February 25, 2013

Monica Jackson, Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Re: Docket No. CFPB-2013-0002

Dear Ms. Jackson:

On behalf of the state Housing Finance Agencies (HFAs) it represents, the National Council of State Housing Agencies (NCSHA) appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB) January 10 proposed rule amending the Ability-to-Repay standards under the Truth in Lending Act. NCSHA commends CFPB for developing a final Ability-to-Repay rule and, within it, a Qualified Mortgage (QM) definition that will protect consumers and help to ensure that lenders and brokers follow responsible underwriting standards. We strongly support CFPB's proposal to exempt loans originated through HFA programs from the ability-to-repay standards, which will ensure that HFAs can continue to offer low- and moderate-income borrowers responsible affordable loan products that fit their unique needs.

We also concur with CFPB's proposal to exempt loans made under the Hardest Hit Fund (HHF) program and other initiatives authorized by the Emergency Economic Stabilization Act (EESA). We agree that requiring credit extended under these programs to comply with the Ability-to-Repay rule could hinder HFAs' ability to use these programs to assist struggling homeowners. Finally, we ask that CFPB exempt HFA loan products from the new, expanded definition of "High Priced Covered Transaction," since applying the rule to these products could trigger costly escrow and appraisal requirements and increase compliance costs.

HFAs have proven over many decades that affordable housing lending done right is good lending. HFAs do it right in the case of first-time homebuyer lending through a time-tested combination of low-cost financing; traditional fixed-rate, long-term products; flexible, but prudent, underwriting with careful credit evaluation; diligent loan documentation and income verification; down payment and closing cost assistance; homeownership counseling; and proactive servicing.

HFAs Follow Rigorous Underwriting Models

In the proposed rule, CFPB notes that one reason it proposes an exemption for HFAs is that HFAs already use strong, yet flexible, underwriting standards in their lending programs. We strongly agree. In fact, many HFAs follow the underwriting standards of government agencies, such as the Federal Housing Administration (FHA) or U.S. Department of Agriculture Rural Development (RD) loans, or standards that are similar to those used by the government sponsored enterprises (GSEs), all of which are exempt from the Ability-to-Repay rule. Many HFAs build on these models by applying even stricter underwriting standards than these programs and establishing additional requirements, such as mandatory counseling for all first-time buyers and strong loan servicing. HFAs also oversee their lenders carefully, ensuring they follow the HFAs' strict underwriting standards and sustainable lending practices.

While all HFAs institute rigorous underwriting standards and other practices to ensure sustainable lending, many states implement a number of different approaches to do so. The examples below illustrate some of the ways HFAs approach their underwriting and lending responsibilities and why an exemption from the Ability-to-Repay rule is necessary for them to continue to reach their lower income home buyers most effectively.

State of New York Mortgage Agency

The State of New York Mortgage Agency (SONYMA) uses underwriting guidelines substantially similar to those used by Fannie Mae and Freddie Mac. However, rather than consider only a borrower's credit score, SONYMA will consider their entire credit history, which allows it to help those borrowers who may have a poor credit score due to a previous financial hardship. SONYMA also exercises stringent oversight of their lending partners, reviewing them annually. Further, SONYMA continuously monitors trends in its delinquencies and makes adjustments to its underwriting guidelines or available products as necessary. For example, SONYMA recently eliminated a 40-year mortgage product after determining it was not serving customers as well as the agency had hoped.

SONYMA's underwriting standards have served the agency and its customers well. As of September 30, 2012, just 3.7 percent of SONYMA's single-family borrowers were 60 days or more delinquent on their mortgages, compared with 10.9 percent of all borrowers in New York State, according to the Mortgage Bankers Association (MBA). In fact, prior to the recent economic crisis, SONYMA's 60+ day default rate had never exceeded 2 percent.

North Dakota Housing Finance Agency

To ensure that its customers are served by lenders who have a vested interest in doing business in, and are knowledgeable about, their communities, the North Dakota Housing Finance Agency (NDHFA) requires its participating lenders to have a physical office location in North Dakota that they have operated for at least two years. NDHFA has required full documentation

from borrowers on every loan it has ever purchased and never allowed loans with "exotic" features, such as balloon payments, to be used in conjunction with its programs. For the past five years, the percentage of NDHFA's loans that are delinquent has been consistently around 4 percent, nearly identical to the MBA delinquency rates for all mortgage loans in North Dakota, despite NDHFA being focused on serving low- and moderate-income households. NDHFA's current foreclosure rate is half a percent below the state average.

Pennsylvania Housing Finance Agency

The Pennsylvania Housing Finance Agency (PHFA) mandates that its creditors follow underwriting standards that are in some ways more stringent that those in the final Ability-to-Repay rule. While, under the final CFPB rule, creditors do not need to verify a borrower's debt obligation if it is not listed on their credit report, PHFA requires that the creditor provide a separate verification of that obligation, indicating the current balance, the monthly payment, and the payment history of the account. Similarly, PHFA imposes on its lending partners stricter borrower income and asset verification standards than those prescribed in CFPB's final rule. In the third quarter of 2012, PHFA's conventional loans had 90 plus-day delinquency and foreclosure rates of 2.98 percent and .99 percent, respectively, far below the equivalent rates for all conventional loans in Pennsylvania.

More evidence of HFAs' prudent underwriting and commitment to customer service is found when examining the relative performance of HFA lending. HFA products have demonstrated superior performance compared to affordable home loans issued through other channels. A limited review of HFA loan data conducted by Fannie Mae in 2011, for example, demonstrated that HFA-financed loans performed significantly better than other Fannie Mae affordable housing loans.

In addition, a limited study NCSHA conducted in 2011 of the relative performance of HFA-financed and non-HFA-financed loans insured by the Federal Housing Administration (FHA) found that, in a large majority of the states, HFA-financed loans had lower long-term delinquency and foreclosure rates than non-HFA loans.

While comprehensive and standardized data is not available, a look at individual HFAs' loan performance records demonstrates the impact of their responsible underwriting standards and commitment to sustainable homeownership. For example:

- FHA-insured loans purchased by the Connecticut Housing Finance Agency have lower foreclosure rates than comparable FHA loans in the northeast.
- Loans financed by the Delaware State Housing Authority and serviced by U.S. Bank have a 60 days or more delinquency rate of just over 2 percent, compared with a national 60 days or more rate of 8.3 percent.

- Virginia Housing Development Authority loan foreclosure rates on FHA and conventional loans are both under 1 percent. This is 3.2 percentage points under the national FHA foreclosure rate and 2.5 percentage points lower than the national foreclosure rate for conventional loans.

Ability-to-Repay Standards Could Jeopardize Effective HFA Programs

As CFPB acknowledges in the proposed rule, requiring HFAs to comply with the Ability-to-Repay rule would negatively impact their ability to offer consumers loan products that uniquely fit their needs. One provision of the rule that could particularly hinder HFAs ability to help lower-income consumers is the requirement that, in order for a home loan to be considered a qualified mortgage (QM), the borrower must have a total debt payments-to-income (DTI) ratio of no more than 43 percent.

If the DTI ratio in the Ability-to-Repay rule applied to HFAs, it would severely curtail their ability to help lower-income borrowers and other underserved populations. For example, the Virginia Housing Development Authority (VHDA) found that, out of the 29,100 loans it issued over the past six years (July 1, 2006 – June 30, 2012), 30 percent had DTI ratios over 43 percent. This includes 33 percent of all loans made to minority borrowers and 32 percent of loans made to borrowers with income less than 80 percent of area median income.

In addition, many HFAs offer "soft second" subordinate loans that allow borrowers to defer the payment of principal until the consumers sell or refinance their home. The principal is completely forgiven if the homeowner remains in the home for a set period of time. Under the Ability-to-Repay rule, the deferred principal would be considered a "balloon payment" until these types of loans were paid off, and the loan would not be classified as a qualified mortgage.

HFAs design and use many of these special loan products to help borrowers fund their down payments and other closing costs. These products are critical to HFAs' ability to provide help those who need it because the cost of a down payment is often one of the most significant obstacles preventing lower income consumers from purchasing a home. Forty-six states offer down payment assistance products, with many including a soft second option. For example, through its HOMEStead program, the Pennsylvania Housing Finance Agency (PHFA) uses funds from the federal HOME Investment Partnerships program to provide eligible borrowers up to $10,000 in down payment and closing cost assistance in the form of a no-interest, second mortgage loan. HOMEstead funds are forgiven at 20 percent per year over five years. PHFA has expressed concerns that these loans would not meet the QM standards.

HFAs also provide soft second loans for other purposes. For example, the New Jersey Housing and Mortgage Finance Agency offers such loans to low- and moderate-income consumers for foreclosure prevention, life-safety improvements, and home rehabilitation.

PHFA offers its Access Modification and Access Down Payment loan products to help people with disabilities pay for needed modifications to their homes.

Many of these programs might not be possible it the HFAs administering them had to comply with the Ability-to-Repay rule.

Compliance Costs Would Place an Undue Burden on HFAs

Many HFAs predict that the Ability-to-Repay rule would significantly increase their compliance costs if it were to apply to them. Whether originating their own loans, as many HFAs do, or working through other lenders, HFAs would have to dedicate significantly more time and resources to ensure their programs and lending partners are in compliance with the rule.

As mentioned above, HFAs are mission-driven organizations that dedicate their resources to providing affordable housing to people who need it. Many of the state and federal programs they administer do not provide administrative funds; others provide insufficient administrative funds or only enough to barely cover the costs of administering them. Most HFAs operate independently and do not receive state operating funds. Consequently, HFAs do not have enough resources to significantly increase compliance expenses without cutting into their ability to meet their missions.

Maintain Exemption for Federal Foreclosure Programs

NCSHA also commends CFPB for proposing an exemption for federal programs authorized under the Emergency Economic Stabilization Act (EESA) that are designed to help homeowners avoid foreclosure. HFAs in 19 states and the District of Columbia administer one of these programs—the $7.6 billion Hardest Hit Fund (HHF) program. NCSHA agrees with CFPB that applying the Ability-to-Repay rule to HHF will hinder the program's effectiveness by interfering with HFAs' underwriting practices and assistance programs under HHF. We also share CFPB's concern that lenders may choose not to participate in the HHF program, or other federal foreclosure prevention programs, if the Ability-to-Repay rule were to apply to those programs.

Extend HFA Exemption to Include New Higher Priced Covered Transaction Definition

While CFPB's proposed rule would exempt HFAs from most of the requirements of the Ability-to-Repay rule, the exemption does not apply to the rule's new definition of a "Higher-Priced Covered Transaction." Several HFAs administer repair and rehabilitation lending programs that may originate loans that fall under this new definition. This would trigger costly

escrow and appraisal requirements, and HFAs may have to terminate these programs due to burdensome costs.

In summary, given the HFAs' status as state agencies and instrumentalities of government, their unique public missions and sustainable lending practices, and the superior relative performance of HFA loans, NCSHA strongly urges CFPB to uphold its proposal to exempt HFA loans products from the final Ability-to-Repay rule.

Thank you for your consideration. We would be happy to discuss these issues with you at your convenience.

Sincerely,

Barbara Thompson
Executive Director