

Congress of the United States
Washington, DC 20515

July 12, 2012

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1801 L Street
Washington, DC 20036

Dear Director Cordray,

We are writing regarding the proposed ability to repay rule, originally published by the Federal Reserve Board, and currently being finalized by the Consumer Financial Protection Bureau (CFPB).

The Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) includes provisions that establish minimum underwriting standards for mortgages. Specifically, the Act includes a provision that prohibits lenders from originating mortgages unless they make a determination – based on verified and documented information – that the consumer has a reasonable ability to repay the loan, including all applicable taxes, insurance and assessments. Mortgages that do not meet this important requirement will be liable for the life of the loan.

Congress, however, also recognized the need to ensure that properly underwritten loans are not weighed down by this additional liability. For this reason, Dodd-Frank allowed federal agencies tasked with implementing these provisions to define a class of Qualified Mortgages (QM). The rule proposed by the Federal Reserve laid out two vastly different alternatives for satisfying the ability to repay requirement: a “legal safe harbor” and a “rebuttable presumption of compliance.” Responsibility for finalizing these provisions was transferred to the CFPB on July 21, 2011.

We believe that the final rule must structure the QM as a strong legal safe harbor, not a rebuttable presumption. Both could still be challenged in court. However, as the Federal Reserve correctly stated in its preamble to the rule, the “drawback of treating a ‘qualified mortgage’ as providing a presumption of compliance is that it provides little legal certainty for the creditor, and thus little incentive to make a ‘qualified mortgage,’ which limits loan fees and features.”

Because of the strict and costly penalties associated with loans that don't meet the ability to repay requirements, lenders are highly unlikely to originate loans that don't meet the QM definition. This could lead to a restriction of credit accessibility for borrowers.

In a recent hearing before the House Financial Services Committee, you acknowledged the importance of striking an appropriate balance on the QM structure. In response to a question about the preference of the CFPB for a safe harbor or rebuttable presumption you said:

"What we have found as we've been working on this is you can -- you can have a sort of definitional safe harbor, a definitional rebuttable presumption. If you leave the standards vague and mushy, there's not a lot of difference between the two, because you can still litigate over whether you comply with the qualifications to get into the safe harbor. What's very important in this area, though, is that we try to create bright lines, so there will not be a lot of litigation. We don't want this to be punted into the courts and people not to be sure for years to come. And we're going to work to do that."

We agree with you that this is not an issue that should be settled by the courts. Therefore, we urge the CFPB to craft a safe harbor that strikes the right balance between protecting consumers from poorly underwritten mortgages while ensuring they have access to safe and affordable mortgage products.

The ability to repay rule and its QM definition will define the mortgage market for years to come. We thank you for your work on this important rule and look forward to your response.

Sincerely,



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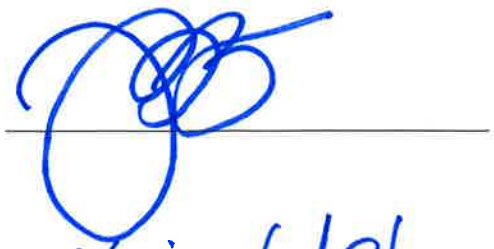
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