October 30, 2013

Carol J. Galante
Assistant Secretary for Housing – Federal Housing Commissioner
U.S. Department of Housing and Urban Development
451 7th Street, S.W.
Washington, D.C. 20410

Re: Docket No. FR-5707-P-01, Qualified Mortgage Definition for HUD Insured and Guaranteed Single Family Mortgages

Dear Commissioner Galante:

The undersigned Associations are grateful for the important work of the Department of Housing and Urban Development (HUD) in developing a proposed rule to define a Qualified Mortgage (QM) for purposes of the Federal Housing Administration (FHA) Insured and Guaranteed Single Family Mortgage Program. Absent such a definition, we believe many consumers would be needlessly denied safe and affordable credit through FHA because their loans would exceed the threshold for safe harbor treatment under the Consumer Financial Protection Bureau (CFPB) Ability to Repay rule.

Nevertheless, we write today to urge that the safe harbor-rebuttable presumption distinction proposed by HUD for Title II FHA–insured loans be eliminated. We urge instead that all loans meeting FHA requirements should be treated as safe harbor QM loans.

As pointed out in its preamble to the proposal, HUD "reviewed its mortgage insurance and guarantee programs and determined that all of the single family residential mortgage and loan products offered by HUD are qualified mortgages, that is they exclude risky features and are designed so the borrower can repay the loan." Despite this fact, HUD has proposed the same safe harbor and rebuttal presumption distinction as the CFPB, perhaps merely to mirror the CFPB's decision.

Unlike the CFPB's rule, however, which governs the wider market of prime and higher priced lending, HUD's rule covers only FHA-insured loans. Accordingly, the establishment of a rebuttable presumption to protect borrowers with higher rates is unnecessary and will impose costs and reduce credit availability for the borrowers most in need of FHA credit.

The FHA underwriting process has been developed and refined over nearly 80 years to ensure consumers have access to safe mortgage loans that they have the ability to repay. Recently, FHA has taken steps to strengthen its underwriting standards to reduce the risk of borrowers' default. Loans at all interest rates—and the process of originating, underwriting, and servicing them—are subject to strict oversight, control, and regulation by the federal government through HUD. All FHA-insured loans are fully-documented and have minimum down payment requirements. Virtually all are fixed rate, and adjustable rate loans are subject to tight adjustment limits to protect borrowers. Loans with credit scores under 620 have debt-to-income (DTI) requirements and now require manual underwriting to ensure an ability to repay.

Establishment of an FHA rebuttable presumption threshold, which HUD estimates will cover less three percent of its current market, will nonetheless necessitate expensive systems changes resulting in costs that are ultimately borne by consumers. The existence of a rebuttable presumption space, particularly as HUD defines the presumption in the rule, will drive many lenders to stop lending in that space because of fear of expensive litigation and liability. Finally, it will also force many lenders, in the interest of caution, to lend well within the safe harbor boundaries thus depriving even more consumers of a safe and sound FHA option.

We urge that in order to implement an FHA QM rule in January, the rule treat all QM loans as safe harbor loans. Making all Title II FHA-insured loans safe harbor loans would cover 100 percent of the current FHA market with no regulatory disruption and no additional implementation delays or costs to consumers.

Importantly, both HUD and the industry share the objective of establishing a QM definition for FHA loans at the same time the CFPB rule becomes effective on January 10, 2014. However, lenders report that at this point they simply do not have the resources to operationalize FHA rebuttable presumption thresholds along with other Dodd-Frank requirements by that date.

If HUD believes a dichotomy between safe harbor and rebuttable presumption loans might still be appropriate, we urge HUD to take 12 months to study the matter, including how the threshold should be structured.

Again, the Associations greatly appreciate HUD’s work to develop this rule and look forward to working with HUD to finalize it. We invite you to review our separate comments for a more detailed discussion of aspects of the proposal. Should you have questions or wish to discuss any aspect of these comments further, please contact any or all of our organizations.

Sincerely,

American Bankers Association
Consumer Bankers Association
Consumer Mortgage Coalition
Independent Community Bankers of America
Mortgage Bankers Association