FDIC

Division of
Depositor and Consumer Protection

National Banker Call

Loan Originator Compensation and HOEPA Final Rules

Thursday, June 6, 2013

Agenda

Regulation Z Amendments (TILA)

- **Loan Originator Compensation Rule (LO Final Rule)**
  - **Compensation restrictions**
  - **Qualification requirements**
- **HOEPA Amendments (HOEPA Rule)**
- **Questions and Answers**

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Email Address

E-mail your questions to:

bankerteleconference@fdic.gov

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Loan Originator Rule

Background

- **Federal Reserve Board (Board):**
  - **August 2009 – issues proposed rule on loan originator compensation**
  - **September 2010 – finalizes proposal**
  - **April 2011 – loan originator final rule becomes effective**
- **Dodd-Frank Act:**
  - **July 2010 – amends TILA**
    - Codifies significant elements of the Board's 2010 Loan Originator Rule and implements additional requirements.
  - **July 2011 – transfers the vast majority of Federal consumer financial laws to the Consumer Financial Protection Bureau (CFPB)**

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Loan Originator Rule

Effective Date

- **LO Final Rule**
  - **January 10, 2014**
- **Provision (h)**
  - **June 1, 2013 (applies to transactions for which the creditor receives an application on or after this date)**
- **Provision (i)**
  - **January 10, 2014 (delayed from its original effective date of June 1, 2013)**

Loan Originator Rule

LO Final Rule Topics Covered

1. Restrictions and clarifications on loan originator compensation.
2. Exceptions to prohibition on compensation based on profits.
3. Exemption from the Dodd-Frank Act's prohibition on consumer payment of upfront points and fees.
4. Loan originator qualification and training requirements and use of unique identifiers.
5. Prohibition on mandatory arbitration/waivers of consumer rights, and financing single-premium credit insurance.
6. Other provisions of the LO Final Rule.

Loan Originator Rule

Scope

- **LO Final Rule applies to closed-end consumer credit transactions secured by a dwelling.**
  - **Includes:**
    - First- and subordinate-lien loans
    - Reverse mortgages that are not HELOCs
  - **Excludes**
    - HELOCs (except provisions (h) and (i))
    - Timeshare plans
- **Provisions (h) and (i) have same scope as LO Final Rule, <u>except</u> that these two provisions also apply to HELOCs when secured by consumer's principal dwelling.**

Loan Originator Rule

Definition of "Loan Originator" Revised and Expanded

- **In expectation of direct or indirect compensation or other monetary gain or for direct or indirect compensation or other monetary gain, performs any of the following activities:**
  - Takes an application;
  - Offers, arranges, assists a consumer with obtaining or applying to obtain, negotiates, or otherwise obtains or makes an extension of consumer credit for another person; or
  - Through advertising or other means of communication represents to the public that such person can or will perform any of these activities.
- **The definition may include anyone involved in the loan origination process.**

Loan Originator Rule

Persons That May Be Loan Originators

- **Anyone that meets the definition of loan originator, including:**
  - Employees, agents and contractors of a creditor or loan originator organization.
  - Creditors engaged in origination activities but do not finance the transaction.
  - Producing managers if they perform loan originator activities.

Loan Originator Rule

Persons That May Not Be Loan Originators

- **If they meet certain requirements:**
  - Employees of manufactured home retailers;
  - Employees performing purely administrative and clerical tasks;
  - Processors, underwriters, and closers;
  - Bona fide third-party advisors;
  - Real estate brokers performing only real estate activity;
  - Seller financers; and
  - Servicers or their employees, agents or contractors – under limited circumstances.

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Loan Originator Rule

Activities

- **If performed would render a person a loan originator:**
  - Referring a consumer to any loan originator
  - Arranging a credit transaction
  - Advertising or communicating by any means that the person can or will perform loan origination services
  - Assisting a consumer in obtaining or applying for consumer credit by advising on specific credit terms

- **If performed would not render a person a loan originator:**
  - General explanation, information, or descriptions in response to consumer inquiries (such as explaining terminology or lending policies)

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Loan Originator Rule

Individual Loan Originator

- Any natural person that meets the definition of a loan originator.

Loan Originator Organization

- Any loan originator that is not an individual loan originator.
- May be any of the following forms of legal existence (among others):
  - Sole proprietorships
  - Corporations
  - Financial institutions (including FDIC-supervised institutions meeting loan originator definition)

Loan Originator Rule

"Takes an Application"

- **Includes, among other things:**
  - Filling out application, inputting the information to online application, taking information over the phone.
  - Processing or analyzing the information.
  - Discussing specific transaction terms.

- **Excludes, among other things:**
  - Providing an application form to consumer at consumer's request.
  - Accepting a completed application form from the customer.
  - Delivering application to LO without assisting the consumer in completing the application; processing or analyzing the information; or discussing specific credit terms or products available.
  - Aiding a consumer to understand how to complete an application.

Loan Originator Rule

"Compensation"

- **New definition under the LO Final Rule**
- **Includes:**
  - Salaries;
  - Commissions; and
  - Any financial or similar incentive.
- **Excludes bona fide and reasonable charges for:**
  - Third-parties services that the LO receives but does not retain;
  - Services performed by LO organization or an affiliate that are not loan origination activities; or
  - Services that are not loan originator activities where the amounts are not retained by the LO but are paid to the creditor, its affiliate, or the affiliate of the LO organization.

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Loan Originator Rule

Compensation Restrictions

Existing Rule		
No compensation based on “terms or conditions” of the transaction <u>except</u> where such compensation is paid directly by the consumer (existing commentary explained that compensation based on a proxy for a term of a transaction was also prohibited).	No dual compensation.	No steering.
LO Rule		
No compensation based on “terms” or a <u>proxy</u> for a term (<u>no exception</u> for consumer-paid compensation based on terms of a transaction). Removes “condition” from related regulatory text and commentary.	No dual compensation (makes one exception).	No steering (makes one revision).

Loan Originator Rule

General Prohibition

No Compensation Based on the Terms of a Transaction or Proxy for a Term of a Transaction

- **Definition "term of a transaction"**

"Any right or obligation of the parties to a credit transaction"

Term of transaction	Not a term of transaction
Interest rate	Overall loan volume
APR	Long term performance of loans
Collateral type	Hourly rate of pay for actual hours worked
Prepayment penalties	Compensation based on fixed % of amount of credit extended
Discount points; origination points, or fees	Quality of the loan originator's files

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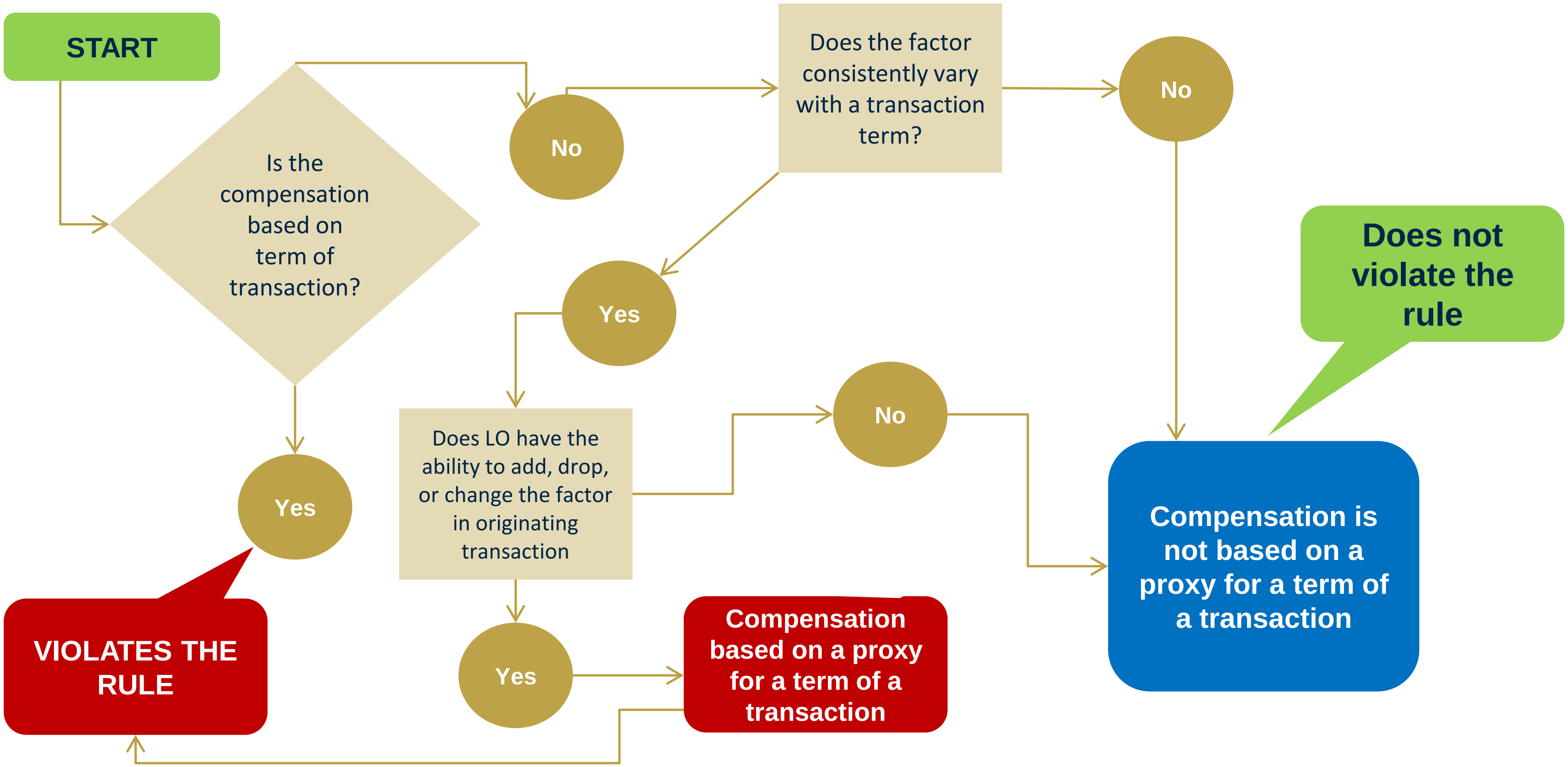
Loan Originator Rule
Proxy Analysis



Loan Originator Rule

Dual Compensation

Prohibition on Dual Compensation

- **In connection with the same transaction, a loan originator cannot receive compensation from any other person if compensation is also received from the consumer.**

Exception

- **If a loan originator organization receives compensation from the consumer, compensation may be paid to the individual loan originator.**

Loan Originator Rule

Steering

LO Final Rule continues the existing rules concerning the steering prohibition of § 1026.36 with a clarification to the types of options presented

Where two or more loans have the same total dollar amount of discount points, origination points, or origination fees, the loan **option with the <u>lowest interest rate</u> that also has lowest total dollar amount of discount points, origination points or origination fees must be presented by LO**

Dodd-Frank Revises Existing Rule

Cannot steer consumer to transaction with higher commission to LO unless in consumer's interest

Existing Rule

Must present several loan options to consumer

Loan Originator Rule

Exception – Profits Based Compensation

Exception – Profits-Based Compensation Designated Tax-Advantaged Plan	
Plan Type	**Requirements**
Defined Contribution Plan	• Compensation permitted even if based directly or indirectly on the terms of multiple transactions of multiple individual loan originators. ➢ But...compensation may not be based on the terms of the transactions of the individual loan originator receiving the compensation.
Defined Benefit Plan	• Compensation permitted even if based directly or indirectly on the terms of multiple transactions of multiple individual loan originators.
Exception – Profits-Based Compensation Non-Deferred Profits-Based Plan	
Non-Deferred Profits Based Plan	• Compensation may not be based directly or indirectly on the terms of the transactions of the individual loan originator receiving the compensation; and either ▪ Compensation cannot exceed 10 percent of individual loan originator's total compensation; or ▪ The individual loan originator was the originator for 10 or fewer mortgage loans during the 12 month period of determination. • Includes , without limitation, bonus pools, profits pools, bonus plans, and profit-sharing plans.

Loan Originator Rule

New Dodd-Frank Qualification Requirements

1. **Imposes qualification requirements, and when applicable, registration and training, on:**
   - Individual loan originators;
   - Mortgage brokers; and
   - Creditors.
     - **For purposes of qualification requirements, "loan originator" includes natural persons, and does not exclude creditors.**
2. **Requires the use of NMLSR unique identifier on specific loan documents.**

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Loan Originator Rule

Qualification Requirements Under Regulation Z

- **Qualification requirements:**
  - Comply with all applicable State law requirements for legal existence and foreign qualifications;
  - Each LO who works for LO organization must be licensed or registered before the individual acts as a loan originator; and
  - For individual loan originators not required to be licensed obtain:
    - Criminal background; and
    - Credit report.
- **Based on the above information ensure individual loan originators has:**
  - Not been convicted or pleaded nolo contendere to specific crimes; and
  - Demonstrated financial responsibility, character, and general fitness.

Loan Originator Rule

Qualification Requirements Under Regulation Z

- **Employees not required to be licensed include:**
  - Depository institutions
  - Bona fide nonprofits
- **Requirements for individuals not required to be licensed:**
  - Provide training appropriate and consistent with the individual's loan origination activities; and
  - Meet financial responsibility, character, and general fitness, and criminal background standards.
- **Requirement applies to loan originator employees:**
  - Hired by the loan originator organization on or after January 10, 2014;
  - Hired by the loan originator organization before January 10, 2014, but for whom there were no applicable screening standards in effect at the time of hire; and
  - Regardless of when hired, those who, based on reliable information known to the loan originator organization, would likely not meet the above requirements.

Loan Originator Rule

Identifier Requirements Under Regulation Z

- **Name & Unique identifier or NMLSR ID required for:**
  - Individual loan originators;
  - Mortgage brokers; and
  - Creditors.
- **Name & NMLRS ID required on the following documents:**
  - The credit application;
  - The note or loan contract; and
  - The security instrument.
- **The documents should have the name & NMLSR ID of the individual with primary responsibility for the transaction at the time document is issued.**

Loan Originator Rule

Two More New Dodd-Frank Requirements

1. Prohibition on mandatory arbitration clauses and waivers of certain consumer rights.

2. Prohibition on financing single-premium credit insurance.

Loan Originator Rule

Prohibition on Mandatory Arbitration

- **Creditors may not include terms requiring arbitration or other non-judicial procedure.**
- **Applies to closed-end consumer credit transactions secured by a dwelling and HELOCs when secured by the consumer's *principal* dwelling.**
- **Prohibition applies to transactions for which the creditor receives applications on or after June 1, 2013.**

Loan Originator Rule

Prohibition on Mandatory Arbitration

- **Prohibition applies to the terms of the entire transaction.**
  - Including the promissory note, the security instrument, or any other document executed as part of the transaction.
- **Consumer and creditor may agree after dispute arises to use arbitration or other non-judicial procedure to settle such dispute.**

Loan Originator Rule

Prohibition on Waivers

- **Creditors may not include waivers of Federal statutory causes of action in contracts or other agreements.**
- **Applies to closed-end consumer credit transactions secured by a dwelling and HELOCs when secured by the consumer's *principal* dwelling.**
- **Prohibition applies to transactions for which the creditor receives applications on or after June 1, 2013.**
- **Consumer and creditor may settle after the dispute arises:**
  - Post-dispute may in effect act as a waiver of the consumer's right to bring that particular claim in court, even if it is a Federal law claim.

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Loan Originator Rule

Prohibition on Financing Single-Premium Credit Insurance

- **Creditors may not finance directly or indirectly, premiums or fees for credit insurance, except for unemployment credit insurance if certain requirements are met.**

- **Applies to closed-end consumer credit transactions secured by a dwelling and HELOCs when secured by the consumer's *principal* dwelling.**

- **Prohibition applies to covered transactions on or after January 10, 2014 (delayed from June 1, 2013).**

Loan Originator Rule

Record Retention Requirements

- **Expanded record retention requirements:**
  - Creditors must maintain records sufficient to evidence compensation payments and copy of compensation agreement governing payments.
  - Loan originator organizations must maintain records sufficient to evidence:
    - Compensation received from a creditor, a consumer, or another person and the compensation it pays to its loan originators; and
    - Compensation agreements that govern those payments.
- **Records must be maintained for three-years from date of payments or receipts.**
- **"Sufficient to evidence" requirement will based on facts and circumstances of each case.**

Loan Originator Rule

Policies and Procedures for Depository Institutions

- **Depository institutions must establish and maintain written policies and procedures reasonably designed to ensure compliance with:**
  - Restrictions on payments to loan originators;
  - Prohibitions on steering;
  - Loan originator qualification requirements; and
  - Loan originator identifier requirements.
- **Policies and procedures must be appropriate to the nature, size, complexity and scope of the mortgage credit activities.**

Amendments to HOEPA

New Rules for High-Cost Mortgages

HOEPA

The new rules would:

- Expand the types of mortgages potentially subject to HOEPA;
- Revise and expand the triggers; and
- Revise the ability-to-repay requirements and make other changes to restrictions on high-cost loans.
- Also implement two homeownership counseling provisions unrelated to high-cost loans.

Effective date: January 10, 2014

HOEPA

Types of loans subject to HOEPA:

- Closed-end refinancing and home-equity loans;
- Purchase-money mortgages ***(NEW);*** and
- HELOCs ***(NEW).***

Loans must be secured by the consumer's principal dwelling, and for a consumer purpose.

HOEPA

Types of loans exempt from HOEPA:

- Loans to finance the initial construction of a dwelling;
- Loans originated and financed by Housing Finance Agencies;
- Loans originated through a U.S. Department of Agriculture Rural Housing Service program; and
- Non-recourse reverse mortgages.

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HOEPA

Three Independent Triggers

A loan potentially subject to HOEPA will be subject to its special rules if it meets any **one** of three independent triggers:

- The **APR** trigger;
- The **Points and Fees** trigger; or
- The **Prepayment Penalty** trigger (NEW).

HOEPA

The APR Trigger

- **6.5% above APOR for first-lien loans**
- **8.5% above APOR for:**
  - Subordinate-lien loans; or
  - Loans under $50,000 secured by dwellings that are personal property.

HOEPA

The Points and Fees Trigger

Dollars to be adjusted annually

Loan Amount	Trigger
Loans of $20,000 and up	5% of total loan amount
Loans below $20,000	The lesser of 8% of total loan amount or $1000

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HOEPA

The Prepayment Penalty Trigger

- **Loans with a prepayment penalty of**:
  - more than 2% of the amount prepaid; or
  - imposed more than 36 months after consummation.
- **Prepayment penalties are banned generally except in fixed-rate, prime-rate qualified mortgages (QMs).**

HOEPA

Points and Fees: Closed-End Loans & Open-End Credit Plans

- Total points and fees trigger lowered from 8% to 5%.
- Points and fees definition and calculation rules are the same for QM and HOEPA loans.
- Six categories of charges are captured by the points and fees definition.

HOEPA

Points and Fees:
Closed-End Loans & Open-End Credit Plans

Points and Fees Category	Description
First	**Prepaid Finance Charges** • **Includes points, underwriting fees or processing fees, etc.** • **New flexibility in calculating the 5% amount primarily found in this category. Possible exclusions:** ▪ *Bona fide* discount points under certain circumstances; ▪ Government guaranty fees and <u>monthly</u> private mortgage insurance; ▪ <u>Upfront</u> private mortgage insurance in certain circumstances; and ▪ *Bona fide* third party charges to unrelated parties, if not required to be included by other parts of the definition.

HOEPA

Points and Fees:
Closed-End Loans & Open-End Credit Plans

Points and Fees Category	Description
Second	**Loan Originator Compensation** • **Count compensation attributable to the transaction at time rate is set (including rate-paid compensation to brokers), except:** ▪ Where direct consumer-payment to broker already counted under first category; and ▪ Payments by broker firms <u>*and creditors*</u> to individual loan originator-employees. (These are excluded under the May 29 amendments.)
Third	**Real Estate Settlement Charges** • May include title-related fees, document fees or appraisal fees. • Included only if they are paid to the creditor, an affiliate or are unreasonable.

HOEPA

Points and Fees:
Closed-End Loans & Open-End Credit Plans

Points and Fees Category	Description
Fourth	Credit insurance related premiums and charges
Fifth	Maximum prepayment penalty that could be charged on the loan being made
Sixth	Prepayment penalty actually charged on a loan being refinanced by the current holder, a servicer acting on its behalf, or an affiliate of either

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HOEPA

Points and Fees:
Open-End Credit Plans Only

Points and Fees Category	Description
Seventh	Fees payable at or before closing charged for participation in the plan.
Eighth	Required transaction fees to make a draw on the line (assume one draw).

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Non HOEPA–Related Counseling Requirements

Two New Counseling-Related Requirements are Unrelated to HOEPA Loans

- RESPA/Reg. X Amendment:
  - Creditors must provide list of homeownership counseling organizations within 3 business days of application.
  - List to be available through CFPB or HUD.
- TILA/Reg. Z Amendment:
  - Mandatory counseling for first-time borrowers considering loans that will or may negatively amortize.

Mortgage Rule Exemptions and Flexibility by Bank-Type

Rule/Provision	**"Community Banks"** (less than $2 Billion in assets; 500 or fewer first lien loans; portfolio limitations)	**"Community Banks" Rural/Underserved**	**Other Banks**
QM Balloon Exemption	✓ (2-year transition)	✓	
"Small Lender" QM (no 43% DTI requirement}	✓	✓	
Legal Protection: Higher Safe Harbor Threshold for Subprime Portfolio (up to APOR + 350 bps)	✓	✓	
MLO Flexibility	✓	✓	✓
Escrow Exemption		✓	
Partial Servicing Exemptions	Available to "Small Servicers" = creditor or affiliate service 5,000 or fewer mortgage loans. Also available to Housing Finance Agencies (as defined by HUD).		

Questions and Answers

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Thank You

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