COMMUNITY
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September 17, 2020

Ms. Kathy Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Dear Director Kraninger:

The Community Home Lenders Association (CHLA) is writing to ask the Consumer Financial Protection Bureau (CFBP) to act expeditiously to modify regulation and enforcement of Loan Originator Compensation practices in order to increase mortgage lender competition, while maintaining consumer protections against steering and other anti-consumer practices.

The impetus for this action is the President's May 19 an Executive Order to provide regulatory relief from regulations that may inhibit economic recovery from the COVID-19 crisis.

That Executive Order states that ***"Agencies should address this economic emergency by rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery. . ."***

CFPB could accomplish these objectives by taking the following timely actions:

- Expeditiously develop guidelines that identify narrow circumstances in which mortgage lenders would be permitted to reduce loan originator compensation in truly competitive situations in order to match or beat competing mortgage rate quotes from other lenders.
- Publicly announce that enforcement action will not be taken against lenders that comply with such guidelines during the COVID emergency.
- Begin the rulemaking process to incorporate these changes into LO Comp rules.

The Problem

The Loan Originator Compensation ("LO Comp") statutory provision and the rule implementing it generally prohibit LO compensation from varying based on the terms of the loan (other than amount of the principal). The purposes are to protect consumers from steering and to eliminate financial incentives to push borrowers into higher rate loans.

Lenders **are** currently permitted under LO Comp rules to respond to a consumer that is carrying out mortgage loan price shopping by lowering the rate on their loan quote. However, the prohibition against reducing (varying) LO compensation makes it very difficult to do so, since a lenders' profit would be reduced or eliminated without the commensurate ability to reduce compensation being paid to LOs. The impact is to reduce a lender's willingness and ability to match competing price offers.

Previous Correspondence

In September 2018 a number of national lender groups, including CHLA, sent the CFPB a letter making this point and asking for targeted flexibility for loan originators to lower their compensation voluntarily, in order to facilitate a more competitive offer and *"pass along the savings to the consumer."*

On its face, this is clearly potentially beneficial to the consumer. However, CHLA recognizes that any changes need to be narrowly circumscribed to narrowly achieve the purpose of more competition, without creating loopholes that undermine the objectives of the LO Comp statute.

Therefore, in April 2019 CHLA sent its own letter to CFPB, putting forth a proposal to circumscribe the narrow circumstances that constitute ***"demonstrable price competition"*** that should be the basis for allowing lenders to reduce loan originator compensation in order to match or compete with other offers that the borrower they are working with have obtained.

This approach is the basis for the recommendations made in this letter.

Recommended Actions

First, the CFPB should develop and promulgate circumstances during the COVID crisis in which lenders can reduce LO compensation, in order to provide more competitive quotes. Per CHLA's letter, these should be narrow, and could include the following:

- *The lender has an agreed upon compensation schedule for the loan originator and has provided a loan estimate, with specific rates and terms, to a potential borrower.*
- *After some period of time working with the borrower, the borrower requests that the lender improve upon the rate or terms of that loan estimate offer, citing a better offer from a different lender.*
- *In response, the lender improves the rate or loan terms of its original loan estimate.*
- *The lender does not make regular use of this flexibility – which could be objectified through some numerical percentage cap..*
- *The lender must maintain a log or in some other way provide documentation that it has met all of the four preceding requirements.*

Second, during the period of the COVID crisis, CFPB should announce it will not take enforcement against lenders that reduce LO compensation and that comply with these conditions. Section 6 of the President's May Executive Order refers to this type of action by providing direction to agencies as follows:

> "***Fairness in Administrative Enforcement and Adjudication*. The heads of all agencies shall consider the principles of fairness in administrative enforcement and adjudication listed below, and revise their procedures and practices in light of them, consistent with applicable law and as they deem appropriate in the context of particular statutory and regulatory programs and the policy considerations identified in section 1 of this order."**

Third, CFPB should begin rulemaking to incorporate this approach into LO Comp rules.

Thank you for consideration of this letter.

Sincerely Yours,

Scott Olson, Executive Director
Community Home Lenders Association

Matthew VanFossen, Absolute Home Mortgage
Board Member, Community Home Lenders Association