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July 10, 2017

Monica Jackson  
Office of the Executive Secretary  
Consumer Financial Protection Bureau  
1275 First St, NE  
Washington, DC 20002

Re: CFPB 2017-0012 Request for Information Regarding the 2013 Real Estate Settlement Procedures Act Servicing Rule Assessment

Dear Ms. Jackson:

The Independent Community Bankers of America<sup>1</sup> (ICBA) appreciates the opportunity to respond to the request for information regarding the 2013 Real Estate Settlement Procedures Act Servicing Rule Assessment, otherwise known as the 2013 Mortgage Servicing Rules, issued by the Bureau. Pursuant to section 1022(d) of the Dodd-Frank Act, the Bureau is seeking comment on its proposed plan to assess the effectiveness of this rule. The Bureau must conduct the assessment of each significant rule and must publish the results of that assessment no later than 5 years from the rule's effective date. The assessment must address the rule's effectiveness in meeting the objectives of both Title X of the Dodd-Frank Act and the Bureau's goals for the particular rule. The assessment must also include public comments on recommendations for modifications to include either expansion or elimination of the rule. This assessment however does not obligate the Bureau to make any changes and is not part of any formal or informal rulemaking.

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<sup>1</sup> The Independent Community Bankers of America®, the nation's voice for more than 5,800 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 760,000 Americans, hold \$4.7 trillion in assets, \$3.7 trillion in deposits, and \$3.2 trillion in loans to consumers, small businesses, and the agricultural community. For more information, visit ICBA's website at [www.icba.org](http://www.icba.org).

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The 2013 Mortgage Servicing Rules are comprised of the 2013 RESPA Servicing Final Rule which implemented section 1463(a) of the Dodd Frank Act and the 2013 TILA Servicing Final Rule which implemented section 1420 of the Dodd-Frank Act. For purposes of this assessment, the Bureau has determined that only the 2013 RESPA Final Servicing Rule is significant and as such the 2013 TILA Final Servicing Rule will not be part of the assessment. The Bureau based this determination on the fact that the RESPA rule covers six vital areas of the servicing process: forced-placed insurance, error resolution and information, general servicing policies, early intervention with delinquent borrowers, continuity of contact with delinquent borrowers, and loss mitigation. The TILA rule focused primarily on the standardized monthly billing statements and disclosures.

While the RESPA servicing rule is broader and required staffing additions and various internal process changes which are very resource intensive, the TILA servicing rule was equally as costly and resource intensive as the RESPA rule for many community bank servicers that could not qualify for the small servicer exemption. The complex monthly billing statements along with the various additional disclosures, including the notice of initial rate adjustment for adjustable rate mortgages that now must be delivered six months prior to the actual adjustment, were expensive to implement. The monthly billing statements caused many community banks to abandon the combined statements that they had used successfully for years, because the TILA servicing rule required the statement be sent within certain time frames that would not work well alongside other credit products that may be included on the statement. This change was expensive and in some cases not well received by borrowers as they preferred the combined statement.

As noted in the Bureau's posting of this request for comment in the Federal Register, those entities that qualify as small servicers—that is, those servicers that service 5,000 mortgage loans or less that they own or originated, are exempt from the mandatory billing statement requirements of the TILA servicing rule as well as certain provisions of the RESPA servicing rule. While this exemption is helpful to many smaller institutions, many still incurred costs to implement the applicable sections of both the RESPA and TILA servicing rules. Further, while the current small servicer exemption provided some level of relief to some community banks, the current threshold of 5,000 loans does not help those community banks that have larger servicing operations or are seeking to grow their servicing operations. To address this issue, ICBA recommends the Bureau increase this threshold to 30,000 loans serviced. This would help larger community bank servicers to profitably remain in the mortgage servicing business and continue servicing their customers on a local basis.

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Additional suggestions and recommendations for modifying the 2013 RESPA Servicing Rules are listed below.

- **Foreclosure Initiation Timeline.** The Bureau should provide servicers the ability to initiate foreclosure prior to the 120<sup>th</sup> day of delinquency, when the servicer has knowledge that the property is vacant/abandoned, and/or the borrowers have given notice they do not wish to keep the property or have refused other loss mitigation options. The ability to initiate foreclosure sooner in certain situations would help protect neighborhoods from blight caused by abandoned homes by allowing those homes to be marketed and re-occupied sooner. It also helps servicers minimize losses caused by extended foreclosure timelines.
- **Perpetual Delinquency.** The Bureau should provide servicers options that include acceleration and foreclosure to resolve loans where the borrower remains perpetually 90 days delinquent, but has refused or does not qualify for other loss mitigation options. Community banks must classify loans that are 90 days delinquent and are subject to additional regulatory scrutiny as well as carrying reserves for these loans until they are resolved. There are some borrowers that will take advantage of the 120-day foreclosure rule and remain perpetually 90 days delinquent, even after being offered other loss mitigation options that would bring the loan current.
- **Written Guidance.** ICBA strongly encourages the Bureau to issue written authoritative guidance along with the publication of FAQs from servicers and written responses from Bureau staff to help servicers interpret and correctly implement and comply with the Bureau's mortgage servicing rules. Having written authoritative guidance would assist all servicers as well as other prudential regulators in their compliance with the Bureau's rules. Having a better understanding of the Bureau's intent and focus on a provision or aspect of a certain rule will result in higher levels of compliance, which should help reduce servicing costs. Reducing servicing costs benefits consumers through broader access to credit through more local lenders and local servicers. The higher the cost to service, the greater the concentration of origination and servicing in large national entities that can spread the costs across a larger book of business. Consumers that lose local service generally experience worse outcomes when a problem arises.

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ICBA appreciates the opportunity to provide comment on the 2013 RESPA and TILA mortgage servicing rules. These rules along with all the other mortgage rules issued by the Bureau since its creation have had a profound impact on all industry participants as well as consumers. We urge the Bureau to carefully consider our suggestions above along with those of other industry participants. We look forward to working with Bureau staff on these rules as the process moves forward. Please contact the undersigned with any questions regarding this letter.

Sincerely,

/s/

Ron Haynie  
Senior Vice President- Mortgage Finance Policy

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