Colorado Mortgage Lenders Association

4380 S. Syracuse Street., Suite 315 • Denver, Colorado 80237 • Phone: (303) 773-9565 • Fax: (303) 773-8746 •
www.CMLA.com

July 21, 2011

Jennifer J. Johnson
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551.

Re: Docket No. R- 1417 and RIN No. AD 7100 AD 75

The Board of Governors of the Federal Reserve System (Federal Reserve) has proposed a rule to implement Congressional amendments to the Truth in Lending Act (TILA) concerning the ability-to-repay requirement which is to be finalized by the Consumer Financial Protection Bureau (CFPB). These amendments were included in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Colorado Mortgage Lender's Association (CMLA) submits the following comments concerning various provisions in the proposed rule.

The Colorado Mortgage Lenders Association is a 56 year old organization made up of over 140 companies employing in excess of 3000 individuals involved in the Mortgage Lending Industry in Colorado. Our membership is made up of Mortgage Bankers, Mortgage Brokers, Banks and Credit Unions located throughout the State. Our members originate the majority of residential real estate loans made in the State of Colorado.

The proposed rule includes the standards that will be used to determine compliance with the ability-to-repay requirement, and these standards include the making of a "qualified mortgage" (QM). Congress included language in the Dodd-Frank Act that is designed to provide some certainty and protection from liability for a lender who makes a QM. This language will benefit consumers by helping to ensure an adequate supply of affordable and high quality mortgages. However, the Federal Reserve states in the proposed rule that it is unclear from the statutory language in the Dodd-Frank Act whether Congress intended that the QM provide a "safe harbor" or merely the presumption of compliance with the ability-to-repay requirement. The proposed rule therefore outlines each of the two options and asks for comments on both.

Alternative 1 in the proposed rule provides for the "safe harbor" QM. In order to qualify for Alternative 1, the "qualified mortgage" must provide for regular periodic payments that do not result in an increase of the principal balance (negative amortization); allow the consumer to defer payment of principal (interest-only payments); or result in a balloon payment; the loan term cannot exceed 30 years; total points and fees payable in connection with the loan generally

cannot exceed 3 percent of the loan amount; the loan is underwritten in a manner that includes full amortization and takes account of all mortgage related obligations that are to be paid by the borrower; and the lender considers and verifies the borrower's current or reasonably expected income or assets. Alternative 1 provides lenders and consumers with a bright line that includes clear standards that must be met in order to make a QM and qualify for the legal safe harbor for compliance with the ability-to-repay requirement.

Alternative 2 provides that a QM must meet the requirements of Alternative 1, as well as additional ability-to-repay requirements. The lender would be required to consider the borrower's employment status, any simultaneous loans, current debt obligations, and the borrower's credit history. If these requirements are met, the creditor is presumed to have complied with the ability-to-repay requirement. Alternative 2 provides merely a "rebuttable presumption" of compliance.

CMLA believes that Alternative 1 is essential for both consumers and lenders, and strongly urges the Consumer Financial Protection Bureau to adopt this approach once the proposed rule is transferred under CFPB jurisdiction (on July 21, 2011).

There are a number of reasons why a safe harbor is necessary. First, the penalties for non-compliance with the ability-to-pay requirements are severe. If lenders do not have a clear safe harbor, consumers will suffer because lenders will inevitably become much more cautious and risk averse. There is already a great deal of uncertainty and litigation in the mortgage market, anything short of a safe harbor will invite more of both. The legal reality is that a rebuttable presumption can be overcome by any evidence of a potential failure to comply with the ability-to-repay standard. The lender is then faced with litigation in order to demonstrate compliance. Widespread litigation will invariably increase costs for consumers.

Second, the legal standards associated with a rebuttable presumption will vary from one court to another and from one jurisdiction to another. The result is likely to be confusion and a significant increase in compliance costs. Again, this will ultimately harm consumers by making credit scarcer and more costly.

Third, vague regulations can help create an environment where marginal creditors flourish. Reputable creditors strive to operate in compliance, less than reputable creditors ignore the rules and move to capture temporary market share. Obviously, this is harmful to consumers.

Fourth, a bright line safe harbor will encourage use of the QM, this will in turn result in an increased supply of affordable and high quality mortgages for consumers. The weak state of the economy has much to do with the lack of a housing recovery. This is no time to make it more difficult for lenders to make quality loans. Rather, this is a time to encourage responsible lending through greater use of the QM.