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Part One: An Originator's Guide to the CFPB – A study of the most important rule changes facing mortgage originators including but not limited to originator compensation, qualification and compliance.

Oct. 16, 2013
1-2 p.m. CST

Part Two: A Servicer's Guide to the CFPB – A study of the most important rule changes facing mortgage servicers including but not limited to disclosures and borrower communication, error resolution and loss mitigation.

Nov. 6, 2013
1-2 p.m. CST

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Speakers

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Limitations on loans with points and fees.

Section 1403 of the Dodd-Frank Act contains a new requirement:

- Originators can only charge up-front points and fees for a mortgage loan where an alternative loan was made available without upfront points and fees.
- Applies to loans where loan originator compensation is paid by anyone other than the consumer (either the creditor's own employee or a mortgage broker).
- Intended to limit originators from steering consumers to a more expensive loan to increase their own compensation.

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Limitations on loans with points and fees, cont.

- The Dodd-Frank Act also gave the CFPB authority to create exemptions to this rule. In its summary of its final rule, the CFPB announced that it was not going to "finalize the proposal at this time."

- Decision made as a result of concern that the rule would have confused consumers.

- CFPB has announced it is planning consumer testing and other research to determine how the other new requirements affect consumer understanding of available loans.

- Obviously may revisit this issue if it finds it necessary.

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Originator Compensation Rules.

Compensation to loan originators based on the terms of any given transaction is barred.

Effective date for most of the changes to compensation rules is January 1, 2014 (originally scheduled for January 10, 2014). Reason: January 1st is the date when annual compensation changes occur anyway.

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Originator Compensation Rules, cont.

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Definition of Loan Originator:

Loan originator defined as a person who for direct or indirect compensation engages in a defined set of activities, including taking an application, offering, arranging or assisting a consumer in obtaining, negotiating, or applying for an extension of consumer credit, or through advertising or other communication representing to the public that such person can or will perform any of these activities.

Assistants to originators performing clerical tasks are not loan originators unless they offer or negotiate "credit terms."

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Originator Compensation Rules, cont.

Other exclusions:

Not a loan originator if provide an application from the loan originator from which he or she works. (if he/she does not assist borrower in completing the application).

Not a loan originator if provide contact information for the originator for which the employee works, so long as don’t discuss particular credit terms and do not direct consumer to a particular loan originator.

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Originator Compensation Rules, cont.

Term of a transaction defined as: "any right or obligation of the parties to a credit transaction."

Examples:

Mortgage broker employee cannot receive compensation based on:

1. the interest rate of the loan.
2. the fact that the loan officer steered consumer to purchase required title insurance from an affiliate of the broker .
3. According to CFPB, also includes fees and other costs.

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Originator Compensation Rules, cont.

- Final rule makes clear that compensation based on a “proxy” for a loan term is also barred.

- “Proxy” clarified: cannot base compensation on a factor if:
  - 1. the factor consistently varies with a transaction term over a significant number of transactions; and
  - 2. the loan originator has the ability, directly or indirectly, to add, drop or change the factor in originating the transaction.

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Originator Compensation Rules, cont.

- Compensation definition: salary, commissions, and any financial or similar incentive, regardless of whether it is labeled as payment for services that are not origination activities. (includes awards of merchandise, trips, etc.)

- Final rule also prohibits loan originator compensation from being reduced to offset the cost of a change in transaction terms.

- Exception: permit loan originators to reduce their compensation to defray certain unexpected increases in estimated settlement costs. (example, increase in interest rate where an unexpected title issue caused a delay and the available interest rate increased).

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Originator Compensation Rules, cont.

- Prohibits loan originator compensation based upon the profitability of a transaction or a pool of transactions.

- Final rule clarifies application of this prohibition to various kinds of retirement and profit-sharing plans:

  – mortgage-related business profits can be used to make contributions to certain tax-advantaged plans like a 401(k) and to make bonuses and contributions to other plans that do not exceed ten percent of the individual originator's total compensation.

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Originator Compensation Rules, cont.

- Final rule implements restriction on loan originators receiving compensation from the consumer and any other person in connection with the same transaction.

- Exception: allows mortgage brokers to pay employees or contractors commissions, as long as the commissions are not based on the terms of the loans they originate.

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Originator Qualification Rules

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- Dodd-Frank Act imposes duty on individual loan officers, mortgage brokers, and creditors to be "qualified."
- Final rule imposes duties on originator organization to make sure their individual loan originators are licensed or registered as applicable.
- For entities whose employees are not required to be licensed, including depository institutions, rules requires
- 1. ensure that loan originator employees meet character, fitness, and criminal background standards;
- 2. provide appropriate training.

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Originator Qualification Rules, cont.

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- Non-licensed originators must undergo a criminal background check to screen them for felony convictions.
- Credit check on non-licensed originators also required.
- Applies to new originators hired on or after January 1, 2014.
- Mortgage brokers, creditors and individual loan originator employees primarily responsible for a particular origination required to list their NMLSR I.D.s and names on enumerated loan documents. (this provision effective as of January 10, 2014).

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Ability to Repay

Originators make a reasonable, good faith determination that the consumer has a reasonable ability to repay it.

Consider:

-consumer's income or assets and employment status

-the mortgage payment, ongoing expenses related to the mortgage or the property that secures it, payments on other loans secured by the same property.

Must consider other debt obligations, alimony, and child support payments. Must also verify borrower's credit history..

Ability to Repay

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- Evaluation must be based on verifiable third party records. No liar's loans!
- Goes into effect January 10, 2014.

Arbitration Requirements

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- The final rule <u>prohibits</u> the inclusion of clauses requiring consumers to submit disputes concerning a residential mortgage loan or home equity line of credit to arbitration.
- Prohibits the application or interpretation of provisions of such loans or related agreements so as to bar a consumer from bringing a claim in court in connection with any alleged violation of Federal law.

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Compliance Procedures

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- Management Oversight
  - ✓Must designate a chief compliance officer (CCO) with authority and accountability
  - ✓CCO should provide reports of compliance risks and other issues to the board of directors/other managerial authority of the entity

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Compliance Procedures, cont.

- Dedicated Compliance Program
  - ✓Policies and Procedures
  - ✓Training
  - ✓Monitoring
  - ✓Corrective Action

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Compliance Procedures, cont.

- Consumer Complaint Management Program
  - ✓Mechanisms to ensure prompt resolution of complaints
  - ✓Recordation and categorization of complaints and inquiries
- Independent Compliance Audits

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CFPB Origination Examination

Objectives of the CFPB:

1. To assess the quality of a supervised entity's compliance management systems in its mortgage origination business.
2. To identify acts or practices that materially increase the risk of violations of federal consumer financial law, and associated harm to consumers, in connection with mortgage origination.
3. To gather facts that help determine whether a supervised entity engages in acts or practices that are likely to violate federal consumer financial law in connection with mortgage origination.
4. To determine, in accordance with CFPB internal consultation requirements, whether a violation of a federal consumer financial law has occurred and whether further supervisory or enforcement actions are appropriate.

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Concerns:

- CFPB Examinations can lead to enforcement procedures
- The CFPB will refer matters to Justice department if it uncovers evidence of violations of criminal law
- The CFPB will pass information of violations outside its purview to other regulators

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Waiver of Privilege

- The CFPB can compel financial institutions to provide information and documents, including those traditionally protected by various privileges.
- The production of documents to the CFPB is privileged.
- The documents lose their privilege if the CFPB transfers documents to other agencies, such as the Federal Trade Commission or state attorney generals.
- No procedural limitations on the sharing of documents with other agencies.

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Seven Modules

- 1 Company Business Model Module
- 2 Advertising and Marketing Module
- 3 Loan Disclosures and Terms Module
- 4 Underwriting, Appraisals, and Originator Compensation Module
- 5 Closing Module
- 6 Fair Lending Module
- 7 Privacy

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1: Company Business Model Module

- Determine company's role in Origination process
- Examination includes:
  - – Product Array
  - – Compensation
  - – Compliance Management
  - – Training

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2: Advertising and Marketing

- This module applies to both mortgage brokers and mortgage lenders.
- Examines risks to consumers arising from advertising
- Includes a review of loan advertising materials for all media types
- Applicable Regulations:
  - TILA, Reg. Z
  - RESPA, Reg. X
  - EcOA, Reg B
  - Safe Act
- Specific examination procedures for non-traditional and reverse mortgages

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3: Loan Disclosures and Terms Module

- Examiners look at general policies and specific origination files to ensure that loans disclosures are adequate
- Focus on files from branches with larger origination volumes
- Applicable statutes
  - RESPA, Reg. X
  - TILA Reg. Z
  - ECOA, Reg. B
  - FCRA, Reg. V
  - Homeowner's Protection Act
  - General Review for Fraud

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4: Underwriting, Appraisals, and Originator Compensation Module

Key Points:

- Are prime consumers steered to subprime loans
- Are customers steered to high-profit loans
- Ensure that appraisals satisfy requirements for valuation independence

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5: Closing Module

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Key Points:

- Review the sample of loan files to assess the entity's closing procedures.
- Compare initial GFEs and TIL disclosures with final HUD-1 settlement statements and final TIL disclosures for any evidence of bait-and-switch tactics with respect to the interest rate, points, closing costs, or the loan product or loan features.
- Review complaints and closing files for evidence of coercion of or fraud against the borrower at settlement.

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6: Fair Lending Module

Key Points:

- Examining whether any of the creditor's policies and procedures has an adverse impact on a prohibited basis, and is not supported by a legitimate business need that cannot be met by a less discriminatory alternative.
- Examination involve requesting loan-level data and detailed information concerning lending practices.
- Statistical modeling is performed

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7: Privacy

- Determine whether the entity's information sharing practices are consistent with the requirements of the GLBA and implementing rule. Please refer to the examination procedures regarding Regulation P, 12 CFR 1016.4, for more information.

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Conclusion

If you have any further questions that were not addressed in this presentation, or want to contact one of our speakers, please email Matt Bartel, COO of ALFN, at mbartel@alfn.org. Thank you for your participation in this webinar. Please complete the brief survey which you will be directed to at the conclusion of this presentation.

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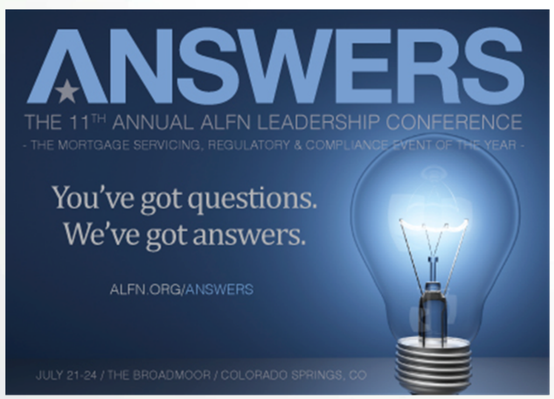

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