

March 19, 2013

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

Subject: Proposed Amendments to the Ability to Repay Standards under the Truth in Lending Act, Docket No. CFPB-2013-0002 --- RIN 3170-AA34

Dear Ms. Jackson:

The following comments are being submitted by the Community Development Bankers Association (CDBA) in response to the Consumer Financial Protection Bureau's proposed amendments to the Ability to Repay Standards under the Truth in Lending Act (Regulation Z), as published in the Federal Register on January 10, 2013.

Support for the Proposed Exemptions:

CDBA supports the CFPB's recognition of the important contribution made by Community Development Financial Institutions (CDFIs) in serving underserved urban and rural markets. We fully appreciate the CFPB for recognizing the regulatory burden that could be imposed upon mission-focused lenders. We urge the CFPB to proceed with the proposed Qualified Mortgage exemption for CDFIs and other proposed exempted organizations from the Ability to Repay Standards under the Truth in Lending Act. CDBA believes the CFPB's proposed exemptions are a reasonable approach, which balance the protection of consumers with the need for an appropriate level of regulation of the mortgage market. While most CDFI banks are already exempt from the Ability to Repay Standards under other small or rural bank exemptions, not all meet the qualifications for these exemptions. All CDFIs are focused on serving the toughest most credit starved communities and should be exempt from the Ability to Repay Standards under the Truth in Lending Act. We urge the CFPB to be inclusive of all CDFIs under this exemption.

We do, however, urge the agency to address some drafting discrepancies that create confusion about how the CDFI exemption is to be applied. Specifically, the rule contains inconsistencies as to which CDFIs are covered by the proposed § 1026.43(a)(3)(v) exemption. On balance, it appears that the intent of the exemption is to apply to all organizations that are certified CDFIs. Yet, the language in some parts of the proposed rule are inclusive of all CDFIs, while others only reference a narrower group of "nonprofit" CDFIs or "nonprofit creditors." To date, there are nearly 1,000 organizations that have been certified by the U.S. Department's Community Development Financial Institutions (CDFI) Fund. While the large majority of those entities are nonprofit organizations, a significant number are for-profit banks and for-profit loan funds.

CDBA is the national trade association of the community development banking sector and the voice and champion of CDFI banks and thrifts, which have a mission of serving Low and Moderate Income (LMI) communities. CDBA represents Federal and State chartered banks and thrifts and their holding

companies that are certified by the U.S. Treasury Department's Community Development Financial Institutions (CDFI) Fund as Community Development Financial Institutions (CDFIs). To be certified as a CDFI, an organization must demonstrate that at least 60% of its total business activities are targeted to LMI communities and people. The CDFI Banks are held to the same high standard as nonprofit loan funds to achieve certification status. In total there are 80+ CDFI banks throughout the United States. All CDFIs share a common mission of improving underserved communities. CDBA members serve our nation's most distressed and credit starved communities and are engines of economic inclusion throughout the United States.

CDFI banks make a difference in the lives of tens of thousands of people in the communities they serve. CDFI banks are often the only source of credit and financial services in these communities. CDFI banks make loans to build and renovate housing so that people have a decent place to live. Our housing lending, in turn, sparks revitalization of other housing in our neighborhoods. CDFI banks make loans to small businesses so that people will have jobs. The businesses our banks lend to, in turn, act as magnets that draw other businesses into the community. Our lending has a ripple effect throughout the community far beyond our direct customers, changing a community's dynamic.

1. Credit Extended by CDFIs, CHDOs, and DAPs

Current Rule States: "[t]he Bureau proposes § 1026.43(a)(3)(v), which provides that an extension of credit made by one of the four types of creditors specified in proposed § 1026.43(a)(3)(v)(A) through (D) is exempt from § 1026.43(c) through (f). Proposed § 1026.43(a)(3)(v)(A) exempts an extension of credit made by a creditor designated as a Community Development Financial Institution, as defined under 12 CFR 1805.104(h).

Comment: The definition referenced under 12 CFR 1805.104(h) is the same definition used by the CDFI Program and is inclusive of all CDFI types – banks, credit unions, loan funds, venture funds, and depository institution holding companies.

Current Rule States: " The Bureau has identified several types of creditors that focus on extending credit to these consumers. ***Nonprofit creditors [emphasis added]*** seeking designation as a Community Development Financial Institutions (CDFIs) by the Treasury Department must undergo a thorough screening process to obtain this designation and then must engage in community-focused lending to maintain the designation... The Bureau is concerned that the ability-to-repay requirements will negatively affect these creditors, while providing little additional protection to consumers."

Comment: The underlined provision above is inconsistent with the definition of a CDFI defined in 12 CFR 1805.104(h). The 12 CFR 1805.104(h) reference includes all CDFIs. The underlined provision above references only nonprofits. It should be noted that for-profit CDFIs are subject to the same screening process as nonprofits to obtain CDFI certification.

2. Summary of the Proposed Rule

(Under "Proposed Exemption for Credit Extended Pursuant to a Community-Focused Lending Program")
Current Rule States: "The Bureau is also proposing to exempt an extension of credit made by certain types of ***nonprofit creditors [emphasis added]*** from the ability-to-repay requirements. Creditors designated by the U.S. Department of the Treasury as Community Development Financial Institutions and creditors designated by the U.S. Department of Housing and Urban Development as either a

Community Housing Development Organization or a Downpayment Assistance Provider of Secondary Financing are included in this proposed exemption. “

Comment: The reference to “nonprofit creditors” is narrower than the universe of CDFIs intended to be covered by the exemption. In addition, it reflects a misunderstanding that all CDFIs are non-profit organizations.

3. Community-Focused Lending Program

Current Rule States: “Various Federal programs establish eligibility requirements and provide ongoing monitoring of specific types of creditors that receive Federal grants and other support. For example, Community Development Financial Institutions (CDFIs) are approved by the U.S. Department of the Treasury (Treasury Department) to receive monetary awards from the Treasury Department’s CDFI Fund, which was established to promote capital development and growth in underserved communities. Promoting homeownership and providing safe lending alternatives are among the Fund’s main goals. The Treasury Department created the CDFI designation to identify and support small-scale creditors that are committed to community-focused lending, but have difficulty raising the capital needed to provide affordable housing services. ***CDFIs may operate on a for-profit or nonprofit basis, provided the CDFI has a primary mission of promoting community development [emphasis added].*** These programs are also subject to other eligibility requirements. As of July 2012 there were 999 such organizations in the U.S., 62 percent of which are classified as Community Development (CD) Loan Funds, 22 percent as CD Credit Unions, while the rest are CD Banks, Thrifts, or CD Venture Capital Funds.”

Comment: This section explains the types of entities covered by the proposed § 1026.43(a)(3)(v) exemption and explicitly states that CDFIs can be for-profit or non-profit entities. The description cites “999” CDFIs and specifically mentions loan funds, credit unions, banks, thrifts, and venture capital funds. Thus, it appears that the rule was intended to be inclusive of all types of CDFIs.

4. Under Section 1-22(b)(2) of the Dodd-Frank Act

Current Rule States: “The proposed exemptions for certain ***nonprofit creditors [emphasis added]*** and certain homeownership stabilization programs include exemptions for various extensions of credit from the ability-to-repay requirements. These exemptions include: extensions of credit made pursuant to programs administered by HFA; extensions of credit made by certain types of ***nonprofit creditors*** including creditors designated by the Treasury Department as Community Development Financial Institutions.”

Comment: The reference to “nonprofit creditors” appears to narrow the universe of CDFIs intended to be covered by the exemption. In addition, it reflects a misunderstanding that all CDFIs are non-profit organizations.

5. Under Section 1-22(b)(2) of the Dodd-Frank Act

Current Rule States: “As explained in the 2013 ATR Final Rule, in general, consumers and others could be harmed by this action as it removes particular consumer protections and could allow some deleterious lending to occur. However, in all of the cases discussed above, the Bureau believes, subject to public comment, that the community-focused mission of the creditor organizations and the close

interaction between lenders and borrowers should mitigate any potential harm to borrowers and any costs from the rule.

“Data regarding the exact scope of lending through these channels are limited as are data regarding the performance of these loans. There are 51 State Housing Finance Agencies and **approximately 1,000 CDFIs, 62 percent of which are classified as Community Development (CD) Loan Funds, 22 percent are CD Credit Unions, while the rest are CD Banks, Thrifts, or CD Venture Capital Funds [emphasis added]**. There are 233 nonprofit agencies and nonprofit instrumentalities of government in the U.S. that are authorized to provide secondary financing, 267 creditors certified by HUD as Community Housing Development Organizations (CHDOs) in connection with HUD’s HOME Investment Partnership Program, and 231 organizations certified as Downpayment Assistance through Secondary Financing Providers. A comprehensive list of these institutions is not available; however the Bureau believes that there may be substantial overlap among these institutions. The Bureau seeks information on the quantity and types of credit extended by each of these types of organizations. The number or volume of loans made by these institutions is limited. There is some data suggesting that SHFA bonds funded approximately 67,000 loans in 2010 with a value of just over \$8 billion. Data regarding CDFIs indicate that these institutions funded just under \$4 billion in loans, however data on the type of housing supported is unavailable. Lending at CHDOs totaled \$64 million in 2011 with just under 500 loans.”

Comment: This section outlines the “potential benefits, costs, and impacts” of the proposed §1026.43(a)(3)(v) exemption. The description cites “approximately 1,000 CDFIs” and specifically mentions loan funds, credit unions, banks, thrifts, and venture capital funds. Thus, it appears that the rule intended to be inclusive of all types of CDFIs.

6. Potential Specific Impacts of the Final Rule

(Under Depository Institutions and Credit Unions with \$10 Billion or Less in Total Assets, As Described in Section 1026)

Current Rule States: “Depository institutions and credit unions with \$10 billion or less in total assets as described in Section 1026 would see differential impacts from the proposed rule. **The depository institutions and credit unions that are CDFIs, and are therefore covered under the proposed exemption from the ability-to-repay requirements and the institutions covered by new definition of qualified mortgages for small creditor portfolio loans contained in the proposal are all, by definition, in this group and are therefore uniquely impacted by the rule [emphasis added]**. The provisions for streamlined refinance apply to all creditors who can utilize those programs and therefore these will not have any specific impact.”

Comment: The provision above explicitly references “the depository institutions and credit unions that are CDFIs, and are therefore covered under the proposed exemption from the ability-to-repay requirements.” This statement is consistent with the CDFI definition referenced under 12 CFR 1805.104(h) and is inclusive of all CDFI types.

7. Regulatory Flexibility Act Analysis

Current Rule States: “The proposal provides that an extension of credit made by a creditor designated as a **Community Development Financial Institution, a Downpayment Assistance through Secondary Financing Provider, and a Community Housing Development Organization are exempt from the ability-to-repay requirements [emphasis added]**. This provision would remove the burden to small entities of

having to implement the ability-to-repay requirements. This provision would also remove the burden to small entities of having to develop and maintain policies and procedures to monitor compliance with the ability-to-repay requirements.”

Comment: This provision states that exemption to the rule is applicable to “Community Development Financial Institutions” generally and it appears that the rule intended to be inclusive of all types of CDFIs – versus a narrower subset of CDFIs.

CDBA members thank you for consideration of these recommendations and look forward to working with you to preserve credit availability in distressed communities. If you have questions on this matter, please contact Jeannine Jacokes, Chief Policy Advisor at 202-689-8935 ext 22 or jacokesj@pcgloanfund.org.

Sincerely,

A handwritten signature in blue ink, appearing to read 'David Reiling', with a large, stylized flourish at the end.

David Reiling
Chairman of the Board of Directors

A handwritten signature in blue ink, appearing to read 'Jeannine Jacokes', with a large, stylized flourish at the end.

Jeannine Jacokes
Chief Policy Advisor