

# LENDERS UPDATE™

## ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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April 19, 2016

## **THE LOAN ORIGINATOR COMPENSATION RULE AND BORROWER PAID COMPENSATION**

From our vantage point, one of the least known/understood and least followed rules relates to the Loan Originator Compensation Rules (the “Rule”) and its requirements for “Borrower Paid Compensation”. Over two years ago the CFPB introduced major changes to the Rule to conform to the requirements of the Dodd-Frank Act. The new Rule was discussed in detail but the provisions relating to “Borrower Paid Compensation”, while mentioned, were not emphasized.

Up until that time, the original rule, had allowed “Borrower Paid Compensation” to change even though the change may have been based on the transaction terms of the loan. The general prohibition based on receiving

compensation based on the loan transaction terms, did not apply to compensation received directly from the consumer.

This changed on January 30, 2014 and the Rule now says that while the compensation paid to a loan originator is a term of the transaction, a loan originator (Broker or Broker L/O in this case) may receive this compensation from the consumer even though it is a term. Even so, this compensation may not be based on any other term of the transaction. Clear, right? Well, maybe not. The official Comment to this regulation makes this a little clearer:

1. **Compensation** that is or is not based on a term of a transaction or a proxy for a term of a transaction. Section [1026.36\(d\)\(1\)](#) does not prohibit compensating a [loan originator](#) differently on different transactions, provided the difference is not based on a term of a transaction or a proxy for a term of a transaction. The rule prohibits [compensation](#) to a [loan originator](#) for a transaction based on, among other things, that transaction's interest rate, annual percentage rate, collateral type (e.g., condominium, cooperative, detached home, or manufactured housing), or the existence of a prepayment penalty. The rule also prohibits [compensation](#) to a [loan originator](#) that is based on any factor that is a proxy for a term of a transaction. [Compensation](#) paid to a [loan originator organization](#) directly by a [consumer](#) in a transaction is not prohibited by § [1026.36\(d\)\(1\)](#) simply because that [compensation](#) itself is a term of the transaction. Nonetheless, that [compensation](#) may not be based on any other term of the transaction or a proxy for any other term of the transaction. In addition, in a transaction where a [loan originator organization](#) is paid [compensation](#) directly by a [consumer](#), [compensation](#) paid by the [loan originator organization](#) to [individual loan originators](#) is not prohibited by § [1026.36\(d\)\(1\)](#) simply because it is based on the amount of [compensation](#) paid directly by the [consumer](#) to the [loan originator organization](#) but the [compensation](#) to the [individual loan originator](#) may not be based on any other term of the transaction or proxy for any other term of the transaction.

What does become clarified from the Comment, is that the Borrower Paid Compensation cannot change with the terms of the transaction or a proxy for a term of the transaction. A broker receiving “Borrower Paid Compensation” may change that compensation from loan to loan but those changes cannot be based on the term of the transaction. Further, and this is apparently a question

that comes up once in a while with the folks in DC, if you are a broker working with a lender, sometimes receiving “Lender Paid Compensation” and sometimes “Borrower Paid Compensation”, (even though there may be arguments to the contrary) the “Lender Paid Compensation”), and the “Borrower Paid Compensation” need not be identical. However, again the same prohibitions apply, the compensation may not be based on a term of the transaction or a proxy thereof.

How this translates or affects your policies would get into actual legal advice and goes beyond the scope or appropriateness of this article. However, if you are a broker and receive “Borrower Paid Compensation”, these policies are certainly worthy of your attention.

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