



December 14, 2023

The Honorable Sandra Thompson
Director, Federal Housing Finance Agency
400 7th Street, SW
Washington, DC 20219

The Honorable Julia Gordon
Commissioner, Federal Housing Administration
Department of Housing and Urban Development
451 7th Street SW
Washington, DC. 20410-8000

The Honorable Joaquin Altoro
Administrator, Rural Housing Service
Department of Agriculture
1400 Independence Ave., SW
Rm 5014, STOP 0701
Washington, DC 20250

The Honorable Denis R. McDonough
Secretary
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC. 20420

Dear Director Thompson, Commissioner Gordon, Administrator Altoro, Secretary McDonough:

We write to you – regulators for federal mortgage programs - to express concerns about the impact of the Sitzer/Burnett v. NAR (“Sitzer”) court ruling on mortgage lending to minorities, veterans, and other underserved homebuyers and to suggest actions to address any such impact.

A shift of the payment of real estate brokerage commissions from home sellers to home buyers could have a profound negative impact on the ability of home buyers to pay for or finance those commissions and on loan appraisal loan to value (LTV) calculations and requirements.

Therefore, we urge a coordinated major review of all federal mortgage programs to ensure that every possible step is taken to maintain homebuyers’ ability to fund and finance the buyer’s real estate commission. We also encourage policies which clearly permit down payment assistance programs to pay the cost of the buyer real estate commission if there is a problem.

As the only national association that exclusively represents independent mortgage banks (IMBs) [which originate three quarters of all mortgage loans], CHLA stands ready to work with you to help develop policies to respond to Sitzer in a manner that fully maintains access to affordable mortgage credit for minority, veteran, and other underserved homebuyers.

Sitzer

The recent legal developments surrounding buyer's agent commissions have ignited discussions within the housing industry, focusing on the potential implications for various stakeholders. While great attention has been given to the legal aspects and structural changes in real estate practices, much less attention has been focused on the impact these changes may have on mortgage lending to homebuyers, particularly underserved homebuyers.

To be clear, Sitzer was just one court ruling and that case is on appeal. Moreover, there are other court cases raising similar issues, whose outcome might or might not be the same as Sitzer.

However, our CHLA members are finding that many real estate agents are already writing sales contracts that require the buyer to pay the buyer's real estate commission. Thus, regardless of judicial outcomes, at least for now and to some extent this is the new reality on the ground.

Traditionally, lenders financed buyer's agent commissions as part of the mortgage financing process, reflecting the fact that 100% of brokerage commissions were incorporated into the sale price. This model is now facing disruption, potentially leaving buyers to cover the commission out of pocket or forego representation. This shift poses significant challenges, especially for veterans using Department of Veterans Affairs (VA) loans, where it is our understanding that VA loan rules both prohibit the borrower from paying the buyer's agent commission and do not allow financing of that commission.

As a result, first-time homebuyers, families with lower incomes, veterans, and minority homebuyers could be adversely affected in their ability to purchase a home because of obstacles and complications related to the need to fund the buyer's broker commission.

Moreover, their ability to compete with other homebuyers to buy a home might be diminished. During the robust bidding wars for homes in recent years, we saw sellers reject homebuyers' purchase offers solely because they were financing the purchase with a Federal Housing Administration (FHA) loan. This same phenomenon could occur if home sellers begin to perceive that borrowers using certain federal mortgage programs are at a disadvantage in being able to finance and close a mortgage loan.

Areas for Action

As a reaction to Sitzer develops, more issues may come into focus. However, at this time, CHLA suggests that federal mortgage programs study and take appropriate action in three areas:

1. **Funding the Buyer's Real Estate Commission.** Federal mortgage programs should review their down payment requirements to ensure that a homebuyer's ability to finance the buyer's agent commission is not diminished. As an example of this concern, VA mortgage loans do not appear to allow the commission to be financed – thus undermining a critical feature of the VA program, its zero down payment capability.
2. **Appraisal Guidance.** Historically, since the seller paid the full real estate commission (for both the seller's and buyer's broker), the full cost of that commission was incorporated into the sales price of the home, and therefore into loan to value (LTV calculations). Thus, it was fully financeable. Appraisal guidelines and LTV calculations should be examined to ensure they do not diminish the ability to finance commissions in the wake of Sitzer. Moreover, requirements should not vary simply based on whether the seller or the buyer is paying the buyer's real estate agent commission.

3. **Downpayment Assistance Programs.** Federal agencies should encourage and support downpayment assistance programs that could help address any diminution of a homebuyer's ability to fund and finance buyer's real estate commission. Consideration should also be given to second lien financing of such costs, if that is a viable option. Washington policymakers would also need to ensure adequate funding of effective downpayment programs, including the Treasury Department's CDFI Fund and state mortgage revenue bond programs, HUD's HOME and Community Development Block Grant (CDBG) programs and the Neighborworks America programs (THUD Appropriations Subcommittee).

Finally, we can only begin to speculate about how these changes might affect regulatory compliance in a host of areas that deal with mortgage loan pricing and practices.

However, CHLA encourages all federal regulators to work together to identify regulatory compliance areas that might be affected, and to address technical violations that may inadvertently arise as pricing policies and practices might change in the aftermath of Sitzer.

We thank you for your consideration of these comments. CHLA would be happy to have our lender members directly communicate their experiences to you in the wake of Sitzer.

Sincerely,

COMMUNITY HOME LENDERS OF AMERICA

CC: Ms. Priscilla Almodovar, CEO, Fannie Mae
Mr. Michael J. DeVito, CEO, Freddie Mae
Mr. Rohit Chopra, Director, Consumer Financial Protection Bureau