# LENDERS UPDATE™

## ALT & ASSOCIATES NEWSLETTER

**A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY**


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# NEW LOAN ORIGINATOR COMPENSATION RULE

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**In the recent past, loan originators have been working under a Loan Originator Compensation Rule originally promulgated by the Federal Reserve Board ("FRB"). The Dodd–Frank Wall Street Reform and Consumer Protection Act moved jurisdiction for this rule away from the FRB and gave it to the Consumer Financial Protection Bureau ("CFPB"). The Act also added supplemental provisions to the existing Rule. The Act gave the CFPB the responsibility of preparing a new Rule to implement these additional provisions.**

**We have been waiting for this other shoe to drop and expecting more draconian requirements. Well, it dropped but the results are not so bad and in some cases are helpful. The entire rule can be found on the CFPB website under the news report for January 18, 2013. The rules will take effect in**

**January 2014, <u>except that the prohibitions on mandatory arbitration in the financing of credit insurance will take effect in June 2013</u>.**

**The major provisions of the new Rule are:**

- **Mortgage broker employees cannot VARY compensation based on a "term of the transaction" such as the interest rate of the loan or the fact that the loan officer refers the consumer to an affiliate to purchase title insurance. The Rule defines "term of the transaction" as "any right or obligation of the parties to a credit transaction".**
- **We know that compensation also cannot vary based on a "proxy" for a term of the transaction. The word proxy is now defined to mean *a factor that consistently varies with the transaction 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.***
- **Pricing concessions generally were not allowed under the present rule. Now, under certain conditions loan originators may reduce their compensation to defray certain unexpected increases in estimated settlement costs.**
- **Loan originator compensation is generally prohibited from being based on the profitability of a transaction or a pool of transactions. Now profits can be used to make contributions to certain retirement plans such as a 401K plan and make bonuses and contributions to other plans that do not exceed 10% of the individual loan originator's total compensation.**
- **Binding arbitration clauses are prohibited as well as the financing of any premiums or fees for credit insurance.**
- **The new rule will allow mortgage brokers to pay their employees commissions where the consumer pays the compensation. Up until this point, employees could only be paid a wage or salary.**

**In the CFPB's original proposal there was a prohibition of upfront points and fees. The Bureau has decided to postpone this portion of this provision until further study.**