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November 12, 2021

Mr. John W. Ryan
President & CEO
Conference of State Bank Supervisors
1129 20th Street NW, 9th Floor
Washington, DC 20036

Dear Mr. Ryan:

The Community Home Lenders Association (CHLA) is writing to express our opinions about emerging efforts on the part of some states to adopt CRA requirements on independent mortgage banks (IMBs).

We share the objectives that underlie such actions – which is to maximize affordable mortgage loans for underserved borrowers. As the only national association that exclusively represents IMBs, we are proud of the fact that IMBs lead the market in access to mortgage credit, doing a demonstrably better job than banks **[S**ee **CHLA's 2021 IMB Report]**.

CHLA would like to be partners with states in maximizing access to mortgage credit. However, imposing CRA on IMBs would have little or no positive impact and could be counterproductive. Following are more effective actions states could take to help IMBs serve even more underserved borrowers:

1. Waive state SAFE Act test fees and subsidize the cost of SAFE Act pre-licensing courses for minority and underserved mortgage loan originators. It is critical to understand the IMB business model. IMBs don't make loans through physical branches; their lifeline to lending to underserved borrowers and underserved communities is through their mortgage loan originators. However, unlike banks which have no licensing requirements for mortgage loan originators, non-bank loan originators must pass a SAFE Act test and take 20 hours of pre-licensing courses. These two requirements cost around $500 combined - a barrier to minority and low-income persons interested in entering the business.

2. Eliminate state SAFE Act restrictions that deny licenses to non-bank mortgage loan originators based on their credit reports. As noted, non-bank loan originators meet much higher standards than bank loan originators. However, credit reports serve no useful purpose in measuring suitability to originate mortgage loans, except to disqualify new minority and low-income mortgage loan originators.

3. End state requirements that mortgage loan originators be located within 100 miles of an IMB physical office. COVID has demonstrated that consumers were fully protected in the countless states that temporarily waived such requirements. One of the ways IMBs consider expanding into new areas, including underserved communities, is to hire loan originators that serve such areas, prior to expanding their focus in that area or locating a branch. Loan originator proximity requirements discourage this.

The concept of CRA also implies that a mortgage lender has autonomy over the underwriting requirements they set, which are critical to their capacity to serve minority and underserved borrowers.

CHLA has publicly expressed concerns about hidden algorithms in underwriting systems like the GSEs' AUS that could – even if unintentionally - discourage loans to underserved or minority borrowers. However, extending CRA to IMBs demonstrates a lack of understanding of the IMB business model. IMBs generally do not set underwriting requirements – they follow requirements set by the federal agency loans they predominately underwrite to (and which are already more targeted to underserved borrowers).

Therefore, we encourage states to lend their strong support to the following federal actions, which could have a more meaningful impact in helping IMBs serve even more underserved and minority borrowers:

1. FHA Should end Life of Loan premiums and cut annual premiums. FHA is the most effective federal mortgage program for minority and underserved borrowers, serving otherwise qualified borrowers with credit blemishes or low down payment needs. However, FHA annual premiums are excessive and Life of Loan premiums deprive borrowers of tens of thousands of dollars of equity wealth building.

2. Fannie Mae and Freddie Mac should continue and expand recent access to credit efforts. Since FHFA Acting Director Sandra Thompson took office, the GSEs have taken a number of positive steps to improve access to credit to underserved borrowers. But more can be done, such as reducing excessive LLPAs, ending mortgage insurance volume discounts to large lenders which disadvantage underserved borrowers, and reversing recent contractions and creating more transparency in their AUS credit box.

3. More Flexible Loan Originator (LO) Comp rules for HFA bond deals. The National Council of State Housing Agencies has urged the CFPB to issue guidance to provide more flexibility so that LO Comp rules do not *"decrease access to HFA loan products for lower- and moderate-income borrowers."*

CRA Has Generally Been Ineffective for Bank Mortgage Lending

A November 2020 Greenlighting Institute Report concluded that in California ***"Non-bank lenders make twice as many home purchase loans to low-income borrowers as mainstream banks."*** The Urban Institute regularly cites statistics showing IMBs do a better job than banks of serving underserved borrowers, based on metrics like FICO scores and DTI ratios. IMBs do over 90% of FHA lending – a key vehicle for first time homeownership for borrowers with credit blemishes and low down payment needs.

CRA may be effective in ensuring that banks have local branches for access to checking accounts, provide consumer credit, and make small business loans. However, CRA has been arguably ineffective in promoting banks mortgage lending to underserved borrowers. During the same time that almost all banks received satisfactory CRA ratings, many banks exited mortgage markets after the 2008 housing crisis or imposed credit overlays to focus on higher FICO score borrowers. Moreover, banks often meet CRA requirements simply by buying IMB-originated loans instead of originating the loans themselves.

CRA for IMBs is Not Appropriate

1. The purpose of CRA has been to address historical bank practices of taking bank deposits from residents of a local community – and then diverting the funds to other communities, particularly areas with higher levels of wealth. No such problem exists with IMBs. IMBs simply do not take deposits from local communities. Instead, IMBs access capital markets – with national and international investors – to bring funds **into** local communities in order to make mortgage loans.

2. Banks are subject to CRA because of a kind of quid pro quo. In exchange for various forms of federal taxpayer backing, banks are required to serve the local communities where they establish branches and take in deposits. Examples of taxpayer backstops for banks include: (1) federal insurance of bank deposits through the FDIC, which facilitates cheap and easy access to funds, regardless of the credit standing of the bank, (2) advances from the Federal Home Loan Banks, which constitute one of our nation's Government Sponsored Enterprises, and (c) access to the discount window at the Federal Reserve, which provides very low rates on short term funds.

   In contrast, IMBs enjoy no comparable financial backing, either at the federal or state level.

3. The term itself - *"Community Reinvestment Act"* – highlights the concept that banks should be required to **"reinvest"** in communities where they take in consumer deposits from residents living in that community. However, without deposits coming from specific locations, it is unclear what the local community is that an IMB would have to "reinvest" in.

4. Imposing CRA on IMBs reflects a lack of understanding of how IMBs work. Unlike banks, IMBs are generally not portfolio lenders; they are not free to make decisions about underwriting criteria and whether to have loan options that serve underserved borrowers. Instead, the great majority of mortgage loans that IMBs originate are federal agency loans (FHA, RHS, VA, Fannie Mae, Freddie Mac), which have prescribed underwriting requirements. Notably, IMBs dominate FHA lending, which consistently serve higher percentages of underserved and minority borrowers.

5. IMBs do not have generally discretion to design underwriting terms to focus on lower income, lower FICO borrowers as they predominately originate federal agency loans (FHA, VA, GSEs). Moreover, as IMBs originate 90% of FHA loans, there are counter-veiling requirements – excessive loan percentages to underserved borrowers can result in financial penalties.

State CRA Requirements Could Discourage IMBs From Lending in a State

IMBs decide which states they choose to originate mortgage loans in. Smaller IMBs typically lend in a few adjacent states or a region. Decisions on which states to lend in are based many factors, including the regulatory burden in comparison to the expected volume and profitability of loans in that state.

Smaller IMBs are particularly impacted by a CRA requirement in a particular state, for the simple reason that smaller IMBs don't have the same regulatory compliance cost economies of scale that larger lenders do. Regulatory costs are much higher for smaller IMBs because they are spread over a small loan base.

Burdensome and costly new CRA compliance requirements (with little real-world impact) can be a factor in discouraging IMBs from deciding to originate mortgage loans in a state.

The best experience we have of a state imposing CRA on IMBs is Massachusetts' adoption in 2007.

HMDA data comparing Massachusetts data since it adopted CRA for IMBs (2020 vs 2008) shows that growth in IMB lending in Massachusetts significantly trailed the national average. [1]

When Massachusetts adopted CRA for IMBs, the 26% Massachusetts IMB share of mortgage loans in 2008 **was above** the national average of 24%. 12 years later, the Massachusetts IMB share of mortgage loans of 55% in 2020 **had fallen to significantly below** the national average of 63%.

IMBs already do a good job of serving underserved borrowers, and nothing in Massachusetts HMDA data supports the contention that CRA increases IMB lending to minority and underserved borrowers.

In fact, in the 12 years after Massachusetts imposed CRA on IMBs, the IMB share of mortgage loans to low and moderate income borrowers increased from 27% in 2008 to 62% in 2020 - while the national average of IMB lending to such borrowers increased at a more rapid pace, from 29% to 67%.

Similarly, in the 12 years after Massachusetts imposed CRA on IMBs, the IMB share of mortgage loans to minority borrowers increased from 27% in 2008 to 62% in 2020 – while the national average of IMB lending to minority borrowers increased at an even more rapid pace, from 33% to 71%.

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[1] Data cited is from the Mortgage Bankers Association. https://www.mba.org/advocacy-and-policy/residential-policy-issues/state-and-local-issues/state-community-reinvestment-act-(cra)-requirements-for-independent-mortgage-banks

Considerations for States That Adopt CRA for IMBs

CHLA makes the following recommendations for states that have already adopted CRA for IMBs:

1. **CRA ratings should be based on a comparison of an IMB's percentage of low- and moderate-income mortgage loans to the average of <u>all</u> loans statewide** (including bank loans)**.**

2. **Formal CRA exams are neither appropriate or necessary unless an IMB has an Unsatisfactory Rating based on the low/mod income comparison in 1 above - or unless there is credible, tangible evidence that the IMB is engaging in actions causing reduced lending to low- and moderate-income borrowers. Any CRA exams should be streamlined for smaller IMBs, both with respect to scope and frequency, consistent with bank regulatory policies.**

3. **Imposition of CRA requirements should have a minimum threshold based on a state's size or mortgage volume – e.g. more than 50 annual loans in smaller states, and more than 1,000 in large states.** This is critical to avoid disincentives for IMBs to explore lending in new states.

4. **States should not impose requirements to locate branches in a specific geographic area.** Any requirement to open offices in specific locations shows a lack of understanding of the IMB business model. Unlike banks, physical office-based business constitutes a tiny portion of IMB lending; loans are originated primarily through an IMB's mortgage loan originators. A more effective approach would be for states to adopt the suggested actions on the first page of this letter to expand loan originators that serve underserved borrowers and communities.

5. **CRA should not impose requirements for IMBs to fund community organizations.** Mandated contributions to community groups would simply be passed along to borrowers in the form of higher mortgage fees or rates. If a state wants to fund meritorious community organizations or activities, it should do so directly - not through some backdoor CRA negotiation.

6. **Enforcement mechanisms should be reasonable and proportionate**. The goal should be good performance - not punitive fines or enforcement penalties. Banking regulators never shut down a bank because of poor CRA ratings; states should not refuse to renew an IMB's license due to an un-satisfactory CRA rating in states that adopt CRA for IMBs. Additionally, new branch approval and change of control approval should not be unnecessarily delayed or conditioned on meeting arbitrary CRA performance criteria.

We thank you for consideration of these comments and ask you to forward them to your members.

Sincerely Yours,

COMMUNITY HOME LENDERS ASSOCIATION