



October 7, 2013

The Honorable Shaun Donovan
Secretary, Department of Housing and
Urban Development
457 7th Street, S.W.
Washington, D.C. 20410

The Honorable Richard Cordray
Director, Consumer Financial
Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Regarding: Request for Guidance and Clarity Regarding HUD's Disparate Impact Regulation and the CFPB Mortgage Standards

Dear Secretary Donovan and Director Cordray:

The Community Bankers Association of Illinois (CBAI) on behalf of its' approximately 400 community bank members is requesting guidance and clarity regarding conflicts between the Department of Housing and Urban Development's (HUD's) disparate impact regulation and the Consumer Financial Protection Bureau's (CFPB's) mortgage lending rule.

CBAI supports equal access to credit and fair lending and condemns discrimination based on race, ethnicity, national origin, gender, religion or other listed categories. Community banks sincerely endeavor to serve their customers and communities and illegal discrimination is not in anyone's best interest.

HUD recently published a regulation under the Fair Housing Act which makes lenders liable for lending policies that have a disparate impact on group(s) of borrowers even in the absence of any intention to discriminate.

Disparate impact describes the different results that arise from practices that are facially neutral in their treatment of different groups but that may fall more harshly on one group than another. Stated differently, disparate impact may arise when the end results of lenders' operations have different demographic results despite the uniform application of sound, neutral financial standards.

The implementation of this regulation poses a serious risk of unintended consequences and will likely inhibit the extension of credit. In addition, a disparate impact cause of action would logically impose an additional obligation on lenders to consider such factors as race or national origin in individual credit decisions, which is specifically precluded by law. Also, a cause of action would permit the filing of frivolous lawsuits based on statistical data alone.

The CFPB recently published final Qualified Mortgage (QM) and Ability-to-Repay rules under the Dodd Frank Act. We were encouraged by the CFPB's recognition of the importance of community banks in the financial system, and the creation of specific modifications and exemptions for "small creditors". In the final Rule the CFPB: extended QM status to small creditors, created a two year transition period during which balloon mortgages will meet the QM definition, and allowed small creditors to charge a higher annual percentage rate while maintaining a safe harbor under the Ability-to-Repay requirements.

While we were disappointed that the definition of small creditor did not rightfully include as many community banks as it should have, CBAI looks forward to working with the CFPB to broaden the definitions of "rural" and "underserved" communities.

Notwithstanding the concerns and disappointments noted above, when the HUD's disparate impact regulation is considered together with the CFPB's QM Ability-to-Repay rule, the very real possibility exists for a community bank to comply with the CFPB rule but to simultaneously be in violation of the HUD Regulation. Specifically, the HUD regulation could expose community banks to disparate impact legal actions if the community bank chooses to only make CFPB-approved QM loans – which is completely within their rights to do so - in the event QM or non-QM borrowers do not statistically represent a diverse cross section of demographics. This regulatory Catch-22 must be addressed and eliminated.

The Community Bankers Association of Illinois strongly urges HUD and the CFPB to provide guidance that makes it clear that a lender will not be subject to disparate impact liability by making only or primarily QM safe harbor loans, or by limiting their exposure to rebuttable presumption on non-QM loans to borrowers whose risk of default is very low. Compliance with one regulation should not make it impossible to comply with the other.

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Thank you for your consideration of our 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,

David G. Schroeder
Vice President Federal Governmental Relations

Community Bankers Association of Illinois
901 Community Drive
Springfield, Illinois 62703
(800) 736-2224