June 3, 2013

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 Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z). Docket No. CFPB 2013-0010, RIN 3170-AA37

Dear Ms. Jackson:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on the proposed amendments and clarifications to the Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Ability to Repay Standards under the Truth in Lending Act (Regulation Z) issued by the Consumer Financial Protection Bureau (the Bureau) in January of 2013. Specifically, the Bureau is seeking comments on proposed clarifications or corrections regarding: (1) the relation to State law of Regulation X servicing provisions; (2) the small servicer exemption from certain servicing rules; (3) the use of government-sponsored enterprise (GSE) and Federal agency purchase, guarantee or insurance eligibility for determining qualified mortgage status; and (4) the determination of debt and income for purposes of originating qualified mortgages (QM).

ICBA's comments focus on the small servicer exemption and the use of GSE and Federal agency purchase, guarantee or insurance eligibility for determining qualified mortgage status.

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[1] *The Independent Community Bankers of America®, the nation's voice for more than 7,000 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.*

With nearly 5,000 members, representing more than 24,000 locations nationwide and employing more than 300,000 Americans, ICBA members hold more than $1.2 trillion in assets, $1 trillion in deposits, and $750 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org

Small Servicer Exemption.

In general, ICBA supports the clarifications the Bureau has provided in the commentary regarding the small servicer definition. In particular, ICBA is pleased the Bureau is proposing to exclude certain loans from counting towards the small servicer threshold of 5,000 mortgage loans serviced when the servicer permits its servicing system to be used by a charitable organization such as Habitat For Humanity to set-up and maintain loans for that organization. These loans are neither originated by the small servicer nor does the small servicer receive any compensation for providing access and capacity to the organization. We are pleased the Bureau's approach would not count these loans towards the small servicer's total loans serviced.

ICBA is concerned that the Bureau is considering counting all closed-end consumer mortgages as opposed to only those mortgages considered to be "federally related mortgage loans" under Regulation X towards the small servicer threshold. In particular, the Bureau's small servicer definition, as currently written, would include the number of construction loans serviced by a community bank when determining a servicer's eligibility as a small servicer. These loans are very short term in nature, generally under twenty four months, and many times are serviced on a separate servicing system within the bank, by a separate unit. These loans are intensely managed as the construction project progresses with activities such as inspections, change orders which alter the loan amount and various other issues relating to the builder. Throughout the entire construction process, the lender is in constant contact with the borrower. Once construction is finished, the borrower pays off the construction loan with a permanent loan either from the construction lender or another lender. The permanent loan is the loan that should count towards the servicers' total loans serviced and should be subject to the Bureau's servicing rules.

ICBA urges the Bureau to only count the number of "federally related mortgage loans" which are subject to Regulation X when calculating the total number of mortgages serviced to determine if a servicer qualifies as a small servicer.

Government Sponsored Enterprise, Federal Agency Purchase, Guarantee or Insurance Eligibility in Determining QM Status.

The Bureau's Ability to Repay Standards issued in January 2013, provided QM safe harbor status to mortgage loans eligible to be sold to the housing GSEs or eligible for insurance or guarantee by a Federal agency such as FHA, VA, or USDA. The Bureau is providing additional commentary and revisions under section 1026.43(e) (4)-4 dealing with Eligibility under GSE/Agency Guides and Automated Underwriting Systems. Specifically, the Bureau proposes that the creditor must comply with the GSE or agency guides when determining the borrower's ability to repay. In particular, if the creditor uses the GSE automated underwriting systems which provide loan specific feedback and documentation instructions for the creditor to use the creditor must follow these instructions completely to obtain QM status, even if the loan is not to be sold or guaranteed/insured. Additionally, the Bureau clarifies that when using the GSE automated underwriting systems the creditor is responsible for entering correct and accurate information into those systems, and that doing otherwise would result in the loan losing its QM status. In general, ICBA agrees with the Bureau's approach on this issue. However, it is possible that a minor data entry error could occur, (transposition of a number) which when reversed would still result in the loan being eligible for GSE purchase or agency insurance. These loans should clearly retain their QM status.

ICBA urges the Bureau to allow loans to retain their QM status where minor data entry errors occur but when corrected would still result in an eligible loan in terms of GSE purchase or Agency insurance or guarantee.

The Bureau is also providing some additional clarification regarding factors that could change a loan's QM status "post consummation", in particular, if a loan is put back to a creditor from a GSE, or if the insurance or guarantee is denied by an Agency. The Bureau proposes that if the reason for the put back or denial is due to an issue related to the process of selling, securitizing or insuring the loan, then the QM status of the loan is not changed. However, if the cause of the put back or denial is due to factors that impact the borrower's ability to repay, then the loan would lose its QM status. ICBA is generally supportive of this approach. However, the calculation of income especially for self employed borrowers, borrowers with income from multiple sources, or in general where all of the borrower's income cannot be documented by a W2 is very subjective, and will vary from underwriter to underwriter. If a creditor has documented the income and debts in accordance with their understanding of the GSE or Agency guides, as applicable and Appendix Q of the Ability to Repay rule, the loan should retain its QM status even if the loan is put back or denied insurance or guarantee by a GSE or Agency for an income-related reason.

ICBA recommends that the Bureau allow loans sold to a GSE or submitted for insurance or guarantee from an Agency to retain their QM status if that loan is denied purchase/insurance/guarantee based on an income related reason, provided the creditor complied with Appendix Q of the Ability to Repay rule.

ICBA appreciates the opportunity to provide the Bureau comments on these clarifications and proposals to the Mortgage Servicing Rule and Ability to Repay Standards. The Bureau has actively engaged ICBA and community bankers nationwide to solicit input and feedback on these and other mortgage rules. ICBA looks forward to working with the Bureau as the rulemaking and implementation process moves forward.

If you have any questions regarding the comments contained in this letter, please contact the undersigned at 202-821-4436 or at ron.haynie@icba.org.

Sincerely,

/s/

Ron Haynie
Senior Vice President- Mortgage Finance Policy
Independent Community Bankers of America