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Mr. Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Dear Director Chopra:

Congratulations on your confirmation as Director of the Consumer Financial Protection Bureau (CFPB).

The Community Home Lenders Association (CHLA) writes to renew our longstanding request that the CFPB appropriately implement the Dodd-Frank statutory requirement that all mortgage loan originators (LOs) must be **"qualified."**

Specifically, the Bureau should close loopholes in the LO Comp rule it adopted in 2013 – by adopting uniform loan originator standards that require **all** mortgage loan originators, including those at banks, to:

(1) Pass the basic SAFE Act test,
(2) Pass an independent background check,
(3) Complete 20 hours of SAFE Act required pre-licensing courses, and
(4) Complete 8 hours of SAFE Act required continuing education courses each year.

Further, until the CFPB implements these basic licensing requirements, we suggest that the CFPB require consumers to receive disclosures from bank loan originators: *(1) whether or not they have failed (or did not take) the SAFE Act mortgage test, (2) whether they failed (or were not subjected to) an independent background check, and (3) whether they are knowledgeable in current mortgage rules and regulations by virtue of having completed 8 hours of SAFE Act continuing education courses in the last year.*

Imposing these minimal consumer protections is appropriate and necessary for a number of reasons:

- **Thousands of currently registered bank mortgage loan originators failed the SAFE Act test.**
- **Tens of thousands of bank loan originators would likely fail the test if forced to take it.**
- **The Wells Fargo accounts scandal highlights the risk of a lack of consumer safeguards.**
- **Bank insurance and securities professionals must pass a test to be licensed in their field.**
- **Existing bank mortgage loan originator qualifications loopholes are unique.**

Background

In 2008, Congress adopted the SAFE Act, which requires all mortgage originators that work at non-banks, as a pre-requisite to being licensed, to (1) pass the SAFE Act mortgage competency test, (2) pass an independent background check, and (3) complete 20 hours of pre-licensing courses.

Additionally, the SAFE Act requires all non-bank mortgage originators, as a condition to maintaining their license, to complete 8 hours of SAFE Act approved continuing education courses each year.

However, mortgage originators that work at banks and other depository institutions are exempt from **all** of these basic requirements. This loophole is an anomaly. Virtually all financial professionals, including realtors, appraisers, individuals that work for a bank and sell securities, and individuals that work for a bank and sell insurance – must be licensed and pass a professional test.

In 2010, Congress adopted Section 1402(a)(2) of P.L. 111-203, which requires that **every** mortgage loan originator, including those working at banks, must be **"qualified."**

This provision augmented the SAFE Act to reflect the lessons learning over the previous two years, which is that banks played a critical role in the subprime crisis. Specifically, major Wall Street banks generated hundreds of billions of dollars of risky subprime mortgages through MBS securitization and marketed those loans through their bank affiliates – originating them through loan originators that worked at those banks.

Unfortunately, the January 2013 Bureau's rule that implemented this provision created the unique exemption that bank mortgage originators enjoy from licensing, testing, an independent background check, and continuing education requirements. That rule merely requires unspecified mortgage training and a non-independent background check, both of which can be carried out in-house by the bank.

During consideration of the LO Comp rule, the Bureau considered and then rejected requiring bank loan originators to meet the same requirements as non-bank mortgage loan originators. In the final rule, the Bureau stated that "*The Bureau has not found evidence that consumers who obtain mortgage loans from depository institutions. . . face risks that are not adequately addressed through existing safeguards and proposed safeguards in the proposed rule.*" The Bureau promised to monitor the adequacy of the much lower requirements it established for banks. Unfortunately, it does not appear to have ever done so.

Moreover, the Bureau does not even require a disclosure to the consumer when a bank loan originator failed – or did not even take - the most basic SAFE Act test.

It is incongruous that bank employees that sell insurance or securities must be licensed and meet high qualification standards, but mortgage loan originators selling mortgage products – a sector that brought down the economy in 2008 – are exempt from the most basic requirements that apply to every other financial professional.

In the wake of the Wells Fargo account scandal, we now understand the serious consumer financial and personal harm that can result from employee-consumer interface behaviors that don't meet minimal consumer protection standards. The combination of unqualified bank mortgage loan originators, combined with senior bank management pressures on employees to push profitable mortgage products without regard to suitability, represents a clear consumer threat.

Thousands of Bank Loan Originators Demonstrably Fail the Statutory "Qualified" Requirement

Thousands of individuals working at banks as registered mortgage loan originators failed (and never passed) the SAFE Act test. Allowing an individual that failed this most basic licensing requirement demonstrably violates the statutory requirement that they must be "qualified."

Moreover, the consumers that do business with mortgage originators that have failed the SAFE Act mortgage competency test are not even aware that their loan originator has failed the test.

<u>Tens of Thousands of Bank Loan Originators Would Likely Fail the SAFE Act Test</u>

Less than 5% of the roughly 400,000 bank and other depository institution registered mortgage originators have ever taken the SAFE Act test. It is speculative to estimate how many of the remaining 95% of bank/DI loan originators would fail the SAFE Act test if required to take it tomorrow. However, extrapolating the roughly 10% SAFE Act test failure rate of the small numbers of bank loan originators that have taken the SAFE Act test across the universe of all registered bank loan originators, there would be more than 35,000 registered bank loan originators that fail the test if forced to take it tomorrow.

Alternatively, extrapolating the historical 30% first-time failure rate of all individuals over time that have taken the SAFE Act test, this number would balloon to over 100,000 bank mortgage loan originators.

Admittedly, this latter calculation is on the high side, since many of these individuals have been in the industry for some time and would likely have a higher pass rate than the overall SAFE Act average. On the other hand, however, most people who take the test have studied for it ahead of time – while existing bank registered loan originators have no strong reason to study for or stay current on these issues.

<u>Wells Fargo Accounts Scandal Demonstrates Consumer Risks</u>

In the years leading up to 2016, Wells Fargo bank generated millions of unsolicited fraudulent savings and checking accounts on behalf of Wells Fargo clients without their consent. In response, the CFPB fined Wells Fargo $185 million for these actions, and the company faces billions of dollars of addition civil and criminal suits.

The fraud resulted in borrowers being charged unanticipated fees and receiving unexpected credit or debit cards or lines of credit. There is much blame to go around – including explicit sales incentives established by Wells Fargo to commit the bad acts, branch managers who wanted to show good numbers, and pressure for top level management to "cross-sell."

The bottom line was that consumers suffered a significant financial, as well as emotional cost, from these fraudulent accounts. The behavior is similar to what the banks did more than a decade ago to market mortgage loans to borrowers that didn't qualify for them and were put at undue financial risk, either from taking on loans they couldn't afford or pushed towards higher priced loans than they were eligible for.

The latter led to Congressional passage of the SAFE Act which governs non-bank mortgage loan originator requirements and the Dodd-Frank LO Comp requirement that all mortgage loan originators must be "qualified."

Consumers must be confident that the individuals they interact with in the mortgage loan process are knowledgeable about mortgage rules and mortgage products, that they understand their ethical obligations, and they have the character to carry out that role.

<u>Other Bank Professionals Must Pass a Test to Be Licensed in Their Field</u>

Individuals that work at banks that sell securities products to consumers must be federally licensed, pass a Series 6 or 7 exam, and complete periodic continuing education. Individuals that work at banks that sell insurance to consumers must be licensed in the state they do business, pass a test, and complete periodic continuing education. Yet, individuals at banks that do mortgage origination are exempt from these requirements – even though mortgages are arguably have a much more significant economic impact on consumers than which insurance or securities they buy.

The Qualifications Loopholes Enjoyed by Bank Mortgage Loan Originators are Unique

Bank mortgage originators are virtually the only professionals involved in real estate or mortgage transactions that are not subject to basic testing and continuing education requirements. Specifically:

- Real estate brokers must be licensed, tested, and take annual continuing education in all 50 states.
- Individuals that perform appraisals on mortgage loans must be licensed, tested, and take annual continuing education in all 50 states.
- Individuals that do home inspections must be licensed and tested in 32 states and a majority of states require them to complete periodic continuing education.
- As previously noted, all mortgage originators that work at non-bank mortgage firms must be licensed, pass an independent background check by the state, complete 20 hours of pre-licensing courses, pass a mortgage competency test, and complete at least 8 hours continuing education each year.

Finally, individuals in many other non-financial professions have licensing, testing, and continuing education requirements - such as Funeral Directors, Cosmetologists, Barbers, Electricians, Plumbers, and Interior Home Designers. We do not understand why bank mortgage loan originators should have lower standards than these professions.

Transitional Period for Compliance

We understand that there are hundreds of thousands of existing registered bank mortgage loan originators that would have to have a reasonable transitional period to achieve compliance with meeting the same standards that non-bank loan originators must now meet. Non-bank mortgage loan originators went through a similar process when the SAFE Act was enacted for non-bank mortgage originators.

The transitional licensing law gives bank mortgage loan originators 120 days to complete the SAFE Act requirements when the loan originator goes to work for a non-bank. We believe the same period is reasonable for the most critical upfront licensing requirements – passing the SAFE Act and passing an independent background check. Since existing bank mortgage loan originators are already serving consumers, there is no justification for having to give them more time to study for the SAFE Act test. This transitional period could be effectively imposed by the CFPB by simply deferring the effective day of the new regulations by 120 days.

We also understand that taking 20 hours of pre-licensing courses could create more of a logistical time compliance challenge. Therefore, a longer period for compliance is fair – e.g., one full year, or even longer if the volume of applicants makes it difficult for loan originators to meet such a deadline.

We appreciate the opportunity to present these views and would be happy to discuss them with you.

Sincerely Yours,

COMMUNITY HOME LENDERS ASSOCIATION

CC: Mr. John Ryan, Conference of State Bank Supervisors