

# LOAN ORIGINATOR COMPENSATION

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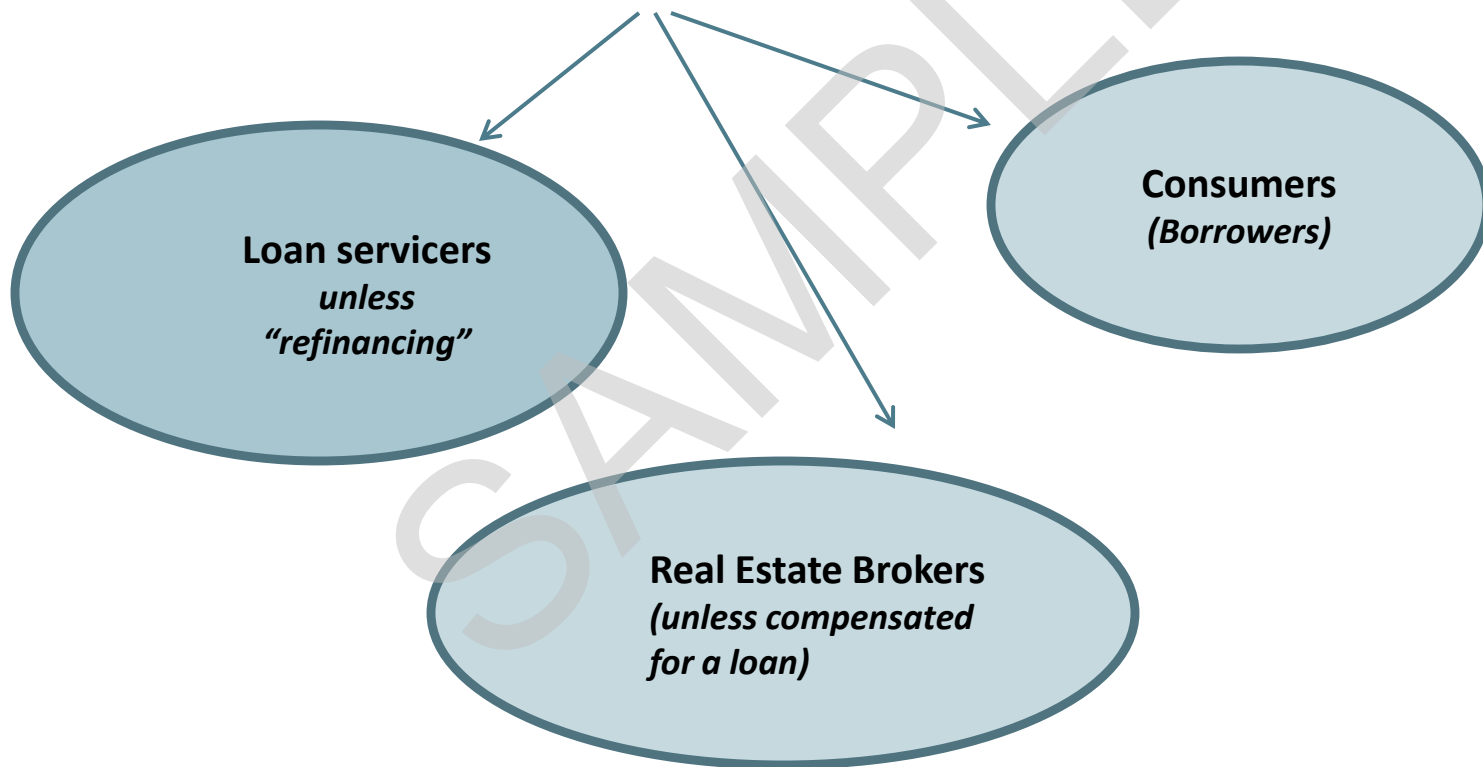
## Who is a Loan Originator?

- A “loan originator” is a person who, for or in the expectation of compensation or other monetary gain, arranges, negotiates, or otherwise obtains an extension of credit for another person.
- The term “loan originator” includes both individuals and entities.
- *A mortgage broker is a loan originator.*
- An employee of a mortgage broker and/or creditor is a loan originator if the employee meets the definition on the previous slide.
- The funding lender in a table-funded transaction is a loan originator.

## Who is a NOT Loan Originator?

- A true creditor that closes a loan in its own name and funds the loan from a bona fide warehouse line of credit, its own money, or deposits held by the creditor is not a loan originator.

The following are also not loan originators:



## Loan Originator Prohibitions under Reg Z

- The August 16, 2010 Final Rule amending Regulation Z establishes 3 key prohibitions on Loan Originators:
  - 1) A loan originator may not directly or indirectly receive (and a person cannot pay) compensation based upon any of the terms or conditions of the loan.
  - 2) If a loan originator receives compensation directly from a consumer, the loan originator may not receive compensation from the creditor (or any other person) in connection with the transaction.
  - 3) A loan originator may not “steer” a consumer to a loan based on the fact that the loan originator will be paid more on that loan (as opposed to other available loans), unless the loan is in the consumer’s interest.

## Prohibition #1

- A loan originator may not directly or indirectly receive (and a person cannot pay) compensation based upon any of the terms or conditions of the loan.



*Let's break this down and discuss what is meant by "compensation" and "terms and conditions of the loan."*

## Prohibition #1

### Compensation includes:

- Salaries
- Commissions
- Any financial or similar incentive
- Merchandise
- Prizes
- Trips
- Fees paid to a Loan Originator (such as a processing fee)

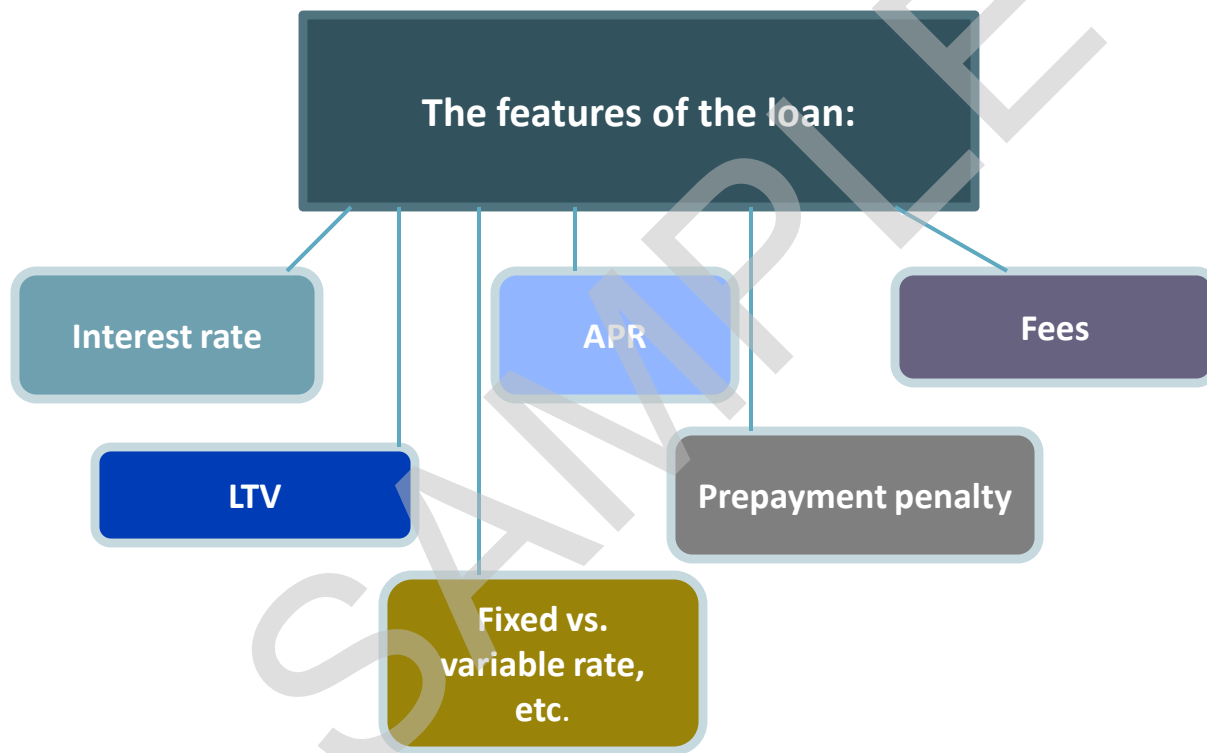
### Compensation DOES NOT include:

- Bona fide and reasonable 3<sup>rd</sup> party charges (e.g., title insurance or appraisals)\*\*

Note – Beware of “upcharging.”  
See example later in “Examples and Explanations.”

## Prohibition #1 (continued)

*What is a term or condition of the loan?*



Note -- This will eliminate loan originator compensation based on the "profitability" of the loan.



## Prohibition #1 (continued)

***Examples of compensation that are not based upon the terms or conditions of the loan:***

- The loan originator's overall loan volume (dollar amount or units).
- The long term performance of the originator's loans.
- Hourly wages for actual hours worked.
- Whether the consumer is an existing or new customer.
- A fixed payment for every loan that the originator arranges for a creditor (e.g., \$600 per loan, or \$1000 for the first 1000 loans and \$500 for each additional loan).
- A percentage of applications submitted by the loan originator to the creditor that result in a closed loan.

## Prohibition #3

- A loan originator may not “steer” a consumer to a loan based on the fact that the loan originator will be paid more on that loan (as opposed to other available loans), unless the loan is in the consumer’s interest.
  - As a practical matter, this prohibition applies to traditional mortgage brokers.
  - “Steering” means directing, advising, counseling, or otherwise influencing a consumer to accept a particular transaction.



*Note that there are four exceptions to Prohibition #3.*

## Exceptions to Prohibition #3

- **Exception #1:**
  - The loan originator directs the consumer to consummate a transaction, after presenting the consumer with a significant number of available loan options, that results in the least amount of *creditor* paid compensation.
- **Exception #2:**
  - The loan originator directs the consumer to consummate a transaction, after presenting the consumer with a significant number of available loan options, that results in the highest amount of *creditor* paid compensation if the terms and conditions for all of the loan options for which the consumer qualifies are the same.

## Examples and Explanations (Loan Terms)

### Example #2:

#### **Question:**

Can a mortgage company pay periodic bonuses if a Loan Originator achieves certain performance levels for the accuracy and completeness of the documents in their loan files?

#### **Answer:**

**Yes.**

*Again, compensation can be based on this factor.*

## Examples and Explanations (Loan Terms)

### Example #10:

#### Question:

Can a Loan Originator charge \$400 for an application fee, if he assumes the credit report will cost \$50 and the appraisal will cost \$250?

**Answer:** **No.** *This would be an example of impermissible upcharging. This can be illustrated as follows:*

#### Loan A

- Borrower charged \$400 Application Fee
- Credit report = \$50
- Appraisal = \$300
- The Appraisers from whom the LO chooses usually charge between \$300 and \$350.
- Loan Originator may keep \$50 – this is not deemed compensation.
- THIS IS NOT UPCHARGING**

VS.

#### Loan B

- Borrower charged \$400 Application Fee
- Credit report = \$50
- Appraisal = \$300
- The Appraisers from whom the LO chooses usually charge between \$250 and \$300.
- Loan Originator may not keep \$50 .
- THIS IS UPCHARGING**

## Examples and Explanations (Loan Terms)

### Example #12:

**Question:** My company has 2 offices:

- 1) New York City, which closes on average 45 loans per month, and
- 2) Manchester, New Hampshire, which closes about 4 loans per month.

Can I pay my Loan Originators in N.H. a higher commission?

**Answer:**

**Yes.**

*Commentary Section 226.36(d)(i)-3.viii provides for varying compensation to Loan Originators based on geographic area. To encourage Loan Originators to originate loans in rural areas, those Loan Originators can be paid a higher commission than those originating loans where there is more significant lending volume.*

## Examples and Explanations (Loan Terms)

### Example #18:

#### Question:

Can a mortgage company compensate its Loan Originators such that it pays each Loan Originator \$1,000 per loan for the 1<sup>st</sup> 500 loans arranged, and then \$700 for each additional loan arranged?

#### Answer:

**Yes.**

*Again, a payment plan fixed in advance for every loan the Loan Originator arranges for the creditor is an example of permissible compensation.*

## Examples and Explanations (Loan Terms)

### Example #19:

#### Question:

Can a mortgage company offer an incentive promotion to its Loan Officers, such that the Loan Officer with the highest average interest rate on his originated loans each quarter receives an gift?

#### Answer:

**No.**

*Compensation to Loan Originators cannot be based on loan terms (including interest rate). Compensation includes any periodic bonus and any merchandise, services, or trips.*



## Examples and Explanations (Loan Terms)

### Example #26:

#### **Question:**

Can a mortgage company compensate the Managers of its branches based on branch profits if the Manager has management responsibilities and also originates some loans?

#### **Answer:**

**No.**

*If a branch Manager originates loans, then the Manager cannot receive compensation based on loan terms. Being a Loan Originator subjects all compensation received by the Manager to the Fed rule, even compensation received in the Manager's capacity as a manager. It should be noted, however, that the Manager, like other originators, can receive a fixed percentage amount of all loans originated.*

## Examples and Explanations (Steering)

### Example #27:

#### Question:

In the scenario below, can the Broker steer the Borrower to Creditor B's Loan?

#### Creditor A Loan

- Borrower qualifies for loan
- Same terms/conditions as Creditor B Loan
- Loan is in the Borrower's interest
- Pays Broker 4% Commission

vs.

#### Creditor B Loan

- Borrower qualifies for loan
- Same terms/conditions as Creditor A Loan
- Loan is in the Borrower's interest
- Pays Broker 5% Commission

#### Answer:

**Yes.** *The steering prohibition is not violated when the Loan Originator (the Broker) directs the Borrower to a loan that will result in greater compensation to himself provided that the terms and conditions on that loan – compared to other possible loan offers available through the Loan Originator and for which the Borrower qualifies – are the same.*