



February 6, 2023

CHLA Comment Letter

Proposed CFPB Rule - Registry of Supervised Nonbanks that Use Form Contracts to Impose Terms and Conditions that Seek to Waive or Limit Consumer Legal Protections Docket No. CFPB-2023-0002]. RIN 3170-AB14

The Honorable Rohit Chopra
Director, Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Dear Director Chopra:

The Community Home Lenders of America (CHLA)¹ writes to provide comments in response to the Bureau's "*Registry of Supervised Nonbanks that Use Form Contracts to Impose Terms and Conditions that Seek to Waive or Limit Consumer Legal Protections.*"

CHLA supports the objectives cited in the Bureau's press release of increasing public awareness of terms and conditions in form contracts that restrict consumers' rights. We also understand why the Bureau would want to establish this requirement for the wide range of non-bank financial firms and products that are subject to few federal consumer protection laws and have little federal or state regulatory supervision.

However, we see no real consumer benefit of imposing this requirement on mortgage lender-servicers, since a large number of federal consumer protections already exist that cannot be waived by contract - including a ban on arbitration and other actions limiting consumer legal rights.

Moreover, application of this 223-page rule to smaller independent mortgage banks (IMBs) creates a significant time and cost compliance burden, that will exacerbate other factors already causing industry consolidation - which in turn hurts consumers by reducing loan choices and competition.

Section 1024(B)(2) of Dodd/Frank requires the Bureau to tailor regulation by asset size, volume, and risk. **Therefore, CHLA calls on the Bureau to exempt small and mid-sized IMBs from this requirement.**

This is warranted, because the requirement provides almost no consumer benefit - since **Section 1414 (e) of Dodd-Frank already prohibits arbitration or any other actions limiting consumer legal action:**

"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."

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

Statutory Requirement to Tailor Supervision by Size, Volume, and Risk

Section 1024(b)(2) of Dodd Frank requires the Bureau to tailor supervision of non-banks by asset size, volume, risks to consumers, and degree of state oversight:

SECTION 1024(b)(2) OF DODD-FRANK:

“(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;

(E) any other factors that the Bureau determines to be relevant to a class of covered persons.

For new requirements such as this registration of form contracts, the Bureau should exempt smaller IMBs when the compliance burdens for smaller IMBs substantially outweighs the consumer benefit.

The Rule’s Compliance Burden on Smaller IMBs

This 223-page rule imposes a disproportionate impact on smaller IMBs, for many reasons:

- (1) Smaller IMBs lack the volume economies of scale necessary to spread compliance costs over a larger revenue base, making smaller IMBs less able to offer competitive loan rates and fees.
- (2) This impact is exacerbated by the current substantial reduction in mortgage loan volume.
- (3) A detailed legal analysis of this 223-page rule will divert significant time from an IMB’s staff, to determine whether contracts - many provided by third parties - meet the standard for submission.
- (4) Concerns about liability exposure will also result in smaller IMBs having to spend substantial resources - e.g. to hire third-party lawyers and consultants - to determine potential rule liability.
- (5) Concerns that even one IMB might submit a third-party provided contract could cause others to make inappropriate and misleading designations out of an abundance of legal caution.

Ironically, the large number of federal consumer mortgage rules that protect consumers creates more contracts than products with fewer protections - and thus a greater rule compliance burden.

Failure to exempt smaller IMBs from this burdensome new requirement will exacerbate other market and regulatory factors that are already driving industry concentration. More mortgage lender concentration means less competition, higher prices, and fewer choices for consumers.

The Incremental Benefit to Consumers is Almost Non-existent

The incremental value to consumers of applying this new requirement to smaller IMBs is almost non-existent. Dodd-Frank prohibits arbitration and other similar actions which limit consumer legal rights. Moreover, unlike most other non-bank financial products, mortgage lender/services are already subject to a comprehensive list of specific federal consumer protections, that cannot be waived.

- **NO ARBITRATION.** Section 1414(e) of Dodd-Frank explicitly: (1) prohibits requiring arbitration to settle disputes on mortgage loans, (2) prohibits use of post-controversy agreements on mortgage loans, (3) prohibits the waiver of any statutory cause of action.
- **Honoring Loan Quotes.** RESPA/TILA regulations require lenders to stay within quoted loan fees. **A mortgage lender cannot waive this consumer protection by contract.**

- **Loan Disclosures.** RESPA/TILA regulations include detailed loan disclosures. **A mortgage lender cannot waive this consumer protection by contract.**
- **Qualified Mortgage.** Section 1411 of Dodd-Frank requires a mortgage lender to make a determination that the borrower has an ability to repay the mortgage loan. **A mortgage lender cannot waive this consumer protection by contract.**
- **No Steering/LO Comp.** Section 1403 of Dodd-Frank prohibits steering incentives with mortgage loans. **A mortgage lender cannot waive this consumer protection by contract.**
- **Non-discrimination.** Section 1403 of Dodd-Frank prohibits abusive or unfair mortgage loan practices that promote disparities among consumers of equal credit worthiness, but different race, ethnicity, gender, age. **A mortgage lender cannot waive this consumer protection by contract.**
- **No Prepayment Penalties.** Section 1414 of Dodd-Frank generally prohibits mortgage loans with prepayment penalties. **A mortgage lender cannot waive this consumer protection by contract.**
- **No Use of Single Premium Credit Premium Insurance.** Section 1414 of Dodd-Frank prohibits use of single premium credit premium insurance with mortgage loans. **A mortgage lender cannot waive this consumer protection by contract.**
- **No Negative Amortization.** Section 1414 of Dodd-Frank prohibits mortgages with negative amortization. **A mortgage lender cannot waive this consumer protection by contract.**
- **ARMs.** Section 1418 of Dodd-Frank establishes consumer protections for resets of adjustable rate mortgages. **A mortgage lender cannot waive this consumer protection by contract.**
- **High Cost Mortgages.** Section 1431 of Dodd-Frank establishes consumer protections for “high cost mortgages.” **A mortgage lender cannot waive this consumer protection by contract.**

There are many other statutory federal consumer protections that apply to mortgage loans and to mortgage lender/servicers that cannot be waived by contract. Moreover, numerous states impose additional or supplemental consumer protections that cannot be waived by contract.

Additionally, the overwhelming proportion of IMB mortgage lending is done through federal agency loans (FHA, RHS, VA, Fannie Mae, and Freddie Mac). These programs already have extensive consumer protections, including loss mitigation and loan modification requirements for defaulted borrowers.

Extent of Exemption

The proposed rule’s exemption for firms with less than \$1 million in revenues is meaningless for mortgage lenders. Generally, a threshold for exemption for smaller IMBs pursuant to section 1024(b)(2) of Dodd-Frank should be based on a balancing of compliance burden and consumer benefit. Here, with very strong existing statutory protections against arbitration and waiving of consumer rights, an exemption should be broad - I.e., it should include at least both small and mid-sized IMBs.

Thank you for consideration of these comments and requests.

Sincerely Yours,

COMMUNITY HOME LENDERS OF AMERICA