October 16, 2012

Mr. Richard Cordray, Director
C/O Monica Jackson, Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Re: CFPB-2012-0037

Dear Director Cordray,

On behalf of the state Housing Finance Agencies (HFAs) it represents, the National Council of State Housing Agencies (NCSHA) welcomes the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB) August 17 proposed rule implementing changes to Regulation Z. NCSHA supports CFPB's efforts to increase transparency and accountability in the mortgage loan market. However, we also believe that federal regulations should not to make it more difficult for consumers to secure affordable home lending.

We are concerned that the proposed rule's guidance on whether a factor impacting a loan originator's compensation is a "proxy" for a loan's terms or conditions does not provide sufficient clarity. This could prompt lenders to stop issuing HFA loan products so as to avoid liability. Consequently, we ask that CFPB amend its guidance to clarify that lenders may compensate loan originators differently for originating HFA loan products.

In addition, we support CFPB's decision to exempt state HFAs and other government agencies from the mortgage originator licensing, registration, and qualification requirements proposed in the rule.

HFAs are state-chartered housing agencies that operate in every state, the District of Columbia, New York City, Puerto Rico, and the U.S. Virgin Islands. Though they vary widely in their characteristics, including their relationship to state government, HFAs share a common mission of supporting affordable housing lending help to those who need it. HFAs also administer a wide range of affordable housing and community development programs, including HOME, down payment assistance, homebuyer education, loan servicing, the Low

Income Housing Tax Credit, Section 8, homeless assistance programs, and state housing trust funds.

Typically, most HFA single-family loan financing activity is conducted through tax-exempt Mortgage Revenue Bonds (MRB). The MRB program is targeted toward first-time homebuyers. In 2010, the most recent year data is available, the average purchase price of an MRB-financed home was $127,247, only 74 percent of the national average price of a conventionally-financed existing single-family home, which the National Association of Realtors reported to be $173,100 in 2010. The national median income among MRB borrowers in 2010 was $36,249, only 73 percent of the national median family income of $49,445. HFAs also use non-MRB tools to finance single-family homes, but the average purchase price and borrower income characteristics of their non-MRB-financed loans are likely to be very similar to those of their MRB-financed loans.

HFAs have served as a constant source of affordable home lending for working families during strong and weak economies, including the during the current housing downturn, when less fortunate borrowers have been almost completely shut out from the private lending market. HFA fist-time homebuyer assistance has helped stabilize markets, support economic recovery, and equip buyers for homes "trade-up" owners are trying to sell before purchasing a new home.

HFAs' primary mission is not to maximize profits, but to help low-income and underserved consumers purchase homes with loans that work for them. HFAs take care to structure the terms of their loans to fit borrowers' needs and interests. HFAs do not and did not engage in subprime or abusive lending. In addition, any revenue HFAs generate from their lending and other activities is reinvested by them in furtherance of their affordable housing goals.

HFAs have proven over many decades that affordable housing lending done right is good lending. HFAs do it right in the case of first-time homebuyer lending through a time-tested combination of low-cost financing; traditional fixed-rate, long-term products; flexible, but prudent, underwriting with careful credit evaluation; diligent loan documentation and income verification; down payment and closing cost assistance; homeownership counseling; and proactive servicing.

When providing affordable home financing to low- and moderate-income homebuyers, HFAs usually partner with private loan originators. While HFAs use a variety of funding techniques, usually a private lender will originate a loan and sell it to the HFA. In order for lenders to sell loans to HFAs, they must follow stringent underwriting standards, comply with federal purchase price and income eligibility rules, and often are required to provide borrowers with counseling and other educational services before closing on the loan.

Clarify Guidance on Proxy Loan Terms to Allow Lender/HFA Partnerships to Continue

The proposed rule maintains the general ban that prohibits lenders from basing loan officer compensation on the terms of the transaction (other than loan amount) or any factor that could be considered a "proxy" for a loan's terms. The rule further clarifies that a factor is to be considered a proxy for a transaction's terms if it "substantially correlates with a term or terms of the transaction" and "the loan originator can, directly or indirectly, add, drop, or change the factor when originating the transaction."

The purpose of this provision is to ensure that loan officers and servicers do not have an incentive to steer borrowers toward more costly loans. This is certainly a worthy goal. However, we are concerned that the proposed definition of proxy is too ambiguous, and is likely to unintentionally make it challenging for lenders to earn sufficient revenue on many HFA loan products. This could prompt banks to cease their HFA lending.

As mentioned above, lenders wishing to sell a loan to an HFA must follow strict program guidelines, underwriting standards, and consumer protection procedures. While these mandates are critical to protecting borrowers, they can be very time- and labor-intensive for lenders and often result in them generating less revenue on FHA mortgages than they do on comparable private loans. To cover the costs for these additional expenses, lenders may choose to pay loan officers a smaller commission for originating an HFA loan than they would for a non-HFA loan. These reduced fees are not part of any effort to steer borrowers away from HFA loans and towards more expensive products, but simply a reflection of the legitimate business expenses associated with making HFA loans.

Several HFAs have heard from their lending partners that, if the proposed definition of proxy were to take effect, they would no longer be certain that they could differentiate between HFA and non-HFA loans in their compensation policies, and would have to adjust their compensation structures accordingly so as to avoid liability. While we understand some analysts believe HFA loans can pass the proxy test and differential compensation for HFA loans is allowable, this interpretation is not clear and HFAs and their lenders cannot rely on it unless CFPB clarifies the rule or issue interpretative guidance.

The lenders have indicated that, if they have to pay the same commission for HFA loans as they do for non HFA loans, than they would have little choice but to substantially curtail their HFA lending activities. This would significantly hinder HFAs' ability to provide affordable home lending to less fortunate consumers. This is particularly concerning for those HFAs who are not technically authorized to originate their own loans.

We highly doubt that Congress or CFPB, when putting together loan compensation policies designed to protect consumers, intended to make it cost-prohibitive for lenders to offer consumers affordable loans such as those offered by HFAs. The intention of the rule is to prevent borrowers from being steered toward more expensive loans. HFAs generally provide

low-and moderate-income homebuyers with more affordable loan terms. Given this, we do not feel that allowing lenders to compensate loan officers differently for originating HFA loans will harm consumers.

The proposed rule's guidance about proxy terms does not provide the requisite clarity needed to ensure lenders that they can adopt compensation policies that take into account the cost associated with financing HFA loans. Therefore, we ask that CFPB make it explicitly clear that such compensation policies are allowable. We believe such a policy is justified by the legitimate business expenses lenders have to account for when issuing HFA loans, as well as legitimate business purpose of HFAs and the positive impact their programs have on potential homebuyers and their communities. Furthermore, we ask that CFPB work to develop more detailed and nuanced guidance on what constitutes a proxy. This will provide more certainty for all market participants and help the market function more efficiently.

Preserve HFA Exemption from Mortgage Licensing Standards

NCSHA strongly supports CFPB's decision to exempt staff from state HFAs and other government agencies from the mandate that all loan originators meet character, fitness, and criminal background check standards that are equivalent to those found in the federal Secure and Fair Enforcement for Mortgage Licensing Act (SAFE). State HFAs are publicly accountable, mission-driven organizations that have a strong track record of putting borrowers first. As such, we feel as if there is no need for them to expend their already stretched resources on having their employees go through costly registration and licensing procedures. We also note that this exception is consistent with the Department of Housing and Urban Development's decision not to apply the SAFE Act to employees of HFAs or other government agencies.

Thank you for your consideration. We would be happy to discuss these issues with you at your convenience.

Sincerely,

Garth Rieman
Director of Housing Advocacy and Strategic Initiatives