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July 31, 2017

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

Re: CFPB-2017-0014 Request for Information regarding the Ability-to-Repay/Qualified Mortgage Rule Assessment

Dear Ms. Jackson:

The Independent Community Bankers of America (ICBA)<sup>1</sup> appreciates the opportunity to respond to the request for information regarding the 2013 Ability-to-Repay/Qualified Mortgage Rule (ATR/QM rule) under the Truth in Lending Act (Regulation Z) in accordance with section 1022(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Per section 1022(d), the CFPB is seeking comment on its proposed plan to assess the effectiveness of this rule. The CFPB must conduct an assessment of each significant rule and must publish the results of the 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. The assessment, however, does not obligate the CFPB 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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In January 2013, the CFPB issued final Ability-to-Repay and Qualified Mortgage Standards under the Truth in Lending Act which implemented sections 1411, 1412, and 1414 of the Dodd-Frank Act. These rules became effective on January 10, 2014. Since then, the ATR/QM rule has had a profound impact on mortgage lending for all lenders and mortgage borrowers alike.

The ATR/QM rule requires all creditors to make a reasonable and good faith determination of a borrower's ability to repay the mortgage loan, including any other mortgage related obligations such as property taxes, and to document and verify the information used in making that determination. These requirements do not apply to investment property loans, open-end home equity lines of credit, timeshare plans, reverse mortgages or temporary loans.

The ATR/QM rule describes the methods and types of information to be collected by the creditor to verify and validate the borrower's ability to repay the loan, which include: income and employment information, assets, outstanding debts, and credit history. The ATR/QM rule specifies a maximum debt-to-income ratio of 43 percent. Loans where the debt to income ratio exceeds 43 percent are deemed not to be a qualified mortgage and as such the creditor could be subject to legal action from a borrower who claims the creditor did not properly assess his/her ability to repay in the event of a default.

The 43 percent DTI level is an arbitrary cap. To help avoid any market disruption by that cap, the Bureau provided an exemption to the 43 percent DTI cap for loans scored through the underwriting systems of Fannie Mae and Freddie Mac (the GSEs). Creditors could "underwrite" mortgage loans through these systems and either sell them to the GSEs or retain them in portfolio, and would receive QM "safe harbor" legal status on those loans. The GSE "patch" exists as long as the GSEs are in conservatorship and will expire in 2021. Appendix Q of the final rule details the types of documentation a creditor must gather and analyze to determine a borrower's ability to repay. Generally, if a creditor does not follow the requirements in Appendix Q, the loan could be considered non-QM, or, at best, the creditor could have a rebuttable presumption of compliance with QM. In either case the creditor would be subject to legal risk described above.

Recognizing that the above could restrain access to credit, particularly in small towns and rural markets that are served by community banks and other small creditors, the CFPB created the small creditor designation which exempts certain depository institutions from the requirements and standards of Appendix Q for loans they originate and retain in their portfolio. It gives those institutions QM safe harbor legal protections for those loans as well. The Bureau also created a definition of "rural" which provides

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exemptions to mandatory escrow requirements and permits balloon loans originated by rural institutions and retained in portfolio to receive QM safe harbor treatment. The current small creditor exemption applies to depository institutions with assets of \$2 billion or less, that originate 2,000 loans or less annually. To qualify for the rural exemption, depositories must meet the small creditor thresholds and have originated at least one mortgage loan in a CFPB-designated rural area during the last two years.

While the ATR/QM rule requires the creditor to consider the borrower's credit history as part of the ATR analysis, the rule does not mandate an acceptable credit score or credit profile. Additionally, the rule does not mandate a loan-to-value (LTV) ratio of a mortgage loan or its impact on a borrower's ability to repay.

For a loan to be considered QM it must comply with the following product features, in addition to the general underwriting criteria discussed above: the loan must be fully amortizing with no negative amortization or balloon payments, or interest only features; the original term may not exceed 30 years; and any points and fees paid by the borrower may not exceed three percent of the loan amount. Finally, the annual percentage rate APR may not exceed 150 basis points over the average prime offer rate or APOR. Small creditors that lend in rural markets as defined above receive certain exemptions to the balloon payment and APR features, although not a complete exemption.

Given the breadth of the ATR/QM rule and its impact on all creditors that originate mortgage loans, the CFPB rightfully designated the ATR/QM rule as "significant." ICBA's suggestions for conducting the assessment and areas where the rule can be improved are listed below.

- The CFPB should interview a broad-based sample of community banks that lend in both rural and non-rural markets. This sampling should include institutions that qualify for the small creditor and rural exemptions and those that do not. While many community banks can utilize the small creditor and rural exemptions, many institutions cannot due to business model or asset size or location. Regardless, all institutions have had to make changes and adjustments to their lending policies to make sure they do not run afoul of the ATR/QM rules and expose themselves to unintended legal risk. Those institutions that enjoy the small creditor and rural exemptions for the most part remain very cautious when granting credit and as such have been reluctant to make loans to anyone other than their best qualified customers, potentially restricting credit to other

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would-be borrowers. Bankers can underwrite credit risk, but they cannot underwrite legal risk.

- The CFPB should work with mortgage industry stakeholders to establish a set of compensating factors that can be used by creditors when underwriting borrowers with DTIs that exceed 43 percent. Additionally, the Bureau should make the GSE patch permanent, thereby removing the possibility for market disruption if the GSEs are released from conservatorship or the 2021 expiration date is passed. Underwriters have always looked at DTIs as guidelines, not hard and fast rules, and would consider other compensating factors such as: demonstrated ability to save, demonstrated ability to devote a higher percentage of income to housing, other borrower assets which could be liquidated to pay the loan, and demonstrated ability to manage credit in determining ability to repay. The combination of the expiration of the GSE patch and inflexibility of the 43 percent DTI will lead to many well qualified borrowers not having access to mortgage credit or will cause those borrowers to pay higher rates for that mortgage credit. This would impact borrowers with fixed incomes, retired borrowers, minority borrowers, immigrant borrowers or borrowers starting out in new careers.
- The CFPB should modify income documentation requirements for self-employed borrowers to provide creditors more flexibility in qualifying these borrowers. The GSE and mortgage insurance company requirements are more flexible than Appendix Q, making it challenging for creditors when underwriting loans either retained in portfolio or sold to other private mortgage investors. Harmonizing the self-employed provisions of Appendix Q with GSE guidelines will help improve access to credit for self-employed borrowers without compromising consumer protections or credit quality.
- The CFPB should grant QM safe harbor status to any mortgage loan originated by a community bank and retained in portfolio. There are many institutions that do not qualify for the small creditor/rural QM exemptions. Yet those institutions are prudent lenders and should be able to achieve QM safe harbor protection for mortgage loans they originate, process, underwrite, fund and continue to service in their portfolio. Community banks did not perpetrate the abuses that caused the financial and foreclosure crisis. Rather, community banks consistently prudently underwrite all mortgage loans, including those sold into

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the secondary market, as if they had to bear the credit risk themselves. Local origination combined with local loan servicing drives better outcomes for all borrowers. Community banks will not risk their capital or their reputation by making loans that are not sustainable. ICBA urges the CFPB to provide safe harbor status to all mortgage loans originated and retained in portfolio by community banks with assets of \$50 billion or less.

ICBA appreciates the opportunity to provide input on the proposed plan to assess the effectiveness of the 2013 ATR/QM Rule. We look forward to working with Bureau staff as this project moves forward. Please contact the undersigned with any questions regarding this letter at [ron.haynie@icba.org](mailto:ron.haynie@icba.org).

Sincerely,

/s/

Ron Haynie  
Senior Vice President- Mortgage Finance Policy

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