
Summary of Mortgage Loan Originator Qualification and Compensation Practices

The Consumer Financial Protection Bureau (CFPB) released the final rule for mortgage loan originator qualification and compensation practices on January 18, 2013. This final rule amends certain sections of Regulation Z, Truth in Lending Act.

On November 15, 2019, the CFPB issued an interpretive rule clarifying screening and training requirements for financial institutions which employ loan originators with temporary authority.

Effective Date: January 10, 2014, except for the provisions on arbitration clauses and financing of single premium credit life insurance which are effective June 1, 2013.

The interpretive rule is effective November 24, 2019.

Link to Final Rule and CFPB Summary: <http://www.consumerfinance.gov/regulations/loan-originator-compensation-requirements-under-the-truth-in-lending-act-regulation-z/>

Link to Interpretive Rule and CFPB Summary: <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/regulation-z-truth-lending-screening-and-training-requirements-loan-originators/>

Scope of the Rule

This rule applies to all mortgage loan originators (MLOs) and the organizations that employ them. Rules governing compensation practices of mortgage loan originators were first issued by the Federal Reserve Board in 2010. The Dodd-Frank Act added certain provisions to the 2010 rule and the Bureau has issued this final rule incorporating those provisions and clarifying certain other aspects of the 2010 rule.

Types of Compensation Prohibited; Types of Compensation Allowed

Prohibition against compensation based on a term or proxy for a term of a transaction

- Mortgage loan originators (MLOs) may not be compensated based on any of the following:
- Interest rate of the mortgage loan
- Yield spread premium of a mortgage loan
- Sale of services such as title insurance from an affiliated company
- MLOs cannot steer consumers into any transaction that results in more compensation to the MLO unless the transaction is in the consumer's best interest
- Proxy for a term of a transaction; such as steering the consumer into a portfolio loan which may pay a higher commission to the MLO

Acceptable forms of mortgage originator compensation are:

- Salary
- Commission based on dollar volume of loans closed or number of loans closed
- Participation in a designated tax-advantaged compensation plan such as 401(k), ESOP, bonus, or retirement plan

Dual Compensation Prohibited

Mortgage loan originators acting as mortgage brokers or employed by a bank that is acting as a mortgage broker may not be compensated by the consumer and any other person or entity.

Pricing Concessions

Mortgage loan originators may decrease their compensation on an individual mortgage loan to assist the borrower only where there is:

- An unforeseen increase or actual settlement cost which exceeded the estimated cost disclosed to the borrower; per section 5 (c) of RESPA
- An unforeseen actual settlement cost not previously disclosed; per section 5 (c) of RESPA

Mortgage Loan Originator Qualifications and Identification

- All mortgage loan originators must:
- Be licensed or registered as applicable under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act)
 - **Note: MLOs who are employed by an insured depository institution are only required to be registered (not licensed) under the S.A.F.E. Act**
- Provide their unique identifier issued by the Nationwide Mortgage Licensing System Registry (NMLS#) on loan documents along with their name
- Be subjected to thorough background checks, which include screening for financial responsibility, criminal records check and any disciplinary actions by regulatory or licensing agencies
- Receive ongoing training regarding mortgage loan origination consistent with the types of mortgage loans the MLO originates

Record Keeping

- Community banks must keep records of all compensation paid to mortgage loan originators for three years after the date it was paid
- Community banks need to maintain records of compensation paid to them by other creditors to whom they sell mortgage loans for up to three years after the date the compensation was paid
- Copies of individual compensation plans for mortgage loan originators must be retained for three years
- Written policies and procedures for the administration of the mortgage loan compensation program(s) must be maintained
- Written policies and procedures regarding the screening, and background checks performed in the hiring of mortgage loan originators must be maintained as well as all records regarding the registration and administration of registered or licensed mortgage loan originators with the NMLS

Ban on Mandatory Arbitration and Prohibition on Financing Single Premium Credit Insurance

The final rule enacts two Dodd-Frank Act provisions which ban creditors from forcing borrowers into contracts that require mandatory arbitration and prohibit the financing of and fees or premiums from single premium credit (credit life, disability, unemployment, loss of income, etc.).

Truth in Lending (Regulation Z); Screening and Training Requirements for Mortgage Loan Originators with Temporary Authority

- The Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (EGRRCPA) amendments to the SAFE Act add a new category of loan originators, those with temporary authority, effective November 24, 2019.
- The section of EGRRCPA titled “Eliminating Barriers to Jobs for Loan Originators,” permit certain loan originators to act as a loan originator in a State for a temporary period of time while applying for a license in the State.
- Eligible loan originators include those who are employed by a State-licensed mortgage company, have applied for a license in a new State, were previously registered or licensed in a different State for a certain period of time prior to applying for the new license, and satisfy certain criminal and adverse professional history criteria
- Provision only applies to originators that are working for or transfer to non-depository institutions in states that ensure that licensed loan originators complete specific training and testing and where loan originator organizations generally provide training for unlicensed loan originator employees.
- The interpretive rule concludes that if an individual loan originator has temporary authority in a particular State, the loan originator organization does not need to satisfy the screening and training requirements in § 1026.36(f)(3) with regard to that individual’s loan origination activities in that State.