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October 16, 2014

Patricia McClung
Assistant Director, Mortgage Markets
Consumer Financial Protection Bureau
1275 First Street, NE
Washington, DC 20002

Re: Regulation Z (Truth in Lending) Mortgage Requirements

Dear Ms. McClung:

The Independent Community Bankers of America (ICBA)¹ appreciates the time and effort the Consumer Financial Protection Bureau (CFPB) has taken to review and evaluate the current qualified mortgage (QM) and ability-to-repay (ATR) Regulation Z (Truth in Lending Act) mortgage rules and escrow requirements that became effective on January 10, 2014. We understand these rules are a work in progress and that subsequent changes may be made to the current requirements to best suit the housing needs of consumers.

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.

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Since the rules have been effective for 10 months, we have been able to conduct an initial evaluation of their effect on the community banking mortgage industry and its consumers. Thus far, the consequences of the QM/ATR rules have been significant for community banks and their customers. In a 2014 National Community Bank Survey of over 1000 community banks conducted by the Conference of State Bank Supervisors and the Federal Reserve, 59 percent of the respondents indicated they are either not originating non-QM loans at all or will only do so on an exception basis.

In addition, a September, 2014 ICBA survey with approximately 350 community bank respondents produced similar results, with 44 percent of the respondents stating they will not originate non-QM mortgage loans and an additional 22 percent of banks stating they will only originate non-QM loans in special circumstances. The data from both of these surveys clearly shows community banks do not feel secure in providing loans that do not receive the legal and regulatory compliance protections of QM loans. As a result, consumers, particularly those in rural and underserved locations where many community banks serve, are receiving limited access to mortgage credit.²

ICBA understands the CFPB's intent to protect consumers from irresponsible lending practices that led to the financial crisis. However, we want to highlight a fact emphasized by Federal Reserve Governor Elizabeth Duke that over the last several years as mortgage delinquencies reached record levels, the serious delinquency rate of mortgages held by community banks did not go much over 4 percent, far 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. As Governor Duke stated, "over the last several years, on average, mortgages held by community banks outperformed even fixed-rate, prime loans, the best performing mortgage category."³

Therefore, if many community banks will not lend outside of the QM definition in the current regulatory environment, we urge the CFPB to insure the current QM definition is broad enough to include a variety of solid consumer mortgage loans, such as community bank mortgage loans held in portfolio. As the CFPB moves forward with evaluating the current QM/ATR and escrow requirements and making changes, ICBA strongly encourages it to consider the following specific recommendations.

² As noted by Federal Reserve Governor Elizabeth Duke, "Compared to larger banks, community banks ... extend larger shares of their total home-purchase loans to low- or moderate-income individuals or borrowers in low- or moderate-income neighborhoods, lending that is the focus of the Community Reinvestment Act requirements to help serve the credit needs of local communities..." *Community Bank 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).

³ *Community Bank 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).

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ICBA Preferred Solution

- Allow all community bank loans held in portfolio for the life of the loan to receive automatic QM safe harbor legal status and an exemption from the escrow requirements for higher-priced mortgage loans (HPML).

The automatic vested interest community banks have in the loans they hold in portfolio protect these loans and make them safe and accessible products for consumers who may not have many financial options given their atypical financial condition/history or the atypical characteristics of the property securing their loan. This recommendation is a logical and unambiguous solution that will allow community banks to continue to provide safe and solid mortgage loans for consumers. If a community bank is willing to take 100% of the credit risk by holding a mortgage loan in portfolio, then all of these loans should have QM safe harbor status. This recommendation is similar to several pieces of proposed legislation from both houses of Congress that have enjoyed bipartisan support, such as the CLEAR Act (H.R. 1750/S.1349) as introduced by Representative Luetkemeyer (R-MO) in the House and by Senator Moran (R-KS) in the Senate.

ICBA Alternative Solution

1. Expand the “small creditor” exception in the QM/ATR rules.

If the CFPB does not pursue the above preferred recommendation, then ICBA strongly urges it to adjust the definition of “small creditor” in the QM/ATR rules as the current definition is 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.

2. Amend the “rural” definition in the QM/ATR balloon provision and escrow rules.

If the CFPB does not allow all community bank loans held in portfolio to receive automatic QM safe harbor legal status and an exemption from the HPML escrow requirements, and continues to use the “rural” definition in the QM balloon and escrow exceptions, then the definition of “rural” should be adjusted to account for community banks that provide loans to largely rural populations, in addition to the expansion of the “small creditor” exception.

The CFPB’s current definition of “rural” under the QM/ATR and escrow rules is restrictive and does not account for many community banks that serve largely rural populations. For example, the current definition of “rural” in the QM/ATR and escrow

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rules only covers about 7 percent of the U.S. population, whereas the U.S. Census Bureau recognizes about 20 percent of the U.S. population as living in a rural area.

ICBA recommends the CFPB amend the definition of “rural” to instead include (1) counties that are not in a metropolitan statistical area (MSA) or (2) any city or town that has a population of less than 50,000 inhabitants.

If the CFPB requires additional data and analysis in adjusting this definition, we encourage it to extend the temporary balloon payment “small creditor” exception to covered transactions consummated on or before January 10, 2017, at a minimum, while it studies the issue further.

3. Amend the “underserved” definition in the QM/ATR balloon provision and escrow rules.

If the CFPB does not allow all community bank loans held in portfolio to receive automatic QM safe harbor legal status and an exemption from the HPML escrow requirements, and continues to use the “underserved” definition in the QM balloon and escrow exceptions, then ICBA strongly urges the CFPB to adjust the definition so that more community banks that provide loans to underserved communities may qualify for the exception. This change should be made in addition to the expansion of the “small creditor” exception and the expansion of the “rural” definition.

The current definition of “underserved” only applies to 22 additional counties in the U.S. that are not also designated as “rural,” which is less than .7 percent of U.S. counties. The definition should be revised to consider more than the number of competitors in a county for an “underserved” area. The CFPB should instead expand the definition of “underserved” areas to include a geographical area within which one or more economic indicators differ from those of metropolitan areas. Such economic indicators include: lower level of income; lower level of education; higher level of seasonal and manufactured housing; higher average age population; a lower average population density than in metropolitan areas; or a higher level of food stamp recipients. In addition, criteria could be based on the Community Reinvestment Act’s Regulation BB definition of “community development,” which would include low- or moderate-income geographies and distressed or underserved nonmetropolitan middle-income geographies designated by the Federal Deposit Insurance Corporation (FDIC), Federal Reserve, and Office of the Comptroller of the Currency (OCC).

As with the “rural” definition, if the CFPB requires additional data and analysis in adjusting the “underserved” definition, we encourage it to extend the temporary balloon payment “small creditor” exception to covered transaction consummated on or before January 10, 2017, at a minimum, while it studies the issue further.

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Thank you for considering our recommendations on these Regulation Z mortgage rules. If you have questions or would like to discuss our comments further, 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

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