



May 25, 2023

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 ask the Consumer Financial Protection Bureau (the “Bureau”) to take certain actions to protect consumers where there is “dual compensation.”

Dual compensation refers to a situation in which an individual is being compensated both for participating in a real estate transaction (representing the buyer and/or seller) and as a loan originator on a mortgage loan.

The Federal Housing Administration (FHA) recently adopted clarifying guidelines for when dual compensation is permitted in conjunction with an FHA loan. Fannie Mae and Freddie Mac also permit dual compensation.

CHLA members continue to study this issue, under a framework that balances the potential benefits of dual compensation flexibility with concerns regarding potential conflicts of interest. However, CHLA members are unified on the importance of certain consumer protections with regard to such practices.

First, of course, any such use should comply with RESPA Section 8 rules.

Second, while some states have established disclosure requirements regarding the use of dual compensation, we believe it is appropriate for the Bureau to establish a uniform disclosure requirement clearly identifying the dual compensation and making it clear that the buyer of a home is under no obligation to use the mortgage services of the loan originator engaging in dual compensation.

CHLA also requests that the Bureau take action to impose the following two important consumer protection conditions on the use of dual compensation:

- (1) No mortgage loan originator should be allowed to receive dual compensation in conjunction with a mortgage loan unless that individual is licensed pursuant to SAFE Act requirements – i.e., the loan originator has: (a) completed 20 hours of pre-licensing SAFE Act courses, (b) passed the SAFE Act test, (c) passed an independent background check, and (d) completes 8 hours of annual SAFE Act continuing education courses.**
- (2) No loan originator should be allowed to receive dual compensation in conjunction with any mortgage loan if that loan originator is also simultaneously representing the seller (individually) in a real estate transaction.**

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

CHLA has repeatedly written the Bureau to ask for adoption of basic consumer protections pursuant to the Dodd-Frank provision that all mortgage loan originators must be “qualified.” CHLA has asked the Bureau to require that all loan originators, including individuals working at banks, meet the basic SAFE Act licensing protections, particularly the requirement that an individual pass the SAFE Act test and pass an independent background check. [See, for example <https://www.communitylender.org/chla-asks-new-cfpb-director-chopra-to-act-on-safe-act-parity/>]

The risks to consumers are clear. The overwhelming majority of bank loan originators have not passed the SAFE Act test, and thousands of them have actually failed the test. Yet, under CFPB rules, including the statutory requirement that all loan originators must be “qualified,” loan originators working at a bank that fail to meet these basic licensing requirements continue to be permitted to act as a loan originator. Moreover, there are no consumer disclosure requirements that a loan originator either failed or never passed the basic SAFE Act test.

CHLA renews our request for basic consumer protections regarding loan originator qualifications.

However, at an absolute minimum, loan originators that have not met all the SAFE Act licensing qualification requirements should not be allowed to simultaneously be compensated for a loan on a real estate transaction in which they represent the buyer or seller.

Under this provision, CHLA is not asking the Bureau to bar bank loan originators from receiving dual compensation. We are merely asking that such loan originators comply with the SAFE Act licensing requirements, particularly passing the SAFE Act test and an independent background check.

Our second recommendation is simple. An individual who represents the seller of a property should not also be permitted to received compensation as a loan originator for the loan being used to purchase the property.

The conflict of interest in such a situation is obvious. For example, knowledge of the maximum amount a borrower qualifies for on a mortgage loan would provide an unfair advantage to the seller with regard to a situation in which the seller is deciding whether to accept an offer or counter with a higher amount.

Another example: a dual compensation situation could create a conflict of interest in advising a seller on which offer to accept, when one of the offers would result in mortgage compensation to the individual.

Thank you for consideration of these recommendations.

Sincerely

COMMUNITY HOME LENDERS OF AMERICA

Cc: The Hon. Julia Gordon, FHA Commissioner
The Hon. Sandra Thompson, FHFA Director