Credit Union Association New York

February 25, 2013

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

Dear Ms. Jackson:

On behalf of the Credit Union Association of New York, I would like to take this opportunity to comment on the CFPB's proposed amendments to its recently enacted qualified mortgage requirements.

On the day that the CFPB enacted the qualified mortgage regulations mandated by Dodd-Frank, it acknowledged that credit unions did not cause the mortgage excesses that it is now charged with fixing, but proposed a partial exemption from this regulation for this and other similarly situated financial institutions. Specifically, the CFPB is proposing to exempt institutions with (a) $2 billion or less in assets that (b) make 500 or fewer mortgages a year and (c) retain these mortgages for at least three years from some of the qualified mortgage requirements. In addition, by also proposing that Community Development Financial Institutions (CDFIs), some of which are credit unions, be exempted from QM requirements, the Bureau has moved beyond rhetoric and taken steps to aid the unique business approach of small lending institutions. Unfortunately, while any exemptions are welcomed, the existing qualifications for the QM exemption do not go far enough to ensure credit unions are not unduly burdened in their ability to continue providing mortgages to their members as a result of complying with these new mandates. Fortunately, this problem can be addressed.

As Director Cordray has said, credit unions along with community banks "find ways to make loans that respond to personal situations and cannot be captured by any generic metrics. They depend on keeping a good reputation in the community, and they often hold those loans in their own portfolio. Accordingly, they have strong incentives to pay close attention to the borrower's ability to repay." These dynamics do not cease to exist once a credit union exceeds $2 billion, or begins to sell some of its loans to the secondary market, or has sufficient membership needs to do more than 500 mortgages a year. Whether its membership base is New York City or the Southern Tier, it is still dependent on members willingly depositing and maintaining their money in credit union accounts to grow and prosper. So long as credit unions are intrinsically tied to the membership base that allows them to exist, they will always have a stake in ensuring that a member can repay the mortgage loan they've been given by the credit union.

1021 WATERVLIET-SHAKER RD., ALBANY, NY 12205 P.O. BOX 15118, ALBANY, NY 12212-5118
MAIN (518) 437-8100 · TOLL-FREE (800) 342-9835 · FAX (518) 437-8500 · WWW.CUANY.ORG

As the CFPB pointed out in the preamble to this proposal: the amount of credit union securitization actually declined while credit unions avoided the systemic failure that continues to plague the for-profit banking industry. Credit unions of all sizes should be rewarded for their sound business practices and encouraged to continue them for the sake of their membership. Consequently, credit unions should be granted the flexibility offered by this proposal by virtue of their status as credit unions irrespective of their asset size or the size of their mortgage portfolio.

If the CFPB is unwilling to grant a categorical exemption, then it should consider tying the QM protection outlined in this proposal not to specific criteria but to whether a credit union can demonstrate that irrespective of its size, it has the ability to oversee appropriate underwriting standards. For instance, a credit union may sell its mortgages to a secondary market participant but because of the close relationship that credit unions often maintain with their membership, members continue to turn to the credit union with questions about their mortgages. Consequently, rather than requiring credit unions to hold on to mortgages or sell them to another institution eligible for the QM exemption, those credit unions that maintain a direct contractual relationship with the entity servicing a mortgage that they have sold should also be eligible for the QM exemption.

Under the finalized QM regulations, mortgages underwritten to Fannie Mae or Freddie Mac standards qualify for the QM exemption. However, under this proposal, institutions would have to retain covered mortgages for at least three years or transfer these mortgages to other institutions eligible for the QM exemption. In finalizing this proposal, the CFPB should clarify that a mortgage sold to either Fannie Mae or Freddie Mac will still be considered a retained mortgage for purposes of this exemption. Since many credit unions rely almost exclusively on Fannie or Freddy, these two institutions provide a crucial source of liquidity for the credit union industry. In addition, mortgages underwritten to Fannie Mae or Freddie Mac standards are qualified mortgages. It would be inconsistent with the CFPB's own goal of encouraging prudent mortgages if credit unions have to choose between curtailing secondary market transactions so as to remain eligible for the legal protections afforded by the QM protections and exposing themselves to increased legal liability in order to provide mortgages to their members.

Finally, we support CFPB's proposal to increase the points and fees limit for qualified mortgages offered by smaller institutions so that a disproportionate number of mortgage loans provided by them are not higher priced mortgage loans eligible for lesser legal protections than other qualified mortgages. Not only does the size of credit unions relative to the nation's largest mortgage lenders put them at a cost disadvantage due to economies of scale, but it is becoming increasingly clear that the largest banks in the country enjoy cheaper access to liquidity as a result of an implicit government guarantee of their continued existence which by some estimates amounts to a tax subsidy of as much as $83 billion annually[i]. Nothing the CFPB can do will completely eliminate this institutionalized advantage, but its proposal to raise the APOR threshold will not further exacerbate this distinction to the detriment of smaller institutions.

The mortgage regulations mandated by Dodd-Frank are among the most significant revisions to this country's housing policy since the Great Depression. The CFPB must ultimately strike an appropriate balance between ensuring that regulation no longer permits the type of activities that led to the Great Recession, while not doing so at the expense of Americans who have the willingness, ability and desire to take on the obligation of a mortgage loan. Credit unions play a vital role in maximizing the home ownership opportunities of all Americans and there is no need to restrict their ability to provide mortgages.

Sincerely,

William J Mellin
President/CEO

---

[i] http://www.bloomberg.com/news/2013-02-24/remember-that-83-billion-bank-subsidy-we-weren-t-kidding.html