September 7, 2012

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

Re: Proposed Rule Regarding High-Cost Mortgage and Homeownership Counseling Amendments [Docket No. CFPB-2012-0029]

Dear Ms. Jackson:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on the proposed rule to implement High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (TILA) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (RESPA), published by the Consumer Financial Protection Bureau (CFPB). Congress recently amended TILA by expanding the types of mortgage loans that are subject to the protections of the Home Ownership and Equity Protection Act of 1994

[1] The Independent Community Bankers of America®, the nation's voice for more than 7,000 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services.

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold $1.2 trillion in assets, $1 trillion in deposits and $700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

(HOEPA), by revising and expanding the triggers for coverage under HOEPA, and by imposing additional restrictions on HOEPA mortgage loans, including a pre-loan counseling requirement. Congress also amended TILA and RESPA by imposing certain other requirements related to homeownership counseling. The CFPB is proposing to amend Regulation Z (TILA) and Regulation X (RESPA) to implement these new statutory requirements.

ICBA has several concerns with this proposed rule and urges the CFPB to carefully consider our comments expressed in this letter. While this letter includes comments relating to the specific regulatory proposed changes and counseling requirements for high-cost mortgage loans, due to the recent comment period extension allowed by the CFPB, ICBA will be sending a second letter in the near future addressing the CFPB's proposed changes to the Annual Percentage Rate (APR) calculation and the proposed Average Prime Offer Rate (APOR) provisions that will affect the high-cost mortgage loan requirements.

**Background**

The Home Ownership and Equity Protection Act was enacted in 1994 as an amendment to TILA to address abusive practices in refinancing and home-equity mortgage loans with high interest rates or high fees. Loans that meet HOEPA's high-cost triggers are subject to special disclosure requirements and restrictions on loan terms, and borrowers in high-cost mortgages have enhanced remedies for violations of the law.

In response to the recent mortgage crisis, Congress expanded HOEPA to apply to more types of mortgage transactions, including to purchase money mortgage loans and home-equity lines of credit. Congress also amended HOEPA's existing high-cost triggers, added a prepayment penalty trigger, and expanded the protections associated with high-cost mortgages. The CFPB is now proposing to amend Regulation Z to implement these statutory amendments to HOEPA. The CFPB's proposal also would implement other homeownership counseling-related requirements that Congress adopted that are not amendments to HOEPA. The proposal would generally require lenders to distribute a list of homeownership counselors or counseling organizations to consumers within a few days after applying for any mortgage loan. The proposal also would implement a requirement that first-time borrowers receive homeownership counseling before taking out a negatively amortizing loan.

Under new statutory requirements, HOEPA protections would be triggered where:

- A loan's APR exceeds the average prime offer rate by 6.5 percentage points for most first-lien mortgages and 8.5 percentage points for subordinate lien mortgages;

- A loan's points and fees exceed 5 percent of the total transaction amount, or a higher threshold for loans below $20,000; or

- The creditor may charge a prepayment penalty more than 36 months after loan consummation or account opening, or penalties that exceed more than 2 percent of the amount prepaid.

The proposed rule also would implement new statutory restrictions and requirements concerning loan terms and origination practices for high-cost mortgages. For example:

- Balloon payments would largely be banned, and creditors would be prohibited from charging prepayment penalties and financing points and fees.

- Late fees would be restricted to four percent of the payment that is past due, fees for providing payoff statements would be restricted, and fees for loan modification or loan deferral would be banned.

- Creditors originating open-end credit plans would be required to assess consumers' ability to repay the loans. (Creditors originating high-cost, closed-end mortgage loans already are required to assess consumers' ability to repay.)

- Creditors and mortgage brokers would be prohibited from recommending or encouraging a consumer to default on a loan or debt to be refinanced by a high-cost mortgage.

- Before making a high-cost mortgage, creditors would be required to obtain confirmation from a federally certified or approved homeownership counselor that the consumer has received counseling on the advisability of the loan.

In addition to the proposed changes discussed above, the CFPB's proposal would implement two homeownership counseling-related provisions that are not amendments to HOEPA. The proposed rule would amend Regulation X to implement a requirement under RESPA that lenders provide a list of federally certified or approved homeownership counselors or organizations to consumers within three business days of applying for any mortgage loan. The CFPB proposed to create a web site portal to make it easy for lenders and consumers to obtain lists of homeownership counselors in their areas.

The proposed rule would also amend Regulation Z to implement a requirement under TILA that creditors obtain confirmation that a first-time borrower has received homeownership counseling from a federally certified or approved homeownership counselor or counseling organization before making a negative amortization loan to the borrower.

**Summary of ICBA Comments**

ICBA's key comments expressed in this letter can be summarized as follows:

- Community banks were not responsible for the mortgage crisis which has led to new regulatory requirements, and therefore the CFPB should provide exemptions for community bank portfolio loans from this and other pending mortgage regulations.

- The CFPB should provide at least 18-24 months after publication of the final rule for community banks to implement these final regulatory requirements.

- The proposed "points and fees" definition is too broad, and third party and affiliate fees and employee compensation, including hourly pay, should not be included in the calculation.

- The definition of "loan originator" should be consistent with the definition under the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) regulations.

- The proposed "points and fees" definition needs to be further clarified for both open-end and closed-end credit.

- The CFPB should permit the ability to correct unintentional violations and creditors should have at least 60 days to find any mistake and notify the consumer, and at least 30 additional days to correct the error.

- The HOEPA regulations should permit community banks to continue to provide balloon payment mortgage loans if the loans are held in portfolio until maturity.

- The CFPB should clarify zip code requirements for the homeownership counseling provisions, and make the website portal available to the public instead of requiring financial institutions to provide a list of homeownership counselors.

**Exempt Community Bank Portfolio Loans from Extensive Mortgage Requirements**

As CFPB officials know and have publicly stated, community banks were not responsible for the mortgage crisis which has led to these and other new and rigorous mortgage requirements. Because most community banks are locally owned and operated, they have strong ties to their local communities. Community bankers also have a close relationship with their customers and consequently, are very familiar with their customers' financial condition, history and ability to repay mortgage loans.

Because community banks have a vested interest in the economic well-being of their customers and communities, they do not engage in abusive lending practices, such as providing overly expensive loans to consumers who are qualified for lower interest rates or steering consumers to loan products that are not in their best financial interest. ICBA understands the intent of Congress to further regulate the mortgage industry to prevent these abuses from occurring in the future and further stabilize the housing market. Nevertheless, the reality is that more stringent and complicated mortgage requirements will further stymie the housing market and community banks' flexibility in providing mortgage loans to their customers.

When drafting final amendments to Regulation Z and Regulation X, ICBA urges the CFPB to remember that community banks have always engaged in responsible mortgage lending practices due to their vested interest in their communities and the consumers they serve. Operationally, many community bank mortgage loans are held in portfolio and are not sold on the secondary market; therefore, the underwriting for these loans has historically been more conservative since the banks have a vested interest in the consumer's ability to repay the loan. Thus, both the consumer and the bank have retained 100 percent of the risk in the loan.

For example, in an ICBA survey conducted in August 2012 of over 450 community bankers, 60 percent of the respondents stated that 75-100 percent of their total mortgage loan originations are held in portfolio and serviced for the life of the loan. Consequently, community banks take great time to educate and inform their customers about the consequences of their borrowing decisions because of the banks' vested interest in the performance of these loans and the more familiar relationship community bankers have with their customers.

Furthermore, for many community banks in small markets and rural areas, mortgage loan transactions are often not the cookie-cutter loan transactions found in the suburban and urban housing markets where there are rows and rows of similar houses. Many times, community bank mortgage loans are provided to consumers who have a unique situation, because of the various sizes of acreages, potential for a manufactured home deal or the atypical location of the home. Therefore, community banks often look to many factors in the lending and underwriting process, especially if the property or the consumer's financial situation is atypical, such as if the consumer is a seasonal employee who does not receive a steady stream of income throughout the year. Community banks are especially adept at making such loans because the bankers know their customers and community members, and have extensive knowledge of the home properties.

The differences between the lending practices of community banks and the larger national financial institutions should be considered in the final rulemaking. The "one size fits all" approach to recent mortgage laws and regulations does not account for the way community banks have conducted their mortgage business for years with little consumer default in an environment of otherwise rampant consumer foreclosure. We strongly urge the CFPB to distinguish between the practices of community banks and larger national financial institutions in all of its final rules regarding mortgage lending, and to provide tiered regulatory requirements and exemptions for portfolio loans when appropriate.

**Extend Timeframes for Implementation**

The CFPB's proposal seeks comment on when a final rule should be effective and on how much time industry needs to make these changes. The CFPB stated it expects to issue a final rule implementing the proposed provisions by January 21, 2013. While ICBA understands the statutory deadlines facing the CFPB in publishing final rules, we also believe Congress intended that all the various mortgage rules be effectively integrated to prevent disruption in the marketplace and consumer confusion. Adequate time will be needed to ensure all the various pending mortgage rules are assimilated in a way that will best guarantee compliance.

In addition, because community banks will need time to make systems changes and retrain their staff in order to address the changes implemented through the CFPB's final rule, and will also have to make numerous changes to address a number of other mortgage requirements currently under the CFPB's consideration, adequate implementation time will be needed even more than what has been provided in the past. In addition to this proposal, the CFPB alone is currently engaged in six other rulemakings relating to mortgage credit, which include implementation of TILA and RESPA disclosure requirements, loan servicing requirements, loan originator compensation provisions, rules on appraisal, ability-to-repay and qualified mortgage underwriting requirements, and requirements for escrow accounts for higher-priced mortgage loans. This list does not include mortgage rulemakings currently under consideration by other regulatory agencies, such as the pending interagency rulemaking on mortgage risk retention and what would be deemed a "qualified residential mortgage."

Community banks are smaller financial institutions that serve their communities and by nature do not have the extensive legal and compliance resources to absorb all of the overwhelming regulatory changes that have occurred and will occur in the next few years. Even with the regulatory amendments that have recently taken affect, many community banks have been forced to limit or completely eliminate aspects of their mortgage business due to their inability to absorb all of the regulatory changes. For example, in an ICBA survey conducted of over 450 community bankers in August 2012, 55 percent of the respondents stated they decreased their mortgage business or completely stopped making higher-priced mortgage loans due to the recent Regulation Z escrow requirements for higher-priced mortgage loans. This decrease in business has had the biggest impact on lower income borrowers, purchasers of mobile homes and borrowers in rural areas. Furthermore, this decrease in business is the result of only one rulemaking.

While we understand the concern of CFPB staff that allowing more implementation time could result in Congress accelerating the effective date for compliance as was done with the Credit Card Accountability, Responsibility, and Disclosure (CARD) Act of 2009, we believe that in this instance, Congress understands the regulatory burden that may result from the upcoming mortgage requirements, and would consequently support an extended implementation period, particularly for community banks or financial institutions under $1 billion in asset size. Therefore, ICBA strongly recommends the CFPB provide at least 18-24 months after publication of the HOEPA final rules for community banks to implement the various requirements. Furthermore, any origination rule changes should apply to loans based on the application date to prevent compliance confusion. If creditors are able to comply with these requirements earlier than 18-24 months, then they should be allowed to do so.

**Streamline All Mortgage Regulations**

As described above, the CFPB is currently considering, in a piecemeal fashion, an unprecedented amount of regulatory changes to the mortgage industry. As a result of the dramatic changes that will be made to current regulatory requirements, we strongly suggest the CFPB re-propose all of its current proposed mortgage rules under one rulemaking, so the various proposed provisions can be reviewed and considered together in one document. This strategy would better enable commenters to review how all of the proposed rules will affect each other, for example, how the CFPB's proposed finance charge amendments will affect the HOEPA provisions, TILA/RESPA disclosure requirements, changes to loan originator compensation rules and proposed rules regarding higher-priced mortgages currently under consideration.

A re-proposal of all the rules currently under consideration would also better ensure the CFPB receives thorough and thoughtful comments that will better assist them as they finalize all the mortgage rules within the next year. Furthermore, this approach would better ensure that all the mortgage rules are not inadvertently contradictory, warranting later corrections and interpretative explanations. If community banks have a good understanding of all the requirements they must comply with, they are better able to implement changes, train staff and guarantee their compliance in a cost effective manner that will benefit their consumers.

**The Proposed Points and Fees Definition Is Too Broad: Third Party and Affiliate Fees, Employee Compensation, Including Hourly Pay, Should Not Be Included**

Prior to recent statutory changes, HOEPA coverage was triggered when a loan's APR or its points and fees exceeded certain thresholds as prescribed by current TILA § 103(aa), which is implemented by current § 1026.32(a)(1). Congress adjusted the two existing thresholds and added a third threshold based on the inclusion of certain prepayment penalties. Under TILA § 103(bb)(1)(A), the revised thresholds regarding points and fees state a consumer credit transaction is a high-cost mortgage if the total points and fees payable in connection with the transaction, other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of either, exceed: (1) In the case of a transaction for $20,000 or more, 5 percent of the total transaction amount; or (2) in the case of a loan for less than $20,000, the lesser of 8 percent of the total transaction amount or $1,000 (adjusted for inflation); or the transaction provides for prepayment fees and penalties that (1) may be imposed more than 36 months after consummation or account opening or (2) exceed, in the aggregate, more than 2 percent of the amount prepaid.

Section 4(c)(7) Fees

The CFPB's proposed HOEPA rule would define points and fees very broadly, which would greatly affect the lending for community banks. For example, based on § 4(c)(7), the proposed rule would include in points and fees 4(c)(7) real estate-related fees unless they are paid to a non-affiliated third party and are reasonable. Congress set a bona fide standard, not a reasonableness standard. This should be the applicable standard because creditors are prohibited from setting third-party charges and therefore, should not be responsible for them.

When a creditor permits the borrower to shop for a required service and the borrower chooses a provider that was not on the Written List of Providers, the borrower, not the creditor, decides what services to obtain. The borrower negotiates and agrees to the fee for those services. The amounts of these fees should be excluded from points and fees because the creditor cannot control them. They should be deemed reasonable and bona fide and excluded from points and fees.

Therefore, fees included in 4(c)(7) that are paid to a third party should be excluded from points and fees if they are bona fide. If the consumer selects either the service provider or the service, the fee should be deemed bona fide.

Employee Compensation

The proposed rule would include employee compensation in points and fees. Such a requirement is superfluous, considering many other recent statutory and regulatory requirements have prevented inappropriate steering and have further regulated yield spread premiums and compensation based on loan terms. Furthermore, including this compensation in the points and fees would be difficult to calculate since the amount of exact compensation may not be know at the time of loan consummation. Therefore, ICBA strongly urges the CFPB not to include employee compensation in the points and fees calculation.

Furthermore, bonuses not known at the time of closing should also be excluded from the points and fees calculation. The proposed commentary explains that compensation, such as an annual bonus based on the number of loans closed, would be considered in the points and fees calculation. However, many community banks pay bonuses annually or bi-annually on the condition that the loan originator is still employed by the bank at the time the bonuses are paid out. Under the CFPB's proposed rule, it would be possible that this bonus amount would be included in the points and fees calculation even though the loan originator never actually received it. Therefore, this amount should not be included in the points and fees calculation since the amount is technically unknown at the time of closing.

Affiliate Fees

The CFPB also proposes to include within the points and fees calculation fees paid to the creditor's affiliates. Again, ICBA does not believe it is necessary to include these fees in the points and fees calculation, and sees no policy purpose or consumer benefit to including these fees. The CFPB should clarify what the consumer or policy purpose is for including these fees in the points and fees calculation. As of now, ICBA believes the final rule should not distinguish between affiliate and non-affiliate fees.

Hourly Pay

The proposed Commentary states that compensation includes items "such as a bonus, commission, yield spread premium, award of merchandise, services, trips, or similar prizes, or hourly pay for the actual number of hours worked on a particular transaction." This language indicates that compensation includes all compensation including hourly pay.

ICBA strongly urges the CFPB to exclude hourly pay from the points and fees calculation. This calculation would not be known until after loan consummation and would be difficult to disclose on the final loan documents. Furthermore, it may inadvertently create an incentive for loan originators to spend less time on the loan, making them susceptible to mistakes or less willing to work on more complicated loans that would require greater hours of time. The results of such a policy change are not consistent with the overall purpose of mortgage regulations which is to ensure that creditors carefully produce loan documents and effectively communicate the terms of the documents to consumers. Thus, this pay should not be included in the points and fees calculation.

**Keep Definition of "Loan Originator" Consistent with SAFE Act**

The proposed regulation would includes in points and fees compensation to loan originators, referring to the definition of originator in § 1026.36(a)(1). This proposed definition would include anyone who, for compensation, "takes an application, arranges, offers, negotiates, or otherwise obtains an extension of consumer credit for another person[.]" While this would include a broker and a loan officer who interact with the applicant directly during the loan process, it is not limited to them. It could include those individuals who participate in loan underwriting; appraising the property; preparing for or conducting a settlement; preparing loan disclosures; helping the applicant select a lender, such as property sellers; and real estate brokerage, if the creditor pays the real estate agent.

ICBA strongly disagrees with this definition because community banks will have a very difficult time calculating this various compensation. We instead strongly recommend the CFPB define loan originator the same way it is defined under the SAFE Act regulations.

This definition would include individuals who take an application and offer or negotiate loan terms, but would exclude individuals who perform only administrative or clerical work on loan originations.

**The Proposed Points and Fees Definition Needs To Be Clarified**

There are some areas where the proposed points and fees definition should be further clarified so that community banks can better ensure their compliance with the requirements. Community banks strive to be as compliant as possible when providing loans and take their compliance functions very seriously. Therefore, it is crucial that the CFPB also ensure that regulations are carefully written and explained so banks can effectively guarantee their compliance and better serve their customers. If mortgage regulations are ambiguous and difficult to comply with, the result will be that community banks will cease offering mortgage loans because they will not be able to absorb the compliance and litigation risk. The potential result will be that fewer consumers will have access to mortgage credit, which would contradict the CFPB's overall purpose to provide access to credit products for all consumers.

Therefore, ICBA urges the CFPB to explicitly state that, for closed-end mortgage loans, the definition of points and fees excludes interest, real estate agents' fees, hazard insurance premiums, property taxes, all servicing fees, and fees payable in a comparable cash transaction. For open-end mortgage loans, the CFPB should explicitly state that the definition of points and fees excludes hazard insurance premiums and employee compensation.

For both closed-end and open-end credit, the CFPB should explicitly state that any unrelated or optional fees are excluded from the points and fees calculation. In particular, fees that the creditor is unaware of, fees for homeownership counseling, and fees for services related to the loan sold after consummation should not be included in the points and fees calculation.

**Permit Ability To Correct Unintentional Violations**

In the statutory provisions, Congress allows a creditor or assignee of a high-cost mortgage in certain circumstances to correct a failure to comply, when acting in good faith, with HOEPA requirements.[2] At this time, the CFPB is not proposing to issue

[2] TILA § 129(v):
(v) CORRECTIONS AND UNINTENTIONAL VIOLATIONS.—A creditor or assignee in a high-cost mortgage who, when acting in good faith, fails to comply with any requirement under this section will not be deemed to have violated such requirement if the creditor or assignee establishes that either—
(1) within 30 days of the loan closing and prior to the institution of any action, the consumer is notified of or discovers the violation, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the consumer—
(A) make the loan satisfy the requirements of this chapter; or

regulatory guidance concerning this provision, but seeks comment on the extent to which creditors or assignees are likely to invoke this provision, and whether regulatory guidance would be useful.

ICBA supports an ability to cure errors, as this benefits consumers and allows banks to address any inadvertent mistakes without the expense and burden of litigation. Nevertheless, ICBA believes the CFPB should further clarify this provision and provide regulatory guidance. In particular, creditors should be able to have at least 60 days to find any mistake and notify the consumer of any unintentional violation. Creditors should also have at least 30 additional days to correct the error.

**Balloon Payment Mortgage Loans Held in Portfolio Should Be Allowed**

Congress recently amended the restrictions on balloon payments under TILA § 129(e). Specifically, amended TILA § 129(e) provides that no high-cost mortgage may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments, except when the payment schedule is adjusted to the seasonal or irregular income of the consumer. The CFPB is proposing two alternatives in proposed § 1026.32(d)(1)(i) to implement the balloon payment restriction under amended TILA § 129(e). Under Alternative 1, proposed § 1026.32(d)(1)(i) incorporates the statutory language and defines balloon payment as a scheduled payment that is more than twice as large as the average of regular periodic payments. Under Alternative 2, the CFPB mirrors Regulation Z's existing definition of "balloon payment" in § 1026.18(s)(5)(i). Accordingly, proposed § 1026.32(d)(1)(i) provides that a balloon payment is "a payment schedule that is more than two times a regular periodic payment."

The CFPB may exempt specific mortgage products or categories of mortgages from certain prohibitions under TILA § 129 if the CFPB finds that the exemption is in the interest of the borrowing public and will apply only to products that maintain and strengthen home ownership and equity protection. As such, ICBA strongly urges the CFPB to allow community banks to offer high-cost balloon mortgage loans that are closed-end or open-end credit, if the loans are held in portfolio by the bank for the life of the loan.

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(B) in the case of a high-cost mortgage, change the terms of the loan in a manner beneficial to the consumer so that the loan will no longer be a high-cost mortgage; or
(2) within 60 days of the creditor's discovery or receipt of notification of an unintentional violation or bona fide error and prior to the institution of any action, the consumer is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the consumer—
(A) make the loan satisfy the requirements of this chapter; or
(B) in the case of a high-cost mortgage, change the terms of the loan in a manner beneficial so that the loan will no longer be a high-cost mortgage.

INDEPENDENT COMMUNITY BANKERS of AMERICA The Nation's Voice for Community Banks.®
1615 L Street NW, Suite 900, Washington, DC 20036-5623 ■ 800-422-8439 ■ FAX: 202-659-1413 ■ Email: info@icba.org ■ Website: www.icba.org

Balloon mortgage loans provided by community banks are not the high-risk products that were provided by un-regulated mortgage lenders and large financial institutions that led to many foreclosures for consumers. Community bank balloon loans have been provided in small communities for decades, with no problems. In an August 2012 survey conducted by ICBA of over 450 community bankers, 70 percent of the community bankers answered that they provide balloon payment residential mortgage loans. Of those community banks, 86 percent answered that 75-100 percent of their balloon mortgage loans are held in portfolio and serviced by their bank for the life of the loan.

The reason community banks provide balloon payment mortgage loans is because they use this structure to match the maturity of their deposit base which provides funding for these loans. Community banks provide these loans as a service to their community, as it may be the borrower's only credit option. These loans are especially significant for consumers in rural communities where it is difficult to impossible to sell the loans into the secondary market due to the unique nature of rural properties and the associated challenges in getting comparable sales for appraisals that meet secondary market standards, such as distance to comparable properties or the number of adjustments to the value because rural properties do not all look alike. Therefore, the only way the bank can safely and soundly extend credit is to structure the transaction as a higher interest balloon loan, which is generally renewed at maturity.

Because these loans are crucial for consumers in rural and underserved areas, ICBA strongly urges the CFPB to allow them to be provided even if they meet the threshold for high-cost loans, as long as the loans are held in portfolio by the bank until maturity.

**Clarify Zip Code Requirements and Make Website Portal Public**

The CFPB is proposing an amendment that requires lenders to provide a list of homeownership counselors to potential borrowers of federally-related mortgage loans. Proposed § 1024.20(a) requires a lender to provide to an applicant for a federally-related mortgage loan a clear and conspicuous written list of five homeownership counselors or counseling organizations. The list provided by the lender pursuant to this requirement must include only homeownership counselors or counseling organizations from either the most current list of homeownership counselors or counseling organizations made available by the CFPB for use by lenders in complying with § 1024.20, or the most current list maintained by the Department of Housing and Urban Development (HUD) of homeownership counselors or counseling organizations certified by HUD, or otherwise approved by HUD.

Proposed § 1024.20(a) also provides that the required list include five homeownership counselors or counseling organizations located in the zip code of the loan applicant's current address, or, if there are not the requisite five counselors or counseling organizations in that zip code, then counselors or organizations within the zip code or zip codes closest to the loan applicant's current address. To facilitate compliance with the proposed list requirement, the CFPB is expecting to develop a website portal that would allow lenders to type in the loan applicant's zip code to generate the requisite list, which could then be printed for distribution to the loan applicant. The CFPB solicits comment on whether such a portal would be useful and whether there are other mechanisms through which the CFPB can help facilitate compliance and provide lists to lenders and consumers. The CFPB also solicits comment on whether ``five'' is the appropriate number of counselors or organizations to be included on the list.

First, ICBA urges the CFPB to define what is meant by zip codes "closest to the loan applicant's current address." It is unclear if this would include zip codes in other states, even if they were the closest to the applicant's particular address. Second, we support the development of a website portal to allow lenders to type in the loan applicant's zip code to generate the requisite list. We would also recommend the CFPB make this website portal public so that consumers may also access a list independently at any time. If this list is made public, the creditor should be able to comply with this requirement by providing a disclosure to the consumer of the website and a toll-free telephone number of where borrowers can access this list, instead of the requirement that the financial institution print the list out for each borrower. This would also better ensure that creditors do not steer borrowers to choose a particular counselor or counseling organization for the required counseling. In order to best preserve counselor independence and prevent conflicts of interest that could arise, creditors should be allowed to provide the website and telephone number disclosures to the borrowers in lieu of a list the creditor must develop and print out.

Furthermore, ICBA believes that the disclosure of 3 homeownership counselors is plenty for consumers. We urge the CFPB not to create more disclosure and information requirements, as information overload is becoming a tremendous problem during the mortgage application process, and consumers are less likely to use and understand their choices if they are overwhelmed with too much information. It is for this reason we strongly support a provision that will ensure bank compliance with these requirements if they provide the website and telephone number information where the borrowers can individually access this list.

In closing, ICBA strongly encourages the CFPB to seek input about operational and other technical issues from community banks before taking additional steps to finalize this and other proposed mortgage rulemakings. Additional feedback can be sought through industry outreach meetings with community bankers throughout the country. While ICBA acknowledges the guidance that can be obtained through the public comment process and often through the Small Business Regulatory Enforcement Fairness Act (SBREFA) process, we remain concerned there is not enough industry outreach conducted, particularly to community banks, when developing these proposed rules. Information obtained through industry outreach meetings would be useful in understanding the impact these proposed rules will have on financial institutions of all sizes and types throughout the country, as well as the consumers they serve. This impact does not always resonate through the comment letters or SBREFA process.

ICBA would welcome the opportunity to organize a meeting in Washington with community bankers and CFPB staff, so that bankers can share their specific experiences with providing mortgage loans and the potential operational difficulties and compliance burden related to this proposed rulemaking.

Thank you for considering our comments. ICBA plans to provide additional comments throughout the process of developing a final rule, as we assess further the effect these potential requirements will have on community banks and their customers. Please feel free to contact ICBA any time for additional feedback, or to discuss our comments and thoughts in more detail.

If you have questions or need additional information about our thoughts in this letter, please do not hesitate to contact me at 202-659-8111 or by email at Elizabeth.Eurgubian@icba.org.

Sincerely,

/s/

Elizabeth A. Eurgubian
Vice President & Regulatory Counsel