



Loan Originator (LO) Compensation

IV. Other Compensation-Related Provisions;
Record Retention and Required Policies and Procedures

Prohibition on Pricing Concession Exception

A loan originator may reduce compensation to defray the cost, in whole or in part, of an unforeseen settlement cost not disclosed to the consumer under RESPA, or an unforeseen increase in an actual settlement cost over an estimated settlement cost disclosed to the consumer.

- **An increase is unforeseen if the increase occurs even though the estimate provided to the consumer is consistent with the best information reasonably available to the disclosing person.**

Prohibition on Dual Compensation Exception

If a loan originator organization receives compensation from a consumer, the loan originator organization may pay compensation to the individual loan originator in connection with the transaction, and the individual loan originator may receive it, without violating the prohibition against dual compensation.

Prohibition on Steering Safe Harbor Clarification

A loan originator cannot “steer” a consumer to consummate a transaction based on the fact that the originator will receive greater compensation from the creditor, unless the consummated transaction is in the consumer’s interest.

- **Effective Safe Harbor:** A loan originator complies with the prohibition if he or she presents to the consumer the loan option with the lowest points or fees for which the loan originator has a good faith belief that the consumer likely qualifies.
- **Safe Harbor Clarification:** Where two or more of these loan options have the same total dollar amount of points or fees, the loan originator must present the consumer with the loan option with the lowest interest rate that also has the lowest total dollar amount of points or fees.

Record Retention

- **Creditor**: Must maintain records sufficient to evidence all compensation it pays to a loan originator, and a copy of the compensation agreement that governs those payments.
- **Loan Originator Organization**: Must maintain records sufficient to evidence all compensation it receives from a creditor, a consumer, or another person and that it pays to its individual loan originators, and the compensation agreements that govern those receipts or payments.
 - Records are sufficient to evidence payment and receipt of compensation if they demonstrate:
 - The nature and amount of the compensation;
 - That the compensation was paid and received and by whom; and
 - When the payment and receipt of the compensation occurred.
- **Three Years**: Records evidencing receipts or payments must be retained for a period of three years from the date of the receipts or payments.

1026.25(c)(2)

Required Policies and Procedures

Depository institutions must establish and maintain written policies and procedures reasonably designed to ensure and monitor compliance with:

- **Restrictions on payments to loan originators;**
- **Prohibitions on steering;**
- **Loan originator qualification requirements; and**
- **Loan originator identifier requirements.**

The policies and procedures must be appropriate to the nature, size, complexity, and scope of the mortgage credit activities of the depository institution and its subsidiaries.