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ICBA
INDEPENDENT COMMUNITY BANKERS *of* AMERICA

December 21, 2010

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Secretary of the Treasury
United States Department
of the Treasury
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John E. Bowman
Acting Director
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Honorable Shaun L. S. Donovan
Secretary
Department of Housing
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451 7th Street, SW
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Honorable Mary L. Schapiro
Chairman
Securities Exchange Commission
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Honorable Ben S. Bernanke
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Honorable John G. Walsh
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Office of the Comptroller
of the Currency
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Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corp.
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Washington, DC 20429

Honorable Edward J. DeMarco
Acting Director
Federal Housing Finance Agency
1700 G Street, NW
Washington, DC 20552

Dear Ladies and Gentlemen:

The Independent Community Bankers of America[1] wishes to share with you the thoughts and concerns of community banks as you work to implement Section 941 of the Dodd-Frank

[1] *The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.*

Wall Street Reform and Consumer Protection Act (the Act) through the issuance of regulations regarding credit risk retention.

ICBA strongly supports the return to sound underwriting standards as reflected in the Act. Nearly all community banks offer residential mortgages to their customers. Their ability to provide mortgages is an important service to their customers and the communities they serve. Their close ties to their customers and conservative underwriting have resulted generally in significantly lower default and delinquency rates on mortgages than the industry as a whole. Community banks take care to properly underwrite residential mortgages to ensure that their customers can afford their mortgage payments and keep their homes.

How the agencies define "qualified residential mortgage" will have far reaching effects on the structure of the mortgage market, and the cost and availability of credit to consumers and borrowers.

As you draft implementing regulations, ICBA strongly urges you not to define "qualified residential mortgage" so stringently that thousands of community banks and other lenders will be driven from the residential mortgage market, enabling only a few of the largest lenders to operate in it. Too narrow a definition will also severely limit credit availability to many borrowers who do not have significant down payments or who have high net worths but relatively low incomes resulting in high debt-to-income ratios.

The Act directs the Federal banking agencies, the Commission, the Secretary of Housing and Urban Development and the Director of the Federal Housing Finance Agency to jointly define the term "qualified residential mortgage" taking into consideration underwriting and product features that historical loan performance data indicate result in a lower risk of default. The Act suggests the following considerations:

1. Documentation and verification of the financial resources relied upon to qualify the mortgagor;
2. Standards with respect to:
    a. The residual income of the mortgagor after all monthly obligations;
    b. The ratio of the housing payments of the mortgagor to the monthly income of the mortgagor;
    c. The ratio of total monthly installment payments of the mortgagor to the income of the mortgagor;
3. Mitigating the potential for payment shock on adjustable rate mortgages through product features and underwriting standards;
4. Mortgage guarantee insurance or other types of insurance or credit enhancement obtained at the time of origination, to the extent such insurance or credit enhancement reduces the risk of default; and
5. Prohibiting or restricting the use of balloon payments, negative amortization, prepayment penalties, interest-only payments and other features that have been demonstrated to exhibit a higher risk of borrower default.

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These are generally factors that community banks regularly use in mortgage underwriting.

In defining "qualified residential mortgage," the Act directs the agencies, Commission, HUD and FHFA to define the term no broader than the definition of "qualified mortgage" as the term is defined under section 129C(c)(2) of the Truth in Lending Act as amended by the Act and implementing regulations. For clarity and ease of compliance, we believe that the definition of "qualified residential mortgage" and "qualified mortgage" should be consistent and be as similar as reasonably possible.

In ICBA's view, the definition of "qualified residential mortgage" should be relatively broad and encompass the largest portion of the residential mortgage market, consistent with the stronger underwriting standards called for by the Act. The intent of the Act is to foster stronger underwriting standards, thus more loans in the future should be able pass a "qualified residential mortgage" test.

Calls by some in the industry to impose by regulation an extremely strict definition of "qualified residential mortgage" would not ensure conservative underwriting as much as permit the largest institutions to gain market share and further consolidate the mortgage industry, driving community banks and other competitors out of the mortgage business, limiting consumer choice and raising the cost of mortgages for borrowers. Loans with unusual characteristics such as negative amortization and perhaps interest only loans should not be exempted and should have a risk retention requirement commensurate with their risk.

Community banks have told ICBA that the regulators must also provide some flexibility to permit the use of mitigating factors when considering debt to income ratios. Community banks have often lent to highly qualified individuals who have a high net worth but relatively low income levels, such as certain professionals, small business owners and retired individuals with large retirement accounts, but low fixed incomes. Without such flexibility, reasonably priced credit will not be available to these consumers and in some cases lenders may face violations of the Equal Credit Opportunity Act.

While the Act does not specifically include loan-to-value as a consideration in the definition of "qualified residential mortgage," community banks have long viewed this as an important risk mitigator. We strongly object to suggestions that borrowers be required to put as much as 30 percent down on a mortgage. This would create too high a hurdle for first-time homebuyers and for homeowners who are trying to refinance their mortgages after declining housing prices. Community banks have not been proponents of loan-to-value ratios of over 100 percent and have been cautious about lending more than 90 percent of property value. The use of private mortgage insurance has long been used by community banks and other lenders in risk management and should be used to help people obtain mortgages with a reasonable down payment. Further, we believe that limiting the loan-to-value ratio of a "qualified residential mortgage" to 70 percent or less will drive more business to the FHA which is exempt from the Act, resulting in more risk on the Federal Government's balance sheet which only increases the budget deficit, not reduce it.

If the definition is too restrictive community banks will be faced with retaining a relatively large amount of credit risk on well underwritten loans and will not be able to remain in the residential mortgage market due to their lack of access to the increased capital required to offset risk retention requirements. We are particularly concerned that community banks operating in rural areas will be driven out of the market by Farm Credit System direct lenders who are supervised by the Farm Credit Administration and who received an exemption in the Act for loans or other financial assets that they make, insure, guarantee or purchase.

We do not believe it was the intent of Congress to limit purchase money and refinancing transactions to only borrowers with very significant down payments or who have been in their homes for enough time to reach a relatively low loan-to-value ratio despite the decline in housing prices that has impacted much of our country. Indeed, the administration has taken a number of steps to encourage and help homeowners refinance their mortgages to lower, more affordable interest rates. The definition must be reasonable to permit first-time homebuyers a reasonable chance at homeownership. We do not support returning to the loose underwriting standards that caused the residential mortgage crisis. However, if the regulation is written too stringently, our fragile housing market—and our economy—will tumble further as demand for home mortgage loans comes to a halt. Only the largest financial institutions will be able to remain in the residential mortgage market and "too big to fail" will continue when only a handful of large institutions dominate and control the market. Consumers will suffer from fewer mortgage options, higher costs and poor service.

We would be happy to discuss our views further with you and will provide additional comments when the proposed rule is published for public comments.

Sincerely,

Camden R Fine

Camden R. Fine
President and CEO