

Article

New era of lender liability: New mortgage lending rule requires lenders to assess borrower's ability to repay



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The new truth-in-lending rule, promulgated by [Consumer Financial Protection Bureau](#), which takes effect for mortgages originated from 10th Jan 2014, requires lenders to make a “reasonable, good faith determination” of the borrower’s ability to repay a mortgage loan, unless the mortgage loan falls in “qualified mortgage” category. The new rule is an amendment in Rule Z under the Truth in Lending Act, implemented pursuant to sections 1411 and 1412 of the Dodd Frank Act.

The lender will be required to make an assessment of the borrower’s ability to repay (ATR) based on objective assessment of 8 factors, viz:

- The borrower's current income or assets
- The borrower's current employment status, if income used is from employment
- Monthly principal and interest (P&I) payments (in case of adjustable rate mortgages, fully indexed)
- Monthly P&I of any simultaneous second lien mortgage loan
- Monthly payments of other mortgage related obligations (taxes and insurance [T&I], condo assessments, etc.)
- Current debt obligations
- Monthly debt-to-income (DTI) or residual income (no specific limits); and
- Credit history.

The lender will be required to document the lender’s satisfaction of the above tests, and preserve the same for 3 years after the origination of the loan. If the lender fails to comply with the test, the lender may face penalties, as well as defences in any legal action the lender may take for recovery or foreclosure.

Interestingly, the obligations percolate down even to an assignee of the mortgages – hence, in case of securitization, even a securitization trust may be affected by the lender’s breaches.

While there are tons of materials explaining various Dodd Frank rules, a very well written article by Standard and Poor’s explaining the ATR rule is [here](#). A CFPB page explaining the ATR rule, effective date, etc is [here](#).