

LENDERS UPDATE™

ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

Main Office:
2102 BUSINESS CENTER DRIVE
SUITE 130
IRVINE, CA 92612
Tel: 949.253.5755 Fax: 949.253.5756
David.j.alt@altandassociates.com
www.altandassociates.com

DAVID JEROME ALT
Attorney at Law

May 29, 2013

LOAN ORIGINATOR COMPENSATION THE NEW RULE

INSTALLMENT 3

Over the past two weeks we have published two installments of our three-part series on the Consumer Financial Protection Bureau's (CFPB) Final Rule amending the loan originator compensation requirements under the Truth in Lending Act. As we have said, this new Rule primarily implements the requirements and restrictions of the Dodd-Frank Act. The provisions discussed in this installment, as well as the prior two, become effective January 10, 2014.

Without providing legal advice, we have attempted to provide summaries of the lengthy material published by the CFPB. In this final installment we discuss dual compensation issues and compensation paid under designated or non-designated compensation plans, which we define below.

PROHIBITED DUAL COMPENSATION

First we turn to prohibited dual compensation, which may occur if any loan originator receives compensation directly from the consumer in a transaction and also from any other person, directly or indirectly in connection with that credit transaction. However, in a transaction where the loan originator receives compensation from the consumer, a creditor still may provide funds for the benefit of the consumer in a transaction, provided such funds are applied solely towards the cost of the transaction and not towards the compensation paid to the loan originator.

In a significant change found in the new Final Rule, if a loan originator organization receives compensation directly from the consumer, that organization may provide compensation to individual originators. The Bureau's example speaks to payments by the mortgage broker to an individual loan originator as compensation for originating the specific credit transaction, which is allowed even if the consumer directly pays the mortgage broker fee. Of course, neither the broker nor the originator can receive compensation from the creditor in connection with that credit transaction.

Significantly, the new Rule provides that compensation received directly from the consumer includes payments to a loan originator made pursuant to an agreement between the consumer and a person other than the creditor or its affiliates, under which such other person agrees to provide funds toward the consumer's costs of the transaction. Payments such as these are sometimes made by a seller, homebuilder, home improvement contractor or a real estate broker or agent. These types of payments are treated as compensation received directly from the consumer if they are made pursuant to an agreement between the consumer and a person other than the creditor or its affiliates. We are told to look to state law to determine whether there is an agreement between the parties.

Again to look to the Bureau's example, assume that a seller has an agreement with the consumer to pay \$1000 of the closing costs. Any of the thousand dollars that is paid by the seller to the loan originator constitutes compensation received directly from the consumer, even if the agreement

does not specify that some or all of the \$1000 must be used to compensate the loan originator.

However, payments by the consumer to the creditor are not payments to the loan originator that are received directly from the consumer. Accordingly payments in a transaction to the creditor on behalf of the consumer by a person other than the creditor or its affiliates are not payments to the loan originator that are received directly from the consumer.

TAX ADVANTAGE PLANS

One of the confusing areas of the original Rule concerned profit-sharing programs, tax-deferred programs and the like. The new Rule attempts to end the confusion.

Essentially, the Rule allows designated tax advantage plans. These are defined as any defined benefit plan or defined contribution plan that is qualified under the Internal Revenue Code. This can include employee annuity plans, simple retirement accounts, simple employment pensions, annuity contracts or eligible deferred compensation plans.

Also allowed are non-deferred profit based compensation in two circumstances:

1. The non-deferred profit base compensation does not exceed 10% of total compensation (the 10% total compensation limit), or
2. the loan originator originated 10 or fewer transactions in any 12 month period.

These plans are essentially compensation arrangements where an individual loan originator may be paid variable additional compensation based in whole or in part on the mortgage-related profits of the person paying the compensation. The individual loan originator may, for example be paid directly in cash stock or other deferred compensation in an amount paid out from the non-deferred profit base compensation plan.

The Rules governing these two types of plans are somewhat technical. We would suggest careful review of any plans developed under these new provisions.

We hope our summary of the new Rule has been of help to you. If you have questions, please let us know.

The Lenders Update is published via e-mail as a complimentary service to our friends and clients in the financial industry throughout California and the United States.

Only those persons who have personally requested this newsletter are on our distribution list.

SHOULD YOU NOT WISH TO CONTINUE TO RECEIVE THIS SERVICE, PLEASE JUST SEND US AN EMAIL TO “OP-OUT” AT:

special@altandassociates.com

ALSO, SHOULD YOU HAVE COLLEAGUES WHO WISH TO BE ADDED TO THIS COMPLIMENTARY SERVICE, PLEASE HAVE THEM E-MAIL US AT:

special@altandassociates.com

ALT & ASSOCIATES provides regulatory, compliance, operational advice and transactional assistance, as well as litigation representation, to the financial services industry. Over the past three decades, members of the firm have represented Institutional Lenders and Mortgage Bankers and Brokers in all aspects of their operations.

If you have any questions please contact:

David J. Alt, Esq.

David.j.alt@altandassociates.com

You may view previous issues on our website at:

www.altandassociates.com

Who's Who in American Law

Martindale Hubble Pre-Eminent Attorney