February 12, 2025

Streamlining Mortgage Regulations and Supervision

The Honorable Russell Vought
Acting Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Dear Acting Director Vought:

Recent Administration actions regarding the Consumer Financial Protection Bureau (CFPB) appear to reflect a determination that fundamental changes are needed with respect to this agency.

Therefore, the Community Home Lenders of America (CHLA)[1] writes to request that supervision of independent mortgage banks (IMBs) be significantly streamlined - in order to arrest the trend towards mortgage industry concentration, to maximize competition, and to reduce the cost of mortgage loans.

CHLA makes four key recommendations regarding CFPB regulation of mortgage lending and IMBs:

1. **The CFPB should exempt smaller IMBs from exams, pursuant to the Dodd-Frank statutory requirement to tier supervision by firm size, volume, and risk - and limit exams of larger IMBs to gaps in state exam schedules or to state requests for the CFPB to conduct an exam.**

2. **The CFPB should end regulation by enforcement, a practice that disproportionately harms smaller IMBs and their borrowers. Moreover, CFPB fines and orders should be based on the severity of the violation and should be clearly defined and be of finite term.**

3. **The CFPB should increase LO Comp Rule flexibility - to help consumers by increasing competition and removing impediments to State HFA bond loans and IMB brokered loans.**

4. **The CFPB should immediately suspend court order registry requirements for IMBs and withdraw its proposed form contracts rule. Both are redundant and unnecessary for IMBs.**

A January 31 Administration **Deregulation Executive Order** noted that *"Overregulation stops American entrepreneurship, crushes small business, reduces consumer choice, and discourages innovation."*

This initiative should include CFPB supervision of mortgage lending. CFPB overregulation of smaller IMBs is particularly onerous, as such lenders lack compliance cost economies of scale compared to large lenders. Federal banking regulators have long followed a policy of streamlined regulation for small banks, in recognition of this fact. The CFPB should do the same for non-bank mortgage lenders.

But don't just take our word for it. Consider the June 2017 Treasury report from the first Trump Administration entitled **"A Financial System that Creates Economic Opportunities".**

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[1] CHLA is the only national trade association focused exclusively on small and mid-sized independent mortgage banks (IMBs).

A major conclusion of this Trump Administration Treasury Report was that ***"The CFPB's supervisory authority is duplicative and unnecessary."***

The report noted CFPB supervisory authority over state-licensed nonbanks that neither enjoy special status under federal law, ***"nor is regulation needed to address moral hazard created by deposit insurance."***

The Report also underscored the effectiveness of state supervision, noting that state supervisors ***"were often leaders in identifying consumer protection problems during the financial crisis and have a unique perspective into the financial services available and needs in their communities."***

The report ended by calling on Congress to repeal the CFPB's duplicative supervisory authority, recommending that *"Supervision of nonbanks should be returned to state regulators, who have proven experience in this field and an existing process for interstate regulatory cooperation."*

1. STREAMLINING SUPERVISION OF SMALLER IMBS

IMBs originate 83% of all mortgage loans and far outperform banks in mortgage lending to first-time homebuyers, minorities, veterans, rural and other underserved families [see CHLA's **IMB Report**].

It is critical to keep in mind that IMBs are subject to a significantly broader range of consumer protection laws than any other non-bank financial product. Federal mortgage regulations include Fair Housing; the Equal Credit Opportunity Act (ECOA); RESPA; TILA; Qualified Mortgage (QM); Loan Originator Compensation (LO Comp); TRID; Anti-Steering; HOEPA; and a host of others.

Additionally, **every IMB mortgage individual loan originator must meet SAFE Act testing, pre-licensing and continuing education requirements, as well as independent background checks.** In contrast, **all** mortgage loan originators that work at a bank are exempt from **all** of these requirements.

States are the primary regulators of IMBs. In fact, every IMB is subject to exams and supervision by every state in which they do business, which also have authority to take enforcement action and levy fines not just for state laws, but for all these federal mortgage consumer protection laws cited above.

Yet, while 97% of banks (those under $10 billion in assets) are exempt from CFPB supervision, **every IMB** – no matter how small or how few loans it originates – is redundantly subject to exams and enforcement actions by the CFPB with respect to **all federal consumer protection laws**.

The Dodd-Frank Wall Street Reform and Consumer Protection Act, which created the CFPB, requires a tiered regulatory streamlining for smaller IMBs. Subsection 1024(b)(2) of Dodd-Frank - which deals with CFPB regulation of non-bank financial services firms – specifically requires the following:

"(2) RISK-BASED SUPERVISION PROGRAM. The Bureau shall exercise its authority under paragraph (1) in a manner designed to ensure that such exercise, with respect to persons described in subsection (a)(1), is based on the assessment by the Bureau of the risks posed to consumers in the relevant product markets and geographic markets, and taking into consideration, as applicable—
(A) the asset size of the covered person;
(B) the volume of transactions involving consumer financial products or services in which the covered person engages;
(C) the risks to consumers created by the provision of such consumer financial products or services;
(D the extent to which such institutions are subject to oversight by State authorities for consumer protection; and
(E) any other factors that the Bureau determines to be relevant to a class of covered persons."

Admittedly, the CFPB has implicitly followed such a policy to some degree, as it appears to have conducted exams more often for larger IMBs than for smaller IMBs. However, the failure to provide a formal and transparent exemption under this specific statute to smaller IMBs creates significant CFPB compliance costs on small IMBs, which may spend tens or hundreds of thousands of dollars to prepare for CFPB exams that may never occur - or to hire lawyers or lobbyists to divine CFPB interpretations of mortgage rules – interpretations that may differ from that of their state regulators.

Therefore, the CFPB should publicly announce and follow a policy that it will not conduct exams for smaller IMBs, establishing a threshold with regard to size and/or loan volume that exempts at least a comparable percentage of IMBs as are excluded under the $10 billion bank exemption threshold.

This need not mean that smaller IMBs are exempt from scrutiny. The CFPB could still conduct an exam of a smaller IMB if a state requests that the CFPB do so or if the CFPB receives a disproportionate number of complaints about a particular lender.

Additionally, the CFPB should limit exams of larger IMBs based on need. Many larger IMBs are subject to exams by numerous states, including in some cases a multi-state exam process. The CFPB should be cognizant of state exam efforts and eschew conducting exams for larger IMBs except where there are gaps in state exams of the firm or where specific states are asking the CFPB to conduct an exam (e.g., due to a lack of capacity). This approach is consistent with conclusions in the 2017 Treasury Report.

2. ENDING REGULATION BY ENFORCEMENT

The 2017 Treasury Report cited above makes a strong recommendation against the CFPB utilizing regulation by enforcement, stating that **"The CFPB should issue rules or guidance subject to public notice and comment procedures before bringing enforcement actions in areas in which clear guidance is lacking or the agency's position departs from the historical interpretation of the law."**

The goal of mortgage rules should be compliance - not fines and penalties. This is the way bank regulators operate, working with banks to improve their compliance and generally giving them a chance to fix problems before imposing significant fines. The CFPB should follow the same approach.

Regulation by enforcement disproportionately affects smaller IMBs, because smaller IMBs lack the loan volume and revenue economies of scale that large lenders have to pay outside attorneys and lobbyists to stay current on how the CFPB might interpret its rules.

Regulation by enforcement also disproportionately affects smaller IMBs, because unlike when fines are levied against large corporations (where shareholders merely pay the fine and absorb them as a cost of doing business) fines levied against smaller IMBs end up by being paid by individuals as owners, where even a relatively smaller fine can have a significant financial impact on an individual and their business.

Thus, the CFPB should make every possible effort, when it identifies a potential small IMB compliance concern, to give the IMB the opportunity to correct a compliance concern **before** assessing fines.

Again, the goal should be compliance with the rules. IMBs that are trying in good faith to comply with the rules should not penalized simply because they fail to discern how the CFPB interprets rules.

Additionally, any CFPB fines and other enforcement actions should be based on the severity of the violation. Moreover, CFPB orders should be clearly defined and be of finite term.

3. LO COMP RULE FLEXIBILITY

The LO Comp statutory provision and implementing rule prohibit LO compensation from varying based on the terms of the loan (other than the principal amount of the mortgage loan). However, the inflexibility of the rule works to the detriment of consumers in certain cases – either discouraging competition by prohibiting a reduction in LO compensation to match competing offers or dis-incentivizing loan options like state HFA bond loans or brokered loans which have different cost structures or execution channels.

Therefore, CHLA writes to ask the CFPB for flexibility from the strict prohibition against variations in Loan Originator compensation, as follows:

1. **Allow a lender to reduce compensation to their loan originators, for the purpose of being able to match a competing offer for a borrower an LO has been working with.**

2. **Allow different LO compensation structures and levels for State HFA Bond Financed mortgage loans.**

3. **Allow flexible LO compensation structures and levels in cases where mortgage bankers may choose to broker out loans rather than originating those transactions internally.**

CHLA will soon be releasing more details on why these changes are needed and beneficial to consumers.

4. END RULES/REQUIREMENTS THAT ARE REDUNDANT FOR IMBS

Court Order Rule. In 2024, the CFPB finalized its **Court Order Registry rule** requiring all non-banks, including IMBs, to annually submit to the CFPB state and federal court orders the firm is subject to. As CHLA explained in its **Comment Letter** on this proposed rule, IMBs already routinely provide such information to the Nationwide Multistate Licensing System (NMLS). This requirement is redundant.

The rule also requires all non-banks, including IMBs, to designate an executive responsible for and knowledgeable of the firm's efforts to comply with the orders identified in the registry – and to annually submit a written statement signed by that executive regarding the entity's compliance with each order in the registry. IMBs are already legally responsible for such compliance. Therefore, this too is redundant.

What is the harm? This rule requires IMBs to spend extensive time and financial resources to read and understand this 486 page final rule - and to make sure they don't fail to comply with some technical aspect of the rule that might deviate from NMLS submission requirements.

For mega-lenders that can amortize compliance costs over a large revenue base, this may not be that significant a burden. But for smaller lenders, this – and countless other detailed rules and regulations – imposes a significant cost per loan, while accomplishing little or no consumer protection.

Smaller IMBs currently face a deadline of April 14 for initial compliance with the Offender Registry submission requirements.

Therefore, CHLA calls on the CFPB to take immediate action to suspend for all IMBs these submission requirements (and withdraw or reverse them for IMBs that have already submitted).

Ultimately, as CHLA requested in our Comment Letter, the CFPB should provide a safe harbor compliance exemption for IMBs that comply with the comparable NMLS submission requirements.

Proposed Form Contracts Rule.

In February 2023, the CFPB proposed its **Form Contract Rule**, requiring all non-banks, including IMBs, to submit information on all form contracts a firm uses "*when they use certain terms or conditions that seek to waive consumer rights or other legal protections or limit the ability of consumers to enforce or exercise their rights.*"

In its February 23 **CHLA Comment Letter**, CHLA pointed out that Dodd-Frank already provides that *"No residential mortgage loan . . . may include terms which require arbitration or any other nonjudicial procedure as the method for resolving any controversy or settling any claims arising out of the transaction."*

In addition to this ban on arbitration, consumers are not allowed to waive: TRID requirements to stay within loan fee quotes; QM Ability to Repay protections; LO Comp rules; prohibitions against prepayment penalties; a ban on negative amortization; protections for ARM loans; and many others.

Thus, while such form contracts may be a legitimate concern for other non-bank financial activities that are largely unregulated, this rule is entirely unnecessary for IMBs – and serves no consumer purpose.

We appreciate that this Form Contract rule and other pending rules are currently paused by Executive Order. However, the CFPB should withdraw this rule - or at a minimum exempt IMBs from its requirements, since, as noted, IMBs are not permitted to waive these consumer protections.

Again, what is the harm? The proposed rule is 199 pages long and requires detailed analysis to determine precisely what is required, along with annual submission requirements.

Moreover, this rule does not exist in a vacuum. It must be understood in the context of a myriad of compliance protocols that smaller IMBs must navigate – imposed by states, the CFPB, the NMLS, Ginnie Mae, FHA, VA, RHS, Fannie Mae and Freddie Mac requirements, and other agencies.

These impose a cumulative compliance cost and time effort that pose a proportionately higher burden on smaller IMBs and are a contributing factor to consolidation of the mortgage industry.

Thus, regulatory streamlining for smaller IMBs, balancing cost and consumer benefits, is essential.

Thank you for consideration of these comments and recommendations.

Sincerely

COMMUNITY HOME LENDERS OF AMERICA