DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9664]

RIN 1545–BF80

Section 67 Limitations on Estates or Trusts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide guidance on which costs incurred by estates or trusts other than grantor trusts (non-grantor trusts) are subject to the 2-percent floor for miscellaneous itemized deductions under section 67(a) of the Internal Revenue Code. These regulations affect estates and non-grantor trusts.

DATES: *Effective Date:* These regulations are effective on May 9, 2014.

Applicability Date: For date of applicability, see § 1.67–4(d).

FOR FURTHER INFORMATION CONTACT: Jennifer N. Keeney, (202) 317–6852 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR Part 1) under section 67 of the Internal Revenue Code (Code) by adding § 1.67–4 regarding which costs incurred by an estate or a non-grantor trust are subject to the 2-percent floor for miscellaneous itemized deductions under section 67(a).

Section 67(a) of the Code provides that, for an individual taxpayer, miscellaneous itemized deductions are allowed only to the extent that the aggregate of those deductions exceeds 2 percent of adjusted gross income. Section 67(b) excludes certain itemized deductions from the definition of ''miscellaneous itemized deductions.'' Section 67(e) provides that, for purposes of section 67, the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual. However, section 67(e)(1) provides that the deductions for costs paid or incurred in connection with the administration of the estate or trust that would not have been incurred if the property were not held in such estate or trust shall be treated as allowable in arriving at adjusted gross income. Therefore, deductions described in section 67(e)(1) are not subject to the 2-percent floor for miscellaneous itemized deductions under section 67(a).

A notice of proposed rulemaking (REG–128224–06) was published in the **Federal Register** (72 FR 41243) on July 27, 2007 (the 2007 proposed regulations). The 2007 proposed regulations provided that a cost is fully deductible to the extent that the cost is unique to an estate or trust. If a cost is not unique to an estate or trust, such that an individual could have incurred the expense, then that cost was subject to the 2-percent floor. The 2007 proposed regulations also addressed costs subject to the 2-percent floor that are included as part of a comprehensive fee paid to the trustee or executor (bundled fees). Written comments were received in response to the notice of proposed rulemaking. A public hearing was held on November 14, 2007, at which several commentators offered comments on the notice of proposed rulemaking.

On January 16, 2008, the Supreme Court of the United States issued its decision in *Michael J. Knight, Trustee of the William L. Rudkin Testamentary Trust* v. *Commissioner,* 552 U.S. 181, 128 S. Ct. 782 (2008), holding that fees paid to an investment advisor by an estate or non-grantor trust generally are subject to the 2-percent floor for miscellaneous itemized deductions under section 67(a). The Court reached this decision based upon an interpretation of section 67(e) that differed from the 2007 proposed regulations. The Court held that the proper reading of the language in section 67(e), which asks whether the expense ''would not have been incurred if the property were not held in such trust or estate,'' requires an inquiry into whether a hypothetical individual who held the same property outside of a trust ''customarily'' or ''commonly'' would incur such expenses. Expenses that are ''customarily'' or ''commonly'' incurred by individuals are subject to the 2-percent floor.

After consideration of the Court's holding in *Knight,* the Treasury Department and the IRS issued Notice 2008–32 (2008–11 IRB 593) (March 17, 2008) to provide interim guidance on the treatment of bundled fees. Subsequent notices extended the interim guidance. (Notice 2008–116 (2008–52 IRB 1372) (December 29, 2008); Notice 2010–32 (2010–16 IRB 594) (April 19, 2010); Notice 2011–37 (2011–20 IRB 785) (May 16, 2011)). On September 7, 2011, a notice of proposed rulemaking and a notice of public hearing (REG–128224–06) were published in the **Federal Register** (76 FR 55322) (the 2011 proposed regulations) and the 2007 proposed regulations were withdrawn.

A public hearing on the 2011 proposed regulations was scheduled for December 19, 2011, but later was cancelled because no one requested to speak. However, comments responding to the 2011 proposed regulations were received. After consideration of these comments, the 2011 proposed regulations are adopted as revised by this Treasury decision. These final regulations generally retain the provisions of the 2011 proposed regulations with minor modifications.

Summary of Comments and Explanation of Revisions

A. Commonly or Customarily Incurred—In General

The proposed regulations provide that a cost is subject to the 2-percent floor to the extent that it is included in the definition of miscellaneous itemized deductions under section 67(b), is incurred by an estate or non-grantor trust, and commonly or customarily would be incurred by a hypothetical individual holding the same property. To determine whether the cost commonly or customarily would be incurred by a hypothetical individual owning the same property, it is the type of product or service rendered to the estate or non-grantor trust that is determinative. The proposed regulations also provide that costs that do not depend on the identity of the payor (in particular, whether the payor is an individual or, instead, is an estate or trust) are costs that are incurred commonly or customarily by individuals.

One commentator stated that treating costs that do not depend on the identity of the payor as costs that are commonly or customarily incurred in all cases is overly broad, and that such treatment effectively represents a disguised reassertion of the standard rejected by *Knight* of making the 2-percent floor applicable to any expense that could be incurred by an individual. In response to this comment, the final regulations remove the reference to costs that do not depend on the identity of the payor.

B. Ownership Costs

The proposed regulations provide that, for purposes of section 67(e), ownership costs are costs that are commonly or customarily incurred by a hypothetical individual owner of such property. Therefore, ownership costs are subject to the 2-percent floor. The proposed regulations define ownership costs as costs that are chargeable to or incurred by an owner of property simply by reason of being the owner of the property, such as condominium

fees, real estate taxes, insurance premiums, maintenance and lawn services, automobile registration and insurance costs, and partnership costs deemed to be passed through to and reportable by a partner. One commentator suggested that the final regulations adopt a rebuttable presumption that ownership costs are not subject to the 2-percent floor. The final regulations do not adopt this comment because the Treasury Department and the IRS believe that ownership costs are costs that commonly or customarily would be incurred by a hypothetical individual holding the same property, and accordingly, should be subject to the 2-percent floor.

Several commentators stated that the examples used to illustrate ownership costs in the proposed regulations are problematic. First, commentators correctly pointed out that real estate taxes are not a miscellaneous itemized deduction because they are fully deductible under section 62(a)(4) or section 164(a). Second, commentators suggested that the final regulations clarify that costs incurred in connection with a trade or business or for the production of rents or royalties are fully deductible under section 162 or section 62(a)(4) and thus are not miscellaneous deductions. Third, a commentator requested that the final regulations clarify that the partnership costs reportable by a partner are subject to the 2-percent floor only if those costs are miscellaneous itemized deductions under section 67(b). Thus, for example, a partnership cost that is fully deductible is not subject to the 2-percent floor. The final regulations adopt these clarifications.

C. Tax Return Preparation Costs

The proposed regulations provide that the application of the 2-percent floor to the cost of preparing tax returns on behalf of the estate, decedent, or non-grantor trust will depend upon the particular tax return. The proposed regulations provide that all costs of preparing estate and generation-skipping transfer tax returns, fiduciary income tax returns, and the decedent's final individual income tax returns are not subject to the 2-percent floor. However, the proposed regulations also provide that costs of preparing other individual income tax returns, gift tax returns, and tax returns for a sole proprietorship or a retirement plan, for example, are costs commonly and customarily incurred by individuals and thus are subject to the 2-percent floor.

Several commentators pointed out that it would be very rare for a trust to pay for the preparation of the tax return of an individual other than the decedent. In the unlikely event that it did, such a cost would either be a deemed beneficiary distribution or would represent a breach of fiduciary duty. Furthermore, tax preparation fees for sole proprietorships and retirement plans would be fully deductible as business expenses under section 162.

To resolve these ambiguities in the proposed regulations, the final regulations provide an exclusive list of tax return preparation costs that are not subject to the 2-percent floor. Any other tax return preparation cost that is included in the definition of miscellaneous itemized deduction under section 67(b) is subject to the 2-percent floor.

A few commentators suggested that the final regulations should expressly provide that the cost of preparing all gift tax returns should be exempt from the application of the 2-percent floor. However, gifts are made by individuals, and the gift tax returns required to report those gifts are commonly and customarily required to be prepared and filed by or on behalf of individuals. Therefore, the final regulations do not adopt the recommendation to include gift tax returns within the category of returns whose preparation costs are exempt from the 2-percent floor.

D. Investment Advisory Fees

The proposed regulations provide that fees for investment advice (including any related services that would be provided to any individual investor as part of an investment advisory fee) are incurred commonly or customarily by a hypothetical individual investor and, therefore, are subject to the 2-percent floor. The proposed regulations also provide guidance regarding a special type of investment advice discussed by the Supreme Court in *Knight.* The Court noted that it is conceivable ''that a trust may have an unusual investment objective, or may require a specialized balancing of the interests of various parties, such that a reasonable comparison with individual investors would be improper.'' The Court further stated that, ''in such a case, the incremental cost of expert advice beyond what would normally be required for the ordinary taxpayer would not be subject to the 2-percent floor.''

The proposed regulations provide that, to the extent that a portion (if any) of an investment advisory fee exceeds the fee generally charged to an individual investor, and that excess is attributable to an unusual investment objective of the trust or estate or to a specialized balancing of the interests of various parties such that a reasonable comparison with individual investors would be improper, that excess is not subject to the 2-percent floor. The preamble to the proposed regulations explained that individual investors commonly have investment objectives that may require a balancing between investing for income and investing for growth and/or a specialized approach for particular assets. The preamble requested comments on the types of incremental charges, as described in this paragraph, that may be incurred by trusts or estates, as well as a specific description and rationale for any such charges. No response to this request was received, and the final regulations retain this provision as proposed.

E. Appraisal Fees and Certain Other Fiduciary Expenses

One commentator suggested that the final regulations include appraisal fees incurred by an estate or trust as a category of expense that is not subject to the 2-percent floor. Although individuals commonly or customarily would have assets appraised, estates and non-grantor trusts are required to undertake valuations for the maintenance and administration of these entities that an individual would not undertake. For example, Form 5227, ''Split-Interest Trust Information Return'', requires taxpayers to determine the fair market value of the trust's assets for each taxable year.

Accordingly, in response to these comments, the final regulations expressly provide that certain appraisal fees incurred by an estate or non-grantor trust are not subject to the 2-percent floor. Those appraisal fees are for appraisals needed to determine value as of the decedent's date of death (or the alternate valuation date), to determine value for purposes of making distributions, or as otherwise required to properly prepare the estate's or trust's tax returns. Appraisals for these purposes are not customarily obtained by individuals (unlike, for example, appraisals to determine the proper amount of insurance needed on certain property) and thus meet the requirements for exemption from the 2-percent floor under section 67(e).

One commentator requested confirmation of the inapplicability of the 2-percent floor to certain other fiduciary expenses. The final regulations contain such a statement with regard to some examples of fiduciary expenses that are not commonly or customarily incurred by individuals.

F. Bundled Fees

The proposed regulations provide that a bundled fee (generally, a fee for both costs that are subject to the 2-percent floor and costs that are not) must be allocated between those two categories of costs. However, the proposed regulations provide an exception to this allocation requirement for a bundled fee that is not computed on an hourly basis. Specifically, for such a fee, only the portion attributable to investment advice (including any related services that would be provided to any individual investor as part of the investment advisory fee) will be subject to the 2-percent floor. Notwithstanding this exception, payments made to third parties out of the bundled fee that would have been subject to the 2-percent floor if they had been paid directly by the estate or non-grantor trust, and any payments for expenses separately assessed by the fiduciary or other service provider that are commonly or customarily incurred by an individual owner of such property will be subject to the 2-percent floor.

The proposed regulations contain an example to illustrate a type of expense that is separately assessed: an additional fee charged by the fiduciary for managing rental real estate owned by the estate or non-grantor trust. Several commentators correctly noted that the expense in this example is not a miscellaneous itemized deduction, but is instead fully deductible. See sections 62(a)(4), 212, and 611. Therefore, the final regulations delete this example.

Most commentators objected to the requirement that a fiduciary commission be unbundled. They recommended that a single fiduciary commission that is not computed on an hourly basis, or otherwise separately stated, be entirely exempt from the 2-percent floor. The primary reason that commentators gave for this recommendation is the administrative difficulty and burden of the required calculations and recordkeeping. At least one commentator, however, acknowledged that unbundling a fiduciary commission is appropriate to provide the same tax treatment to the same expenses, regardless of how those expenses are billed.

Commentators also challenged the regulatory authority to require this unbundling, arguing that there is no statutory ambiguity with regard to a fiduciary commission and thus no authority to apply the 2-percent floor to any portion of that commission.

The Treasury Department and IRS believe the authority to unbundle rests with the authority to define expenses that ''would not have been incurred if the property were not held in such trust or estate.'' Consistent with the *Knight* decision, these final regulations interpret this statutory exception to the 2-percent floor to capture those expenses that would not commonly or customarily be incurred by an individual. In identifying these expenses, the *Knight* Court specifically recognized that unbundling may be required in the case of investment advisory fees, the costs of which exceed the costs charged to an individual investor and which are incurred either because the investment advice is being rendered to a fiduciary or because of an unusual investment objective or the need for a specialized balancing of interests of various parties. The final regulations adopt this reasoning and, consistent with the *Knight* decision, provide that the portion of such a fee in excess of what would have been charged to an individual investor may be exempt from the 2-percent floor. Based upon the *Knight* decision and the authority to promulgate interpretative regulations, the Treasury Department and IRS believe that the final regulations are within the scope of regulatory authority.

The Treasury Department and IRS also believe that retaining the unbundling requirement in the final regulations is appropriate because it provides equitable tax treatment to similarly situated taxpayers. Taxpayers that pay investment fees to a third-party investment advisor and those that pay investment fees as part of a bundled fee should receive similar tax treatment.

The Treasury Department and IRS also believe that the limitations to the unbundling requirement reduce administrative burdens. For example, a fiduciary fee, an attorney's fee, or an accountant's fee that is not computed on an hourly basis is fully deductible except for (i) amounts allocable to investment advice; (ii) amounts paid out of the bundled fee by the fiduciary to third parties if those amounts would have been subject to the 2-percent floor if they had been paid directly by the non-grantor estate or trust; and (iii) amounts that are separately assessed (in addition to the usual or basic fiduciary fee or commission) by the fiduciary or other service provider that are commonly or customarily incurred by an individual owner of such property. Because the latter two categories relate to amounts that are traceable to separate payments, the Treasury Department and IRS believe that the administrative burden associated with subjecting these amounts to the 2-percent floor is insubstantial.

Furthermore, where amounts are allocable to investment advice but are not traceable to separate payments, the final regulations retain the flexibility of allowing the use of any reasonable method to make the allocation to investment advice. The Treasury Department and the IRS believe that the availability of any reasonable method mitigates administrative burden. However, to provide additional guidance, these final regulations provide non-exclusive factors to further reduce administrative burden for both taxpayers and the IRS.

In the preamble to the proposed regulations, the Treasury Department and the IRS requested comments on the types of methods for making a reasonable allocation to investment advice, including possible factors on which a reasonable allocation is most likely to be based, and on the related substantiation needed to satisfy the reasonable method standard. The Treasury Department and the IRS received only one comment in response to this request, which explained that there is no single standard that could be applied to multiple trusts or even to the same trust in different years.

In finalizing these regulations, the Treasury Department and the IRS reconsidered comments received in response to Notice 2008–32. Although some comments supported a percentage safe harbor, the percentages suggested assumed that all fees that are customarily incurred by individuals (and not just investment advisory fees) would be required to be unbundled. For this reason, the percentages that were suggested are not readily applied to the framework of the final regulations. The final regulations, however, permit the Treasury Department and the IRS to provide safe harbors in future published guidance.

Effective/Applicability Date

The final regulations apply to taxable years beginning on or after May 9, 2014.

Availability of IRS Documents

The IRS notices cited in this preamble are available at *www.irs.gov.*

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these

regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal author of these regulations is Jennifer N. Keeney, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.67–4 is added to read as follows:

§ 1.67–4 Costs paid or incurred by estates or non-grantor trusts.

(a) *In general.* Section 67(e) provides an exception to the 2-percent floor on miscellaneous itemized deductions for costs that are paid or incurred in connection with the administration of an estate or a trust not described in § 1.67–2T(g)(1)(i) (a non-grantor trust) and that would not have been incurred if the property were not held in such estate or trust. A cost is subject to the 2-percent floor to the extent that it is included in the definition of miscellaneous itemized deductions under section 67(b), is incurred by an estate or non-grantor trust, and commonly or customarily would be incurred by a hypothetical individual holding the same property.

(b) *''Commonly'' or ''Customarily'' Incurred*—(1) *In general.* In analyzing a cost to determine whether it commonly or customarily would be incurred by a hypothetical individual owning the same property, it is the type of product or service rendered to the estate or non-grantor trust in exchange for the cost, rather than the description of the cost of that product or service, that is determinative. In addition to the types of costs described as commonly or customarily incurred by individuals in paragraphs (b)(2), (3), (4), and (5) of this section, costs that are incurred commonly or customarily by individuals also include, for example, costs incurred in defense of a claim against the estate, the decedent, or the non-grantor trust that are unrelated to the existence, validity, or administration of the estate or trust.

(2) *Ownership costs.* Ownership costs are costs that are chargeable to or incurred by an owner of property simply by reason of being the owner of the property. Thus, for purposes of section 67(e), ownership costs are commonly or customarily incurred by a hypothetical individual owner of such property. Such ownership costs include, but are not limited to, partnership costs deemed to be passed through to and reportable by a partner if these costs are defined as miscellaneous itemized deductions pursuant to section 67(b), condominium fees, insurance premiums, maintenance and lawn services, and automobile registration and insurance costs. Other expenses incurred merely by reason of the ownership of property may be fully deductible under other provisions of the Code, such as sections 62(a)(4), 162, or 164(a), which would not be miscellaneous itemized deductions subject to section 67(e).

(3) *Tax preparation fees.* Costs relating to all estate and generation-skipping transfer tax returns, fiduciary income tax returns, and the decedent's final individual income tax returns are not subject to the 2-percent floor. The costs of preparing all other tax returns (for example, gift tax returns) are costs commonly and customarily incurred by individuals and thus are subject to the 2-percent floor.

(4) *Investment advisory fees.* Fees for investment advice (including any related services that would be provided to any individual investor as part of an investment advisory fee) are incurred commonly or customarily by a hypothetical individual investor and therefore are subject to the 2-percent floor. However, certain incremental costs of investment advice beyond the amount that normally would be charged to an individual investor are not subject to the 2-percent floor. For this purpose, such an incremental cost is a special, additional charge that is added solely because the investment advice is rendered to a trust or estate rather than to an individual or attributable to an unusual investment objective or the need for a specialized balancing of the interests of various parties (beyond the usual balancing of the varying interests of current beneficiaries and remaindermen) such that a reasonable comparison with individual investors would be improper. The portion of the investment advisory fees not subject to the 2-percent floor by reason of the preceding sentence is limited to the amount of those fees, if any, that exceeds the fees normally charged to an individual investor.

(5) *Appraisal fees.* Appraisal fees incurred by an estate or a non-grantor trust to determine the fair market value of assets as of the decedent's date of death (or the alternate valuation date), to determine value for purposes of making distributions, or as otherwise required to properly prepare the estate's or trust's tax returns, or a generation-skipping transfer tax return, are not incurred commonly or customarily by an individual and thus are not subject to the 2-percent floor. The cost of appraisals for other purposes (for example, insurance) is commonly or customarily incurred by individuals and is subject to the 2-percent floor.

(6) *Certain Fiduciary Expenses.* Certain other fiduciary expenses are not commonly or customarily incurred by individuals, and thus are not subject to the 2-percent floor. Such expenses include without limitation the following: Probate court fees and costs; fiduciary bond premiums; legal publication costs of notices to creditors or heirs; the cost of certified copies of the decedent's death certificate; and costs related to fiduciary accounts.

(c) *Bundled fees*—(1) *In general.* If an estate or a non-grantor trust pays a single fee, commission, or other expense (such as a fiduciary's commission, attorney's fee, or accountant's fee) for both costs that are subject to the 2-percent floor and costs (in more than a de minimis amount) that are not, then, except to the extent provided otherwise by guidance published in the Internal Revenue Bulletin, the single fee, commission, or other expense (bundled fee) must be allocated, for purposes of computing the adjusted gross income of the estate or non-grantor trust in compliance with section 67(e), between the costs that are subject to the 2-percent floor and those that are not.

(2) *Exception.* If a bundled fee is not computed on an hourly basis, only the portion of that fee that is attributable to investment advice is subject to the 2-percent floor; the remaining portion is not subject to that floor.

(3) *Expenses Not Subject to Allocation.* Out-of-pocket expenses billed to the estate or non-grantor trust are treated as separate from the bundled fee. In addition, payments made from

the bundled fee to third parties that would have been subject to the 2-percent floor if they had been paid directly by the estate or non-grantor trust are subject to the 2-percent floor, as are any fees or expenses separately assessed by the fiduciary or other payee of the bundled fee (in addition to the usual or basic bundled fee) for services rendered to the estate or non-grantor trust that are commonly or customarily incurred by an individual.

(4) *Reasonable Method.* Any reasonable method may be used to allocate a bundled fee between those costs that are subject to the 2-percent floor and those costs that are not, including without limitation the allocation of a portion of a fiduciary commission that is a bundled fee to investment advice. Facts that may be considered in determining whether an allocation is reasonable include, but are not limited to, the percentage of the value of the corpus subject to investment advice, whether a third party advisor would have charged a comparable fee for similar advisory services, and the amount of the fiduciary's attention to the trust or estate that is devoted to investment advice as compared to dealings with beneficiaries and distribution decisions and other fiduciary functions. The reasonable method standard does not apply to determine the portion of the bundled fee attributable to payments made to third parties for expenses subject to the 2-percent floor or to any other separately assessed expense commonly or customarily incurred by an individual, because those payments and expenses are readily identifiable without any discretion on the part of the fiduciary or return preparer.

(d) Effective/*applicability date.* This section applies to taxable years beginning on or after May 9, 2014.

§ 1.67–4T [Removed]

■ **Par. 3.** Section 1.67–4T is removed.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: April 1, 2014.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2014–10661 Filed 5–8–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AO65

Loan Guaranty: Ability-To-Repay Standards and Qualified Mortgage Definition Under the Truth in Lending Act

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) Loan Guaranty regulations to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, requiring that VA define the types of VA loans that are ''qualified mortgages'' for the purposes of the new Ability to Repay provisions of the Truth in Lending Act. This rule establishes which VA-guaranteed loans are to be considered ''qualified mortgages'' and have either safe harbor protection or the presumption that the borrower is able to repay a loan, in accordance with the new Ability to Repay provisions. The rule does not change VA's regulations or policies with respect to how lenders are to originate mortgages, except to the extent lenders want to make qualified mortgages.

DATES: *Effective Date:* This interim final rule is effective May 9, 2014.

Comment Date: Comments must be received on or before June 9, 2014. While the standard comment period is 60 days, in order for VA to provide thorough responses to all comments and publish the final regulation as soon as possible with a target date of within 90 days of the publication of this interim final rule, we are limiting the period for comments to 30 days. VA believes it is important to publish the final rule soon because of the certainty the final rule will provide veterans and lenders. See below for further explanation.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AO65—Loan Guaranty: Ability-to-Repay Standards and Qualified Mortgage Definition under the Truth in Lending Act.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John Bell III, Assistant Director for Loan Policy and Valuation (262), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–8786. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law 111–203, 124 Stat. 1376 (2010), became law on July 21, 2010. The Dodd-Frank Act established as an independent agency the Consumer Financial Protection Bureau (CFPB) and charged it with implementing many reforms to Federal oversight of residential mortgage lending, including a requirement that lenders be able to demonstrate that borrowers are reasonably able to repay their mortgage loans at the time the loans are made. Public Law 111–203, Sec. 1411. As directed by the Dodd-Frank Act, the CFPB has issued rules regarding implementation of the Truth in Lending Act (TILA), 15 U.S.C. 1601, et seq. The CFPB rules became effective January 10, 2014. The CFPB has amended the rules, as explained below, several times since initial publication.

The Dodd-Frank Act also requires various Federal agencies to define which of their loans are qualified mortgages for the purposes of sections 129B and 129C of TILA and authorizes such agencies to exempt streamlined refinances from certain income verification requirements. Public Law 111–203, Secs. 1411 and 1412. In compliance with sections 1411 and 1412 of the Dodd-Frank Act, VA is in this rulemaking defining qualified mortgage to mean any loan guaranteed, insured, or made by VA, with certain limitations on streamlined refinances, also known as Interest Rate Reduction Refinance Loans (IRRRLs). The terms ''streamlined refinance'' and ''IRRRL'' are used interchangeably in this rule. VA is also specifying income verification requirements for IRRRLs.

Note on Comments and Publication of Final Rule

VA believes it is important to publish a final rule promptly after the publication of this interim final rule. Veterans want full assurance that the