CENTER FOR RESPONSIBLE LENDING

Comments submitted by the
Center for Responsible Lending

to the Consumer Financial Protection Bureau
RE: 12 CFR Part 1026
Amendments to the 2013 Mortgage Rules under the Truth in Lending Act (Regulation Z)
Qualified-Mortgage Rule

Docket No. CFPB-2014-0009
RIN 3170-AA43
79 Fed. Reg. 25,730 (May 5, 2014)

June 5, 2014

Thank you for the opportunity to submit comments regarding the Consumer Financial Protection Bureau's (CFPB) proposed rulemaking concerning amendments to CFPB's Qualified-Mortgage (QM) Rule under the Truth in Lending Act (Regulation Z).

The Center for Responsible Lending (CRL) is a nonprofit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, one of the nation's largest nonprofit community development financial institutions. Self-Help has provided $6 billion in financing to 70,000 homebuyers, small businesses, and nonprofits and serves more than 80,000 mostly low-income families through 30 retail credit union branches in North Carolina, California, and Chicago.

The comments submitted below touch on CFPB's proposed amendments of the qualified-mortgage rule as it relates to 1) nonprofits and 2) post consummation cures.

1. CRL Supports CFPB's Amendments to Adjust its Regulations covering Nonprofits, but we urge CFPB to further clarify its Language to Prevent Potential Abuse.

In this proposal, CFPB (the Bureau) addresses aspects of the qualified-mortgage rule and how this rule impacts how nonprofit housing-credit providers work. The Bureau proposes two amendments to protect nonprofit housing providers from unintended consequences of the qualified-mortgage rule.

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First, the Bureau proposes to amend the definition of "small-servicer" in Regulation Z § 1026.41 by adding a new provision for servicers having a tax exemption ruling or determination letter under IRC § 501(c)(3). This amendment would allow nonprofit servicers to service loans originated by associated nonprofits without losing their small-servicer exemption--so long as the servicer or associated nonprofit was the originating creditor. CRL believes that this amendment is necessary to allow certain nonprofits to continue current practices. The second CFPB amendment would exclude certain "deferred or contingent, interest-free subordinate liens" (commonly known as "silent seconds") from being counted in the 200 loan limit for the nonprofit exemption in 1026.43(a)(3)(v)(D).[1] These amendments are important clarifications, as bona fide nonprofit housing-credit providers' incentives are generally aligned with the interests of borrowers. CRL supports these amendments because we believe that nonprofit housing lenders generally provide a valuable service to low-income homebuyers.

However, CRL urges the Bureau to provide additional language and clarification to prevent confusion or abuse of the nonprofit and "associated nonprofit" definitions. It is possible that without further clarification from CFPB, the proposed rule could be abused by dishonest operators of a 501(c)(3) entity. In the event of abuse, the IRS may revoke an entity's 501(c)(3) designation for failing to comply with IRS regulations. But, until the IRS formally does so, a noncompliant entity will still have a "tax exemption ruling or determination letter from the [IRS] under [IRC] section 501(c)(3)" as required to be eligible for the exemption proposed in Regulation Z § 1026.41. A strict interpretation of the proposed regulation would permit a dishonest nonprofit to qualify for the exemption until the IRS revokes its designation. In this event, the CFPB would be obliged to honor the exemption despite even blatant evidence that the entity was not a bona fide nonprofit. This problem, however, can be avoided by requiring the entity to be a *bona fide* nonprofit that operates in compliance with IRC § 501(c)(3). Adding commentary specifying that the rule is to be interpreted in this manner or amending the proposed rule to include such a requirement would preserve the intent of the rule without any impact on legitimate nonprofit entities.

CRL also recommends a clarification, in the commentary and supplementary information announcing the final rule, to prevent other abuses of the "associated nonprofit" definition. As paragraph 4 of the proposed commentary currently states, the small servicer determination is made separately for each "associated nonprofit entity." This means each entity can service up to 5,000 loans and maintain eligibility for the exemption. We encourage the Bureau to publicly state that it will monitor use of this exemption to ensure that dishonest associated nonprofits are not used to conceal a servicer's improper invocation of the exemption while servicing more than 5,000 loans. Similarly, the Bureau should occasionally examine silent second mortgages made pursuant to the proposed rule to ensure that any associated charges are bona fide.

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1 79 Fed. Reg. 25,730, 25738 (May 5, 2014).

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2. CRL Supports the Proposed Right to Cure, but the Amendment Must Include Certain Key Elements that will Protect the Borrower.

CRL will support a right to cure that will satisfy a set of requirements that will also protect the borrower in instances of bona fide errors made by creditors. Overall, the cure must address any and all negative consequences to the borrower, including providing a cash refund to the borrower. In addition to a refund, the creditor must adjust and correct any excess fees charged and financed, such as interest rates, etc. that derive from the original overcharge. A loan should only regain QM status when the consumer can be made whole. Second, the Bureau should also include language stating that any errors in overcharges and the following cure process must be done in good faith. Third, the Bureau should adopt a low cap on the size of the overcharge subject to cure. In other words, presumption of a good faith error should not be applied to egregious overcharges. Fourth, errors in legal judgment should not be curable. Similarly, in the Truth in Lending Act, an error in legal judgment is not a defense under §1640(b) or (c).[2] Fifth, CRL supports the regulation having a fixed number of days (120) after consummation of the loan, which also should not be subject to the discovery rule. Finally, the Bureau should not allow cure provisions in the (albeit unlikely) event of rescission, litigation, borrower or regulator initiated error-notification, or default arising either out of the loan amount error or other problems with the loan that may occur during the cure time period. CRL also urges the Bureau to monitor the regulation for abuses or unusually high instances of errors originating from the same creditors and adjust its scrutiny accordingly.

Conclusion

A healthy national economy depends on a healthy housing sector. The Bureau's amendments concerning nonprofit small-servicer and silent second mortgage exemptions are helpful changes that will protect nonprofits and benefit consumers. The right to cure provisions are also acceptable as long as the Bureau adopts the appropriate consumer safeguards addressed above. For further information about this comment, please contact Yana Miles at Yana.Miles@Responsiblelending.org

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2 15 U.S.C. §1640(b)-(c)

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