Submitted electronically

July 7, 2014

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Amendments to the 2013 Mortgage Rules Under the Truth in Lending Act (Regulation Z) – Docket No. CFPB-2014-0009; RIN 3170-AA43

Dear Ms. Jackson:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on the Consumer Financial Protection Bureau (CFPB) proposed rule to amend the 2013 mortgage rules in Regulation Z, which regulates the Truth in Lending Act (TILA). This letter is ICBA's second letter in response to these proposed amendments, and addresses the qualified mortgage

[1] The Independent Community Bankers of America® (ICBA), the nation's voice for more than 6,500 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services.

ICBA members operate 24,000 locations nationwide, employ 300,000 Americans and hold $1.3 trillion in assets, $1 trillion in deposits and $800 billion in loans to consumers, small businesses and the agricultural community. For more information, visit www.icba.org.

(QM) and escrow small creditor provisions and the CFPB's proposed cure provision for loans that are originated with the good faith expectation of QM status but that actually exceed the 43 percent debt-to-income (DTI) ratio limit that applies to certain QM loans. The first letter sent by ICBA regarding this rulemaking addressed the CFPB's proposed cure mechanism for the points and fees limit.

The Community Bank Mortgage Business Is Unique

ICBA is pleased the CFPB is evaluating the recent mortgage rules to assess their impact on the industry and assess changes needed to help both creditors and consumers and assure credit availability. As the CFPB examines the recent rules, we urge it to consider the different business model of community banks and make modifications to the rules so this model can continue to be preserved for the benefit of consumers nationwide.

As ICBA has previously communicated to the CFPB, community banks are relationship lenders with a completely different business model than that of the larger financial institutions and mortgage companies. As relationship lenders who underwrite based on firsthand knowledge of their customers and communities and who thrive based on the strength of their reputations, community banks have every incentive to make fair, commonsense, and affordable loans. They do not need prescriptive regulations to compel them to do so. As a result, many of the new mortgage requirements are superfluous and overly burdensome for community banks, given the way they have conducted business for years.

In particular, community banks make it a priority to help consumers with non-traditional credit histories or employment, and borrowers in rural communities where non-traditional mortgage loans, especially balloon loans, are prevalent due to the unique nature of rural properties. Community banks often structure loans to meet the unique needs of the consumer based on his or her type of employment, cash flow, type of property, amount of assets, or net worth. These loans are not sold into the secondary market but are kept in portfolio. This gives the bank a vested interest in the loans and permits the bank and the consumer to work out a solution if repayment problems arise. Because of the nature of community bank mortgage loans and community banks' vested interest in loan performance, additional regulatory requirements, such as mandatory escrow accounts or restrictions on certain types of balloon loans, are unnecessary regulatory burdens.

Federal Reserve Board Governor Elizabeth Duke also raised this issue in her November 9, 2012 speech when she stated that even over the last few years when mortgage delinquencies reached record levels, "the serious delinquency rate of mortgages held by community banks did not go much over 4 percent, far

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lower than the serious delinquency rates that climbed to almost 22 percent for subprime, fixed-rate loans and more than 46 percent for subprime, variable-rate loans. Governor Duke further stated in this speech that, “over the last several years, on average, mortgages held by community banks outperformed even fixed-rate, prime loans, the best performing mortgage category.”[2]

ICBA understands the important purpose behind the CFPB’s new mortgage regulations, which is to stop abuses and maintain a safe, strong, and robust mortgage industry where financial institutions provide solid loans to consumers so they can achieve the American dream of home ownership. Community banks share this dream, but are having increasing difficulty adjusting their business model to the overwhelming amount of new regulatory requirements, many of which do not distinguish between the different business operations of smaller financial institutions such as community banks. We hope the distinctive characteristics of the community bank mortgage industry are considered by the CFPB as it moves forward with evaluating the current mortgage rules.

ICBA Supports a DTI Limit Tolerance

In this proposed rulemaking, the CFPB is asking for comment on whether a limited post-consummation cure or correction provision should be added for loans that are originated with the good faith expectation of QM status but that actually exceed the 43 percent DTI ratio limit that applies to certain QM loans. To satisfy the general QM definition in § 1026.43(e)(2) of TILA’s Regulation Z, the consumer's total monthly DTI ratio—verified, documented, and calculated in accordance with § 1026.43(e)(2)(vi)(B) and appendix Q—cannot exceed 43 percent at the time of consummation. Similar to errors made in calculating points and fees, errors made in calculating DTI ratios could jeopardize a loan's QM status under § 1026.43(e)(2). The CFPB is proposing § 1026.43(e)(3)(iii) to permit lenders to cure inadvertent points and fees overages by refunding to the consumer the dollar amount that exceeds the applicable points and fees limit, under certain defined conditions. The CFPB is also considering whether a similar cure provision may be appropriate in the context of DTI overages.

The CFPB is considering whether it may be appropriate to address the more limited scenario where DTI overages result from errors in calculation or documentation, or both, of debt or income. Specifically, the CFPB is reviewing whether, in such situations, it would be feasible to permit post-consummation corrections to the documentation, which would result in a corresponding recalculation of the DTI ratio. The CFPB is not proposing a specific DTI ratio cure or correction provision at this time but is requesting comment on any potential cure and correction provisions for DTI overages.

[2] *See Community Banks and Mortgage Lending*, Remarks by Elizabeth A. Duke, Member of the Board of Governors of the Federal Reserve System, Community Bankers Symposium in Chicago, Illinois, Nov. 9, 2012.

ICBA strongly advocates for an environment where regulators and financial institutions work together to help consumers have access to financial products and services. We do not support an atmosphere of “gotcha” rulemaking, where community banks become exposed to legal and compliance risk for inadvertent and minor calculation or documentation errors. The new QM mortgage rules are intricate and complex, and ICBA strongly supports any additional thresholds the CFPB could provide to the DTI limit provisions as this could give many community banks greater flexibility in providing loans and ensuring QM status.

As with the 3 percent points and fees cap, ICBA is concerned some creditors may not lend to a consumer if they are too close to the 43 percent DTI limit in fear of accidentally exceeding the limit and losing the loan’s QM status. A tolerance level or reasonable cushion would better protect many community banks from inadvertent errors that could open them up to liability and compliance risk. In addition, a threshold or greater cushion for the 43 percent DTI calculation would provide additional security for many community banks and enable them to lend to more consumers who may come closer to reaching the DTI limit. Therefore, any additional flexibility the CFPB could provide for community banks to correct inadvertent errors to the DTI calculation and documentation would be greatly welcomed and appreciated by ICBA.

The Small Creditor Exception Should Include All Community Bank Portfolio Loans

The CFPB is also asking for feedback and data from small creditors regarding the implementation of certain provisions in the 2013 Title XIV Final Rules that are tailored to account for small creditor operations. While ICBA appreciates the distinctions made for small creditors in the QM and escrow rules, we strongly advocate that all community bank mortgage loans, including balloon mortgage loans, that are held in portfolio for the life of the loan receive QM safe harbor status and exemption status from escrow requirements if they are higher-priced mortgage loans.

Under the CFPB’s 2013 Title XIV Final Rules, there are four types of exceptions and special provisions available only to small creditors:

- A QM definition for certain loans made and held in portfolio, which are not subject to a bright-line DTI ratio limit and are subject to a higher annual percentage rate (APR) threshold for defining which first-lien QM loans receive a safe harbor under the ability-to-repay rule (§ 1026.43(e)(5));

- Two QM definitions (*i.e.,* a temporary and an ongoing definition) for certain loans made and held in portfolio that have balloon-payment features, which are also subject to the higher APR threshold for defining which first-lien QM loans receive a safe harbor under the ability-to-repay rule (§

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1026.43(e)(6) and (f));

- An exception from the requirement to establish escrow accounts for certain higher-priced mortgage loans (HPMLs) for small creditors that operate predominantly in rural or underserved areas (§ 1026.35(b)(2)(iii)); and

- An exception from the prohibition on balloon-payment features for certain high-cost mortgages (§ 1026.32(d)(1)(ii)(C)).

To be a small creditor for purposes of these exceptions and special provisions, the creditor must have (1) together with its affiliates, originated 500 or fewer covered transactions secured by a first lien in the preceding calendar year; and (2) had total assets of less than $2 billion at the end of the preceding calendar year. The CFPB is requesting comment on certain aspects of the annual first-lien origination limit under the small creditor test.

ICBA agrees with the idea behind the small creditor exception in the mortgage rules. As it currently stands, this exception has allowed many community banks to continue to provide mortgage loans that receive QM safe harbor status that would not if this exception did not exist. Nevertheless, ICBA strongly supports a broader exemption for community bank mortgage loans so they can continue to provide solid mortgage products to their customers without fear of legal exposure or compliance violations.

Currently, there are community banks that would be considered small financial institutions based on their asset size but that still do not qualify for the small creditor exemption because they exceed the loan volume threshold. A threshold of 500 total first lien originations per year is only 41 first lien mortgages per month, or nine per week, an amount that easily can be exceeded by a small creditor. For community banks that wish to grow their mortgage business, this low number is restrictive since some community banks will not provide loans that do not have QM safe harbor status, so they stop providing mortgage loans after they reach this low threshold and consumers have fewer mortgage lender options.

This burden especially is felt by community banks with regard to the QM requirements, balloon mortgage provisions, and the escrow requirements for higher-priced mortgage loans under Regulation Z. For all of the new mortgage requirements, ICBA strongly urges the CFPB to provide exemptions for community banks that hold their loans in portfolio for the life of the loan, since they will automatically have a vested interest in the loans' performance.

The reality is that for portfolio loans, both consumers and their bankers have "skin in the game" and care about the long term success of the transaction. This

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was not the reality for many non-community bank mortgage loans in the mid-2000s, many of which had risky features and were quickly sold into the secondary market by the originating lender. Withholding safe harbor status for loans held in portfolio and exposing the lender to litigation risk will not make the loans safer, nor will it make underwriting more conservative. It will merely deter community banks from making loans to their customers, particularly those in rural and underserved counties.

Likewise, community bank loans held in portfolio should be exempt from new escrow requirements for higher priced mortgage loans because portfolio lenders have every incentive to protect their collateral by ensuring the borrower can make tax and insurance payments. For many community banks, an escrow requirement is expensive and impracticable and, again, will only deter lending to consumers who have no other options.

At the Very Minimum, the CFPB Should Expand the Current “Small Creditor” Exception

If the CFPB does not pursue the above recommendation, ICBA strongly urges the CFPB to adjust the definition of “small creditor” for purposes of these mortgage rules, as the current definition is too restrictive. Most community banks that exceed either or both the asset size or loan volume thresholds have all the attributes of traditional, relationship-based community banks. In particular, ICBA finds the loan volume test, which is extremely low for most community banks, is not consistent with the asset size test. At the very minimum, ICBA urges the CFPB to increase the loan volume threshold to at least 2000 first-lien mortgage loans, or to disregard loans sold into the secondary market when applying the annual loan threshold number. If the financial institution is willing to take 100% of the credit risk by holding the mortgage loan in portfolio, then all of these loans should have QM safe harbor status.

On behalf of ICBA, thank you for re-evaluating these rules and making adjustments where they are appropriate. If you have questions about the comments in this letter, please feel free to contact me by telephone at 202-821-4469 or by email at Elizabeth.Eurgubian@icba.org.

Sincerely,

/s/

Elizabeth A. Eurgubian
Vice President & Regulatory Counsel