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On behalf of the low-income clients of the
National Consumer Law Center
and the National Association of Consumer Advocates

Regarding

The Dodd-Frank Ability to Repay Qualified Mortgage Rule

Before

The Consumer Financial Protection Bureau

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Thank you for the opportunity to testify today. I testify today on behalf of the National Consumer Law Center's low-income clients and the National Association of Consumer Advocates. We appreciate the vigorous and thorough work of the Bureau on this rule.

Regulation of the mortgage market under Dodd-Frank is essential to our economic security. In the years leading up to the economic crisis, pricing replaced underwriting as a risk control mechanism in the subprime market. Lenders relied on securitization to spread the cost of the inevitable foreclosures. Foreclosures devastated communities across the country, particularly communities of color.

Congress' mandate in Dodd-Frank is clear. Lenders must take reasonable steps to ensure that EVERY mortgage loan is affordable when made, and homeowners whose lenders overreach have recourse. The Consumer Financial Protection Bureau's new regulations implement important new protections for sustainable lending, but fail to fully deliver those protections.

The Bureau laudably offers a rebuttable presumption for subprime borrowers—a chance for homeowners in this soon-to-be-re-emerging market to seek redress if they received a Qualified Mortgage that the lender should have known was nevertheless unaffordable. This important backstop against abusive lending will not be available in the prime market.

The safe harbor the Bureau has afforded for prime loans provides shelter to lenders who knowingly make unaffordable loans, in direct violation of congressional intent. While the Qualified Mortgage definition guards against many abuses of the recent crisis, without a rebuttable presumption new abuses will flourish.

For example, a 43% debt to income ratio in the rule is a helpful starting point and may be a reasonable standard for a homeowner earning $10,000 per month, but for a homeowner earning only $1000 per month, 43% does not leave enough to pay the utility bills and other essentials. A residual income analysis that looks at the actual cash available is essential in assessing loan affordability for low-income homeowners.

And, adjustable rate mortgages with exploding payments can meet the QM definition so long as the payments increase after the initial period covered by the rule.

The Bureau intends to seek further comment on the treatment of yield spread premiums, payments by lenders to brokers to upsell homeowners into needlessly expensive loans. These payments must be clearly and fully included in the cap (as they are in the statute) to avoid the resurgence of abuse by brokers. Limits on compensation are not enough to constrain this abuse.

A rebuttable presumption does *not* create significant litigation risk to the market. Few homeowners find an attorney; fewer prevail. Individual homeowners face a heavy factual burden to overcome and due to the fact-intensive nature of the inquiry, class actions are not viable.

The Bureau's Qualified Mortgage rule invites abusive lending in the prime market and erodes the extent of the progress made by Dodd-Frank. Combined with the lack of a rigorous, market-wide loan modification mandate, this rule makes progress but still leaves homeowners and the market vulnerable to a future crisis. Thank you.