February 25, 2013

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

Dear Ms. Jackson,

The Conference of State Bank Supervisors (CSBS), American Association of Residential Mortgage Regulators (AARMR), and American Council of State Savings Supervisors (ACSSS) (collectively, "state regulators") strongly support the Consumer Financial Protection Bureau's (CFPB) small creditor qualified mortgage definition in the Proposed Amendments to the Ability to Repay Standards under the Truth in Lending Act, Docket No. CFPB-2013-0002, RIN 3170-AA34. State regulators have long standing policy that regulations should not hinder an insured depository institution's willingness to engage in portfolio lending, and this proposed rule would make it easier for such institutions to extend credit and retain the risk thereof.

State regulators have long supported a flexible approach to underwriting for institutions that retain mortgages in portfolio because interests are inherently aligned between consumers and lenders that retain 100% of the risk of default. Further, the proposed increased interest rate thresholds for legal protections recognizes the higher cost of doing business for smaller creditors, which do not have the same funding market access as institutions operating on exponentially larger scales.

ALIGNED INTERESTS IN PORTFOLIO LENDING

Banks that hold loans in portfolio retain the risk associated with repayment; accordingly, it is logical to confer higher legal protections if the basic underwriting requirements for repayment ability are met. The core requirements of the qualified mortgage should align consumer protections and underwriting requirements, so the added legal protections of a safe harbor or rebuttable presumption should be applied. The CFPB properly summarized the small creditor portfolio lending model's aligned interest with consumer protection: small creditors "have strong incentives to carefully consider whether a consumer will be able to repay a portfolio loan at least in part because the small creditor retains the risk of default."

LOCAL CREDIT

State regulators further support the increased average prime offer rate thresholds for small creditors for the level of legal protection conferred by the qualified mortgage definition. As noted in the proposal, many small creditors are the predominant source of credit in areas where large creditors do not operate. Small creditors fill this gap with a business model crucial to our nation's economy. The CFPB properly acknowledges small creditors are "well suited to make mortgage loans that are responsible and affordable because their small size, relationship-based lending model, and ties to their communities enable them to make more accurate assessments of consumers' ability to repay than larger creditors."

The increased average prime offer rate (APOR) levels appropriately recognize the importance of local credit and the increased cost of providing it. In addition to the higher funding costs incurred by small creditors, many small creditors originate mortgages that are smaller and to borrowers with slightly blemished credit, increasing the cost of doing business. By creating greater legal protection to those institutions that provide products with fully retained risk, the CFPB is appropriately preventing regulations from influencing small creditors that would otherwise extend credit in their local community. Small creditors have a higher cost of business than their large competitors, and this threshold recognizes the regulatory cost of doing business in disproportionately scaled markets.

Clarity Points and Process

State regulators support the proposed thresholds for small creditor size and APOR levels. However, additional details on what constitutes an originated loan for the purposes of the 500 limit would be useful. For example, if a community bank brokers a loan that is never in the bank's name, that may not be considered an origination. Similarly, table funding transactions may warrant further consideration.

State regulators also suggest a delineated process for the CFPB to revisit these thresholds in the future. It would be useful to know what market trends will trigger a reconsideration of the thresholds used in a crucial rule for the small mortgage creditor industry, such as the market considerations for creditor size or funding considerations for the increased APOR levels. The size disparity between large creditors and small creditors may continue, making 3.5% above APOR a hindrance to credit in communities that rely upon this source of credit. Accordingly, it would be useful for the CFPB to outline the steps that will be taken to monitor market activity for the purposes of ensuring regulations tailored to small creditors are still meaningful.

Conclusion

State regulators view this proposal as the proper approach to many regulatory issues facing small creditors. As the CFPB continues to promulgate new and update existing regulations, state regulators strongly encourage the CFPB to continue creating flexible standards for institutions that fit under a certain asset or size cap.

Sincerely,

John W. Ryan
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Conference of State Bank Supervisors

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