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Submitted electronically

October 30, 2013

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410-0500

Re: Qualified Mortgage Definition for HUD Insured and Guaranteed Single Family Mortgages
[Docket No. FR-5707-P-01]

Dear Sir or Madam:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to comment on the Department of Housing and Urban Development (HUD) proposed rule regarding the definition of Qualified Mortgage (QM) for purposes of the Federal Housing Administration (FHA) Insured and Guaranteed Single Family Mortgage Program. Specifically, we urge HUD to consider all loans meeting FHA requirements to be qualified mortgage loans that receive safe harbor legal protections.

¹ The Independent Community Bankers of America® (ICBA), the nation's voice for nearly 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 approximately 23,600 locations nationwide and employing almost 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 www.icba.org.

The Dodd–Frank Wall Street Reform and Consumer Protection Act requires HUD to propose a QM definition that is aligned with the Ability-to-Repay criteria set out in the Truth-in-Lending Act and HUD’s mission to promote affordable mortgage financing options for lower income borrowers. HUD’s proposed definition of QM requires that mortgage loans have periodic payments and terms not to exceed 30 years, limit upfront points and fees to no more than three percent with adjustments for smaller loans, and be insured or guaranteed by the FHA or HUD.

Like the Consumer Financial Protection Bureau (CFPB) QM rulemaking, HUD’s proposed rule establishes two categories of QM that have different legal consequences for lenders. Mortgages with an annual percentage rate (APR) that exceeds the average prime offer rate (APOR) for a comparable mortgage by more than the combined annual mortgage insurance premium and 1.15 percentage points for a first-lien mortgage will have a rebuttable presumption of compliance, where lenders will be presumed to have determined that the consumer met the ability-to-repay standard. Under this category, consumers can challenge the presumption by proving they did not have the ability to repay the mortgage. Mortgages with APRs that do not exceed the APOR for a comparable mortgage by more than the combined annual mortgage insurance premium and 1.15 percentage points for a first-lien mortgage will receive safe harbor legal protection, which is a more certain legal protection for lenders.

While HUD’s proposed rule is consistent with the CFPB’s QM rulemaking, we believe it is unnecessary for HUD to establish a rebuttable presumption of compliance standard for FHA loans, which are already well-underwritten loans. Furthermore, the establishment of a rebuttable presumption category of loans could have the unintended consequence of decreasing credit availability for borrowers due to creditors’ increased legal and compliance exposure and fear of liability.

As such, ICBA believes HUD should consider all FHA loans, as they are currently defined, to be qualified mortgages with safe harbor legal protections. The rebuttable presumption standard and added QM criteria should be eliminated. This change will ensure that FHA mortgage loans will continue to be made to consumers, including underserved borrowers with limited access to mortgage credit.

Thank you for considering our comments and for your work on this mortgage rulemaking. If you have questions or need additional information about our thoughts in this letter, please do not hesitate to contact me at 202-659-8111 or Elizabeth.Eurgubian@icba.org.

Sincerely,

/s/

Elizabeth A. Eurgubian
Vice President & Regulatory Counsel