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Brokers - Thou Shalt Not Accept Payments From More Than One Source In Connection With A Mortgage Loan

Mortgage lenders and brokers are aware that the new regulations on loan originator compensation (part of Regulation Z) will go into effect on April 1. One aspect of those regulations that has received little attention until just recently is that if the consumer pays the loan originator directly (which may be the case with mortgage brokers, but will not be the case with loan originators who are employed by the creditor), the regulations prohibit any other person from providing any compensation to a loan originator, directly or indirectly, in connection with that particular transaction. This means that, if a mortgage broker is paid by the consumer, (i) the mortgage broker cannot receive additional compensation from the lender, and (ii) the lender cannot also pay compensation to any of its internal loan originators in connection with that loan (with the possible exception of an hourly wage). It is also worth noting that payments to a loan originator made out of loan proceeds are considered compensation received directly from the consumer. There is some question as to whether this is exactly the result that the Federal Reserve Board intended. We understand that the Mortgage Bankers Association of America is seeking clarification from the Fed on this provision, so it is possible that some modification will be forthcoming. Barring that, though, mortgage lenders should be prepared to comply with the above limitations commencing April 1.

Mortgage lenders should strongly consider reviewing all Good Faith Estimates and HUD-1 Settlement Statements to make sure that they show payments to the mortgage broker from either the lender or the consumer, but not both. A GFE or HUD-1 that shows payments to the mortgage broker by both the consumer and the lender will be evidence of a Regulation Z violation, and likely result in a violation of a loan representation or warranty in the event that the lender sells the loan to an investor, resulting in a likely repurchase demand in the event that the borrower defaults on the loan.

In addition, mortgage lenders that are paying brokers in connection with a mortgage loan should make sure that the broker does not have the consumer sign anything that says that the consumer will ever pay or be responsible for paying any sum to the broker for its services. Conversely, any agreement between the broker and the consumer should then specify that the full consideration payable to the broker for the services provided by the broker will be paid by the mortgage lender.

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