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Tuesday, April 19, 2011

## FRB: Proposes Rule - Ability to Repay

Today, the Federal Reserve Board (FRB) requested public comment on a proposed rule under Regulation Z that would require creditors to **determine a consumer's ability to repay a mortgage before making the loan and would establish minimum mortgage underwriting standards.**

The FRB notice was issued on April 18, 2011.

The revisions to the regulation, which implements the Truth in Lending Act (TILA), are being made pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA).

The proposal would apply to all consumer mortgages (except home equity lines of credit, timeshare plans, reverse mortgages, or temporary loans).

The proposal would also implement the Dodd-Frank Act's limits on prepayment penalties.

**Comment Period: Until July 22, 2011.**

Because the general rulemaking authority for TILA is scheduled to transfer to the Consumer Financial Protection Bureau on July 21, 2011.

Accordingly, this rulemaking will not be finalized by the FRB.

### Four Compliance Options

Consistent with the DFA, the proposal would provide four options for complying with the ability-to-repay requirement.

#### General Ability-to-Repay Standard - Option # 1

First, a creditor can meet the general ability-to-repay standard by considering and verifying specified underwriting factors, such as the consumer's income or assets.

Considering and verifying the following eight underwriting factors:

- Income or assets relied upon in making the ability-to-repay determination
- Current employment status
- The monthly payment on the mortgage
- The monthly payment on any simultaneous mortgage
- The monthly payment for mortgage-related obligations
- Current debt obligations
- The monthly debt-to-income ratio, or residual income
- Credit history

Additionally, the underwriting of the payment for an adjustable-rate mortgage would be based on the fully indexed rate.



#### Qualified Mortgage - Option # 2

Second, a creditor can make a "qualified mortgage," which provides the creditor with special protection from liability provided the loan does not have certain features, such as negative amortization; the fees are within specified limits; and the creditor underwrites the mortgage payment using the maximum interest rate in the first five years.

The FRB seeks comments on two alternative approaches for defining a "qualified mortgage."

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Two alternative definitions of a "qualified mortgage."



### Alternative 1

Alternative 1 would operate as a legal safe harbor and define a "qualified mortgage" as a mortgage for which:

- The loan does not contain negative amortization, interest-only payments, or a balloon payment, or a loan term exceeding 30 years;
- The total points and fees do not exceed 3 percent of the total loan amount;
- The income or assets relied upon in making the ability-to-repay determination are considered and verified; and
- The underwriting of the mortgage (1) is based on the maximum interest rate that may apply in the first five years, (2) uses a payment scheduled that fully amortizes the loan over the loan term, and (3) takes into account any mortgage-related obligations.

### Alternative 2

Alternative 2 would provide a rebuttable presumption of compliance and would define a "qualified mortgage" as including the criteria listed under Alternative 1 as well as additional underwriting requirements from the general ability-to-repay standard.

The creditor would also have to consider and verify:

- The consumer's employment status,
- The monthly payment for any simultaneous mortgage,
- The consumer's current debt obligations,
- The monthly debt-to-income ratio or residual income, and
- The consumer's credit history.



### Balloon-Payment Qualified Mortgage - Option # 3

Third, a creditor operating predominantly in rural or underserved areas can make a balloon-payment qualified mortgage. This option is meant to preserve access to credit for consumers located in rural or underserved areas where banks originate balloon loans to hedge against interest rate risk for loans held in portfolio.

Under this option, a creditor can make a balloon-payment qualified mortgage with a loan term of five years or more by:

- Complying with the requirements for a qualified mortgage; and
- Underwriting the mortgage based on the scheduled payment, except for the balloon payment.



### Refinancing of a Non-Standard Mortgage - Option # 4

Fourth, a creditor can refinance a "non-standard mortgage" with risky features into a more stable "standard mortgage" with a lower monthly payment. This option is meant to preserve access to streamlined refinancings.

Under this option, a creditor complies by:

- Refinancing the consumer into a "standard mortgage" that has limits on loan fees and that does not contain certain features such as negative amortization, interest-only payments, or a balloon payment;
- Considering and verifying the underwriting factors listed in the general ability-to-repay standard, except the requirement to consider and verify the consumer's income or assets; and
- Underwriting the "standard mortgage" based on the maximum interest rate that can apply in the first five years.



### Other Rule Proposals

- Implement the Dodd-Frank Act's limits on prepayment penalties
- Lengthen the time creditors must retain records that evidence compliance with the ability-to-repay and prepayment penalty provisions

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April 18, 2011



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