February 2, 2015

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, NW.
Washington, D.C. 20552

Dear Director Cordray:

On behalf of our members, the National Council of State Housing Agencies (NCSHA)[1] and the Mortgage Bankers Association (MBA)[2] write to you to strongly urge that CFPB provide additional guidance to ensure that state and local Housing Finance Agency (HFA) loans – which are an important entry point for homeownership for first-time homebuyers and lower- and moderate-income American families – are not disadvantaged by the Bureau's Loan Originator Compensation (LO Comp) rule.

HFA programs provide participants needed access to credit along with housing counseling and financial education. They encourage homeownership in a responsible and well-regulated manner and they serve homebuyers who are often underserved and encounter difficulty gaining access to credit elsewhere.

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. Additionally, HFA programs often limit the interest rates and fees that may be charged to borrowers. To address the additional costs associated with originating loans under, and the rate and fee limits applicable to, HFA loan programs, lenders in the past would pay loan originators a smaller commission for originating an HFA loan than they would for a non-HFA loan.

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[1] The National Council of State Housing Agencies (NCSHA) represents the state housing finance agencies (HFAs) for all 50 states, Puerto Rico, the District of Columbia, the U.S. Virgin Islands, and New York City. State HFAs are state-chartered authorities established to help meet the affordable housing needs of the residents of their states.

[2] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs 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.

The LO Comp rule prohibits lenders from basing loan originator compensation on the terms of the transaction (other than loan amount) or any factor that could be considered a "proxy" for a loan's terms. The purpose of this provision is to ensure that loan originators do not have an incentive to steer borrowers toward more costly loans. A consequence of this position, however, is that it has decreased access to HFA loan products for lower- and moderate-income borrowers. Because lenders are not explicitly able to pay lower commission rates for HFA products, many will not offer them because they cannot recover sufficient revenue.

Guidance provided thus far has not worked to sufficiently facilitate involvement in HFA programs. Specifically, informal guidance that lenders who participate in these programs may designate a loan originator or loan originators to exclusively originate HFA products and compensate them for such, has not proven practical or economical except for large lenders. At the same time, while the preamble to the revised LO Comp rule may permit basing loan originator compensation on whether a borrower is a lower- or moderate-income borrower, lenders are not comfortable with using the preamble language as a basis for varying compensation for HFA loans.

Violations of the LO Comp rule are subject to significant damages and can serve as bases for claims at foreclosure under the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). As a result, mortgage investors and other industry members are justifiably cautious about varying loan originator compensation in circumstances unless it is expressly authorized by the rule. Thus, a specific exemption is still needed to assure HFA financing is available for borrowers.

Importantly, 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 the absence of an exemption from the rule would endanger the viability and effectiveness of HFA loan programs.

We therefore urge adoption of a specific exemption to the LO Comp rule for loans made under HFA programs to promote access to credit. The undersigned would appreciate an opportunity to work with the CFPB to develop an exemption to the LO Comp rule for HFA program loans that is appropriately tailored and will avoid restraining participation in such programs in a manner that ensures consumer protection.

If you have any questions, please contact us. If you wish, we would welcome an opportunity to meet with Bureau representatives to discuss these comments.

Sincerely,

Stephen A. O'Connor
Senior Vice President
Public Policy & Industry Relations
Mortgage Bankers Association

Barbara Thompson
Executive Director
National Council of State Housing Agencies