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Submitted via email: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

Honorable Ben S. Bernanke  
Chairman Board of Governors of the Federal Reserve System  
Washington, DC 20551

Re: Ability-to-Repay Proposed Rule, Docket No. R-1417 and  
RIN No. 7100-AD75

Dear Chairman Bernanke:

Our office represents buyers, sellers, investors and lenders alike and we have for many years through thousands of transactions. The original S.A.F.E. Act and the Dodd-Franks amendments appear to limit a seller's right or that of a private lender to loan money secured by an individual's private and principal residence, or that is the way it is being interpreted in many circles.

The "mortgage meltdown" in America was not caused by privately held financing, but by the actions of the "big banks". Private individuals and sellers of real estate should be allowed to finance residential property as they can every other type of asset. The regulations need to make it clear that financing by individuals on an occasional basis is not a regulated conduct. The Federal Reserve has not historically regulated this type of financing and should not in the future (and neither should the Consumer Financial Protection Bureau).

Private financing is and should remain just that, private. Individuals risking their own funds should be unregulated as to the type of collateral that may secure the loan. I have understood that the public policy is that individuals should be encouraged to own homes. Private financing is one of the ways to accomplish this policy without any risk to the public or public entities. There has not, as a general rule, been any history of abuse in the private financing arena. Individuals should be able to risk their capital and to realize a return on their investments.

The practice of requiring loans of this type to be originated by "loan originators" is unrealistic. Loan originators are required to be affiliated with a lender that is not going to allow them to be working independently to originate "private loans". The lenders are going to only want the originators to originate their loans because of liability issues. The market must allow individuals to manage their own capital.

The proposed rule needs clarification that a privately held loan does NOT need to be treated as a "QM" or meet the requirements of satisfying the "Truth in Lending Act" and the private/seller lender is not required to meet the determination of ability to repay standard. Rest assured the private/seller lender is going to determine that there is an ability to repay the loan but it may not be some arbitrary standard set forth in the industry. The private/seller lender is going to look at the situation even harder than the big banks that are going to sell their loans. The private/seller has 100% "skin in the game" unlike the commercial lenders. If an individual has "invested his/her money by putting it in the bank or by purchasing through their pension plan, interests in pools of loans of unknown origin, then there needs to be the protection envisioned by the proposed rule, but not when they are making that decision on their own directly with a borrower.

The terms of the loans made by private lenders or sellers, also should not be regulated. There is no "one size fits all" loan or borrower. Flexibility is the key to financing. The borrower may not have the credit standing available to obtain a loan from a bank lender but may have a relationship with a private lender or seller to allow them to get the financing they need to purchase a home. Rhetorically, why should this option be taken from any buyer or a seller?

These transactions have occurred since the founding of our nation and before. What has suddenly made them "wrong" or suspect. These types of transactions are very personal and have not and do not need the regulation or interference of the Federal Reserve or the Consumer Financial Protection Bureau. Balloon payments, interest only loans and points are a matter of negotiations and need to be available to private/seller lenders and borrowers to provide both flexibility and incentive in a particular transaction. Please do not limit these options. They need to be available to borrowers and private/seller lenders alike, and they need to be available in the context of borrowers who will reside in the property or those that are investing. Look at the number of foreclosed properties that are being purchased by investors. But for the investors, a large percentage of the foreclosure inventory on this country would still be inventory, yet it is extremely difficult for investors to obtain financing. Investors, because of credit tightening, are having a very difficult time finding financing. Private financing is important to them in the absorption of the available inventory of foreclosed properties.

Thank you for the opportunity to comment. Please reconsider and rethink the proposal and exclude private and seller financing without restriction.

Sincerely

*/s/ Joseph T. Kirkland, Jr.*

Joseph T. Kirkland, Jr.  
Attorney