UMPQUA HOLDINGS
CORPORATION
Parent company for Umpqua Bank and Umpqua Investments, Inc.

July 22, 2011

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th and Constitution Avenue, NW
Washington, DC 20551
regs.comments@federalreserve.gov

Re: Docket No. R-1417 re Proposed Rule Amending Regulation Z: Ability-To-Repay Requirements (76 F.R. 27390)

Ms. Johnson:

Umpqua Bank, a regional community bank serving the northwestern United States, appreciates the opportunity to comment on the Federal Reserve Board's proposed rule regarding ability-to-repay requirements, ("Qualified Mortgage") mandated by recent provisions of Title XIV of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* ("DFA"). This proposal is complex. Umpqua and all banks will be profoundly impacted by its provisions. Most importantly, the rule is a significant addition to the regulation of the housing finance system. Since the stakes are incredibly high, and failure to strike the proper balance would devastate a severely weakened housing economy, it is critically important that regulators carefully consider and weigh the needs and requirements of all stakeholders.

Umpqua Bank

Umpqua Bank, headquartered in Roseburg, Ore., is a subsidiary of Umpqua Holdings Corporation (NASDAQ: UMPQ), and has 185 locations in Oregon, Northern California, Washington and Nevada with assets of approximately $12 billion. Umpqua Bank has been recognized nationally by *The Economist, The Wall Street Journal, The New York Times, BusinessWeek, Fast Company* and CNBC for its innovative customer experience and industry-leading banking strategy. For the past five years in a row, the company has been included on *FORTUNE* magazine's list of the country's "100 Best Companies to Work For."

Critical Issues

Umpqua Bank supports the concept that mortgage loans are extended only with proper underwriting standards to maximize the prospects for repayment. If done correctly, this regulatory structure would both protect consumers and guard against systemic risk. These regulations must, however, also ensure the mortgage finance system continues to provide the full levels of mortgage capital required by families across America. Umpqua believes any final rule must be carefully calibrated to ensure these dual goals are met.

EUGENE	675 Oak Street Suite 200 PO Box 1560 Eugene OR 97440	P 541 434 2998	F 541 342 1425	
PORTLAND	One SW Columbia Street Suite 1400 Portland OR 97258	P 503 727 4295	F 503 727 4207	umpquaholdingscorp.com
TIGARD	6610 SW Cardinal Lane Tigard OR 97224	P 503 624 4262	F 971 544 1190	

Umpqua Bank believes the Board's proposed rule must be revised. In our comments below, the bank addresses two principal elements of concern. First, under the legal scheme set forth by the Dodd-Frank statutory reforms, ***QM loans will be the only viable loans for virtually all bank lenders.*** The QM segment will become the center of practically all mortgage lending going forward, as financial institutions will access its protections and seek to avoid unreasonable risks. Regulators must craft a safe harbor structure that is not only protective, but also broad enough to sustain the major percentages of mortgage lending necessary to satisfy the nation's housing and financing demands.

Umpqua Bank joins trade associations in setting forth a proposed solution that is well balanced through a mix of greater consumer protections, and provisions that incentivize increases in safe and sound lending activities.

Background

On April 19, 2011, the Federal Reserve Board ("FRB" or "the Board") issued a proposed rule to implement the ability-to-repay requirements for closed-end residential loans as mandated by Sections 1411, 1412 and portions of 1414 of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010 ("DFA"). *See* Pub. L. No. 111-203 § 1411, 124 Stat. 1376, 2142. The rule would establish minimum mortgage underwriting standards for covered mortgages.

The changes proposed in this rule would amend Regulation Z to prohibit creditors from making mortgage loans without regard to the consumer's repayment ability, and would be inserted as new regulations pursuant to a new TILA section at 15 U.S.C. 1639c. The proposed changes are meant to implement the DFA amendments where creditors are prohibited from making a mortgage loan unless there is a reasonable and good faith determination, based on verified and documented information, that the consumer will have a reasonable ability to repay the loan, including any mortgage-related obligations (such as property taxes).

These proposals also implement Section 1412 of DFA, where Congress sets forth a "safe harbor and rebuttable presumption" that a QM will meet the ability-to-repay standards of Section 1411. The Act sets forth certain standards that would define the QM category, and these proposals clarify and expand such standards. If a mortgage loan meets the elements of a QM, the creditor and assignee of the loan would enjoy a safe harbor presumption that the loan meets the Section 1411 standards. Finally, provisions under Section 1414 of the Dodd-Frank Act limit prepayment penalties for residential mortgage loans that qualify as QMs, and outright prohibit prepayment penalties for mortgage loans that do not meet the QM standard. The proposal addresses these provisions as well.

The Act requires the Board to prescribe regulations to implement the ability-to-repay provisions, the QM safe harbor, and most importantly, grants the regulator very broad authority to amend and adjust the criteria set forth in the statute. If this structure is constructed properly it will eliminate the need for a narrow, prescriptive Qualified Residential Mortgage (QRM) standard that, as proposed, would shut many qualified borrowers out of the housing market and damage the housing recovery in profound ways.

Legislative Intent

The Congressional articulation of intent is clear on two very important objectives. First, the mortgage-shopping consumer must be better protected through enhanced rules and regulations. Second, although it may be necessary to limit the scope and array of mortgage financing, the availability of safe and responsible mortgage credit must be ensured. Through these statements of intent, Congress directed there be careful and explicit balancing of goals, and expressed the public will be best served by a careful consideration of all the interests at play in the implementation of the new regulatory structure. The statute's dual purposes must be carefully balanced.

Umpqua Bank recognizes the "ability to repay" rules constitute a fundamental component of Congress' effort to address the market failures that contributed to the recent near collapse of financial markets. Umpqua believes this goal should not come at the cost of unreasonably limiting financial options. Responsible and affordable mortgage credit must remain available for all qualified borrowers.

Under DFA, regulators have very broad authority and discretion to shape these new rules. The views expressed in this letter are meant to ensure we achieve a true equilibrium of interests and we construct a new legal system of solid consumer protections that are compatible with the ability to effectively satisfy the public's demands for mortgage financing.

Impact of the New Ability-to-Repay Legislation

The ambitious goal of the ability-to-repay portion of the DFA is to set the minimum underwriting standards all mortgage loans must adhere to—these proposed rules will apply broadly to both owner-occupied and non-owner-occupied property loans. These new provisions will alter the legal and underwriting foundations of the mortgage lending system.

Clearly, these proposals have great impact on all aspects of mortgage lending—they modify the legal responsibilities of lenders and loan originators, they fundamentally impact the types of products offered to the public, they affect channels and systems used to deliver these loans to consumers, and influence the very cost and price of mortgage loans across all markets. Even if banks already follow the general underwriting standards set forth in the rule, as Umpqua Bank has always done, placing ability-to-repay prescriptions into a law means the bank's existing guidelines must be specifically channeled, verified and structured to comply. It also means there is absolutely no leeway outside of the written text of the law.

Policymakers must understand the how the ability-to-repay laws will affect the creditors' willingness and ability to offer mortgage loans in the post-DFA market. The following elements describe the effects of the Dodd-Frank rules upon mortgage lending by banks:

1. Non-ATR Loans Are Prohibited

This rule sets forth real prohibitions on a whole new swath of products and market activities. Under the proposed rule, mortgage loans that do not meet the "ability to repay" standards, or the safe harbors, will be effectively proscribed. DFA states no creditor may make residential mortgage loans unless "ability to repay" is established pursuant to Section 129C requirements. In short, ***the rules being proposed here will serve to strictly limit the universe of legal and acceptable loans—all mortgage lending will have to occur within the proposed rule's boundaries, and no mortgage lending may exist outside of them.***

Regulators will develop new enforcement procedures and interpretations, and examination staff will develop new examination guidelines, to ensure that proscribed loans are not made. Likewise, secondary market players and investors will have to ensure that none of the loans they purchase fall outside the standards set forth by this rulemaking.

2. TILA Structure & Liability

The new minimum standards being implemented in this rulemaking are incorporated into the existing body of the Truth-In-Lending Act. These proposed regulations will be subject to the existing body of law contained in TILA and Regulation Z. Therefore, the "ability to repay" rules will be subject to the penalties and liabilities contained in TILA, and these have been significantly expanded by DFA. When added together, these new liabilities are tremendously burdensome. Lenders that violate repayment ability requirements will be subject to:

- Expanded damages applicable to Home Ownership and Equity Protection Act (HOEPA) loans, which would include an amount equal to the sum of all finance charges and fees paid by the consumer.
- A lengthened statute of limitations of three years.
- Recoupment or set-off provisions, where the consumer will be allowed raise a violation of these provisions against the creditor or an assignee in connection with judicial or non-judicial foreclosures or other action to collect the debt as a matter of defense. Violations of the ability-to-repay rule will subject creditors to all TILA remedies, including the enhanced civil remedies that apply to violations of TILA's high-cost loan rules (as described above). These provisions apply regardless of the statute of limitation.
- New enforcement authorities by state attorneys general.

3. Assignee Liability

Finally, the DFA law amplifies liabilities for loan assignees. The new legal structure would attribute liability under this section to the holders of mortgage loans for the acts, errors and omissions of originators and other settlement service providers. As noted above, such liability would include magnified monetary liability as well as rescission and/or recoupment actions under the underlying mortgage loans. New Section 130(k) of DFA allows the consumer to sue creditors, assignees or holders of the mortgage loan, notwithstanding any other provision of law, for recoupment or set off. This explicit attribution of risk to any and all holders will greatly exacerbate risks that assignees are likely to face with respect to any mortgage-backed assets.

Importance of the Qualified Mortgage Protections

The special protections afforded by the QM provisions will be more than just optional—they will be necessary and compulsory to establish the legal assurances that lenders and investors will require to safely operate in the mortgage market going forward. Umpqua Bank will seek to operate exclusively within the QM segment, and will entirely avoid making loans outside this safe harbor.
The QM standards must be crafted with full realization it will comprise the vast portion of mortgage lending. ***The QM category must be designed as the stage on which almost all mortgage lending will take place.*** Any product development aimed at specialized needs or populations, or any product tweaks to allow banks to navigate through change or adapt to market evolution, will have to be explicitly permitted within the QM segment or such lending will simply not be made.

***Safe Harbor: Alternative 1* is Key Component to Compliant Lending**

The proposed rule sets forth two alternatives for legal protections for lenders pursuant to the qualified mortgage safe harbor provisions of Section 1412. Under the first approach, a creditor that makes a mortgage loan that satisfies certain specific conditions that meet the qualified mortgage provisions would be entitled to "safe harbor" protections with regard to the repayment ability determination requirements. Under the second proposed approach, a creditor making a qualified mortgage loan and satisfying the conditions specified in the first alternative plus additional underwriting elements would be entitled to "rebuttable presumption" of compliance with the repayment ability determination requirements.

The Board is soliciting comments on these two alternatives because it finds that DFA is not clear as to whether a qualified mortgage is eligible for a safe harbor or a rebuttable presumption. In the proposed rule's preamble, the Board posits that "it is unclear whether that protection is intended to be a safe harbor or a rebuttable presumption of compliance with the repayment ability requirement."

Umpqua Bank believes there are important considerations that compel the adoption of the *safe harbor* protections that are set forth under *Alternative 1*. The structural arrangement of the "qualified mortgage" provisions within the DFA legislation, as well as pragmatic realities of the market, lead to the conclusion the legal protections under Section 1412 must necessarily constitute full "safe harbors."

Differing Standards: As per the Board's analysis in the rule's preamble, the statutory structure suggests that the QM is an alternative to the general ability-to-repay standard and must therefore operate as a safe harbor. Since the various QM standards, as set forth by the statute, contain items that differ from the general ability-to-repay standards, it follows that one is meant to apply *in lieu of* the other, and is therefore to be considered a complete legal panacea if all of its elements are met. It would make little sense for Congress to provide a scheme where it mandates a set of standards that are *only presumed* to be met by satisfying a completely distinct set of standards. If the standards are substantively different, then they must be viewed as alternatives to each other—in other words, achieving compliance with one set of standards means that one is necessarily compliant with both.

Umpqua Bank agrees with the Board's statement in the rule's preamble the "drawback of treating a 'qualified mortgage' as providing a presumption of compliance is that it provides little legal certainty for the creditor, and thus little incentive to make a 'qualified mortgage,' which limits loan fees and features." This is a correct and accurate statement—a mere rebuttable presumption provides no added certainties to lenders, and would not therefore achieve the statutory objective of providing lenders the confidence and legal assurances they require. **It is crucial regulators grant lenders the meaningful protections that a legal "safe harbor" would confer.**

The bank urges regulators to adopt Alternative 1 and allow for a true safe harbor under the QM protections. ***Just as important, any such safe harbor should make certain consumers are assured full legal guarantees that their loan is affordable and safe.***

Umpqua Bank Endorses Industry Recommendations

Umpqua Bank joins industry trade associations urging regulators revisit a number of details contained in this proposal. It is clear the new ability-to-repay requirement will generally apply to all mortgage transactions going forward, and such near universal scope creates the imperative the rules and standards proposed in this regulation be very precisely calibrated. As per the DFA, these ability-to-repay rules will categorically prohibit transactions that fall outside of its strictures, and any violation will bring extensive liability to lenders and assignees. Since virtually no lender will opt to operate outside the boundaries of the QM, it is essential policymakers fully understand the importance of the safe harbor protections under this new regulatory regime.

To reiterate —these rules will determine the scope of all future mortgage lending.

To assist the regulators in finalizing these rules, the American Bankers Association, with input from Umpqua Bank and banks of all sizes, has developed an alternative approach to the QM elements of the rule as proposed. These recommendations are similar to proposals offered by other industry representatives with a stake in mortgage transactions.

In the proposal, Umpqua Bank would support a set of QM standards that are generally consistent with those proposed by the Board, and with changes to the points and fees calculation. A most important element of this alternative approach is the proposal requires the rules be finalized with full safe harbor protections (as per Alternative 1), and would therefore pledge widespread industry support for stricter standards than even those proposed by the Board under either Alternative 1 or 2.

DFA grants the Board great discretion to shape these new rules. Congress afforded the Board broad authority to modify the QM requirements, and granted broad authority to revise, add to, or subtract from the criteria for determining what constitutes a qualified mortgage. The Act allows regulators discretion to make changes "upon a finding that such regulations are necessary and proper to ensure that responsible, affordable, mortgage credit remains available to consumers." Umpqua Bank respectfully urges the Board use this authority to tailor the proposal along the lines suggested below.

Points and Fees

First, Umpqua Bank does not believe loan originator compensation should be counted toward the 3% points and fees cap. Three percent is already highly restrictive, particularly in light of GSEs that cap at 5%.

Therefore, Umpqua believes the three percent limit on points and fees requires significant adjustment.

First, based on data that has been developed by lenders, the definition of smaller loans demanding an adjustment should be increased to $150,000.

Second, whether the customer chooses to use an affiliated provider of the lender or not, the bona fide charges for such non-lender service should be excluded from the calculation. The largest of these fees for title services are "filed fees" over which the lender has no discretion.

Third, while the compensation to originator companies should be excluded from the calculation in light of the recent loan originator compensation rule, at a minimum the payments by borrowers to creditors and brokerages as well as the compensation they in turn permit their originators should not both be counted. Double counting in this manner is simply unfair.

Fourth, Umpqua requests the up-front mortgage insurance premium exclusion set forth in DFA be eliminated.

QM Safe Harbor

ABA's proposal, as supported by Umpqua Bank, would establish more rigorous standards than the proposed QM safe harbor. The recommendations are proposed in lieu of both of the QM safe harbor proposals from the Board. It would include standards proposed to satisfy the general ability to repay standard, the presumption of compliance, and also include the standards proposed for the general QM safe harbor.

Under ABA's proposal, a creditor or assignee must evidence that a loan satisfies these standards (or satisfies the requirements of the balloon safe harbor or the non standard mortgage safe harbor) to be deemed to be in the safe harbor to comply with the ability to repay requirement. Requirements for satisfaction of the standards are contained in the commentary to the rule and should be made part of the rule.

In order to assure a workable safe harbor, documentation such as a written application signed by the borrower should be prescribed. A final application would show how the loan was underwritten by the lender to qualify the borrower and restate the required product standards. A creditor or assignee may demonstrate compliance with these standards with evidence of written and/or automated compliance using physical or electronic records; (1) borrower's written signed application; (2) creditor or assignee's worksheets; (3) third party records; (4) evidence of use of a widely accepted standards such as FHA or GSE guides; and/or (5) evidence of use of third-party automated systems, as appropriate, such as DU (Fannie Mae's Desktop Underwriter) and LP (Freddie Mac's Loan Prospector). (The definition of third party record requires clarification to ensure that electronic records are permissible.)

Finally, a creditor or assignee should be allowed to use assets to compensate for income under the underwriting factors set forth below, to the extent creditor or assignee can demonstrate repayment ability using such compensating factors. Also, the final rule needs to retain flexibility in assessing consumer credit histories. The rule and commentary must permit flexibility in deciding particular credit criteria to address self employed borrowers and borrower's with thin files to use rental records, etc., in lieu of standard scoring or credit criteria.

QM Qualification Standards:

In order for a loan to qualify for the QM safe harbor, the loan *must not:*

1. Result in an increase in principal balance post closing (no negative amortization);
2. Allow deferment of principal or a balloon payment (except if balloon payments may occur under a balloon payment qualified mortgage);
3. Have a term exceeding 30 years (except in conjunction with a loan modification to provide a borrower a loan with a lower monthly payment than he or she may otherwise face);
4. Have total points and fees that exceed 3 percent of the total loan amount with (i) appropriate adjustments for smaller loans; (ii) appropriate exclusions for third party fees regardless of affiliations; (iii) exclusions of employee compensation to avoid double counting and (iv) the exclusions otherwise excluded in the proposal, as examples, certain up-front mortgage insurance premiums and up two discount points.

In order for a loan to qualify for the QM safe harbor, a creditor *must* underwrite the mortgage:

1. Based on the *highest rate during the first five years;*
2. Using a payment schedule that fully amortizes the loan over the loan term and takes into account any mortgage related obligations;
3. To consider the following :
    a. The consumer's current or reasonably expected Income or assets, other than the value of the dwelling that secures the loan. *Creditor must verify the amounts of income or assets it relies on to determine consumer's ability to repay transaction*

b. If creditor relies on income from the consumer's employment in determining repayment ability the consumer's current employment status. *Creditor may verify consumer's employment orally if creditor prepares record of oral information*;
c. The consumer's monthly payment on the covered transaction, calculated in accordance with paragraph (c)(5) of this section;
d. The consumer's monthly payment for mortgage related obligations. *From general standard;*
e. The consumer's monthly payment on any simultaneous loan that creditor knows or has reason to know will be made, calculated in accordance with paragraph (c)(6) of this section. *Creditor's policies and procedures must require the consumer to state the source of the down payment;*
f. The consumer's current debt obligations. *If creditor relies on credit report to verify debt and a consumer's application states an obligation not shown in report, creditor need not independently verify such obligation. Creditor may look to FHA and other guides to define debt;*
g. Consumer's monthly debt-to-income ratio or residual income. *Creditor must consider debt-to-income or residual income and use widely accepted governmental and non-governmental standards in defining income and debt including FHA and other guides.*

ABA and Umpqua Bank believe these expanded QM standards would better protect consumers than either of the standards set forth in the proposed rule's alternatives.,.Combining our suggested standard with a firm safe harbor would result in a legal design that would afford creditors the confidence they need to lend, and would properly shield borrowers, as the statute intends.

In conclusion, Umpqua Bank strongly supports the broad, robust QM proposal outlined in these comments that will allow few, if any, mortgage loans outside its boundaries, and will protect mortgage borrowers, guarantors and investors from the abuses of the past. As such, the standards must provide an explicit and essential safe harbor from legal liability if followed, instead of a weak "rebuttable presumption" that provides virtually no protection and would severely limit lending to qualified borrowers.

Please contact me if I can provide additional information at 541-434-2997 or stevenphilpott@umpquabank.com. Thank you for your consideration.

Sincerely,

Steven L. Philpott
EVP/General Counsel

KMY:ky I:\government relations\2011\qm comments - comtee ltr 7-22-11.docx