American Bankers Association
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October 9, 2012

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW.,
Washington, D.C. 20552.

Re: Docket No. CFPB-2012-0033; RIN 3170-AA14
2012 Truth in Lending Act (Reg. Z) Mortgage Servicing

Dear Ms. Jackson:

The American Bankers Association[1] welcomes this opportunity to comment on the Consumer Financial Protection Bureau's ("CFPB" or "Bureau") proposed rules that would amend the mortgage servicing provisions of Regulation Z, which implements the Truth in Lending Act ("TILA"), and Regulation X, which implements the Real Estate Settlement Procedures Act ("RESPA").[2] Some elements of the proposed rules implement the Dodd-Frank Wall Street Reform and Consumer Protection Act's ("Dodd-Frank Act") servicing requirements. For other aspects of the proposed rulemakings, the CFPB is asserting discretionary authority to propose additional servicing requirements that are not mandated by the Dodd-Frank Act.

ABA agrees that all borrowers deserve high-quality mortgage servicing. However, we are concerned about the scope of the proposal, whether it meaningfully advances consumer protection, and its potential implementation costs. We also have a number of comments regarding the specific requirements that the CFPB has proposed. The following bullets summarize our position on key aspects of the proposal.

- Scope. The CFPB's mortgage servicing regulation should closely track the Dodd-Frank Act's mortgage servicing requirements and should not be a vehicle by which to codify 1) the National Mortgage Settlement between state attorneys general and certain servicers that was announced in February 2012 or 2) servicing-related consent agreements between certain servicers and their primary federal regulators.

- Servicer Diversity. The regulations should cultivate a diverse servicing landscape. The nation's mortgage servicing industry currently consists of companies with a wide range of asset sizes and business models. Some servicers originate mortgage loans and hold them in their loan portfolio; some servicers sell their loans to large aggregators but retain the

[1] ABA represents banks of all sizes and charters and is the voice for the nation's $13 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than $165 million in assets.
[2] 77 FR 57318-406 (September 17, 2012)

servicing; and other servicers have entire business lines devoted to servicing mortgages that originators sold on a servicing released basis. ABA strongly urges the CFPB to craft a mortgage servicing regulation that preserves this diversity within the servicing industry and that retains flexibility for existing high-quality servicing practices that have served borrowers and servicers well.

- Cumulative Impact. We request that CFPB analyze the cumulative impacts of its rulemakings in terms of actual costs as well as the potential disincentives for some banks to originate and service mortgage loans going forward. Due to the potential costs and sweeping nature of the CFPB's proposals, many banks are re-evaluating their business models, assessing costs and risks that may result from the new regulations, and are considering how they may need to change their business plan, including whether they will continue to offer certain products and services and whether they will continue to service residential mortgage loans.

- Requirements Not Mandated by the Dodd-Frank Act. ABA requests that the CFPB not adopt servicing rules that significantly diverge from the express requirements of the Dodd-Frank Act. We also request that CFPB recognize that the largest servicers are subject to settlement agreements with state attorneys general and consent agreements with the federal banking regulators. The final servicing rules should not require these servicers to comply with requirements that exceed or otherwise conflict with the settlement and consent agreements.

- Small Servicer Exemption. The CFPB should revise the definition of "Small Servicer" to include servicers who service 10,000 loans or less and that service loans for their own portfolios or service loans for which they have retained the servicing rights but have sold the loans into the secondary market. We also recommend that CFPB exclude Small Servicers from Regulation X's customer service-related provisions that are not required by the Dodd-Frank Act. This approach would help to preserve the business models of community bank portfolio lenders. These institutions, as well as those who sell mortgage loans into the secondary market as "servicing retained," are truly relationship lenders and have very strong, built-in incentives to provide high-quality mortgage servicing.

- Section 1022 Analysis and Regulatory Flexibility Act Analysis. We do not believe that the CFPB's Section 1022 analysis or the Regulatory Flexibility Act analysis adequately identify the types of costs or the amount of those costs that banks will incur as part of this rulemaking. Furthermore, we believe that the full cost of compliance with the proposed servicing rules will significantly exceed the CFPB's estimates.

- Cost of Compliance. Most banks expect to rely on the assistance of third-party vendors to complete extensive computer programming to place required information in specific data fields for the various new disclosure and periodic statement requirements. However, it is important that the CFPB understand the amount of bank staff expertise and time that will be required to select a vendor, customize the vendor's product, implement the vendor's changes, test and audit the changes, and adequately oversee the vendor. A bank cannot hire a vendor and simply plug that vendor's product into the bank's computer systems. Rather, these changes will also require extensive work of specialized employees within the bank.

- Compliance Date. It is important that servicers have adequate time to comply with the CFPB's servicing regulations. We request that servicers be given 18-24 months to comply. For the following reasons to be enumerated, a shorter timeframe would be unworkable.

- Procedural Concerns. The CFPB's mortgage-related proposals and supporting documents related to those proposals are nearing a cumulative 5,000 standard pages and have typically been limited to a 60-day comment period, with multiple comment periods that overlap. These regulations have been issued in close time proximity to each other, and community banks with a few dozen employees simply have not had adequate time to thoroughly review all of the proposals, communicate with vendors regarding the cost of implementation, analyze the possible internal costs, and continue to serve their customers. This creates a significant problem. While members of the industry have provided high-level feedback, we do not believe that the CFPB has allowed sufficient time for a thorough analysis of the proposals.

- Preemption. The CFPB has indicated that it is not inclined to preempt state laws on mortgage servicing. As the CFPB is likely aware, state legislatures, regulators, and attorneys general have acted or are preparing to act in the mortgage servicing area. Preemption would provide some degree of legal and regulatory certainty to banks of all sizes who are evaluating the desirability of their mortgage servicing operations going forward. Therefore, we request that the CFPB reconsider its position on preemption.

Our comments are organized as follows:

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I. CFPB's Impact on the Future Mortgage Market

The CFPB is shaping the U.S. mortgage market of the future. This is an important undertaking that carries significant responsibility. The CFPB's rulemakings may affect the availability and cost of mortgage-related products and services for years to come. For example, the scope of the CFPB's mortgage servicing regulations may make it less desirable for banks to retain mortgage servicing rights. Similarly, the Bureau's rulemaking on Qualified Mortgages will influence the menu of loan products that financial institutions will offer and may limit the individuals who will qualify for mortgage credit. The proposed rules for high-cost mortgages could affect the availability of low-dollar mortgage loans that are the lifeblood of mortgage credit in rural communities. Other examples abound. To date, the CFPB has proposed six mortgage-related rulemakings and has indicated that it plans to issue additional proposals prior to year-end.

Although not within the CFPB's jurisdiction, we also note that the regulatory framework for mortgage activities could be further complicated by the Basel III capital proposal. Basel III would change the capital treatment of various mortgage-related assets, including mortgage servicing. Specifically, Basel III would make it more difficult and expensive for bank servicers to comply with the required capital ratios by 1) limiting the amount of servicing assets that could be included in a bank's regulatory capital and 2) increasing the risk weight of servicing assets to 250%. Servicing is a specialty of many banks, including many community banks, and Basel III's proposed treatment of servicing rights could severely impact smaller banks, perhaps even lowering their capital levels below well-capitalized status.

The Basel III proposal, combined with the CFPB's servicing rulemaking may make it very difficult, if not impossible, for many banks to hold and service residential mortgage loans profitably. As a result, some banks may choose to exit or significantly curtail their mortgage servicing business, which would damage long-standing customer relationships and reduce fee income. We do not believe that further consolidation in the servicing industry is a desirable outcome for consumers.

Due to the extent of the mortgage-related regulatory changes that the CFPB is considering, it is important that the CFPB fully understand the potential cumulative impact of these proposed requirements. Banks will not be able to manage the CFPB's extensive regulatory changes by simply *adjusting* their compliance programs. Due to the potential costs and sweeping nature of the CFPB's proposals, many banks are re-evaluating their business models, assessing costs and risks that may result from the new regulations, and considering how they may need to change their business plans, including whether they will continue to offer certain products and services and whether they will continue to service residential mortgage loans.

ABA recognizes the need for regulatory reform of certain mortgage origination and servicing practices. We also believe that such reforms should be sufficiently balanced to avoid the risk of credit diminution, reduced consumer choice in available financial service providers, and increased concentration in mortgage servicing. To avoid these unwelcome results, it is important that CFPB analyze and understand the cumulative impacts of its rulemakings in terms of actual costs as well as the potential disincentives for some banks to originate and service mortgage loans going forward. Consumers will be hurt, not helped, if rulemakings result in a reduction of mortgage credit and consolidation in the servicing industry.

II. Requirements Not Mandated by the Dodd-Frank Act

A large percentage of the CFPB's proposed servicing regulations would impose requirements that are not mandated by the Dodd-Frank Act. In many instances, these additional requirements include provisions that parallel the National Mortgage Settlement and the consent agreements between certain banks and their primary federal regulators. The servicing practices that were the subject of these agreements have been or are in the process of being addressed. Most servicers were not the subject of these agreements and were not parties to the negotiations that culminated in these agreements. The final servicing rules should not require these servicers to comply with requirements that exceed or otherwise conflict with the settlement agreements. Moreover, the CFPB has not demonstrated the need to apply the concepts contained in the agreements to over 12,000 additional mortgage servicers satisfactorily serving their customers. For these reasons, ABA requests that the CFPB not adopt servicing rules that significantly diverge from the express requirements of the Dodd-Frank Act.

III. Considerations Applicable to Small Servicers

The vast majority of banks in the United States are community banks – small businesses in their own right. In fact, more than 3,000 of our country's banks (41 percent) have fewer than 30 employees. Many community banks operate in small towns, where there is only one traffic light, one grocery store, a hardware store, and the trusted bank. Their deliberations regarding how they may need to adjust or even curtail their mortgage lending and servicing operations in light of the CFPB's regulations are very real. In these rural and small-town settings, the customers they leave behind may not otherwise be served by other financial services providers. To help mitigate the cumulative regulatory impact of its proposals, and the servicing rulemakings in particular, ABA requests that the CFPB 1) revise the proposed definition of "Small Servicer" to enable more community banks to benefit from the regulatory burden relief that the exemption is intended to provide and 2) expand the provisions to which the Small Servicer exemption would apply.[3]

A. CFPB Should Revise the Definition of "Small Servicer" and Should Broaden the Scope of the Small Servicer Exemption

1. *Increase the Loan Cap to 10,000*

Under the CFPB's proposal, a servicer would be exempt from the requirement to provide a borrower with a periodic statement for each billing cycle if the servicer 1) services 1,000 loans or

[3] Section 1022 of the Dodd-Frank Act authorizes the CFPB to exempt any class of "covered persons" from any provision under Title X of the Act and from any of the CFPB's regulations.

less and 2) only services mortgage loans for which the servicer or an affiliate is an assignee, or for which the servicer or an affiliate is the entity to whom the mortgage loan was initially payable. We appreciate that the CFPB is considering exempting Small Servicers from the requirement to provide borrowers with a periodic mortgage statement for each billing cycle, but believe that proposed 1,000 loan limit would prevent many community banks from benefitting from the regulatory burden relief that the Small Servicer test is intended to provide.

Portfolio Lenders/Servicing Retained. Community banks have a proven track record of providing high-quality servicing. Many community bank servicers, particularly portfolio lenders, value the ability to maintain ongoing, multifaceted customer relationships and therefore have a vested interest in ensuring that mortgage loans that they originate receive quality servicing. These institutions typically hold the mortgage loans that they originate in their own loan portfolio or they sell the loans into the secondary market but retain the servicing with the hope of providing additional financial products and services to their mortgage customers.[4] Portfolio lenders directly incur losses associated with non-performing loans and therefore have every incentive to originate quality loans, provide borrowers with quality servicing, and communicate with their borrowers who are experiencing difficult economic circumstances and need to work out a repayment plan.

The context here is important, and we believe, largely absent from the deliberations of this rulemaking. The advantages of "relationship banking" are widely recognized. According to the GAO, "FDIC staff noted that relationship lending gives community banks the ability to lend to borrowers without long credit histories, because it allows them to use nonstandard information to make profitable loans to customers who are seen as high risk by large banks."[5] The salutary impact of such direct customer dealing extends to mortgage servicing activities.

Requiring these high-quality servicers to undertake complex and expensive technological projects and to revise their existing business practices to implement government-mandated processes would impact the profitability and efficiency of servicers who *already* regularly invest the staff time and resources to have effective servicing relationships with their customers.

We also note that since the mortgage crisis, retaining servicing has been a marketing tool for some community banks. Their customers want the ability to come to the branch to make a payment or to quickly resolve an issue or have a question answered. These banks have stated that the proposed servicing rules may force them to sell the servicing on mortgage loans that they originate, which would not benefit their customers. Similarly, some of our members that would meet the Small Servicer test have indicated that they would need to begin selling servicing if they crossed the 1,000 loan limit.

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[4] As we indicated in our letter dated June 8, 2008, respondents to ABA's 19th Annual Real Estate Survey held in their loan portfolios 41% of the loans that they originated in 2011. Of the participants that sold mortgage loans into the secondary market, 33% sold servicing retained, 42% sold servicing released, and 25% sold both servicing retained and servicing released. Approximately 86% of participating institutions had assets of less than $1 billion.
[5] See, *inter alia*, GAO Report: *Community Banks and Credit Unions, Impact of the Dodd-Frank Act Depends Largely on Future Rule Makings* (GAO-12-881), September 2012.

Loan Cap. We believe that the proposed 1,000 loan cap would undermine the business model of portfolio lenders. The CFPB offers very little data to support its 1,000 loan cap and did not provide any analysis regarding the impact that such a limited cap would have on community bank portfolio lenders. Within the construct of the CFPB's proposal, we believe a loan cap of 10,000 loans would be more appropriate as it would preserve the diversity in the market, specifically the efficient and responsive servicing model of smaller servicers, which clearly benefits consumers.

ABA surveyed its members in order to respond to the CFPB's request for comment regarding the proposed cap. We surveyed our members and received results from banks ranging from $100 million to more than $15 billion in assets. The survey also inquired about the number of first lien loans that institutions service for their own portfolio, the number of loans that they service that they have sold servicing retained, and the number of closed-end second lien loans that the banks service. Approximately 79% of respondents serviced less than 10,000 mortgage loans, whereas 21% serviced more than 10,000 loans. We believe that this data point is generally consistent with servicing concentrations in the mortgage market but is significant in that it incorporates data for first-lien and second lien loans that banks hold in their portfolios.

2. *Small Servicers Should Be Exempt From Certain Parts of the Servicing Rule Not Mandated by Dodd-Frank*

The CFPB is asserting discretionary authority to propose additional servicing requirements that are not mandated by the Dodd-Frank Act. We do not believe that the CFPB has demonstrated the need to apply these additional regulatory requirements to the entire servicing industry. Given that there is little to no evidence indicating breakdowns in the servicing practices of the vast majority of bank servicers, we do not believe that it is appropriate for the CFPB to impose these non-statutory requirements on all servicers, without demonstrating the additional consumer protections to be gained clearly outweigh the costs that Small Servicers will incur. In many cases, these additional requirements parallel or closely resemble components of the National Mortgage Settlement and/or the consent agreements between a limited number of servicers and the federal banking regulators. The servicing practices that were the subject of these agreements have been or are in the process of being addressed. The vast majority did not experience the procedural breakdowns that led to these agreements and were not parties to the negotiations that resulted in these agreements.

Accordingly, ABA recommends that CFPB exempt Small Servicers from the following elements of the proposed rule:

- Error resolution and information request procedures
- Information management policies and procedures
- Early intervention requirements
- Continuity of contact
- Loss mitigation procedures

B. Additional Factors Demonstrate the Need to Expand the Small Servicer Exemption

1. The Intended Benefits of the Rule and the Costs of Compliance are Misaligned

The mortgage servicing industry is highly concentrated. It is estimated that 50 servicers service 80% of outstanding mortgage loans. This means that well over 12,000 servicers would be required to spend significant resources to amend policies and procedures and engage in extensive programming changes in order to service just 20% of the market. We do not believe that effective public policy would require these smaller servicers to incur the regulatory costs that would be associated with this rulemaking to service a disproportionately small percentage of the market. More importantly, given the servicing performance of community banks and the built-in incentives that drive their high level of customer service, we do not believe that there is a demonstrated need to apply to small servicers those elements of the proposal that are not required by the Dodd-Frank Act.

Furthermore, as explained below, we believe that the costs of various technological changes associated with the proposals would be significant and that the CFPB has significantly underestimated the costs of compliance, and in many cases, did not address the different types of costs that bank servicers would incur to comply with the proposed rules.

2. The CFPB's Section 1022 Analysis and Regulatory Flexibility Act Analysis Do Not Assess the Full Cost of Compliance With The Proposed Rule

Section 1022(b)(2)(A) of the Dodd-Frank Act requires that the CFPB consider the impact of proposed rules on financial institutions with $10 billion or less as well as the impact on consumers in rural areas. In addition, the Regulatory Flexibility Act requires the CFPB to consider the potential economic impact of its regulations on small entities.[6] ABA does not believe the Section 1022 analysis or the Regulatory Flexibility Act analysis adequately identifies the types of costs or the amount of those costs that banks will incur as part of the servicing rulemakings.

For example, the CFPB provided the following cost estimates in its Section 1022 analysis:

- Initial ARM Reset Notice. The CFPB estimates that it anticipates that the one-time cost of providing this proposed disclosure would be just over $3 million for 12,800 servicers. However, the CFPB does not explain how it arrived at this figure. In addition, the CFPB asserts that CFPB states that vendors will spread the one-time software and IT costs of the notice over many small servicers and the annual compliance costs will be small. CFPB estimates that five annual payments of $58 by each small servicer will fully amortize the one-time cost of the proposed interest rate adjustment notice.[7]

[6] 5 USC 601 et. seq.
[7] CFPB did not define the term "small servicer" for purposes of this analysis.

- Subsequent ARM Reset Notice. The CFPB estimates one-time costs of just under $2 million for all servicers. According to CFPB, amortizing this cost over five years and combining it with annual costs of $129,000 gives a total annual cost of $41 per servicer, or 80 cents per disclosure. For small servicers, the one-time cost is projected to be $1.65 million, which would also equal a total additional annual cost of $41 per servicer.

- Periodic Statements. The CFPB did not estimate the cost of providing periodic statements. The Bureau believes that servicers will use vendors for one-time software and IT upgrades and for producing and distributing the disclosure. The CFPB asserts that smaller servicers may be charged for all these costs, but they service relatively few loans so in aggregate these costs are small.

a. Costs Associated with Third-Party Vendors and Technology Projects

ABA understands that the majority of bank servicers expect to rely on the assistance of third-party vendors in order to comply with the CFPB's mortgage servicing rules. Most of this vendor work will likely involve extensive computer programming to place required information in specific data fields for the various new disclosure and periodic statement requirements. While vendors will provide expertise and manpower to help banks comply, it is important that the CFPB understand the amount of bank staff expertise and time that will be required to select a vendor, customize the vendor's product, implement the vendor's changes, test and audit the changes, and adequately oversee the vendor. A bank cannot hire a vendor and simply plug that vendor's product into the bank's computer systems. Rather, these changes will also require extensive work of specialized employees within the bank. Below is an overview of the types of work that must be completed within the bank as part of engaging vendors for various technology-related projects. We believe that the full cost of compliance will significantly exceed the CFPB's estimates and that the costs described below further support the need to limit the scope of the regulations and to revise the Small Servicer test.

Project Identification and Planning: Although the formality of the planning stage may vary with the complexity of the change to be implemented and the size of the institution, all banks initiate the process by establishing broad project goals and identifying key stakeholders (i.e., bank employees who will be impacted by the proposed change). In most cases this involves an internal study of existing software systems and operations to identify baseline functionality requirements and to identify all other software programs that interface with the software. In addition, project planners consider the impact the change will have on bank customers; throughout the change process efforts are made to minimize customer inconvenience and confusion. Next, a project team is assembled, specific assignments are made, and a detailed project plan may be drafted. Such a plan generally includes an implementation time line and specific criteria for assessing progress and determining whether to proceed with the project as planned, to revise it, or even to abandon it.

Vendor Selection and Due diligence: Project managers meet with existing software providers and others that offer an alternate software solutions. This involves the comparison of the existing program's capabilities with that of others. Institutions that elect to contract with a new vendor will engage in significant due diligence prior to vendor selection, a process that generally takes several months. One community bank that is currently transitioning from one loan processing system to another reports that it took five months to research three potential vendors. The process involved watching three or four program demonstrations by *each* vendor; requesting documentation from the vendor about its financial condition, its knowledge of applicable laws and regulations, and the scope and effectiveness of its operations and controls; and finally, considering feedback from other financial institutions that use the vendors' software. After vendor selection, an institution must consider FFIEC requirements for contract structuring and review.[8] Although the degree of both will vary with the nature and significance of the third-party relationship, the process requires, at minimum, contract review by legal counsel, typically adding weeks to the vendor selection process. Finally, the entire due diligence process must be documented.

Customized Programming: No software program provides a turnkey solution. Rather, each program must be adjusted to reflect a bank's specific products and services and to interface with the bank's core processing system, and not infrequently, with other software programs. In addition, although software vendors and core providers often collaborate to develop off-the-shelf interfaces that enable most software programs to work with core processing systems, these "canned" programs must be customized to enable communication between core systems and software and to ensure that data populates new fields and forms accurately and clearly.

- For example, a community bank ($312 million in assets) that is currently in the midst of changing its vendor-provided loan processing software reported that to prepare for implementation programming the chief lending officer and two other loan processors had to read and complete between 370 and 400 pages of worksheets to ensure that (1) existing loan products are accurately reflected on new loan applications, contracts, and disclosure forms; (2) appropriate state and federal law and regulatory choices are made; (3) data from the core system is transmitted and mapped correctly on to the new loan forms; and (4) customer and loan information is transmitted between the loan processing system and the servicing system. To do this work, the three employees independently completed a set of worksheets, compared their work, and from this created a master set that was further reviewed by the bank's audit and compliance staff before submitting the master set to the software provider for programming. On multiple occasions throughout the process, bank employees had to call the software vendor to request clarification as to how to complete the worksheets. The employees working on the project report that the process took six weeks to complete with each employee devoting at least 20 hours of work per week to the task. Audit and compliance review of the master set consumed another five hours.

Adjustments Prior to Launch: The next step in the implementation process is for the software vendor to make an on-sight visit to set up the interface between the software and the core and to train bank employees to use the program. This "training," however, is not simply a

[8] *See, e.g.* Guidance for Managing Third-Party Risk, FIL-44-2008 (June 6, 2008), *available at* http://www.fdic.gov/news/news/financial/2008/fil08044.html.

demonstration of how to use the system. It is significantly more involved and, in fact, requires a noteworthy amount of time "training the trainer" about the bank's products and processes, editing and configuring of the information reflected on loan documentation, and resolving issues relating to state law and other regulatory issues. Indeed, what would typically be considered training of employees occurs much later in the process. The timing of this initial training/review can also be difficult to schedule. Not only does the bank have to complete the preliminary background work required for the vendor to customize the product to the bank's needs, it must fit into the vendor's openings and availability.

- For the community bank changing loan software programs, this initial training/review took four full days and involved 10 loan administrators and processors – more than 320 employee hours were invested in the process. In addition, the bank paid the vendor a per diem of $800/day, plus reimbursement for travel and lodging.

After all adjustments have been made, a new software system is ready for "live" testing. This testing phase, however, requires twice the work as banks simultaneously operate and input loan data into two software systems, the old and the new, to be able to compare products and processes to verify that the new software is functioning properly and that data imports and exports to core systems work. Live testing typically lasts several weeks and usually uncovers additional issues that must be addressed. Only after all problems have been resolved will the "old" system be turned off.

- For the community bank, the project team (the chief lending officer and two administrative employees) each spent at least 20 hours per week for six weeks on the testing and trouble-shooting. Moreover, while they were in the midst of this testing, they received two updates from the vendor – one that was 170 pages and another that was 70 pages long. Both included state law regulatory alerts that had to be reviewed to determine whether they would affect the bank's operations.

While the live testing is occurring, the bank must create "user guides" – manuals and work-flow procedures – to instruct staff to use the new software and any procedural changes implemented to accommodate new programs and functionality. These user guides are unique to each bank's loan origination and backroom operations; therefore, they must be individually drafted from a blank sheet of paper.

Finally, retail employees that will originate loans must be trained to complete the new applications and disclosures.

- For the community bank described above, they plan to conduct this training in-house, working with three employees at a time, until all 20 employees with loan origination responsibilities are comfortable using the new system. They estimate that this in-house training will take 160 hours (eight hours per employee). Obviously, scheduling and providing this training takes time away from the day-to-day, and presumably income-generating, responsibilities of the trainer (the head of the loan department) and the lenders in attendance.

Hardware, Software and Other Costs: Software changes frequently mandate server upgrades or replacements to accommodate new programs. In addition, if other existing hardware – printers and desk or laptop computers – are not compatible with the new software, these need to be reprogrammed or replaced as necessary. This work must be conducted by IT employees, typically after branch hours so as not to disrupt bank operations. In addition, determining what is causing the incompatibility and researching the best way to work around it requires considerable IT time.

- In the case of one community bank, tests of the software system in each of the 10 branches revealed that seven printers were incompatible with the software and would have to be replaced or modified. In addition, all 20 loan officer desktop computers needed to be upgraded to accommodate the new software.

Finally, new software can increase costs if there are formatting changes to forms. For example, existing envelope stock institutions currently use to send various notices may need to be discarded and new envelope stock may have to be purchased if the location of the address block on the statement does not fit within the existing address window. Although small, these costs must be factored into any calculation of total implementation costs.

b. <u>Vendor Fees</u>

Community banks report difficulty in being able to estimate vendor fees at this stage with any degree of accuracy. Our members report that their existing vendors have not communicated pricing changes for 2013 and 2014. We believe that this is because 1) the servicing requirements have not been finalized; 2) the CFPB is engaging in a high volume of other mortgage-related rulemakings, which may impact pricing; and 3) the CFPB's proposals have been lengthy and involve a large number of requirements that are not expressly required by the Dodd-Frank Act. At a minimum, community banks are anticipating one-time assessments, a significant increase in their contract rates at renewal, or a combination of both.

IV. Compliance Date

It is important that servicers have adequate time to comply with the CFPB's servicing regulations. We request that servicers be given 18-24 months to comply. For the following reasons, a shorter timeframe would be unworkable.

First, by our count there are at least six major mortgage-related rulemakings underway that are in various stages of development. We anticipate that banks will be required to comply with many of these rulemakings on or about the same time and that the staffing and resources necessary to help a bank come into compliance will be significant. As described in Section III. above, even when a bank contracts with a third-party vendor, the implementation of just one large-scale technological or regulatory change occurs in multiple stages, requires significant internal work by bank employees, and can take over one year to complete.

Second, it is important that the effective date take into account the demands that will be placed on third-party vendors. Because the CFPB is re-creating much of the regulatory framework for mortgage lending activities, we are concerned that some vendors may be short on capacity and staff to help banks develop and implement the myriad of programming and other technological changes that will be required.

Third, in addition to the programming and software changes described throughout this letter, banks of all sizes will need to create new policies and procedures or revise existing ones to comply with the CFPB's requirements. This will require the involvement of multiple personnel within multiple departments of each bank who have job responsibilities beyond complying with the Dodd-Frank Act and associated regulations. At a minimum, these policies and procedures would need to be created and/or reviewed by senior loan officers, loan processing and servicing personnel, IT staff, internal auditors, compliance teams, and possibly inside or outside bank counsel. In many institutions, the policies and procedures will be reviewed by senior management and approved by the board of directors.

V. Procedural Concerns

The CFPB's mortgage-related proposals and supporting documents related to those proposals are nearing a cumulative 5,000 standard pages and have typically been limited to a 60-day comment period, with multiple comment periods that overlap. These regulations have been issued in close time proximity to each other, and community banks with a few dozen employees simply have not had adequate time to thoroughly review all of the proposals, communicate with vendors regarding the cost of implementation, analyze the possible internal costs, and continue to serve their customers. This creates a significant problem. We are concerned that the CFPB will issue final regulations without sufficient public notice, review, and comment. While members of the industry have provided high-level feedback, we do not believe that the CFPB has allowed time for a thorough analysis of the proposals.

The Dodd-Frank Act requires CFPB to convene a Small Business Regulatory Enforcement Fairness Act ("SBREFA") Panel whenever a rule under consideration may have a "significant economic impact on a substantial number of small entities." The Panel meets with selected Small Entity Representatives ("SERs"), to solicit feedback on the potential economic impacts of complying with the rules being considered and to explore less burdensome regulatory alternatives. The SERs for the mortgage servicing panel were given just two weeks to analyze the CFPB's Outline of Proposals Under Consideration (dated April 9, 2012) and to prepare for the convening meeting of the SBREFA panel. The SERs were given one additional week to provide written comments. This abbreviated time period did not provide the SERs adequate time to analyze the CFPB's Outline of Proposals Under Consideration (dated April 9, 2010), prepare for the panel, and provide the data that CFPB requested. This is particularly problematic considering that the CFPB's charge to consider information obtained in the SBREFA panel when crafting its rules.

VI. Preemption

The CFPB has indicated that it is not inclined to preempt state laws on mortgage servicing. As the CFPB is likely aware, state legislatures, regulators, and attorneys general have acted or are preparing to act in the mortgage servicing area. Preemption would provide some degree of legal and regulatory certainty to banks of all sizes that are evaluating the desirability of their mortgage servicing operations going forward. Therefore, we request that the CFPB reconsider its position on preemption.

VII. Regulation Z: Section-By Section Comments and Requests for Clarification

A. Initial ARM Rate Reset Notice

The proposed rule would require servicers to notify consumers that their adjustable rate mortgage ("ARM") will adjust 210 – 240 days before the first payment at the adjusted level is due. The Dodd-Frank Act applies this requirement to hybrid ARMs. However, the CFPB is proposing to exercise its discretionary authority to apply the Initial Rate Reset Notice requirement to all closed-end ARMs. Similarly, the Dodd-Frank Act sets forth content requirements for the Initial Rate Reset Notice; however, the CFPB is proposing additional content requirements pursuant to its discretionary authority.

1. <u>Generally</u>

It is important that consumers understand the terms of their mortgage loans, and ABA supports efforts to provide clear and meaningful information to borrowers prior to origination to help ensure that they understand the terms of their mortgage loans prior to closing. ABA also appreciates the intent behind the Dodd-Frank Act's requirement that servicers notify borrowers prior to the first time that the interest rate of a hybrid adjustable rate mortgage resets. However, we believe that the statute's specific requirements regarding the content of this notice are misguided and problematic.

The Dodd-Frank Act requires servicers to provide a good faith estimate of the borrower's monthly payment that will be due after the loan's interest rate adjusts. The statute requires that servicers provide this notice between six and seven months before the loan's reset date. The CFPB is proposing that lenders provide such notice 210-240 days before the payment at the adjusted level is due. An estimate will be necessary because the value of the reference index upon which the new payment amount will be based will not be available at the time of disclosure. The reference index may increase or decrease between the date that the servicer provides the disclosure and the date that the borrower's interest rate actually resets. As a result, the borrower's actual interest rate may change depending on any movements in the reference index. We are concerned that providing speculative and potentially misleading information to borrowers regarding their new payment amount will result in borrower confusion and dissatisfaction, and depending on the interest rate environment, lost borrower opportunities to refinance or unnecessary refinancings.

ABA understands that the initial rate reset notice is required by the Dodd-Frank Act; however, we suggest that the CFPB use its discretionary authority to require that the Initial ARM Rate Reset Notice simply remind customers that their rate is slated to reset and disclose the maximum interest rate under the note, rather than an estimate. The disclosure could also be used as an opportunity to encourage borrowers to contact their servicer if they have any questions or are concerned about the affordability of the new payment.

2. Scope

The Dodd-Frank Act's Initial ARM Rate Reset Notice requirements apply to hybrid ARMs. However, the CFPB is proposing to extend this notice to non-hybrid ARMs. Because of the significant likelihood that a borrower's actual payment amount would differ from the estimate contained in the disclosure, ABA believes that it would be bad public policy to extend this requirement to non-hybrid ARMs. We therefore strongly urge the CFPB not to apply the Initial ARM Rate Reset Notice to these products.

CFPB has repeatedly stated that its servicing rules are intended to help prevent borrower payment shock and to provide borrowers with clear and accurate information. Applying the Initial ARM Rate Reset Notice requirements to non-hybrid ARMs would not be consistent with these goals. In addition, limiting this requirement to hybrid ARMs would help to mitigate the regulatory burden that the CFPB's mortgage proposals will impose on community banks. Community banks commonly originate non-hybrid ARMs and hold these products in their portfolio. Many times, these are small loans that do not qualify for sale into the secondary market.

3. ARMs Impacted

ABA requests that the CFPB clarify the loans to which the initial rate reset requirements would apply. Specifically, would the Initial ARM Rate Reset Notice apply to ARMs originated on or after the effective date of the final rule? Or does the CFPB intend that such notices also apply to existing loans that have initial rate adjustments on or after the effective date of the final rule?

4. State Housing Finance Authorities

CFPB is proposing to require that ARM notices contain certain contact information regarding state housing finance authorities ("HFAs"). If the CFPB elects to include this requirement in the final servicing rule, we request that the Bureau help to minimize regulatory burden on covered institutions by creating a website containing contact information for state HFAs. ARM notices could then simply refer to the CFPB's website. This approach would assist all institutions that would be subject to the ARM notice requirements, particularly those who service mortgage loans on properties located in multiple states.

We also note that the CFPB proposes to require that ARM notices contain HFA contact information in the state where the borrower resides, whereas the periodic statement would be required to contain HFA information for the state in which the property is located. One website containing centralized information would help to address this inconsistency.

5. Costs

Bank servicers will need to engage in extensive systems programming to create the proposed disclosures. The Initial ARM Rate Reset Notice will require bank servicers and their vendors to populate a multitude of informational fields. Each of these fields will require multiple programs and calculations to transfer information from existing databases into the new disclosure forms. In addition, core processing systems are generally designed to create the existing rate change notices when an "official" rate change takes place. In essence, intense rewriting of programming code will be required to in essence "trick" core systems into producing a notice with an estimated rate change that does not drive an actual rate change in the servicing system. See Section III.B.2. of this letter for a discussion of the types of costs involved when engaging third-party vendors as well as a discussion regarding the challenges in estimating the costs associated with the CFPB's proposal.

Some banks elect to sub-contract their statement and disclosure processing because they cannot handle the volume of multiple statements and disclosures required by various regulations (e.g., savings and CD statements, checking statements, corporate and personal trust statements, credit card statements, etc.). This can be an expensive service, but some institutions find it necessary to help them manage their disclosure and statement volume. It is possible that additional banks may contract for such services due to the increased operational burden that will result from the myriad of additional disclosures and notices proposed by the CFPB, including the Initial ARM Rate Reset Notice. We also note that the postage costs associated with the additional disclosures will be significant.

B. Subsequent Rate Reset Notices

Servicers are currently required to notify consumers each time the interest rate adjustment results in a payment change. The CFPB is proposing to change the timing requirement for these disclosures to 60-120 days before the new payment amount is due. The CFPB is also proposing new content requirements for the Subsequent Rate Reset Notices. Existing ARMs with look-back periods of less than 45 days that were originated before July 21, 2013 would be exempt from the new timing requirement. The proposed changes to the timing and content for Subsequent Rate Reset Notices are not required by the Dodd-Frank Act. Rather, CFPB is asserting its discretionary authority to mandate these changes.

1. Generally

We request that the CFPB not amend Regulation Z's requirements for the Subsequent Rate Reset Notice. The CFPB should not require significant changes to existing disclosures that are not mandated by statute. Several factors weigh against the CFPB's proposal: 1) the expense in creating uniform instruments for new loans; 2) the burden on portfolio lenders to revise their proprietary product offerings; 3) the need to develop new product pricing systems; 4) the significant costs to servicers to implement a large number of disclosure-related technological changes; and 5) the large number of regulatory changes required by statute that banks will be required to implement at the same time.

2. Look-Back Periods of Less Than 45 Days

We appreciate the CFPB's efforts to take into account practical challenges associated with the proposed timing requirements by grandfathering existing ARMs with look-back periods of less than 45 days that were originated before July 21, 2013. This provision is intended to help to alleviate potential conflicts with existing loan contracts with look-back periods of 30 days. However, ABA members have indicated that banks and their vendors would have to maintain bifurcated system functionalities for grandfathered versus non-grandfathered loans.

Furthermore, the proposed cutoff date of July 21, 2013 is not workable. For FHA, VA and GSE loans, servicers must rely on these agencies to change the look-back periods set forth in their mortgage notes. Lenders and servicers are not permitted to adjust these notes on their own. These agencies need time to make official changes to the notes they use and to release revised documents and guidance. Thereafter, lenders, servicers, technology vendors, form vendors, attorneys, and other affected parties will need to review and/or implement these new requirements. If the CFPB elects to adopt the proposed changes to the timing for the Subsequent Rate Reset Notices, we request that the cutoff period for grandfathered loans be changed to 18-24 months after the regulation becomes effective.

C. Prompt Crediting and Provision of Payoff Statements

The proposal would establish specific requirements regarding the crediting of mortgage loan payments, including partial payments and payments that do not conform to requirements that the servicer has established.

1. <u>Payoff Statements</u>

a. Third Parties

ABA agrees that servicers have a duty to send payoff balances to consumers within a reasonable period of time. We would note that servicers must obtain a borrower's authorization prior to releasing payoff information to an unauthorized third-party. If the borrower does not timely authorize this release, servicers will not be able to comply with the 7-day requirement. ABA requests that the CFPB take into account external factors that may interfere with a bank's ability to comply with this provision. We specifically recommend that the 7-day period begin to run after the customer provides the appropriate authorization.

b. Inconsistency with HOEPA Proposal

There is an inconsistency between the proposed language for the servicing rule and the HOEPA proposed rule, which requires 5 business days. We ask that the Bureau remain consistent between all rules, and change the HOEPA proposed rule to 7 business days to match the servicing rule to ensure uniformity and ease of compliance.

D. Periodic Statement

The CFPB's proposal would implement Section 1420 of the Dodd-Frank Act, which requires servicers to provide borrowers with a periodic statement for each billing cycle. Servicers that provide coupon books that meet certain requirements would be exempt from the requirement to provide periodic statements. In addition, as discussed in Section III.A., the CFPB is proposing to use its discretionary authority to exempt certain Small Servicers from the periodic statement requirement. To be a Small Servicer, an institution would be required to meet the following two-part test: 1) service 1,000 or fewer mortgage loans and 2) only service mortgage loans that it (or an affiliate) holds in portfolio.

The CFPB's proposed regulation sets forth specific requirements regarding the frequency, timing, form, content, and layout of periodic mortgage loan statements. The CFPB would implement the Dodd-Frank Act's required content for the periodic statement, but is also proposing to exercise its discretionary authority to require an extensive amount of additional information.[9]

1. ABA Recommendations and Requests for Clarification

   a. *Content*

ABA believes that servicers should provide borrowers with clear and accurate information regarding their mortgage loans. In fact, our members consistently report that well-informed borrowers are banks' best customers. However, the information that CFPB is proposing to require pursuant to its discretionary authority is currently available to borrowers through other channels. Due to the extensive costs that these additional requirements would impose on thousands of mortgage servicers, we do not believe that there would be a net benefit for consumers to providing this same information on a periodic statement.

[9] The CFPB's additional content requirements would include:

Past Payment Breakdown. Would require servicers to include on the periodic statement the total of all payments received since the last statement and a breakdown of how those payments were applied to principal, interest, escrow, fees, and any partial payment or suspense account (if applicable). Servicers would also be required to detail the total of all payments received since the beginning of the calendar year and provide a breakdown of how those payments were applied to principal, escrow, fees, and charges, as well as the amount currently held in a partial payment or suspense account.

Transaction Activity. Would list any activity since the last statement that credits or debits the outstanding account balance. This would include a description of any late fees as well as the transfer of any payments to a suspense account.

Messages. Would require a message on the front of the statement if a partial payment of funds is being held in a suspense account regarding what must be done for the funds to be applied.

Delinquency Information. If a borrower is more than 45 days delinquent, the periodic statement would be required to disclose the date on which the consumer became delinquent and a statement of the potential risks of delinquency (e.g., late fees or, if the delinquency persists, foreclosure), a recent account history showing the amount due for each billing cycle or the date on which a payment for a billing cycle was fully paid, notice of any acceptance into a modification program (either trial or permanent), a notice if the loan has been referred to foreclosure, the total amount to bring the loan current, and a statement directing the borrower to the housing counselor information located on the statement.

Information That is Duplicative or Available Elsewhere. Each year, servicers must provide borrowers with IRS Form 1098, which states the amount of interest that the borrower paid in the calendar year. In addition, servicers must provide borrowers with an annual escrow statement containing:

- The account history;
- Projections for the next year;
- Current mortgage payment and portion going to escrow;
- Amount of past year's monthly mortgage payment and portion that went into the escrow account;
- Total amount paid into the account during the past year;
- Amount paid from the account for taxes, insurance premiums, and other charges;
- Balance at the end of the period;
- Explanation of how the surplus, shortage, or deficiency is being handled; and
- The reasons why the estimated low monthly balance was not reached, if applicable.

In addition, investors generally require servicers to provide delinquency notices and related information to borrowers whose mortgage payments are past due. Servicers who service loans for their own loans portfolios engage in similar practices. For these reasons, it would be appropriate for a periodic mortgage statement to simply note the fact of delinquency on the first page, with a reference to bank contact information for borrower assistance. Under this approach, key information regarding delinquency would be communicated, but the burdens of implementing the proposed delinquency-related information would be substantially reduced.

We also note that borrowers have access to extensive account information via online and telephone banking and by simply calling or stopping by their local banks. Because this information is already available, requiring banks to overhaul their computer systems and engage in extensive IT projects and programming is duplicative and unnecessary.

Coupon Book Exception. The Dodd-Frank Act provides that a servicer is not required to provide periodic statements for fixed-rate mortgage loans if the servicer provides the borrower with a coupon book containing "substantially the same information" that the statute requires to be included in the periodic statement.[10] Coupon books contain key information about the payment of a mortgage loan, such as payment amount, due date, late fees terms, and bank contact information. While this information is limited, it is the most important information regarding the payment of a mortgage loan. We also note that the information provided on coupon books generally tracks the Dodd-Frank Act's requirements for periodic statements. Because Congress provided for the coupon book exception for fixed-rate mortgage loans, we do not believe that

[10] Section 1420 of the Dodd-Frank Act requires that periodic statements contain information regarding the principal obligation under the mortgage, the current interest rate, the date on which the interest rate may next reset or adjust, the amount of any prepayment fee, a description of any late payment fees, and contact information that the borrower may use to obtain information regarding the mortgage. The Dodd-Frank Act also provides CFPB with discretion to require that periodic statements require additional information.

Congress intended for the periodic mortgage statement to provide the granular detail that the CFPB is proposing. Therefore, the CFPB should significantly revise the content requirements applicable to periodic mortgage statements.

b. Small Servicers

Small Servicer Test. As discussed at length in Section III.A, we request that CFPB significantly revise the definition of Small Servicer.

Servicing Released. Under existing business models, some banks elect to hold in their portfolios certain loans that they originate while selling other loans into the secondary mortgage market and releasing the servicing rights. We request that CFPB confirm that the act of selling a portion of their loans and servicing rights would not disqualify these institutions from qualifying for the Small Servicer exemption for those loans that the institution does service, provided it otherwise meets the criteria for the Small Servicer test.

Calculating Number of Loans Serviced. The proposal provides that in determining whether a Small Servicer services 1,000 loans or less, the servicer must calculate the number of mortgage loans that it services as of January 1st for the remainder of the calendar year. We request that the CFPB clarify how banks should treat loans that it has originated but that are tagged for sale into the secondary market. We do not believe that these loans should be counted toward the loan cap. We understand that, on average, such loans are off of a bank's books in 30 days.

Small Servicers that Provide Periodic Statements. We understand that some community banks currently provide some form of periodic statement to their customers. These periodic statements are limited to basic account information and would not meet the periodic statement criteria that CFPB has proposed. In the event that the Small Servicer test is expanded, these institutions may qualify for the periodic statement exception. In these circumstances, we request that the CFPB confirm that the practice of providing a periodic statement (however basic) would not automatically trigger an expectation that such periodic statements must comply with all of the CFPB's form and content requirements for periodic statements.

c. Consumer Opt Out

ABA recommends that CFPB provide servicers the option of allowing their customers to opt out of receiving periodic mortgage statements. Some consumers, particularly those who bank online, elect not to receive monthly account statements. One ABA member reports that 60% of its customers have opted out of receiving monthly statements. Consumers should likewise be permitted to opt out of receiving periodic statements or email notifications regarding such periodic statements for their mortgage loans.

d. State Housing Finance Authorities

CFPB is proposing to require that periodic statements require certain contact information regarding state housing finance authorities ("HFAs"). If the CFPB elects to include this requirement in the final servicing rule, we request that the Bureau help to minimize regulatory burden on covered institutions by creating a website containing contact information for state HFAs. Periodic statements could then simply refer to the CFPB's website. This approach would assist all institutions that would be subject to the periodic statement requirements, particularly those who service mortgage loans on properties located in multiple states.

We also note that the CFPB proposes to require that ARM notices contain contact HFA information in the state where the borrower resides, whereas the periodic statement would be required to contain HFA information for the state in which the property is located. One website containing centralized information would help to address this inconsistency.

e. Other Periodic Statement Exemptions

Section 1420 of the Dodd-Frank Act provides the CFPB with the authority to exempt any class of "covered persons" from any provision under Title X of the Act and from any of the CFPB's regulations. We request that CFPB exercise this authority to exempt from the periodic statement requirement servicers that provide customers with information that is substantially similar to the information required for coupon books.

2. <u>Programming Challenges and Costs</u>

a. *Generally*

Most institutions expect to utilize third-party vendors in order to create a periodic statement that complies with the proposed requirements. As described in detail in Section III.B.2., an extraordinary amount of programing-related work will be required for all servicers to produce the periodic statements as proposed. Much of the labor involved would to implement those sections where the CFPB is proposing to require certain "dynamic" information, which is not required by the Dodd-Frank Act.

Data that would be required on the proposed periodic statement often resides on multiple systems platforms. Common examples include information regarding past payment breakdowns, the amount of interest paid over the past year, delinquency data, and suspense account information. Servicers would have to create programs and calculations that would enable these platforms to feed the necessary information into the system that produces periodic statements. These programs and calculations will require a significant amount of time and resources to develop, implement, and test prior to providing borrowers with a periodic statement. For these reasons, we strongly urge the CFPB to limit the content of the periodic statement to the elements required by the Dodd-Frank Act.

b. Impacts to Banks That Currently Provide Periodic Statements

The cost of complying with the proposed periodic statement requirements would not be limited to banks that currently do not produce periodic statements. Banks that currently issue periodic statements also expect to incur significant costs. They would need to reformat their existing periodic statements to meet the proposed content requirements as well as the proposed organization and formatting requirements. Both of these changes would require significant programming costs.

VIII. Regulation X: Section-By-Section Comments and Requests for Clarification

A. Error Resolution and Information Requests

Pursuant to the Dodd-Frank Act, servicers would be required to meet certain procedural requirements for responding to information requests or complaints of errors. The proposal defines specific types of claims which constitute an error, such as a claim that the servicer misapplied a payment or assessed an improper fee. A borrower could assert an error either orally or in writing. Servicers could designate a specific phone number and address for borrowers to use. Servicers would be required to acknowledge the request or complaint within 5 days and correct the error or respond to the borrower with the results of the investigation, generally within 30 to 45 days. Further, servicers generally would be required to acknowledge borrower requests for information and either provide the information or explain why the information is not available within a similar amount of time. A servicer would not be required to delay a scheduled foreclosure sale to consider a notice of error unless the error relates to the servicer's improperly proceeding with a foreclosure sale during a borrower's evaluation for alternatives to foreclosure.

1. Definition of Error

ABA generally supports the proposed definition of "error." It includes the types of issues that servicers are in a position to address and excludes matters relating to origination, underwriting, and secondary market transactions, which the servicer is not in a position to address.

2. Oral Requests for Information and Error Resolution

a. No Statutory Requirement

The proposed rule would allow borrowers to make oral requests for error resolution and information. ABA strongly objects to this provision and requests that the CFPB not adopt it as part of the final servicing rules. The Dodd Frank Act did not mandate the proscriptive error resolution and information request requirements that the CFPB has proposed, including the requirement to respond to oral notices and requests. Rather, the statute prohibits certain servicer actions, including:

- Charging fees for responses to "valid" Qualified Written Requests;
- Failing to take timely action to respond to a borrower's requests to correct errors relating to allocation of payments, final balances for purposes of paying off the loan or avoiding foreclosure, or other standard servicer's duties;

- Failing to respond within 10 business days to a request to provide the identity, address, and other relevant contact information about the owner or assignee of a borrower's loan; and

- Failing to comply with any other obligation the CFPB finds, by regulation, to be appropriate to carry out the consumer protection purposes of RESPA.

b. Practical Challenges

In addition to diverging from the Dodd-Frank Act, this requirement would be difficult to comply with from a practical perspective and would be extraordinarily costly for all bank servicers to implement.

First, institutions would have difficulty determining what customer conversations trigger the oral notice of error and information request requirements and which ones do not. This would expose the bank to significant risk.

Second, the CFPB has proposed permitting a servicer to identify a specific phone number or address that borrowers must use to trigger the resolution procedures. However, this approach is problematic. Community banks would find it prohibitive to create a dedicated, staffed phone number to handle and document such phone calls. In addition, community bank borrowers expect to be able to walk into their local branch or call their loan officer to have any questions or concerns addressed directly. They do not want to be instructed to call another telephone number.

Third, CFPB acknowledged that community banks may lack the technology to record borrower telephone calls and instead suggested that institutions track borrower conversations using the "notes" feature in the bank's computer systems. However, this is not workable. Our members confirm that most bank computer systems do, in fact, have a notes feature, but that not all systems allow for tracking or auditing information contained in these fields.

For the reasons described above, we request that the CFPB not adopt the error resolution and information request procedures. In particular, we recommend that the CFPB not require oral notices of error and requests for information.

B. <u>Loss Mitigation</u>

Under the CFPB's proposal, within 30 days of receiving a complete application, a servicer must evaluate the borrower for <u>all</u> loss mitigation options available from the servicer for which the borrower may qualify and provide the borrower with a written notice stating the servicer's determination of whether it may offer the borrower a loss mitigation option. A servicer that determines that a borrower is not eligible for a loan modification must notify the borrower in writing and must 1) state the specific reasons for the determination and 2) inform the borrower of the right to appeal the servicer's determination. The CFPB is proposing the loss mitigation requirements pursuant to its discretionary authority.

The preamble to the proposed rule states that "the proposal would impact the ability to manage programs through the use of a loss mitigation option priority order, as a servicer would be required to evaluate a borrower for all programs and provide the results of the evaluation for all programs." As drafted, ABA is concerned that the proposal would impact a lender's ability to set a priority waterfall of loss mitigation options. We emphasize that the key issue in loss mitigation is identifying the loss mitigation technique that would be least detrimental to the creditor and that would allow the borrower to stay in his or her home. We also note that limitations imposed by mortgage insurers may limit loss mitigation options that are available to a particular borrower. Loss mitigation decisions require business judgment.

During recent conversations with ABA staff, the CFPB worked to clarify its intent regarding the proposed loss mitigation provisions. CFPB stated that its objective is to create a loss mitigation *procedural requirement* for servicers and that CFPB anticipates that lenders would re-calibrate their loss mitigation eligibility criteria and loss mitigation programs in order to comply with the proposed requirements. As an example, CFPB stated that a lender's criteria could specify that a borrower is not eligible for a short sale if the borrower is eligible for forbearance. While this clarification is somewhat helpful and would not seem to interfere with the goal of minimizing creditor losses, the new procedural requirements are unclear as proposed and would be costly for servicers to implement. In particular, we note that GSE, FHA, and VA loss mitigation programs may need to be revised and that portfolio lenders will need to formalize their loss mitigation procedures.

ABA requests that CFPB withdraw the proposed loss mitigation requirements because 1) the loss mitigation requirements and the new borrower rights that it creates are not within the requirements of the Dodd-Frank Act that the CFPB must codify and because 2) providing borrowers with a report summarizing all of the servicer's loss mitigation options and the borrower's eligibility for those options will result in a large number of unwarranted borrower appeals from individuals seeking more attractive work-out options. If the CFPB retains the loss mitigation requirements, we request that the Bureau clarify these provisions.

C. Early Intervention With Delinquent Borrowers

The CFPB is proposing to use its discretionary authority to establish specific procedural requirements under which servicers must notify delinquent borrowers. First, servicers would be required to orally notify borrowers of their delinquency status when the borrower becomes 30-days past due. Second, when a borrower becomes 40-days delinquent, the servicers would be required to provide a written notice containing specific information established by CFPB.

ABA supports the CFPB's goal of encouraging early borrower-servicer communication when the borrower becomes delinquent. Such communications are critical to minimizing loss for the creditor. Our members generally report that they have communication channels in place that are similar, although not identical to, the CFPB's proposal. However, adjustments to or formalization of policies and procedures would be necessary to comply with the proposed rule.

D. Information Management Policies and Procedures

The CFPB is proposing to use its discretionary authority to require a servicer to establish policies and procedures for maintaining and managing information and documents relating to borrower mortgage loan accounts. A servicer would be deemed to meet this requirement if the policies and procedures meet specific objectives and sub-objectives specified by the CFPB. Many of our smaller members may need to 1) re-write their existing policies and procedures to comply with the proposal or 2) formalize their existing practices into the policies and procedures that the CFPB is proposing to require. While not as onerous as those aspects of the CFPB's requirements that would involve significant computer programming and IT expenditures, this requirement is not without cost. Compliance, lending, operations, and IT staff would need to create, update, and/or review the procedures. In addition, senior management and the board of directors in many institutions would need to review and approve these documents.

E. Continuity of Contact

The CFPB is proposing to use its discretionary authority to require servicers to assign personnel to respond to the inquiries of a delinquent borrower and assist the borrower with the loss mitigation process. The servicer may assign a single person or a team of personnel to the borrower. ABA does not object to this provision.

F. Other Lien Holders

Under the CFPB's proposal, any servicer that receives a complete loss mitigation application must 1) within 5 days determine if any other servicers service mortgage loans that have senior or subordinate liens encumbering the property and 2) provide to the other servicer the loss mitigation application received from the borrower. When the other servicer receives the loss mitigation application, it must comply with the CFPB's loss mitigation requirements as if that servicer had received the application from the borrower.

ABA understands the issues that CFPB is attempting to remedy with this provision; however, the proposed requirement is problematic. While 12 CFR 1016.15(a)(7) may not require servicers to provide privacy notices in connection with the loss mitigation application, we note that a borrower may not want the loss mitigation information shared with another servicer.

G. Force-Placed Insurance

The CFPB's proposal would implement the Dodd-Frank Act's requirements for lender-placed insurance, including the timing and content of the borrower notice requirements, the termination of lender-placed insurance and refunds, and the need for providing "sufficient demonstration of coverage by the consumer." The CFPB has also proposed additional requirements not dictated by the Dodd-Frank Act, such providing borrowers with a good-faith estimate of the lender-placed insurance premium, and requiring servicers to advance from an escrow account payments for a borrower's insurance premium even if the borrower is delinquent. We are concerned about the provisions that CFPB is proposing pursuant to its discretionary authority and strongly believe that the CFPB should not minimize the borrower's responsibility to maintain insurance.

1. *Obligation to Continue Insurance and Advance Funds*

Mortgage servicers are not in a position to know whether an insurance policy has been cancelled for non-payment or some other reason. For example, there may be circumstances where a borrower shops for and purchases a new policy and does not provide the lender with this information. In this situation, a servicer would, arguably, still be required to advance funds for a policy that the borrower wishes to cancel.

The proposed rule would also require a servicer to continue paying for the borrower's existing hazard insurance if the borrower's escrow account does not contain sufficient funds. The CFPB should not adopt this requirement. This portion of the proposal is not based on the specific requirements in the Dodd-Frank Act and it fails to appreciate that mortgage servicers do not have the information necessary to determine why a policy was cancelled.

XI. Conclusion

ABA appreciates the opportunity to comment on this very important rulemaking. Should you have any questions regarding ABA's comments, please contact the undersigned or Krista Shonk at kshonk@aba.com.

Sincerely,

Robert R. Davis