NOVEMBER 8, 2013

2013 Loan Originator Rule

SMALL ENTITY COMPLIANCE GUIDE

The Bureau recently finalized changes to this rule. The October 2013 Final Rule amends the final rule issued January 20, 2013,which is set to take effect in January 2014 (except for provisions that took effect in June 2013). This guide is updated for these changes.

Consumer Financial Protection Bureau

Summary of Changes

The Bureau updated this guide on November 8, 2013 to reflect finalized changes to the rule issued January 20, 2013, most of which is set to take effect in early January 2014. Notable changes and clarifications in the October 2013 Final Rule impacting guide content include:

- ☐ *Definition of "loan originator"*: Clarifies the definition of loan originator, including what constitutes assisting a consumer in applying for credit; defining "credit terms"; further describing administrative and clerical tasks; further describing loan processing activities such as coordination of the consummation of the credit transaction; and clarifying when an employee of a manufactured home retailer is not a loan originator. (*See "Are you a loan originator" on page 17*.)

- ☐ *Non-Deferred Profits-Based Compensation Plans*: Clarifies permissible compensation payable to a loan originator under a non-deferred profits-based compensation plan. (*See "How can non-deferred profits-based compensation payments be made in compliance with the rule?" on page 48-48 and "How does the 10-percent total compensation limit exception work" on page 49*.)

- ☐ *Financing Credit Insurance Premiums*: Clarifies the prohibition on creditor financing of credit insurance premiums, including when a creditor "finances" a consumer's premium, and when the prohibition does not apply to premiums calculated and paid in full on a monthly basis. (*See "What is the scope of the prohibition on financing credit insurance?" on page 78*.)

- ☐ *Revised effective dates of Loan Originator rule provisions*: Changes the effective date for the 2013 Loan Originator Final Rule to January 1, 2014 for most of the rule's provisions. (*See "When do I have to start following this rule" on page 15*.)

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1. Introduction

In the aftermath of the mortgage crisis, regulators and lawmakers began focusing on the influential role that loan originators, such as mortgage brokers and bank loan officers, play in helping consumers choose their loans. In particular, there was significant concern about the incentives that loan originators have to steer consumers into more expensive loans in order to increase their own compensation.

Regulators and lawmakers have imposed a number of new requirements concerning loan originators' licensing and registration, training, screening, and compensation practices. In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), adopted new requirements that built on some of these earlier initiatives. (See 15 U.S.C. 1639b [Section 1403 of the Dodd-Frank Act] for more information on this topic.)

The Consumer Financial Protection Bureau (the Bureau) issued regulations to implement the new Dodd-Frank Act requirements in January 2013 (the Bureau's Loan Originator Rule). The Bureau provided further clarifications to this rule through the October 2013 Final Rule. The regulations expand upon and refine earlier regulations adopted by the Board of Governors of the Federal Reserve System (that became effective in April 2011 and were recodified by the Bureau in December 2011) to restrict certain compensation practices. The regulations also implement Dodd-Frank Act requirements concerning loan originator qualifications that build upon existing requirements under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act).

As this rule expands upon earlier regulations, you may find it helpful to consult with prior regulations governing loan originator compensation.

The Bureau's Loan Originator Rule, which is the focus of this guide, clarifies a number of issues under existing loan originator compensation rules and implements the Dodd-Frank Act requirements as well. In general, the rule covers these areas and sets the following requirements:

Loan originator definition

- ☐ Clarifies the existing definition of "loan originator" for purposes of the rule, including exclusions for certain employees of manufactured home retailers; servicers; seller financers; real estate brokers; management, clerical, and administrative staff; and loan processors, underwriters, and closers.

Compensation

- ☐ Prohibits a loan originator's compensation from being based on the terms of a transaction (with limited exceptions) or a proxy for a transaction term.

- ☐ Permits contributions to and benefits under designated tax-advantaged plans and certain bonuses and other compensation under non-deferred profits-based compensation plans based on mortgage-related business profits.

- ☐ Prohibits loan originators in a transaction from being compensated by both a consumer and another person, such as a creditor.

Recordkeeping

- ☐ Extends existing recordkeeping requirements concerning loan originator compensation so that they apply to both creditors and other companies that hire loan originators, such as mortgage broker companies, and also lengthens the time certain records must be retained.

Qualifications

- ☐ Requires loan originators to be licensed and registered if required under state or federal law and requires the organizations that hire them to ensure they are licensed or registered.

- ☐ Requires companies that hire loan originators to make sure that their loan originator employees who are not required to be licensed and are not licensed meet certain character and fitness standards, pass a criminal background check and are appropriately trained.

IDs on loan documents

- ☐ Requires certain loan originator identification information to be included on loan documents.

Policies and procedures to comply

- ☐ Requires depository institutions to establish and maintain written policies and procedures to monitor compliance with various new and existing rules applicable to their loan originator employees.

Mandatory arbitration and waivers of federal claims

- ☐ Restricts creditors from including in their contracts mandatory arbitration clauses and provisions where consumers would waive federal statutory causes of action.

Financing credit insurance

- ☐ Restricts creditors from financing certain credit insurance premiums or fees.

I. What is the purpose of this guide?

The purpose of this guide is to provide an easy-to-use summary of the Loan Originator Rule. This guide also highlights issues that small loan originators and creditors, and those that work with them, might find helpful to consider when implementing the rule.

This guide also meets the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, which requires the Bureau to issue a small-entity compliance guide to help small businesses comply with these new regulations.

The Bureau anticipates that most loan originators and creditors will have to make some changes to their processes, software, contracts, or other aspects of their business operations in order to comply with this rule.

Changes related to this rule may take careful planning, time, or resources to implement. This guide will help you identify and plan for any necessary changes.

To support rule implementation and ensure the industry is ready for the new consumer protections, the Bureau will coordinate with other agencies, publish plain-language guides, publish updates to the Official Interpretations, and publish readiness guides.

The guide summarizes the Loan Originator Rule, but it is not a substitute for the rule. Only the rule and its Official Interpretations (also known as Commentary) can provide complete and definitive information regarding its requirements. The discussions below provide citations to the sections of the rule on the subject being discussed. Keep in mind that the Official Interpretations, which provide detailed explanations of many of the rule's requirements, are found after the text of the rule and its appendices. The interpretations are arranged by rule section and paragraph for ease of use. The rule, as issued on January 20, 2013, and Official Interpretations, as issued on January 20, 2013, are available at http://www.consumerfinance.gov/regulations/loan-originator-compensation-requirements-under-the-truth-in-lending-act-regulation-z/. Additionally, the CFPB issued the October 2013 Final Rule to amend and clarify rule provisions and Official Interpretations in the January 2013 Final Rule and that document is also available at the same web link.

The focus of this guide is the Loan Originator Rule. This guide does not discuss other federal or state laws that may apply to the origination of closed-end credit or home equity lines of credit (HELOCs).

At the end of this guide, there is more information about the rule and related implementation support from the Bureau

II. Who should read this guide?

You may find this guide helpful if:

- ☐ You are a loan originator that receives compensation for originating closed-end mortgage loans.
- ☐ You are a person that pays compensation to a loan originator for originating such loans.
- ☐ You are a creditor for closed-end mortgage loans.
- ☐ You are a creditor for HELOCs secured by a consumer's principal dwelling. (Only the provisions on mandatory arbitration, waivers of federal claims, and financing certain credit insurance apply to you.)

This guide may also be helpful to secondary market participants, software providers, and other companies that serve as business partners to loan originators or creditors.

III. Who can I contact about this guide or the rule?

For more information on the rule, please contact the Bureau's Office of Regulations at 202-435-7700, or email questions to CFPB_reginquiries@cfpb.gov.

Email comments about the guide to CFPB_TitleXIVRules@cfpb.gov. Your feedback is crucial to making sure the guide is as helpful as possible. We welcome your suggestions for improvements and your thoughts on its usefulness and readability.

We are particularly interested in feedback relating to:

- ☐ How useful you found this guide for understanding the rule
- ☐ How useful you found this guide for implementing the rule at your business
- ☐ Suggestions you have for improving the guide, such as additional implementation tips or formatting or presentation comments

2. Overview of the Loan Originator Rule

I. What is the Loan Originator Rule about?

The rule generally regulates how **compensation** is paid to a loan originator in most closed-end mortgage transactions, including:

- ☐ Prohibiting a loan originator's compensation from being based on the terms of the transaction or a proxy for a transaction term.
- ☐ Permitting certain methods of compensating loan originators using bonuses, retirement plans, and other compensation plans that are based on mortgage-related profits.
- ☐ Prohibiting loan originators in a transaction from being compensated by both the consumer and another person, such as a creditor.

The rule also imposes **qualification** duties on loan originators. They must be licensed and registered if required under the SAFE Act or other state or federal law. In addition, the rule requires that loan originators who are not required to be licensed and are not licensed be trained on the state and federal legal requirements that apply to their loan origination activities. The rule also makes existing background and character screening requirements more consistent for different types of loan originators.

Implementation Tip: The SAFE Act refers to the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5101 *et seq*.).

Implementation Tip: The NMLSR ID is a number assigned by the Nationwide Mortgage Licensing System and Registry to facilitate electronic tracking and uniform identification of loan originators and public access to loan originators' employment, disciplinary, and enforcement-action history.

Companies that hire loan originators must make sure their employees meet the rule's qualification requirements, including licensing or registration. Companies that hire loan originators under a brokerage agreement must make sure their brokers meet licensing or registration requirements, but do not have to ensure they meet other qualification requirements.

The rule also requires that certain **identification** information, such as the primary originator's name and NMLSR unique identifier (NMLSR ID), and the name and NMLSR ID of the originator's employer, if any, appear on certain loan documents.

For more information on the NMLSR, visit http://mortgage.nationwidelicensingsystem.org/Pages/default.aspx.

Depository institutions also must establish and maintain **written policies and procedures** to monitor compliance with the provisions on compensation, qualification, identification, and steering contained in § 1026.36.

The rule also implements two other provisions of the Dodd-Frank Act that apply to most closed-end mortgage loans and to HELOCs secured by the consumer's principal dwelling. These provisions:

- ☐ Prohibit mandatory **arbitration clauses** in contracts.
- ☐ Prohibit contracts from being interpreted to waive **federal statutory causes of action.**
- ☐ Prohibit certain **financing of credit insurance** premiums or fees (but allow consumers to pay credit insurance that is calculated on a monthly basis).

II. Who is covered by the rule?

The provisions on compensation restrict payments to "loan originators."

Under the rule, a "loan originator" generally includes individuals and entities that perform loan origination activities for compensation, such as taking an application, offering credit terms, negotiating credit terms on behalf of a consumer, obtaining an extension of credit for a consumer, or referring a consumer to a loan originator or creditor.

A "loan originator" is either an "individual loan originator" or a "loan originator organization."

"Individual loan originators" are natural persons, such as individuals who perform loan origination activities and work for mortgage brokerage firms or creditors.

"Loan originator organizations" are generally loan originators that are not natural persons, such as mortgage brokerage firms and sole proprietorships.

The rule specifically excludes some persons from being a "loan originator," including certain real estate brokers, seller financers, and loan servicers. *(See "Are you a loan originator?" on page 17.)*

For purposes of the compensation provisions, creditors are defined as "loan originators" (and "loan originator organizations") only if they are table-funded (*i.e.,* they **do not** finance transactions at consummation out of their own resources). That means the rule does not restrict payments made *to* a creditor unless the creditor is table-funded. But the rule restricts payments *from* all creditors to their loan originator employees or to other "loan originators" such as mortgage brokers.

For purposes of the qualification and identification provisions, the rule includes both table-funded and other creditors in the definition of "loan originator organization." Thus, for example, creditors and other companies that hire individual loan originators have a duty to ensure that their employees meet the rule's qualification requirements. And all creditors have a duty to include NMLSR IDs and other identification information for themselves and other loan originators on loan documents as described later in this guide.

The requirements to establish and maintain written policies and procedures to monitor compliance with the various new and existing rules applicable to individual loan originators apply to depository institutions (including credit unions).

The prohibitions on mandatory arbitration clauses, waivers of federal claims, and certain financing practices for credit insurance generally apply to creditors that offer either closed-end consumer credit secured by a dwelling (except for certain time-share plans) or HELOCs secured by the consumer's principal dwelling.

III. When do I have to start following this rule?

The Loan Originator Rule originally provided that for covered closed-end and HELOC mortgage loans where you (as a creditor) receive the application on or after June 1, 2013, you must make sure your contracts for those loans do not contain mandatory arbitration clauses or waivers of federal claims, and that you do not finance certain credit insurance for those loans. The Bureau subsequently delayed the June 1, 2013 effective date for the **prohibition of financing credit insurance** to January 10, 2014, in order to allow sufficient time for compliance. (§ 1026.36(i)) The effective date for the provisions on mandatory arbitration clauses and waivers of federal claims were not affected by the delay and took effect June 1, 2013. (§ 1026.36(h))

If applicable to you, you must start following the provisions on qualification (§ 1026.36(f)) and establishing and maintaining written compliance policies and procedures for depository institutions (§ 1026.36(j)) on January 1, 2014. Provisions concerning the rule's definitions (§ 1026.36(a)), scope (§ 1026.36(b)), and amendments to the anti-steering provisions (§ 1026.36(e)) also take effect on January 1, 2014.

The compensation provisions in § 1026.36(d), as revised by the Loan Originator Rule, generally take effect on January 1, 2014 and apply to transactions that are consummated and for which loan originators are paid compensation on or after that date. The record retention provisions in § 1026.25(c)(2) have the same effective date. If, however, you are paying compensation under a designated tax-advantaged plan under § 1026.36(d)(1)(iii), there is a slightly different effective date. The provisions of § 1026.36(d)(1)(iii) will apply to transactions for which you paid compensation on or after January 1, 2014, regardless of when the transactions were consummated.

For the provision requiring the name and NMLSR ID of a loan originator organization, and an individual loan originator (as applicable), on loan documents, § 1026.36(g), you must start complying by January 10, 2014 with regard to any application received on or after that date.

IV. What loans does the rule cover? (§ 1026.36(b))

Almost all closed-end consumer credit transactions secured by a dwelling (including any real property attached to the dwelling) are subject to the provisions on compensation, qualification, identification, and the establishment and maintenance of written policies and procedures for compliance.

This includes loans made to consumers that are secured by residential structures that contain one to four units, including condominiums and cooperatives. It is **not** limited to first liens or to loans on primary residences.

The provisions on compensation, qualification, identification, and the establishment and maintenance of written policies and procedures **do not apply to**:

- ☐ Open-end credit plans including HELOCs
- ☐ Time-share plans

The prohibitions on mandatory arbitration clauses, waivers of federal claims, and certain financing practices for credit insurance apply to closed-end consumer credit transactions secured by a dwelling (except certain time-share plans) and to HELOCs secured by a consumer's principal dwelling.

3. Are you a loan originator? (§ 1026.36(a)(1))

I. Can loan originators only be individuals?

No. A "loan originator" is either a "loan originator organization" or an "individual loan originator."

You are a "loan originator organization" if you are a loan originator that is **not** a natural person, such as a sole proprietorship, trust, partnership, limited liability partnership, limited partnership, limited liability company, corporation, bank, thrift, finance company, or credit union. (§ 1026.36(a)(1)(iii) and comment 36(a)-1.i.D)

You are an "individual loan originator" if you are a loan originator who is a natural person. (§ 1026.36(a)(1)(ii))

As discussed, creditors are excluded from the definition of "loan originator" and "loan originator organization" for purposes of the compensation provisions unless they are table-funded. But all creditors, including those that use their own sources of funding, are included in the definition of "loan originator" and "loan originator organization" for purposes of the qualification and identification requirements.

II. What actions make me a loan originator?

You may be a "loan originator" if you are an organization or individual that for compensation or other monetary gain performs loan origination activities, such as (*see* comments 36(a)-1, 36(a)-4, and 36(a)(1)(i)(B)-1):

- ☐ Taking an application

- ☐ Arranging a credit transaction

- ☐ Assisting a consumer in applying for credit. A loan originator assists a consumer in obtaining or applying for credit by advising on particular credit terms that are or may be available to the consumer based on the consumer's financial characteristics.

> **Implementation Tip**: This definition of "loan originator" is broader than the one under the SAFE Act and its implementing regulations because Congress chose to use broader language in the Dodd-Frank Act definition.
>
> **Implementation Tip**: Still unsure if you're a loan originator? The commentary to § 1026.36(a) has further explanation of

- ☐ Offering or negotiating credit terms. Credit terms include rates, fees and other costs. Credit terms are selected based on the consumer's financial characteristics when those terms are selected based on any factors that may influence a credit decition, such as debts, income, assets or credit history.

- ☐ Making an extension of credit

- ☐ Referring a consumer to a loan originator or creditor. Referring is an activity included under each of the activities of offering, arranging, or assisting a consumer in obtaining or applying to obtain an extension of credit.

- ☐ Advertising or communicating to the public that you can or will perform any loan origination services

You are **not** a loan originator if you are simply:

> **Implementation Tip**: See the commentary to § 1026.36(a) and the preamble to the final rule for examples and further discussion of why these activities alone do not constitute loan origination.

- ☐ A person who performs purely administrative or clerical tasks on behalf of a loan originator or creditor, but does not take consumer credit applications or offer or negotiate credit terms available from a creditor to that consumer selected based on the consumer's financial characteristics. (§ 1026.36(a)(1)(i)(A), Comment 36(a)-4)).
    - o A loan originator's or creditor's employee who provides a credit application from the entity for which the person works to the consumer for the consumer to complete is not an loan originator.

- A loan originator's or creditor's employee who delivers the consumer's credit application to the loan originator or creditor is not a loan originator - as long as the employee did not assist the consumer in completing the application, process or analyze information, or discuss particular credit terms that are or may be available from a creditor or a loan originator to that consumer selected based on the consumer's financial characteristics.

- ☐ A properly licensed real estate broker that performs only real estate brokerage activities so long as you are not compensated by a loan originator or creditor. You are not compensated by a loan originator or creditor if you are paid by a loan originator or creditor on behalf of a buyer or seller solely for performing real estate brokerage activities or if you are paid compensation by a loan originator or creditor, or affiliate of the loan originator or creditor, solely for performing real estate brokerage activities in connection with a property owned by that loan originator or creditor.

- ☐ A servicer or a servicer's employee, unless you perform loan origination activities on replacing an existing obligation with a new debt as discussed below. (See §1026.36(a)(1)(i)(E)).

> **Implementation Tip**: If you are a servicer or work for a servicer, you become a loan originator if you perform loan origination activities on a covered transaction, such as handling a refinancing or assisting in adding a different consumer on an existing debt. However, renegotiating or modifying an existing mortgage does not constitute a loan origination activity. You will find the rules for what determines whether a loan is a modification or a refinance in Regulation Z at § 1026.20(a) and accompanying commentary.

- ☐ An employee of a manufactured home retailer and you do not take applications, offer or negotiate credit terms, or advise consumers on credit terms. A loan originator does not include an employee of a manufactured home retailer that "assists" a consumer in obtaining or applying for consumer credit (as defined in comment 36(a)-1.i.A.*3*), provided that the employee does not advise on specific credit terms, or otherwise engage in loan originator activity as defined in § 1026.36(a)(1). The following, in the absence of other activities, do not make such an employee a loan originator (see comment 36(a)(1)(i)(B)-1):

  - Generally describing the credit application process without advising on credit terms available from a creditor.

  - Preparing residential mortgage loan packages, including providing general application instructions so consumers can complete an application -- but not filling out a consumer's application.

- Collecting information on behalf of the consumer with regard to a residential mortgage loan, including gathering information or supporting documentiation from third parties for the consumer then to provide in the application or to submit to the creditor.

- Providing or making available general information about creditors or loan originators that may offer financing for manufactured homes in the consumer's general area, when doing so does not otherwise amount to "referring" as defined in comment 36(a)-1.i.A.

☐ A seller financer who meets certain requirements as discussed on page 22.

You are **not** a loan originator simply because you perform the following activities:

☐ Provide bona fide third-party advisory services, such as those an accountant, attorney, or registered financial advisor would. However, if you advise a consumer on credit terms offered by either you or your employer, or you receive, or expect to receive, compensation from loan originators or creditors for providing advice on credit terms offered by them, or for referring consumers to them, then you are a loan originator.

☐ Provide HUD-approved housing counseling services in certain circumstances. (*See "When is a HUD-approved counselor a loan originator?" on page 21*.)

☐ Provide general explanations, information, or descriptions of credit products in response to consumer queries.

> **Implementation Tip**: See the commentary to § 1026.36(a) for examples of activities that are not loan origination activities.

☐ Describe other product-related services (for example, optional monthly payment methods via telephone or via automatic account withdrawals, the availability and features of online account access, the availability of 24-hour customer support, or free mobile applications to access account information) (*see* comment 36(a)-4.ii.C).

☐ As an employee of a creditor or loan originator, provide contact information of a loan originator or creditor for whom you work or of another person who works for that entity so long as you do not discuss particular credit terms with the consumer that are or may be available from a creditor or loan originator to that consumer selected based on the consumer's financial characteristics, or direct the consumer to a particular loan originator or creditor seeking to originate credit transactions to consumers with the consumer's financial characteristics based on the employee's assessment of those characteristics (*see* comment 36(a)-4.ii.B).

☐ Perform loan-processing activities, such as compiling and assembling credit application packages and supporting documentation, for a loan originator or creditor.

- Persons who coordinate consummation of the credit transaction or other aspects of the credit transaction process, such as communicating with a consumer about process deadlines and documents needed at consummation, are not loan originators, provided that any communication that includes a discussion about credit terms available from a creditor to that consumer selected based on the consumer's financial characteristics only confirms credit terms already agreed to by the consumer. (*see* comment 36(a)-4.iii.C).

- ☐ Perform credit underwriting activities, so long as you do not communicate directly with the consumer about specific credit terms.

For the provisions on compensation, a creditor is a loan originator for transactions where the creditor is table-funded (that is, the creditor does not use funds from its own resources to consummate the transaction).

For the requirements on qualification and identification, a creditor is a loan originator regardless of whether it uses table funding or not. (§ 1026.36(a)(1)(i)).

III. When is a HUD-approved counselor a loan originator? (Comment 36(a)-1.v))

In certain circumstances, the rule excludes you from being considered a loan originator if you are a HUD-approved counselor, even if some of the activities you engage in otherwise meet the definition of a loan originator. The rule contains two different exclusions that may apply to HUD-approved counselors. One exclusion is for third-party advisers generally and the other is specific to HUD-approved counselors.

First, under the third-party advisor exclusion, you will not be a loan originator if you merely assist consumers with understanding the credit origination process and various credit terms, or you merely collect and organize documents to support a credit application.

This exception does not apply, however, if you advise a consumer on credit terms offered by either you or your employer, or you receive, or expect to receive, compensation from loan originators or creditors for providing advice on credit terms offered by them, or for referring consumers to them.

Second, under the exclusion for HUD-approved counselors, you also will not be a loan originator if (1) you simply assist a consumer in obtaining or applying for consumer credit from a loan originator or creditor; (2) your compensation is not contingent on referrals or on engaging in additional loan origination activities; and (3) you satisfy one of the following two conditions:

- ☐ You receive compensation expressly permitted by applicable local, state, or federal law that requires counseling and the counseling performed complies with such law (for example, §§ 1026.34(a)(5) and 1026.36(k) of Regulation Z); or

- ☐ You receive a fixed sum of compensation from a creditor, loan originator, or the affiliate of either as a result of agreements between creditors or loan originators and local, state, or federal agencies or authorities.

IV. When is a seller financer a loan originator? (§ 1026.36(a)(4) and (5))

Seller financers that engage in a minimum number of transactions are considered creditors under the Truth in Lending Act (TILA) and Regulation Z. Specifically, seller financers would be considered creditors under Regulation Z if they extend credit secured by a dwelling (other than high-cost mortgages subject to § 1026.32) six or more times in the preceding calendar year, or extend more than one high-cost mortgage in any 12-month period. Accordingly, such seller financers are excluded from the definition of loan originators for purposes of the compensation provisions unless they use table funding. In addition, the rule contains two additional special exclusions from the compensation, steering, qualification, and identification provisions for certain seller financers. These exceptions are:

1. **You are a natural person, estate, or trust and you provide seller financing for only one property in any 12-month period.**

2. **You are any type of seller financing entity and you finance the sales of three or fewer properties in any 12-month period.**

Specifically, under the first special exclusion, if you are a seller financer **that is a natural person, estate, or trust**, you are not a loan originator if:

- ☐ You provide seller financing for only one property in any 12-month period.

- ☐ You owned the property securing the financing.

- ☐ You did not construct, or act as a contractor for the construction of, a residence on the property in your ordinary course of business.

- ☐ The financing meets the requirements below.

The financing must:

- ☐ Have a repayment schedule that does not result in negative amortization.

- ☐ Have a fixed rate or an adjustable rate that resets after five or more years. These rate adjustments may be subject to reasonable annual and lifetime limits.

> **Implementation Tip**: An annual rate increase of 2 percentage points or less is reasonable. A lifetime limitation of an increase of 6 percentage points or less is reasonable. You may choose a minimum floor. The maximum ceiling may not exceed the usury limit applicable to the transaction. (Comments 36(a)(4)-2 and 36(a)(5)-1)

If the financing agreement has an adjustable rate, you must determine the rate by adding a margin to an index rate. The index you use must be widely available, such as the U.S. Treasury securities indices or LIBOR.

Under the second special exclusion, if you are a seller financer (regardless of whether you are a natural person, estate, or trust), you are not a loan originator if:

- ☐ You provide seller financing for three or fewer properties in any 12-month period.

- ☐ You owned the properties securing the financings.

- ☐ You did not construct, or act as a contractor for the construction of, a residence on the property in your ordinary course of business.

- ☐ The financing meets the requirements below.

> **Implementation Tip**: You may use the criteria set forth in § 1026.43(c) or comment 36(a)(4)-1 to comply with the ability-to-repay standard.

The financing must:

- ☐ Be fully amortizing.

- ☐ Have a fixed rate or an adjustable rate that resets after five or more years. These rate adjustments may be subject to reasonable annual and lifetime limits.

Further, you must determine in good faith that the consumer has a reasonable ability to repay the loan. If the financing agreement has an adjustable rate, you must determine the rate by adding a margin to an index rate. The index you use must be widely available, such as the U.S. Treasury securities indices or LIBOR.

4. What does the rule say about compensation and fees? (§ 1026.36(a)(3))

I. What counts as compensation?

If you are a loan originator, the term "compensation" generally includes salaries, commissions, and any financial or similar incentive that you receive and retain.

For example, the term "compensation" includes:

- ☐ An annual or other periodic bonus
- ☐ Awards of merchandise, services, trips, or similar prizes (Comment 36(a)-5.i)

II. Does the name of the fee matter?

If you are a loan originator, compensation generally includes payments that you retain, and is not dependent on the label or name given to a fee. (Comment 36(a)-5.ii) *(See "How does the rule treat payments for services other than loan origination activities?" on page 26.*)

III. Does compensation include fees that loan originators collect and pass on to third parties?

If you are a loan originator organization, your compensation does **not** include amounts you receive as payment for bona fide and reasonable charges, such as credit reports, that you collect and pass on to a third party that is not the creditor, the creditor's affiliate, or your affiliate. (Comment 36(a)-5.iii)

If you mark up the third-party charge (a practice known as "up-charging"), the difference between the actual charge and the marked-up charge is compensation.

> **Implementation Tip**: See 12 CFR 1024.8(b)(2) for rules related to average charge pricing.

However, if you cannot accurately determine the actual third-party charge when it is imposed and instead use average charge pricing in accordance with the Real Estate Settlement Procedures Act (RESPA), your compensation does not include amounts above the third-party charge even if you keep them. In these cases, the amount you charged must be bona fide and reasonable and must comply with state and other applicable law. (Comment 36(a)-5.v)

For example, assume you are a loan originator organization that receives compensation directly from a consumer.

Based on your past average cost for credit reports, you charge the consumer $25 for a credit report provided by a third party. Under your agreement with the consumer reporting agency, you receive a month-end bill for the credit report that varies between $15 and $35 depending on how many credit reports you obtain that month.

The consumer pays $25 for the credit report. At the end of the month, the cost for the credit report is actually $15 for this consumer's transaction based on your credit report volume that month.

In this case, the $10 difference between the $25 credit report fee you imposed on the consumer and the actual $15 cost for the credit report is not compensation, even though you retain the $10.

If, however, the average price for the credit report is $15, and you still charged $25, the $10 difference would be compensation.

IV. How does the rule treat payments for services other than loan origination activities?

The rule excludes from the definition of compensation payments that are collected by loan originator organizations for services other than loan origination activities, such as payments for acting as a title insurance agent or issuer or a real estate broker.

If you are a loan originator organization, your compensation does not include:

- ☐ Payments you receive and retain for bona fide and reasonable charges for services you perform that are not loan origination activities.
- ☐ Payments your affiliates receive and retain for bona fide and reasonable charges for services they perform that are not loan origination activities.
- ☐ Payments you receive and pass along to the creditor, the creditor's affiliate, or your affiliate for bona fide and reasonable charges for services that are not loan origination activities. (Comment 36(a)-5.iv.A)

Loan origination activities are any activities described in the definition of "loan originator" that would mean the person performing them is considered to be a "loan originator." *(See "What actions make me a loan originator?" on page 17.*) (Comment 36(a)-5.iv.C)

For example, assume you are a loan originator organization that provides title insurance to a consumer in a transaction. Because providing title insurance is not a loan origination activity, the payment to you for the title insurance is not compensation, so long as your insurance charge was bona fide and reasonable.

If you are an individual loan originator, any payment to you, including salary, commissions, and financial or similar incentives, is compensation regardless of how it is labeled. (Comment 36(a)-5.iv.B)

> Implementation Tip: If you (as a loan originator organization) mark up a charge that you collect and pass along to the creditor, its affiliates, or your affiliates for services that are not loan origination activities, your compensation may include the difference between the actual charge and the marked-up charge. Such mark-ups are treated the same as mark-ups of third-party fees, and are considered compensation. (*See "Does compensation include fees that loan originators collect and pass on to third parties?" on page 25.*)

For example, assume you are an individual loan originator who receives an extra commission for selling title insurance to a consumer in a covered transaction. This extra commission is compensation, regardless of how it is labeled.

V. Are dividends on stock owned by a loan originator considered compensation? (Comment 36(a)-5.vi)

If you are a loan originator, any award of stock, stock options, or equity interests would generally be compensation.

However, bona fide returns or dividends paid on stock or other equity holdings, including those paid to owners or shareholders of a mortgage brokerage firm who own such stock or equity interests, are not compensation.

Bona fide returns or dividends must be paid based on documented ownership or equity interests and cannot be functionally equivalent to compensation.

Ownership and equity interests must be bona fide. This means they must be allocated according to a loan originator's capital contribution. The allocation must not be a mere subterfuge for the payment of compensation based on terms of a transaction.

Ownership and equity interests are not bona fide if the formation or maintenance of the business organization from which returns or dividends are paid is a mere subterfuge for the payment of compensation based on the terms of a transaction.

Thus, ownership and equity interests are not bona fide if, for example, a corporation or LLC is used to pass through payments to a loan originator or group of loan originators that otherwise would be prohibited by the rule.

5. How does the prohibition against compensation based on a transaction term work? (§ 1026.36(d)(1))

I. What compensation based on transaction terms is prohibited? (§ 1026.36(d)(1)(i))

The existing compensation provisions in Regulation Z and codified by the Dodd-Frank Act were designed to eliminate some of the most common incentives that loan originators had historically used to steer consumers into loans that are less advantageous than those for which the consumers otherwise qualified.

The existing rule prohibits loan origination compensation based on transaction terms, such as interest rate, or a proxy for transaction terms. The Loan Originator Rule clarifies this existing prohibition, including defining what constitutes a transaction term, clarifying how to determine whether a factor is a proxy for a transaction term, and clarifying when compensation may be paid based on profits from a mortgage-related business.

Implementation Tip: Some profits-based compensation plans are permitted under the rule, as described further in Part 8 on page 42.

Implementation Tip: If you are a loan originator, you also may not receive compensation that is based on a proxy for a transaction term. See Part 6 on page 38 for a more detailed discussion.

If you are a loan originator for purposes of the compensation provisions (including a table-funded creditor), you generally may not **receive** compensation that is based on:

- A term of a single transaction.
- The terms of multiple transactions conducted by you.
- The terms of multiple transactions conducted by multiple loan originators, taken in the aggregate (such as most profits-based compensation plans).

The rule also prohibits anyone for purposes of the compensation provisions from **paying** loan originators compensation that is based on transaction terms. This means creditors, loan originators, or anyone else may not pay their own loan originator employees or other loan originators (such as brokers) compensation based on the term of a transaction or multiple transactions.

Examples of prohibited compensation include, but are not limited to:

- A loan originator receiving higher compensation based on the transaction's interest rate, such as receiving 2 percent of the loan amount if the interest rate is above 6 percent and 1 percent of the loan amount if the interest rate is 6 percent or less.
- A loan originator receiving higher compensation based on whether the loan contract contains a prepayment penalty.

> **Implementation Tip**: The restriction on paying loan originators based on transaction terms applies to any person paying such compensation, not just creditors.

- A loan originator receiving higher compensation for closing more than 10 transactions per month with an interest rate higher than 6 percent.
- An individual loan originator receiving additional compensation if the consumer buys creditor required title insurance from the originator's employer or its affiliate, rather than a third party. *(See "Does the rule prevent loan originators from receiving commissions for performing activities that are not loan origination activities?" on page 34.)*

II. What is a transaction term? (§ 1026.36(d)(1)(ii))

A transaction "term" is any right or obligation of the parties to a credit transaction, except for the amount of credit extended.

"Credit transaction" means the "operative acts" and written and oral agreements that, together, create the consumer's right to defer payment of debt or to incur debt and defer its payment.

An example of an "operative act" in a covered credit transaction is the consumer's purchase of certain goods and services essential to the transaction, such as required title insurance or a required appraisal. (Comment 36(d)(1)-1.iii)

Terms of the transaction include:

- ☐ Rights and obligations in the note or other credit contract and in the security instrument (and any document incorporated by reference)

- ☐ Any fees or charges required to be disclosed in the Good Faith Estimate, the HUD-1, or HUD-1A that are:

    - Imposed by the loan originator or creditor on the consumer for the credit or for any credit-related product or service provided by the loan originator or creditor.

    - For any product or service required as a condition of the extension of credit, such as title insurance protecting the creditor's interest or an appraisal. (Comment 36(d)(1)-1.iii.D)

Examples of transaction terms include:

- ☐ The interest rate

- ☐ The annual percentage rate

- ☐ The collateral type (*e.g.*, condominium, cooperative, detached home, or manufactured housing)

- ☐ The existence of a prepayment penalty

- ☐ The origination points or fees paid to the creditor or loan originator

- ☐ Fees for creditor-required title insurance

Varying compensation to a loan originator based on the "product type" often will violate the rule because many "products" (which is not a defined term) in the market refer to different bundles of specific transaction terms.

III. Is the amount of credit extended a transaction term? (§ 1026.36(d)(1)(ii))

The amount of credit extended is not a transaction term if the loan originator compensation is based on a fixed percentage of the amount of credit extended.

Such compensation may be subject to a minimum or maximum dollar amount, so long as the amounts do not vary with each transaction. (Comment 36(d)(1)-9)

Examples:

- ☐ A creditor is permitted to compensate a loan originator 1 percent of the amount of credit extended for all loans the originator arranges for the creditor but not less than $1,000 or greater than $5,000 for each loan.

- ☐ A creditor is not permitted to compensate a loan originator 1 percent of the amount of credit extended for loans of $300,000 or more, 2 percent of the amount of credit extended for loans of more than $200,000 and less than $300,000, and 3 percent of the amount of credit for loans of $200,000 or less. (Comment 36(d)(1)-9)

Implementation Tip: This rule is the same as the existing rule. The Loan Originator Rule did not substantively change the existing provision.

Implementation Tip: For reverse mortgages, the "amount of credit extended" means either (1) the maximum proceeds available to the consumer under the loan or (2) the maximum claim amount if the loan is a Federal Housing Administration Home Equity Conversion Mortgage (HECM). See 12 U.S.C. 1715z-20 and 24 CFR Part 206 to determine whether a loan is a HECM loan. (Comment 36(d)(1)-10)

IV. How can the compensation policy be used to determine whether compensation is based on a transaction term? (Comment 36(d)(1)-1.i)

Whether the compensation you are receiving or paying is based on transaction terms depends on objective facts and circumstances indicating whether the compensation would have been different if a transaction term had been different.

The determination does not depend on whether you subjectively intended to create a relationship between the compensation paid and a transaction term.

If you have a compensation policy in place and the objective facts and circumstances indicate that you followed this policy, you would analyze the **policy** to determine whether compensation would have been different if a transaction term had been different.

For example, assume you are a creditor and your compensation policy is to pay individual loan originators who work for you 1 percent of the loan amount on each transaction, and the objective facts and circumstances indicate that you followed this compensation policy.

You would analyze the compensation scheme in the policy (namely, paying 1 percent of the loan amount) to determine whether compensation would have been different if a transaction term had been different.

If the facts and circumstances indicate that you did not follow your compensation policy, or there is no policy in place, you may compare the transactions originated by the loan originator in question and the amounts of compensation you paid to the loan originator in question to determine whether compensation would have been different if a transaction term had been different.

V. Can loan originator organizations receive compensation directly from a consumer? Can they split compensation with an individual loan originator? (Comment 36(d)(1)-2)

Yes. If you are a loan originator organization for purposes of the compensation provisions (including a table-funded creditor), the compensation the consumer paid directly to you is itself a transaction term (a fee imposed on the consumer by a loan originator). Nonetheless, the rule makes clear that you are not prohibited from receiving this compensation from the consumer simply because the compensation itself is a term of the transaction. Even so, that compensation may not be based on any other term of the transaction.

In addition, if you (as a loan originator organization) receive compensation directly from a consumer, and split that compensation with your loan originator employee by paying a commission to the employee, the amount of compensation you paid to your employee could be viewed as being based on a transaction term (namely, the amount of compensation the consumer paid you). Nonetheless, the rule makes clear that you are not prohibited from paying compensation to individual loan originators simply because the consumer paid the compensation to you. However, the compensation you pass along to the individual loan originator may not be based on any other term of the transaction.

Implementation Tip: This is a change from the existing rule, where the prohibition on receiving compensation based on transaction terms does not apply to compensation received directly from a consumer.

Implementation Tip: The existing rule prohibits a loan originator organization from paying a commission to a loan originator employee in a transaction where the organization received compensation directly from a consumer. The Loan Originator Rule generally permits this payment. (*See "If the consumer pays a loan originator organization, can the organization pay a commission to the individual loan originator who originated the transaction?" on page 58.*)

VI. Does the rule prevent loan originators from receiving commissions for performing activities that are not loan origination activities? (§ 1026.36(d)(1) and comment 36(a)-5.iv)

It depends on whether you are an individual loan originator or a loan originator organization. If you are paid a commission for acts that are not loan origination activities, your commission is treated differently depending upon whether you are an organization or an individual.

i. Loan originator organizations

If you are a loan originator organization, payments are not compensation if they are for non-loan origination services if your charges are bona fide and reasonable. (Comment 36(a)-5.iv.A)

Your compensation for loan origination activities cannot be based on whether you receive payment for non-loan origination services.

For example, if you are a loan originator organization, you cannot charge consumers 1 percent of the loan amount if they buy title insurance from you, but 2 percent if they buy title insurance from another entity.

ii. Individual loan originators

If you are an individual loan originator, all payments to you are considered compensation for loan origination activities, regardless of how those charges are labeled. (Comment 36(a)-5.iv.B)

This prohibition prevents you from receiving a commission for performing a service or selling a product, such as title insurance, that customers buy on the same transaction.

For example, assume you are an individual loan originator. You receive compensation of 1 percent of the loan amount for each covered transaction you close. You would be prohibited from receiving an extra commission when consumers purchase title insurance from your employer.

VII. How may loan originators increase or decrease their compensation in a particular transaction? (Comments 36(d)(1)-5 and -7)

If you are a loan originator, you generally may not agree with another person to set your compensation at a certain level and then subsequently lower it in selective cases, such as for consumers who find lower rates with other creditors.

When the creditor offers to extend credit with specified terms and conditions (such as rate and points), the amount of your compensation for that transaction may not change (increase or decrease) based on whether different terms are negotiated.

For example, if a creditor agrees to lower the rate it initially offered, the new offer may not reduce your compensation.

While a creditor may change credit terms or pricing to match a competitor, to avoid triggering high-cost mortgage provisions or for other reasons, you may not change your compensation.

There is one provision that allows you to lower your compensation. When there are unforeseen increases in settlement costs, you may lower your compensation to lower the costs to the consumer within certain limitations. This exception is a change from the existing rule. (*See "Does the rule permit a loan originator to reduce its compensation to cover unexpected costs?" on page 35*.)

VIII. Does the rule permit a loan originator to reduce its compensation to cover unexpected costs? (Comment 36(d)(1)-7)

Yes. The Loan Originator Rule permits a loan originator to reduce its compensation in narrowly-defined circumstances to lower costs to consumers if there are unforeseen increases in settlement costs.

Specifically, if you are a loan originator, you may decrease your compensation to lower the actual settlement cost for a consumer if there was an unforeseen increase in the actual settlement cost over the estimate disclosed to the consumer under section 5(c) of RESPA (or an unforeseen actual settlement cost not disclosed under section 5(c) of RESPA).

An increase in a settlement cost at closing is unforeseen if the increase occurs even when the estimate provided to the consumer is consistent with the best information reasonably available to the disclosing party at the time the disclosure was made.

For example, assume a consumer locks in a rate for a purchase-money transaction. A title issue delays the closing by a week and the rate lock expires. The consumer wants to relock the interest rate. Provided the title issue was unforeseen, you (as a loan originator) may decrease your compensation to pay in whole or in part for the rate-lock extension fee.

IX. May periodic changes be made in a compensation arrangement? (Comment 36(d)(1)-6)

As a person paying compensation to a loan originator, you may periodically revise your compensation arrangement with the loan originator. Just be sure you do not base the revised compensation arrangement on transaction terms.

You may periodically review factors such as loan performance, transaction volume, or current market conditions and prospectively revise the compensation you agree to pay to a loan originator. (Comment 36(d)(1)-6)

Implementation Tip: This rule is the same as the existing rule on the subject of making periodic changes in loan originator compensation. The Loan Originator Rule did not substantively change the existing provision.

For example, assume you are a creditor that does not use table funding. During the first six months of the year, you paid $3,000 for each loan an originator delivered, regardless of the transaction terms.

After considering the volume of business the originator produced in the first half of the year, you decide that as of July 1, you will pay $3,250 for each loan the originator delivers, regardless of the transaction terms. You are not violating the rule against compensation based on terms even if the loans you make after July 1 generally carry a higher interest rate than loans made before that date. (The higher interest rates reflect the higher compensation.)

X. Does the rule restrict how creditors can set rates and fees in a particular transaction? (Comment 36(d)(1)-4)

No. If you are a creditor, this prohibition does not prevent you from offering or providing different loan terms to the consumer based on the consumer's credit or other transactional risks.

If you follow this rule in the way you compensate a loan originator, you may recover the costs of the compensation and other costs of the transaction by charging the consumer points, fees, a higher interest rate, or a combination of these. (Comment 36(d)(1)-4)

Implementation Tip: The Loan Originator Rule did not substantively change the existing provision on setting rates and fees. This provision is the same as the one in the existing rule.

6. How does the rule prohibit compensation based on a proxy for a transaction term? (§ 1026.36(d)(1)(i))

I. Is compensation based on a proxy for a transaction term prohibited?

Yes. If you are a loan originator for purposes of the compensation provisions (including table-funded creditors), you may not receive compensation based in whole or in part on a factor that is a proxy for a term of a transaction.

If you are a person who is paying a loan originator, you may not compensate a loan originator based on a factor that is a proxy for a term of a transaction.

II. What is a proxy for a transaction term?

A factor (that is not itself a transaction term) is a proxy for a transaction term if it meets two conditions:

1. The factor consistently varies with a transaction term or terms over a significant number of transactions.

2. The loan originator has the ability, directly or indirectly, to add, drop, or change the factor when originating the transaction.

Examples applying the proxy test:

- ☐ **Portfolio loans versus loans sold into the secondary market:** Compensation based on whether a loan is held in portfolio or sold into the secondary market could be compensation based on a proxy for a transaction term if: (1) the terms of the loans held in portfolio consistently differ from those in the sold loans (for example, five-year terms for portfolio loans versus 30-year terms for sold loans) and (2) the loan originator has the ability to encourage a consumer to take one set of terms over another. (Comment 36(d)(1)-2.ii.A)

- ☐ **State where property securing the loan is located:** Compensation based on whether a property securing the loan is located in State A versus State B likely would not be a proxy for loan terms even if the loans secured by property in State A have terms that consistently differ from the terms of loans secured by property in State B. (For example, they have a higher interest rate.) This is because a loan originator typically cannot influence whether the transaction is secured by property located in State A or State B, such as encouraging a consumer to purchase a home in one state versus another. (Comment 36(d)(1)-2.ii.B)

- ☐ **Low-to-moderate-income consumer:** Compensation based on whether a consumer is of low-to-moderate income likely would not be a proxy for loan terms even if the loans to such consumers have terms that consistently differ from the loans of other consumers (for example, they have a higher interest rate). This is because loan originators typically cannot change whether a consumer is of low-to-moderate-income.

III. Is the amount of credit extended a proxy for a transaction term? (§ 1026.36(d)(1)(ii))

No. The loan amount is not a proxy for a transaction term, as long as the loan originator's compensation is based on a fixed percentage of the amount of credit extended. This is true even if the compensation is subject to a minimum or maximum dollar amount. *(See "Is the amount of credit extended a transaction term?" on page 31.)*

7. Are there permissible or “safe” compensation methods provided for under the rule? (Comment 36(d)(1)-2.i)

Yes. The rule expressly recognizes seven permissible compensation methods with respect to the payment of salary, commissions, and other compensation. These compensation methods are effectively safe harbors.

Compensation paid or received according to these methods is not based on transaction terms or proxies for transaction terms:

1. The loan originator’s overall dollar volume (total dollar amount of credit extended or total number of transactions originated), delivered to the creditor.

2. The long-term performance of the originator’s loans.

3. An hourly pay rate based on the actual number of hours worked.

4. Loans made to new customers versus loans to existing customers.

5. A payment that is fixed in advance for every loan the originator arranges for the creditor (for example, $600 for every credit transaction arranged for the creditor, or $1,000 for the first 1,000 credit transactions arranged and $500 for each additional credit transaction arranged).

6. The percentage of the loan originator’s applications that close.

7. The quality of the loan originator’s loan files (for example, accuracy and completeness of the loan documentation) submitted to the creditor.

The seven permissible compensation methods are not intended to be an exhaustive list. You may use other compensation structures so long as they comply with the rule.

How do these safe harbors apply if the compensation is payments, contributions, or benefits under bonus plans, retirement plans, or other compensation plans that are determined with reference to profits from a mortgage-related business? Special restrictions apply to these compensation plans as discussed in Part 8. You must comply with these additional restrictions regardless of whether you use one or more of the seven permissible compensation methods. For example, if you pay an individual loan originator a bonus based on two of the seven factors (e.g., overall dollar volume and quality of loan files) but the bonus is paid out of a bonus pool that is established with reference to your mortgage-related business profits for the calendar year, the payment of the bonus still is subject to the additional rules regarding non-deferred profits-based compensation.

Recall also that the loan amount is not a term or a proxy for a term of the transaction, if the compensation is based on a fixed percentage of the loan amount. (See Part 5 and Part 6 of this guide for more information on this.) Therefore, you may pay compensation based on the loan amount.

8. How does the rule prohibit compensation based on the terms of multiple transactions conducted by multiple individual loan originators?

I. What does the rule say about compensation that is based on the terms of multiple transactions conducted by multiple individual loan originators? (§ 1026.36(d)(1)(i) and comment 36(d)(1)-1.ii)

If you are a loan originator, you generally may not receive compensation that is based on the terms of multiple transactions conducted by multiple individual loan originators. If you are a person paying a loan originator, you generally may not pay this compensation.

This type of compensation generally arises in two types of situations: (1) payments, contributions, or benefits under profits-based compensation plans that are determined with reference to profits from a mortgage-related business; and (2) pooled compensation.

i. Profits-based compensation plans

Compensation to a loan originator that is based upon profits of mortgage-related business is considered compensation that is based on the terms of multiple transactions by multiple individual loan originators. (Comment 36(d)(1)-1.ii)

If you are a loan originator, you generally may not receive compensation that is determined with reference to profits from a mortgage-related business because such compensation could create an incentive for multiple loan originators to work collectively to steer consumers to less-advantageous loans. However, the rule provides some exceptions in limited circumstances as discussed later in this guide. *(See "How may compensation payments be structured in designated tax-advantaged plans to comply with the rule?" on page 45and "How may the payments from a non-deferred profits-based compensation plan be structured?" on page 49.)*

If you are paying compensation, what counts as your profits from a mortgage-related business? You must count profits determined with reference to revenue generated from closed-end consumer credit transactions secured by dwellings (except for certain time-shares) **that you or your affiliate originate**. Revenue from these transactions includes:

- ☐ Origination fees you or your affiliate collected
- ☐ Interest you or your affiliate earned
- ☐ Income you or your affiliate earned from servicing
- ☐ Proceeds you or your affiliate earned from secondary market sales (Comment 36(d)(1)-3.v.B)

If you pay compensation through a profits-based compensation plan that is **not** based on profits from a mortgage-related business, this compensation is **not** considered to be based on terms of multiple transactions conducted by multiple loan originators.

It still would be prohibited, however, if it otherwise violates the rule, such as where the amount of money that is paid to a loan originator depends on the transaction terms originated by that loan originator. Thus, even if a profits-based bonus is unrelated to profits on mortgage loans, the bonus must not vary based on whether the loan originator is making higher-rate mortgage loans. (§ 1026.36(d)(1)(i))

What if a bonus or other compensation is not based on profits? Such compensation generally is **not** prohibited as compensation based on the terms of multiple transactions conducted by multiple individual loan originators. (However, see the discussion on pooled compensation below.) But whatever the source, this compensation is not allowed if it violates the rule in other ways, such as where it is based on transaction terms or the terms of multiple transactions conducted by a single loan originator.

Bonus compensation that is not based on profits includes:

- ☐ A retention bonus budgeted for in advance

- ☐ A performance bonus paid out of a bonus pool set aside at the beginning of the company's annual accounting period as part of the company's operating budget (Comments 36(d)(1)-1.ii and 36(d)(1)-3.ii)

The following examples illustrate whether a bonus is based on profits under this rule:

- ☐ **Bonus based on profits for mortgage-related business:** You are a creditor paying a bonus to an individual loan originator out of a bonus pool you established based on your profits. Your profits are determined by the performance of your mortgage-related business.

    - This bonus is considered compensation based on the terms of multiple transactions by multiple individual loan originators. (*See "How may the payments from a non-deferred profits-based compensation plan be structured?"* on page 49 for ways this plan could be structured so that it is not prohibited compensation.)

- ☐ **Bonus that is *not* based on profits:** You are a creditor that has an employment contract with an individual loan originator. The contract guarantees the originator a quarterly bonus of a specified amount if he meets a monthly origination volume target. You pay the bonus when the originator meets this monthly target because you are obligated to pay the bonus in the specified amount. The bonus does not take into account the terms of the loans any of your employees originate or your company's profits.

ii. Pooled compensation

If you are a loan originator, you may not pool and share compensation with other loan originators who originate transactions with different terms and who are compensated differently. (Comment 36(d)(1)-2.iii)

For example, if you are a loan originator who receives a higher commission than another loan originator and your loans generally have higher interest rates than his, you and the other originator may not share pooled compensation.

II. Does the rule permit a loan originator to receive compensation as part of a retirement or bonus plan that is based on mortgage-related business profits? (§ 1026.36(d)(1)(iii) and (iv))

Yes, subject to some restrictions. You can structure retirement and bonus plans that are based on mortgage-related profits in ways that do not violate the rule's ban on compensation based on terms of multiple transactions conducted by multiple individual loan originators. The rule includes provisions on designated tax-advantaged plans and non-deferred profits-based compensation plans in § 1026.36(d)(1)(iii) and 1026.36(d)(1)(iv), respectively.

For a discussion of bonuses and other compensation plans that are **not** based on mortgage-related profits, see *"What does the rule say about compensation that is based on the terms of multiple transactions conducted by multiple individual loan originators?"* on page 422.

III. How may compensation payments be structured in designated tax-advantaged plans to comply with the rule? (§ 1026.36(d)(1)(iii))

You may structure tax-advantaged deferred compensation that is based on mortgage-related profits in two ways:

1. A contribution to a defined contribution plan that is a designated tax-advantaged plan.

2. A benefit under a defined benefit plan that is a designated tax-advantaged plan.

If you are an employer and make a contribution to a defined contribution plan for an individual loan originator, you may **not** base the contribution on the terms of that originator's transactions.

A defined contribution plan is defined in Internal Revenue Code Section 414(i), 26 U.S.C. 414(i).

A defined benefit plan is defined in Internal Revenue Code Section 414(j), 26 U.S.C. 414(j).

A "designated tax-advantaged plan" means any plan that meets any of the following requirements:

- ☐ A plan described in Internal Revenue Code Section 401(a), 26 U.S.C. 401(a)
- ☐ An employee annuity plan described in Internal Revenue Code Section 403(a), 26 U.S.C. 403(a)
- ☐ A simple retirement account, defined in Internal Revenue Code Section 408(p), 26 U.S.C. 408(p)
- ☐ A simplified employee pension described in Internal Revenue Code Section 408(k), 26 U.S.C. 408(k)
- ☐ An annuity contract described in Internal Revenue Code Section 403(b), 26 U.S.C. 403(b)
- ☐ An eligible deferred compensation plan, defined in Internal Revenue Code Section 457(b), 26 U.S.C. 457(b)

Implementation Tip: The Bureau issued guidance clarifying that employers could make contributions to certain "Qualified Plans" for individual loan originator employees even if the contributions were derived from profits generated by mortgage loan originations. That guidance is in effect until January 1, 2014, the effective date of the relevant provisions of the Loan Originator Rule.

As explained in CFPB Bulletin No. 2012-2, *Payments to Loan Originators Based on Mortgage Transaction Terms or Conditions under Regulation Z* (available at http://files.consumerfinance.gov/f/201204_cfpb_LoanOriginatorCompensationBulletin.pdf), "Qualified Plans" include qualified profit-sharing, 401(k), and employee stock-ownership plans. The Bureau also interprets "Qualified Plans" as used in the prior guidance to include the various designated tax-advantaged plans described in the Loan Originator Rule.

Some deferred compensation plans are not designated tax-advantaged plans, such as those created pursuant to Internal Revenue Code Section 409A. Payments, contributions, or benefits under those deferred compensation plans may not be based on mortgage-related business profits. *(See "What does the rule say about compensation that is based on the terms of multiple transactions conducted by multiple individual loan originators?" on page 42.)*

IV. What is a non-deferred profits-based compensation plan?

A non-deferred profits-based compensation plan is any **non-deferred** compensation arrangement where an individual loan originator may be paid variable, additional compensation based in whole or in part on the mortgage-related business profits of the person paying the compensation, any affiliate, or a business unit in the person's or the affiliate's organization. (Comment 36(d)(1)-3.ii)

Non-deferred profits-based compensation plans include, but are not limited to, the following types of compensation if they are determined based on the mortgage-related profits of the person paying the compensation, its business unit, or its affiliate:

- ☐ Bonus pools
- ☐ Profits pools
- ☐ Bonus plans
- ☐ Profit-sharing plans
- ☐ Awards of merchandise, services, trips, or similar prizes or incentives (Comment 36(d)(1)-3.ii)

For example, if you are a creditor, you have set up a non-deferred profits-based compensation plan if you pay your individual loan originators bonuses at the end of a calendar year based on your average net return on assets for the calendar year.

Example of plans that are not considered non-deferred profits-based compensation plans

A non-deferred profits-based compensation plan does not include:

- ☐ A designated tax-advantaged plan
- ☐ Any other forms of deferred compensation that are not designated tax-advantaged plans, such as those created pursuant to Internal Revenue Code Section 409A. (Comment 36(d)(1)-3.ii)

Implementation Tip: Bonus plans that are not determined with reference to profits or are determined only with reference to profits from a business other than a mortgage-related business are not compensation based on the terms of multiple transactions conducted by multiple loan originators. *(See "What does the rule say about compensation that is based on the terms of multiple transactions conducted by multiple individual loan originators?" on page 42).*

A non-deferred profits-based compensation plan also does not include the following bonus plans because they are not based on profits:

- ☐ A retention bonus budgeted for in advance

- ☐ A performance bonus paid out of a bonus pool set aside at the beginning of the company's annual accounting period as part of the company's operating budget. (Comment 36(d)(1)-3.ii)

A non-deferred profits-based compensation plan does not include a plan that is determined with reference only to profits from a business other than a mortgage-related business, as determined in accordance with reasonable accounting principles. (Comment 36(d)(1)-3.v.E)

V. How can non-deferred profits-based compensation payments be made in compliance with the rule? (§ 1026.36(d)(1)(iv) and comment 36(d)(1)-3)

You may pay compensation under a non-deferred profits-based compensation plan to an individual loan originator if the compensation is **not** based on the terms of that individual loan originator's transactions and either:

- ☐ The compensation paid does not, in the aggregate, exceed 10 percent of the originator's total compensation corresponding to the time period for which the compensation under the non-deferred profits-based compensation plan is paid (the "10-percent total compensation limit" or "10-percent limit").

- ☐ The individual was a loan originator for 10 or fewer transactions consummated during the 12-month period preceding the date of the compensation determination.

VI. How may the payments from a non-deferred profits-based compensation plan be structured?

Under a non-deferred profits-based compensation plan, if you are paying the individual loan originator, you may, for example:

- ☐ Pay the originator directly in cash, stock, or other non-deferred compensation. (Comment 36(d)(1)-3.ii)

- ☐ Use a fixed formula for the amount and distribution of pay.

- ☐ Use your discretion to decide whether to pay this compensation in a given year. (Comment 36(d)(1)-3.ii)

You may **not** base the distribution to an individual loan originator on the terms of the originator's transactions. (Comment 36(d)(1)-3.iv)

For example, assume you are compensating a loan originator under a non-deferred profits-based compensation plan. Also assume the loan originator makes loans that vary in their interest rate spread. Your compensation payment may not take into account the average interest rate spread on the individual loan originator's transactions during the relevant calendar year.

VII. How does the 10-percent total compensation limit exception work?

To determine whether payment of compensation under a non-deferred profits-based compensation plan complies with the 10-percent total compensation limit, calculate the ratio of the compensation under the non-deferred profits–based compensation plan (*i.e.*, the compensation subject to the 10-percent limit) and the total compensation corresponding to the relevant time period. (Comment 36(d)(1)-3.v.C)

i. Time period for compensation subject to the 10-percent limit.

The relevant time period for compensation subject to the 10-percent limit is the time period for which a person makes reference to profits in determining the compensation (i.e., when the compensation is earned). It does not matter whether the bonus is actually paid during that particular time period. (Comment 36(d)(1)-3.v.C)

ii. Individual loan originator’s total compensation

To calculate the total compensation for an individual loan originator, use the loan originator’s wages and tips reportable for Medicare tax purposes in box 5 on IRS Form W-2 (or IRS Form 1099-MISC if the originator is an independent contractor). These are wages and tips that are actually paid during the relevant time period (regardless of when they are earned), except for any compensation under a non-deferred profits based-compens ation plan that is earned during a different time period.

If you choose to do so, you may also include:

- ☐ All contributions you actually made to the loan originator’s accounts during the relevant time period in designated tax-advantaged plans that are defined contribution plans (regardless of when the contributions are earned); and

- ☐ All compensation under a non-deferred profits-based compensation plan that is earned during the relevant time period, regardless of whether the compensation is actually paid during that time period.(Comment 36(d)(1)-3.v.A)

If an individual loan originator has some compensation that is reportable on the W-2 and some that is reportable on the 1099-MISC, the total compensation is the sum of the total of what is reportable on each of the two forms. (Comment 36(d)(1)-3.v.A)

If any compensation paid to an individual loan originator consists of an award of merchandise, services, trips, or similar prizes or incentives, include the cash value of the award when you calculate the 10-percent total compensation limit. (Comment 36(d)(1)-3.v.D)

iii. Calculating the 10-percent limit with a yearly bonus

Assume that you use a calendar-year accounting period. For calendar year 2014, you pay an individual loan originator the following amounts:

- ☐ $80,000 in commissions based on the individual loan originator’s performance and volume of loans generated during 2014.

- ☐ $10,000 in an employer contribution to a designated tax-advantaged defined contribution plan in 2014.

- ☐ A year-end bonus of $10,000 from a non-deferred profits-based compensation plan to be paid in January 2015.

Even though you did not pay it until January 2015, for purposes of the 10-percent total compensation limit, you would count the year-end bonus as part of both the compensation subject to the 10-percent limit and, if you choose to include it, the total compensation for calendar year 2014 because the bonus was based on profits calculated for 2014.

When you calculate total compensation for 2014, you cannot take into account any bonus that is actually paid in 2014 but earned during a different calendar year (such as an annual bonus for 2013 that you pay in January 2014).

Therefore, for calendar year 2014, the individual loan originator's compensation that is subject to the 10-percent limit would be $10,000 (the year-end bonus) and the total compensation would be $100,000 ($80,000 in commissions + $10,000 designated tax advantaged plan contribution (assuming you elect to include it in total compensation for calendar year 2014) + $10,000 bonus (assuming you elect to include it in total compensation for calendar year 2014) = $100,000). The bonus would be permissible because it does not exceed $10,000, 10 percent of total compensation. (Comment 36(d)(1)-3.v.C)

If the employer contribution to the designated tax-advantaged plan is earned in 2014 but actually made in 2015 it may not be included in total compensation for 2014

iv. Calculating the 10-percent limit with a quarterly bonus

If you pay an individual loan originator a bonus at the end of each quarter under a non-deferred profits-based compensation plan, the quarterly bonus payment is limited to 10 percent of total compensation received during the quarter. Apply the limit to each quarter.

You can also pay an annual bonus under the non-deferred profits-based compensation plan that does not exceed the difference of 10 percent of the individual loan originator's total compensation corresponding to the calendar year and the aggregate amount of quarterly bonuses. (Comment 36(d)(1)-3.v.C)

For example, assume you are a creditor using a calendar-year accounting period. During a calendar year, you pay an individual loan originator $90,000 in salary and commissions (or $22,500 during each quarter).

Under a non-deferred profits-based compensation plan, you could pay a bonus for each quarter of up to $2,250 (which is 10 percent of $22,500).

Assume that you pay a bonus of $1,250 for each quarter and that all of the quarterly bonuses, including the fourth-quarter bonus, are paid during the calendar year. This means that during the calendar year you pay a total of $95,000 in salaries, commissions, and quarterly bonuses.

In this case, you can also pay the individual loan originator an annual bonus under the non-deferred profits-based compensation plan of $5,000, because the total amount of all bonuses you paid under the non-deferred profits-based compensation plan is $10,000 ($5,000 in quarterly bonuses plus the $5,000 annual bonus). The $10,000 does not exceed 10 percent of total compensation during the calendar year ($90,000 in salary and commissions plus $10,000 in bonuses).

v. Calculating the 10-percent limit with awards of merchandise, services, trips, prizes, or incentives

Assume you employ individual loan originator A and individual loan originator B. You pay them each $40,000 in salary and $45,000 in commissions and contribute $5,000 to a designated tax-advantaged defined contribution plan for each. You include the $5,000 contribution in the total compensation amount, which brings it to $90,000 for each loan originator.

In December of the calendar year, you reward both individual loan originators for their performance during the calendar year out of a bonus pool based on the profits of the mortgage-origination business unit.

You pay A $10,000 in a cash bonus. You elect to include the bonus in the total compensation. A's total compensation was $100,000 after the annual bonus.

You pay B $7,500 in a cash bonus and award a vacation package with a cash value of $3,000. You elect to include the bonus and the vacation reward in the total compensation. B's total compensation was $100,500 after the annual bonus.

A's $10,000 annual bonus is permissible because the bonus would not constitute more than 10 percent of his total compensation during the calendar year.

B's $7,500 bonus and vacation package are not permissible because the total value of the bonus and the vacation package is $10,500, which is greater than 10 percent (10.45 percent) of B's total compensation during the calendar year.

To comply, you could reduce B's annual bonus to $7,000 or less or you could structure the vacation package so its cash value would be $2,500 or less. (Comment 36(d)(1)-3.v.D)

vi. Safe harbor for individual loan originators

If you are an individual loan originator who receives compensation from a person under a non-deferred profits-based compensation plan, you are in compliance with the rules even if the compensation violates the rules, so long as you relied in good faith on an accounting or statement provided by the person who determined your compensation under the non-deferred profits-based compensation plan.

The statement or accounting must be provided to you within a reasonable time period following the determination. (Comment 36(d)(1)-3.v.G)

VIII. Is there another exception for individual loan originators who originate 10 or fewer mortgage loans?

Yes. In addition to the 10-percent limit, if you are an individual loan originator, you may be compensated under a non-deferred profits-based compensation plan if you meet two tests:

1. You were a loan originator for 10 or fewer transactions consummated during the 12-month period preceding the date of the compensation determination.

2. This compensation is **not** based on the terms of your transactions. (§ 1026.36(d)(1)(iv))

For example, assume you are a loan originator organization employing two individual loan originators who originate covered transactions during the calendar year. Loan originator A is a manager who originates loans only occasionally. Loan originator B originates loans in the normal course of business.

In January of the following year, you evaluate the performance of your mortgage business for the prior year, and on February 1 decide to pay a bonus to your loan originators out of a company bonus pool.

Between February 1 of the prior calendar year and January 31 of the current calendar year, A originated eight transactions and B originated 15 transactions.

You may use the 10-or-fewer exception to award a bonus to A, who originated 10 or fewer loans consummated during the 12-month period before you determined to pay the bonus.

You may not use the 10-or-fewer exception to award the bonus to B. You may be able to award a bonus if it is within the 10-percent total compensation limit requirements. (Comment 36(d)(1)-3.vi)

9. What does the rule say about compensation from multiple sources? (§ 1026.36(d)(2)(i))

The existing rule generally prohibits a loan originator from receiving compensation from a consumer and another person, such as a creditor, in the same transaction.

The Loan Originator Rule generally retains this prohibition, but provides flexibility for loan originator organizations to pay a commission in a transaction to its loan originator employees even if the organization has received compensation in that transaction directly from the consumer. *(See "If the consumer pays a loan originator organization, can the organization pay a commission to the individual loan originator who originated the transaction?" on page 58).*

Also, the Loan Originator Rule provides guidance on how the prohibition works if a person other than the creditor or its affiliates pays compensation to a loan originator on behalf of the consumer. *(See "What if someone else pays compensation to the loan originator on behalf of the consumer?" on page 56).*

I. When a consumer directly pays the loan originator, can another person also pay the loan originator on the same transaction? (§ 1026.36(d)(2)(i)(A))

No. If you are a loan originator, you may not receive compensation in connection with a particular transaction from both a consumer and another person.

Also, if any other loan originator receives compensation in a transaction directly from a consumer, you generally may not receive compensation from a person other than the consumer in connection with that particular transaction *(See "If the consumer pays a loan originator organization, can the organization pay a commission to the individual loan originator who originated the transaction?" on page 58.)*

Compensation in connection with a particular transaction means payments, such as commissions, that are specific to and paid solely in connection with the transaction in which the consumer also paid you compensation. (Comment 36(d)(2)(i)-1)

This restriction applies regardless of when the compensation is paid – whether before, at, or after consummation. (Comment 36(d)(2)(i)-1)

For example, if you are a loan originator organization that receives an origination fee that the consumer pays you directly in a particular transaction, you may not receive compensation in connection with that particular transaction from a person other than the consumer, such as a creditor.

II. What constitutes a direct payment from the consumer? (Comment 36(d)(2)(i)-2.i and .ii)

If you are a loan originator and you charge an origination point or fee which a consumer pays in cash or out of the loan proceeds, that is a direct payment from the consumer. (*See "What if someone else pays compensation to the loan originator on behalf of the consumer?" on page 56.)*

If you charge an origination point or fee and that fee is paid using funds from the creditor that result from an increased interest rate, that is not a direct payment by the consumer.

For example, assume you are a mortgage brokerage firm. You charge an origination fee. The consumer agrees to an increased interest rate to generate a rebate from the creditor. The rebate covers settlement costs, including the origination fee you charged. That is not a direct payment from the consumer.

When a consumer pays a creditor an origination point or fee, that is not considered a payment to a loan originator. This is true even if the consumer pays the point or origination fee out of the loan proceeds.

III. What if someone else pays compensation to the loan originator on behalf of the consumer? (§ 1026.36(d)(2)(i)(B))

Home builders, home-improvement contractors, real estate brokers or agents, or other persons may agree to pay some or all of a consumer's closing costs.

But if their funds are used to pay a fee imposed by the loan originator, that is considered direct compensation from the consumer. This rule applies when two conditions are met:

- ☐ The entity paying the fee is not the creditor or its affiliates.

> **Implementation Tip**: State law determines whether there is an agreement between the parties.

- ☐ There is an agreement between the consumer and this person for the person to provide funds toward the consumer's transaction costs.

The parties do not have to agree specifically that the payments will be used to pay for the origination points and fees the loan originator charges. Rather, the rule is triggered if the parties simply agree that the person will make a payment toward the consumer's transaction or closing costs, and the loan originator retains such payment. (Comment 36(d)(2)(i)-2.iii)

For example, assume you are a loan originator organization. You charge an origination fee on a purchase-money mortgage. The home sellers (who are not the creditor's affiliate) have agreed to pay $1,000 of the consumer's closing costs.

Any of the $1,000 that the sellers pay you for the origination fee is considered compensation received directly from the consumer, even if the agreement does not specify that some or all of that $1,000 must be used to compensate you.

If the $1,000 is used to pay an origination point or fee imposed by a creditor, that is not compensation paid directly to you as the loan originator. (Comment 36(d)(2)(i)-2.iii)

For example, assume a creditor charges an origination fee to a consumer who is borrowing money to buy a house. The home sellers (who are not affiliated with the creditor) agree to pay $1,000 of the consumer's closing costs. Any of the $1,000 the home sellers pay to the creditor for the origination fee is **not** considered compensation received directly by you as the loan originator from the consumer.

IV. Can an origination charge be paid partly by the consumer and partly by the creditor? (Comment 36(d)(2)(i)-2.i and .ii)

No. If you are a loan originator organization and you charge an origination point or fee, the entire amount of the point or fee must be paid entirely by the consumer or entirely out of funds paid by the creditor, such as those generated from a higher interest rate.

For example, assume you are a loan originator organization. You charge a $1,000 origination fee. That fee is the only compensation you are receiving in the transaction and it is not based on transaction terms or a proxy for transaction terms.

The transaction has additional closing costs of $750. The consumer pays $800 at closing toward closing costs, and receives funds from the creditor of $950 generated through a higher interest rate.

This arrangement violates the dual-compensation provision because neither the $800 payment by the consumer nor the $950 rebate from the creditor covers the entire origination fee.

Assume that instead, the additional closing costs are $3,000 and the consumer receives a rebate of $3,200 generated through a higher interest rate.

This arrangement would not violate the dual-compensation provision because the entire origination fee could be paid out of the $3,200 generated through a higher interest rate. The consumer's $800 and the rest of the creditor's funds could be used to pay the additional closing costs.

If the consumer pays the entire amount of the point or fee, a creditor still may provide funds the consumer can apply toward transaction costs other than loan originator compensation.

For example, you, as a loan originator organization, charge a $1,000 origination fee. That $1,000 origination fee is the only compensation you are receiving in the transaction and that fee amount is not based on transaction terms or a proxy for transaction terms.

The transaction has additional closing costs of $750. The consumer pays $1,200 at closing toward closing costs, and receives funds from the creditor of $550 generated through a higher interest rate.

This arrangement would not violate the dual-compensation provision because the $1,200 payment by the consumer covers the entire $1,000 origination fee. The $550 from the creditor may be applied to the closing costs other than your compensation.

V. If the consumer pays a loan originator organization, can the organization pay a commission to the individual loan originator who originated the transaction? (§ 1026.36(d)(2)(i)(C))

Yes. If you are a loan originator organization and receive compensation directly from the consumer, you may still pay compensation to the individual loan originator for the transaction. In this case, neither you nor the individual loan originator may receive compensation from the creditor in connection with the transaction.

> **Implementation Tip**: This is a change from the existing rule that prohibits a loan originator organization from paying a commission to a loan originator employee in a transaction where the organization received compensation directly from a consumer.

You may base the amount of the compensation that you pay to the individual loan originator on the amount of compensation that you receive, but not on any other transaction term or proxy for any other transaction term.

If you are an individual loan originator, you may receive such compensation. (See Parts 5-7 of this guide for the restriction in the rule on paying compensation based on terms of the transaction or a proxy for a term of the transaction.)

10. What are the qualification rules for loan originators? (§ 1026.36(f))

I. What duties for qualification apply to individual loan originators under the rule? (§ 1026.36(f))

If you are an individual loan originator, you must comply with applicable state or federal laws governing registration and licensing, including the SAFE Act, its implementing regulations, and state SAFE Act implementing laws.

Implementation Tip: This rule does not affect which loan originators must comply with state and federal licensing and registration requirements, such as under the SAFE Act. It only requires that you follow the state and federal rules that apply to you. (Comment 36(f)-3)

II. What duties for qualification apply to loan originator organizations (including creditors) under the rule?

If you are a loan originator organization that is not a government agency or a state housing finance agency, you must comply with all applicable state law requirements for legal existence and foreign qualification. (§ 1026.36(f)(1)) For purposes of the qualification and identification provisions, "loan originator organization" includes creditors regardless of whether they are table-funded. *(See "Who is covered by the rule?" on page 14.)*

The state laws you must comply with where applicable include those that bring your organization into legal existence, maintain its legal existence, permit you to transact business in another state, or facilitate service of process. They do not include state law requirements to pay taxes and other requirements that do not relate to your legal accountability to consumers. (Comment 36(f)(1)-1)

If state or federal laws require you to license or register your loan originator organization, you must comply with those laws. (§ 1026.36(f) and comment 36(f)-2)

III. What is my duty as a loan originator organization to make sure individual loan originators who work for me are licensed or registered? (§ 1026.36(f)(2))

If you are a loan originator organization that is not a government agency or a state housing finance agency, you must make sure the individual loan originators who work for you obtain any licenses or registrations required by the SAFE Act and state SAFE Act implementing law.

> **Implementation Tip**: This is a new requirement that goes beyond what the SAFE Act requires.

After the Loan Originator Rule becomes effective, you must verify these credentials before the individual acts as a loan originator in a covered transaction for you. *(See "What must a loan originator organization do to make sure its loan originator employees are qualified, even if they do not have to be licensed under the SAFE Act?" below.)*

Implementation Tip: Individual loan originators who work for you include employees and independent contractors who operate pursuant to a brokerage agreement with you. You can confirm the registration or license status of an individual at www.nmlsconsumeraccess.org. (Comment 36(f)(2)-1)

IV. What must a loan originator organization do to make sure its loan originator employees are qualified, even if they do not have to be licensed under the SAFE Act?

If you are a loan originator organization that is not a government agency or a state housing finance agency, you have three duties with respect to each of your individual loan originator employees who is not required to be licensed and is not licensed as a loan originator pursuant to Regulation H (12 CFR 1008.103) or state SAFE Act implementing law. (§ 1026.36(f)(3))

These three duties, which are discussed in the three following questions, include collecting information about the employee, determining that the employee is qualified, and making sure the employee is properly trained. These duties help make sure that loan originator employees who are not required to be licensed are qualified, trustworthy, and properly trained.

Implementation Tip: Individual loan originators who are not subject to SAFE Act licensing generally include employees of depository institutions and their federally-regulated subsidiaries as well as employees of bona fide nonprofit organizations that a state has exempted from licensing under the criteria in 12 CFR 1008.103(e)(7). (Comment 36(f)(3)-1)

Implementation Tip: The SAFE Act imposes qualification requirements on loan originators who must be licensed under the SAFE Act. The qualification requirements in this rule applicable to employees who are not required to be licensed are similar to the qualification requirements in the SAFE Act that apply to originators who must be licensed.

In contrast to the requirement to make sure the individual loan originators who work for you obtain any licenses or registrations required by the SAFE Act and state SAFE Act implementing law, these additional requirements only apply to your employees (not originators who operate under a brokerage agreement with your organization).

V. What background information must loan originator organizations collect about employees who are not required to be licensed under the SAFE Act before they originate loans?

You must obtain:

- ☐ A criminal background check
- ☐ A credit report
- ☐ Information from the NMLSR on administrative, civil, or criminal findings reported by any government jurisdiction, or from the individual loan originator if not required to be registered under the NMLSR (§ 1026.36(f)(3)(i))

Initial review and assessment

You must collect the above information for any individual:

- ☐ Hired on or after January 1, 2014

> **Implementation Tip**: If you are a depository institution (including a credit union), you can meet the requirement for the criminal background check by reviewing any criminal background check you receive upon compliance with the requirement related to registration in the NMLSR in 12 CFR 1007.103(d)(1). You can meet the requirement to obtain information related to any administrative, civil, or criminal determinations by any government jurisdiction by obtaining the information through the NMLSR.
>
> If you do not have access to NMLSR, you may obtain these items by other means. For example, you may obtain a criminal background check from a law-enforcement agency or a commercial service. You may obtain information on any past administrative, civil, or criminal findings (such as disciplinary or enforcement actions) from the individual loan originator. (Comment 36(f)(3)(i)-1)

- ☐ Hired before that date but for whom no applicable statutory or regulatory background standards were in effect at the time of hire to screen that individual, or the applicable standards were not used to screen that individual

After the Loan Originator Rule becomes effective, you must comply with this requirement before the individual acts as a loan originator for you in a covered transaction.

You do not have to collect the above information for any individual hired before January 1, 2014, if you screened the individual under statutory or regulatory standards that were in effect at the time of hire.

Subsequent reviews and assessments

After the initial screening, you only have to perform subsequent reviews and assessments if you know of reliable information indicating that the individual loan originator likely does not meet the standards set by the rule.

> **Implementation Tip**: You are not required to obtain the covered information for an individual whom you hired as a loan originator before January 1, 2014, and screened under applicable statutory or regulatory background standards in effect at the time of hire unless you know of reliable information indicating that the individual loan originator does not meet the standards set by the rule. However, if the individual subsequently stops being your employee and then later resumes employment as a loan originator, you must do the background checks required by this rule. (Comment 36(f)(3)(i)-2)

For example, if you know of criminal conduct by an individual loan originator through a newspaper article, a previously obtained criminal background report, or the NMLSR, you must collect the above information to determine whether any resulting conviction, or any other information, causes the individual to fail to meet the standards set by the rule, regardless of when the loan originator was hired or previously screened. (Comment 36(f)(3)(ii)-3)

VI. What qualification determinations must a loan originator organization make before allowing an employee who does not need a license to originate loans? (§ 1026.36(f)(3)(ii) and comment 36(f)(3)(ii)-1)

Based on the information you obtain (see "What background information must loan originator organizations collect about employees who are not required to be licensed under the SAFE Act before they originate loans?" on page 62) and any other information reasonably available to you, you must determine that the individual loan originator has:

- ☐ During the past seven years not been convicted of, or pleaded guilty or *nolo contendere* to, a felony in a domestic or military court.

> **Implementation Tip**: Other reasonably available information includes any information you have obtained or would obtain as part of a reasonably prudent hiring process, including information gathered from application forms, candidate interviews, reference checks, and other sources of reliable information and evidence.

- ☐ Never at any point been convicted of, or pleaded guilty or *nolo contendere* to, a felony involving an act of fraud, dishonesty, a breach of trust, or money laundering.
- ☐ Demonstrated financial responsibility, character, and general fitness that would lead you to determine the individual loan originator will operate honestly, fairly, and efficiently.

i. Initial review and assessment

You must make the above determinations for any individual:

- ☐ Hired on or after January 1, 2014
- ☐ Hired before that date but for whom no applicable statutory or regulatory background standards were in effect at the time of hire to screen that individual, or the applicable standards were not used to screen that individual

You do not have to make the above determinations for any individual hired before January 1, 2014, if you screened the individual under statutory or regulatory standards that were in effect at the time of hire.

After the Loan Originator Rule becomes effective, you must comply with this requirement before the individual acts as a loan originator for you in a covered transaction.

ii. Subsequent reviews and assessments

After the initial screening, you only have to perform subsequent reviews and assessments if you know of reliable information indicating that the individual loan originator likely does not meets the standards set by the rule.

> **Implementation Tip**: See chart on page 84 for a description of the background information and qualification determinations required for loan originator employees that are not required to be licensed and are not licensed depending on when they are hired.

For example, if you know of criminal conduct by an individual loan originator through a newspaper article, a previously obtained criminal background report, or the NMLSR, you must determine whether any resulting conviction, or any other information, causes the individual to fail to meet the standards set by the rule, regardless of when the loan originator was hired or previously screened. (Comment 36(f)(3)(ii)-3)

iii. Felony

A crime is a felony only if at the time of conviction it was classified as a felony in the jurisdiction where the individual was convicted. (§ 1026.36(f)(3)(ii)(A)(*2*))

An individual is not unqualified because of the following:

- ☐ Expunged convictions and pardoned convictions
- ☐ A conviction or plea of guilty or *nolo contendere*, if you have obtained consent to employ the individual from certain other agencies (§ 1026.36(f)(3)(ii)(A)(*2*))

iv. Financial responsibility, character, and general fitness

To determine financial responsibility, character, and general fitness, you must assess all the required information as well as reasonably available information, including information that you know or would discover during a reasonably prudent hiring process. (Comment 36(f)(3)(ii)(B)-1)

You may determine that the individual meets the standards if you have no significant adverse information.

Your review and assessment of financial responsibility is sufficient if it considers, as relevant factors:

- ☐ The existence of current outstanding judgments, tax liens, or other government liens

- ☐ Nonpayment of child support
- ☐ A pattern of bankruptcies, foreclosures, or delinquent accounts

You do not need to consider debts arising from medical expenses.

Your review and assessment of character and general fitness is sufficient if it considers, as relevant factors:

- ☐ Acts of unfairness or dishonesty
- ☐ Dishonesty in the course of seeking employment
- ☐ Dishonesty concerning qualifications
- ☐ Disciplinary actions by regulatory or professional licensing agencies

No single factor necessarily requires that you determine that the individual does not meet the standards for financial responsibility, character, or general fitness, if you consider all relevant factors and reasonably determine that, on balance, the individual meets the standards.

If you establish and follow written procedures for determining whether individuals meet the financial responsibility, character, and general fitness standards, you comply with the requirement for those individuals.

Your procedures may provide that you consider bankruptcies and foreclosures under the financial responsibility standard only if they occurred within a recent time frame established in the procedures. Your procedures do not have to include a review of a credit score. (Comment 36(f)(3)(ii)(B)-2)

VII. What training must a loan originator organization provide for loan originator employees who are not required to be licensed under the SAFE Act?

You must provide periodic training covering federal and state law requirements that apply to an individual's loan origination activities. This training requirement applies to individual loan originators regardless of when you hired them. (§ 1026.36(f)(3)(iii)) You are required to provide training to your loan originator employees. You are not required to provide training to loan originators who operate under a brokerage agreement with your organization.

Your periodic training must be sufficient in frequency, timing, duration, and content to make sure individual loan originators know the state and federal legal requirements that apply to their loan origination activities.

The training must consider the responsibilities of individual loan originators and the nature and complexity of the mortgage loans they work with. (Comment 36(f)(3)(iii)-1)

Individual loan originators are not required to receive training on requirements and standards that apply to types of mortgage loans that they do not originate, or on subjects about which they already have knowledge and skill.

Training may be delivered by you or any other person. You may use workstations, the Internet, teleconferencing, or other interactive technologies or delivery methods.

You may use a training program sponsored or regulated by a government agency or housing finance agency to satisfy these training requirements, as long as the training covers the types of loans the individual loan originator originates and the applicable federal and state laws and regulations.

You may use NMLSR-approved licensed loan originator continuing-education training to satisfy the training requirement of this rule, to the extent that it covers the types of loans the individual loan originator originates and applicable federal and state laws and regulations. (See 12 CFR 1008.107(a)(2) for information about NMLSR continuing-education requirements.)

11. What are the rule's recordkeeping requirements? (§ 1026.25)

I. What records must be maintained under the rule? (§ 1026.25(c)(2))

If you are a creditor that is not a loan originator organization for purposes of the compensation provisions (*i.e.,* not a table-funded creditor), you must maintain records sufficient to evidence:

- ☐ All compensation you pay to loan originators
- ☐ The compensation agreements that govern those payments

If you are a loan originator organization (including creditors that use table funding), you must maintain records sufficient to evidence:

- ☐ All compensation you receive from creditors, consumers, and other individuals or entities
- ☐ All compensation you pay to individual loan originators
- ☐ The compensation agreements that govern those receipts or payments

i. Records of payment and receipt of compensation (Comment 25(c)(2)-1.i)

Records are sufficient to evidence payment and receipt of compensation if they demonstrate the following facts:

- ☐ The nature and amount of the compensation
- ☐ Who paid the compensation
- ☐ Who received the compensation
- ☐ When the payment and receipt of compensation occurred

The additional records that are sufficient to evidence payment or receipt of compensation will vary on a case-by-case basis depending on facts and circumstances, particularly with regard to the nature of the compensation.

While the rule does not specify which records you must keep, here are some examples of the records you might wish to retain:

- ☐ Salary
  - o Copies of required Internal Revenue Code filings
- ☐ Contributions to or a benefit under a designated tax-advantaged retirement plan
  - o Copies of required Internal Revenue Code filings relating to the plan
  - o The names of any loan originators who participate in the plan
  - o Determination letters from the Internal Revenue Service regarding the plan
- ☐ Commissions or bonuses
  - o Settlement agent "flow of funds" worksheets or other written records
  - o Creditor closing instructions letters directing disbursement of fees at consummation
- ☐ Pricing concessions to cover unexpected (or omitted) settlement costs
  - o When you decrease compensation to defray the cost, in whole or in part, of an unforeseen increase in an actual settlement cost over an estimated settlement cost disclosed to the consumer pursuant to section 5(c) of RESPA (or omitted from that disclosure), you should retain records to document the decrease in compensation and reasons for it.
- ☐ Mortgage broker

- If you are loan originator organization that is a mortgage broker, the disclosure of compensation or broker agreement required by applicable state law typically recites the broker's total compensation for a transaction. Such a state law disclosure will be sufficient to evidence compensation under this rule, unless the actual compensation was different from the amount listed in the disclosure or agreement.

ii. Compensation agreement

A compensation agreement is any agreement – whether oral, written, or based on a course of conduct – that establishes a compensation arrangement between parties. (Comment 25(c)(2)-1.ii)

Examples of compensation agreements include (but are not limited to):

- ☐ A brokerage agreement between a creditor and a mortgage broker.
- ☐ Provisions of employment contracts between a creditor and an individual loan originator employee addressing payment of compensation.

When a compensation agreement is oral (or is based on a course of conduct) and you cannot maintain it in writing, keep any records (if they exist) that show the agreement existed and its terms.

Creditors and loan originators are free to specify what transactions are governed by a particular compensation agreement as they see fit.

The compensation agreement that you must retain for a particular transaction is the agreement that determined the compensation *for that transaction*.

For example, suppose you change the compensation for a loan originator on all loans originated after a certain date, and the new compensation structure does not start for several months. The agreement you would retain for a transaction consummated in the interim period is the original agreement, not the new agreement, because the original agreement governs the compensation until the new agreement takes effect.

II. How long must records required by the Loan Originator Rule be maintained?

Creditors and loan originator organizations must keep records related to the requirements for loan originator compensation for three years after the date of payment or receipt of compensation.

You must retain records for three years after each receipt or payment, even if multiple compensation payments relate to a single transaction. (Comment 25(c)(2)-1.iii)

For example, assume you are a loan originator organization. You pay an individual loan originator a commission consisting of two separate payments of $1,000 each on June 5, 2014, and July 7, 2014. You must retain the records of the two payments through June 4, 2017, and July 6, 2017, respectively.

12. What information must a loan originator organization include on the loan documents? (§ 1026.36(g))

If you are a loan originator organization for a transaction, you must provide on specified loan documents, as applicable:

- ☐ Your name and NMLSR ID, if the NMLSR has provided you an NMLSR ID
- ☐ The name of the individual loan originator (as the name appears in the NMLSR) with primary responsibility for the origination and his NMLSR ID, if he has one

As discussed above, "loan originator organization" for purposes of the identification rules is defined to include creditors regardless of whether they are table-funded.

> **Implementation Tip**: If you as a loan originator organization or individual loan originator have been provided a unique identifier by the NMLSR, it must be included on the credit application, note or loan contract, and security instrument, regardless of whether you are required to obtain an NMLSR unique identifier. (Comment 36(g)(1)-2)

The NMLSR ID is a number assigned by the Nationwide Mortgage Licensing System and Registry. It facilitates electronic tracking and uniform identification of loan originators and public access to the employment history of loan originators and any publicly adjudicated disciplinary and enforcement actions against them. (§ 1026.36(g)(3) and comment 36(g)(1)-1.)

You do not need to include the information more than once on each of the specified loan document. For example, you do not have to include the information on each page of a document. (Comment 36(g)(1)-3)

I. What happens when there is more than one loan originator on a transaction?

If there is more than one loan originator for a transaction, you must include the name and NMLSR ID of the individual loan originator with primary responsibility for the transaction at the time the loan document is issued. (Comment 36(g)(1)(ii)-1)

You have flexibility to establish a reasonable, written policy that sets forth how you will determine which individual loan originator has primary responsibility for a transaction.

If you establish such a policy, follow it for each transaction, and document your actions, you will comply with this requirement.

If the individual loan originator with primary responsibility for a transaction changes, you do not need to reissue previously completed documents merely to update a loan originator name and NMLSR ID.

Going forward, you would include on loan documents the information about the individual who now has primary responsibility, and would not include the information about the individual who formerly had primary responsibility.

II. Which documents must contain the name and NMLSR ID? (§ 1026.36(g)(2))

The loan documents that must contain the name and NMLSR ID are the:

- ☐ Credit application
- ☐ Note or loan contract
- ☐ Security instrument

13. What policies and procedures must depository institutions establish to monitor compliance? (§ 1026.36(j))

I. What must policies and procedures for monitoring compliance cover?

If you are a depository institution, you must establish and maintain written policies and procedures reasonably designed to ensure and monitor your compliance, as well as the compliance of your employees, your subsidiaries and their employees, with the provisions on compensation, steering, qualification, and identification found in § 1026.36(d), (e), (f), and (g).

The written policies and procedures must be appropriate to the nature, size, complexity, and scope of the mortgage-lending activities of the depository institution and its subsidiaries.

II. Which depository institutions and subsidiaries are subject to this requirement?

Depository institutions as defined in Section 1503(3) of the SAFE Act, 12 U.S.C. 5102(3) and subsidiaries as defined in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813 are subject to this requirement. This includes credit unions.

14. What arbitration and federal claims waivers does the rule prohibit? (§ 1026.36(h))

I. Can a creditor include predispute mandatory arbitration clauses in its contracts? (§ 1026.36(h)(1))

No. If you are a creditor, you are prohibited from including terms that require arbitration or any other non-judicial procedure to resolve any controversy or settle any claims arising out of a contract or other agreement for a closed-end consumer credit transaction secured by a dwelling (except for certain time-share plans) or for a HELOC secured by the consumer's principal dwelling.

After a dispute or claim under the transaction arises, a consumer, creditor, or any assignee may agree to settle or to use arbitration or another non-judicial procedure to resolve the dispute or claim.

II. Can a creditor assert that a consumer has waived federal claims? (§ 1026.36(h)(2))

No. If you are a creditor extending closed-end credit to consumers where the loan is secured by a dwelling (excluding certain time-share plans), your contract or other agreement may not bar a consumer from bringing a claim in court asserting a violation of any federal law. This provision also applies to HELOCs secured by the consumer's principal dwelling. It also prohibits anyone from applying or interpreting the contract to bar a federal claim.

After a dispute or claim under the transaction arises, a consumer, creditor, or any assignee may agree to settle or to use arbitration or another non-judicial procedure to resolve the dispute or claim.

15. What is the scope of the prohibition on financing credit insurance? (§ 1026.36(i))

If you are a creditor, you may not finance, directly or indirectly, any premiums or fees for credit insurance in connection with a closed-end consumer credit transaction secured by a dwelling (except for certain time-share plans) or for a HELOC secured by the consumer's principal dwelling.

- ☐ A creditor finances premiums or fees for credit insurance if it provides the consumer the right to defer payment of a credit insurance premium or fee owed by the consumer beyond the monthly period in which the premium or fee is due. (§ 1026.36(i)(2)((ii))

- ☐ For single-premium credit insurance, a creditor violates the prohibition by adding the credit insurance premium or fee to the amount owed at closing. (Comment 36(i) –1)

This prohibition does not apply to credit insurance when the premiums or fees are calculated and paid in full on a monthly basis.

- ☐ Premiums are calculated on a monthly basis if they are determined mathematically by multiplying a rate by the actual monthly outstanding balance. (§ 1026.36(i)(2)((iii))

- ☐ The prohibition is violated for monthly-pay credit insurance if, upon the close of the monthly period in which the premium or fee is due, the creditor includes the premium or fee in the amount owed. (Comment 36(i) –1)

"Credit insurance" is any credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life, or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract. *See exclusion for certain unemployment insurance discussed below.*

I. What credit unemployment insurance does the rule specifically exclude from the definition of “credit insurance”?

The rule excludes credit unemployment insurance from the definition of “credit insurance” if:

- ☐ The credit unemployment insurance premiums are reasonable.

- ☐ The creditor receives no direct or indirect compensation in connection with the credit unemployment insurance premiums.

- ☐ The credit unemployment insurance premiums are paid pursuant to a separate insurance contract and are not paid to an affiliate of the creditor.

16. Practical implementation and compliance considerations

As a creditor or mortgage brokerage firm, you should consult with legal counsel or your compliance officer to understand your obligations under the rule, and to devise the policies and procedures you will need to have in place to comply with the rule's requirements.

How you comply with the rule may depend on your business model. When mapping out your compliance plan, you should consider practical implementation issues in addition to understanding your obligations under the rule. Your compliance plan may include:

1. Identifying affected compensation, departments, and staff

Creditors and mortgage brokerage firms may pay various types of compensation to their loan originator employees. To plan for implementation of the rule, you should identify all origination-related departments and staff affected by the rule and examine your compensation contracts with loan originators to make sure they will comply with the rule. You also may want to consider whether to provide individual loan originators with a statement or accounting of compensation received under a non-deferred profits-based compensation plan, as described in Comment 36(d)(1)-3.v.G.

2. Identifying the business-process, operational, and technology changes that will be necessary for compliance

As a creditor or mortgage brokerage firm, the new requirements may affect a number of parts of your business systems and processes. The forms and processes you use to communicate internally and externally may be affected by the compensation, qualification, and identification requirements. For example, with the addition of the provisions clarifying how to determine whether a factor is a proxy for a transaction term, you should ensure that any factor that could be considered a proxy for a term of the transaction is removed from the compensation plans.

The systems and processes you use to compensate loan originators and ensure that they are qualified and trained may also be affected. Upon review and modification of your loan originator compensation plans, you will need to identify and update all systems and technology platforms that touch the compensation plans, such as, but not limited to, Product Pricing and Eligibility, Point of Sale, Loan Origination Systems, and Accounting platforms. You will also need to ensure that your system of record for loan originator compensation is configured to store all compensation paid to your loan originators, or if you are a broker, the compensation received, for the minimum required term. Additionally, if your compensation plans will include non-deferred profits-based compensation plans, you will need to verify that your tracking system accurately tracks the total number of originations during the bonus period to determine de-minimus test exemptions for the 10% bonus cap.

If you are a creditor, you also may need to review:

Contracts used for covered transactions so that you comply with the provisions barring mandatory arbitration clauses and waivers of federal claims

Systems and processes related to financing credit-insurance premiums

If you are a creditor or mortgage brokerage firm, you may wish to review your existing business processes, as well as the hardware and software that you, your agents, or other business partners use. Gap analyses may be a helpful output of such a review and help you to create a robust implementation plan.

3. Identifying critical impacts on key service providers or business partners

Third-party updates may be necessary to update:

Disclosures to ensure compliance with the identification requirements

Compliance and quality-control systems and processes

Recordkeeping protocols

Software providers, or other vendors and business partners, may offer compliance solutions that can assist with any necessary changes. Identifying these key partners will depend on your business model. For example, banks and credit unions may find it helpful to talk to their correspondent banks and technology vendors. In some cases, you may need to negotiate revised or new contracts with these parties or seek a different set of services.

If you seek the assistance of vendors or business partners, make sure you understand the extent of the assistance they provide. For example, if vendors provide software that calculates how much non-deferred compensation based on mortgage-related profits you may pay a loan originator, do they guarantee the accuracy of their conclusions?

4. Identifying training needs

Consider the training that will be necessary for your loan officers and your compliance and quality-control staff. Training may also be necessary for other individuals you, your agents and business partners employ.

5. Considering other Title XIV rules

The Loan Originator Rule is just one component of the Bureau's Dodd-Frank Act Title XIV rulemakings.

Other Title XIV rules include:

- ☐ Ability-to-Repay and Qualified Mortgage Rule
- ☐ 2013 HOEPA Rule
- ☐ ECOA Valuations Rule
- ☐ TILA Higher-Priced Mortgage Loans Appraisal Rule
- ☐ RESPA & TILA Mortgage Servicing Rules
- ☐ TILA Higher-Priced Mortgage Loans Escrow Rule

Each of these rules affects aspects of the mortgage industry and its regulation. Many of these rules intersect with one or more of the others. Therefore, the compliance considerations for these rules may overlap in your organization. You will find full copies of the regulations on the Bureau's website at http://www.consumerfinance.gov/regulations.

17. Other Resources

I. Where can I find a copy of the rule and get more information about it?

You will find the rule on the Bureau's website at http://www.consumerfinance.gov/regulations/loan-originator-compensation-requirements-under-the-truth-in-lending-act-regulation-z/.

In addition to a complete copy of the rule, that web page also contains:

- ☐ The preamble, which explains why the Bureau issued the rule; the legal authority and reasoning behind the rule; responses to comments; and analysis of the benefits, costs, and impacts of the rule

- ☐ Official Interpretations of the rule

- ☐ Links to final rule amendments, including the October 2013 Final Rule

- ☐ Other implementation support materials including videos, reference charts, and proposed rule amendments

Userful resources related to regulatory implementation are also available at http://www.consumer finance.gov/regulatory-implementation/.

For email updates about Bureau regulations and when additional Dodd-Frank Act Title XIV implementation resources become available, please submit your email address within the "Email updates about mortgage rule implementation" box at http://www.consumer finance.gov/regulatory-implementation/.

Background Information and Qualification Determinations Required for Loan Originator Employees Who Are Not Required to Be Licensed and Are Not Licensed[1]

Hired on or after 1/1/14	Hired before 1/1/14 and no qualification screening at time of hire	Hired before 1/1/14 and screened using standards at time of hire	You have *reliable* information that makes it *likely* a loan originator does not meet standards
Employer must obtain criminal background check, credit report, and findings information (from NMLSR or individual if not registered) required by the rule. Conduct *initial* screening to make qualification determinations required by the rule.	Employer must obtain criminal background check, credit report, and findings information (from NMLSR or individual if not registered) required by the rule. Conduct *initial* screening to make qualification determinations required by the rule.	No additional action required unless you have *reliable* information that makes it *likely* that the loan originator does not meet standards set by the rule. (See 4th column)	Employer must collect required information and perform *subsequent* screening to determine whether the rule's qualification standards are met. Applies regardless of when employee hired or previously screened.

1 This chart describes the requirements in § 1026.36(f)(3)(i) and (ii) applicable to employers for loan originator employees that are not required to be licensed under the SAFE Act and are not licensed. Employers must also ensure these employees are registered under the SAFE Act where applicable and must provide periodic training covering Federal and State law requirements that apply to the individual loan originator's loan origination activities, as set forth in § 1026.36(f)(2) and (f)(3)(iii) respectively.

Consumer Financial Protection Bureau

Version Log

The Bureau updates this guide on a periodic basis to reflect finalized clarifications to the rule which impacts guide content. Below is a version log noting the history of this document and notable rule changes:

Date	Version	Rule Changes
November 8, 2013	2.0	☐ *Definition of "loan originator":* Clarifies the definition of loan originator, including what constitutes assisting a consumer in applying for credit; defining "credit terms"; further describing administrative and clerical tasks; further describing loan processing activities such as coordination of the consummation of the credit transaction; and clarifying when an employee of a manufactured home retailer is not a loan originator. (*See "Are you a loan originator" on pages 18-21.*) ☐ *Non-Deferred Profits-Based Compensation Plans:* Clarifies permissible compensation payable to a loan originator under a non-deferred profits-based compensation plan. (*See "How can non-deferred profits-based compensation payments be made in compliance with the rule?" on page 48 and "How does the 10-percent total compensation limit exception work" on pages 49.*) ☐ *Financing Credit Insurance Premiums:* Clarifies the prohibition on creditor financing of credit insurance premiums, including when a creditor "finances" a consumer's premium, and when the prohibition does not apply to premiums calculated and paid in full on a monthly basis. (*See "What is the scope of the prohibition on financing credit insurance?" on pages 80*) ☐ *Revised effective dates of Loan Originator rule provisions:* Changes the effective date for the 2013 Loan Originator Final Rule to January 1, 2014 for most of the rule's provisions. (*See "When do I have to start following this rule" on page 16*).
June 7, 2013	1.0	Original Document