

# Lenders Compliance Group

Monday, January 31, 2011

## FRB's Loan Officer Compensation "Guidance"



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On January 26, 2011, the Federal Reserve Board issued a "Guide" - a "small entity compliance guide" required under Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), as amended.

I have placed "Guide" in quotes because I haven't seen such a perfunctory and virtually useless issuance from the FRB in quite a long time in a matter of such consequence!

It seems to me that the "Guide" is more of a reaction to the [January 13, 2011 letter from the SBA's Office of Advocacy](#), which expressed concern, among other things, that the "the Federal Reserve has not analyzed properly the full economic impact of the proposal on small entities as required by the Regulatory Flexibility Act (RFA)."

If this is meant to be a response to that letter, and to comply with the SBREFA, it falls far short of the mark; and, in any event, it surely doesn't seem to fulfill the statutory requirements carefully reasoned in the SBA's letter.

Much of the FRB "Guide" is no more than a regurgitation of the "already known" aspects of the Regulation Z amendments affecting loan officer compensation. I doubt our clients will get much help from this document!

The SBA's letter recommended that the Board publish a compliance guide in the immediate future and extend the time for small entities to comply - [now scheduled for April 1, 2011](#) - to reflect the delay in the availability of the guide.

To quote directly from the SBA letter:

- "Small entities have indicated that the requirements of some of these changes are unclear and confusing. They are concerned that the lack of clarity may lead to problems in compliance.
- Advocacy reviewed the Board's website. Advocacy commends the Board for having a SBREFA compliance guide page on its website. However, although there are compliance guides for Regulations C, D, E, F, H, I, J, L, M, O, P, R, V, X, AA, BB, CC, DD, and GG, Advocacy was unable to find a compliance guide for Regulation Z."

Nevertheless, at this time it does not appear that a delay is being seriously considered.

In reviewing our Library and Archives, it appears that we have well over 300 documents on the subject of loan officer compensation. [So I decided to open a new section in the Library devoted to COMPENSATION - MLOs](#). Over time, it will receive more and more relevant documents. Check back or [bookmark the page](#), if you want to keep track of this controversial subject.

At this time, I am completing an article that will be published in the March 2011 edition of [National Mortgage Professional Magazine](#), the country's premier magazine of the mortgage industry. [The article will cover, comprehensively and practically, the salient features of loan officer compensation that will become effective on April 1, 2011.](#)

Moreover, my article will provide clear guidelines to assist mortgage loan originators in understanding and applying compensation requirements.

In the meantime, we will watch the situation closely and provide updates, where needed.

Best wishes,  
[Jonathan Foxx](#)

Some Highlights of the "Guide"

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### Definitions of a Loan Originator and Mortgage Broker:

- All persons who originate loans, including mortgage brokers and their employees, as well as mortgage loan officers employed by depository institutions and other lenders.

### Payments based on transaction terms or conditions:

- Prohibits a creditor or any other person from paying, directly or indirectly, compensation to a mortgage broker or any other loan originator that is based on a mortgage transaction's terms or conditions, except the amount of credit extended.
- Compensation can neither be increased nor decreased based on the loan terms or conditions.
- When the creditor offers to extend a loan with specified terms and conditions (such as rate and points), the amount of the originator's compensation for that transaction is not subject to change, based on either an increase or a decrease in the consumer's loan cost or any other change in the loan terms.
- The amount of credit extended is deemed not to be a transaction term or condition of the loan for purposes of the prohibition, provided the compensation payments to loan originators are based on a fixed percentage of the amount of credit extended. (Such compensation may be subject to a minimum or maximum dollar amount. The minimum or maximum amount may not vary with each credit transaction.)
- Creditors may use other compensation methods to provide adequate compensation for smaller loans, such as basing compensation on an hourly rate, or on the number of loans originated in a given time period.
- An originator that increases the consumer's interest rate to generate a larger yield spread premium can apply the excess creditor payment to third-party closing costs and thereby reduce the amount of consumer funds needed to cover upfront fees. (There is no prohibition from using the interest rate to cover upfront closing costs, as long as any creditor-paid compensation retained by the originator does not vary based on the transaction's terms or conditions.)

### Payments by persons other than the consumer:

- If compensation is received directly from a consumer in a transaction, no other person may provide any compensation to a loan originator, directly or indirectly, in connection with that particular credit transaction.
- Payments made by creditors to loan originators are not payments made directly by the consumer, regardless of how they might be disclosed under HUD's Regulation X, which implements the Real Estate Settlement Procedures Act (RESPA).

### Prohibition on steering and allowance of Safe Harbor:

- Prohibits a loan originator from "steering" a consumer to a lender offering less favorable terms in order to increase the loan originator's compensation.
- Provides a safe harbor to facilitate compliance:

To be within the safe harbor, the loan originator must obtain loan options from a significant number of the creditors with which the originator regularly does business.

The loan originator can present fewer than three loans and satisfy the safe harbor, if the loan (s) presented to the consumer otherwise meet the criteria in the rule. For each type of transaction, if the originator presents to the consumer more than three loans, the originator must highlight the loans that satisfy the criteria specified in the rule.

The safe harbor is met if the consumer is presented with loan offers for each type of transaction in which the consumer expresses an interest (that is, a fixed rate loan, adjustable rate loan, or a reverse mortgage); and the loan options presented to the consumer include:

- (A) the loan with the lowest interest rate for which the consumer qualifies;
- (B) the loan with the lowest total dollar amount for origination points or fees, and discount points, and
- (C) the loan with the lowest rate for which the consumer qualifies for a loan without negative amortization, a prepayment penalty, interest-only payments, a balloon payment in the first 7 years of the life of the loan, a demand feature, shared equity, or shared appreciation; or, in the case of a reverse mortgage, a loan without a prepayment penalty, or shared equity or shared appreciation.

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**FRB - Small Entity Compliance Guide - Regulation Z:  
Loan Originator Compensation and Steering,  
12 CFR 226 (1/26/11)  
Print and Website Versions**



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## Company Description

Lenders Compliance Group is the first full-service, mortgage risk management firm in the country, specializing exclusively in mortgage compliance and offering a full suite of services in mortgage banking. We are pioneers in outsourcing solutions for residential mortgage compliance. We offer our clients real-world, practical solutions to mortgage compliance issues, with an emphasis focused on operational assessment and improvement, benchmarking methodologies, Best Practices, regulatory compliance, and mortgage risk management.

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