September 21, 2020

The Honorable Kathy Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

RE: Amendments to Escrow Exemptions for Certain Higher-Priced Mortgage Loans under Truth in Lending Act (Regulation Z); Docket No. CFPB-2020-0023 or RIN 3170-AA83,

Dear Director Kraninger,

The Independent Community Bankers of America ("ICBA")[1] welcomes the opportunity to comment on the notice of proposed rulemaking ("NPR") published by the Consumer Financial Protection Bureau ("CFPB" or "Bureau") that would amend Regulation Z, as directed by Section 108 of 2018's Economic Growth, Regulatory Relief, and Consumer Protection Act ("EGRRCPA"). Central to Section 108 is a new exemption from the Truth in Lending Act's ("TILA") escrow requirements for certain insured depository institutions and insured credit unions that originate certain higher-priced mortgage loans ("HPMLs").

The proposed rule states that these institutions are exempt if they meet the following criteria: "(1) the institution has assets of $10 billion or less; (2) the institution and its affiliates originated

[1] The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ nearly 750,000 Americans and are the only physical banking presence in one in five U.S. counties. Holding more than $5 trillion in assets, nearly $4 trillion in deposits, and more than $3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at www.icba.org.

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1,000 or fewer loans secured by a first lien on a principal dwelling during the preceding calendar year; and (3) certain of the existing HPML escrow exemption criteria are met." Specifically, these existing HPML escrow exemption criteria, as established in Regulation Z, include: "(1) the requirement that the creditor extend credit in a rural or underserved area; (2) the exclusion from exemption eligibility of transactions involving forward purchase commitments; and (3) the prerequisite that the institution and its affiliates not maintain an escrow account other than those established for HPMLs at a time when the creditor may have been required by the regulation to do so or those established after consummation as an accommodation to distressed consumers to assist such consumers in avoiding default or foreclosure."[2]

ICBA welcomes and recognizes the Bureau's efforts to enact these amendments that will allow certain community banks to opt out of establishing escrow accounts for HPMLs. The amendments will safely expand access to credit for consumers and allow more community banks the flexibility to provide lending services to customers without the prohibitive costs associated with the creation and maintenance of escrow accounts. Though ICBA is broadly supportive of the proposed rule, we urge the Bureau to adjust the amendment to cover otherwise eligible lenders making safe, small-balance HPMLs that may not satisfy the underserved or rural lending criteria.

Background

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") added TILA Section 129D(a) which adopted and amended a rule issued by the Board of Governors of the Federal Reserve System in 2008 that required the use of escrow accounts for payment of insurance and property taxes for HPMLs. The Dodd-Frank Act also granted the Bureau significant latitude to structure exemptions based on institution, asset size, and mortgage lending activity.

The CFPB's 2013 HPML final rule provided the regulatory framework for HPML escrow requirements and exemptions. Small creditors are exempt if they are under $2 billion in assets, made fewer than 2,000 first lien mortgage loans during the previous calendar year (excluding

[2] https://files.consumerfinance.gov/f/documents/cfpb_proposed-rule_hpml-escrow-exemption_2020-07.pdf

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portfolio loans), are not presently escrowing mortgage loans[3]or making forward-commitment loans, and make at least one covered mortgage loan in areas that are designated rural or underserved in the previous calendar year or, for applications received before April 1 of a calendar year, during either of the two prior calendar years.[4]

Most recently, Congress enacted EGRRCPA in 2018, resulting in the present proposed rulemaking tasked with implementing the statutory requirements of Section 108 and amending TILA Section 129D(c). EGRRCPA requires the Bureau to promulgate regulations exempting certain insured depository institutions[5] from escrow requirements. Broadly, the exemption applies to insured depository institutions with $10 billion or less in assets, 1,000 or fewer mortgage loans, and adheres to certain Regulation Z HPML exemption criteria. The statutory criteria correspond with the CFPB's proposed regulatory amendments outlined in the section above.

ICBA Analysis and Recommendations

ICBA appreciates the Bureau's detailed and thoughtful approach to implementing the escrow section of EGRRCPA. The proposed amendments largely reflect the intent of the legislation and will certainly provide regulatory relief and lending flexibility to community banks and, by extension, increased access to credit for creditworthy borrowers in rural communities. As noted in the proposed rule, the proposed amendments are relatively narrow. However, ICBA believes the changes will allow newly exempt community banks the opportunity to become active mortgage lenders. The NPR correctly recognizes the resulting benefits for consumers, including greater access to credit.

However, as mentioned previously, ICBA recommends the Bureau adjust the proposed amendment to allow an exemption for institutions making smaller balance HPMLs less than $100,000 if they are operating outside of designated rural or underserved areas, provided they meet all the other criteria enumerated in Section 108 of EGRRCPA. Such loans are often used for the purchase or for improvements of mobile/modular homes as well as for situations where the loan proceeds will be used to cover other expenses, with the consumer's residence being

[3] § 1026.35(b)(2)(iii)(D)(*1*) establishes dates between which creditors were allowed to maintain escrow accounts for first-lien HPMLs without losing eligibility for the exemption - April 1, 2010, until May 1, 2016. The proposed rule will make the date current, setting it at 90 days after the final rule is published in the Federal register.
[4] Escrow accommodations after consummation to distressed consumers is another exception.
[5] The CFPB's 2013 final rule exemption, in contrast, applied to all small creditors.

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used as collateral for that loan. Typically, these loans are made to low- or middle-income consumers. The cost of an escrow account is often prohibitively expensive for these consumers and burdensome for smaller community banks. In many cases, the creation of escrow accounts for these smaller loans does not make sense for either the lender or the borrower. For the borrower, an escrow requirement for such a loan will likely act as an unnecessary barrier to much-needed credit. As stated in the NPR, for a small lender "[t]he startup costs associated with creating the infrastructure to establish and maintain escrow accounts may be substantial."[6]

ICBA appreciates the opportunity to comment on the NPR and looks forward to working with the CFPB throughout the process of finalization and implementation. If you have any questions regarding this letter, please contact me at ron.haynie@icba.org.

Sincerely,

/s/

Ron Haynie
Senior Vice President, Mortgage Finance Policy

[6] Ibid, 35.

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