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## LO COMP COMPLIANCE STRATEGIES IN A TIGHTENING MARKET

*The BCFP's LO Comp Rule generally prohibits a lender from varying an LO's compensation based on the terms of a transaction or a proxy for such terms. The authors discuss the ins and outs of the Rule, including the proxy test, pricing concessions, and fair lending considerations. They then turn to the use of lead sources, dedicated product channels, quality assurance measures, and bonuses, as allowed by the rule.*

By R. Andrew Arculin and Peter S. Frechette \*

Despite taking effect nearly five years ago, the Loan Originator Compensation Rule ("LO Comp Rule" or the "Rule")<sup>1</sup> of the Bureau of Consumer Financial Protection (the "Bureau") suddenly finds itself again at the regulatory forefront. The Bureau has identified the Rule as a regulatory priority, while industry groups are

clamoring for changes to give lenders more flexibility.<sup>2</sup> Why this sudden refocus on an old rule?

Simple answer: the bottom line. For years the industry got by with conservative, flat LO compensation structures in a conventional, refi-driven market. But with interest rates rising and the market shifted to purchase loans, growth is now limited by the number of homes available for sale, margins are tighter, and originations more competitive. Having talented LOs who can drive new originations is more important than ever, but lenders are also looking for ways to reduce compensation shop-wide.

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<sup>1</sup> 12 C.F.R. § 1026.36(d). The LO Comp Rule applies to the employees, agents, and contractors – including mortgage brokers – of bank and non-bank mortgage lenders who are compensated for any of the following activities: taking an application, offering credit terms, negotiating credit terms on behalf of a consumer, obtaining an extension of credit for a consumer, or referring a consumer to a loan originator or lender, or, through advertising or otherwise, representing to the public that he or she can or will perform any of these activities. *Id.* § 1026.36(a). Distinguishing between LOs and employees that perform purely administrative or clerical tasks on behalf of the lender is a critical compliance step, but goes beyond the scope of this article.

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<sup>2</sup> *See, e.g.*, Letter from the Mortgage Bankers Association to Acting Director Mick Mulvaney (Oct. 17, 2018), *available at* <https://www.mba.org/Documents/MBA%20LO%20Comp%20Reform%20Letter%20Company%20Leaders.pdf>; Letter from the American Bankers Association, et al., to Acting Director Mick Mulvaney (Sept. 26, 2018), *available at* <https://www.aba.com/Advocacy/LetterstoCongress/Documents/joint-trades-bcfp-loan-originator-compensation-rule-092618.pdf>.

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