

September 26, 2018

The Honorable Mick Mulvaney  
Acting Director  
Bureau of Consumer Financial Protection  
1700 G Street, NW  
Washington, DC 20552

Dear Acting Director Mulvaney,

The undersigned trade associations and mortgage industry cooperatives whose members comprise the vast majority of mortgage lending in the United States are writing to urge the Bureau of Consumer Financial Protection (BCFP or Bureau) to make changes to its Loan Originator Compensation (LO Comp) rule necessary to help consumers and reduce regulatory burden. We recognize the Bureau is considering a variety of regulatory actions following the conclusion of its Request for Information process which are designed to reduce costs and improve the functioning of markets for consumers and lenders alike. We believe changes to the LO Comp rule should be among the Bureau's top priorities in its review of the mortgage rules.

The original impetus for the LO Comp rule was to protect consumers from steering. In the current regulatory environment, the harm associated with steering – borrowers agreeing to a loan they do not understand and cannot repay – is less likely than when the LO Comp rule was first adopted due to the rule itself, as well as other regulatory actions adopted following the passage of the Dodd-Frank Act. The Qualified Mortgage rule made repayment ability the preeminent consideration in credit decision-making, largely eliminating loan features and lending practices believed to be risky. More recently, the Bureau's TILA-RESPA Integrated Disclosure rule attempted to make mortgage terms and costs easier to understand by heightening disclosure requirements. Together, these regulations reduce the risk of steering by shielding consumers from unsuitable mortgage loan products and ensuring they are aware of the costs of credit.

While these regulatory developments have reduced the risk of steering, the LO Comp rule places strict limits on certain practices that actually would result in lower consumer costs or greater product availability. After more than five years under the rule, a rebalancing is needed.<sup>1</sup>

The LO Comp rule, while well-intentioned, is causing serious problems for industry and consumers due to its overly strict prohibitions on adjusting compensation and the amorphous definition of what constitutes a "proxy" for a loan's terms or conditions. These harms are felt when borrowers are unable to obtain lower interest rates from their lender of choice when shopping for a mortgage, or when lenders are unable to hold loan officers accountable for errors in the origination process. Consumers are also harmed when lenders limit their participation in special programs designed to serve first-time and low-to moderate-income borrowers. Three important changes would address these problems:

- **The Bureau should allow loan originators to voluntarily lower their compensation in response to demonstrable competition in order to pass along the savings to the consumer.** The Bureau's

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<sup>1</sup> Fortunately, this was anticipated by Congress in the Dodd-Frank Act, which provides the Bureau with broad authority to adjust the LO Comp rule's statutory requirements when doing so "supports the availability of responsible, understandable and affordable mortgage credit to the consumer." 15 USC §1639b(a). While we believe the changes discussed here can be made by changing the regulation within the current framework, the Bureau could use this authority to adopt these recommendations if it believes that the statute constrains its ability to make these pro-consumer and pro-market changes.

rule provides that a loan originator's compensation may not be increased or decreased once loan terms have been offered to a consumer. This provision is designed to eliminate financial incentives for a loan officer to steer a consumer to a higher interest rate or a higher-cost loan.

However, the rule as implemented also has the effect of prohibiting reductions in compensation that could otherwise be passed along to the consumer in the form of a lower-priced, more affordable loan. This result also has the effect of reducing the consumer benefit that comes from shopping across multiple lenders in order to negotiate the best interest rates and other terms.

Currently, in such situations, a lender must decide between lowering the interest rate, fees, or discount points to meet the competition (and thus originating an unprofitable loan with the fixed loan originator compensation), or declining to compete with other loan offers. The requirement to pay the loan originator full compensation for a discounted loan creates a strong economic disincentive for lenders to match interest rates. For the consumer, the result is a more expensive loan or the inconvenience and expense of switching lenders in the midst of the process. This anti-competitive feature impedes loan shopping and discourages price competition, and is therefore contradictory to the stated aims of the Bureau's Know Before You Owe / RESPA-TILA Integrated Disclosure rulemaking, which seeks to encourage shopping and empower the consumer to negotiate.

To address this unintended outcome, we urge the Bureau to amend the rule to permit lenders to respond to demonstrable price competition with other lenders by allowing the loan originator to voluntarily reduce his or her compensation in order to pass along the savings to the consumer. This change would significantly enhance competition in the marketplace, helping lenders to compete for more loans and benefiting consumers who will receive a lower interest rate or lower-cost loan offer.

- **The Bureau should allow lenders to reduce a loan originator's compensation when the originator makes an error.** The LO Comp rule currently prevents companies from holding their employees financially accountable for losses that result from mistakes or intentional noncompliance with company policy when they make an error on a particular loan. As it stands, a loan originator who is responsible for an error may not bear the cost of that mistake. This result runs directly contrary to the central premise of the Dodd-Frank Act amendments to TILA that led to the LO Comp rule — compensation is the most effective way to incentivize loan originator behavior.

The inability to tie compensation to the quality of a loan originator's work on a given loan severely restricts the creditor's ability to manage its employees and disincentivize future errors. Effectively, the creditor is left with two extreme options: fire the loan originator or pay him or her full commission despite the error. This binary choice does not serve the interests of consumers, creditors, or loan originators. Rather, greater accountability on the part of loan originators will incentivize them to reduce errors and consistently comply with regulatory requirements and company policy, leading to a safer and more transparent market for consumers.

- **Lenders should be allowed to alter loan compensation in order to offer loans made under state and local housing finance agency (HFA) programs.** The LO Comp rule is understood to forbid varying compensation for different loan types or products, including HFA loans. HFA programs are particularly important for first-time homebuyers and low- to moderate-income families who are often underserved and face affordability constraints under market interest rates and terms. These programs provide participants with much-needed lower interest rates or access to down payment assistance, often along with housing counseling and financial education, encouraging responsible homeownership in a well-regulated manner.

However, the assistance provided through these programs is not without costs. The robust underwriting, tax law-related paperwork, yield restrictions, and other program requirements make HFA loans more expensive to produce. HFAs also frequently cap lender compensation at levels below what a lender typically receives on a non-HFA loan. Covering these expenses is particularly difficult given that many HFA programs include limits on the interest rates, permissible compensation, and other 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. The inability to do so today reduces the ability of companies to offer HFA loans, particularly when producing these loans results in a loss. HFAs report that some lenders have left their programs, and others have limited the volume of their participation.<sup>2</sup> The Bureau should address this dilemma through an exemption in the LO Comp rule for HFA loans.

Finally, the Bureau should explore ways to generally simplify the LO Comp rule. The rule broadly prohibits compensation based on loan terms or proxies for terms while providing a short list of expressly permissible compensation factors. The Bureau should add clarity to the regulation, including specifying a clear “bright line” list of impermissible compensation factors rather than the current approach of providing a short list of permissible factors and a vague and complicated “proxy for a term” analysis that serves to discourage everything else.

This current state of affairs encourages different interpretations of an ambiguous test that unfairly disadvantages those companies that hew closest to the Bureau’s rule. Industry and consumers would be better served with clear bright-line rules that are easy to follow, and easy to enforce. The undersigned associations and cooperatives welcome the opportunity to discuss the issues identified in this letter.

Respectfully,

American Bankers Association  
America’s Mortgage Cooperative  
Capital Markets Cooperative  
Community Home Lenders Association  
Community Mortgage Lenders of America  
Consumer Mortgage Coalition  
Independent Community Bankers of America  
Mortgage Bankers Association  
The Mortgage Collaborative  
National Association of Federally Insured Credit Unions  
The Realty Alliance  
Real Estate Service Providers Council (RESPRO)

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<sup>2</sup> See MBA and NCSHA’s joint comments, “Re: Request for Information Regarding the Bureau’s Adopted Regulations and New Rulemaking Authorities, Docket No. CFPB-2018-0011” (June 19, 2018). Available at [https://www.mba.org/Documents/Comment%20Letters/NCHSA-MBA\\_Bureaus\\_Adopted\\_Regulations\\_FINAL.pdf](https://www.mba.org/Documents/Comment%20Letters/NCHSA-MBA_Bureaus_Adopted_Regulations_FINAL.pdf).