

# LENDERS UPDATE™

## ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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## **LOAN ORIGINATOR COMPENSATION, THE NEW RULE**

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On January 20 of this year, the Consumer Financial Protection Bureau (CFPB) issued its final rule amending the loan originator compensation requirements under The Truth in Lending Act. This new rule implements the requirements and restrictions imposed by the Dodd–Frank Act. The majority of the Rule, including those portions we will be discussing, is effective January 10, 2014.

Many of our clients are gearing up to implement this rule on or before the effective date. As they enter into the process, we are receiving numerous questions concerning compliance with the Rule. We thought it might be helpful to address some of these questions here in the Update. We obviously cannot provide legal advice in this setting, but we can discuss the materials the CFPB published with the Final Rule, with particular emphasis on the published Official Interpretations.

We will publish several installments with answers to some of the specific questions that have been posed to us.

## **INSTALLMENT 1**

### ***Who is a loan originator?***

The basic definition specifies activities or services which, if performed in the expectation of compensation, make the person performing such activities a “loan originator” unless otherwise excluded. These include:

- ✚ Referring a consumer to any person who participates in the origination process as a loan originator. The referral can be oral or written if it is directed to a consumer to affirmatively influence the consumer to select a particular originator or creditor.**
- ✚ Arranging a credit transaction, which includes the initial contact and orienting the applicant to that originator’s or creditor’s process and assisting the borrower in applying for credit by taking an application, offering credit terms or otherwise obtaining an extension of credit.**
- ✚ Assisting an applicant by advising the applicant of specific credit terms, filling out an application form, preparing an application package or collecting application and supporting information.**
- ✚ Presenting to an applicant particular credit terms as well as communicating with that applicant for the purpose of reaching a mutual understanding about offered terms.**
- ✚ Marketing to the public that one can perform loan origination services. Advertising services of a third-party does not make one a loan originator.**

The definition of loan originator includes employees, agents, or contractors of a creditor as well as employees, agents or contractors of a mortgage broker that satisfy the above definition.

The definition does not include bona fide third parties such as accountants, attorneys, financial advisors, housing counselors or others who do not receive compensation for loan origination activities. A referral by an advisor of this type does not make the person a loan originator, as long as that person does not receive nor expect compensation for referring the applicant.

One of the most frequent questions under the prior Rule, was to what extent managers, and administrative and clerical staff are loan originators. The new rule attempts to clarify that question.

Managers, administrative and clerical staff acting as employees or contractors of the creditor, when they take an application, offer to arrange or assist an applicant to obtain, negotiate, or otherwise obtain or make a particular extension of credit for another person, are loan originators. That said, the following examples describe activities that by themselves do not render one of these persons a loan originator:

- ✚ Loan originators do not include persons who, at the request of the consumer, provide an application form to the consumer, accept a completed application form from the consumer or deliver the application to a loan originator or creditor. A person does not assist the consumer in completing the application if the person explains how to fill out the application, or the contents of the application or where particular information is to be provided, or alternatively describes the application process without discussion of credit terms or products.
- ✚ A person is not a loan originator who provides general explanations or information in response to consumer queries or provides loan originator creditor contact information in response to a consumer's request, provided the employee does not discuss particular credit terms and does not refer

the consumer to a particular loan originator based on that person's assessment of the consumer's financial characteristics.

Loan processors are also not within the definition of a loan originator. Allowable services they may perform include:

- ✚ Compiling and assembling credit application packages and supporting documentation.
- ✚ Verifying information provided by the consumer or asking for support documentation or for the consumer's authorization to obtain supporting documentation.
- ✚ Arranging for the close of the loan or for other aspects of the process including communicating with the applicant about these arrangements.
- ✚ Providing a consumer with information on related credit terms, such as the best days of the month to close the loan.
- ✚ Communicating with the applicant, on behalf of the loan originator, that a written credit offer has been sent to the consumer without providing any details of that offer.

Underwriters are also not within the definition of a loan originator.

Allowable services include:

- ✚ Evaluating an applicant's information to make underwriting decisions on loan qualification and communicating those decisions to the loan originator or creditor, but not to the consumer.
- ✚ Approving credit terms or setting credit terms in offer or counteroffer situations, again while communicating that information only to the loan originator not the applicant.
- ✚ Establishing credit pricing offered to the public via marketing or loan originators.

Managers that work for creditors sometimes engage in loan origination activities and have become known as “producing managers”. The definition of loan originator includes those managers who take an application, offer, arrange, assist the consumer with applying, negotiating or otherwise obtaining a particular extension of credit for another person even if such persons are also employed by the creditor to perform duties that are not origination activities. Producing managers who fulfill these criteria are loan originators.

**INSTALLMENT 2 New issues related to compensation itself will be in our next issue. Stay tuned.**

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