

CONTINUING COMPLIANCE CHALLENGES IN MORTGAGE LOAN ORIGINATOR COMPENSATION

Mortgage loan originators play an important role in serving the residential mortgage industry and American homeowners. Their compensation garners seemingly outsized attention from federal regulators. This article addresses those regulatory efforts from the consumer protection and labor agencies and how those regulations have, and have not, changed.

By Kris D. Kully *

While the restrictions related to mortgage loan originator compensation have remained largely consistent for the past 15 years, they are still the source of considerable focus and frustration. That compensation is a critical aspect of operating a profitable residential mortgage lending business — it is both a key driver of revenue and a significant expense for mortgage lenders and brokers. By prohibiting compensation to loan originators that is based on the loan's interest rate or other terms, the federal restrictions imposed in 2011¹ upended the typical business model to an extent that some in the industry may still be in denial. In spite of hopes to the contrary, neither the Loan Originator Compensation Rule ("LO Comp Rule") nor other requirements for that compensation have changed.

This article explains how multiple federal regulators have addressed mortgage loan originator compensation, the basic principles of the LO Comp Rule, and the vacillations on an exemption from requirements for

overtime pay, and the reasons why compliance remains so challenging.

MISALIGNED INCENTIVES

Federal regulators have grappled for decades with how mortgage loan originators are compensated. For this purpose, a "mortgage loan originator" is the individual who works for a mortgage lender or broker, takes a consumer's application for a closed-end residential mortgage loan, and/or assists the consumer in obtaining such a loan. The term also includes a mortgage broker entity that engages in the business of providing those services under arrangements with one or more lenders. The Board of Governors of the Federal Reserve (the "FED") finalized a rulemaking effective in 2011 providing that mortgage loan originators must not receive, and no person may pay to those persons, directly or indirectly, compensation based on a term of the transaction.² Although that was the first federal codification of such an express prohibition, federal policymakers were concerned about potentially

¹ 75 Fed. Reg. 58,509 (Sept. 24, 2010), effective April 6, 2011; see also 76 Fed. Reg. 43,111 (July 20, 2011).

² 75 Fed. Reg. 58,509 (Sept. 24, 2010).

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