been more than 30 days past due during the 6 months preceding the new loan's closing date; and
2. All fees and charges financed as part of the loan or paid at closing (i.e., all expenses associated with the cost of the refinance) are in compliance with 38 C.F.R. § 36.4313, and such fees are shown to be recouped within 36 months of the new loan closing. Note that VA excepts from the recoupment requirement, the following three types of IRRRLs: 1) mortgages that include energy efficient improvements, 2) loans that are being refinanced from an adjustable-rate to a fixed-rate, and 3) loans which a refinance a fixed-rate loan into another fixed-rate loan of a shorter duration; and
3. The requirements set out in A12, below, related to exemption of income verification are satisfied.

Lenders should note that if the IRRRL cannot be exempted from income verification (as set forth in A13, below), the loan can still be deemed a safe harbor QM, if the lender verifies the borrower's income in accordance with VA's underwriting requirements found at 38 C.F.R. § 36.4340. If the loan is not exempted from verification, and if the lender does not verify the borrower's income in accordance with 38 C.F.R. § 36.4340, then the new IRRRL cannot be considered a safe harbor QM.

7. Will VA still guaranty the loan if the IRRRL does not meet the recoupment period of less than 36 months, or does not meet the 6-month seasoning requirements?

A7. Yes, VA will guaranty the loan; however, the loan will not have Safe Harbor QM status. Instead, it will be a Rebuttable Presumption QM. VA does not condition the guaranty on satisfaction all of the QM requirements. Lenders should consult their legal staff regarding safe harbor and rebuttal presumptions QMs.

8. What is the date that begins the seasoning and recoupment periods?

A.8. The date of the note is the date on which legal obligations are established between borrower and lender. Therefore, to calculate the seasoning period, the lender should use the date of the note that is being refinanced. The starting date for recalculating the recoupment period is the date of the new IRRRL note.

9. Are pre-paid expenses, such as real estate taxes and home owners' insurance counted in total closing costs for the 36-month recoupment period?

A9. No, only those expenses the veteran incurs as a cost of the IRRRL must be included in the recoupment period. VA does not believe it is necessary to include in the recoupment period the costs of items the borrower would have paid anyway under the loan being refinanced. The purpose of the recoupment calculation is to demonstrate the difference in out-of-pocket or financed expenses between the original loan and the new

IRRRL. Consequently, if expenses like homeowners' insurance premiums, taxes, special assessments, and homeowners' association fees were, or would have been, payable under the original loan, they are excluded from the recoupment calculation.

10. If I submit a loan for VA prior approval that is considered a Rebuttable Presumption QM, and VA approves the loan, will the loan have Safe Harbor protections?

A10. No. The type of QM protection would not change simply because VA approved a lender's underwriting. VA's approval of underwriting is limited to the validity of the guaranty and does not affect the type of QM designation.

11. Can lender credits be excluded from the recoupment calculation?

A11. Whether a lender credit or premium pricing is a cost of the IRRRL, and thus included in the recoupment calculation, depends on whether a lender's credit is an incentive paid on behalf of the veteran or is a result of some sort of consideration the veteran provides. If the former, the lender credits and premium pricing can be excluded from the recoupment calculation. If the latter, they must be included. In other words, lender credits and premium pricing may be excluded from the recoupment calculation only to the extent they offset fees allowed in 38 C.F.R. § 36.4313.

12. Are there changes to the income verification requirements for IRRRLs?

A12. VA continues to exempt IRRRLs from income verification pursuant to 38 C.F.R. 36.4340(b)(2), as long as the following Dodd-Frank Act conditions are met:

- a. The Veteran is not 30 or more days past due on the loan being refinanced;
- b. The proposed IRRRL does not increase the principal balance outstanding on the prior existing residential mortgage loan, except energy efficient mortgages and to the extent of fees and charges outlined in 38 CFR 36.4313.
- c. Total points and fees (as defined in section 103(aa)(4) of the Truth-in-Lending Act (TILA), other than bona fide third-party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator) payable in connection with the proposed IRRRL do not exceed three percent of the total proposed principal amount;
- d. The interest rate on the proposed IRRRL 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;
- e. The proposed IRRRL is subject to a payment schedule that will fully amortize the IRRRL in accordance with VA regulations;
- f. The terms of the proposed IRRRL do not result in a balloon payment, as defined in TILA; and

g. Both the residential mortgage loan being refinanced and the proposed IRRRL satisfy all other VA requirements.

VA did not exercise discretion in applying these conditions to the IRRRL program. VA merely recited the criteria required under the Dodd-Frank Act.

13. Is VA prior approval required on a proposed IRRRL that does not meet the requirements for exemption of income verification?

A13. A prior approval submission on a proposed IRRRL is only necessary if the original loan is 30 or more days past due.

14. Is an IRRRL lender responsible for an origination lender's failure to comply with VA credit underwriting guidelines?

A.14. No, an IRRRL lender is not responsible under the IFR for another lender's failure to underwrite the loan in accordance with VA credit underwriting guidelines,