



9800 Fredericksburg Road  
San Antonio, Texas 78288

July 22, 2011

Ms. Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, NW  
Washington, DC 20551  
[regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

**Re: Regulation Z; Truth in Lending (Docket No. R-1417 and RIN 7100-AD 75)**

Ladies and Gentlemen:

United Services Automobile Association (USAA), on behalf of its bank subsidiary, USAA Federal Savings Bank, is pleased to provide comments with respect to the Board of Governors of the Federal Reserve System (the Board) request for comment on proposed changes to Regulation Z, Truth in Lending<sup>1</sup> to implement certain provisions of Title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act).

USAA is a membership-based association, which together with its family of companies, serves present and former commissioned and noncommissioned officers, enlisted personnel, retired military, and their families. Since USAA's inception in 1922 by a group of U.S. Army officers, we have pursued a mission of facilitating the financial security of our members and their families by providing a full range of highly competitive financial products and services, including personal lines of insurance, retail banking and investment products. Our core values of service, honesty, loyalty and integrity have enabled us to perform consistently and be a source of stability for our members, even in the midst of the unprecedented financial crisis of recent years.

USAA Federal Savings Bank, an indirect wholly owned subsidiary of USAA, is a federally chartered savings association organized to offer personal retail banking services, including home mortgages and automobile loans.

In this letter, we support the definition of Qualified Mortgage in Alternative 1 that provides a safe harbor for compliance with the ability-to-repay requirements. USAA, however, has significant concerns that (1) this definition of Qualified Mortgage is unnecessarily inflexible, thereby restricting mortgage availability to consumers, particularly first-time homebuyers, and (2) the points and fees test narrows profit margins, thereby driving interest rates higher and mortgage lending to fewer, larger players. We urge the Board to use the discretion granted by the Act to craft a definition of Qualified Mortgage that ensures mortgage credit is available and affordable to consumers.<sup>2</sup>

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<sup>1</sup> *Regulation Z; Truth in Lending*, 76 Fed. Reg. 27390 (May 11, 2011) (Release).

<sup>2</sup> See Dodd-Frank Act, Section 1412(b)(3)(B)(ii) ("The Board may prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers").

**A. Lenders will be less likely to offer loans unless they meet the definition of Qualified Mortgage.**

We predict that the secondary mortgage market will display a preference for Qualified Mortgages, and lenders will tend to restrict their product offerings to those products. Those products may be unaffordable for otherwise qualified consumers, thus excluding them from the market. Furthermore, if a lender offers a non-Qualified Mortgage, the lender will be subject to increased risk. For example, the Act provides that there is no time limit during which a consumer may assert a violation of the ability-to-repay requirements as a defense to foreclosure by recoupment or set off.<sup>3</sup> Non-Qualified Mortgages would be subject to this risk, regardless of whether they are prudently and compliantly underwritten, resulting in upward price pressure on loans, thereby negatively impacting the availability of credit to consumers, especially first-time homebuyers.

**B. Alternative 1, providing a safe harbor, is the more appropriate standard.**

Because we believe most lenders will only offer loans that meet the definition of Qualified Mortgage, selecting the correct alternative is crucial to the mortgage market and the recovery of the housing market and consumer confidence. We believe Alternative 1 is the more appropriate standard. The safe harbor set forth in Alternative 1 will offer a level of protection and certainty that is not available in the rebuttable presumption set forth in Alternative 2. The presumption of an ability to repay in Alternative 2 would be subject to rebuttal that the lender, despite verifying and documenting all information required by statute, regulation and investors, should have known that the borrower did not have the requisite ability to repay. This will lead to litigation. To defend against such litigation, lenders will have to consider numerous additional defensive factors when determining whether a loan is a Qualified Mortgage, adding to the risk and expense of such loans. The safe harbor in Alternative 1 provides lenders with the greatest level of certainty and protection from second-guess determinations. Certainty of future costs will allow lenders to maintain more affordable lending for consumers, encourage home ownership, and aid the economic recovery.

**C. The definition of Qualified Mortgage is unnecessarily inflexible.**

The Qualified Mortgage definition as proposed permits no flexibility on the part of a lender to meet the needs of first-time homebuyers and those applicants who are self-employed. Over decades of making loans, federally regulated lenders have developed regulatory acceptable methods to determine the creditworthiness of borrowers in accordance with regulatory guidance.<sup>4</sup> Forcing lenders to follow inflexible rules removes the ability of lenders to use alternative indicators of creditworthiness such as rent and utility payments or demonstrated ability to responsibly handle higher debt to income ratios than the proposed regulation implies. Every borrower, regardless of creditworthiness, will be offered the same products -- those that meet the Qualified Mortgage definition. Fewer product offerings will limit the availability of credit and increase prices, thereby excluding many creditworthy borrowers from the market.

Finally, an inflexible definition of Qualified Mortgage will eliminate regulatory discretion. The OTS has stated that lending policies "may provide for prudently underwritten loan approvals" that are exceptions to standard lending policies. The OTS recognizes the importance of "making credit

<sup>3</sup> *Id.* at Section 1413 (creating Truth in Lending Act Section 130(k)).

<sup>4</sup> See OTS Regulatory Bulletin RB 37-69, One-to-Four Family Residential Real Estate Lending, at pp. 212.3-212.4 (Feb. 10, 2011) (the OTS expects federal thrifts to take into account the capacity and creditworthiness of the borrower, borrower cash down payment, borrower equity, any secondary sources of repayment, any additional collateral and/or credit enhancements (guarantees, private mortgage insurance, etc.)).

available to creditworthy borrowers.”<sup>5</sup> Furthermore, as the OCC has stated and as USAA’s own data shows, “the most convincing proof of the quality and soundness of a real estate mortgage loan is a favorable payment history.”<sup>6</sup> A narrow and inflexible definition of Qualified Mortgage punishes prudent lenders and qualified borrowers for the past actions of a limited sector of the mortgage industry. Using current OTS or OCC standards, and ensuring their uniform and strict enforcement, gives lenders the flexibility to create products that are safe based on the lender’s assessment of the borrower’s creditworthiness, even though they might not fit within the strict confines of the proposed definition of Qualified Mortgage.

**D. The “Points and Fees” test will make credit increasingly unaffordable and unavailable and decrease competition in the mortgage market.**

Limiting points and fees, as in the proposed definition of Qualified Mortgage, prevents lenders from pricing appropriately for the creditworthiness of a borrower or the transaction costs of the loan. As a result, lenders will be forced to charge higher interest rates or may be less inclined to make such loans. Fewer and more expensive loans will render credit increasingly unavailable, particularly to moderate- and low-income borrowers. In addition, reducing the profitability of lending will have a disproportionate impact on community banks and smaller lenders, causing them to exit the market and decreasing competition. The intended goal of eliminating “too big to fail”<sup>7</sup> by increasing competition would be defeated as only the largest lenders would remain in the market.

In conclusion, we believe consumers would be better served by regulators curbing abusive lending practices and stringently enforcing current standards, rather than imposing inflexible regulations on lenders, especially those with proven track records of making responsible loans to well-qualified borrowers. We urge the Board to use its regulatory discretion to craft a definition of Qualified Mortgage that includes flexible standards akin to those espoused by the OTS and OCC. The regulations as proposed will not ensure that “affordable mortgage credit remains available to consumers” as Congress intended.<sup>8</sup> In fact, they will have the opposite effect.

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We appreciate the Board’s consideration of our comments. Should you have any questions or wish further clarification or discussion of our points, please contact Deneen Donnley, USAA Federal Savings Bank General Counsel, at 210-456-3430.

Sincerely,



Steven Alan Bennett  
Executive Vice President  
General Counsel & Corporate Secretary

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<sup>5</sup> *Id.* at p. 212.8.

<sup>6</sup> Comptroller’s Handbook (Section 213), Real Estate Loans, at 7 (March 1990).

<sup>7</sup> “Preserving a Central Role for Community Banking” speech by Board Chairman Ben S. Bernanke at the Independent Community Bankers of America National Convention, Orlando, Florida (March 20, 2010) (“to have a competitive, vital, and innovative financial system in which market discipline encourages efficiency and controls risk, including risks to the system as a whole, we have to end the too-big-to-fail problem once and for all.”).

<sup>8</sup> Release at 27448.