



**2010 NRMLA ANNUAL MEETING**  
**National Reverse Mortgage Lenders Association**  
New Orleans, Louisiana  
November 3 - 5, 2010

**WEINER**  
**BRODSKY**  
**SIDMAN**  
**KIDER** PC

# **2010 NRMLA ANNUAL MEETING**

## **MEATBALLS, BILL MURRAY AND REVERSE MORTGAGE LENDING**

# **2010 NRMLA ANNUAL MEETING**

**IT JUST REALLY MATTERS!**

**THREE EXAMPLES**

# 2010 NRMLA ANNUAL MEETING

**ONE:** REGULATION Z FINAL RULE – LOAN  
ORIGINATOR COMPENSATION

**TWO:** REGULATION Z PROPOSED RULE –  
DISCLOSURES AND ADVERTISING

**THREE:** DODD-FRANK ACT

# LOAN ORIGINATOR COMPENSATION RULE

## LOAN ORIGINATOR COMPENSATION FINAL RULE: FIVE “BIG POINTS”

1. Basic Rule: No payments to loan originator or mortgage brokers based on the terms and conditions of the transaction, other than the “amount of credit extended” (loan amount).
2. However, if the consumer pays the originator directly, and the creditor does not also pay the originator, then payment may be based on loan terms and conditions.

## **LOAN ORIGINATOR COMPENSATION RULE**

### **LOAN ORIGINATOR COMPENSATION FINAL RULE: FIVE “BIG POINTS” (cont’d)**

- 3.** No steering to a loan not in the consumer’s interest, if the originator will be paid more for such a loan.
- 4.** Technically, applicable to closed end loans, only - including fixed rate HECM reverse mortgages.
- 5.** Effective for creditor applications received on and after April 1, 2011.

# LOAN ORIGINATOR COMPENSATION RULE

## TWO MAIN THEMES, AND AN OPEN ISSUE

- 1.** Compensation based on a loan term or condition is OK if the loan originator receives compensation *directly* (and only) from the consumer.
- 2.** Otherwise, compensation from the creditor based on loan amount (amount of credit extended) is OK, if based on a fixed percentage of that amount.
- 3.** Question: Is HECM “loan amount” the maximum claim amount or the principal limit advanced at closing?

# LOAN ORIGINATOR COMPENSATION RULE

## Direct Consumer Compensation Payments

- ✓ Compensation paid to a loan originator from loan proceeds is considered a direct payment from the consumer
- ✓ Compensation derived from an increased interest rate is not considered direct compensation from the consumer

# LOAN ORIGINATOR COMPENSATION RULE

## Direct Consumer Compensation Payments(cont'd)

- ✓ Points paid by the consumer are not considered payments directly from the consumer
- ✓ Loan originator may be paid a salary or hourly wage by the loan originator's employer that is not tied to a specific loan, even if the loan originator also receives direct compensation from the consumer

# LOAN ORIGINATOR COMPENSATION RULE

## Creditor Compensation Payments

- Compensation based on fixed percentage of the loan amount, with or without a fixed minimum or maximum dollar amount, where the fixed percentage and any minimum/maximum amounts remain the same for all loans (no “tiers” based on loan amount)
- Compensation based on loan originator’s overall loan volume (i.e., total dollar amount of credit extended or total number of loans originated), delivered to the creditor

# LOAN ORIGINATOR COMPENSATION RULE

## Creditor Compensation Payments (cont'd)

- Compensation based on long-term performance of the originator's loans
- Compensation based on hourly rate of pay to compensate the originator for the actual number of hours worked

# LOAN ORIGINATOR COMPENSATION RULE

## Creditor Compensation Payments (cont'd)

- Compensation based on whether the consumer is an existing customer of the creditor or a new customer
- Compensation based on payment that is fixed in advance for every loan the originator arranges for the creditor (e.g., \$600 for every loan arranged for the creditor, or \$1,000 for the first 1,000 loans arranged and \$500 for each additional loan arranged)
- Compensation based on the percentage of applications submitted by the loan originator to the creditor that result in consummated transactions

# LOAN ORIGINATOR COMPENSATION RULE

## Creditor Compensation Payments (cont'd)

- Compensation based on the quality of the loan originator's loan files (e.g., accuracy and completeness of the loan in consummated transactions)
- Compensation based on legitimate business expense, such as fixed overhead costs

# LOAN ORIGINATOR COMPENSATION RULE

## PROHIBITION ON STEERING

Loan originators are prohibited from directing or “steering” a consumer to a loan based on the fact that the originator will receive greater compensation from the creditor in that transaction than in other transactions the originator offered or could have offered, unless the consummated transaction is in the “consumer’s interest.”

# LOAN ORIGINATOR COMPENSATION RULE

## Prohibition On Steering: (cont'd)

- ❑ “Consumer’s interest” = transaction must be compared to other possible loan offers available through the originator (if any) for which the consumer was “likely to qualify” at the time of the transaction
- ❑ “Likely to qualify” = based on creditor’s standards and credit terms at the time of the transaction

# LOAN ORIGINATOR COMPENSATION RULE

## Prohibition On Steering(cont'd)

☐ Requirements of anti-steering provision deemed satisfied if:

- Loan originator reviews possible loan offers available from a significant number of creditors with which the originator regularly does business and directs the consumer to the transaction that will result in the least amount of creditor-paid compensation to the loan originator
- Safe harbor requirements met

# LOAN ORIGINATOR COMPENSATION RULE

## Prohibition On Steering: Safe Harbor Requirements

☐ Must meet all 3 of these “safe harbor” requirements:

- 1) Consumer must be presented with loan options from a significant number of the creditors with whom the loan originator regularly does business, that include:
  - A loan with the lowest interest rate
  - A reverse loan with the lowest interest rate with no prepayment penalty, shared equity, or shared appreciation
  - A loan with the lowest total dollar amount for origination points or fees and discount points
- 2) If more than 3 loan options are presented for each type of transaction, loan originator should highlight the 3 loan options which meet the above criteria
  - Less than 3 loan options for each type of transaction may be presented if the option(s) presented satisfy the above criteria (e.g., 1 loan meets all the requirements)
- 3) Loan originator believes in good faith that the consumer likely qualifies for the loan options presented

# LOAN ORIGINATOR COMPENSATION RULE

## What is not required by the anti-steering provisions:

- Loan originator is not required to meet the safe harbor requirements
- Loan originator is not required to establish a business relationship with any new creditors
- Loan originator is not required to inform a consumer about a potential transaction if the originator makes a good faith determination that the consumer is not likely to qualify
- Loan originator is not required to direct a consumer to the transaction that will result in a creditor paying the least amount of compensation to the originator

# LOAN ORIGINATOR COMPENSATION RULE

## Scope Of Coverage

### ☐ Who is subject to the new rule? “Loan Originators”

- Applies to a natural person and a mortgage broker company
- Applies to mortgage brokers (an originator that is not an employee of the creditor) and mortgage loan officers employed by mortgage brokers, mortgage bankers and financial institutions
- Applies to creditors that close a loan in their name, but use table-funding from a third party to fund the loan

# LOAN ORIGINATOR COMPENSATION RULE

## Scope Of Coverage(cont'd)

- ❑ Who is not subject to the new rule?
  - Does not apply to creditors that originate loans closed in their own names and with their own source of funds
  - Does not apply to servicers when the servicer modifies an existing loan on behalf of the current owner
  - Does not apply to managers, administrative staff and other employees of creditors and loan originators who do not originate loans and whose compensation is not based on whether any particular loan is originated

# LOAN ORIGINATOR COMPENSATION RULE

## Key Officer Staff Interpretation

### ☐ “Creditor Flexibility In Setting Terms”

This Rule “does not limit a creditor’s ability to offer a higher interest rate in a transaction as a means for the consumer to finance the payment of the loan originator’s compensation or other costs that the consumer would otherwise be required to pay directly.”

Example:

- Higher creditor interest rate if creditor pays all originator compensation
- Lower creditor interest rate if consumer pays all originator compensation

# **PROPOSED REVERSE MORTGAGE RULES**

## **REGULATION Z PROPOSED CONSUMER PROTECTION AND DISCLOSURE RULES FOR REVERSE MORTGAGES: FOUR MAJOR PARTS.**

# PROPOSED REVERSE MORTGAGE RULE

## ONE:

Improved Consumer Disclosures Provided In Connection With Reverse Mortgage Loans, Including Changes To The Timing, Format And Content Of Such Disclosures.

# PROPOSED REVERSE MORTGAGE RULE

## **TWO:**

Required A New, Two-Page Disclosures To Be Given At Application For A Reverse Mortgage Loan To Clarify Basic Features And Risk of Reverse Mortgages.

# PROPOSED REVERSE MORTGAGE RULE

## **THREE:**

Prohibiting Certain Practices in the Sale of Financial Product in Connection with a Reverse Mortgage Loan, Including Prohibiting a Creditor from Conditioning a Loan on the Purchase of Another Financial or Insurance Product.

# PROPOSED REVERSE MORTGAGE RULE

## **FOUR:**

Imposing New Rules On The Advertising  
Of Reverse Mortgage Loans.

## DISCLOSURE AT APPLICATION

“Key Questions To Ask About Reverse Mortgage Loans” to replace the current HELOC and closed-end application disclosures.

# REVERSE MORTGAGE COST DISCLOSURES

NEW REQUIRED INFORMATION

ABOUT REVERSE MORTGAGE

TOTAL COSTS:

**“OUT WITH TALC”**

# **PROPOSED REVERSE MORTGAGE RULES**

## **PROHIBITION ON CROSS-SELLING OF REVERSE MORTGAGES.**

# PROPOSED REVERSE MORTGAGE RULES

## REVERSE MORTGAGE ADVERTISING.

# DODD-FRANK ACT

- Title X – Consumer Financial Protection Bureau
- Title XIV – Mortgage Reform & Anti-Predatory Lending Act

# **DODD-FRANK ACT**

## **Dodd-Frank Wall Street Reform and Consumer Protection Act**

Section 1032(f) – Combined Disclosures under TILA & RESPA

Section 1076 – Reverse Mortgage Study & Regulations

# **DODD-FRANK ACT**

## **Dodd-Frank Wall Street Reform and Consumer Protection Act**

### **Section 1083 – Alternative Mortgage Transaction Parity Act**

-Background – allows state housing creditors to originate ARMS and alternative mortgage transactions despite state law to the contrary.

- Amendments may limit preemption of state laws that preclude reverse mortgages, shared appreciation mortgages and other non-traditional mortgages.

# DODD-FRANK ACT

## Dodd-Frank Wall Street Reform and Consumer Protection Act

### Section 1094 – Amendments to Home Mortgage Disclosure Act

-Increases types of information reported by financial institutions and available to public

- Points & fees at origination
- Difference between APR & benchmark
- Term of prepayment penalty
- Value of collateral
- Duration of introductory rate
- Loan term
- Origination channel
- Borrower credit score

# **DODD-FRANK ACT**

## **Dodd-Frank Wall Street Reform and Consumer Protection Act**

Section 1400 – Mortgage Reform and Anti-Predatory Lending Act

Subtitle A – Residential Mortgage Loan Origination

Subtitle B – Minimum Standards for Mortgages

Subtitle C- High Cost Mortgages

Subtitle D – Office of Housing Counseling

Subtitle E – Mortgage Servicing

Subtitle F – Property Appraisal Requirements

# **DODD-FRANK ACT**

## **Dodd-Frank Wall Street Reform and Consumer Protection Act**

### Section 1401 – Definitions

- Mortgage Originator Broader than SAFE Act
- Residential Mortgage Loan

# **DODD-FRANK ACT**

## **Dodd-Frank Wall Street Reform and Consumer Protection Act**

Section 1402 – Duty of Care

Section 1403 – Prohibition on Steering Incentives  
& Mortgage Originator  
Compensation Restrictions

Section 1405 – Bureau's Discretionary Regulatory  
Authority

# **DODD-FRANK ACT**

## **Dodd-Frank Wall Street Reform and Consumer Protection Act**

Section 1411 – Ability to Repay

Section 1412 – Rebuttable Presumption for Ability to Repay Standard

Section 1413 – Defense to Foreclosure  
- Not really a defense to foreclosure

# **DODD-FRANK ACT**

## **Dodd-Frank Wall Street Reform and Consumer Protection Act**

Section 1414 – Prohibition on Prepayments  
- Arbitration Clauses Prohibited

Section 1416 – Amendments to Civil Liability Provisions

# **DODD-FRANK ACT**

## **Dodd-Frank Wall Street Reform and Consumer Protection Act**

Section 1417 - Lender's Rights in the Context of Borrower Deception

Section 1419 - New TILA Disclosures

- Settlement Charges
- Wholesale Rate of Funds
- Mortgage Originator Fees
- Interest Paid as Percentage of Principal

# **DODD-FRANK ACT**

## **Dodd-Frank Wall Street Reform and Consumer Protection Act**

### **Section 1420 – Disclosures Required in Monthly Statements**

- principal amount
- current interest rate
- date of interest rate adjustment
- amount of prepay fee
- description of late payment fee
- phone number & e-mail for info
- contact info for HUD or State authority
- other info required by CFPB

# DODD-FRANK ACT

## Dodd-Frank Wall Street Reform and Consumer Protection Act

Subtitle F – Appraisal Activities

Section 1471 – Property Appraisal Requirements

- Applies to Higher-Risk Mortgages
  - “Non-Qualified” Reverse Mortgages Exceeding APR Threshold
    - Super Appraisal Requirement
    - Physical Property Visit
    - Second Appraisal Under Certain Circumstances
      - No Cost to Applicant
    - Free Copy of Appraisal
    - Consumer Notification
    - Violations - \$2,000

# **DODD-FRANK ACT**

## **Dodd-Frank Wall Street Reform and Consumer Protection Act**

### Section 1472 – Appraisal Independence Requirements

- Acts or Practices that Violate Appraisal Independence
- Exceptions
- Prohibitions on Conflicts of Interest
- Mandatory Reporting
- No Extension of Credit
- Appraisal Report Portability
- Customary and Reasonable Fee
- Sunset of HVCC
- Penalties

# **DODD-FRANK ACT**

## **Dodd-Frank Wall Street Reform and Consumer Protection Act**

Section 1473 – Amendments Relating to FFIE Appraisal Subcommittee

Section 1474 – Equal Credit Opportunity Act Amendment

Section 1475 – RESPA Amendment Relating to Appraisal Fees

# **2010 NRMLA ANNUAL MEETING National Reverse Mortgage Lenders Association**

**New Orleans, Louisiana  
November 3 - 5, 2010**

**JAMES A. BRODSKY**  
brodsky@wbsk.com

**JOEL A. SCHIFFMAN**  
schiffman@wbsk.com

## **WEINER BRODSKY SIDMAN KIDERPC**

1300 19<sup>th</sup> Street, NW., 5<sup>th</sup> Floor  
Washington, DC 20036  
Phone: 202-628-2000 Fax: 202-628-2011

4695 MacArthur Court, 11<sup>th</sup> Floor  
Newport Beach, CA 92660  
Phone: 949-798-5570 Fax: 949-798-5571

**Washington, DC★ Dallas, TX★ Newport Beach, CA**  
[www.wbsk.com](http://www.wbsk.com)