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Submitted electronically

March 25, 2015

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

Re: Proposed Rule Amending Regulation Z to Implement Amendments to the
Qualified Mortgage/Ability-to-Repay Rules [Docket No. CFPB-2015-0004]

Dear Ms. Jackson:

The Independent Community Bankers of America (ICBA)¹ is pleased to have the opportunity to comment on the Consumer Financial Protection Bureau (CFPB) proposed amendments to certain mortgage rules issued in 2013 under the Truth in Lending Act's Regulation Z.² The proposed rule revises the CFPB's regulatory definitions of "small creditor" and "rural" areas for purposes of extending certain special provisions and exemptions to small creditors under the CFPB's ability-to-repay (ATR) and qualified mortgage (QM) underwriting requirements and escrow requirements for higher-priced mortgage loans (HPML).

¹ The Independent Community Bankers of America®, the nation's voice for more than 6,000 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 52,000 locations nationwide, community banks employ 700,000 Americans, hold \$3.6 trillion in assets, \$2.9 trillion in deposits, and \$2.4 trillion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

² Specifically, on January 10, 2013, the CFPB issued Escrow Requirements Under the Truth in Lending Act (Regulation Z), 78 FR 4725 (Jan. 22, 2013) (January 2013 Escrows Final Rule), and Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z), 78 FR 6407 (Jan. 30, 2013) (January 2013 ATR Final Rule). The CFPB also issued a proposal to amend the January 2013 ATR Final Rule, which was finalized on May 29, 2013. See 78 FR 6621 (Jan. 30, 2013) (January 2013 ATR Proposal) and 78 FR 35429 (June 12, 2013) (May 2013 ATR Final Rule).

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ICBA is quite appreciative for many of the changes to the mortgage rules being proposed by the CFPB in this rulemaking, and expresses gratitude to Director Cordray and CFPB staff for their receptiveness and openness to listening to community bank concerns and addressing issues with the current requirements. In addition to supporting the proposed regulatory changes, ICBA is committed to supporting statutory changes that would provide QM safe harbor status for loans originated and held in portfolio by banks with less than \$10 billion in assets, including balloon mortgages. We also support exempting banks with assets below \$10 billion from the HPML escrow requirements for loans held in portfolio.

Overall, ICBA strongly supports the changes being made by the CFPB in this proposed rule. Nevertheless, while we strongly support most of these proposed amendments, we have some comments and suggestions on how to move forward with a final rule that will greatly improve the effectiveness and clarity of these provisions which will enable community banks to better serve their customers and communities.

Background

In January 2013, the CFPB issued several final rules concerning mortgage markets in the United States, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).³ The CFPB has clarified and revised these rules over the past two years to address questions and concerns raised by stakeholders. The CFPB also has indicated it would revisit its regulatory definitions of “small creditor” and “rural” and “underserved” areas in the mortgage rules through study and additional rulemaking. Throughout this two-year period, ICBA and community banks around the country have provided the CFPB with numerous written and verbal comments and data regarding the effect of the current definitions on the community banking industry and its consumers. This includes data from ICBA’s 2014 Community Bank Lending Survey provided in Appendix A of this letter.

The CFPB is now proposing several additional amendments to the 2013 Title XIV Final Rules to revise Regulation Z provisions and official interpretations relating to escrow requirements for HPMLs under the January 2013 Escrow Final Rule and ATR/QM requirements under the CFPB’s January 2013 ATR Final Rule and May 2013 ATR Final Rule.⁴ This current proposal reflects feedback from stakeholders regarding the CFPB’s definitions of “small creditor” and “rural” and “underserved” areas, as those definitions relate to exceptions to requirements provided to small creditors under the CFPB’s ATR/QM and escrow rules.

³ Public Law 111-203, 124 Stat, 1376 (2010).

⁴ The CFPB’s proposal also would affect its 2013 Home Ownership and Equity Protection Act (HOEPA) Final Rule.

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Specifically, the CFPB is proposing the following changes to the current requirements:

- Raising the loan origination limit for determining eligibility for small-creditor status (based on the preceding calendar year's originations of the creditor and its affiliates) from 500 originations of covered transactions secured by a first lien, to 2,000 such originations, and excluding originated loans held in portfolio by the creditor and its affiliates from this limit. The CFPB also proposes to provide a grace period from calendar year to calendar year to allow creditors that exceeded the origination limit in the preceding calendar year to operate, in certain circumstances, as a small creditor with respect to applications received prior to April 1 of the current calendar year.
- Including in the calculation of the asset limit for small-creditor status (*i.e.*, less than \$2 billion (adjusted annually) in assets as of the end of the preceding calendar year) the assets of the creditor's affiliates that originate mortgage loans. The CFPB also proposes to add a grace period to the annual asset limit, similar to the grace period added to the origination limit, to allow a creditor that exceeded that threshold in the preceding calendar year to operate, in certain circumstances, as a small creditor with respect to applications received before April 1 of the current calendar year.
- Adjusting the time period used in determining whether a creditor is operating predominantly in rural or underserved areas (*i.e.*, whether the creditor extended more than 50 percent of its total first-lien covered transactions secured by properties located in rural or underserved areas) from any of the three preceding calendar years to the preceding calendar year.
- Amending the current exemption under § 1026.35(b)(2)(iii)(D)(1) provided to small creditors that operate predominantly in rural or underserved areas from the requirement for the establishment of escrow accounts for HPMLs, to prevent creditors that are currently ineligible for the exemption, but that might qualify if the proposed rule is finalized, from losing eligibility for the exemption because they established escrow accounts due to requirements under the current rule prior to the proposed changes in this rulemaking taking effect.
- Expanding the definition of rural to include both: (1) a county that meets the current definition of rural county, and (2) a census block that is not in an urban area as defined by the U.S. Census Bureau (Census Bureau).
- Adding two new safe harbor provisions related to the rural or underserved definition for certain automated tools that: (1) may be provided on the CFPB's website to allow creditors to determine whether properties are

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located in rural or underserved areas, or (2) may be provided on the Census Bureau's website to assess whether a particular property is located in an urban area according to the Census Bureau's definition.

- Extending the temporary two-year transition period that allows certain small creditors to make balloon payment qualified mortgages (§ 1026.43(e)(6)) and balloon payment high-cost mortgages (§ 1026.32(d)(1)(ii)(C)), regardless of whether they operate predominantly in rural or underserved areas, to certain covered transactions for which the application was received before April 1, 2016.

Summary of ICBA Specific Comments

- ICBA strongly supports the CFPB's proposed expanded definitions of "small creditor" and "rural" for purposes of the ATR/QM provisions and escrow requirements for HPMLs.
- While ICBA supports the expanded definitions of "small creditor" and "rural," we believe the optimum solution for ensuring access to credit for consumers is to provide community bank loans held in portfolio, including balloon payment loans, automatic QM safe harbor legal status and an automatic exemption from escrow requirements for HPMLs.
- Alternatively, the CFPB should also consider using its exemption authority to allow small creditors to receive an exemption from escrow requirements for HPMLs and receive QM safe harbor status for balloon loans if they *generally* provide mortgage loans in rural or underserved counties, thereby eliminating the requirement that this loan volume be "more than 50 percent."
- If the CFPB does not pursue ICBA's optimum solution, we urge it to increase the asset size threshold for the small creditor exception under the QM rules to \$10 billion.
- Any \$2 billion asset size threshold should not include the assets of the creditor's affiliates that originate covered transactions secured by a first lien. If the CFPB wishes to include the assets of the creditor's affiliates, then the asset size threshold should be increased to \$10 billion for this calculation.
- If the CFPB does not pursue ICBA's optimum solution, we encourage it to align the escrow rules with the small creditor definition and not require escrow accounts for HPMLs held in portfolio by community banks if the annual percentage rate (APR) does not exceed the average prime offer rate (APOR) by 3.5 percentage points or more.

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- If the CFPB continues to use the “underserved” criteria in the QM balloon and HPML escrow exceptions, ICBA urges it to expand the definition so that more consumers can be covered and receive access to credit.
- 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.
- ICBA urges the CFPB to maintain the current three-year look-back period for determining whether the “rural” or “underserved” test is met for purposes of the escrow requirements.
- ICBA agrees with the CFPB that creditors should have until April 1, 2016 before determining whether they qualify under any new escrow requirements.
- ICBA urges the CFPB to examine the usefulness of the unwieldy § 1026.35(b)(2)(iii)(D) which disqualifies creditors from the escrow exemption if they have established escrow accounts in the past.
- ICBA supports safe harbor protections for community banks that access CFPB tools and resources for determining “rural” or “underserved” status.
- ICBA encourages the CFPB to provide an earlier effective date for the final rules so community banks can utilize the expanded definitions of “small creditor” and “rural” for loans made in 2015. Optional compliance should be the date of publication of the final rules with mandatory compliance on January 1, 2016.

ICBA Supports the Expanded Definitions of “Small Creditor” and “Rural”

ICBA strongly supports the CFPB’s proposed changes. We encourage the CFPB to finalize changes to the current QM/ATR and escrow requirements for HPMLs that would increase the loan origination limit from 500 covered transactions to 2,000 covered transactions, where the limit is applied only for loans not held in portfolio, and expand the definition of “rural” for the exception to the escrow requirements and balloon mortgage provisions.

Based on a 2014 ICBA Community Bank Lending Survey of over 500 community banks, only 25 percent of the bank respondents stated they actively provide mortgage loans that do not currently satisfy the definition of QM under Regulation

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Z.⁵ Forty-four percent of the banks responded they do not provide non-QM loans and 22 percent of the banks responded they only provide non-QM loans in special cases. Furthermore, with regard to the “rural” exception for QM balloon mortgage loans and escrow requirements, only half of the banks that are self identifying rural lenders qualified for the current Regulation Z “rural” exception, and only 9 percent of community banks between \$501 million - \$2 billion in asset size qualified for the exception.

Overall, 73 percent of the bankers responded that regulatory burden of new rules and requirements was the most significant barrier to making residential mortgage loans, more than any other factor including lack of borrower demand, competition from bank and non-bank lenders, or lack of qualified borrowers. In a survey conducted by the Conference of State Bank Supervisors (CSBS), 15 percent of active mortgage lenders stated that 80 percent or more of their 1-to-4 family mortgage loans, made before the QM rule became effective, would not currently meet QM requirements. The most frequently cited reasons for non-compliance were the debt-to-income (DTI) ratio cap and the bar on balloon payment loans made by “non-rural” lenders. The result of these rules, as indicated in ICBA’s survey, is that 57 percent of community bankers reported tighter underwriting in residential mortgage lending and 44 percent reported decreases in loan originations. Furthermore, 15 percent of the bank respondents are considering an exit or have already exited this line of business.

The CFPB’s proposed expanded definitions of “small creditor” and “rural” would greatly help these bankers qualify for needed exceptions to the QM and escrow rules and continue to actively lend to the consumers in their communities.

Community Bank Mortgage Loans Held in Portfolio Should Receive QM Safe Harbor Legal Protections and an Exemption from Escrow Requirements

While we thank the CFPB for listening to the concerns of community bankers and proposing changes that will help them continue to serve their customers’ mortgage needs, we strongly believe community bank loans that are held in portfolio, including balloon mortgage loans, should be considered QM loans that receive automatic legal safe harbor protections and an exception from any escrow requirements for HPMLs. When a community bank holds a loan in portfolio, it has 100 percent of the credit risk, a direct stake in the loan’s performance and every incentive to ensure it is properly underwritten, affordable, and responsibly serviced. We believe this is the optimum solution for community banks and their customers and the most effective solution for ensuring access to credit for consumers who need it most.

⁵ The 2014 ICBA Community Bank Lending Survey at Appendix A was distributed by email to 6,500 community banks. There were 519 unique responses collected from September 15 – October 3, 2014, a response rate of 8.0 percent.

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ICBA therefore encourages the CFPB to consider using the exemption authority granted to it under § 1022(b)(3) of the Dodd-Frank Wall Street Reform and Consumer Protection Act to allow all mortgage loans held in portfolio by the creditor to receive automatic QM safe harbor legal status and an exception to the escrow requirements for HPMLs.⁶ An appropriate asset size threshold for the creditor, if one is set, would be \$10 billion, as mentioned in ICBA's *Plan for Prosperity*.⁷ Alternatively, the CFPB should also consider using its exemption authority to allow small creditors to receive an exemption from escrow requirements for HPMLs and receive QM safe harbor status for balloon loans if they *generally* provide mortgage loans in rural or underserved counties, thereby eliminating the requirement that this loan volume be "more than 50 percent."⁸

ICBA Supports a \$10 Billion Asset Size Limit for Small Creditors

While the CFPB is proposing to increase the loan origination limit for the small creditor provision and balloon loan and escrow exceptions, it nevertheless is proposing to amend the \$2 billion asset limit to also include the assets of the creditor's affiliates that originate covered transactions secured by a first lien. Thus, assets of affiliates that engage in the type of mortgage lending covered by Regulation Z's ATR provisions are counted toward the asset limit.

The CFPB states that counting both the creditor's assets and the assets of the creditor's affiliates that originate mortgage loans would make the tests for determining small creditor status consistent between the asset limit in § 1026.35(b)(2)(iii)(C) and the origination limit in § 1026.35(b)(2)(iii)(B), which currently includes the originations of the creditor's affiliates in determining whether the limit has been exceeded. The CFPB states this consistency will facilitate creditor compliance. Also, the CFPB reasons that given its proposed increase to the origination limit, the proposed change to the asset limit is necessary to ensure that small creditor status does not become a means for larger creditors to evade important requirements that provide consumer protections.

ICBA opposes this proposed change and supports an increase to the small creditor asset size threshold to \$10 billion.⁹ Based on the latest call report data, there were at least 90 charters below \$2 billion in assets that were part of holding

⁶ Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Section 1022(b)(3) ("The Bureau, by rule, may conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services, from any provision of this title, or from any rule issued under this title, as the Bureau determines necessary or appropriate to carry out the purposes and objectives of this title, taking into consideration the factors in subparagraph (B).").

⁷ ICBA's 2015 *Plan for Prosperity* is a set of detailed legislative priorities positioned for advancement in Congress.

⁸ 12 CFR § 1026.35(b)(2)(iii)(A).

⁹ ICBA's 2015 *Plan for Prosperity* advocates for QM safe harbor legal status and an exemption from any escrow requirements for loans, including balloon mortgage loans, originated and held in portfolio by banks with less than \$10 billion in assets.

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companies with more than \$2 billion in assets, but under \$10 billion in assets.¹⁰ Those banks would have previously satisfied the small creditor asset threshold but will no longer under the CFPB's proposed change to this threshold amount. Many of these holding companies are basically affiliations of independently run community banks under a single ownership structure and are not larger creditors that the CFPB is hoping to prevent from evading the rules.

In order for all small creditors to continue to actively lend in their communities, the CFPB should not require the current threshold to include the assets of the creditor's affiliates. If the CFPB wishes to include the assets of the creditor's affiliates, then the asset size threshold should be increased to \$10 billion for this calculation so that community banks can continue to receive the exemption. Overall, ICBA supports an increase of this threshold to \$10 billion, as specified in our 2015 *Plan for Prosperity*, so community banks can effectively provide consumer mortgage loans to the consumers in their communities.

ICBA Supports an Expanded Exception for Escrow Requirements for HPMLs

Escrow accounts are currently required for first lien mortgage loans that are HPMLs. An HPML that would require an escrow account is a closed-end first-lien mortgage loan with an APR that exceeds the APOR by 1.5 or more percentage points. Small creditors are exempt from providing escrow accounts for portfolio loans that are HPMLs if they lend predominantly in rural or underserved areas during any of the three preceding calendar years, the creditor extended more than 50 percent of its total covered transaction in rural or underserved properties, and generally do not provide escrow accounts.

As stated previously in this letter, ICBA believes all community bank loans held in portfolio should automatically be considered QM loans with safe harbor legal status, and that these loans also should be exempt from any escrow requirements since they are self-regulating loans. Overall, ICBA believes the small creditor exception for escrow accounts should be consistent with the small creditor exception in the ATR/QM rules. Thus, if the CFPB does not move forward with ICBA's optimum solution, we urge it to alternatively increase the APR threshold for coverage under the current escrow exception to less than 3.5 percentage points above the APOR for small creditor portfolio loans. This APR threshold is consistent with the APR threshold for small creditor QM safe harbor loans.

As ICBA has communicated in the past, mandatory escrow accounts for community bank portfolio loans are an unnecessary administration expense that do not provide any benefit to the consumer. Community banks are low risk institutions with a vested stake in their communities, whose underwriting is often

¹⁰ 2014 Call Report Data retrieved FDIC.gov.

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based on a personal knowledge of the borrower, the community, and local economic conditions. Loans held in portfolio by community banks are especially well underwritten and diligently serviced because the lender has an ongoing interest in the performance of the loan and the protection of the collateral from tax liens or uninsured losses. With these overriding incentives in place, an escrow account is unnecessary for community bank loans held in portfolio.

If anything, escrow requirements impede community banks' ability to offer more mortgage loans to their consumers. In ICBA's 2014 Lending Survey, 43 percent of the community bank respondents stated they do not provide HPMLs to their customers.

The Dodd-Frank Act gives the CFPB authority to exempt certain institutions from this escrow requirement for HPMLs.¹¹ We urge the CFPB to use this authority to provide a broad exemption for all community bank mortgages held in portfolio, or alternatively, make the HPML APR threshold for compliance consistent with the APR threshold for small creditor QM loans that receive safe harbor legal status.

ICBA Supports an Expanded Definition of “Underserved” in the Balloon Loan and Escrow Exceptions

Section 1036.35(b)(2)(iv)(B) defines a county as “underserved” during a calendar year if, according to the Home Mortgage Disclosure Act (HMDA) data for the preceding calendar year, no more than two creditors extended covered transactions, as defined in § 1026.43(b)(1), secured by a first lien, five or more times in the county. The CFPB states that although it has considered alternative definitions to “underserved,” it believes the current definition appropriately identifies areas where the withdrawal of a creditor from the market could leave no meaningful competition for consumers' mortgage business. Therefore, the CFPB is not proposing any substantive changes to the definition of “underserved” at this time.

While ICBA is pleased the CFPB has expanded the definition of “rural” so more community banks that provide loans in rural areas can provide balloon mortgage loans and receive QM safe harbor legal status and relief from escrow requirements for some portfolio loans, we are concerned that the definition of “underserved” in the balloon mortgage and escrow provisions is under-inclusive.

¹¹ Dodd Frank Act, Section 1022(b)(3) (“The Bureau, by rule, may conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services, from any provision of this title, or from any rule issued under this title, as the Bureau determines necessary or appropriate to carry out the purposes and objectives of this title, taking into consideration the factors in subparagraph (B). Factors.--In issuing an exemption, as permitted under subparagraph (A), the Bureau shall, as appropriate, take into consideration-- (i) the total assets of the class of covered persons;(ii) the volume of transactions involving consumer financial products or services in which the class of covered persons engages; and (iii) existing provisions of law which are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protections.”).

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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 current “underserved” definition in the QM balloon and escrow exceptions, then ICBA encourages it to adjust the definition so more community banks that provide loans to underserved communities may qualify for the exception to these mortgage requirements.

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 age 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.

ICBA Supports a Three-Year Look Back Period for Determining “Rural” or “Underserved” Status for Escrow Exception

In advance of the sunset date for § 1026.43(e)(6), the CFPB is proposing to amend § 1026.35(b)(2)(iii)(A) and comment 35(b)(2)(ii)-q to adjust the time period used in assessing whether the rural or underserved test is met. The CFPB is proposing to eliminate the three-year look back period in § 1026.35(b)(2)(iii)(A) and to establish the preceding calendar year as the relevant time period for assessing whether the “more than 50 percent” test is satisfied. The CFPB’s proposed change also includes a grace period to allow otherwise eligible creditors whose first-lien covered transactions in the preceding year failed to meet the “more than 50 percent” test to continue to operate with the benefit of the exemption with respect to applications received before April 1 of the current calendar year if their first-lien covered transactions during the next-to-last calendar year met the test.

ICBA encourages the CFPB to keep the status quo with regard to the three-year look-back period. There have been many recent changes, some for the good, to

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the escrow requirements for HPMLs. ICBA is grateful to the CFPB for continuing to examine these rules so they are regulated in a fair manner. Nevertheless, because of the frequent changes to these rules combined with several additional mortgage rules in the last three years, community banks are continually in the process of adjusting their business practices so they can ensure both compliance with new requirements and high-quality service to their customers. The definitions of “rural” and “underserved” have fine distinctions and warrant a longer look-back period, such as three years, for community banks to ensure compliance with the requirements while properly serving their consumers and communities in this variable regulatory environment.

The CFPB expresses concern that continuing the current three-year look-back period could be contrary to the goal of identifying creditors that focus their activity in “rural” or “underserved” areas, but we disagree with this concern. Community banks that lend predominantly in “rural” or “underserved” areas are highly unlikely to change their lending practices annually. The current three-year look-back window provides a more realistic picture of the practices of the lenders that should be subject to the exceptions and will prevent these lenders from abruptly halting their loan originations should they come close to approaching the loan threshold or have a concern of not meeting the “more than 50 percent” test in a given year. To alleviate these very realistic concerns, we strongly encourage the CFPB to maintain the current three-year look-back period. The CFPB can always study whether this three-year period is effective in implementing these mortgage exceptions and make regulatory changes in the coming years if needed.

ICBA Supports Changes to Requirements that Financial Institutions Not Have Prior Escrow Accounts in Order to Satisfy Escrow Exception

The CFPB also is proposing to amend the current exemption under § 1026.35(b)(2)(iii)(D)(1) provided to small creditors that operate predominantly in rural or underserved areas from the requirement for the establishment of escrow accounts for HPMLs, to prevent creditors that are currently ineligible for the exemption, but that might qualify if the proposed rule is finalized, from losing eligibility for the exemption because they established escrow accounts due to the requirements under the current rule.

Creditors that do not currently meet the requirements in § 1026.35(b)(2)(iii)(A) through (D) are generally required under § 1026.35(b) to establish escrow accounts for any HPML those creditors make. If the CFPB’s proposed changes are finalized, it is possible that some creditors that currently are ineligible for the exception would satisfy it. However, under current § 1026.35(b)(2)(iii)(D), these creditors would be ineligible for the exemption after the effective date if they maintain an escrow account that they were required to set up prior to the effective date.

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We agree with the CFPB that these creditors should not lose the exemption because they were required by applicable regulations to establish escrow accounts prior to January 1, 2016. Such policy would be contrary to the CFPB's goals in proposing these amendments to the current escrow requirements. ICBA supports the CFPB's change and encourages it to go further in allowing creditors until April 1, 2016 before they could become ineligible from the changed escrow requirements due to the fact they maintain an escrow account. This longer period would be more helpful to community bankers that may need the additional time if certain loans take longer to process or the bank began processing the loan before it was aware of any final regulatory change. Providing the extended period of time is consistent with the CFPB's policy goals and would be too narrow a time period to allow creditors to evade the escrow requirements.

Furthermore, we urge the CFPB to examine the usefulness of current § 1026.35(b)(2)(iii)(D). ICBA believes that the requirement is cumbersome and does little, if anything, to advance the policy goals of the escrow requirements for HPMLs. If there are ever future changes to be made to the current escrow requirements to address developments in the market place, this provision will almost always need to be amended as well. We urge the CFPB to study the effectiveness and usefulness of § 1026.35(b)(2)(iii)(D), weigh its benefits verses costs on creditors, and eliminate the requirement unless findings prove it is essential.

ICBA Supports Safe Harbor Provisions for “Rural” and “Underserved” Exemptions

Section 1026.35(b)(2)(iv)(A) and (B) and comment 35(b)(2)(iv)-1 currently provide that a creditor may rely as a safe harbor on the list of counties published by the CFPB to determine whether a county qualifies as “rural” or “underserved” for a particular calendar year. Due to the proposed expanded definition of “rural,” the CFPB also proposes to add two new safe harbor provisions relating to automated online tools that may be provided by the CFPB or Census Bureau.

To assist creditors in implementing the proposed rural definition, the CFPB may develop an automated tool that allows creditors to enter property addresses on the CFPB's website to determine whether the properties are located in rural or underserved areas for the relevant calendar years. The CFPB proposes that this tool can become a safe harbor for creditors when it becomes available. Until any tool becomes available, the CFPB anticipates that creditors would use resources provided by the Census Bureau, and proposes that these tools also could be relied on as a safe harbor.

ICBA supports the CFPB providing safe harbors for reliance on these tools if the information is current and updated, and the tools are easily available and accessible at all times. In all cases, ICBA supports the development of these types of tools to ease compliance burden for community banks.

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ICBA Supports a Proposed Effective Date of Final Publication

The CFPB proposes that all of the changes in this notice take effect on January 1, 2016. The CFPB believes this proposed effective date provides a date that is consistent with the end of the calendar year determinations required to be made with regard to the applicability of the special provisions and exemptions that apply to small creditors and would therefore facilitate compliance by creditors. The CFPB seeks comment on whether the proposed effective date is appropriate or whether another effective date should be adopted.

ICBA would prefer the CFPB provide an earlier optional effective date so that community banks can utilize the expanded small creditor and rural exceptions. As stated in this letter, many more community banks will be able to qualify as “small creditors” or “rural” lenders under these revised requirements, and these changes will very likely increase their lending to consumers in their communities. We encourage the CFPB to allow banks to utilize these expanded exceptions upon publication of the final rule. The mandatory compliance date can be January 1, 2016 for purposes of compliance with the final changes. Mandatory compliance should not be earlier for any banks that currently satisfy the small creditor exception but may not after any final rules if the asset size threshold is not increased.

Again, thank you for listening to the concerns of community banks and the consumers in their communities. These proposed rules are a step in the right direction and will allow many more community banks to provide good, solid loans to consumers.

Thank you for providing the opportunity to comment. If you have questions or would like to discuss our comments further, please contact me at 202-821-4469 or Elizabeth.Eurgubian@icba.org.

Sincerely,

/s/

Elizabeth A. Eurgubian
Vice President & Senior Regulatory Counsel

Attachment

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APPENDIX A

2014 ICBA Community Bank Lending Survey

Executive Summary

January 2015



2014 ICBA Community Bank Lending Survey – Executive Summary

In 2014, ICBA conducted a survey of community banks on their lending activities. The survey provides a valuable benchmark to help gauge community banks' outlook toward areas of lending in the year ahead, real-world data to help policymakers assess the impact of recent rulemaking and insights into barriers that are preventing community banks from better serving their communities.

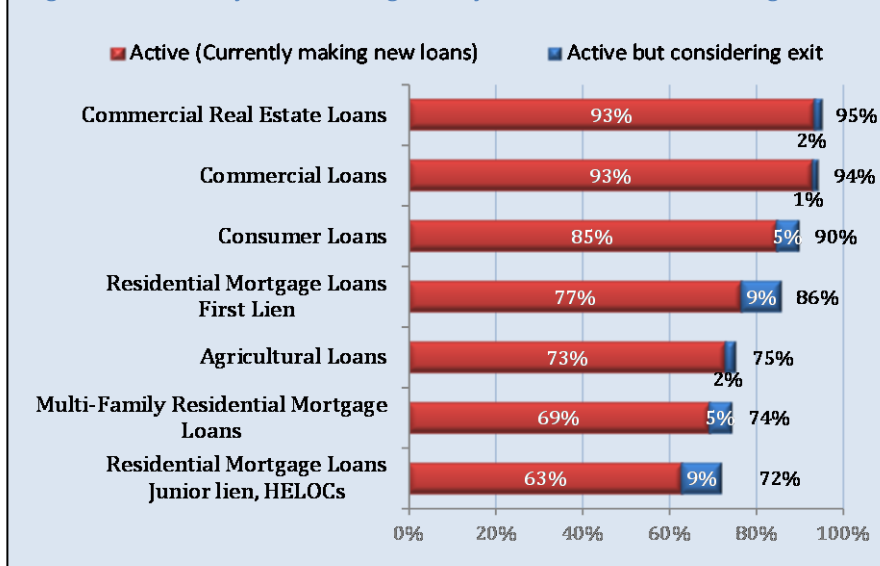
Key Findings:

- Most community banks are full-service lenders, providing many different types of loans to meet their customers' needs.
- Despite challenges, community banks maintain a positive outlook towards most areas of lending.
- The regulatory burden is putting pressure on community banks' residential mortgage lending activities.
- Exemptions from the Consumer Financial Protection Bureau Qualified Mortgage (QM) rule for small and rural creditors are too narrow and risk limiting consumer access to mortgage credit.
- Community banks perceive making non-QM mortgages as a significant risk and are reluctant to do so.
- Community banks' loan underwriting trended towards tighter standards across all lines of lending.

Analysis:

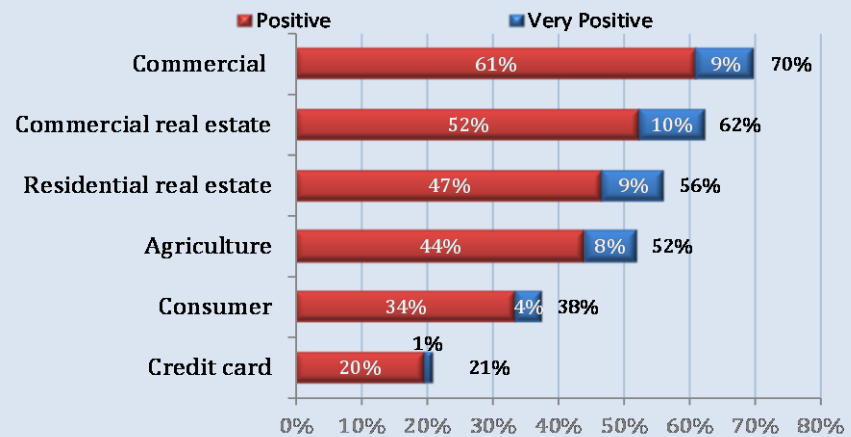
Most community banks are full-service lenders, providing many different types of loans to meet their customers' needs. Almost all banks are active in the area of commercial real estate (95%), commercial, (94%) and consumer lending (90%), Figure 1).

Figure 1: Community Bank Lending Activity in 2013-14 – Active Lending Areas



Despite many challenges, community banks maintain a positive outlook towards most areas of lending over the next two years. The most positive outlook was for commercial lending (70%) and commercial real estate lending (62%). Fewer respondents, though still a majority, had a positive outlook for residential real estate (56%) and agriculture (52%) loans. Only a minority of respondents had a positive outlook for consumer loans and credit cards (Figure 2).

Figure 2: Community Bank Lending Outlook by Area – Positive

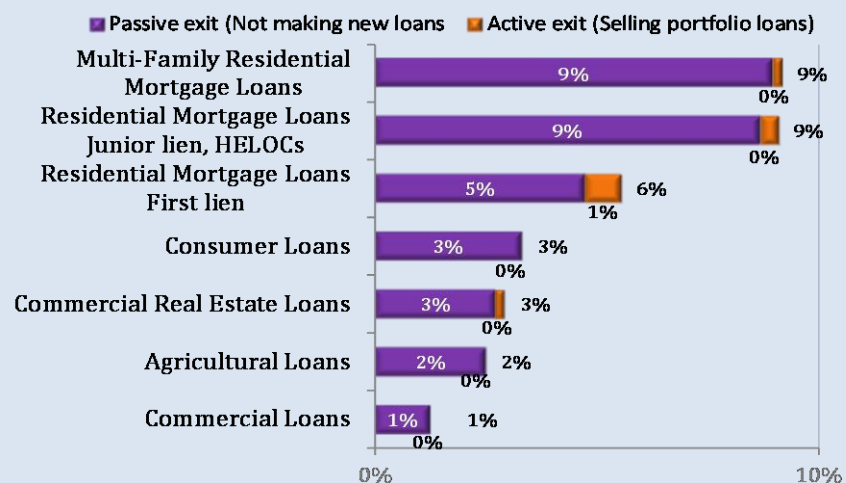


Regulatory burden is putting pressure on community banks' residential mortgage lending activities. The regulatory burden of new rules and requirements was the most cited (73%) barrier to making more residential mortgage loans (Figure 5). (Relatively few banks cited this factor for consumer (26%) or commercial (21%) lending.) Additionally, while most banks (86%, Figure 1) remain active residential mortgage lenders, a significant percentage are considering an exit (9%), are exiting from this line of lending (6%, Figure 3) or are not active (9%, Figure 4). A majority of banks reported tighter underwriting in residential mortgage lending (57%) and many reported decreases in originations (44%). Most community banks reported having increased staffing for lending compliance in the last five years (78%).

Exemptions from the Consumer Financial Protection Bureau Qualified Mortgage (QM) rule for small and rural creditors are too narrow. Though they meet the asset threshold test of \$2 billion or less, two-thirds of banks with \$500 million to \$2 billion in assets make too many loans (more than 500 a year) to qualify (66%). Half of banks that serve rural areas do not qualify for the "rural" exception (50%).

Community banks perceive making non-QM mortgages as a significant

Figure 3: Community Bank Lending Activity in 2013-14 – Exit Lending Areas



risk and are reluctant to do so. Only one-quarter of community banks routinely make non-QM loans (25%). Two-thirds of community banks simply do not make non-QM mortgage loans (44%) or only do so in special cases (22%).

While most community banks reported underwriting standards remained unchanged in 2013-14 compared to the previous two-year period, many more banks reported tighter underwriting standards than looser. About one-in-three banks reported tighter underwriting standards in commercial real estate (38%), commercial loans (32%), agricultural loans (32%) and consumer loans (30%). Less than 1 in 20 reported looser underwriting for any type of lending.

The majority of banks reported increased loan originations in 2014 compared to the previous year for commercial loans (52%), commercial real estate (52%) and agricultural loans (51%). In contrast, a significant number of community banks experienced decreases in consumer loan originations (27%).

Market factors prevented community banks from making more commercial and consumer loans. Lack of borrower demand was cited by a majority of respondents for commercial loans (57%). Just under half of respondents cited this factor for mortgage (47%) and consumer lending (46%). Lack of qualified borrowers was cited by more than four-in-ten banks for consumer (45%), commercial (44%) and mortgage lending

Figure 4: Community Bank Lending Activity in 2013-14 – Inactive Lending Areas

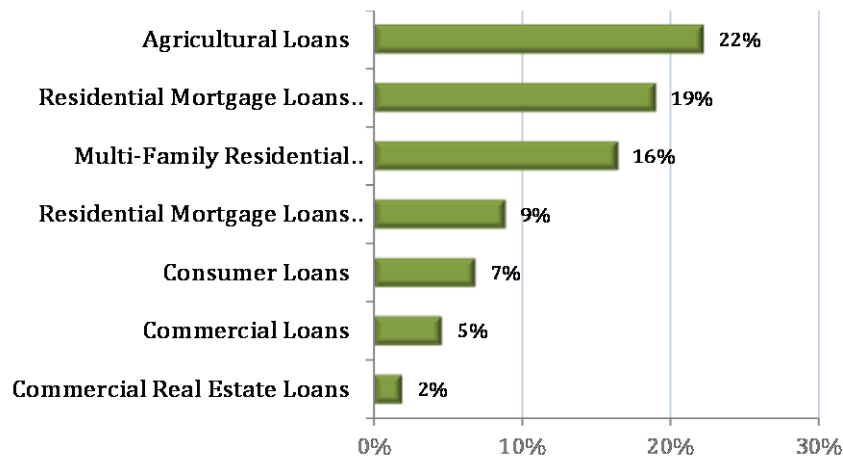
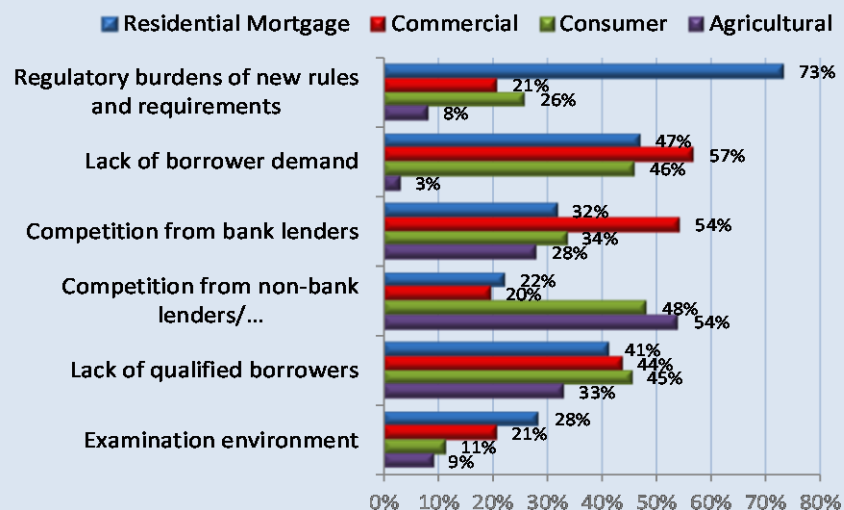


Figure 5: Factors Preventing Community Banks from Making More Loans



(41%, Figure 5).

Competition from other banks, non-banks and government agencies is also an important limiting factor in community bank lending. Competition from non-bank lenders was the top factor preventing banks from making more consumer loans (48%) and competition from bank lenders was the second most cited factor in commercial loans (54%). Agricultural lenders cited competition from the Farm Credit System as the top factor (54%, Figure 5).

Survey Methodology:

The ICBA Community Bank Lending Survey was distributed by email to 6,500 community banks. Between September 15 and October 3, 2014, 519 unique responses were collected on a one response per bank basis, for a response rate of 8.0%. Most responses (79%) came from either the bank president and CEO (59%) or the chief lending officer (20%).

The survey sample slightly over-represents community banks between \$50 million and \$500 million in assets and under-represents community banks above \$500 million in assets compared to the industry below \$10 billion in assets. In terms of regulator, charter and ownership type, survey respondents closely reflect the make-up of the industry below \$10 billion in assets. When asked to indicate the types of geographic areas they served (multiple selections were allowed), 20% of respondents indicated urban areas, 39% suburban areas and 76% serve rural areas.