

Consumer Financial Protection Agency

MBA RECOMMENDS

In order to restore confidence in our nation's housing finance system and better protect consumers, MBA believes Congress needs to enact strong, comprehensive reforms to the financial regulatory system. Key aspects of any reform effort should be the establishment of uniform lending standards that will protect all consumers, federal regulation of mortgage bankers, and consolidation of consumer protection functions in an existing federal agency. Unfortunately, the proposed Consumer Financial Protection Agency (CFPA) is likely to worsen consumer protection and weaken the regulation of mortgage lenders.

THE NEED FOR FINANCIAL REGULATORY REFORM

Our nation faces a once-in-a-generation opportunity to improve the mortgage lending process. The current dual federal-state regulatory framework has shown that it requires major overhaul to provide effective regulation of the financial services industry and better protect consumers. The scope and powers of disparate state and federal financial regulators have not kept pace with the financial products, services and providers they are tasked with regulating. The current regulatory structure has resulted in broad supervisory gaps in some areas and costly redundancies in others.

MBA believes carefully crafted regulatory improvements would help restore investor and consumer confidence in the nation's financial markets and ensure the availability and affordability of sustainable mortgage credit for years to come. At the same time, if regulatory solutions are not well-designed, they risk exacerbating a credit crisis that trillions of public dollars have still not fully resolved.

Any changes in consumer regulation must be carefully constructed to achieve their intended effects and best serve all consumers — those who have benefitted greatly from the mortgage market as well as those who have been harmed.

THE CONSUMER FINANCIAL PROTECTION AGENCY FALLS SHORT ON PROTECTING CONSUMERS

Both the House and Senate CFPA bills would create a new federal regulatory agency, separate and apart from existing federal financial regulators that would be charged with setting rules and regulating a broad array of financial activities.

MBA has strong concerns that these bills would fail to:

- Establish uniform national standards that will regulate all lenders and protect all consumers consistently, regardless of where they live, and instead would worsen the patchwork of state and federal laws that have failed to adequately protect consumers.
- Properly utilize federal regulators already responsible for financial regulation and instead establish CFPA as a separate new agency.
- Give sufficient attention to mortgage lending.
- Close the gaps in the regulation of mortgage bankers and mortgage brokers that have resulted in inadequate consumer protection.

A BETTER APPROACH TO REGULATORY REFORM

Establish uniform national mortgage lending standards and a meaningful partnership between state and federal regulators to keep the standards up-to-date and enforce them consistently across the nation.

To achieve uniform national mortgage lending standards, Congress should delete provisions of the bills: establishing the new CFPA's regulations as a floor, not a ceiling, for consumer protection; undermining the preemption available to national banks under current law and making them subject to state laws; and encouraging states to enact additional duplicative and oftentimes contradictory laws. In their place, Congress should establish rigorous, dynamic and uniform national mortgage lending standards for all lenders. Because the standards would be uniform, they would maximize competition and lower costs. By requiring a partnership of federal and state regulators to keep the standards up-to-date and enforce them, this approach would ensure the highest level of protection to consumers nationwide.

Assign responsibility for implementation of mortgage lending standards to a federal prudential regulator, or possibly a council of such regulators, in order to strengthen consumer protection in the most effective manner possible.

This change would ensure that consumer protection and safety and soundness are both considered and effectively carried out under the same roof. Separate bureaucracies in government, each assigned a portion of financial supervision, have a poor track record of effective regulation. Also, rather than including

regulation of mortgage lending among a broad range of financial concerns, this approach would assure mortgage lending has the attention it deserves so homeowners are not deprived of sound credit options.

Assign responsibility for regulation of mortgage lenders and mortgage brokers to a federal prudential regulator.

Prudential regulators are experienced in establishing standards and better equipped to immediately examine and supervise these entities in conjunction with the states. They would be better equipped to establish rigorous nationwide qualifications — including net worth, bonding and other qualifications — as well as implementing uniform national mortgage lending standards.

MBA'S REGULATORY REFORM PROPOSAL

In 2009, MBA proposed the Mortgage Improvement and Regulation Act (MIRA) as an alternative or a complement to regulatory changes. MBA developed MIRA to establish new, rigorous national mortgage lending standards and new regulation of nondepository mortgage bankers and mortgage brokers that would fit well within an improved federal regulatory framework. MIRA builds on the Federal Reserve's new rules under the Home Ownership and Equity Protection Act (HOEPA) and pending legislation. Overall, the proposal is both comprehensive and workable and would be complementary to other regulatory reform proposals.

For more information visit www.mortgagebankers.org or call (202) 557-2700.

