

Lenders Compliance Group

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Ability-to-Repay: Regulating or Underwriting? Part II (Magazine Article)

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**ABILITY-TO-REPAY:
REGULATING OR UNDERWRITING?
Part II**

It has been published in the [National Mortgage Professional Magazine](#) - July 2011.

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EXCERPT # 1

It seems to me that the imposition of an ability-to-repay requirement as a regulatory mandate is an admission that market forces cannot discipline lenders or incentivize lenders to act in their own self-interest.

This is an obvious shift in liabilities, because this mandate shifts the burden of compliance to the lenders in order to assure that their contractually bound borrowers can pay back their loans. Parties to any contract can become adversaries!

In other words, the relationship between the creditor and the borrower is innately affected and extensively undermined by this Rule, inasmuch as it imposes a new kind of theory for a regulatory framework and, in my estimation, infantilizes lenders by making them comply with a regulator's ad hoc way of rationing the extension of credit.

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EXCERPT # 2

If the rationing of credit is meted out through this regulatory construct, it can be legitimately asserted as well that lenders are not arms-length, contractual counterparties; that is, lenders now will have a duty to assess a prospective borrower's ability to repay, irrespective of collateral value and securitization.

This change in the dynamics between and the inherent, due diligence tension among the parties to a residential mortgage transaction raise serious issues about the systemic consequences soon to be engendered.

**ABILITY-TO-REPAY:
REGULATING OR UNDERWRITING?**

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