

CFPB Issues Proposal to Permit Mortgage Lenders to Make Unaffordable Loans Without Consequences

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National Consumer Law Center Statement: Proposal May be Challenged

Washington, D.C. - Today, the Consumer Financial Protection Bureau (CFPB) announced a Notice of Proposed Rulemaking regarding the Dodd-Frank Act ability to repay and qualified mortgage rules.

The following statement is by National Consumer Law Center Staff Attorney Alys Cohen:

“The Consumer Financial Protection Bureau announced a proposed rule that would shield lenders from legal liability for making mortgage loans without regard to borrowers’ ability to repay so long as the borrower remained current for the first three years of the loan and the loan meets other requirements. This action flies in the face of the Dodd-Frank Act, which requires lenders to make a good faith determination of a borrower’s ability to repay and allows borrowers to defend a threatened foreclosure at any time by asserting that the lender ignored the borrower’s lack of ability to repay in making the loan.

“There are many reasons a homeowner can make payments for several years even when a mortgage is unaffordable to them, including payments from roommates who are not on the mortgage, borrowing money, or even going without essentials such as utilities or medical care. These homeowners should not be precluded from using Dodd-Frank’s protections to save their homes, especially since the Ability-to-Repay rule contemplated this scenario already and allowed for it.

“The Dodd-Frank Act’s Ability-to-Repay rule was created to prevent the market excesses that led to the Great Recession, a calamity from which many communities, especially low-income neighborhoods and communities of color, still have not recovered.

“The CFPB’s proposal puts low-income neighborhoods and communities of color at greater risk at a time when they are facing increased challenges due to the COVID-19 pandemic. The proposal ignores the most basic lessons of the Great Recession and clear Congressional intent, and seeks to protect lenders from basic accountability to those homeowners who may have received unaffordable loans. Because the proposed rule directly conflicts with the underlying law, the proposal may be ripe for a challenge under the Administrative Procedure Act.”