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***Submitted electronically***

July 22, 2013

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

**Re: Proposed Amendments to the 2013 Consumer Mortgage Rules  
Issued by the CFPB**

Dear Ms. Jackson:

The Independent Community Bankers of America (ICBA)<sup>1</sup> appreciates the opportunity to comment on the proposed amendments published by the Consumer Financial Protection Bureau (CFPB) addressing the consumer mortgage rules finalized in January 2013. In general, these proposed amendments focus on clarifying, revising, or amending the recent CFPB provisions in Regulation Z (Truth in Lending Act) and Regulation X (Real Estate Settlement Procedures Act) regarding loan servicing, loan originator compensation, escrows for higher-priced mortgages, and qualified mortgages.

ICBA thanks the CFPB for further examining the consequences of these final rules, and for providing clarifications and flexibility so that community banks can

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<sup>1</sup> With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold \$1.2 trillion in assets, \$1 trillion in deposits and \$700 billion 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).

ensure their compliance with the requirements. While we support some of the changes, we also have concerns that we believe can be easily remedied in this or subsequent rulemakings.

### ***The CFPB's Escrow Changes Are Helpful, But Still Do Not Provide Enough Relief for Community Banks***

The CFPB is proposing to amend § 1026.35(b)(2)(iii)(A) which provides an exemption from the higher-priced mortgage loan escrow requirements to creditors that extend more than 50 percent of their total covered transactions secured by a first lien in “rural” or “underserved” counties during the preceding calendar year and also meet other small creditor criteria, and do not otherwise escrow loans serviced by themselves or an affiliate. In light of recent changes to which counties meet the definition of “rural,” the CFPB is proposing to amend this provision to prevent creditors that qualified for the exemption in 2013 from losing eligibility in 2014 or 2015 because of these changes by allowing creditors to retain the exemption if they qualified in any of the previous three calendar years (assuming the other criteria for eligibility are also met). The CFPB is also proposing to amend § 1026.35(b)(2)(iii)(D)(1) to prevent creditors that were previously ineligible for the exemption, but may now qualify in light of the proposed changes, from losing eligibility because they had established escrow accounts for first-lien higher-priced mortgage loans (for which applications were received after June 1, 2013), as required when the final rule took effect.

In addition, the CFPB recently announced it would re-examine the definitions of “rural” and “underserved” over the next two years to determine whether further adjustments are appropriate particularly in light of access to credit concerns. In light of this coming re-examination, the CFPB is proposing to revise § 1026.35(b) and its commentary to minimize volatility in the definitions during the re-evaluation. As proposed, the provision thus would prevent a creditor from losing eligibility for the exemption under the “rural or underserved” element of the test unless it has failed to exceed the 50-percent threshold three years in a row.

ICBA is pleased the CFPB is proposing these changes to the current escrow requirements and we support them. Nevertheless, ICBA strongly urges the CFPB to simplify the requirements for community banks by exempting community bank portfolio loans from the escrow requirements for higher-priced mortgages. This approach would be consistent with the CFPB's policy goals and simplify a multi-faceted and extremely complex policy. Even with the current exemption from the higher-priced mortgage escrow rules, many community banks are limiting the types of mortgage loans they provide because they are unable to satisfy the requirements. As the CFPB has publicly acknowledged, 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 loans held in portfolio. Our preferred approach is not to apply a loan threshold or require complex geographic analysis, but simply to exempt all community bank mortgage loans held in portfolio for the life of the loan. This approach would exempt only strongly underwritten and diligently serviced loans.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) gives the CFPB authority to exempt certain institutions from this escrow requirement for higher-priced mortgage loans. We urge the CFPB to use this authority to provide the broader exemption. At the very least, any provisions regarding a bank's history of providing escrow accounts to customers should not be consideration for whether a bank can comply with the exemption.

Furthermore, ICBA urges the CFPB to expand the "small creditor" exception provided for QM and HOEPA balloon payment loans to incorporate the escrow requirements for higher-priced mortgage loans. Thus, community banks that satisfy the small creditor exception would be exempt from the escrow requirements for higher-priced mortgage loans until January 10, 2016, even if they do not lend predominantly in rural or underserved areas or if they have a history of providing mortgage escrow accounts. The CFPB has stated it is planning to further analyze the definitions of "rural" and "underserved" as currently required for the balloon mortgage exception and escrow rules exemption. Because of this further examination, ICBA strongly recommends providing this additional compliance time for the escrow requirements for higher-priced mortgage loans as well.

***The Expansion of the Balloon Mortgage Exception to HOEPA Loans Is Helpful, But ICBA Urges the CFPB to Exempt ALL Balloon Mortgage Loans from Additional Requirements if They Are Held in Portfolio***

The CFPB is proposing to revise the exception to the prohibition on balloon payments for high-cost mortgages in § 1026.32(d)(1)(ii)(c) for transactions that satisfy the criteria set forth in § 1026.43(f), which implements a Dodd-Frank Act provision that allows certain balloon-payment mortgages made by small creditors operating predominantly in "rural or underserved areas" to be accorded status as qualified mortgages under the 2013 Ability-to-Repay/QM Final Rule. The CFPB also amended this rule to add § 1026.43(e)(6) to allow small creditors during the period from January 10, 2014, to January 10, 2016, to make balloon-payment qualified mortgages even if they do not operate predominantly in rural or underserved areas. In light of those actions, the CFPB is proposing to revise § 1026.32(d)(1)(ii)(c) to expand the exception to the prohibition on balloon payments for high-cost mortgages for transactions that satisfy the criteria in

either § 1026.43(f) or (e)(6).

ICBA agrees with these proposed changes by the CFPB. We urge the CFPB to further study the balloon mortgage product, as it is provided by community banks, and to allow all balloon mortgage loans to be provided if they are held in portfolio by community banks. As we have stated in meetings and correspondence with CFPB officials, community banks provide balloon mortgage loans as a service to their customers so they can receive financing even if they have an atypical property or financial situation. These loans are held in portfolio by community banks and are therefore self-regulating, as the banks have a vested interest in the loans' performance. ICBA thanks the CFPB for allowing certain high-cost balloon mortgage loans to be provided to consumers and for providing the two-year period for community banks to provide these loans if they satisfy the small creditor definition. Nevertheless, we believe the best policy decision for consumers would be to continue to allow these loans if they are held in portfolio by community banks.

### ***ICBA Supports Clarifications to Loan Originator Compensation Rules***

The CFPB is proposing certain clarifications, revisions, and amendments to provisions of the Loan Originator Compensation rules issued in January 2013. Specifically, the CFPB has received numerous questions regarding situations where employees of creditors may be responding to inquires from consumers regarding the availability of mortgage programs, or in some instances, employees of the creditor may discuss the availability of mortgage loan programs with a consumer which may result in the consumer making an application for a mortgage loan with a mortgage loan originator. The employee who refers the consumer to the mortgage loan originator may receive a small referral fee for this task. This is very common in community banks where a teller may provide information to a consumer on a variety of bank services, including mortgage loans. There has been confusion regarding the compliance of these types of referral programs with the CFPB's final loan originator compensation rules. Additionally some community banks are concerned they may have to discontinue these types of referral programs altogether or register all tellers and customer services staff as mortgage loan originators which would be prohibitive.

ICBA supports the clarifications and changes proposed to § 1026.36(a)(1)(i)(A) and (B), along with comments 36(a)-1 and -4 that address these issues. The CFPB is also proposing to revise comment 36(a)-4.i to clarify that the definition of Loan Originator does not include employees such as bank tellers who, through the normal course of their duties, may ask a consumer if they are interested in learning more about the bank's mortgage programs, and may provide the consumer an application to complete and refer that consumer to a registered

loan originator. These individuals do not negotiate terms of a mortgage loan or qualify the consumer in any way for any particular type of loan. They should not be considered loan originators in any regard. ICBA deeply appreciates the CFPB's clarifications and revisions to these sections. In addition, ICBA encourages the CFPB to communicate these clarifications and revisions to all prudential banking regulators so all institutions are held to the same standards.

Thank you for considering our comments and for your ongoing analysis of these mortgage rulemakings and the impact on community banks. Please feel free to contact ICBA any time for additional feedback or to discuss our comments and thoughts in more detail. 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 by email at [Elizabeth.Eurgubian@icba.org](mailto:Elizabeth.Eurgubian@icba.org).

Sincerely,

/s/

Elizabeth A. Eurgubian  
Vice President & Regulatory Counsel