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Bankers Advisory

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Best Practices for Borrower Ability to Repay Rules

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About one year ago, I published an article entitled Borrower Repayment Ability on the Radar. The article highlighted the "ability-to-repay" requirement of the Qualified Mortgage (QM) under Dodd-Frank. The article included a matrix of all U.S. states as of that had passed legislation requiring mortgage lenders to determine the borrower's Ability to Repay (ATR).

As of May 1, 2011, only five U.S. states had laws requiring mortgage originators to make the ATR determination for conforming transactions. Twenty-six states, however, had similar laws that applied to high cost mortgages. The remaining twenty states had no consumer protection laws pertaining to the ability to repay.
For this article, I created a new matrix. As of March 30, 2012, there are fifteen states that require mortgage lenders to make a determination of the borrower's ability to repay for conforming mortgages. Presently there are 36 states remaining that have not enacted any legislation on this topic. (I did not include High Cost Loan rules in the new matrix). Both the 2011 and 2012 matrices include all 50 states and the District of Columbia.

New Question of the Day
Fannie Mae, Freddie Mac and HUD have published their seller/servicer/insurer guidelines for decades that are intended to establish the eligibility requirements for 1-4 family residential mortgages. Whether or not the secondary market agency would potentially accept an income figure or verification source for a particular borrower will become the question of the day.

Lenders should not exclusively rely upon the underwriting requisites of government sponsored agencies and other secondary market investors to determine what specific standards or supporting documents are to be used in assessment of qualifying income. As appropriate and in accordance with the lender's business models and loan programs, regulators expect lenders to develop robust policy and procedure manuals.

For example, an agency or insurer may require two years' wage statements (W-2s) along with a recent paystub. When other factors are considered in totaling qualifying income figures, such as change in employer, change in type of industry, short-term gap, etc., underwriters will form different conclusions based on their own training and experience.

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Underwriters often make slight adjustments to other sources of income, such as second jobs, annual bonus or overtime, for example, because there was lack of evidence to support income history or the likelihood of continuance. In such cases, the Underwriting Transmittal will note the income as a "compensating factor" to help support the loan.

The scenario described above is one of dozens of nuances or sub-rules which ideally should be spelled out in the lender's internal policy and procedure manual.

Lending policies must be written in exact accordance with the lender's corporate charter, supervisory authority, business channels and loan programs. Underwriting standards need not replicate the seller/servicer guidelines of an agency. Moreover, rules should reflect the lender's CRA strategic plan, fair lending program and other initiatives where certain underwriting standards are adapted to reflect the geographic and demographic characteristics of the lender's marketplace.

The decision processes may include tiered levels of authority for loan approval or denial. Tiers can be segmented by business unit, loan program, loan purpose, property type or LTV%. Whether or not operation centers are centralized or de-centralized are also captured as tiered levels in the decision process. All lenders who fund loans for Third Party Originators should have a written policy for the investigation, approval and monitoring of brokers, and well defined forms and procedures for loan approval and funding.

Lenders Must Start Building Their Own Yardstick

No one can predict if a borrower will lose their job or eventually default on their loan. However, through the establishment of internal policy and procedures, a lender can hold business managers accountable to loan quality on a level playing field.

"Exception-based decisions" are fine for portfolio lending, soon to be known as the "Non-QM" loans. With our nation's new skin-in-the-game environment, lenders will be out of the game for non-compliance with these new strict laws. The matrix below illustrates the legal steps that have been taken by lawmakers throughout the country.

Borrower Ability to Repay - State Laws (A-M)

Alaska

The Alaska Secure and Fair Enforcement for Mortgage Licensing Act of 2010 does not contain provisions regarding borrower repayment ability.

Alabama

The Alabama Consumer Credit Act does not contain provisions regarding borrower repayment ability.
The Alabama S.A.F.E. Mortgage Licensing Act of 2009 - no requirements Mortgage Broker Licensing Act does not contain provisions regarding borrower repayment ability.

Arkansas

The Fair Mortgage Lending Act does not contain provisions regarding borrower repayment ability.

Arizona

The Loan Originators Statute does not contain provisions regarding borrower repayment ability.

The Mortgage Bankers Statute does not contain provisions regarding borrower repayment ability. The Mortgage Brokers Statute does not contain provisions regarding borrower repayment ability.

California

California Finance Lenders Law - A finance lender making or negotiating a loan must consider a borrower's ability to repay the loan when determining the size and duration of the loan. When making or negotiating a loan, a finance lender must take into consideration the borrower's ability the repay the loan in determining the size and duration of the loan. Cal. Admin. Code tit. 10,§1452.

The California Residential Mortgage Lending Act does not contain provisions regarding borrower repayment ability.

The Real Estate Law does not contain provisions regarding borrower repayment ability.

Colorado
Mortgage Loan Originator Licensing and Mortgage Company Registration Act - A mortgage loan originator must make a reasonable inquiry concerning the borrower's current and prospective income, existing debts and other obligations, and any other relevant information.

A reasonable inquiry requires the mortgage loan originator to interview and discuss current and prospective income with borrowers, including the income's source and likely continuance.

A mortgage loan originator has a duty of good faith and fair dealing in all communications and transactions with a borrower and must not fail to comply with the following duties: the duty to make a reasonable inquiry concerning the borrower's current and prospective income, existing debts and other obligations, and any other relevant information and, after making such inquiry, to make the loan originator's best efforts to recommend, loan originator, or originate a residential mortgage loan that takes into consideration the information submitted by the borrower (A mortgage loan originator will not be deemed to have violated this provision if the borrower conceals or misrepresents relevant information.); (2) the duty not to recommend or induce the borrower to enter into a transaction that does not have a reasonable, tangible net benefit to the borrower, considering all of the circumstances, including the terms of a loan, the cost of a loan, and the borrower's circumstances; and A mortgage loan originator must make a reasonable inquiry in order to determine the reasonable, tangible net benefit for a borrower. The reasonable, tangible net benefit standard is inherently dependent upon the totality of facts and circumstances relating to a specific transaction.

While the refinancing of certain home loans may clearly provide a reasonable, tangible net benefit, others may require closer scrutiny or consideration to determine whether a particular loan provides the requisite benefit to the borrower.

Uniform Consumer Credit Code--Supervised Lenders - no requirements

Connecticut
Non-depository Mortgage Lenders and Brokers Act -- A mortgage loan originator's duty to make a "reasonable inquiry" requires the mortgage loan originator to recommend appropriate mortgage products. Mortgage loan originators may only recommend appropriate mortgage products after a reasonable inquiry has been made in order to understand the borrower's current and prospective financial status. A reasonable inquiry requires the mortgage loan originator to interview and discuss current and prospective income with borrowers, including the income's source and likely continuance, and may not require the mortgage loan originator to verify such income. Mortgage loan originators have a duty to recommend mortgage products based on the information provided by the borrower.

District of Columbia
Mortgage Lenders and Brokers Act -- A mortgage loan originator must make a reasonable inquiry in order to determine the reasonable, tangible net benefit for a borrower.
The reasonable, tangible net benefit standard is inherently dependent upon the totality of facts and circumstances relating to a specific transaction. While the refinancing of certain home loans may clearly provide a reasonable, tangible net benefit, others may require closer scrutiny or consideration to determine whether a particular loan provides the requisite benefit to the borrower. The current income, current debt, currents assets, current liabilities, employment, and other sources of revenue of each borrower must be verified and documented in order to determine the borrower's ability to repay a loan secured by a residential lien instrument.

Delaware
Licensed Lenders Act - no requirements
Mortgage Loan Brokers Act - no requirements
S.A.F.E. Mortgage Licensing Act of 2009 - no requirements

Florida
The Mortgage Brokerage and Lending Act does not contain provisions regarding borrower repayment ability.

Georgia
The Georgia Residential Mortgage Act does not contain provisions regarding borrower repayment ability.

Hawaii
The Financial Services Loan Company Act does not contain provisions regarding borrower repayment ability. The Secure and Fair Enforcement for Mortgage Licensing Act does not contain provisions regarding borrower repayment ability.

Secure and Fair Enforcement for Mortgage Licensing Act - A mortgage loan originator company and mortgage loan originator may not originate a residential mortgage loan without regard to the borrower's ability to repay the loan according to its terms. The borrower's ability to pay may not be based on the current market value of the borrower's collateral.

Iowa
The Mortgage Bankers and Brokers Act does not contain provisions regarding borrower repayment ability.
The Secure and Fair Enforcement for Mortgage Licensing Act does not contain provisions regarding borrower repayment ability.

Idaho
The Idaho Credit Code does not contain provisions regarding borrower repayment ability.
The Idaho Residential Mortgage Practices Act does not contain provisions regarding borrower repayment ability.

The Mortgage Company Act does not contain provisions regarding borrower repayment ability.

Illinois
Residential Mortgage License Act of 1987 - A mortgage lender, broker and loan originator must determine a borrower's reasonable ability to pay:

1. principal and interest;
2. real estate taxes;
3. homeowner's insurance;
4. assessments; and
5. mortgage insurance premiums, if applicable.

With respect to variable rate residential mortgage loans, the reasonable ability to pay the principal and interest on the loan must be determined based on a fully indexed rate. This rate must be calculated by using the index rate prevailing at the time of origination of the loan plus the margin that will apply when calculating the adjustable rate under the terms of the loan, assuming a fully amortizing repayment schedule based on the term of the loan.

With respect to loans that allow for negative amortization, the principal amount of the loan must be calculated by including the maximum amount the principal balance may increase due to negative amortization under the terms of the loan.

A licensee may not make, provide, or arrange for a residential mortgage loan without verifying the borrower's reasonable ability to pay the principal and interest on the loan, real estate taxes, homeowner's insurance, assessments, and mortgage insurance premiums, if applicable. For loans that allow for negative amortization, the principal amount of the loan must be calculated by including the maximum amount the principal balance may increase due to negative amortization under the terms of the loan. For all residential mortgage loans made by a licensee, the borrower's income and financial resources must be verified by tax returns, payroll receipts, bank records, or other reasonably reliable methods, based upon the circumstances of the proposed loan.

Indiana
The First Lien Mortgage Lending Act does not contain provisions regarding borrower repayment ability.
The Loan Brokers Act does not contain provisions regarding borrower repayment ability.
The Mortgage Lenders and Originators Regulation does not contain provisions regarding borrower repayment ability.
The Uniform Consumer Credit Code does not contain provisions regarding borrower repayment ability.

Kansas
The Kansas Mortgage Business Act does not contain provisions regarding borrower repayment ability.
The Loan Brokers Act does not contain provisions regarding borrower repayment ability.
The Uniform Consumer Credit Code does not contain provisions regarding borrower repayment ability.

Kentucky
The Mortgage Licensing and Regulation Act does not contain provisions regarding borrower repayment ability.

Louisiana
The Louisiana S.A.F.E. Residential Mortgage Lending Act does not contain provisions regarding borrower repayment ability.

Massachusetts
Mortgage Lender and Broker Laws - The determination of a borrower's ability to repay a loan must take into account:

1. the borrower's ability to repay at the fully indexed rate, assuming a fully amortizing repayment schedule, and the resulting scheduled payments that may be charged under the loan accounting for interest rates, financial terms or scheduled payments that may adjust upward; and 2. property taxes and reasonably anticipated insurance costs (regardless whether the lender or broker will collect an escrow for taxes or insurance).
Mortgage Loan Originator Law - The determination of a borrower's ability to repay a loan must take into account: 1. the borrower's ability to repay at the fully indexed rate, assuming a fully amortizing repayment schedule, and the resulting scheduled payments that may be charged under the loan accounting for interest rates, financial terms or scheduled payments that may adjust upward; and 2. property taxes and reasonably anticipated insurance costs (regardless whether the lender or broker will collect an escrow for taxes or insurance).
It is an unfair or deceptive act or practice for a mortgage lender to make or mortgage broker to arrange a mortgage loan unless the mortgage lender or broker, based on information known at the time the loan is made, reasonably believes at the time the loan is expected to be made that the borrower will be able to repay the loan based upon a consideration of the borrower's income, assets, obligations, employment status, credit history, and financial resources, not limited to the borrower's equity in the dwelling which secures repayment of the loan.

The determination of a borrower's ability to repay a loan must take into account, without limitation:(1) the borrower's ability to repay at the fully indexed rate, assuming a fully amortizing repayment schedule, and the resulting scheduled payments that may be charged under the loan accounting for interest rates, financial terms or scheduled payments that may adjust upward; and (2) the property taxes that are required on the Subject property at the time the loan is expected to be made and the reasonably anticipated insurance costs if the loan requires that insurance be maintained on the property, regardless whether the broker or lender will collect an escrow for such taxes or insurance in connection with loan payments. The "fully indexed rate, " with respect to loan rates that may adjust upward, means the index rate prevailing at the date of loan origination plus the margin to be added to it after the expiration of an introductory interest rate.

For purposes of illustration, assume that a loan with an initial fixed rate of 7% will reset to the 6-month London Interbank Offered Rate (LIBOR) plus a margin of 6%. If the 6-month LIBOR rate equals 5.5% at the date of origination, the determination of ability to pay must take into account the borrower's ability to repay at 11.5% (5.5% plus 6%), regardless of any interest rate caps that limit how quickly the fully indexed rate may be reached. Item (1) above requires lenders and brokers to take into account the loan rates and terms that adjust following the fixed rate period. The lender or broker's determination of a borrower's ability to repay the loan must take into account the borrower's ability to pay at the fully-indexed rate. If the duration of the fixed starter rate is relatively short (such as 2 or 3 years for 2/28 or 3/27 ARM loans), then the lender or broker certainly should determine the borrower's ability to pay the monthly payments at the fully indexed rate, following the ARM adjustment.

If the duration of the fixed starter rate is considerably longer (such as 5, 7 or 10 years), then the lender or broker has increased flexibility in taking into account the fully indexed rate in reasonably assessing the borrower's ability to repay.

Maryland
Maryland Mortgage Lender Law - no requirements
Mortgage Originator Law - no requirements

Maine
The Maine Consumer Credit Code-Loan Brokers does not contain provisions regarding borrower repayment ability.
The Maine Secure and Fair Enforcement Mortgage Licensing Act of 2009 does not contain provisions regarding borrower repayment ability.

Michigan
The Mortgage Brokers, Lenders and Servicers Licensing Act does not contain provisions regarding borrower repayment ability.
The Mortgage Loan Originator Licensing Act does not contain provisions regarding borrower repayment ability.
The Secondary Mortgage Loan Act does not contain provisions regarding borrower repayment ability.

Minnesota
Minnesota Residential Mortgage Originator and Servicer Licensing Act

A residential mortgage originator and a person exempt from licensing may not make, provide, or arrange for a residential mortgage loan without verifying the borrower's reasonable ability to pay the scheduled payments of principal, interest, real estate taxes, homeowner's insurance, assessments, and mortgage insurance premiums. The analysis of a borrower's reasonable ability to repay the loan may include consideration of the following (if verified):

1. current and expected income;
2. current and expected cash flow;
3. net worth and other financial resources (other than the consumer's equity in the dwelling that secures the loan);
4. current financial obligations;
5. property taxes and insurance;
6. assessments on the property;
7. employment status;
8. credit history;
9. debt-to-income ratio;
10. credit scores;
11. tax returns;
12. pension statements; and
13. employment payment records.

With respect to variable rate residential mortgage loans, the reasonable ability to pay must be determined based on a fully indexed rate and a repayment schedule which achieves full amortization over the life of the loan.

The Minnesota S.A.F.E. Mortgage Licensing Act of 2010 does not contain provisions regarding borrower repayment ability.

Missouri
The Secure and Fair Enforcement for Mortgage Licensing Act does not contain provisions regarding borrower repayment ability.

Mississippi
The Mississippi S.A.F.E. Mortgage Act does not contain provisions regarding borrower repayment ability.

Montana
The Montana Mortgage Act does not contain provisions regarding borrower repayment ability.

Borrower Ability to Repay - State Laws (N-Z)

North Carolina
The Secure and Fair Enforcement Mortgage Licensing Act does not contain provisions regarding borrower repayment ability.

North Dakota
The Money Brokers Act does not contain provisions regarding borrower repayment ability.
The Mortgage Loan Originator Act does not contain provisions regarding borrower repayment ability.

Mortgage Loan Originator Act References

Nebraska
The Residential Mortgage Licensing Act does not contain provisions regarding borrower repayment ability.

New Hampshire
Non-depository Mortgage Bankers and Brokers Act - A mortgage banker, broker, and loan originator may not offer or extend a mortgage loan to a borrower unless a reasonable lender would believe at the time the loan is made that the borrower will be able to make the scheduled payments associated with the loan. The loan file kept by the mortgage banker, broker, and loan originator must document the analysis used to arrive at this conclusion. Mortgage bankers and brokers must have a documented methodology that enables the banker or broker's employees, agents, and originators to make a reasonable determination that the borrower can repay a mortgage loan. The documented methodology must be approved by a senior manager. The methodology must reflect all relevant factors that have a bearing on the present and future capacity of the borrower to adequately service the debt.

New Jersey
New Jersey Residential Mortgage Lending Act - no requirements
Mortgage Loan Company Act - Mortgage bankers and brokers must have a documented methodology that enables the banker or broker's employees, agents, and originators to make a reasonable determination that the borrower can repay a mortgage loan.
The documented methodology must be approved by a senior manager. The methodology must reflect all relevant factors that have a bearing on the present and future capacity of the borrower to adequately service the debt.

New Mexico
New Mexico Mortgage Loan Originator Act - A mortgage loan originator must determine a borrower's reasonable ability to pay:

1. principal;
2. interest;
3. real estate taxes;
4. property insurance;
5. property assessments;
6. mortgage insurance premiums; and
7. other scheduled long-term monthly debt payments.

With respect to adjustable rate residential mortgage loans, the reasonable ability to pay must be determined based on a fully indexed rate and repayment schedule that achieves full amortization over the life of the mortgage loan.

A mortgage loan originator may not originate a residential mortgage loan that does not require documentation and consideration of the borrower's reasonable ability to repay that loan pursuant to its terms. The borrower's ability to repay must be demonstrated through reasonably reliable documentation that may include payroll receipts, tax returns, bank records, asset and credit evaluations, mortgage payment history or other similar reliable documentation. The above provisions do not apply to the following so long as each of the following, as applicable, provides the borrower with a reasonable, tangible net benefit: (1) a residential mortgage loan originated pursuant to a government streamline program; (2) a reverse mortgage insured as part of a government program; or (3) to loss mitigation activities of a mortgage loan servicer or lender with which the borrower has a current relationship.

Nevada
Mortgage Banker Act - no requirements
Mortgage Broker Act -- A lender may use any commercially reasonable means or mechanism in determining a borrower's ability to repay a home loan. A lender's duty to use any "commercially reasonable means or mechanism" to determine a borrower's repayment ability means that lenders must inquire into a borrower's current and future income and financial status (but does not dictate what specific methods must be utilized as long as they are reasonable and frequently used within the lending community). A lender may not knowingly or intentionally make a home loan, other than a reverse mortgage, to a borrower, including without limitation, a low-document home loan, no-document home loan or stated-document home loan, without determining (using any commercially reasonable means or mechanism), that the borrower has the ability to repay the loan.

New York
The New York Banking Law does not contain provisions regarding borrower repayment ability.

Ohio
Mortgage Broker Act -
Mortgage Loan Act -

On 3/30/12 the Ohio Office of Attorney General issued additional regulations regarding a consumer's ability to repay. The added provision is that a consumer shall be considered to have an ability to repay if the lender is offering a fully-amortizing fixed-rate refinance loan that has the same or lesser interest rate as the consumer's current loan, the same or lesser principal amount as the consumer's current loan, and does not extend the payoff date of the consumer's current loan. If the consumer currently has an adjustable rate mortgage, the interest rate of the consumer's current loan is the interest rate the consumer is paying as of the date of the refinance.

Oklahoma
Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act
The Uniform Consumer Credit Code does not contain provisions regarding borrower repayment ability with respect to loans other than "subsection 10 mortgages."

Oregon
The Oregon Consumer Finance Act does not contain provisions regarding borrower repayment ability.
Oregon Mortgage Lender Law - A mortgage banker, broker or loan originator may not negotiate or make a negative amortization loan without regard to the borrower's repayment ability at the time the loan is made, including the borrower's current and reasonably expected income, employment, assets other than the collateral, current obligations and mortgage related obligations.

The Oregon Mortgage Loan Originator Law does not contain provisions regarding borrower repayment ability.

Pennsylvania
Mortgage Licensing Act - In determining an applicant's ability to repay an offered loan, a lender or broker may not: 1. primarily rely upon the sale or refinancing of an applicant's collateral; or 2. ignore facts or circumstances that it knows or reasonably should know which would indicate that an applicant does not have the ability to repay the offered loan. If there is a material change after a lender or broker has performed the ability to repay calculation, the lender or broker must immediately:

1. send a notice to the applicant disclosing the material change and that the material change may affect the applicant's ability to repay the offered loan, if provided by a broker; or 2. perform another ability to repay analysis in accordance with the above requirements, if provided by a lender.

All records, worksheets and supporting documentation used in the lender's or broker's ability to repay analysis must be maintained in the applicant's loan file.

A mortgage lender or mortgage broker may not offer a loan without having reasonably determined that the applicant will have the ability to repay the loan in accordance with the loan terms and conditions by final maturity at the fully indexed rate, assuming a fully amortized repayment schedule. In performing an analysis to determine whether an applicant will have the ability to repay an offered loan, a lender or broker must consider, verify and document: (1) the income of the applicant; (2) the fixed expenses of the applicant. When performing the income verification, a lender or broker is only required to verify the income that the applicant chooses to rely upon to repay the offered loan. In performing an evaluation of an applicant's ability to repay, a lender or broker may consider and document supplemental information provided by the applicant in addition to income that demonstrates that the applicant has the ability to repay the offered loan, provided that the supplemental information is reasonably related to an applicant's ability to repay. In determining an applicant's ability to repay an offered loan, a lender or broker may not: (1) (1) primarily rely upon the sale or refinancing of an applicant's collateral; or (2) ignore facts or circumstances that it knows or reasonably should know which would indicate that an applicant does not have the ability to repay the offered loan.

An applicant may be presumed to have the ability to repay an offered loan if the offered loan has 1 of the following characteristics: (1) is insured by the Federal Housing Administration; (2) is guaranteed by the United States Department of Veterans Affairs; (3) is originated or approved for purchase by the Pennsylvania Housing Finance Agency; or (4) is the subject of a written finding by a United States Department of Housing and Urban Development approved counseling agency that there is a reasonable expectation that the borrower will be able to repay the offered loan.

Rhode Island
Rhode Island General Laws Licensed Activities Act - No requirements
Secure and Fair Enforcement Mortgage Licensing Act of 2009 - No requirements

South Carolina
Licensing of Mortgage Brokers Act
The South Carolina Consumer Protection Code does not contain provisions regarding borrower repayment ability.
The South Carolina Mortgage Lending Act does not contain provisions regarding borrower repayment ability.

South Dakota
The Mortgage Lender Business Statute does not contain provisions regarding borrower repayment ability.

Tennessee
The Industrial Loan and Thrift Companies Act does not contain provisions regarding borrower repayment ability.
The Tennessee Residential Lending, Brokerage and Servicing Act does not contain provisions regarding borrower repayment ability.

Texas
The Mortgage Banker Registration and Residential Mortgage Loan Originator Licensing Act does not contain provisions regarding borrower repayment ability.
The Mortgage Broker License Act does not contain provisions regarding borrower repayment ability.
The Secondary Mortgage Loan Act does not contain provisions regarding borrower repayment ability.
The Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 does not contain provisions regarding borrower repayment ability.

Utah
The Mortgage Lending and Servicing Act does not contain provisions regarding borrower repayment ability.
The Utah Consumer Credit Code does not contain provisions regarding borrower repayment ability.
The Utah Residential Mortgage Practices and Licensing Act does not contain provisions regarding borrower repayment ability.

Virginia
The Mortgage Lender and Broker Act does not contain provisions regarding borrower repayment ability.
The Mortgage Loan Originator Act does not contain provisions regarding borrower repayment ability.

Vermont
The Vermont Licensed Lenders Act does not contain provisions regarding borrower repayment ability.

Washington
Consumer Loan Act - A lender's underwriting policy of a conventional residential mortgage loan must include: 1. a procedure for evaluating a borrower's ability to repay; 2. standards used to evaluate the borrower's ability to repay by final maturity at the fully indexed rate; 3. a policy that provides the assumption of a fully amortizing repayment schedule in determining the borrower's ability to repay; 4. an evaluation of any negative amortization on a borrower's ability to repay; 5. standards for an acceptable range for the borrower's debt to income ratio based on the loan type; 6. demonstration that the debt to income ratio includes all of the borrower's contractual obligations, or that an allowance has been made within the ratio to take into account ancillary borrower contractual obligations; 7. standards for counseling borrowers on the impact of their decision to accept a mortgage with an adjustable rate, balloon payment, or other alternative product or feature; 8. standards on the substitution of a credit score in place of income, assets, or net worth; 9. standards for due diligence of third-party originators including pre-relationship review, verifications of borrower information, responsibility for initial RESPA compliance, responsibility for adverse action notice compliance, and post-closing reviews; and 10. procedures for notifying borrowers about prepayment penalties. A lender must demonstrate consistent and uniform application of the above elements in the lender's in-house compliance and audit departments. A lender's analysis of a borrower's repayment capacity must include: 1. the debt to income ratio; 2. the assets, net worth, or equity; and 3. any prepayment penalty clauses.

The Mortgage Broker Practices Act does not contain provisions regarding borrower repayment ability.

Wisconsin
The Mortgage Bankers, Loan Originators and Mortgage Brokers Act does not contain provisions regarding borrower repayment ability.

West Virginia
West Virginia Residential Mortgage Lender, Broker and Servicer Act - A lender must consider the borrower's: 1. income; 2. current debt; 3. employment status and history; and 4. other financial resources (other than equity in the dwelling that will secure the loan).
If a borrower's household debt-to-income ratio will exceed 50% (as determined from a credit report, credit application, financial statement) then the broker and initial lender must document in writing and maintain an assessment of the borrower's ability to repay the loan according to its terms. The assessment must be signed by the lender and the borrower and must consider:

1. the household's current debt obligations;2. the term of the loan; and 3. the borrower's circumstances along with their current and projected income and assets (other than a security interest in the real estate taken to secure the loan).

The West Virginia Safe Mortgage Licensing Act does not contain provisions regarding borrower repayment ability.

Wyoming
The Wyoming Residential Mortgage Practices Act does not contain provisions regarding borrower repayment ability.
The Wyoming Uniform Consumer Credit Code does not contain provisions regarding borrower repayment ability.

Source: AllRegs

Please visit the original 5/2/11 article, Borrower Ability to Pay on the Radar