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Will your loan originator compensation plan pass muster?

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Dust off your payroll records, loan originator compensation agreements and your accounting policies and procedures. The Consumer Financial Protection Bureau (CFPB) will be looking at these documents to determine if companies and individuals with managerial responsibility are violating the Loan Originator Compensation Rule that went into effect in April 2012.

The rule prohibits any person from paying a loan originator compensation, *directly or indirectly,* that is based on any of a loan transaction's terms or conditions. Basically, it bans compensation that incentivizes a loan originator to steer customers into mortgage loans with less favorable terms, such as higher interest rates. This seems like old news, but after last week, a refresher is in order.

In 2013, the CFPB fined Castle & Cooke Mortgage, LLC and its president and senior vice president for paying quarterly bonuses to loan originators that were based on the interest rates of the loans closed during the quarter. The CFPB forced them to disgorge $9.2 million to affected consumers who paid a higher rate than they otherwise should have and another $4 million as a civil money penalty.

On June 4, 2015, the CFPB fined RPM Mortgage, Inc. and its CEO for setting up a loan originator compensation plan that funneled interest rate-based bonuses to loan originators through their expense accounts. The CFPB, through this enforcement action, has demonstrated how indirect compensation violates the Loan Originator Compensation Rule. RPM will be required to pay $18 million to affected consumers and $1 million in a civil money penalty. In addition, the CEO will be required to pay $1 million in a civil money penalty.

Officers of lenders should pay close attention. The CFPB levied the civil money penalty against RPM's CEO individually. This follows the CFPB's trend of deterring violations by holding company officials individually liable.

Beyond compliance with the compensation rule, this issue is vitally important in this age of qualified mortgages (QMs). Failure to comply with these rules can disqualify a loan from being considered a QM and create the risk of significant issues with investors and security holders related to repurchase and loan pushbacks.

Mortgage companies should review their loan originator compensation plans annually to ensure that compensation is not based on the terms or conditions of the loans originated. Internal testing and close analysis of sales-level practices are not optional. We are often tasked with directing gap analyses by company officers, so that an unbiased set of eyes can help ensure that lender compliance efforts are "bullet proof." The results are sometimes surprising.

For more information on this case, read the CFPB press release.

Authors