

Statement Regarding CFPB Revamp of Mortgage Rules That Will Protect Lenders from Legal Liability for Peddling Unaffordable Loans, Increase Foreclosures, and Create Instability in the Mortgage Market

FOR IMMEDIATE RELEASE: December 10, 2020

National Consumer Law Center contact: Jan Kruse (jkruse@nclc.org)

Washington, D.C. – Today, the Consumer Financial Protection Bureau (CFPB or Bureau) released two final rules revising the standards for determining a borrower’s ability to repay a mortgage and further limiting lender liability despite the lessons of the previous financial crisis, which led to millions of unnecessary foreclosures. By removing protections and creating a new exception to the rule, the new “qualified mortgage” (QM) rules will protect lenders from legal liability, increase foreclosures, and lead to instability in the mortgage market. The Biden administration must revisit these rules immediately, given the short timeline until the rules become effective.

The following is a statement from National Consumer Law Center attorney Alys Cohen.

“The Consumer Financial Protection Bureau’s new rules will dramatically change the mortgage market to the detriment of homeowners, especially lower-income Black families who have historically been the target of predatory loans. The Biden Administration must review and change these rules quickly to reflect the intent of Congress that each homeowner is individually reviewed for an ability to repay a mortgage loan.

“The new rules come at the worst time as families are struggling with the economic fallout from COVID-19 and will likely increase foreclosures beyond the flood already expected from the pandemic. While providing more avenues for new credit, many of the new loans made will be neither safe nor affordable. Borrowers with small, more expensive loans will be especially exposed to unsustainable lending, which will lead to some losing their homes.

“Both the CFPB’s new approach to general Qualified Mortgages (QM), establishing ability to repay based on price rather than a borrower’s situation, and its new ‘seasoned QM’ rule, establishing ability to repay based on three years of loan payments, do not measure an individual borrower’s capacity to make payments. Homeowners with unaffordable loans sanctioned by the new rules will not be able to rely on the ability to repay rule to help prevent a foreclosure.

“The Bureau failed to adequately consider reasonable alternatives to its general QM proposal, including extending the current approach of incorporating lending standards with compensating factors from Fannie Mae and Freddie Mac or a more holistic measurement of ability-to-pay based on a borrower’s household budget or cash flow. And the CFPB’s rulemaking exacerbates the vulnerability of borrowers with small, high-priced mortgage loans, largely made to borrowers who are lower-income and people of color.

"The Bureau's "seasoned QM" rule also gives lenders a free pass from liability where a borrower makes payments for three years even if the borrower can show the loan was unaffordable and the payment were made despite significant hardships. Many homeowners who receive unaffordable loans do make payments, often for several years, because trying to save their home is a top priority for families. They often do so by taking on hardships that are detrimental to their families, including taking on additional work, borrowing money, going without medicine or enough food, and not paying utility bills. In preventing homeowners from challenging their unaffordable loans after three years of payments, the CFPB has exceeded its legal authority. The language of Dodd-Frank is directly contrary to the rule's approach because it allows homeowners to defend against a foreclosure for the life of the loan, not just the first three years.

"Combined, the new CFPB rules likely will lead to more foreclosures while letting mortgage lenders off the hook for peddling loans that people cannot afford to pay over the long term."

The General QM Final Rule and the Seasoned QM Final Rule will take effect 60 days after publication in the *Federal Register*. The General QM Final Rule will have a mandatory compliance date of July 1, 2021.

Links

CFPB Qualified Mortgage final rule; NCLC and CFA comments to CFPB proposed rule, Sept. 8, 2020; Civil Rights and Consumer Group Comments_

CFPB Seasoned Qualified Mortgage final rule; NCLC and CFA comments to CFPB proposed rule, Oct. 1, 2020