ABILITY TO REPAY/QUALIFIED MORTGAGE (QM) PROPOSED RULE

National Association of REALTORS®

Government Affairs Division

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THE DODD-FRANK ACT

- Anti-Predatory Lending Legislation considered for the last several Congresses.
- The financial crisis provided a catalyst for enactment on July 21, 2010.
- As part of the 2,000+ page law: Title XIV—Mortgage Reform and Anti-Predatory Lending Act

Proposed Rule

- The Federal Reserve Board published the proposed rule with comments due July 22, 2011.
- The Dodd-Frank Act transferred rulemaking responsibility to the Consumer Financial Protection Bureau (CFPB) on July 21, 2011.
- The Fed is transferring the public comments to the CFPB, which takes over from here.

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Ability to Repay Determination Required

- DFA amended the Truth in Lending Act in various ways.
- Section 129C: No creditor may make a mortgage loan without making a reasonable and good faith determination that the borrower has the ability to repay the loan.
- NAR officially warned about weak underwriting standards in May 2005, and welcomes this concept.
- The ability to repay requirement applies to almost all mortgages, including investor loans, but excluding open-end credit, timeshares, reverse mortgages, and construction loans.

Lender Compliance Options
Option 1—General Ability to Repay

Make a reasonable and good faith determination the borrower has a reasonable ability to repay, based on verified and documented information related to 8 statutory factors:

1. Income/assets
2. Employment
3. Mortgage payment
4. Payments on other loans
5. Mortgage related obligations
6. Other debt
7. DTI ratio or residual income
8. Credit history

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Option 2—Originate a QM Mortgage

Alternative 1—The Safe Harbor option defines a QM as a mortgage meeting 4 criteria:

1. No neg am, balloon, IO, or >30 year mortgages
2. 3% cap on points and fees
3. Consider and verify income and assets
4. Underwriting is based on maximum rate in 1st 5 years, uses fully amortizing payment schedule, considers mortgage related obligations.

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Alternative 2—Rebuttable Presumption (easier to challenge in court)

Includes the 4 criteria for the Safe Harbor option, plus additional underwriting based on the 8 statutory criteria:

1. Employment
2. Payments on other loans
3. Other debts
4. DTI or residual income
5. Credit history

Compliance Options 3 & 4

3. Refinancing a non-standard mortgage into a standard mortgages (no need to verify income or assets to give borrower a safe product).

4. Balloon payment exception for rural and underserved areas (exception to QM prohibition if creditor operates in a predominantly rural or underserved area, the loan term is $\leq$ 5 years, the borrower can afford the payments).

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NAR Comment Letter Submitted July 22, 211

- **Seller Financing:** ability to repay applies to creditors (defined as those making more than 5 consumer mortgage loans in a calendar years). Therefore, exempts most seller financing. Letter asks the CFPB for clarification/confirmation.
- **FHA Loans:** should be presumed to be QM. FHA underwriting rules cited as example of sound underwriting. Why add layer of red tape?

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- NAR Supports the Safe Harbor Option, but only with stronger protections for consumers. Lenders are using strong underwriting already.
- Mortgage liquidity should be enhanced if litigation risk to lenders is reduced with a Safe Harbor.
- Increased liquidity will help consumers.
- Consumer groups v. lenders.

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Next Steps

- CFPB will analyze the public comments. Deadline for final rule is 1/21/2013 (effective no later than 1/21/2014)
- The Fed received nearly 900 public comments (plus nearly 1,000 identical form letters).
- We are in new territory with a brand new federal agency.
- NAR message to CFPB: Need to balance competing interests of lenders and consumers to keep mortgage lending available for all creditworthy consumers.

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