

ADVOCACY SUBMITS COMMENTS ON THE CONSUMER FINANCIAL PROTECTION BUREAU'S PROPOSED RULEMAKING ON MORTGAGE LOAN ORIGINATOR COMPENSATION

On October 16, 2012, the Office of Advocacy of the U.S. Small Business Administration (Advocacy) submitted a comment letter to the Consumer Financial Protection Bureau (CFPB) on the proposed rule on *2012 Truth in Lending Act (Regulation Z) Loan Originator Compensation*. A copy of Advocacy's comments can be found at www.sba.gov/advocacy.

- On September 7, 2012, the CFPB published in the Federal Register a proposed rule amending Regulation Z (Truth in Lending Act or TILA) to implement amendments to TILA made by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The proposal would implement statutory changes to Regulation Z's current loan originator compensation provisions, including a new additional restriction on the imposition of any upfront discount points, origination points, or fees on consumers under certain circumstances. It also provided additional guidance and clarification under the existing regulation's provisions restricting loan originator compensation practices.
- The proposed rule would require creditors to create and maintain records to demonstrate their compliance with provisions that apply to the compensation paid to or received by a loan originator for three years rather than two years. Advocacy encouraged the CFPB to clarify what is considered compensation and to consider a safe harbor that would provide small entities a mode of compliance without the complexity and cost of the rule.
- Dodd-Frank prohibits consumer payment of upfront points and fees in all residential mortgage loan transactions except those where no one other than the consumer pays a loan originator compensation tied to the transaction. The proposal requires that before a creditor or loan originator may impose discount points and origination points or fees on a consumer, the creditor must make available to the consumer a comparable, alternative loan that does not include such points or fees. The CFPB also seeks comment on whether the CFPB should adopt a "bona fide" requirement. Industry representatives stated that the zero point zero fee alternative was a bad choice that may be unrealistic for small players. They also stated putting all points and fees into interest rates may create a riskier loan. The small lenders may not have the ability to comply with the bona fide part of the proposal. Advocacy encourages the CFPB to give full consideration to the concerns of small entities and not impose the zero points-zero fees alternative and urged the CFPB to carefully consider the alternatives that are set forth by the industry.

- The proposal also clarifies and restricts pooled compensation, profit sharing and bonus plans for loan originators, depending on certain incentives to steer consumers to different transaction terms. It would permit employers to make contributions to 401(k) plans, employee stock option plans and other “qualified plans.” It also permits employers to pay bonuses or make contributions to non-qualified profit-sharing and retirement from general profits derived from mortgage activity, if the loan originator affected has originated five or fewer mortgage transactions in the last 12 months or if the company’s mortgage business revenues are limited. The CFPB sought comment on whether 25 percent or 50 percent would be the proper test for such limitation. Advocacy encouraged the CFPB to provide some clarification as to the definition of revenue. Advocacy also encouraged the CFPB develop a mortgage-related revenue limit that reflects the unique business structure of smaller industry members and provides relief to small entities.

For more information, visit Advocacy’s webpage at www.sba.gov/advocacy or contact Jennifer Smith at 202-205-6943.