

Originator Compensation and the Fed Rule Webinar Q &A

This document contains Q &A for the Calyx Software Webinars held Feb. 22 & Feb. 23, 2011

The guest presenters from Abacus Mortgage Training and Education graciously answered the questions submitted during the two webinars based on the information they had available to them on Friday, March 4th. The answers are not intended to be legal advice and we suggest individuals and/or companies seek the council of their attorney.

Dual Compensation and Hourly Wages

1. **Do you think we can pay MLOs a flat rate of say 1% and also an hourly rate?** Yes
2. **Do LO's have to be paid a salary or hourly rate on either Borrower paid or Lender paid compensation? If so, how many hours per week?** There is controversy over originators employed by brokers on borrower paid compensation. Investors are coming out with differing policies. Expect the Federal Reserve Board to issue guidance on this. We cannot predict how soon, however.
3. **If an LO of a Mortgage Banker is be paid over-par pricing, is this dual compensation?** No, but if you are paid that way, it must be "Lender paid" and must meet the criteria of the Rule. You cannot receive compensation from the borrower as you have described.
4. **If we have an originator who handles both loans that he originated and loans that were referred to him by management, can he be paid differently on those two types of loans?** It would appear so. However, there must be a "business reason" and must be defensible.
5. **Can processors be paid separately from the Broker compensation?** That depends. There is not enough information here to answer the question.
6. **As a broker, if one of my originators chooses to collect his fees from the consumer, can I compensate him? Is that dual comp since the consumer will be paying me, the broker?** There is controversy over originators employed by brokers on borrower paid compensation. Investors are coming out with differing policies. Expect the Federal Reserve Board to issue guidance on this. But we cannot predict how soon.
7. **I work for a non-profit and I have always been salaried. I get the same paycheck every week no matter how much I bring or don't bring in so is this fairly safe? Most of our loans are brokered out and periodically we will close a loan in our name and sell it to Georgia Department of Community Affairs. Are we safe in both circumstances since I am salaried?** Salaries are always compliant as long as they meet minimum standards required by the Department of Labor and of your state.
8. **Either through YSP or upfront fee but not a combo?** That is not really the distinction made in the Rule. YSP is now "lender paid" compensation (or 3rd party). If by "up front" you mean "borrower paid" then the answer is, "yes".
9. **If the LO also processes loans can he be paid a % of the LA and a flat processing fee?** No. This would appear to be a violation of the Rule. That issue is specifically addressed in the commentary.
10. **Can I pay an originator a base salary plus a percentage of his loan volume above a minimum monthly volume?** It would appear that the plan as you present it would be complaint. As long as all of the parts of the plan meet the other requirements of the Rule, it would appear that commissions and bonus structures based upon volume percentages are acceptable.
11. **Under the Lender paid model, can our loan originators be paid under a 1099? We are mortgage brokers.** The rule doesn't address that. However, if you are exercising care and control of originators we do not think you will be able to argue they are contract labor. Just a thought – Department of Labor 2010-1 would say they are employees under most circumstances. You should have an attorney look at your situation and give you written advice.

Questions answered are not intended as legal advice.

Please consult legal counsel for answers specific to your circumstance.

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12. **How will Mortgage Broker Originator get paid, 1099 or W2?** The rule doesn't address that. However, if you are exercising care and control of originators we do not think you will be able to argue they are contract labor. You should have an attorney look at your situation and give you written advice. State laws also address the issues of contract labor versus W-2 employees.
13. **Can you pay on units AND volume?** Yes, but your compensation has to meet the other requirements of the rule.
14. **If a LO working for a correspondent (true true source) does a no cost loan & collects no \$ from borrower, is there a limit on compensation paid to the LO?** The rule itself contains no dollar limits or percentage limits on income. The pay plan itself must be consistent and compliant with the Rule. Keep in mind that other regulations and policies may apply – the Home Ownership and Equity Protection Act, for instance.
15. **I was told that a loan officer cannot be paid commission when the consumer paid option is chosen. This came from a large lender. Is this true?** There is controversy over originators employed by brokers regarding borrower paid compensation. Investors are coming out with differing policies. Expect the Federal Reserve Board to issue guidance on this issue. But we cannot predict how soon. For right now, you have to comply with the creditor's guidance. Lenders will always be conservative to protect themselves. And taken literally, the Rule seems to say what you have indicated.

YSP and Compensation Plans

1. **Can a Mortgage Banker Company Owner pay his Loan Officers in any way in the Loan transaction? If there is an Origination fee charged, can the LO be paid direct from the consumer and then paid from the Owner of the Mortgage bank/Lender in the form of profit sharing or salary?** Mortgage Loan Originators can only be paid in accord with your plan. And they must always be paid in accord with your plan.
2. **If lenders of a broker pay the broker only 2% across the board, the loan officer can't up sell. Can the loan officer get a % of the controlled fee? Example: the broker only gets 2% across the board from all lenders. Can the loan officer's get 80%? Again, the fees are controlled by the lender/creditor. I am not sure why you would do it that way. I would think the easiest way to pay would be on basis points.**
3. **Say an LO wants to make 1.5%. The day of his appointment with the borrower, the lender is paying -1.5YSP at a rate of 4.5% and that is what is disclosed on the GFE. The day they go to lock, pricing has worsened to -1.25%. Under the new rule, how would this work? Or would this not even be an issue because the Broker is guaranteed to be paid whatever he has agreed with the lender ahead of time?** Mortgage Loan Originators will always receive the agreed upon amount on all loans.
4. **It is my understanding that a non-creditor (broker) is the loan originator per the Rule. So, regardless of whether an owner/broker or LO for that owner/broker is originating the loan, the Loan Originator/owner/broker is limited to their set compensation. An LO working for that broker/owner and their income "tier" would not be affected — it would simply be based off of the set income that the Broker has set with each investor. Am I missing something here?** Your question is complex. Let me answer the parts one at a time. (1) Broker entities are considered originators by the rule. But they are given special status because they are entities. (See the staff commentary) (2) All LOs are limited to their compensation. (3) The Mortgage Loan Originator income will not be based off of the terms of the

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loan. It can be based on salary, salary plus compliant commissions, salary plus compliant commissions, plus per unit bonus, salary plus compliant commissions, plus per unit bonus plus file quality or pull through considerations, etcetera. Mortgage Loan Originator compensation is never based off of raw “income” but must be based upon the volume of the loan, units, quality, etc.

5. **Since the LO is actually choosing lender paid or borrower paid, can they still be paid off that percentage per loan? Or do they have to receive a set standard?** A company can set a commission which will work for both options.
6. **What is the latest on the fact that if it is a BORROWER paid comp, the LO has to be a salary or hourly instead of just getting 1% or whatever on every loan?** Nothing is resolved on that yet. Many lenders are holding fast to the position that Mortgage Loan Originators employed by brokers will have to get a salary if they choose the borrower paid option. Look for guidance from the Federal Reserve Board on this, but it will not be quick.
7. **As a broker/ owner, can we still pay our originators on a % of revenue per loan?** Compensation cannot be paid off of fee income. See the other questions answered above for more.
8. **As a broker/ owner my partner and I split the profit periodically. We also originate. Is this still allowed?** Yes. But like all issues of partnerships, you should consult an attorney and have the agreement in writing.
9. **I own a small broker company with 4 MLOs including me and hire a processor. How do I deal with this?** (1) Negotiate your agreement with your investors, (2) negotiate your arrangement with your Mortgage Loan Originators, (3) pay your overhead including your processor, and (4) take the profit which is left over.
10. **Is it possible for the originators in the same office/company to be compensated differently in terms of % of loan amount?** If you mean can you pay one Mortgage Loan Originator a higher percentage than another, the answer is ‘yes’.
11. **If I charge 1% origination and charge a 2% Mortgage Broker fee, can I then raise the interest rate for the yield to be a credit to the borrower’s closing costs? To clarify the question, the entire yield spread would be applied to the borrower as a closing cost credit.** Premium pricing (increasing the rate to pay for charges other than compensation) is allowed. It will be up to individual investors as to how they apply that principle. But keep in mind that the Rule is TILA – compensation does not have the same meaning as in the Good Faith Estimate.
12. **How do you guys see the SRP vs. the YSP question and how it plays into the rule with an employer paying LO's additional compensation after sale of the loan?** You cannot pay anything to a Mortgage Loan Originator which is based on the rate or terms of the loan. What you are describing, I believe, would not be compliant.
13. **If a producing manager is paid only on profitability, is there an issue?** The controlling word in your question is the word “Only”. As a PBM (Producing Branch Manager), the rule is clear that the PBM is classified as an “originator”. Because of that, in my opinion, they must have a compensation program which takes that into account.
14. **Can you pay an LO salary plus commission for loans?** Yes

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15. **Can a broker pay their LO's a different volume split for different lenders? For example, I will pay 40 Bps for a loan that goes to bank A; 50 Bps for a loan at bank B; and 60 Bps for a loan at bank C. No**
16. **So if I understand correctly — my company (mortgage BROKER) must have 3 separate comp plans. 1) For non-producing Owner 2) A producing Branch Manager & L.O and 3) For the L.O.'s. Is that right? If you have both non-producing bench managers (NBMs) and producing branch managers (PBMs) the answer is 'yes'. You would need at least those three. Plus you would need agreements between your investor-creditors and your company.**
17. **I am a mortgage broker. Do I pay my loan officer based on a percentage basis depending on the revenue of every loan? Will I give them a 1099 or W-2?** You cannot pay based upon the income of the loan. Many laws affect the issuance of W-2's versus 1099s. The Department of Labor has a lot of material on that issue. Plus each state has regulations which affect how you pay. You should consult an attorney to ensure your plan is compliant.
18. **Can you discuss the tier volume prohibition as this is the first we have heard that is not an option?** The tier prohibition is transaction specific. You cannot pay a higher volume percentage, for instance, for originating a one million dollar loan than you pay for originating a one hundred thousand dollar loan or vice versa. See the commentary to the rule.
19. **Is it no tier pricing but OK to pay on tiered volume?** That sounds correct. But it is difficult to answer a question like this without more detail. See the answer to the question above.
20. **I am still not clear on the YSP for mortgage brokers. Can I use the rebate to pay my fees and points as well as third party fees?** Yes, on the indirect option (where the borrower does not pay compensation). Not on the indirect or third party option.
21. **Does this reimbursement of "actual costs" to loan originator show up on the loan originator's W-2's? Or is it handled as pre-taxes?** If I were a Mortgage Loan Originator, I would want it to be handled as nontaxable reimbursement.
22. **If I am the only FHA originator in a 5 originator office, how much differently can I be compensated? Can I be paid twice the other agents for the same loan amount?** One Mortgage Loan Originator may be compensated differently from another. Just be cautious with this. There are concerns within the Rule and there are concerns outside of the Federal Reserve Board Interim Rule on Originator Compensation. If you are developing complex compensation plans, it is always a good idea to consult an attorney.
23. **If we only charge points up front, are we exempt from all of these rules? Am I correct to assume this is only applicable when it is lenders' paid compensation?** This impacts creditors and brokers differently. Since your question didn't specify, we are unable to answer it. And as you are probably aware, there are major concerns with brokers paying Mortgage Loan Originators when they use the direct pay option.
24. **How does a mortgage broker-owner who also originates his own loans and only has 1 loan officer working for him pay his loan officer and still make money off of the loans he closes?** I am not sure of the problem. If you are the owner, all profit will flow to you in one way or another.
25. **What about freelance processors who get paid per deal?** Processors are not considered 'originators'. The commentary to this rule has large sections which mention processing. You should read those. Also,

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you should be aware that the Secure and Fair Enforcement for Mortgage Licensing Act in many states has specific requirements on using contract processing.

26. **I'm a Broker in California. How do I get paid on my LO's loans? Also, can they remain Independent Contractors?** The rule doesn't address "contract" labor versus "employees". However, the changing environment in mortgage law and regulation may affect that issue. You should consult a qualified labor attorney who is familiar with the mortgage industry to ensure compliance. The oversight and supervision required by the Secure and Fair Enforcement for Mortgage Licensing Act may impact your pay arrangements.
27. **If you cannot pay an originator more for a 200K loan than a 100K loan, how can you pay a percentage?** That is not what the Rule says. You cannot pay a larger percentage for a larger loan than a smaller one.
28. **Are wholesale account executives considered originators? Industry standard is to tier their commission based on tiered loan volume, is that acceptable?** Interesting question. Your compensation as a wholesale AE will be determined on how your job is structured. You should be able to rely on your employer (the creditor) to develop a compliant pay plan.
29. **Can a broker subtract average costs associated with an average loan such as \$1275 before computing the basis points paid on a loan to the originator?** No
30. **So, on an individual loan, if the borrower pays a 1% origination, can we still get SRP from the lender?** No. Not if the SRP is compensation. If the SRP is being used to pay bona fide 3rd party fees, the answer is 'yes'. However, there are specific issues with brokers in this scenario. You should consult with your investors to see how they interpret this issue.
31. **How does the lender paid LO option work if the LO isn't allowed to keep YSP (per RESPA)?** The Federal Reserve Board Interim Rule on Originator Compensation has nothing to do with the Real Estate Settlement Procedures Act. This is a confusing concept since they seem to apply. The best way to think about it is that the Real Estate Settlement Procedures Act deals with "Origination Charges" and is a category of expenses. The Federal Reserve Board Interim Rule on Originator Compensation deals with "compensation" fees and is not an expense category. That doesn't mean you can avoid the Rule by naming compensation fees something else.
32. **If an originator is paid by the Creditor, is there still a YSP credit given to the borrower? If so, doesn't this mean the Creditor will be paying the Originator and then paying part of the borrower's fees?** According to the Rule, the creditor can pay the originator and use premium pricing to pay bona fide third party fees. We have addressed this in previous questions.
33. **My QC company said we were not allowed to have a floor and ceiling on what we charge as an origination fee and that would be a violation of this rule. However, you just discussed that we can have a floor and ceiling (min and max). So we can say that \$5k is the minimum and \$20k max so on loans that are \$100k and we are contracted at 1.5pt then are we ok with charging \$5k instead of 1.5pt? I thought this was not allowed. Please advise further.** I am not sure why your quality control company told you that. Maybe because the minimum and maximum do not work the way you have indicated in your question. The floor means you will always get paid at least this minimum amount. The ceiling means your compensation will never exceed this amount. So if you set your compensation

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- at 2% and your floor is \$500 and your ceiling is \$5000: then compensation on a \$20,000 loan would be \$500, even though it exceeded to 2%. If, on the other hand, you originated a \$1,000,000 loan your compensation would be \$5000 since that was your ceiling. But a word of caution – setting your ceiling or floor too high will mean that you will lose loans to competitors. These are non-negotiable per loan.
34. **If no limit then why is there a min. and max. compensation?** There is no minimum or maximum in the Rule. You and your investors (creditors) set the minimum and maximums. The Fed does not say what that minimum or maximum amount is.
 35. **What is the difference between volume and loan amount? They are the same thing to me, but it sounds like you are making a difference between the two.** As we discussed it in that particular section of the presentation, “volume” referred to the aggregate total. “Loan amount”, on the other hand, referred to the amount of a particular transaction.
 36. **As a Mortgage Broker, Originator & Owner, if I charge the borrower points on a loan that has a YSP what happens to the YSP?** In accord with the Rule, YSP is now considered to be “lender paid” compensation if it is to be retained by the originator as compensation. On the other hand, if YSP is used to pay bona fide third party fees, it flows to the third parties which performed the services for which the consumer is being charged. Not all creditors’ policies are the same. You should consult with your investors to ensure you are compliant with their policies and plans.
 37. **Can you have different comp plans for each LO or groups of LO's?** Yes. But it must be compliant with all parts of the Rule and with other provisions of the Department of Labor.
 38. **You mentioned Permitted Payments for Originator Compensation. Does this type of bonus set-up (such as on aggregate volume/units, file quality, etc) also apply to MLO compensation paid to the originator by the broker? i.e. can the broker compensate to MLO with a bonus, monthly or quarterly, based on aggregate performance (not based on amount of profit)? I have heard "yes" and "no" in regards to this question. I see nothing wrong with performance bonus pay. The Rule allows it. Just make sure it is compliant in all respects.**
 39. **On a lender paid plan, some lenders have a different rate sheet for brokers than a borrower paid plan. The lender paid plan increases the price for the same interest rate. For example, instead of 4.5% at 1.5% YSP they would offer 4.5% with a discount of .5%. The lender will then use this money to pay the originator. If a lender reflects the discount on the HUD-1 and reflects the origination fee, do they reflect the origination fee as POC? If they don't it looks like they overcharged the borrower. Or are they paying it to the originator outside of the transaction? Keep in mind that the Federal Reserve Board Interim Rule on Originator Compensation is not a RESPA issue. The HUD-1 form is a Real Estate Settlement Procedures Act form. Lender paid compensation will still be entered as it currently is. There is no change in that.**

Profit Sharing

1. **Can originators participate in profit sharing? Is that allowable under this regulation?** Anything you do to try and avoid the Federal Reserve Board Interim Rule on Originator Compensation should be run by a qualified attorney. Trying to create legal ways to work around the Rule could be risky. There are also Secure and Fair Enforcement for Mortgage Licensing Act and state compliance issues on such an

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arrangement. As a general rule of thumb, the more complex the plan, the less likely it is to be manageable and complaint.

2. **Could I per se, create a partnership and take in partners much like a law firm and pay an overall profit sharing fee?** Anything you do to try and avoid the Federal Reserve Board Interim Rule on Originator Compensation should be run by a qualified attorney. Trying to create legal ways to work around the Rule could be risky. There are also Secure and Fair Enforcement for Mortgage Licensing Act and state compliance issues on such an arrangement. As a general rule of thumb, the more complex the plan, the less likely it is to be manageable and complaint.
3. **What if there are multiple owners that originate, can the profit share be disproportionate?** Anything you do to try and avoid the Federal Reserve Board Interim Rule on Originator Compensation should be run by a qualified attorney. Trying to create legal ways to work around the Rule could be risky. There are also Secure and Fair Enforcement for Mortgage Licensing Act and state compliance issues on such an arrangement. As a general rule of thumb, the more complex the plan, the less likely it is to be manageable and complaint.

COOP Loans

1. **Are coop loans subject to these compensation regulations?** COOP loans are not excluded from the Rule. All loans on 1-4 family dwellings are included, except timeshares and open-ended loans such as HELOCS.

Fees

1. **Can you discuss how the rules pertain to a one person mortgage broker office that doesn't charge any processing fees?** The same as it would to any other shop if the "one person" is the owner, they can be paid compensation on loans and take profit as the owner. Your agreement with your creditor investors would be the same as any other entity.
2. **Are Seller paid closing costs allowed?** Remember that the buckets are (1) borrower paid, and (2) everything else. As long as it is structured to fit with the provisions of the Rule, it would seem to be allowed.
3. **Should the GFE be used on the 3rd page for comparisons of loans?** The Rule is not specific about the specific disclosure form. However, I do not think that Page 3 of the Good Faith Estimate will contain all of the information required.
4. **Will a broker still be able to charge for processing and administration?** Check with your investors to see what they will require.
5. **Can seller paid fees pay for broker fees?** Remember that the buckets are (1) borrower paid, and (2) everything else. As long as it is structured to fit with the provisions of the Rule, it would seem to be allowed.
6. **Can you pay a flat fee per loan?** Yes
7. **As a Mortgage Broker are we allowed to charge a processing Fee to the client after April 1st?** If you have processors, the answer is, 'yes'. If you are charging a processing fee but your Mortgage Loan Originators process the loans, then any processing fee will be considered "compensation". Each

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creditor may have policies, which affect that as well. Check with your particular lender to see what their policy is.

8. **What 3rd party fees are allowed to be covered by YSP? E&O insurance? Appraisal reviews...? Do they have to be on the 2010 GFE to get it dispersed?** The Federal Reserve Board Interim Rule on Originator Compensation does not affect the Good Faith Estimate. The Good Faith Estimate is controlled by the Real Estate Settlement Procedures Act.
9. **Can you charge a Loan Originator an expense for given-leads vs. self-generated leads under the new final rule?** I am not sure you can charge the originator a fee. But you can certainly have differing plans for each. Your compensation policy should be reviewed by a qualified attorney to ensure you are compliant and that your plan is defensible.
10. **Does that reimbursement cost have to be consistent?** Originators may only be reimbursed for actual expenses.
11. **In a wholesale transaction where the broker's compensation is being paid by the creditor, can the creditor charge the borrower an origination fee?** I believe that only originators can charge an "origination fee".
12. **Can a loan officer that has a DBA and tax ID for processing charge the third party processing fee to their DBA name even if they own that DBA without violating this rule? Is there a difference on this with a "Borrower paid" loan vs. "Lender paid" loan?** (1) No. The rule does not consider what you call it. If it flows to the originator, it is compensation. (In other words, the name of the fee does not affect how it is considered.) (2) There are differences on this regarding whether you are a broker entity or a creditor entity. This has been addressed in other answers.

"One-Man" Shop

1. **I am a mortgage broker, own my company and have NO originators aside from myself. Is it possible this may be advantageous? I'm still uncertain on how I need to adopt a compensation plan for myself?** (1) You will have to follow investor guidelines on compensating yourself per loan. (2) You can distribute the profit as before.
2. **The owner is 100% owner and the only originator; he is paid a salary. How are the year-end corporate profits treated? He is a broker. Same as before.**
3. **I am a Broker/Owner and the MLO. I additionally process all the loans. Can I charge a Processing Fee and or Application Fee?** No. I do not believe so. Just as importantly, you will have to follow your investor guidelines.
4. **I own my shop. I operate primarily as a banker with my own warehouse LOC's, retained earnings and personal lines. I occasionally close govt. loans which are brokered transactions. I make anywhere from 1.75% to 2.75% on various loans. I currently have no LO's. All funds are deposited and I may take a draw once or twice per year. Do I have any issues??** As long as you follow your creditor guidelines, there does not appear to be any issue. Keep in mind that the Rule is applied transactionally. Any loans you broker you will not be treated as a creditor. That will be the most complex issue with which you deal. If I were you, I would get a good attorney to help me develop a compliant defensible policy.

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5. **If you are a broker owner with no employees who is the only originator... how then are you defined under the rules.... and fund only in other creditors names? No lines.** You will be both an originator entity and an individual originator. You have some options on payment. The most common scenario I have seen is to pay yourself on your originations as an originator. Then as an owner, take a draw from your profits periodically.
6. **What kind of payment plan do you need for a One Man Shop and you do not want to draw any income from the company until the year's expenses have been paid?** You will be both an originator entity and an individual originator. You have some options on payment. The most common scenario I have seen is to pay yourself on your originations as an originator. Then as an owner, take a draw from your profits periodically. The periodic payment may be annual.
7. **I am a producing owner. Can I choose to just pay me a salary, not on a per loan basis?** Yes. Salaries are always permissible and compliant.
8. **If I am a solely owned 1 man shop that originates loans can I just set up to pay myself on an hourly salary with a monthly dividend or bonus?** Yes, as you have presented it. Like salaries, hourly pay is always compliant.
9. **If it is not permissible to adjust for credit score and LTV, then how are Fannie and Freddie allowed to have adjustment for this?** Neither Fannie nor Freddie are “originators” according to the Rule.

Safe Harbor

1. **What is # 3 for Safe Harbor?** A Safe Harbor (SH) is an exemption from liability on steering. To get the SH, the originator has to provide a disclosure to the borrower that shows:
 - a. The lowest interest rate available
 - b. The lowest total dollar cost for discount points and origination points or fees
 - c. The loan with the lowest interest rate without any risky features. Risky features are defined as balloon payments due within a certain time, prepayment penalties, etcetera.

This disclosure must only be only on:

- a. Transactions for which the consumer likely qualifies
- b. Lenders or creditors with which originator regularly does business
- c. From a significant number of creditors

You asked for an explanation of point 3 above. The Rule gives the following examples of risky features: “negative amortization, a prepayment penalty, interest-only payments, a balloon payment in the first 7 years of the life of the loan, a demand feature, shared equity, or shared appreciation; or, in the case of a reverse mortgage, a loan without a prepayment penalty, or shared equity or shared appreciation”. You should not consider this an exhaustive list by a list of examples.

2. **Can you give us an idea how to handle the Safe Harbor rules for a Broker with 25 lenders?** The Rule specifically says you are to only disclose a “significant number”. That is defined as from 3-4 lenders.

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Disclosure of more than 4 is not required. The disclosure requirement is, in my opinion, still troublesome since it requires more paper.

3. **If the comp is different but the interest rate is the same, say on 30 yr fixed loans, is that safe harbor?**

It is not safe harbor, but it from your question, it does not appear to be steering -- if all of the considerations are the same. For instance, the compensation might be more because the loan contains a prepayment penalty. In that instance, it might be steering if you convinced the customer to take that option.

Steering

1. **I don't understand this steering rule. If you say the LO can make 2pt on YSP, then the ONLY rate the LO can offer to borrower is the one with 2pt. YSP?** The steering rule addresses the originator influencing a consumer to take a specific loan product because it benefits the originator. So if you had an agreement with creditor A which paid your company 2% on a 30 fixed rate loan, and an agreement with creditor B which paid your company 2.25% on the same loan; if creditor B was 1/8th higher in rate and if you convinced your customer to go with creditor B; you could be guilty of steering.
2. **As a broker, one has lenders who do a great job from underwriting to closing and others who are terrible. If the terrible wholesale lender has better rates, what does the steering provision require you to do?** If you explain that to the customer and if the customer decides to go with the lender you recommend, even though their cost might be higher, then it is not steering. Just document it, and have the customer sign a statement to that effect. I personally think you will have a difficult time defending the fact that you regularly do business with a company who does "terrible" underwriting. It seems to me that this is one effect of the Rule. You should cut off business relationships with creditors who are not performing well. Then this scenario is not an issue.
3. **What if we know our best priced lender (for the consumer) has a 2 month turn time, but our client needs to close sooner than that? Can we go with a FASTER but worse priced lender?** If the choice is disclosed to the consumer, and if the consumer decides that it is in their interest to use a lender with faster turn times, then it is fine. (1) You should disclose. And (2) you should document.
4. **How will the policing of a broker work if a guy can pick creditor A to price at 3.0, Creditor B at 2.0 and Creditor C at 1.0; and then the originator sends all of his clients to Creditor A because he makes the most? Can I do that on the banker side with my loan officers and they can simply pick their comp package buy investor?** The Federal Reserve Board Interim Rule on Originator Compensation does not work the way you describe. It is up to the consumer to decide which loan option and creditor is in their interest. If an originator places a consumer in a program which pays the originator more but benefits the consumer less, it is steering.
5. **Doesn't the consumer need to have a choice of loans not investor? i.e. A 30 yr vs. 3/1 ARM not CHASE vs. WELLS at the same rate?** The Rule requires disclosure of a "significant number" of creditors as well as rates, etcetera. But this is only required if you are seeking the Safe Harbor provision.

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6. **Is closing on time and effective lender turn-time in the best interests of the consumer? Even if rate is higher?** Interestingly, the rule never uses the phrase “best interest”. It says in the “interest” of the consumer. My opinion (which is not a legal one) is that this is up to the consumer.
7. **We sometimes will send a loan to a lender who may have a slightly higher rate because they tend to be more flexible on certain types of property or situations. They may not have the best deal, but we feel more likely to obtain loan approval. How do we justify the higher rate as being in the best interest of the borrower?** As we said earlier, that determination is up to the consumer. Make sure you can document it.
8. **Regarding the requirement to disclose several loan options — What if we sell just type of loan? I assume you meant just “one type of loan”. Then you should disclose that. The thing you left out was the requirement to disclose a “significant number” of creditors.**

Creditors

1. **But as an LO working for a creditor, can we make up front points? Can the creditor pay us on a salary quarterly based on so called "performance" or whatever you want to call it?** Any originator can make upfront points. No originator can use blended compensation. Nothing in the Rule affects frequency of pay (though it is transaction specific). I am not sure why you have “performance” in quotes.
2. **Is it possible for a "Creditor" to make a loan without an "Originator"?** I do not see how. Someone has to take the application. They will be the originator.
3. **As a creditor can I still charge a Proc. Fee and UW fee since this is not a 3rd party fee?** Creditors are not covered by the Rule. The Real Estate Settlement Procedures Act, however, limits charges for which you do not perform work.
4. **Can there be dual compensation if you are a creditor? Collect 1 pt, have 0.5% margin built in and pay your LO on all loans 1.25%?** Creditors are not covered by the Rule, except that they cannot pay originators in violation of the Rule.
5. **I am a creditor. If I pay my LO's based completely on loan volume, how do I create a safe harbor as every loan would pay the same? Could the company policy satisfy the Safe Harbor provision and not have to do this on a loan by loan basis?** Safe Harbor is transactional. However, the commentary addresses that issue. It would appear that such a policy would be complaint. Remember that creditors are not covered by the Rule. It would be hard to argue that a company closing with its own funds was steering, I think.
6. **I am still confused about the term "creditor." Can you please clarify further?** A creditor shares at least these two characteristics on any particular transaction: (1) They use their own funds to close a loan either from assets, deposits, or from a bona fide credit line. (2) They are the first payee listed on the loan note. NOTE: by this Rule, a table funding transaction is always considered as a brokered transaction.
7. **We are a Banker; we underwrite, close and fund with our own funds and have the ability to service them as well. How long do we need to service them to be considered a "creditor" before?** The Rule does not establish any timeframe.

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8. **I am with a bank that funds then sells their loans to investors. I know they are a creditor and I am a loan originator but I am still confused on how we benefit more than a bank or broker who does not fund their loans?** It is not a benefit issue as much as it is a coverage issue. The guidelines covering originators working for creditors are applied differently than originators working for mortgage brokers. It appears to me that each has advantages and disadvantages.

Banker Applications

1. **Does this affect Banks the same way it affects brokers?** It is not a bank versus broker issue. It is a creditor versus originator issue.
2. **How does this affect net branches where we are responsible for 100% of our money?** The Rule affects net branches. You parent company will have to develop a plan to compensate you which is compliant with the Rule. The things we pointed out in Scenario one in our webinar would apply to many net branches.
3. **I've been told that Bankers have a way out with these rules. Is that true, or are they affected as much as brokers are?** Not true. It is not a bank versus broker issue. It is a creditor versus originator issue. Originating employees of depositories are covered just like originating employees of any other creditor or broker. All mortgage companies are affected.

Private Money

1. **What about hard money, private money?** The source of the money has nothing to do with the application of the Rule. The issue of creditors and originators does. See the answers to previous questions.
2. **Is a company exempt from this law if they have a bona fide credit line (non-captive credit line) even?** Creditors are not covered by the Rule. Originators are covered by the Rule no matter for what type of institution they work.
3. **I think your interpretation of a bona fide credit line is incorrect. Even with a captive line there is much more liability than to act as a broker. We have all kinds of reps and warranties to uphold as well as personally guaranteeing the line. That is why there is improved pricing for closing the loans on a captive line. They are paying us for the increased risk on our part. Just telling you what the Federal Reserve Board has said. Captive credit lines are not considered to be bona fide. It does not appear to have anything to do with risk.**
4. **If I have a credit line. Files are underwritten by the lender that I am selling to but are funded with our line and only sold to them ...would this qualify as a bona fide credit line?** It would not appear to qualify. The questions you need to answer are: (1) can you sell to other creditors using that line? And, (2) who appears on the note as the first payee?

Miscellaneous

1. **Are commercial properties inside the circle?** All 1-4 family residences are inside the circle.

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2. **Do any of you have a sample agreement for Mortgage Broker and Loan Originator?** No, but your creditor lenders should be able to provide you with a template.
3. **Can you lower a locked interest rate?** Yes, but the compensation will remain the same.
4. **Could you please explain "down selling?"** "Down selling" is negotiating a rate lower.
5. **If you can get paid based on file quality then why can't you be paid based on credit history?** Because credit history is considered to be a "proxy" for terms of the loan, it is specifically forbidden.
6. **If we originate a HELOC then this rule does not apply?** That is correct. Creditors may have policies which affect that. But the Federal Reserve Board Interim Rule on Originator Compensation does not apply to open ended loans.
7. **The "no biz purpose exclusion" re: investment properties even apply when a purely biz purpose loan involves a lien on a residential property (i.e. as an abundance of caution)?** Yes.
8. **How do we prove that amount of time which is spent on a file?** Document it.
9. **Does the entity, i.e. a non-producing branch manager or Secondary Marketing, have the ability to reduce the rate or cost of a loan to save a loan? I understand that an LO or Broker cannot change the terms.** The terms of the loan can be changed by numerous parties. Originator compensation, however, will not change. You can lower a loan from 5.5% to 5.25%, but that will not affect the originator compensation.
10. **Specific examples would be very helpful: Proxy examples?** Some examples of proxies mentioned are: debt to income, LTV, credit history, etcetera. (NOTE: this is not an exclusive list)
11. **Why is no one addressing the mortgage call reports that are due 4-1 also?** Abacus Mortgage Training & Education is addressing that issue. Just not in this webinar. This webinar is focused on the Federal Reserve Board Interim Rule on Originator Compensation.
12. **If LO'S are incented to originate larger loans, what becomes of the availability of mortgage credit for lower income consumers?** Again, good question. I feel like some lender will figure out that there is a lot on money to be made by paying originators flat fees on lower loan amounts. Watch the finance companies take advantage of this. I could be wrong. But I do not think so.
13. **How do we obtain the 1-1/2 page rule?** You can email Info@GetYourEd.com and we will email you a copy.
14. **Where can we get a complete guide to the new rules to ensure that we are in compliance?** Abacus Mortgage Training & Education has a class we will be offering shortly. Keep up with our website at www.getyourued.com. The class has been submitted to the National Mortgage Licensing System and Registry for credit.
15. **Is it for applications taken on or after 4/11/2011 or loans closed on or after 4/11/2011?** It is for applications submitted to a creditor on or after 4/1/2011.
16. **Is the no closing cost loan a thing of the past?** No, the rule allows for cost loans.
17. **Is liability insurance available for the actual damages in the TIL act?** I am not aware of any.
18. **Do you have a written policy for purchase that we can tailor?** No, but your investors should have one.
19. **What are your thoughts regarding us as a Corporation and ONLY one LO paid on W2?** I do not see any advantage in that. I could be missing something.
20. **Could you expand on "file quality?"** Completeness, accuracy, etcetera

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21. **Define lowest interest rate? Is that with a buy-down or at par or what your rate sheet gives you?**
Both are in the disclosure. Lowest rate and lowest rate with no points.
22. **What about HELOC's with an option to lock the rate?** HELOCs are not covered by the Rule.
23. **How do these rules benefit a borrower?** The Federal Reserve Board reasons that the Rule benefits the borrower by removing a practice that some originators used to take advantage of a consumer. In studies conducted by the Federal Reserve Board, consumers indicated they did not understand blended compensation (payment from the creditor to originators plus payment from consumers directly). Therefore, the Fed staff reasoned that some unscrupulous originators used it to obtain excessive fees. I am not defending the Federal Reserve Board. Just telling you what they said. For more, refer to the GPO announcement of the Rule. They go point by point through the entire Rule, explaining why they did what they did.
24. **Did you mention NOO are not included since they don't fall under Reg Z?** Not the case – sorry. The business purpose exclusion was removed in this rule.
25. **I need information on min. and max.** It is “as negotiated” with your creditors. Minimum is “I will never originate a loan under any circumstance for less than \$\$”. A maximum is “I will not ever charge more than \$\$ for originating any loan, regardless of size.” Be careful – there are traps on both. Setting minimums or maximums too high will mean that you will not be able to compete in the market.
26. **Are loans with balloon payments covered under this rule?** Yes.

The guest presenters from Abacus Mortgage Training and Education graciously answered the questions submitted during the two webinars based on the information they had available to them on Friday, March 4th. The answers are not intended to be legal advice and we suggest individuals and/or companies seek the council of their attorney.