

April 27, 2012

Honorable Richard Cordray  
Director, Bureau of Consumer Financial Protection  
1700 G St., NW  
Washington, DC

Dear Director Cordray:

The undersigned trade associations representing the financial services, home building and real estate industries as well as other concerned organizations write to you today regarding the Qualified Mortgage (QM) under the Ability to Repay rule to be issued by the Bureau of Consumer Financial Protection (CFPB). Our purpose is to reiterate our very strongly held view that the QM should be structured as a legal safe harbor with clear, well-defined standards. The standards must embody requirements for sound mortgages for consumers and specify the grounds on which there can be litigation or enforcement action as to whether those requirements have been met.

### **Safe Harbor versus Rebuttable Presumption**

Structuring the QM as a safe harbor and focusing litigation and enforcement activity on whether the standards are met is the only means of ensuring that the largest number of borrowers possible will enjoy the safest and most affordable options for sustainable credit available through the QM. In contrast, establishing the QM as a rebuttable presumption of compliance—even with clear substantive standards but lacking clarity or limitations regarding the scope of litigation—will markedly lessen the availability and affordability of sustainable mortgages to consumers.

### **Effects of Rebuttable Presumption**

A QM rule with a rebuttable presumption can be overridden by facts or evidence beyond, and completely unrelated to, the requirements of the QM. This unpredictability, in a setting where the potential liability for each claim can be extensive, will force lenders to retreat to far more conservative lending standards.

Smaller lenders will have great difficulty managing this degree of risk and the resultant litigation costs. A presumption can be expected to result in the exit of lenders—large and small—from the market and a reduction in credit from those remaining. This will harm consumers by depriving them of robust competition and lower costs.

### **Benefits of Safe Harbor**

The undersigned believe the establishment of clear standards and defined proceedings, in the form of a safe harbor, is the only practicable approach. While a consumer is just as entitled to judicial review of an alleged failure to determine ability to repay through litigation involving a safe harbor, any such review would be appropriately focused only on whether the QM's standards or factors have been met. Such an approach will

require the CFPB to develop the right standards rather than simply leaving the matter to the courts.

Carefully defining the standards for litigation in the form of a safe harbor also will have the advantage of reducing the number of groundless claims, whose costs are ultimately borne by all. It will allow lenders of all sizes to compete. Most importantly, it will allow lenders to comfortably operate within the boundaries of the standards prescribed, allowing the maximum number of families to qualify for traditional, affordable and sustainable loans.

## **Conclusion**

We firmly believe the way the QM is finally structured is the most critical mortgage lending issue facing the CFPB today and will have ramifications for consumers for years to come. We urge the CFPB to carefully evaluate the potential impacts of a safe harbor versus a rebuttable presumption on consumers, financial services providers and the economy as a whole before issuing the final rule. The final rule should increase the availability and affordability of sustainable mortgage credit to consumers as Congress intended, not unduly reduce its availability or increase its costs.

We appreciate your attention to this matter. We also would welcome an opportunity to meet with you at your earliest convenience.

Sincerely,

**American Bankers Association  
American Escrow Association  
American Financial Services Association  
American Land Title Association  
Community Mortgage Banking Project  
Consumer Mortgage Coalition  
Community Mortgage Lenders of America  
Consumer Bankers Association  
Financial Services Roundtable  
Habitat for Humanity  
Housing Policy Council  
Independent Community Bankers of America  
Leading Builders of America**

**Mortgage Bankers Association  
Mortgage Insurance Companies of America  
National Association of Federal Credit Unions  
National Association of Hispanic Real Estate Professionals  
National Association of Home Builders  
National Association of Realtors®  
The Realty Alliance  
Real Estate Services Providers Council, Inc. (RESPRO®)  
Securities Industry and Financial Markets Association  
The U.S. Chamber of Commerce**