NATIONAL COMMUNITY REINVESTMENT COALITION
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July 21, 2011
Jennifer J. Johnson
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution, Avenue NW
Washington DC 20551

RE: Docket No. R-1417 and RIN No. 7100-AD75, Regulation Z, Qualified Mortgages and Ability to Repay.

To Whom It May Concern:

If Congress had passed strong anti-predatory lending legislation a decade ago and if the regulatory agencies had then adopted robust regulations and enforcement regimes, the foreclosure crisis would not have occurred or would have been much less severe. Finally, in July 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), which contains vital anti-predatory lending standards, including new ability-to-repay requirements and qualified mortgage specifications. If implemented rigorously, these amendments to Regulation Z will deter a new round of high volume risky lending and thus prevent future cataclysms.

Given the importance of this rulemaking, the National Community Reinvestment Coalition (NCRC) urges the Federal Reserve Board and the Consumer Financial Protection Bureau to implement comprehensive and robust regulations. NCRC is an association of more than 600 community-based organizations that promotes access to basic banking services, including credit and savings, to create and sustain affordable housing, job development, and vibrant communities for America's working families. Our Housing Counseling Network, which works with 160 housing counseling agencies around the country, has served numerous victims of abusive lending. On behalf of these victims, NCRC urges you to implement a comprehensive rule to best protect against lending abuses.

General Ability to Repay Standards
In order to comply with Dodd-Frank's ability-to-repay requirement, a lender is required to consider eight underwriting factors, including income, employment status, monthly mortgage payments, debt-to-income ratios, and monthly payments on simultaneous loans. The Federal Reserve used its discretionary authority to appropriately add home equity lines of credit (HELOCs) as a simultaneous loan that a lender must consider. Since abusive HELOCs were widespread leading up to the crisis, NCRC agrees with the Federal Reserve that adding HELOCs as simultaneous loans is necessary. In addition, NCRC agrees with the Federal Reserve Board that a lender must use either the introductory rate or the fully-indexed rate, whichever is greater, when calculating the monthly payment for adjustable rate mortgages.

Similarly, the Federal Reserve Board appropriately requires a lender to underwrite a higher-priced balloon loan assessing the borrower's ability to pay the balloon loan without refinancing. As the Board states, this will effectively limit high priced balloon loans to only affluent consumers with substantial assets. For balloon loans that are not higher priced, the Federal Reserve is proposing an ability-to-repay analysis based on the first five years after origination. The Federal Reserve rationalizes the five-year time frame as consistent with other aspects of Dodd-Frank, including the five-year time period for assessing ability-to-repay in the case of qualified mortgages. Balloon loans, however, were abused repeatedly during the years of heavy subprime lending. In order to avoid repeat episodes, the time period for an ability-to-repay analysis must be stretched out in the case of balloon loans. NCRC suggests that ten years should, at a minimum, be the time period established.

Safe Harbor or Presumption of Compliance for a Qualified Mortgage
The Dodd-Frank Act defines a qualified mortgage that is automatically assumed to comply with the ability-to-repay requirements. A qualified mortgage is defined in Dodd-Frank as a mortgage with the following features:

- No negative amortization, interest only payments, or balloon payments;
- Term is 30 years;
- Points and fees do not exceed three percent of the loan amount;
- Income and assets are considered and verified;
- Loan complies with any debt-to-income limit or residual income guideline or regulation prescribed by the Board; and
- Underwriting is based on the maximum rate in the first five years.

The Federal Reserve presents two alternatives for the qualified mortgage. Under the first alternative, the factors enumerated in the statute are sufficient to define a loan as a qualified mortgage. Moreover, the qualified mortgage has a safe harbor, meaning the lender is entitled to an irrefutable assumption that the lender has complied with Dodd-Frank's ability-to-repay analysis.

Under the second alternative, the Federal Reserve establishes a rebuttable presumption for a creditor. A rebuttable presumption does not allow for absolute protection from legal liability if a consumer can prove that the lender did not make a reasonable determination of a borrower's ability to repay. Moreover, under the second alternative, the lender would be required to comply with the other requirements of the general ability-to-repay requirements of Dodd-Frank, such as consideration of simultaneous liens.

NCRC believes that the second alternative would provide better protections for consumers as well as improving safeguards against widespread risky lending. The safe harbor alternative leaves borrowers unprotected against abuses associated with simultaneous liens or from inadequate consideration of employment and income (since consideration of employment and income is more detailed in the general ability-to-repay section of Dodd-Frank). In addition, the safe harbor alternative invites abusive lending since borrowers will have no legal recourse. At the very least, the Federal Reserve must provide a rebuttable presumption in any qualified mortgage definition it establishes.

Balloon Loans Eligible for a Qualified Mortgage

NCRC urges the Federal Reserve not to allow an exception to the prohibition against balloon payments in qualified mortgages. The Dodd-Frank Act allows the Federal Reserve to make such an exception for banks serving rural areas, but the Act does not mandate the exception. The Federal Reserve states that community banks operating in non-metropolitan areas originate balloon loans that they then hold in portfolio to hedge against interest rate risk. The Federal Reserve states that it allows balloon loans made by community banks with assets under $2 billion to be eligible for qualified mortgage status in order to preserve access to credit in rural and underserved areas.

In the years leading up to the financial crisis, abuses associated with balloon loans were widespread. Absent more research demonstrating that preserving access to balloon loans is critical in rural areas, NCRC urges the Federal Reserve to abandon this proposal. The proposal does not present Home Mortgage Disclosure Act (HMDA) data or any other evidence that shows a large market share of community banks making balloon loans in rural areas. In fact, NCRC's research of HMDA data shows a large market share by the larger banks in rural areas. This is due, in part, to the incompleteness of HMDA data for rural areas. The Federal Reserve should therefore investigate, using HMDA and non-HMDA data, the proposition that community banks originating balloon loans are critical in terms of access to credit for rural communities.

If the Federal Reserve proceeds with the balloon loans, the Federal Reserve needs to specify that when measuring whether 50 percent or more of a bank's loans are balloon loans one must review the bank's loan files because HMDA data cannot be used for this purpose. In addition, the asset level of banks eligible for the balloon loan exception must be adjusted. The asset level ought to be the same as the asset level for CRA's intermediate small banks. Finally, NCRC agrees with the Federal Reserve's proposal that the geographical areas under consideration should be counties and that the community bank should be allowed to make balloon qualified mortgage (QM) loans only in circumstances in which the bank and only one other lender are making loans in a county.

Refinancing of a Non-Standard Mortgage

As the Board notes, the Dodd-Frank Act encourages creditors to refinance borrowers out of hybrid mortgages posing payment shock into standard mortgages. The Board's proposed definition of hybrid mortgages is appropriate but the Board proposal to allow lenders to dispense with income verification when refinancing into standard mortgages is problematic. Since the refinance would be executed by the creditor that made the original hybrid loan, income verification would not be difficult. As the Board notes, the statute does allow reducing defaults to be a "higher priority" in underwriting. However, it is not clear that this priority means that income verification can be ignored. Moreover, the Board provides a definition of a "standard" mortgage that is very similar to the definition of qualified mortgage. In order to simplify compliance for lenders, the definition should be exactly the same. Even the proposed "safe harbor" definition of qualified mortgage requires income verification. Since liar loans were widespread and defaulted with great frequency leading up to the crisis, the Federal Reserve should encourage income documentation when implementing Dodd-Frank.

Calculation of Points and Fees

This proposal seeks comment on whether to use specific cut-offs to implement the legislation's direction to allow a higher total of points and fees, or to use instead a more complex but potentially more sensitive sliding scale calculation. While we do not want to disadvantage borrowers of smaller loans, a high proportion of whom are likely to be low- and moderate-income families and families of color, we also support a simple and straightforward rule that minimizes both purposeful and inadvertent miscalculations that could harm consumers. We therefore support the fixed cut-off approach proposed in the regulation.

Likewise, we also encourage analyzing the impact of the proposed 3 percent fee cap on the ability of low- and moderate-income borrowers to access to capital, especially in regard to low-principal loans and loans covered by the Community Reinvestment Act. Because many lenders may choose to either not lend outside of the QM definition or charge much more for such loans, NCRC is concerned that a 3 percent cap on low-principal loans and loans covered by the Community Reinvestment Act may cut off many access to affordable loans to low- and moderate-income borrowers. We encourage further analysis on this matter. In addition, we respectfully request that the results of any analysis of points and fees by principal loans amounts and for CRA and non-CRA loans be made publicly available discussed in the preamble of the CFPB's proposed rule.

NCRC also supports the inclusion in calculating points and fees of compensation paid directly to a loan originator, whenever that compensation occurs, whether at or before closing or at any time thereafter. The intent of this provision is to protect consumers from paying excessive amounts for lender services, regardless of when that compensation is awarded. The proposed rule would insure that the points and fees cap appropriately accounts for payments loan originators receive for selling a mortgage to a consumer. We support the Board's proposal to include in points and fees qualified mortgage fees paid to lender affiliated settlement services providers.

We support the inclusion of all upfront premiums and charges for credit insurance and debt cancellation and suspension coverage in the definition of points and fees. These are services that are sold to consumers as part of the mortgage origination process and can potentially add significant costs. There is no defensible reason to exclude them from the overall restriction on points and fees.

We strongly support including in the calculation of points and fees any prepayment penalty assessed by the lender, if the lender or its affiliate is the holder of the original loan. Many consumers were victimized by "loan flipping" during the housing bubble, and lenders profited from collecting fees to refinance these mortgages, which consumers might otherwise have been unable to pay. This results in a piling on of charges and stripping of equity from the consumer. This is very different than an arms-length transaction where the consumer chooses to refinance one loan with lender A with a new loan with lender B. Lender A may receive a prepayment penalty, but lender B is not encouraged to extend the refi loan in order to obtain that fee.

But NCRC does have concerns about whether fees for title insurance should be included in an "ability to repay" analysis. HOEPA already requires "unreasonable" fees to be included in the applicable points and fees threshold. In addition, a majority of states require that title insurance rates be set by the state, approved by the state, or filed with the state. With these protections in place, the effect of including title insurance may be decreased access to capital in low- and moderate-income communities.

Other Protections
NCRC appreciates the Federal Reserve's limitations on prepayment penalties in qualified mortgages consistent with the Dodd-Frank Act. Prepayment penalties often trapped borrowers in deceptive, abusive, and unaffordable loans in the years leading up to the crisis. Extending the record retention requirements to three years to match the time period for liability of violating the ability-to-pay requirements or the prepayment limitations will also enable borrowers to effectively assert their legal rights. Finally, the Board is appropriately applying its prohibition of evading the ability-to-pay and other aspects of this proposed rule by prohibiting the structuring of a loan to an open-end loan for purposes of evasion.

Coordination of QM and QRM
The Federal Reserve Board, the Bureau of Consumer Financial Protection, and the other regulatory agencies involved in the Qualified Residential Mortgage (QRM) proposal must coordinate the QM and QRM rules.

The QM and QRM rules must provide robust protections against abusive lending without choking off access to responsible credit. Accordingly, we ask the agencies to focus on restricting abusive practices that contributed to the crisis, such as no-documentation lending, and to refrain from instituting onerous down payment requirements or unduly restrictive debt-to-income ratios. In addition, we urge you harmonize the QM and QRM rules by adopting the same servicing standards in both. This is especially important in the absence of statutory national servicing standards or guidance from the Bureau of Consumer Financial Protection.

The QRM rules should not be finalized before the QM rules. In fact, when the CFPB issues its QM proposal, the agencies working on QRM should ask for comments on a revised QRM proposal that harmonizes the QRM rule with the QM rule.

Thank you for the opportunity to comment on this important issue.

Sincerely,

John Taylor
President & CEO