

Submitted via email

June 11, 2012

Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Proposed Rule to Implement Ability to Repay Mortgage Standards [Docket No. R- 1417]

Dear Director Cordray:

The undersigned organizations representing community banks are writing to strongly urge the Consumer Financial Protection Bureau (CFPB) to provide a legal safe harbor with clear, well-defined standards for the ability-to-repay mortgage requirements. Additionally, we urge the CFPB to allow balloon mortgage loans held in portfolio by the originating banks for the life of the loan to be included under this safe harbor so community banks can continue to meet the specific needs of their customers.

As you are aware, the ability-to-repay mortgage rulemaking was proposed by the Federal Reserve pursuant to amendments made to the Truth in Lending Act (TILA) by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). Under the Federal Reserve's proposed rulemaking, the regulation would provide options for complying with the ability-to-repay standard. Alternatively, a creditor can originate a "qualified mortgage" (QM) which provides special protections from enforcement and liability. The Federal Reserve solicited comment on two alternative definitions of what would be deemed a QM. Alternative 1 would operate as a legal safe harbor of compliance with the ability-to-repay requirements and Alternative 2 would provide a rebuttable presumption of compliance as opposed to a safe harbor.

It is critical to the business of community banks that the QM be structured as a legal safe harbor with clear standards. The reality is many community banks will cease originating mortgage loans if provided with only a rebuttable presumption of compliance – even one with clear and well-defined standards. In practice, a rebuttable presumption of compliance can be rejected by facts unrelated to the criteria of a QM, and many

community banks will not be able to absorb the compliance and litigation risk that will accompany this lack of legal certainty. Others will significantly curtail their lending and make mortgages only to the highest qualified borrowers where the risk of default is near zero. In contrast, originating QM loans that satisfy safe harbor requirements would more likely reduce this compliance and litigation risk for community banks.

We are already witnessing community banks leaving the mortgage market due to the lack of resources and inability to absorb today's compliance burden. This lack of diversity and reduction of competition in the marketplace greatly limits consumer choice, particularly for lower income and rural consumers who have fewer financial resources and options available to them. The CFPB has been tasked with protecting the economic health of the everyday consumer, particularly those in rural and lower income areas. However, we are certain that if the CFPB provides community banks with only a rebuttable presumption of compliance with the new mortgage requirements, many will exit the market and consumers will have fewer credit options available to them. In an already vulnerable economy, such policymaking will unintentionally harm, not protect, consumers.

Furthermore, any legal safe harbor should allow community banks to provide balloon mortgage loans that are held in portfolio for the life of the loan, regardless of where and to whom the loans are provided. Balloon mortgage loans originated by community banks are not the same high-risk, poorly underwritten products made by some lenders in the run up to the financial crisis. Community bank balloon mortgage loans have been provided for decades. Community banks use this structure to match the maturity of their deposit base which provides funding for these loans. These mortgage loans are held in portfolio by community banks for the life of the loan, and are therefore safe and solid loans because the banks retain a vested interest in their performance. These are not loans destined for sale in the secondary market where an originator has little to no exposure if the loan goes into default. Rather, since the banks hold all of the credit risk, they have every incentive to ensure the loan is affordable for the borrower.

Community banks provide these loans as a service to their customers, as it may be the consumer's only credit option, especially in smaller markets and rural areas where loans may be ineligible for sale into the secondary market due to the unique nature of rural properties or to the borrower's characteristics. Borrowers may have seasonal income. Rural properties may be too large, or have mixed uses, or lack the requisite comparable sales for appraisal because the comparables may be too far removed in time or geographic distance. Consumers whose credit is not acceptable in the secondary market often turn to the community bank and banker they have known for years for assistance. For these borrowers, the only way to safely and soundly extend the credit is to structure the transaction as a short-term loan, such as a balloon payment loan.

To protect these loan products, Congress gave the CFPB authority under the Dodd-Frank Act to exempt community bank portfolio loans from the additional Truth-in-Lending Act requirements. We ask the CFPB to use this authority and allow balloon mortgage loans held in portfolio to be protected by a safe harbor for the ability-to-repay

requirements, without imposing the extensive and confusing exemption criteria proposed by the Federal Reserve.

In closing, we firmly believe the ability-to-repay and QM rulemaking will mark the turning point of whether community banks will continue to be able to provide mortgage loans to their customers or will be eliminated from the marketplace. We urge the CFPB to make the best choice for consumers and community banks, and provide a safe harbor for QM loans that includes protections for community bank mortgage loans held in portfolio for the life of the loan.

Sincerely,

Independent Community Bankers of America
Community Bankers Association of Alabama
Arkansas Community Bankers Association
Arizona Bankers Association
California Independent Bankers
Independent Bankers of Colorado
Florida Bankers Association
Community Bankers Association of Georgia
Community Bankers of Iowa
Community Bankers Association of Illinois
Indiana Bankers Association
Heartland Community Bankers Association
Community Bankers Association of Kansas
Bluegrass Bankers Association
Louisiana Bankers Association
Massachusetts Bankers Association
Maryland Bankers Association
Community Bankers of Michigan
Independent Community Bankers of Minnesota
Missouri Independent Bankers Association
Montana Independent Bankers
Independent Community Bankers of North Dakota
Nebraska Independent Community Bankers
Community Bankers Association of New Jersey
Independent Community Bankers Association of New Mexico
Independent Bankers Association of New York State
Community Bankers Association of Ohio
Community Bankers Association of Oklahoma
Oregon Bankers Association
Pennsylvania Association of Community Bankers
Independent Banks of South Carolina
Independent Community Bankers of South Dakota
Tennessee Bankers Association
Independent Bankers Association of Texas
Virginia Association of Community Bankers

Vermont Bankers Association
Community Bankers of Washington
Community Bankers of Wisconsin
Community Bankers of West Virginia