



## Loan Originator (LO) Compensation

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### III. Loan Originator Compensation Restrictions; Profits-Based Compensation Exceptions

# Key Compensation Restrictions

- **Loan originators may not receive compensation based on the terms of a transaction (except for payments based on a fixed percentage of the loan amount).**
- **Loan originators may not receive compensation from both the consumer and another party, such as a creditor (referred to as “dual compensation”).**
- **Loan originators may not steer a consumer to a transaction that will result in more compensation for the loan originator, unless the transaction is in the consumer’s interest.**

# Prohibition on Compensation Based on Loan Terms

**No loan originator can receive and no person can pay to a loan originator, directly or indirectly...**

- **Compensation in an amount that is based on terms of transactions (or proxies for terms of transactions) of:**
  - a single loan originator, or
  - multiple loan originators (limited exception: some profits-based compensation).

# Terms of a Credit Transaction

## **Terms of a credit transaction include, but are not limited to:**

- **The interest rate;**
- **The annual percentage rate;**
- **The existence of a prepayment penalty;**
- **The collateral type (e.g., whether the property is a condo or a detached home); and,**
- **Loan origination fees.**

# Compensation Methods Not Based on Loan Terms

## Compensation methods not based on loan terms, effectively serving as safe harbors, include:

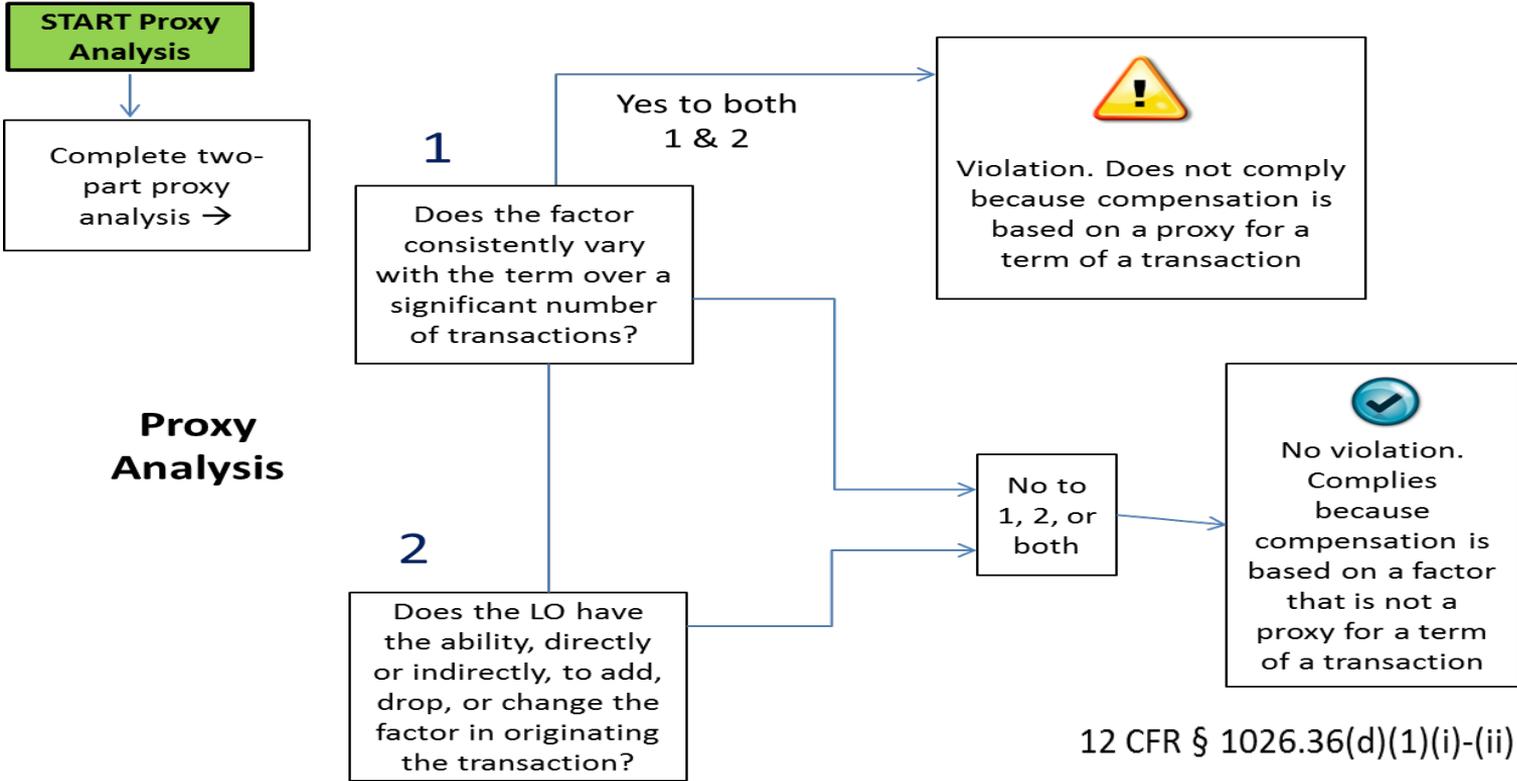
- Overall loan volume of loan originator (i.e., total dollar amount of credit extended or total number of transactions originated);
- Long term performance of loan originator's loans;
- Quality of loan originator's files submitted to the creditor (i.e., accuracy and completeness of the loan documentation); and,
- A dollar amount fixed in advance (for example, \$100 for every loan application that closes).

# Proxy for Loan Term

**A factor that is not a term of a transaction may be a proxy for a term of a transaction if:**

- **The factor consistently varies with a loan term over a significant number of transactions; and**
- **The loan originator has the ability, directly or indirectly, to add, drop, or change the factor in originating the transaction.**

# Proxy Analysis Flowchart



# What Counts as Profits?

**Profits include all revenue generated from closed-end consumer credit transactions secured by dwellings that you or your affiliate originates, including:**

- **Origination fees;**
- **Interest ;**
- **Income from servicing ; and**
- **Proceeds earned from secondary market sales.**

# Tax-Advantaged Compensation Plan Exception

**Compensation in the form of a contribution or benefit to a designated tax-advantaged plan is excepted from the prohibition against compensation based on loan terms of multiple loan originators (i.e., bank profits from mortgage-related activities) , so long as the amount of the compensation is not based on the terms of the individual loan originator’s transactions.**

- **The LO Comp Rule defines the term “designated tax-advantaged plan” as a deferred compensation plan that meets certain requirements under the Internal Revenue Code, such as 401k’s, pensions, or annuity plans.**

# Profits-Based Bonus and Other Non-Deferred Compensation Plan Exception

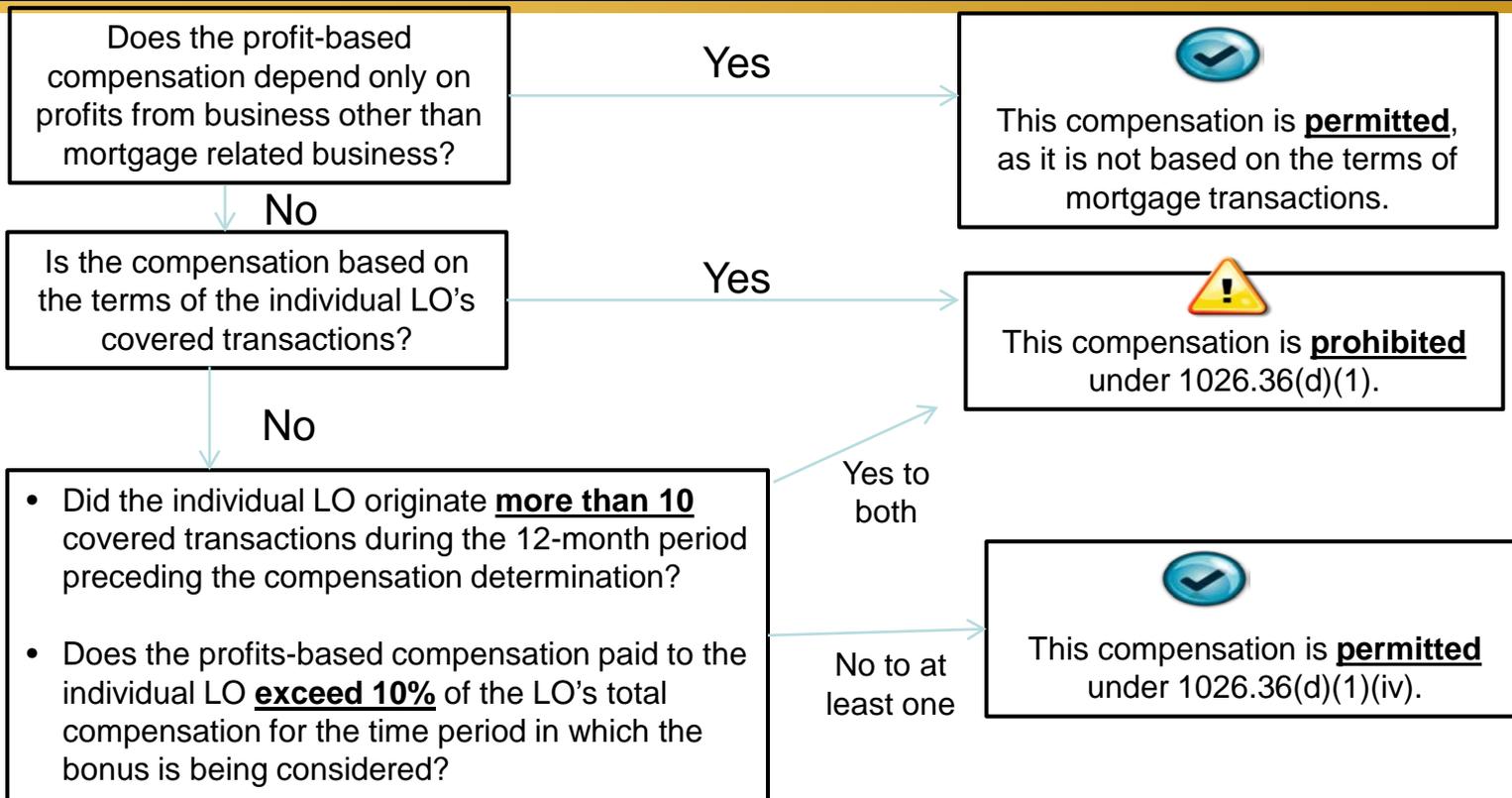
Compensation in the form of a profits-based bonus or similar payment (i.e., based on bank profits from mortgage-related activities) to an individual loan originator under a non-deferred compensation plan is excepted from the prohibition against compensation based on loan terms of multiple loan originators, provided that:

- Compensation paid is not based on the terms of that individual loan originator's transactions; and

Either:

- The compensation does not, in the aggregate, exceed 10 percent of the individual loan originator's total compensation corresponding to the time period for which the non-deferred profits-based compensation under the plan is paid; or
- The individual loan originator was a loan originator for ten or fewer transactions during the 12-month period preceding the date of the compensation determination.

# Loan Originator Rule Profit-Based Compensation Analysis Flowchart



# Calculating Total Compensation

## **In calculating total compensation, count:**

- **The loan originator's wages and tips reportable for Medicare tax purposes in box 5 on IRS Form W-2, or IRS Form 1099-miscellaneous if the originator is an independent contractor, or, if applicable, both.**
- **The cash value of any merchandise, services, or trips awarded to the loan originator during the relevant time period.**

## **If you choose to do so, you may also include:**

- **All contributions you actually made during the relevant time period to tax-advantaged, deferred contribution plans; and**
- **All compensation earned during the relevant time period (regardless if paid) under non-deferred, profits-based compensation plans.**