THIS VIDEO WAS FILMED ON JUNE 7, 2013 PRIOR TO THE JULY 2, 2013 CFPB PROPOSED RULE. PLEASE SEE THE UPDATES AT THE END OF THIS VIDEO.

LOAN ORIGINATOR COMPENSATION

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EFFECTIVE DATES

- Amendments regarding mandatory arbitration became effective on June 1, 2013.
- Final Rule is effective January 10, 2014
- **See the "update" at the end of this video for January 1, 2014 effective date for items usually structured on an annual basis.**

COVERED LOANS

Everything but investor loans or timeshares

DEFINITIONAL CHANGES

Loan Originator

- The term "loan originator" includes any person who performs any of the following activities in connection with a covered transaction:
  - Takes an application
  - Offers, arranges, negotiates, or otherwise obtains credit for a consumer
  - Assists a consumer in obtaining or applying for credit
  - Extends the credit
  - Represents to the public that the person can or will perform any of these activities though advertising or other means of communication

DEFINITIONAL CHANGES

Individual Loan Originator

- The term "individual loan originator" includes a natural person who meets the definition of "loan originator."

Loan Originator Organization

- The term "loan originator organization" includes any loan originator that is not an individual loan originator.

WHO IS A LOAN ORIGINATOR?

	Broker	Creditor / Correspondents
Loan Officer	YES	YES
Entity / Organization	YES	NO

COMPENSATION

- Includes salaries, wages, commissions, and any financial or similar incentive.

WHAT IS NOT COMPENSATION

- Amounts the loan originator receives to pay bona fide and reasonable third party charges (e.g., credit reports and appraisals)

- Unintentional overcharges for bona fide and reasonable third part fees.

PROXY

- Final Rule generally prohibits payments to a loan originator that are based on the terms of the loan or a “proxy” for loan terms.

- Two-Tier Test --- A factor that is not itself a term of a transaction is a proxy for a term of a transaction if:

1. The factor "consistently varies with that term over a significant number of transactions,"

   and
2. The loan originator had the ability, directly or indirectly, to "add, drop, or change the factor" in originating the loan.

PROHIBITED FACTORS

1. Interest Rate
2. Annual Percentage Rate
3. Collateral Type (Condo, Co-Op detached)
4. Existence of a Prepayment Penalty

PERMISSIBLE FACTORS

1. The amount of credit extended is not a term of a transaction or a proxy for a term of a transaction, provided that compensation received by or paid to a loan originator, directly or indirectly, is based on a fixed percentage of the amount of credit extended. Compensation based on the amount of credit may be subject to a minimum or maximum dollar amount

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

3. An hourly rate of pay to compensate the originator for the actual number of hours worked.

4. The long-term performance of the originator's loans.

PERMISSIBLE FACTORS

5. Whether the consumer is an existing customer of the creditor or a new customer.

6. A payment that is fixed in advance for every loan the originator arranges for the creditor (e.g., $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).

7. The percentage of applications submitted by the loan originator to the creditor that results in consummated transactions.

8. The quality of the loan originator's loan files (e.g., accuracy and completeness of the loan documentation) submitted to the creditor

PAYMENTS UNDER DEFINED BENEFIT PLANS

- The rule allows payments to an individual loan originator in the form of a contribution to a defined contribution plan that is a designated tax-advantaged plan or a benefit under a defined benefit plan that is a designated tax-advantaged plan, e.g. 401(k) program.

PAYMENTS UNDER DEFINED BENEFIT PLANS

- The rule allows limited compensation under a non-deferred profits-based compensation plan (i.e., any arrangement for the payment of non-deferred compensation that is determined with reference to the profits of the person from mortgage-related business), provided that:
  - (1) The compensation is not directly or indirectly based on the terms of that individual loan originator's transactions that are subject to the rule, and
  - (2) At least one of the following conditions is satisfied:
    - (a) The compensation does not, in the aggregate, exceed 10% of the individual loan originator's total compensation corresponding to the time period for which the compensation under the non-deferred profits-based compensation plan is paid; or
    - (b) The individual loan originator was a loan originator for ten or fewer transactions subject to the rule consummated during the 12-month period preceding the date of the compensation determination.

PRICING CONCESSIONS

- The Final Rule leaves unchanged the general principle in current Commentary that the creditor must bear the cost of a pricing concession, not the loan originator.

DUAL COMPENSATION/NON-IMPLEMENTATION OF ZERO-ZERO ALTERNATIVE

- The new rules provide that if a loan originator receives compensation directly from a consumer, neither that loan originator nor any other loan originator in the transaction may receive transaction-based compensation from any person other than the consumer.

DUAL COMPENSATION/NON-IMPLEMENTATION OF ZERO-ZERO ALTERNATIVE

- Language was added confirming that compensation received from a consumer includes payments to a loan originator pursuant to an agreement between the consumer and a third-party, other than the creditor or the creditor's affiliates, under which the third-party agrees to provide funds towards the consumer's costs of the transaction, including loan originator compensation.

DUAL COMPENSATION/NON-IMPLEMENTATION OF ZERO-ZERO ALTERNATIVE

- Language was added that will permit a loan originator organization (broker) that receives compensation from the consumer to pay its employee loan originator transaction-based compensation, such as a commission, without violating the rule.

- "zero-zero alternative" loan product abandoned in the Final Rule.

REQUIREMENTS FOR UNLICENSED INDIVIDUAL LOAN ORIGINATORS

- Required Information
  - Criminal Background Check
  - Credit Report
  - Administrative, Civil or Criminal Findings
  - No Felony Convictions
  - Financial Responsibility, Character and General Fitness

FINANCIAL RESPONSIBILITY, CHARACTER AND GENERAL FITNESS

- A review of financial responsibility should consider the existence of:
  - current outstanding judgments;
  - tax liens;
  - other government liens;
  - nonpayment of child support; or
  - a pattern of bankruptcies, foreclosures, or delinquent accounts (debts arising from medical expenses are not required to be considered).
- A review and assessment of character and general fitness should consider:
  - acts of unfairness or dishonesty, including dishonesty by the individual in seeking employment or in connection with these determinations .

PERIODIC TRAINING

- The loan originator organization must provide periodic training to its individual loan originators regardless of when the individual was hired.

- The training must be sufficient in frequency, timing, duration and content to ensure knowledge of state and federal legal requirements applicable to an individual loan originator's loan origination activities.

- Generally, training approved by the NMLSR to meet the licensed loan originator continuing education requirement in Regulation H also satisfies the periodic training requirement.

DISCLOSURE REQUIREMENTS

- 1026.36(g) imposes a new requirement on a loan originator organization to include its name and NMLSR ID, as well as the name of the individual loan originator with primary responsibility for the origination and the NMLSR ID for such individual, on certain loan documents when each such document is provided to a consumer or presented to a consumer for signature, as applicable.

REQUIRED LOAN DOCUMENTS

- The loan documents that must include the names and NMLSR IDs are:

1. the credit application,
2. the note or loan contract, and
3. the security instrument.

LOAN ORIGINATORS WITHOUT NMLSR ID'S

- If a loan originator is not required to obtain and has not been issued an NMLSR ID, an NMLSR ID is not required to be included on the loan documents. However, if the loan originator has been provided an NMLSR ID, even though the loan originator is not required to obtain an NMLSR ID, the NMLSR ID must be included on the required documents .

PROHIBITION ON MANDATORY ARBITRATION

- Effective June 1, 2013
- A contract or other agreement for a closed-end consumer transaction secured by a dwelling or a home equity line of credit secured by the consumer's principal dwelling may not include terms that require arbitration or any other non-judicial procedure to resolve any controversy or settle any claims arising out of the transaction.
- Creditors may wish to check their 203(k) documents to ensure compliance.

PROHIBITION ON FINANCING SINGLE-PREMIUM CREDIT INSURANCE

- Effective January 10, 2014
- Prohibition states:
  - A creditor may not finance, directly or indirectly, any premiums or fees for credit insurance in connection with a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling).

UPDATES

On July 2, 2013, the CFPB issued a proposed rule that would render the following changes to the recorded presentation on Loan Originator Compensation. (Comments were due by July 22, 2013):

(1) Clarification on the application of the loan originator compensation rules to retailers of manufactured homes and their employees.

(2) Clarification on the application of the loan originator compensation rules to bank tellers and similar staff.

(3) Adjusting the effective date of certain provisions of the loan originator compensation rules to January 1, 2014.

The affected provisions would be the amendments to or additions of (as applicable) §1026.25(c)(2) (record retention), §1026.36(a) (definitions), §1026.36(b) (scope), §1026.36(d) (compensation), §1026.36(e) (anti-steering), §1026.36(f) (qualifications), and §1026.36(j) (compliance policies and procedures for depository institutions).

The provisions largely focus on compensation plan structures, registration, licensing, hiring and training policies that are usually structured on an annual basis.