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Mortgage Industry Urges CFPB to Make Changes to Lo Comp Rule

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On September 26, 2018, the Mortgage Bankers Association (MBA) together with eleven other mortgage industry groups submitted a letter to CFPB Acting Director Mick Mulvaney "to urge the Bureau. . . to make changes to its Loan Originator Compensation (LO Comp) rule necessary to help consumers and reduce regulatory burden." The trade groups assert that because the current regulatory environment has significantly reduced the harm associated with steering through measures such as the Qualified Mortgage rule and the Bureau's TILA-RESPA Integrated Disclosure rule, relaxation and clarification of the LO Comp rule "should be among the Bureau's top priorities."

The trade groups state that, as currently implemented, the LO Comp rule imposes strict and often ambiguous limits, which have the unintended consequences of increasing consumer costs and reducing product availability and competition. Accordingly, the trade groups encourage the Bureau to make three specific changes to the rule to address these problems.

First, the trade groups request that the LO Comp rule should be amended to "allow loan originators to voluntarily reduce their compensation in response to demonstrable competition in order to pass along the savings to the consumer." The trade groups assert that because the rule currently prohibits a loan originator's compensation from being increased or decreased once loan terms have been offered to a customer, a lender "must decide between lowering the interest rate, fees, or discount points to meet the competition (and thus originating an unprofitable loan with the fixed loan originator compensation) or declining to compete with other loan offers." "The requirement to pay the loan originator full compensation for a discounted loan creates a strong economic disincentive for lenders to match interest rates," which harms consumers by impeding competition in the marketplace.

Second, the trade groups claim that the prohibition on changes to a loan originator's compensation after loan terms have been offered also has the negative consequence of preventing employers from holding their employees "financially accountable for losses that result from mistakes or intentional noncompliance with company policy." Accordingly, the trade groups request that the LO Comp rule be amended to "allow [the] lender to reduce a loan originator's compensation when the originator makes an error." The trade groups assert that this change would encourage accountability on the part of loan originators and "incentivize them to reduce errors and [to] consistently comply with regulatory requirements and company policy." The trade groups also maintain that such incentives would encourage better adherence to the regulations and policies designed to protect consumers and that, accordingly, alleviating the restrictions on changes to a loan originator's compensation after loan terms are offered would benefit consumers and lenders alike by encouraging competition and increasing accountability.

Third, the trade groups recommend that the Bureau amend the rule to allow lenders "to alter loan compensation in order to offer loans made under state and local housing finance agency (HFA) programs." These programs provide important benefits and access to credit for first-time home buyers and low-to-moderate-income families, and the robust underwriting and related requirements make such loans more expensive to produce. The trade groups note that covering these expenses is a challenge, as HFA programs typically limit the interest rates and fees, and that lenders previously addressed the issue "by paying loan originators a smaller commission for an HFA loan than for a non-HFA loan." According to the trade groups, the LO Comp rule's prohibition of this solution has reduced the ability of companies to offer HFA loans at all, thereby reducing the availability of these important resources for consumers.

In its conclusion, the letter also suggests that the Board should broadly simplify the LO Comp rule by "specifying a clear 'bright line' list of impermissible compensation factors," reversing course from the "current approach of providing a short list of permissible factors and a vague and complicated 'proxy for a term' analysis that serves to discourage everything else." The trade groups assert that clear, bright-line rules create less ambiguity and are therefore easier to enforce, encouraging adherence to the law and better serving both consumers and the industry.

The MBA also addressed the LO Comp rule in its comments responding to the CFPB's Request for Information Regarding the Bureau's Adopted Regulations and New Rulemaking Authorities (RFI), which were submitted on June 19, 2018. The MBA comments addressed issues "in the order in which [the MBA] believe[s] they should be revisited by the Bureau," starting with the three requests set forth in the recent trade group letter. Those comments, in combination with the recently submitted letter, demonstrate industry-wide agreement that the Bureau should prioritize its resources to implement revisions to the LO Comp rule.

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