FDIC

FEDERAL DEPOSIT INSURANCE CORPORATION

Loan Originator (LO) Compensation

III. Loan Originator Compensation Restrictions; Profits-Based Compensation Exceptions

Key Compensation Restrictions

- Loan originators may not receive compensation based on the terms of a transaction (except for payments based on a fixed percentage of the loan amount).
- Loan originators may not receive compensation from both the consumer and another party, such as a creditor (referred to as “dual compensation”).
- Loan originators may not steer a consumer to a transaction that will result in more compensation for the loan originator, unless the transaction is in the consumer’s interest.

Prohibition on Compensation Based on Loan Terms

No loan originator can receive and no person can pay to a loan originator, directly or indirectly…

- **Compensation in an amount that is based on terms of transactions (or proxies for terms of transactions) of:**
  - a single loan originator, or
  - multiple loan originators (limited exception: some profits-based compensation).

Terms of a Credit Transaction

Terms of a credit transaction include, but are not limited to:

- The interest rate;
- The annual percentage rate;
- The existence of a prepayment penalty;
- The collateral type (e.g., whether the property is a condo or a detached home); and,
- Loan origination fees.

Compensation Methods Not Based on Loan Terms

Compensation methods not based on loan terms, effectively serving as safe harbors, include:

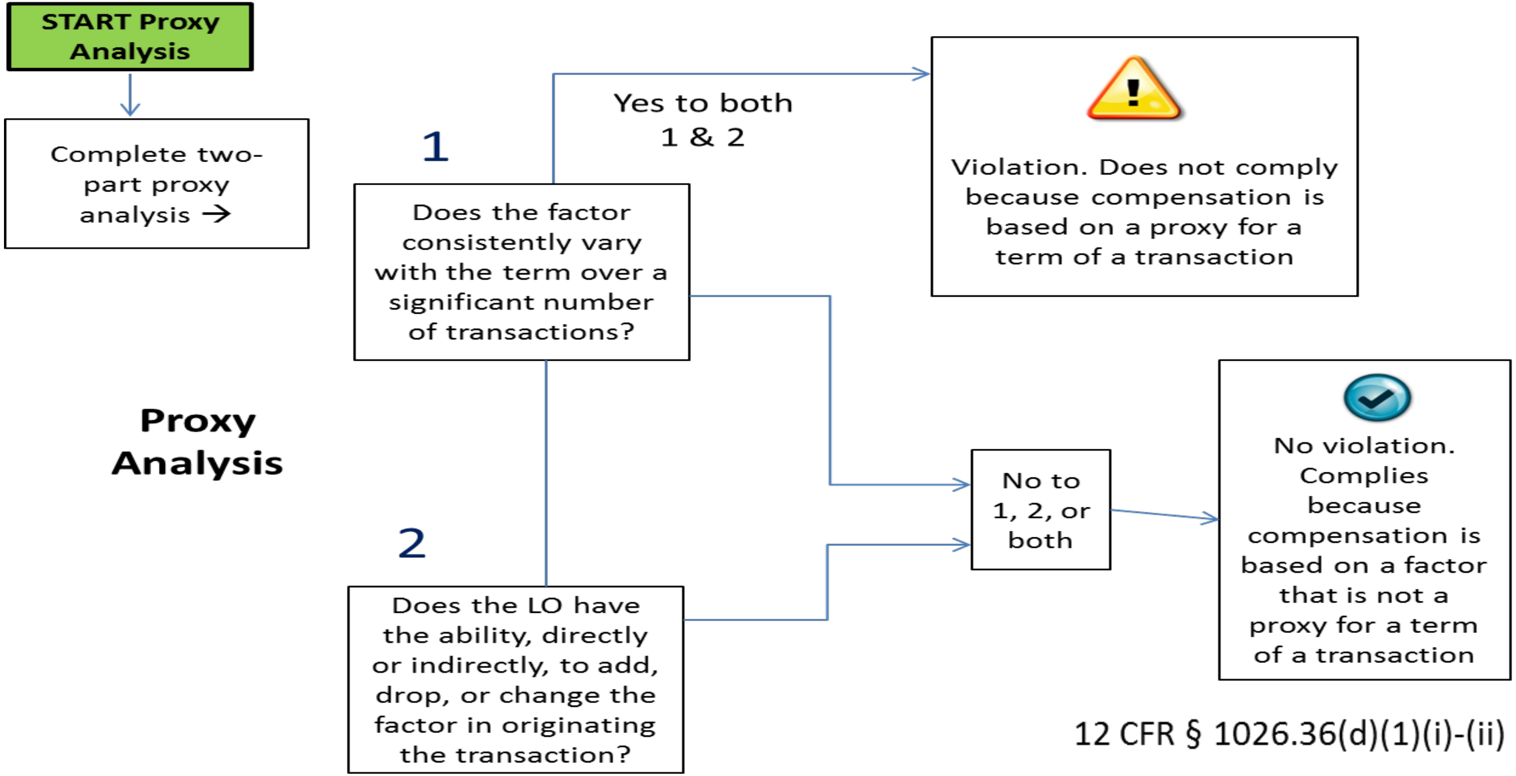
- Overall loan volume of loan originator (i.e., total dollar amount of credit extended or total number of transactions originated);
- Long term performance of loan originator's loans;
- Quality of loan originator's files submitted to the creditor (i.e., accuracy and completeness of the loan documentation); and,
- A dollar amount fixed in advance (for example, $100 for every loan application that closes).

Proxy for Loan Term

A factor that is not a term of a transaction may be a proxy for a term of a transaction if:

- **The factor consistently varies with a loan term over a significant number of transactions; and**
- **The loan originator has the ability, directly or indirectly, to add, drop, or change the factor in originating the transaction.**

Proxy Analysis Flowchart



12 CFR § 1026.36(d)(1)(i)-(ii)

What Counts as Profits?

Profits include all revenue generated from closed-end consumer credit transactions secured by dwellings that you or your affiliate originates, including:

- **Origination fees;**
- **Interest ;**
- **Income from servicing ; and**
- **Proceeds earned from secondary market sales.**

Tax-Advantaged Compensation Plan Exception

Compensation in the form of a contribution or benefit to a designated tax-advantaged plan is excepted from the prohibition against compensation based on loan terms of multiple loan originators (i.e., bank profits from mortgage-related activities) , so long as the amount of the compensation is not based on the terms of the individual loan originator's transactions.

- **The LO Comp Rule defines the term "designated tax-advantaged plan" as a deferred compensation plan that meets certain requirements under the Internal Revenue Code, such as 401k's, pensions, or annuity plans.**

Profits-Based Bonus and Other Non-Deferred Compensation Plan Exception

Compensation in the form of a profits-based bonus or similar payment (i.e., based on bank profits from mortgage-related activities) to an individual loan originator under a non-deferred compensation plan is excepted from the prohibition against compensation based on loan terms of multiple loan originators, provided that:

- **Compensation paid is not based on the terms of that individual loan originator's transactions; and**

Either:

- **The compensation does not, in the aggregate, exceed 10 percent of the individual loan originator's total compensation corresponding to the time period for which the non-deferred profits-based compensation under the plan is paid; or**

- **The individual loan originator was a loan originator for ten or fewer transactions during the 12-month period preceding the date of the compensation determination.**

Profit-Based Compensation Analysis Flowchart

Does the profit-based compensation depend only on profits from business other than mortgage related business?

Yes

This compensation is **permitted**, as it is not based on the terms of mortgage transactions.

No

Is the compensation based on the terms of the individual LO's covered transactions?

Yes

This compensation is **prohibited** under 1026.36(d)(1).

No

- Did the individual LO originate **more than 10** covered transactions during the 12-month period preceding the compensation determination?

- Does the profits-based compensation paid to the individual LO **exceed 10%** of the LO's total compensation for the time period in which the bonus is being considered?

Yes to both

No to at least one

This compensation is **permitted** under 1026.36(d)(1)(iv).

Calculating Total Compensation

In calculating total compensation, count:

- The loan originator’s wages and tips reportable for Medicare tax purposes in box 5 on IRS Form W-2, or IRS Form 1099-miscellaneous if the originator is an independent contractor, or, if applicable, both.
- The cash value of any merchandise, services, or trips awarded to the loan originator during the relevant time period.

If you choose to do so, you may also include:

- All contributions you actually made during the relevant time period to tax-advantaged, deferred contribution plans; and
- All compensation earned during the relevant time period (regardless if paid) under non-deferred, profits-based compensation plans.