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CFPB Finalizes Minor Changes to Mortgage Rules to Ensure Access to Credit

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Changes Will Assist Nonprofits and Allow for Refunds of Excess Points and Fees for Qualified Mortgages

October 22, 2014, the Consumer Financial Protection Bureau (CFPB) today finalized minor adjustments to its mortgage rules to ensure access to credit. The adjustments, which were proposed in April, include two changes that will help certain nonprofit organizations continue to provide mortgage credit and servicing to underserved populations. The changes also lay out limited circumstances where lenders that exceed the points and fees cap can pay a refund of the excess amount plus interest to consumers and still have the loan be considered a Qualified Mortgage.

"Our mortgage rules are protecting consumers from debt traps, runarounds, and surprises," said CFPB Director Richard Cordray. "These adjustments will maintain those strong protections, while ensuring consumers have access to credit. This includes helping nonprofits that provide working families with important pathways to affordable homeownership."

In January 2013, the CFPB finalized several mortgage rules, most of which took effect in January 2014. Among these rules, the Ability-to-Repay rule protects consumers from irresponsible mortgage lending by requiring that lenders generally make a reasonable, good-faith determination that prospective borrowers have the ability to repay their loans. The mortgage servicing rules establish strong protections for homeowners, including those facing foreclosure.

The amendments finalized today respond to concerns about origination and servicing issues, including those of nonprofit housing providers. The changes include:

- **Defining nonprofit small servicers:** Certain small servicers are exempt from some of the Bureau's new mortgage servicing rules, so long as they—together with their affiliates—service 5,000 or fewer mortgage loans and meet other requirements. But the Bureau learned that some nonprofit organizations may service loans, for a fee, from other associated nonprofit lenders. Because of their unique structure, these organizations may not be able to consolidate their servicing activities and still meet the current requirements for the small servicer exemption. The changes finalized today provide an alternative definition of a small servicer applicable to certain 501(c)(3) nonprofit organizations so that they can consolidate their servicing activities while maintaining their exemption from some of the servicing rules.

- **Nonprofit Ability-to-Repay exemption amendment:** Certain 501(c)(3) nonprofit organizations that lend to low- and moderate-income consumers were already exempt from the Ability-to-Repay rule if the organization makes no more than 200 mortgages a year, among other limitations. The adjustments finalized today include an amendment to this provision so that certain nonprofit groups, such as Habitat for Humanity, can continue to extend certain interest-free, forgivable loans, also known as "soft seconds," without regard to the 200-mortgage loan limit.

- **Refunding excess points and fees:** Under the Ability-to-Repay rule, certain loans called Qualified Mortgages are subject to certain requirements that protect consumers. The points and fees charged to a consumer on a Qualified Mortgage generally cannot exceed 3 percent of the loan principal at the time the loan is made. Under the amendments finalized today, if a lender discovers after the loan has closed that it has exceeded the 3 percent cap, there are limited circumstances where lenders can pay a refund of the excess amount with interest to the consumer, to have the loan still meet the legal requirements of a Qualified Mortgage. The refund must occur within 210 days after the loan is made. The creditor must also maintain and follow policies and procedures for reviewing points and fees and providing refunds to consumers. The provision also allows secondary market participants to provide these refunds. The change is designed to encourage lenders to provide access to credit to consumers seeking loans that are at or near the points and fees limit. This provision will expire on January 10, 2021.

The provisions regarding nonprofit organizations were finalized largely as proposed. The final provision on refunding points and fees contains a number of modifications from the proposal issued in April, which were made in response to concerns raised during the public comment period. The modifications include requiring that interest on the overage amount to be paid to consumers getting these refunds, a longer overall refund period (the proposal allowed 120 days for the refund to be paid), and certain limitations on circumstances under which this refund option is available.

The CFPB has been working to ensure a smooth transition to compliance with the new mortgage rules. The Bureau has coordinated with other agencies, published plain-language guides and other compliance aids, and had regular contact with industry participants, consumer advocates, legal aid attorneys, housing counselors, and others to answer their questions. The CFPB also has provided educational materials to the public about their new protections under the rules.