Consumer Financial Protection Bureau
1801 L Street NW, Washington, DC 20036

CFPB Bulletin 2012-02

Date: April 2, 2012

Subject: Payments to Loan Originators Based on Mortgage Transaction Terms or Conditions under Regulation Z, 12 C.F.R. § 1026.36.

This Bulletin is being issued in response to several inquiries the Consumer Financial Protection Bureau ("Bureau") has received regarding the payment of compensation to loan originators under Regulation Z, 12 C.F.R. § 1026.36 ("Compensation Rules").

Loan originator compensation rules were originally adopted by the Federal Reserve Board in September 2010 (75 Fed. Reg. 58,509 (Sept. 24, 2010)), and covered institutions were required to comply with the provisions on April 6, 2011. Pursuant to Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), rulemaking authority for Regulation Z transferred to the Bureau. In December 2011, the Bureau issued interim final rules recodifying the provisions of Regulation Z (76 Fed. Reg. 79,768 (Dec. 22, 2011)).

Subject to certain narrow exceptions, the Compensation Rules provide that no loan originator may receive (and no person may pay to a loan originator), directly or indirectly, compensation that is based on any terms or conditions of a mortgage transaction. The Commentary to the Regulation clarifies that compensation includes salaries, commissions, and annual or periodic bonuses. The Commentary also states that the terms or conditions of a transaction include the interest rate, loan-to-value ratio, or prepayment penalty. Furthermore, the Commentary provides that compensation may not be based on a factor that is a proxy for a term or condition, such as a credit score, when the factor is based on a term or condition such as the interest rate on the loan. Finally, examples are also provided in the Commentary of when compensation is not based on a transaction's term or condition, such as basing compensation on the long-term performance of the loan and whether the consumer is an existing customer of the creditor or a new customer.

The Bureau has received several questions about whether and how the Compensation Rules apply to qualified profit sharing, 401(k), and employee stock ownership plans (collectively, "Qualified Plans"). Specifically, Bureau staff has been asked whether a financial institution can, consistent with the Compensation Rules, contribute to Qualified Plans for employees, including loan originators, if employer contributions to such plans are derived from profits generated by mortgage loan originations.

The Compensation Rules (including the Commentary) do not expressly address whether the loan origination provisions apply to contributions made to Qualified Plans. The Bureau recognizes that there has been some confusion on the applicability of the Compensation Rules to Qualified Plans.

Section 1403 of the Dodd-Frank Act contains provisions that also address loan originator compensation. Under the Dodd-Frank Act, the Bureau must adopt final loan originator compensation rules by January 21, 2013, or the provisions are self-effectuating on that date. The Bureau anticipates issuing a proposed rule for public comment in the near future on the loan origination provisions in the Dodd-Frank Act.

Until final rules are adopted by the Bureau, the Bureau believes it is important to clarify how the Compensation Rules apply to Qualified Plans. To provide clarity at this juncture, the Bureau's view is that the Compensation Rules permit employers to contribute to Qualified Plans out of a profit pool derived from loan originations. That is, financial institutions may make contributions to Qualified Plans for loan originators out of a pool of profits derived from loans originated by employees under the Compensation Rules.

The Bureau has also received questions about how the Compensation Rules apply to profit-sharing arrangements/plans that are not in the nature of Qualified Plans. Many of the questions have been fact-specific and the Bureau does not believe it is practical to provide guidance in this Bulletin about such plans. We anticipate providing greater clarity on these arrangements in connection with a proposed rule on the loan origination provisions in the Dodd-Frank Act.

Any questions regarding the subject matter of this Bulletin should be directed to Catherine Henderson or Colgate Selden, in the Office of Regulations, at (202) 435-7700, or at Catherine.Henderson@cfpb.gov or Colgate.Selden@cfpb.gov.