WEST VIRGINIA HOUSING INSTITUTE, INC.

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# A retailer's guide to dealing with Dodd-Frank issues

**You should explain at your initial meeting that new federal law requires you to have limited discussions concerning financial terms of any loans and that the consumer should instead have those discussions solely with the lending institutions of his or her choice.**

New rules effective Jan. 1, 2014, implement the Dodd-Frank Act, federal legislation aimed, in part, at protecting consumers from financial problems relating to home mortgages. One of the new rules relates to loan originator compensation ("LO Comp Rule").

Similar to the SAFE Act, which deals with state mortgage loan originator ("MLO") licensing, the LO Comp Rule deals with loan originators ("LOs"); however, the activities regulated by each law are not the same. First, the LO Comp Rule applies to both individuals and entities. By contrast, the SAFE Act's MLO licensing requirements apply only to individuals. Second, the LO Comp Rule's coverage is determined by federal law, while SAFE Act licensing requirements are determined by state law.

As a result, the determination of whether you are a MLO required to be licensed under the state SAFE Act is separate and apart from the determination of whether your activities are LO activities under the LO Comp Rule. While it is a separate analysis, if an individual is a LO under the LO Comp Rule, the individual will likely need to be licensed as a MLO under the SAFE Act.

Two developments are vital to retailers and others in the manufactured housing business. Those are the creation of the Consumer Finance Protection Bureau (CFPB), which is the heart of the Dodd-Frank Act; and the LO Comp Rule, which defines activities that make an individual or entity a LO and contains restrictions on compensation for covered individuals and entities.

**Employees of a manufactured housing retailer are not LOs under the LO Comp Rule if they do not take applications, offer or negotiate credit terms, or advise a consumer on credit terms.**

If you are considered a LO under the LO Comp Rule, you are likely subject to state licensing, testing, regulations, and continuing education requirements. Furthermore, if a retailer or its employees engage in LO activities under the LO Comp Rule, compensation paid to the retailer for loan origination activities is included in the "points and fees" calculation for determining whether a loan is a high-cost mortgage and whether the loan is a qualified mortgage. Finally, the compensation received by the individual and retailer would be subject to the LO Comp Rule's compensation restrictions. <u>As a result, you do not want to be considered a LO under the LO Comp Rule unless you do so knowingly and purposefully.</u>

**Note, even if your salespeople are independent contractors, <u>you are liable if they violate the rule</u>, and you may be considered a loan originator organization.**

The CFPB revised the LO Comp Rule as part of a series of new regulations applicable to the mortgage industry. The new LO Comp Rule, along with the other regulations, are aimed at preventing perceived abuses in the mortgage industry that contributed to the recent financial crisis.

Much of Dodd-Frank, as well as its implementing regulations, deals with how creditors and servicers will make, underwrite and service loans. Since those issues are beyond the control of retailers in our industry, they will not be addressed here. Each creditor is making its own arrangements on how to deal with Dodd-Frank and those with whom you have done business doubtless will be in touch with you. We have been told that creditors are considering the development of a common, generic loan application form that will be accepted by many creditors to avoid steering and referral issues.

The LO Comp Rule is designed to protect consumers by reducing incentives for loan originators to steer consumers into loans with particular terms and by ensuring that loan originators are qualified.

**This is for your guidance only and does not represent or purport to represent final legal advice; you should contact your own attorney in all areas in which you have a question.**

Keep this in mind: Employees of a manufactured housing retailer are not LOs under the LO Comp Rule if they do not take applications, offer or negotiate credit terms, or advise a consumer on credit terms. Credit terms mean rates, fees and other costs. Credit terms are selected based on the consumer's financial characteristics when those terms are selected based on any factors that may influence a credit decision, such as debts, income, assets or credit history.

If a retailer or its employees are considered LOs under the LO Comp Rule, here are some clear rules about what a retailer and its employees cannot do:

--Be compensated based on transactions terms, except the loan amount.

--Be compensated by both the creditor and a consumer or other party.

Note, even if your salespeople are independent contractors, <u>you are liable if they violate the rule</u>, and you may be considered a loan originator organization.

Below is a list of activities that make a retailer's employees LOs under the LO Comp Rule, as well as a list of activities that may be conducted by a retailer's employee without the employees being considered LOs.

# What you cannot do

Without being considered LOs under the LO Comp Rule, a retailer's employees cannot:

--Fill out a loan application, or in any way physically assist the applicant in filling out the application. Two interpretations of this rule should make it clear. You cannot fill out an application form for a blind customer; you cannot provide a foreign-language translator that completes an application form for a person who does not speak English. You can, however, provide a translator for a non-English speaker, but they cannot fill out the forms.

--Input application information into an online application or other automated system.

--Take a loan application over the phone and then put that information into a form to be sent to a creditor.

--Email a completed application to a creditor that the customer completed on the retailer's computer.

--A consumer may go to a lender's website from your office and fill out the lender's application; however, the consumer should transmit the application to the lender.

--Discuss specific terms of a loan.

-- Present credit terms for the consumer's consideration that are selected based on the consumer's financial characteristics, or communicate with a consumer for the purpose of reaching a mutual understanding about prospective credit terms. This means a creditor or loan originator, as opposed to a retailer or its employees, should provide credit approvals with credit terms to the consumer in the first instance.

--If a bank owns the home and offers a special financing package for you to transmit to consumers, you will be in violation of the act if you do so because that could be seen as offering credit terms and steering.

--Arrange/schedule loan closings with consumers. Retailer employees can still administer a loan closing and make sure the consumer properly completes all forms in a closing packet; however, the lender, not the retailer employee, should discuss credit terms and answer a borrower's questions relating to credit terms at closing. A duly licensed MLO employed by the lender should be available in person or by telephone during the loan closing to answer the borrower's questions.

--Direct, refer or steer a customer to any creditor or loan originator.

--If you are a dealer and have an in-house MLO, then you can recommend your own MLO to the consumer, just like any other lending institution, but your loan originator cannot "steer" a consumer to a loan based on the fact that the loan originator will receive greater compensation from the creditor in that transaction than in other transactions the originator offered or could have offered to the consumer, unless the consummated transaction is in the consumer's best interest. There are detailed rules about what loans would be in the consumer' best interest.

--In this situation, the MLO and non-MLO need to be employees of the same entity and the non-MLOs cannot make the referral based on an assessment of the consumer's financial characteristics. The non-MLO should also not discuss credit terms that are or may be available.

--Negotiate terms of the loan.

--Ask for or collect consumer information such as the customer's debts, income, assets, or credit history for the purpose of determining his or her financial characteristics to then select credit terms or the creditors or loan originators that you will provide information about to the consumer.

--Examine the consumer's credit history (which could include the credit score), income, debts or assets and then select credit terms that are available or potentially available as a result.

--Examine the consumer's credit history (which could include the credit score), income, debts or assets to select which creditors or loan originators you will provide information about to the consumer.

--Discuss credit terms that may be available from a creditor or loan originator based on the consumer's financial status.

--Tell a consumer a specific interest rate that can be offered.

--Answer direct questions that would sway a consumer to choose a creditor or loan originator. For example, you cannot respond to questions such as, "Which lender is best? Which lender would you use? Which lender will make my monthly payments lowest?"

--Do anything to influence the consumer to select a creditor or loan originator.

--Provide an application form for only one creditor.

-- Quote rates, fees, costs, payments, required down payments or other credit terms that may be available for loan products that are offered by creditors.

--Assist a consumer in selecting which credit terms to choose or which loan product to choose when he or she has obtained multiple approvals.

--Advertise estimated monthly payments.

--Advertise the retailer can provide or help find financing.

--Advertise promotion terms dealing with rates.

--Have signs that discuss the ease of getting financing.

Avoid saying:

--"No credit, no problem."

--"Buy here, pay here."

--"No credit check financing."

--"Your land is your down payment."

On the other hand, you can say:

"Lenders offer rates as low as 3 percent to qualified consumers."

# What is permissible

Here are some activities that will not make a retailer's employees LOs under the LO Comp Rule:

--Generally provide credit application instructions to consumers so that consumers can complete an application, such as describing the meaning of the terms: "assets, primary residence, monthly income, declarations (legal terms such as bankruptcy, alimony) liabilities and recurring debts." When providing application instructions, you should avoid the appearance that you are telling the customer what information to put on the application.

--Generally describe the credit application process without advising on credit terms.

--"The lender, with your approval, will pull your credit report to let them understand your financial profile."

--"The lender will need to verify your income sources and employment."

--"The lender will take your income, job and debt information and evaluate whether you might qualify for their loan."

--In response to an inquiry, describe credit language and what those terms mean, such as what is an interest rate, what is the APR, or the meaning of common fees in a transaction, such as titling fees, flood certification fees, credit report fees, or "points" and origination fees without getting into specifics. When discussing the meaning of common fees and costs, you should be cautious.

--Provide general application instructions to consumers so they can fill out their applications and highlight on the application the places they need to complete.

--Answer specific questions asked by the consumer about the application process as long as the responses do not deal with credit specifics or in any way direct a consumer to, or influence a consumer to choose, any creditor or loan originator.

--Provide to the consumer a list of creditors that likely will make manufactured housing loans in the general area.

--When compiling a list of potential lenders, do it by alphabetical order and hand that list with the fax numbers, addresses, website addresses and email addresses for lenders and loan originators to the consumer.

--Allow lending institutions to advertise their products within the retailer's offices through flyers and brochures as long as it is done in a neutral manner and does not rise to the level of referral or steering.

--Discuss sales related details with creditor personnel. In doing so you should refrain from discussing financing related details.

--Administer loan closing, including making sure the borrower has signed all forms contained in the closing packet. However, a retailer employee cannot arrange/schedule the closing and should not discuss credit terms or answer question relating to credit terms at the loan closing. A duly licensed MLO employed by the lender should be available in person or by telephone during the loan closing to answer the borrower's questions.

--Pull a consumer's credit report for ***sales-related purposes***, such as qualifying a customer for a sale by matching a customer with the correct home and determining whether the customer is a *bona fide* prospect, but ***not*** credit related purposes. A retailer employee should not pull a consumer's credit report to direct the consumer to a particular lender or loan terms or use it to determine what credit terms may be available. The retailer employee also should not use the contents of the credit report to determine the names of available lenders that the retailer employee will provide to the consumer. When obtaining a credit report, it is advisable that you have the consumer's prior signed authorization and that you not provide the consumer with a copy of the credit report. The authorization instructions may include instructions to the consumer on how the consumer can pull his or her own credit report.

--A community may still pull a consumer credit report for residency qualifying purposes. Again, it is advisable that you have the consumer's prior written signed authorization.

--Pull a consumer's credit report for ***sales-related purposes***, such as qualifying a customer for a sale by matching a customer with the correct home and determining whether the customer is a *bona fide* prospect, but ***not*** credit related purposes.

You still can administer a loan closing, but make sure the lender has an MLO at least in contact by telephone

# General guidance

For your general information:

--You should explain at your initial meeting that new federal law requires you to have limited discussions concerning financial terms of any loans and that the consumer should instead have those discussions solely with the lending institutions of their choice.

--Without being considered loan originators, retailer employees are permitted to provide or make available general information about creditors or loan originators that may offer financing in the general area. This must be done in a manner that does not amount to referral. One method that could accomplish this may be for retail centers to compile a list of all lenders and their fax numbers that may be available and make that list available to potential customers.

-- When compiling a list of potential lenders, do it by alphabetical order and hand that list with the fax numbers, addresses, website addresses and email addresses for lenders and loan originators to the consumer.

- Retail centers can also make available, in a neutral manner, general brochures or information about the different creditors or loan originators that may be available.

--Retailer employees should not recommend a particular creditor or loan originator or otherwise influence the consumer's decision to choose a particular creditor, loan originator or loan product.

--Activities you perform in connection with a prequalification form should be viewed the same as activities you perform with credit applications and origination. As a result, you should limit your activities accordingly.

- When compiling a list of potential lenders, do it by alphabetical order and hand that list with the fax numbers, addresses, website addresses and email addresses for lenders and loan originators to the consumer.

This document was prepared by Andy Gallagher, executive director of the West Virginia Housing Institute Inc., with input from many others and with expert legal advice. This document has been fully vetted by the best legal minds in the in the industry and is issued with their approval. Having said that, Gallagher is fully responsible for the content. . Gallagher can be reached at (304) 415-4187 or andy@wvhi.org