US consumer financial board issues pro-bank mortgage rules

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The US Consumer Financial Protection Bureau (CFPB) on Thursday issued new rules for mortgage lenders and banks which, in the guise of upholding consumers' rights, will strip most borrowers of the ability to sue in court against predatory lenders.

The CPFB was established as an "independent" arm of the Federal Reserve Board under the Obama administration-backed Dodd-Frank banking overhaul law, passed in 2010. The CFPB was touted by the administration and its liberal and "left" supporters as the crowning achievement of a law that supposedly imposed the "toughest" regulations on the banking industry since the 1930s.

In fact, Dodd-Frank was an exercise in damage-control, enacted in the aftermath of the 2008 Wall Street crash to shield the banks from any serious repercussions for the fraudulent and illegal practices that plunged the US and world economy into the deepest crisis since the Great Depression. Dodd-Frank imposed token restrictions on certain of the most egregious forms of financial swindling, while allowing the banks to continue their speculative activities and actually increasing the power of the biggest banks.

It was the legislative counterpart to the multi-trillion-dollar bailout of the banks at taxpayer expense.

Dodd-Frank purported to end the predatory mortgage lending that led to the crash of the housing market in 2006-2007 by legally requiring banks to verify the ability of mortgage customers to repay their loans. This implicitly gave a green light for victims of predatory lending practices who defaulted on their loans to sue the banks in court.

The law mandated the CFPB to formulate the rules by which the banks would verify the "ability to repay" of mortgage borrowers. At a public hearing held Thursday in Baltimore, called by Congressman Elijah Cummings, the ranking Democrat on the House Oversight and Government Reform Committee, CFPB Director Richard Cordray, who was appointed last year by Obama, heard testimony on the new rules released that day.

The rules essentially establish a new category of "qualified mortgages," which must meet certain criteria that minimize risk of default. In return for adhering to these criteria, the banks gain the immense benefit of virtual immunity—a so-called "safe harbor"—from law suits by borrowers or purchasers of mortgage-backed bonds.

A "qualified mortgage" may not contain terms that exceed 30 years or high-risk features that were prevalent during the housing bubble such as interest-only payments or negative-amortization payments, where the principal of the loan increases.

It may not carry fees and points in excess of 3 percent of the loan, although this requirement is watered down for loans under $100,000.

The banks, must, moreover, verify that once the borrower begins making mortgage payments, his or her total monthly debt payments will not exceed 43 percent of pre-tax income. Lenders are required to look at eight factors, including current income and assets, employment status, credit history, the mortgage's monthly payment, other loan payments (student loans, credit cards, etc.), monthly payments for such things as property taxes, other debt obligations and the borrower's monthly debt-to income ratio.

This effectively excludes from the designation of qualified mortgages, and therefore protection from legal challenges, no-documentation loans and adjustable rate mortgages with low initial "teaser" rates and ballooning payments further down the road.

However, the new rules do not ban such exotic and high-cost loans. While it is believed that in the short term banks will be hesitant to offer such loans, and the government-sponsored mortgage finance giants Fannie

Mae and Freddie Mac, which currently buy or guarantee 90 percent of all home loans in the US, will not accept them, there is no reason to assume that these highly predatory loans will not make a comeback.

The *Wall Street Journal* on Thursday quoted John Taylor, chief executive of the National Community Reinvestment Coalition, as saying, “Where there’s money to be made, and where it’s clear that something illegal or predatory is not occurring, there will be a market for it because there will be a better rate of return.”

There are as well huge loopholes regarding “quality mortgages.” For up to seven years, the debt-to-income requirement will be waived if loans that exceed the 43 percent threshold are nevertheless deemed acceptable by Fannie Mae or Freddie Mac.

So-called “community banks” with assets of less than $2 billion are exempted from the “quality mortgage” requirements, and balloon payments are permitted in mortgages originated by and held in the portfolio of small lenders that operate in rural or underserved areas. This is, in effect, an invitation for scavengers to exploit would-be homeowners in impoverished rural and inner-city areas.

For the most part, the new rules, which take effect January 1, 2014, coincide with the current lending practices of banks and mortgage companies, which have imposed strict requirements and curtailed credit availability in the aftermath of the housing and banking meltdown. The *Wall Street Journal* reported that “roughly three-quarters” of all mortgage loans in 2011 had a 43 percent debt-to-income ratio and met the other CFPB requirements, and an additional 20 percent of loans that exceeded the 43 percent ratio met the second test of being acceptable to Fannie Mae or Freddie Mac.

Thus, in return for continuing to do what they are already doing, the banks have received from the CFPB protection from lawsuits by victimized borrowers or holders of mortgage-backed bonds.

Testifying at Thursday’s hearing in Baltimore, David Moskowitz, deputy general counsel at Wells Fargo, all but said as much. “It’s entirely consistent with how we think about basic underwriting,” Moskowitz said.

His remarks were consistent with those of other industry spokesmen, who generally hailed the new rules. “It is far less onerous than what banks expected,” said Jaret Seiberg, senior policy analyst at Guggenheim Securities.

David Stevens, chief executive of the Mortgage Bankers Association, told the *New York Times*, “These rules offer protection for consumers and a clear, safe environment for banks to do business.” He went on to praise the CFPB for doing “a great job listening to stakeholders” in drafting the rule.

Some consumer advocates sharply criticized the new rules. Alys Cohen of the National Consumer Law Center gave a statement to the CFPB hearing in Baltimore in which she declared: “The safe harbor the bureau has afforded for prime loans provides absolute shelter to lenders who knowingly make unaffordable loans, in direct violation of congressional intent.” As a result, she added, “new abuses will flourish.”

She pointed out that the new rules do not ban “yield spread premiums”—bonus payments by banks to brokers who convince borrowers to take out needlessly expensive loans. “The Consumer Financial Protection Bureau’s qualified mortgage rule invites abusive lending,” she concluded.

The financial crash was the outcome of a Ponzi scheme in which lenders pushed exotic and high-cost sub-prime loans on unwitting consumers who could not afford them. The banks bought the loans and turned them into mortgage-backed securities and collateralized debt obligations, selling these “structured financial products” to banks and speculators around the world. Government regulators blessed the scam and the credit-rating firms gave the toxic securities and CDOs top ratings.

Not a single CEO or high-ranking bank official has been prosecuted, let alone convicted and jailed, for these criminal activities that brought the housing market and financial system to the verge of collapse and precipitated a social catastrophe for hundreds of millions of workers in the US and around the world. Not a single Wall Street bank has been seriously penalized, let alone broken up or taken out of private hands.

Under these conditions, there is no credibility to government pretences of protecting consumers and policing the bankers. Financial machinations and outright crimes are not mere excesses of an otherwise healthy economic system. They are embedded in the very foundations of the capitalist system, whose mortal crisis takes the form of parasitism and criminality.