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United States House of Representatives
Committee on Financial Services
Washington, D.C. 20515

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# M E M O R A N D U M

**To:** Members, Subcommittee on Financial Institutions and Consumer Credit

**From:** Financial Services Committee Majority Staff

**Date:** January 9, 2014

**Subject:** January 14, 2014, Financial Institutions and Consumer Credit Subcommittee Hearing on "How Prospective and Current Homeowners Will Be Harmed by the CFPB's Qualified Mortgage Rule"

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The Subcommittee on Financial Institutions and Consumer Credit will hold a hearing entitled "How Prospective and Current Homeowners Will Be Harmed by the CFPB's Qualified Mortgage Rule" at 10:00 a.m. on Tuesday, January 14, 2014, in room 2128 of the Rayburn House Office Building. This hearing will feature one panel of witnesses, including:

- Jack Hartings, Chief Executive Officer, Peoples Bank in Coldwater, Ohio, on behalf of the Independent Community Bankers of America
- Bill Emerson, Chief Executive Officer, Quicken Loans, on behalf of the Mortgage Bankers Association
- Daniel Weickenand, Chief Executive Officer, Orion FCU, on behalf of the National Association of Federal Credit Unions

This hearing continues the Subcommittee's study of the impact of the Qualified Mortgage ("QM") rule issued last year by the Bureau of Consumer Financial Protection (CFPB). The Subcommittee held its first hearing on this subject on May 21, 2013.

Title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111-203) made substantial changes to the mortgage lending marketplace. Section 1411 of the Act requires mortgage lenders to determine at the time a loan is made that the borrower has a reasonable ability to repay it. Section 1411 specifies that in determining whether the borrower has the ability to repay the loan, lenders must consider "the consumer's credit history, current income, expected income the consumer is reasonably assured or receiving, current obligations, debt-to-income ratio or the residual income the consumer will have after paying non-mortgage debt and mortgage-related obligations, employment status, and other financial resources." If a lender fails to determine that the borrower has the ability to repay the loan, the lender is subject to statutory damages and potential class action liability. In addition, the Dodd-Frank Act permits borrowers to raise the lender's failure to satisfy the ability to repay requirement as a defense in foreclosure proceedings.

To mitigate the potential liability that lenders face, section 1412 creates a regime under which lenders may presume that a mortgage meets the ability to repay requirement if it is a "qualified mortgage." The Dodd-Frank Act lists illustrative criteria for mortgages to be considered QMs but delegates to the Federal Reserve Board the authority to issue regulations that specifically define a qualified mortgage.[1] The Federal Reserve Board is permitted to prescribe regulations that revise, add to, or subtract from the criteria that define a QM if necessary to ensure that responsible, affordable mortgage credit remains available to consumers. The responsibility for finalizing the QM rule transferred from the Federal Reserve Board to the Consumer Financial Protection Bureau (CFPB) on July 21, 2011.

The CFPB finalized the QM rule in January 2013; it will go into effect on January 10, 2014. In this hearing, the Committee will continue its investigation into the impact of this rule on low- and moderate-income families and first time homeowners. The Committee will also hear testimony about the liability associated with making mortgages that do not qualify as QM and whether there is likely to be a secondary market for non-QMs.

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[1] Section 1412 lists the following as possible features of Qualified Mortgages: (1) no negative amortization; (2) no balloon payments (except in rural or underserved areas); (3) no "interest only" payments; (4) income and financial resources of the borrower are verified and documented; (5) the loan is underwritten based on payments reflecting full amortization and takes into consideration all mortgage-related obligations, such as taxes, property insurance, and assessments; (6) variable rate loans are underwritten based on the maximum rate permitted in the first five years and a payment schedule that reflects full amortization; (7) the loan complies with any regulatory guidelines on debt-to-income ratios; (8) total points and fees generally do not exceed 3 percent of total loan amount; and (9) the term does not exceed 30 years, unless this limit is extended by regulations.