FDIC

Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C.

Financial Institution Letter
FIL-20-2012
April 17, 2012

FDIC Statement on CFPB Bulletin 2012-02: Payments to Loan Originators Based on Mortgage Transaction Terms or Conditions under Regulation Z

Summary: The Consumer Financial Protection Bureau (CFPB) issued Bulletin 2012-02 on April 2, 2012, to provide additional guidance on permissible forms of compensation to loan originators under the Truth in Lending Act - Regulation Z's Compensation Rules (12 C.F.R. § 1026.36). The Bulletin addresses whether and how the Compensation Rules apply to qualified profit-sharing, 401(k), and employee stock ownership plans (collectively, Qualified Plans). Specifically, the CFPB indicates that the Compensation Rules permit employers to contribute to Qualified Plans out of a profit pool derived from mortgage originations. The CFPB does not provide guidance on profit-sharing arrangements or plans that are "not in the nature of Qualified Plans," but indicates it anticipates providing greater clarity in a future rulemaking.

Statement of Applicability to Institutions with Total Assets under $1 Billion: This guidance applies to all FDIC-supervised financial institutions that engage in mortgage loan origination.

Distribution:
FDIC-Supervised Banks

Suggested Routing:
Chief Executive Officer
Compliance Officer
Chief Lending Officer

Related Topics:
Truth in Lending Act and Regulation Z

Attachment:
CFPB Bulletin 2012-02

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Highlights:

- The Compensation Rules permit employers to contribute to Qualified Plans out of a profit pool derived from loans originated by employees.
- Determination of whether the Compensation Rules permit employers to contribute to profit-sharing arrangements and plans that "are not in the nature" of qualified plans (non-qualified profit-sharing plans) requires a case-by-case analysis of the specific facts in each instance. The CFPB anticipates providing greater clarity in the future, in connection with a proposed rule implementing the loan origination provisions of the Dodd-Frank Act.
- The following pages summarize some key points of the Compensation Rules.

FDIC Examination Policy:

- The FDIC will consider the specific facts and the totality of the circumstances at each financial institution to determine if a financial institution is complying with the Compensation Rules, consistent with Regulation Z and CFPB Bulletin 2012-02.

FDIC Statement on Payments to Loan Originators
Based on CFPB Bulletin 2012-02

This guidance emphasizes certain supervisory expectations for FDIC-supervised institution mortgage loan originator compensation plans.

The Compensation Rules

The Federal Reserve Board originally issued the loan originator compensation rules (Compensation Rules) under the Truth in Lending Act in September 2010 (75 *Fed. Reg.* 58509 (Sept. 24, 2010)). Covered institutions were required to comply with the provisions by April 6, 2011. Under Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), rulemaking authority for Regulation Z transferred to the Consumer Financial Protection Bureau (CFPB) in July 2011. In December 2011, the CFPB issued interim final rules republishing the provisions of Regulation Z (76 *Fed. Reg.* 79768 (Dec. 22, 2011)).

Subject to certain exceptions, the Compensation Rules and commentary to the regulation provide that no loan originator may receive (and no person may pay to a loan originator), directly or indirectly, compensation that is based on any terms or conditions of a mortgage transaction, including without limitation salaries, commissions, and annual or periodic bonuses. It does not preclude, among other things, basing compensation on the long-term performance of a loan, or on whether the consumer is an existing customer of the creditor or a new customer. Terms or conditions of a transaction include interest rate, loan-to-value ratio, or prepayment penalties.

In addition, the commentary to the regulation[1] provides that compensation may not be based on a factor that is a proxy for a term or condition, such as a credit score when the factor is based on a term or condition, such as the interest rate on the loan.

Compensation Plans

Qualified Plans -- The CFPB has interpreted the Compensation Rules to permit employers to contribute to qualified profit-sharing, 401(k), and employee stock ownership plans (collectively, Qualified Plans)[2] out of a profit pool derived from mortgages originated by loan originators under the Compensation Rules.

Non-Qualified Plans -- The CFPB has indicated that questions about how the Compensation Rules apply to non-qualified plans are fact-specific. The CFPB has not provided guidance about non-qualified plans in its Bulletin. The CFPB anticipates providing greater clarity on these arrangements in connection with a future rulemaking implementing the mortgage loan origination provisions in the Dodd-Frank Act.

Supervisory Expectations

FDIC-supervised institutions should ensure that their policies and practices related to compensation programs are consistent with the Compensation Rules, commentary, and applicable CFPB guidance. Institutions should incorporate periodic reviews of this area into their overall compliance program and report any material exceptions to their board of directors.

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[1] Comment 36(d)(1)–2, 75 *Fed. Reg*. 58536 (Sept. 24, 2010).
[2] *See* Section 401(a) of the Internal Revenue Code of 1986, as amended, 26 USC 401(a) and the regulations thereunder, and Section 3(2)(A) of the Employee Retirement Income Security Act of 1974, as amended, 29 USC 1002(2)(A) (ERISA).

FDIC Compliance Examiners will review institution compensation programs in light of the Compensation Rules,[3] and consider the specific facts of the institution's compensation program, the totality of the circumstances at each financial institution, and the institution's efforts to comply with the Compensation Rules.

Mark Pearce
Director
Division of Depositor and Consumer Protection

[3] According to 75 Fed. Reg. 58509 (September 24, 2010), the purpose of the Compensation Rules is "to protect consumers in the mortgage market from unfair or abusive lending practices that can arise from certain loan originator compensation practices, while preserving responsible lending and sustainable homeownership."