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ManuFacts

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The Dodd-Frank Act

Loan Originator Compensation Rule

SPECIAL POINTS OF INTEREST:

- DODD-FRANK ACT SYNOPSIS
- KEY DEFINITIONS
- KEY QUESTIONS & SCENARIOS

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It is not the purpose of this Special Edition of *ManuFacts* to debate the pros and cons of the Dodd-Frank Act. Rather its purpose is to help retailers understand the Loan Originator Compensation Rule and its essential requirements so that they can take the necessary steps to ensure compliance for their company and employees.

This Special Edition will provide:

- A brief synopsis of the Loan Originator Compensation Rule and its applicability to retailers
- Key Definitions
- Key Examples of non-permissible and permissible activities.

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Dodd-Frank Act Synopsis

The Dodd-Frank Act is federal legislation designed to provide protection for consumers from financial problems relating to home mortgages. Home mortgages include loans for both chattel (personal) and real property manufactured homes.

The SAFE Act, as implemented in California by Senate Bill 36, is not the same as the Dodd-Frank Act as implemented by the Consumer Financial Protection Bureau (CFPB).

While many of the terms used in the Dodd-Frank and California's SAFE Act appear to be the same, these federal laws have very different applications. The Bureau stated that Congress defined "mortgage originator" in the Dodd-Frank Act (from which the LO Comp term "Loan Originator" comes) to be broader in most ways than the definition of "loan originator" in the SAFE Act. The other important distinction is that the LO Comp Rule is primarily regulated at the federal level by the Bureau, while the SAFE Act is primarily regulated by the individual states through their own state SAFE Act laws.

Loan Originator Compensation Rule

The Loan Originator Compensation Rule, as detailed in the Dodd-Frank Act, became effective on January 1, 2014.

Similar to the SAFE ACT, which deals with state mortgage loan originator ("MLO") licensing, the LO Comp Rule deals with loan originators ("LOs"); however, the activities regulated by each law are not the same. First, the LO Comp Rule applies to both individuals and entities. By contrast, the SAFE Act's MLO licensing requirements apply only to individuals. Second, the LO Comp Rule's coverage is determined by federal law, while SAFE Act licensing requirements are determined by state law.

As a result, the determination of whether you are a MLO required to be licensed under the state SAFE Act is separate and apart from the determination of whether your activities are LO activities under the LO Comp Rule. While it is a separate analysis, if an individual is a LO under the LO Comp Rule, the individual will need to be licensed as a MLO under the California's SAFE Act.

Who is a Loan Originator as Defined by the LO Comp Rule?

A Loan Originator (LO) is a person or business entity (Loan Originator Organization – LOO) who in expectation of direct or indirect compensation or other monetary gain or for direct or indirect compensation or other monetary gain performs **any** of the following activities:

- Takes a credit application;
- Offers, arranges, assists a consumer in obtaining or applying to obtain a loan;
- Negotiates, or otherwise obtains or makes an extension of consumer credit for another person;
- Through advertising or other means of communication represents to the public that the person can or will perform any of the LO activities.

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The following activities make a retailer and/or a retailer employee a loan originator:

- Discussing **particular credit terms** that are or may be available;
- Taking any oral or written action directed to a consumer that can affirmatively influence the consumer to select a particular loan originator or creditor;
- Filling out a consumer application, inputting information into an online application or other automated system, or taking information from the consumer over the phone to complete a credit application;
- Initially contacting and orienting the consumer to a particular loan originator's or creditor's origination process or particular credit terms that are or may be available to that <u>consumer based on the consumer's financial characteristics.</u>

<u>**Note:**</u> Both the retail company and the individual employee can be classified as LOs.

<u>**Caveat:**</u> Retailers who originate transactions on a 3-party retail installment sales contract that are assigned to a lender after closing are considered loan originators and/or loan originator organizations.

<u>WHAT YOU CAN DO</u>

The following activities would not make a retailer and/or a retailer employee a loan originator:

- **Generally** describing the application process, without advising on credit terms available from a creditor;
- Providing explanation, information or descriptions in response to consumer queries, such as explaining terminology or lending practices;
- Confirming written offer terms already transmitted to the consumer;
- Providing or making available **general information** about creditors or loan originators that may offer financing **when doing so does not amount to "referring" or recommending a particular creditor or loan originator, or otherwise influencing a consumer's decision;**
- Collecting information on behalf of a consumer, such as gathering information or supporting documentation to provide to a consumer for inclusion in a credit application and providing application instructions to a consumer so they can complete a credit application.

Note: Both the retail company and the individual employees can be deemed LOs. LOs that are not employed by a lender (creditor) are defined in the rule as "Mortgage Brokers".

<u>Consequences of Being a Loan Originator as Defined in the Federal LO Comp Rule</u>

The following is a partial summary of the consequences of being considered a LO and/or LOO under the LO Comp Rule.

As a preliminary matter, individuals or entities that are loan originators are subject to regulations by the Bureau. Any compensation paid to the retailer for LOO activities attributed to a particular transaction is considered to be a loan originator compensation, and therefore is included in points and fees for HOEPA high-cost and qualified mortgage calculations. The sales price of a manufactured home is not deemed to include loan originator compensation for purposes of the points and fees triggers, unless the creditor has **knowledge** that the sales price includes compensation for LO/LOO activities.

Individuals engaged in LO activities need to be licensed as MLOs under California's SAFE Act. In that case, retailers employing those individuals will also need a state lender's license as a lender or broker.

While the following may be exhausting, it is not an exhaustive example of what retailers can and cannot do if they do not want to be defined as a loan originator or loan originator organization:

<u>What a Retailer Cannot Do</u>

If a retailer or the retailer's employees does any of the following, **they can be defined as a loan originator pursuant to the Loan Originator Compensation Rule effective January 1, 2014:**

- Fill out a loan application, or in any way physically assist the applicant in filling out the application. Two interpretations of this rule should make it clear. You cannot fill out an application form for a

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blind customer; you cannot provide a language translator that completes an application form for a person who does not speak English. You can, however, provide a translator for a non-English speaker, but they cannot fill out the forms.

- Input application information into an online application or other automated system.
- Take a loan application over the phone and then put that information into a form to be sent to a creditor.
- Email a completed application to a creditor that the customer completed on the retailer's computer. A consumer may go to a lender's website from your office and fill out the lender's application; however, the consumer should transmit the application to the lender.
- Discuss specific terms of a loan.
- Present credit terms for the consumer's consideration that are selected based on the consumer's financial characteristics, or communicate with a consumer for the purpose of reaching a mutual understanding about prospective credit terms.
- Direct, refer or steer a customer to any creditor or loan originator.
- If you are a dealer and have an in-house MLO, then you can recommend your own MLO to the consumer, just like any other lending institution, but your loan originator cannot "steer" a consumer to a loan based on the fact that the loan originator will receive greater compensation from the creditor in that transaction than in other transactions the originator offered or could have offered to the consumer.
- Negotiate terms of the loan.
- Ask for or collect consumer information such as the customer's debts, income, assets, or credit history/score for the purpose of determining his or her financial characteristics to then select credit terms or the creditors or loan originators that you will provide information about to the consumer.
- Discuss credit terms that may be available from a creditor or loan originator based on the consumer's financial status.
- Tell a consumer a specific interest rate that can be offered.
- Answer direct questions that would sway a consumer to choose a creditor or loan originator.
- Do anything to influence the consumer to select a creditor or loan originator.
- Provide an application form for only one creditor. Quote rates, fees, costs, payments, required down payments or other credit terms that may be available for loan products that are offered by specific creditors.
- Assist a consumer in selecting which credit terms to choose or which loan product to choose when he or she has obtained multiple approvals.
- Advertise estimated monthly payments.
- Advertise the retailer can provide or help find financing.
- Advertise promotion terms dealing with rates.
- Have signs that discuss the ease of getting financing. Avoid saying: "No Credit, No Problem," "Buy here, pay here," "No credit check financing," "Your land is your down payment."

What a Retailer Can Do

The following activities will not make a retailer or a retailer's employees a Loan Originator Organization or Loan Originators pursuant to the LO Comp Rule:

- Generally provide credit application instructions to consumers so that consumers can complete an application, such as describing the meaning of the words. When providing application instructions, you should avoid the appearance that you are telling the customer what information to put on the application. You may high light on the application the places they need to complete.
- Generally describe the credit application process without advising on credit terms, i.e: "The lender, with your approval, will pull your credit report to let them understand your financial profile." "The lender will need to verify your income sources and employment." "The lender will take your income, job and debt information and evaluate whether you might qualify for their loan."
- In response to an inquiry, describe credit language and what those terms mean, such as what is an interest rate, what is the APR, or the meaning of common fees in a transaction without getting into specifics.
- Answer specific questions asked by the consumer about

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the application process as long as the responses do not deal with credit specifics or in any way direct a consumer to, or influence a consumer to choose, any creditor or loan originator.

- Provide to the consumer a list of creditors that likely will make manufactured housing loans in the general area.
- When compiling a list of potential lenders, do it by alphabetical order and hand that list with the fax numbers, addresses, website addresses and email addresses for lenders and loan originators to the consumer.
- Allow lending institutions to advertise their products within the retailer's offices through flyers and brochures as long as it is done in a neutral manner and does not rise to the level of referral or steering.
- Discuss sales related details with creditor personnel. In doing so you should refrain from discussing financing related details.
- Pull a consumer's credit report for ***sales-related purposes,*** such as qualifying a customer for a sale by matching a customer with the correct home and determining whether the customer is a *bona fide* prospect, but ***not*** credit related purposes. A retailer employee should not pull a consumer's credit report to direct the consumer to a particular lender or loan terms or use it to determine what credit terms may be available. The retailer employee also should not use the contents of the credit report to determine the names of available lenders that the retailer employee will provide to the consumer. When obtaining a credit report, it is advisable that you have the consumer's prior signed authorization and that you not provide the consumer with a copy of the credit report. The authorization instructions may include instructions to the consumer on how the consumer can pull his or her own credit report.
- A community may still pull a consumer credit report for residency qualifying purposes. Again, it is advisable that you have the consumer's prior written signed authorization.

SPECIAL APPRECIATION

CMHI very much appreciates the Manufactured Housing Institute's leadership on this issue and the excellent work done by the members of the Task Force.

We also appreciate the contributions to this Special Edition of *ManuFacts* by:

- Marc Lifset of the McGlinchey Stafford Law Firm
- Andy Gallagher of the West Virginia Housing Institute

Resources

- Special Bulletin 2013-06: www.cmhi.org/pdfs/CMHI_SpecialBulletin_2013-06.pdf
- MHI's summary of the rule: www.cmhi.org/pdfs/MHI_Loan_Originator_Summary.pdf
- The Consumer Finance Protection Bureau Final Rule: www.consumerfinance.gov/regulations/loan-originator-compensation-requirements-under-the-truth-in-lending-act-regulation-z/
- Marc Lifset Article – WMA Reporter – January 2014