CFPB Proposal Would Encourage Unaffordable Mortgage Lending and Threaten Access to Credit

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Washington, D.C. – Today, the Consumer Financial Protection Bureau released two proposed rules that together will fundamentally reshape the mortgage market at a time when the market is attempting to adjust to the pandemic and recession and access to credit for communities of color is already constrained.

"With the country facing the effects of a worldwide pandemic, the mortgage markets need stability and the continuation of a known system that provides sustainable access to credit. The CFPB should focus its resources now on providing stability and protection for homeowners, not in making major changes," **said Alys Cohen, staff attorney at the National Consumer Law Center**. "The CFPB has reduced transparency by rolling back critical disclosure of fair lending data, refused to enforce important protections for homeowners when mortgage servicers fail to provide them information, and generally neglected the concerns of communities of color in favor of a deregulatory agenda, unconnected to the present circumstances. The decision to proceed with this major mortgage rulemaking now is especially concerning because the homeowners most at risk of losing access to affordable and responsible credit under the proposal, people of color and low-income borrowers, are also those most hard-hit by both the COVID-19 financial and health crisis, as well as the last mortgage meltdown during the Great Recession a decade ago."

The CFPB's proposals would change the circumstances in which a lender is presumed to have met the requirement of the Dodd-Frank Act that borrowers have an ability to repay their mortgages. Instead of the current rule, which tracks the statute in requiring lenders to look at a borrower's income in making this determination, the new rule would allow lenders to get a safe harbor from any enforcement of the statutory requirement so long as the loan is under an arbitrary price cap. While lower priced loans, unsurprisingly, have lower default rates, the CFPB's own research shows that, holding constant for one major determinant of pricing, credit scores, Blacks and Hispanic Whites are denied mortgage loans more often than whites, thus suggesting that using pricing as a cutoff point will necessarily have a discriminatory impact on access to credit unconnected to ability to repay.

The proposals would also end the ability of lenders to rely on underwriting criteria established by Fannie Mae and Freddie Mac in meeting the statutory requirements. It is under this "GSE-patch" that a great deal of current lending in communities of color and in low-income communities is made currently. Rather than extending the GSE patch to provide stability to a market already roiled by economic uncertainty, the CFPB proposes to end it as soon as April 2021.

"Instead of continuing the GSE-patch to provide stability at a time of great market uncertainty, the CFPB is plunging ahead with rulemaking that would dramatically alter the rules of the game for mortgage lenders, borrowers, and our entire economy," **said Cohen.** "Government, industry, and consumer and civil rights stakeholders must work together to develop sustainable mortgage lending models that do not risk a resurgence of abusive loans in the hardest-hit communities and that ensure opportunities to build wealth for all. The CFPB should focus its attention on pandemic response while building the long-term models for sustainable lending, rather than forcing through a rulemaking on limited data.