National Consumer Law Center and the Consumer Federation of America Urge CFPB to Maintain Ability to Repay Determinations for All Mortgage Loans

FOR IMMEDIATE RELEASE: July 25, 2019

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Washington, D.C. – Advocates at the National Consumer Law Center and the Consumer Federation of America issued the following statement today in response to the Consumer Financial Protection Bureau's (CFPB) announcement of an Advance Notice of Proposed Rulemaking regarding the Dodd-Frank Act ability to repay and qualified mortgage rules.

"The Consumer Financial Protection Bureau's announcement today represents an opportunity to ensure that the mortgage market is accessible to a diverse range of homeowners, but it also risks increasing consumer harm. We urge the CFPB to ensure that lenders remain required to determine that borrowers have a reasonable ability to repay their loans, a basic premise of responsible underwriting. Only when lenders have made a reasonable determination of a borrower's ability to repay should they be shielded from liability.

"The Dodd-Frank Act ability to repay rule remains a bulwark against the market excesses that brought us the recent financial crisis, a calamity from which many communities, especially low-income neighborhoods and communities of color, still have not recovered. Providing sustainable mortgage credit to these communities will require both adjustment of the CFPB's ability to repay rules and an examination of the broader market forces constraining credit. In any adjustment to the standards for determining a borrower's ability to repay, a revised rule must continue to hold at the forefront the prevention of harm to consumers in the form of the extension of improvident, risky, unaffordable loans. Because the racial wealth gap widened as a result of the foreclosure crisis, any new rule also must ensure that it helps and does not harm homeownership in communities of color through adoption of limits or tests that further, rather than reduce, historic discriminatory practices.

"Following the global market collapse in 2008, which was fueled by the worst foreclosure crisis our nation has ever experienced, Congress mandated that lenders make a reasonable determination that borrowers have an ability to repay the loan, reacting to widespread underwriting failures in the run-up to the Great Recession. Congress provided that the safest loans could receive a presumption of compliance with this ability to repay determination, provided that lenders complied with ability to repay rules issued by the Bureau. These loans are known as "qualified mortgages."

"We urge the Bureau to continue to require that all lenders make a determination of the borrower's ability to repay, as required by the statute, rather than substituting loan price alone for an assessment of ability to repay, as some have urged. Loan price limits combined with the statute's product limitations may hold defaults low statistically, but will not prevent equity-stripping loans from being made to cash-poor but house-rich consumers, for instance. Financial regulators have long condemned equity-stripping lending as an unfair and deceptive practice, which led directly to the loss of wealth in communities of color in the foreclosure crisis.

"The Bureau's ability to repay rule could expand access to credit without promoting risky lending practices through a variety of means including:

- establishing a measure of affordability based on cash flow, which lenders could use in making qualified mortgages;
- raising the debt-to-income ratio from its current 43% level in concert with additional compensating factors and underwriting measures;
- carving out riskier loans, such as adjustable rate loans and high-cost mortgages, from the qualified mortgage liability safe harbor for lenders;
- reducing regulatory burden by revising and simplifying the Bureau's existing rules for defining income and debt ("Appendix Q"); and
- providing a rebuttable presumption rather than a safe harbor for all borrowers, an approach more consistent with the statute."