MORTGAGE BANKERS ASSOCIATION

National Council of State Housing Agencies

June 19, 2018

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

**Re: Request for Information Regarding the Bureau's Adopted Regulations and New Rulemaking Authorities, Docket No. CFPB-2018-0011**

Dear Ms. Jackson,

The Mortgage Bankers Association (MBA)[1] and the National Council of State Housing Agencies (NCSHA)[2] appreciate the opportunity to offer comments on the Bureau's adopted and inherited rulemakings. The RFI process is an excellent opportunity for the Bureau to take stock of its actions in the past and consider how best to meet its statutory mandates to protect consumers and promote financial opportunity going forward. In that spirit, our organizations would like to highlight a particular issue with the Loan Originator Compensation Rule that is harming consumers without offering any concurrent consumer protections.[3]

The Truth in Lending Act ("TILA"), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), states that "no mortgage originator shall receive from any person and no person shall pay to a mortgage originator, directly or indirectly, compensation that varies based on the terms of the loan (other than the amount of the principal)."[4] The Loan Originator Compensation Rule broadly prohibits compensation based on loan terms or proxies for loan terms while providing a short list of expressly permissible compensation factors. In practice, this requirement is understood to forbid varying compensation for different loan types or products, including loans made under housing finance agency (HFA) programs.

HFA programs provide participants with much needed access to credit, along with housing counseling and financial education. HFA loans and partnerships with HFAs are important tools to ensure increased access to credit through Fannie Mae and Freddie Mac under the conservatorship of the Federal Housing Finance Agency.[5] These loans

[1] MBA is the national association representing the real estate finance industry, an industry that employees more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's web site: www.mba.org.

2 NCSHA is a nonprofit, nonpartisan organization created by the nation's state Housing Finance Agencies (HFAs) more than 40 years ago to coordinate and leverage their federal advocacy efforts for affordable housing. NCSHA's member HFAs are state-chartered authorities established to help meet the affordable housing needs of the residents of their states. State HFAs have provided more than $450 billion billion in financing to produce and preserve more than 7 million affordable owner-occupied homes and rental apartments. NCSHA represents its members in Washington before Congress, the Administration, and the several federal agencies concerned with housing, including the Department of Housing and Urban Development, the Department of Agriculture, and the Treasury, and with other advocates for affordable housing. www.ncsha.org.

3 MBA discusses the rest of our comments on the Loan Originator Compensation rule in our filed comments on the Adopted Rulemakings docket.

[4] 12 U.S.C. § 1639b(c)(1).

[5] The FHFA has included assessing opportunities for further partnerships with HFAs as part of the 2018 GSE goals around increasing access to mortgage credit for creditworthy borrowers. *See 2018 Scorecard for Fannie Mae, Freddie Mac and Common Securitization Solutions*, p. 3, December 2017. Available at: https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/2018-Scorecard-12212017.pdf.

encourage homeownership in a responsible and well-regulated manner. HFA programs are particularly important for first-time homebuyers and low- to moderate-income ("LMI") families who are often underserved and encounter difficulty gaining access to credit elsewhere. In 2016, the latest year for which comprehensive data is available, the median borrower income for all HFA program loans was $49,598, 14 percent below the national median income for the year.[6]

However, the assistance provided through these programs is not without costs. Because of robust underwriting, tax law-related paperwork, yield restrictions, and other program requirements, HFA loans are often more expensive to produce. Covering these expenses is particularly difficult given that many HFA programs include limits on the interest rates and fees that may be charged to borrowers. In the past, lenders would address this challenge by paying loan originators a smaller commission for an HFA loan than for a non-HFA loan. Conversations with MBA members suggest that loan originators remain willing to reduce their compensation for these loans, but believe that doing so is forbidden by the Loan Originator Compensation rule.

The inability to reduce loan originator compensation to offset HFA production costs under the current Loan Originator Compensation rule harms consumers by reducing the availability of these vital programs. Companies that wish to offer these loans do so at a loss. This has the effect of limiting the number of loans they can make and thereby reducing competition—and raising prices—for loans in LMI communities. The Bureau should address this by creating an exemption or alternative path to compliance loans made under local bond or HFA programs. The rule's rigidity makes HFA loans less available to consumers in LMI communities, a perverse result given that the rule was intended in part to protect LMI consumers from being steered into expensive loans with higher rates or fees. These unintended consequences need to be addressed.

Finally, we would note that there is already extensive precedent for exempting HFA loans under the Title XIV Dodd-Frank rules. HFA loans are exempt from the ability to-repay (ATR) rule. Although the exemption was not part of the original ATR rule, the CFPB proposed and adopted the exemption for HFA loans based on the concern that an exemption was necessary to ensure the viability and effectiveness of HFA loan programs. Similarly, CFPB has exempted loans directly originated by HFAs from the High-Cost mortgage rule and classified all HFAs as "small servicers" under its mortgage servicing rule, regardless of the size of their servicing portfolios.

Sincerely,

Stephen A. O'Connor
Senior Vice President
Residential Policy
Mortgage Bankers Association

Garth Rieman
Director of Housing Advocacy and Strategic Initiatives
National Council of State Housing Agencies

[6] Data from NCSHA's 2016 Factbook, publication pending. NCSHA is happy to share the data on request.