



Federal Developments in Loan Originator Compensation

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Recent Federal Developments

- Proposed revisions to Regulation Z
- Federal Reserve Board's proposed guidance on Sound Incentive Compensation Policies
- Proposed Wall Street Reform and Consumer Protection Act
- Proposed Restoring American Financial Stability Act
- Fair Labor Standards Act Interpretation No. 2010-1



Proposed Revisions to Regulation Z

- Proposed August 26, 2009
- Part of a sweeping rewrite of the closed-end mortgage rules
- Response to the financial crisis
- Status of proposed rules
- Issued under the Federal Reserve Board's HOEPA authority to regulate unfair and deceptive practices on mortgage loans

Application

- All TIL-covered closed-end transactions secured by real estate or other dwellings
- Not limited to mortgages secured by owner-occupied homes/principal dwellings
- Applies to “Yield Spread Premiums” paid to “Loan Originators”
- Applies to payments by any “Person”



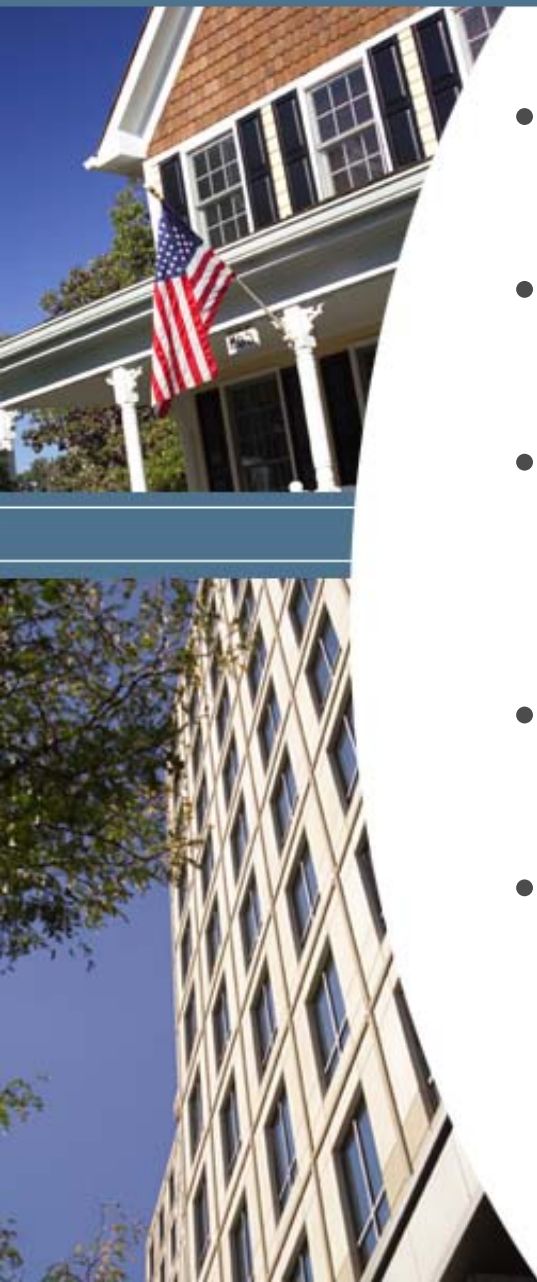
“Yield Spread Premiums”

- Includes YSPs and other compensation paid to independent mortgage brokers
- Includes overages and other compensation paid to employees

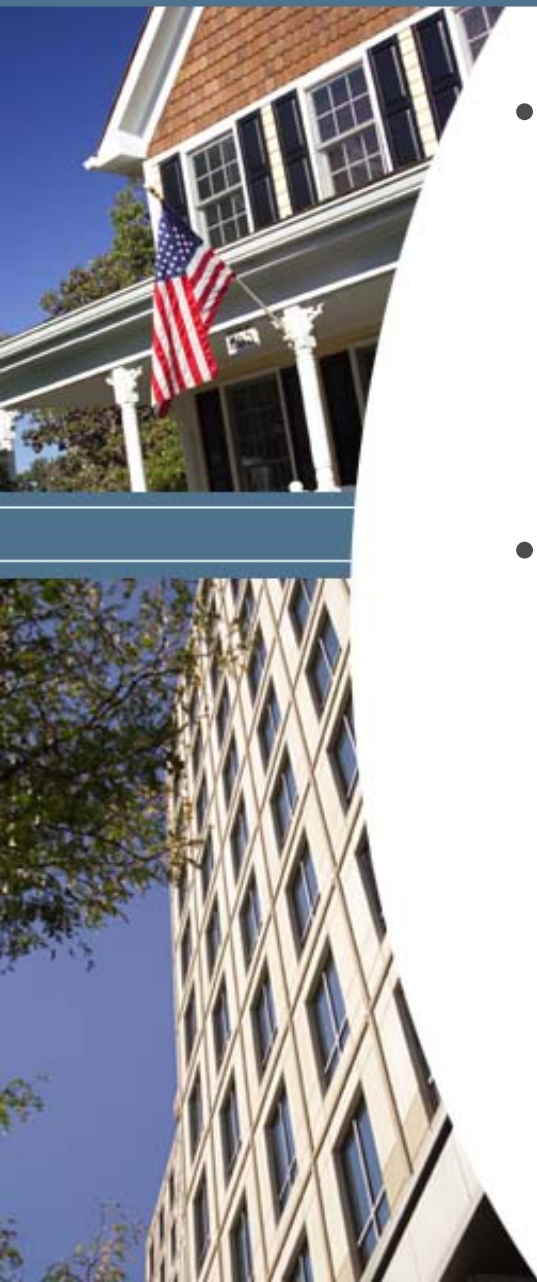


“Loan Originator”

- Covers independent mortgage brokers and employees
- Can include table-funders that are creditors under Regulation Z
- Applies if the individual or entity performs origination services

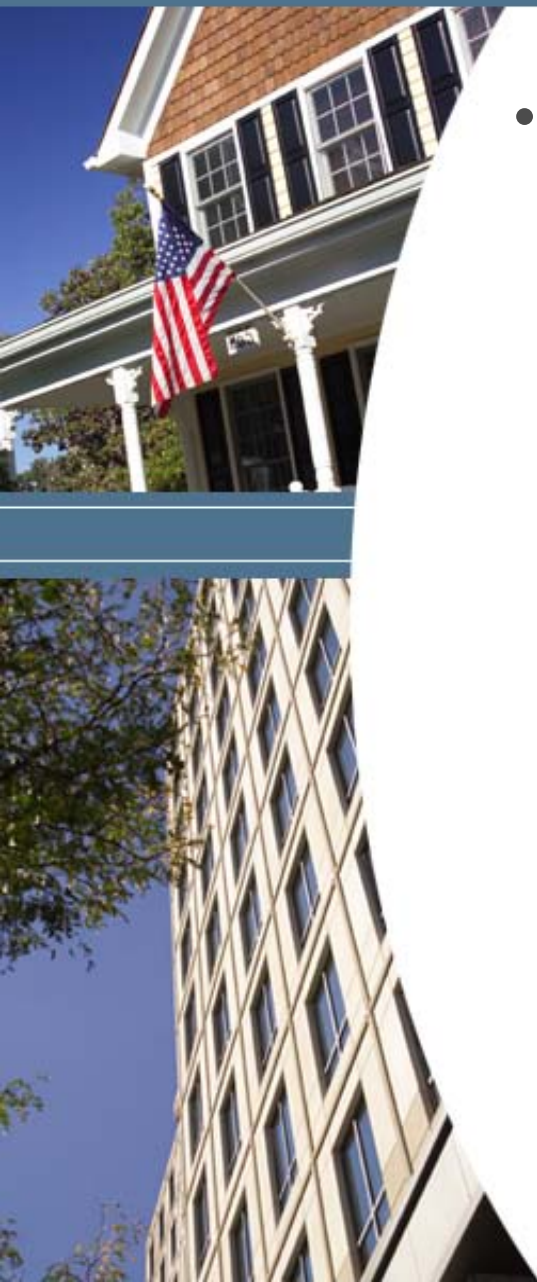


- Loan Originator compensation could not be based on loan terms and conditions
- Designed to eliminate incentives to steer borrowers to loans that are not in their best interest
- Prohibition would not apply to direct payments by borrowers, but the Loan Originator could not receive additional compensation from any other Person
- Compensation is not limited to commissions; includes salary, bonuses and even award trips
- Compensation cannot change even if loan terms change



- Compensation could *not* be based on:
 - » Interest rate or Annual Percentage Rate
 - » Loan fees and terms (e.g., prepayment fees)
 - » Loan type
 - » Loan amount

- Compensation *could* be based on:
 - » Loan volume
 - » Loan performance
 - » Hourly wages
 - » Hours expended
 - » Geography, provided there is no violation of fair lending laws



- The proposed rules would also *not*:
 - » Restrict a creditor's ability to set rates and other terms to recoup the cost of compensation
 - » Prohibit underages, provided they are not passed through to the Loan Originator
 - » Prohibit periodic adjustments in a Loan Originator's compensation as long as the changes are prospective and not based on individual loan terms and conditions

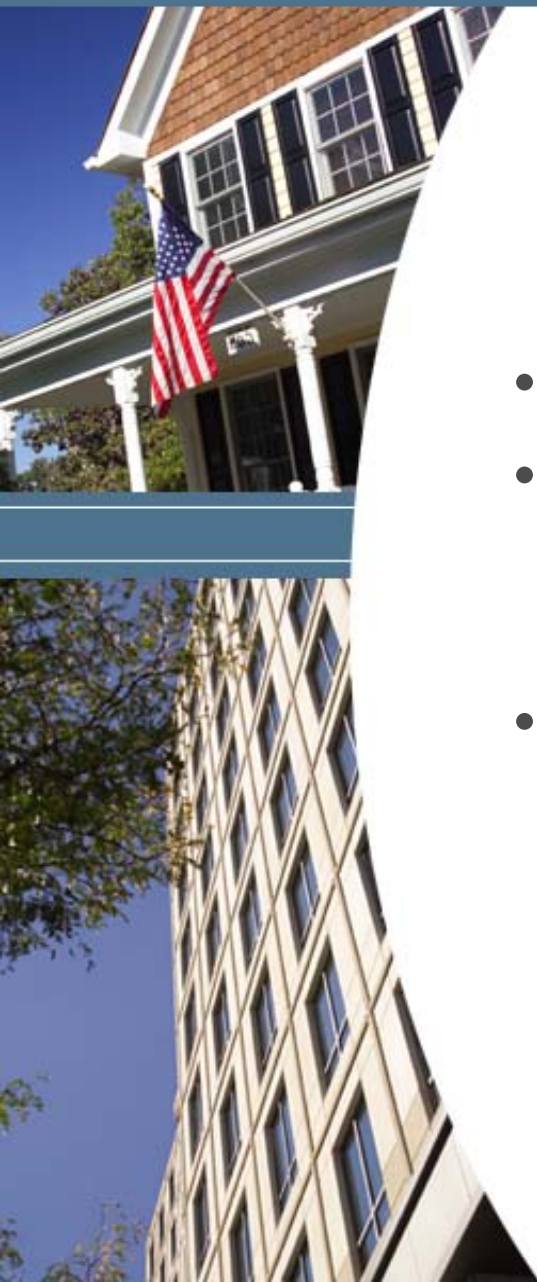
Prohibition on Steering

- An alternative proposal
- Only applies to employee Loan Originators if “brokering out”
- Safe Harbor:
 - » Loan Originator presents at least three loan options for each transaction type:
 - Lowest rate
 - Second lowest rate
 - Lowest origination and/or discount points and fees
 - » Must obtain loan options from a “significant” number of creditors
 - » Must have a good faith belief that the borrower will qualify for the loan options presented



The FRB is requesting comments on:

- Allowing compensation to be based on loan amount
- If loan amount is used, should percentage compensation be permitted?
- Should the prohibition on steering be adopted?
- What should the record retention requirements be?
- Should the compensation restrictions apply to HELOCs?



Proposed FRB Guidance on Sound Incentive Compensation Policies

- Proposed October 22, 2009
- Comprises two supervisory initiatives:
 - » 28 largest and most complex banking organizations
 - » Small institutions through risk-focused examinations
- Not limited to executive compensation

Applies Three Principles

- Incentives cannot encourage excessive risk-taking
- Compensation must be compatible with effective controls and risk management
- Compensation plans must be supported by strong corporate governance



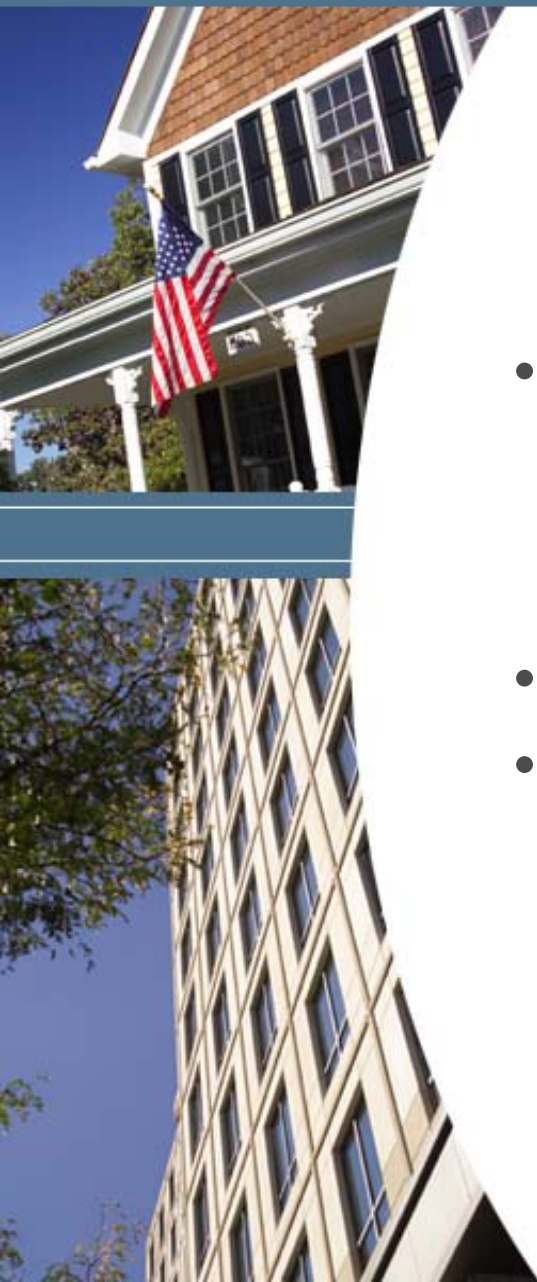
Proposed Wall Street Reform and Consumer Protection Act

- Passed by House December 11, 2009
- Would establish a separate Consumer Financial Protection Agency
- “The Director may prescribe regulations establishing duties regarding compensation practices applicable to a covered person, employer or independent contractor who deals or communicates directly with a consumer in the provision of a consumer financial product or service for the purpose of promoting fair dealing with consumers.”
- Act would also prohibit “steering incentives”



Proposed Restoring American Financial Stability Act

- Introduced in the Senate
- Would create a Bureau of Consumer Financial Protection
- The Bureau could prescribe rules identifying unlawful, unfair, deceptive or abusive practices in connection with offering or extending consumer financial products or services



U.S. Department of Labor Administrative Interpretation No. 2010-1

- Withdraws 2006 interpretation that some loan officers can qualify for the bona fide administrative employee exemption from minimum wage and overtime pay laws
- Does not impact outside sales exemption
- 2010 Interpretation focuses on the loan officer's role of selling products versus managing the general business operations of the employer or its customers