



February 22, 2013

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

Regarding: Docket No. CFPB-2013-0002, RIN 3170-AA34 - Proposed Amendments to the Ability-to-Repay Standards under the Truth in Lending Act (Regulation Z)

Dear Ms. Jackson:

The Community Bankers Association of Illinois (CBAI), representing approximately 400 community bank members and their 900 branches, is pleased to provide the Consumer Financial Protection Bureau (CFPB or Bureau) with our observations and recommendations regarding the Bureau's proposed amendments (Proposal or Amendments) to the Ability-to-Repay standards under the Truth in Lending Act (TILA) regarding an additional definition of a qualified mortgage for certain loans made and held in portfolio by small creditors and for a higher-priced covered transaction threshold for balloon-payment qualified mortgages. We strongly support additional exemptions and modifications and urge the Bureau to amend the final Rule.

At the outset, the CBAI appreciates the Bureau recognizing the importance and unique needs of small creditors (community banks) that was revealed during the comment periods on the ability-to-repay requirements. Rather than proceed to finalize a rule which would disadvantage community banks, the concurrent Proposal seeks additional comments to amend the Rule issued by the Bureau. We commend this method of rulemaking and hope that other regulators will follow your lead during their rulemaking process. The recognition by a regulator that they may not have "got it right" the first time is unfortunately not as prevalent as it should be.

CBAI was impressed with the Bureau's understanding of community banks and their importance to their customers and communities. As stated in the Proposal, "Small creditors [community banks] may be particularly well suited to make mortgage loans that are responsible and affordable because of their small size, relationship-based lending model, and ties to their communities enable them to make more accurate assessments of a consumers' ability-to-repay than large creditors." Also, "... the reputation of these community banks is largely dependent on serving their communities in ways that cause no harm." In addition, "Small creditors [community banks] often are willing to evaluate the merits of unique consumers and properties using flexible underwriting criteria [including "soft" information] and make highly individualized underwriting decisions." Finally, evidence suggests that underwriting based on such criteria and information results in loan portfolios that are better performing.

CBAI was pleased with the Bureau's sensitivity to preserving access to credit, not unnecessarily interfering in underwriting requirements, not adding unnecessary costs and needless delays, and not constraining the availability of responsible and affordable credit for consumers. Further, your understanding that "Small creditors may have a particular need for the protection from liability the qualified safe harbor provides." is appreciated. The Bureau's sensitivity and understanding are an important part of a strong foundation for the proposed Amendments.

Small Creditor Asset and Transaction Thresholds

The Bureau is proposing to define a new category of qualified mortgages which would qualify for the safe harbor. The proposal would include certain loans originated by small creditors (community banks) that have total assets of \$2 billion or less and (together with affiliates) originate 500 or fewer first-lien transactions. However, there is a small but not an insignificant number of community banks that are approaching or have exceeded the asset and the number of transaction thresholds. We do not want these community banks to stop responsibly serving their customers and communities by affording them less of an opportunity for safe harbor protection than their fellow community banks. CBAI recommends the limits be set at higher levels so that the rules do not discourage successful organic growth or unnecessarily exclude certain community banks.

CBAI recommends increasing the asset threshold from \$2 billion to a minimum of \$5 billion or higher. In addition, given the unfortunate consolidation in the industry, we recommend the

threshold be indexed to the average asset size of a community bank (versus inflation) so that it will be automatically updated going forward. There is precedent for indexing to banks' asset size in the various examination types under Community Reinvestment Act (CRA).

CBAI recommends an increase in the annual number of mortgages originated to a minimum of 3,500. The Proposal correctly states that community banks are more able and likely to consider the "soft" factors versus the more rigid approval parameters utilized by the larger factory-like mortgage originators. There are also certain economies of scale in mortgage originations which take on greater importance with increased regulation of banks and mortgage lending.

Community banks walk a fine line between having a large enough mortgage operation to be profitable and yet not losing the ability to consider the "soft" factors which contributes to the successful performance of community bank mortgage portfolios. The higher minimum of at least 3,500 would allow community banks with large mortgage operations to benefit from the safe harbor together with their fellow responsible community bankers.

Delay in the Loss of the Safe Harbor Benefits

In addition to the above recommendations for increases in both the asset and transaction thresholds CBAI recommends a delay in the loss of the safe harbor benefit for community banks that exceed them. As proposed, and on a worst case basis, a community bank would lose the safe harbor benefit on January 1st of the current year for exceeding the thresholds on December 31st of the previous year by even one dollar of assets or a single mortgage transaction.

We recommend the loss of the safe harbor only when a community bank exceeds the threshold for two consecutive calendar year-ends, by at least \$250 million in assets and by at least 500 transactions. By incorporating this provision in the Proposal a community bank will have at a minimum of one full year to prepare for the loss of the benefit for exceeding the thresholds. Although not specifically stated in the Proposal it should be made clear that only mortgages made after the thresholds were exceeded would lose the safe harbor benefit and that if a bank were to fall back below the thresholds at the end of a Call Report period it would again enjoy the benefit for subsequently originated mortgages.

Small Creditors Higher-Priced Balloon Mortgages

The Bureau is proposing to allow community banks which operate predominantly in “rural” or “underserved” areas to offer first-lien balloon loans with a higher annual percentage rate and still benefit from a conclusive presumption with the ability-to-repay rules of safe harbor. CBAI agrees with an expanded exemption. In addition, we urge the CFPB to revisit the overly restrictive definitions of both rural and underserved areas in the Ability-to-Repay Rule released contemporaneously with this Proposal.

Although the Bureau revealed that many counties would be included in the definition of “rural” it only encompasses less than 10% of the population. This definition is too restrictive and may not be consistent with other agencies (i.e., United States Department of Agriculture and the Farm Credit System) current or proposed definitions of rural areas. While consistency is not always appropriate in bank regulation we believe consistency is appropriate in this situation. Without such consistency the competitive playing field will become or remain tilted against community banks and this should not be an unintended consequence of this rulemaking.

The CFPB's definition of “underserved” is another area of concern. The CFPB’s current definition does not sufficiently encompass underserved low-to-moderate (LTM) income communities particularly in large urban areas. These areas were devastated economically by the financial crisis and are where the shadow financial industry may predominantly serves the financing needs of consumers. Unfortunately, given the current definition in the Rule, many counties which contain these communities would not qualify as underserved - yet they are.

CBAI supports a more expanded definition of underserved while still remaining consistent with the intent of providing a reasonable exception in the Rule and the proposed Amendments. Specifically, we recommend exceptions be added for community banks serving primarily low-to-moderate income census tracts, for loans they make in LTM census tracts, and for loans they make to LTM borrowers. Community banks, unlike many of the large banks and mortgage companies, have proven that they can fairly serve underserved areas including LTM income communities and consumers. They should be encouraged to expand their efforts in these areas for the consumers’ benefit.

CFPB

Proposed Amendments to Ability-to-Repay Standards

Page 5

Consumer Awareness

Finally, the Bureau is soliciting comments on potential concerns for consumer who may not be aware that the selection of an exempt versus nonexempt financial institution will impact their legal rights to make claims of noncompliance with the rules or in foreclosure actions. If the recent mortgage meltdown and the financial crisis have proven anything it is that community banks are the “good guys”, the ones who did not abuse their customers, communities, the nation’s economy, and American taxpayers. We strongly believe that the Bureau can confidently proceed to approve amendments in this Proposal which will benefit community banks without negatively impacting consumers. In fact, these exceptions will enhance the ability of community banks to responsibly serve more consumers.

Summary

CBAI supports a new category of qualified mortgages for (small creditors) community banks which will benefit from a conclusive presumption with the ability-to-repay rules of safe harbor. We support the thresholds being set at higher than the proposed levels (\$5 billion in assets and 3,500 transactions) so that some community banks do not confront the loss of the safe harbor. We also support giving them a reasonable amount of time to either fall back below the thresholds or be given a reasonable period of time to prepare for the change. In addition the definitions of “rural” and “underserved” should be expanded to level the playing field for community banks and to encourage them to serve LTM borrowers and communities.

Thank you for your consideration of these observations and recommendations. If you have any questions or need additional information, please contact me at 847-909-8341 or by e-mail at davids@cbai.com.

Sincerely,

/s/

David G. Schroeder
Vice President Federal Governmental Relations

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