**Small Business Review Panel and Cost of Credit Consultation for Residential Mortgage Loan Origination Standards Rulemaking**

## DISCUSSION ISSUES FOR SMALL ENTITY REPRESENTATIVES

To help frame the small entity representatives' discussion of issues and cost of credit matters during the upcoming meeting with the Small Business Review Panel, we list below questions on which the CFPB seeks your advice, input, and recommendations. You may find it helpful to refer to the "Outline of Proposals Under Consideration and Alternatives Considered" ("Outline of Proposals") enclosed with this document as you think about these questions.

Please note that the questions below were designed to assist you in identifying the type of information you may need effectively to participate in the discussion with the Panel and other small entity representatives. We recognize that some of these questions may not apply to you or your business. When a topic is relevant to you, please discuss it based on either your own experience or your knowledge of the experience of other small entities in your same line of business. It may also be useful to the discussion to provide specific examples of issues that have arisen in your mortgage loan origination activities.

We are not asking the participating small entities to produce or provide detailed data during the discussion with the Panel. The Panel, however, wants to understand the potential economic impacts of the particular proposals under consideration by the CFPB discussed in the Outline of Proposals. The Panel's understanding may be enhanced if you can provide a general sense of the type and amount of any costs to comply with the proposals under consideration. Some of the questions suggest ways in which you might want to consider those costs as you prepare for the general discussion. The CFPB welcomes any quantitative information you may choose to provide in response to those questions, either during the meeting or afterward, but those questions should not be treated as data requests. If you find that company-specific information may be helpful to the discussion, we encourage you to frame your response in a manner that protects your company's proprietary information, as your responses will be included in a public report.

As you prepare for the discussion, then, please think about the following general issues as they relate to the proposals under consideration and to the questions below:

- The potential effects of the proposed requirements and alternatives on your company's systems, operations, and compliance costs.[1]
- The amount of time you would need to make any changes to your systems or operations or take other actions you believe would be required in order to comply with the proposals under consideration.
- The number or percentage of transactions conducted by your company that may be impacted by the proposals under consideration.
- The potential costs and/or benefits for your company.
- Based on any direct knowledge or experience you may have, how your or other small companies' anticipated compliance costs may differ from those of larger entities, and the characteristics of small companies compared to larger companies that may contribute to these differences.

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[1] Please note that the terms "business" and "company" include "organization," as appropriate.

## I. BAN ON DUAL COMPENSATION AND LIMITATIONS ON UPFRONT PAYMENTS OF DISCOUNT POINTS, ORIGINATION POINTS, OR FEES

Dodd Frank prohibits the customer from paying upfront points and fees to the mortgage loan originator ("MLO"), creditor, or their affiliates in all retail and wholesale residential mortgage loan originations if the creditor is paying the MLO. The CFPB is considering a proposal under which it would exercise its exemption authority to: (1) permit the payment of bona fide discount points (*i.e*., points which result in a minimum reduction of interest rate for each point paid) where the creditor also offers the option of a no discount point loan; and (2) permit upfront origination fees to be paid to the MLO or creditor provided that such fees are flat (*i.e*., do not vary with the size of the loan).

Dodd-Frank prohibits brokerages from paying individual brokers a commission if the consumer has paid the brokerage. The CFPB is therefore considering a proposal under which it would exercise its exemption authority and permit brokerage-paid compensation structures under similar conditions and restrictions discussed above in connection with creditor-paid compensation.

1. What portion of your residential mortgage loan compensation is:

    a. "consumer-paid," where the consumer (borrower) pays a brokerage firm or creditor and the remuneration to the respective brokerage employee or loan officer originating the mortgage is structured more like a salary than a commission;

    b. "brokerage-paid," where the consumer pays the brokerage firm and the brokerage firm pays its employee broker compensation tied to the transaction; and

    c. "creditor-paid," where the creditor may pay compensation to MLOs that are its loan officers or to a brokerage firm (including where the brokerage firm then pays its employee brokers)?

2. Over the last year, what percentage of your customers paid discount points to reduce the coupon rate on their mortgage loan? What average reduction in the coupon rate on a loan of a given size did customers obtain by paying: (a) one discount point, and (b) two discount points? Has the percentage of customers paying discount points or the average reduction obtained varied over the past several years?

3. When you offer a customer the opportunity to buy down the coupon rate on his or her loan by paying discount points, do you simultaneously market a loan of similar size but without discount points to that customer?

4. When you offer mortgage loans with origination points, do you also offer consumers a mortgage loan of similar principal but without origination points? On average, over the last few years, how have the yields differed on no-point loans relative to one-point loans?

5. How would a prohibition on the upfront payment by the consumer of all discount points and origination fees in loan originations affect your business and the types and volume of loans you could originate where: (a) there is creditor-paid compensation, and (b) where there is brokerage-paid compensation?

6. What fees that are typically charged vary with the size of the loan? Which ones do not vary? Do the costs of providing services associated with the fees vary with the size of the loan and if so, how?

7. In addition to the proposals under consideration described above, the CFPB has considered imposing the following additional conditions on the allowance of certain upfront points and fees: (1) consumers must be offered the option of a no-point, no-fee loan; and (2) there must be a reasonable relationship between the payment of upfront fees and the loan's interest rate (with the possible exception of discrete, "add-on" benefits or services requested by the consumer, such as fees for rate lock or expedited handling). What impacts, if any, would these additional conditions have on your business?

8. The CFPB is considering a proposal that would permit upfront fees to also be paid to affiliates of the MLO or affiliates of the creditor, provided that such fees are flat and so do not vary with the size of the loan. Payments to affiliates of the MLO or creditor for title insurance, however, would be permitted to vary with the size of the loan.

   Does your company control or is your company controlled by another entity that supports your loan origination business? Is your company under common control with another company that supports your loan origination business? If your answer to either question is yes:

   a. How do these affiliated entities support your business?
   b. How are these affiliated entities currently compensated? To what extent are these affiliates compensated based on terms or conditions other than the amount of credit extended?
   c. Do you believe the same conditions imposed on upfront points and fees paid by consumers to creditors or MLOs should also be imposed on affiliates of these entities? Why or why not? How would the proposals under consideration relating to potential conditions on affiliate fees impact your business model or practices?

9. What potential costs and burdens, if any, do you believe that a "sunset provision," as described in the Outline of Proposals, would impose on your business? Do you believe that a mandatory assessment provision would impose the same, greater, or lesser costs and burdens?

## II. MLO COMPENSATION THAT VARIES BASED ON LOAN TERMS (OTHER THAN PRINCIPAL)

### A. Compensation Based on Profits Derived from Mortgage Business

Much like the Board's Loan Originator Rule, Dodd-Frank generally prohibits MLOs from receiving compensation that varies based on the terms of the mortgage transaction. However, Dodd-Frank makes one significant change by imposing this ban even on transactions in which the consumer compensates the MLO. As detailed in the Outline of Proposals, the CFPB is considering proposals to clarify the permissibility of various payments under qualified retirement, profit-sharing and similar plans and non-qualified profit sharing and bonus plans for MLOs.

1. How do you currently compensate MLOs? What are the components of the MLOs' compensation?

2. Do you provide a qualified retirement plan (*e.g.*, a qualified 401(k) plan or qualified profit-sharing plan) or a qualified stock ownership plan to your MLO employees?

   a. If so, please explain what types of qualified plans you offer and how the plans are funded.
   b. Please describe the type and amount of any employer contribution to these plans and how it is determined.
   c. Would the proposals under consideration impact your ability to provide or fund qualified

MLO employee retirement or profit-sharing plans? If so, how?

3. Do you provide non-qualified profit-sharing or bonus plans to MLO employees?

   a. If so, please explain what types of non-qualified plans you offer and how you currently structure and fund these plans.

   b. Please describe the type and amount of any employer contribution to these plans and how it is determined.

   c. How do you determine the type and amount of bonuses or other payments awarded your MLO employees?

   d. Would your business as a creditor or broker be affected by the proposal under consideration restricting payment of bonuses or employer contributions to non-qualified profit-sharing or stock ownership plans based on whether the company's mortgage-related revenue exceeds a certain percentage of its total revenue? Would these impacts differ based on the percentage amount of the restriction? If so, how?

4. If employers are permitted to pay MLO employees bonuses or to make contributions to non-qualified profit-sharing or similar non-qualified plans from profits derived from the company's mortgage business, provided that mortgage-related revenue does not contribute more than a set percentage of the company's total revenue, what percentage cap do you believe would be appropriate and why? Will the impact on your business vary if the cap is set at or near 20 percent as opposed to at or near 50 percent? If so, how?

5. What actions would you need to take to comply with the proposals under consideration? Please describe the cost and feasibility of these actions. Which costs would be one-time and which would be ongoing?

## B. Pricing Concessions

The CFPB is considering a proposal that would allow pricing concessions to cover unanticipated increases in third-party settlement charges which exceed or are in addition to the amounts disclosed on the Good Faith Estimate ("GFE").

1. How often are there such settlement charges, not under the MLO's control, that exceed amounts shown on the GFE?

2. Relative to the current Loan Originator Rule, would the proposal under consideration help MLOs to close loans when creditors will not agree to pricing concessions for these settlement charges or the creditor is unable to pay for the costs in time for closing?

3. Are there any other circumstances in which you believe that pricing concessions should be permitted? If so, when and why?

4. What costs and benefits to small entities do you believe would result from the proposal under consideration?

5. Do you believe that the proposal under consideration will change the MLO's bargaining position with the creditor or affect the frequency with which concessions are made by the MLO versus by the creditor? If so, how?

### C. Point Banks

The CFPB is considering a proposal that would allow point banks funded by a creditor under certain, limited conditions, as detailed in the Outline of Proposals.

1. How have point banks generally been used and funded?

2. What costs and benefits to small entities do you believe would result from the proposal under consideration?

3. Do you believe that point banks should be permitted under any conditions other than those listed in the proposal under consideration? If so, which ones and why?

4. Do you believe that the proposal under consideration will impact: (1) the MLO's bargaining position with creditors with whom the MLO holds point banks; and (2) the frequency with which concessions are made by the MLO versus by the creditor?

### D. Proxies

Compensation based on a proxy of a term or condition violates the Loan Originator Rule. The CFPB is considering proposing that a factor is a proxy for a loan term if: (1) it substantially correlates with a loan term; and (2) the MLO has discretion to use the factor to present a loan to the consumer with more costly or less advantageous term(s) than term(s) of another loan available through the MLO for which the consumer likely qualifies.

1. Are there any factors that you believe should not be considered a proxy for a transaction's terms or conditions and thus be allowed as a basis for MLO compensation? Are there any that you believe should be considered a proxy? Please describe these factors, your reasons for believing that they should or should not be permitted as the basis for MLO compensation, and how the allowance or disallowance of these factors will impact your business.

2. What costs and benefits, if any, do you believe there will be to your business from the proposal under consideration? Do you believe the proposal under consideration will be effective at preventing harm to consumers without being overbroad or having unintended consequences?

### E. Record Retention Requirements for MLOs

The CFPB is considering requiring brokerages (in addition to creditors) to maintain records of MLO compensation arrangements and agreements, and records of compensation provided to MLOs by a consumer or a person other than the consumer.

1. What MLO compensation records does your business currently maintain? How are you maintaining these records?

2. What actions would your business need to take to comply with the proposal under consideration? What are the costs of these actions? Which costs would be one-time and which would be ongoing?

## III. MLO QUALIFICATION AND SCREENING REQUIREMENTS

The CFPB is considering proposing rules to implement Dodd-Frank's requirement that entities employing or retaining the services of MLOs be "qualified" and to clarify the requirement for unique identifiers of

MLOs to appear on loan documents.

1. Are you or the MLOs you employ currently required to comply with the SAFE Act? If not, do your current systems and operations allow you to comply with the requirements set forth in the proposal under consideration?

2. What actions would you need to take to comply with the proposal under consideration implementing Dodd-Frank's requirement that entities employing or retaining the services of MLOs be "qualified"? What would these actions cost? Which costs would be one-time and which would be ongoing?

3. Do you believe that the proposal being considered requiring MLO entities to ensure that the MLOs they employ are "qualified" is necessary for effective consumer protection?

4. Which loan documents currently include the MLO's Nationwide Mortgage Licensing System and Registry ("NMLSR") numerical identifier and MLO name? How have you reported NMLSR identifiers and MLO names where multiple MLO individuals (or entities) were involved in the transaction?

5. What changes, if any, to your current systems and operations would be needed to enable you to include the NMLSR numerical identifier and MLO name on disclosure and closing documents that include loan terms? What would these changes cost? Which costs would be one-time and which would be ongoing?

## IV. Potential Effect on the Cost of Credit For Small Entities

The proposals under consideration would apply to any consumer credit transaction secured by a mortgage, deed of trust, or other security interest on a residential dwelling or a residential real property that includes a dwelling. Thus, these are mortgage loans that are used *primarily* for personal, family, or household purposes. The proposals under consideration would *not* apply to consumer credit transactions under open-end credit plans, such as HELOCS, or to timeshare plan transactions.

1. Do you believe any of the proposals under consideration may impact the cost of credit *for small entities*? Why or why not?

2. If you believe any of the proposals under consideration may impact the cost of credit for small entities, in what ways do you believe the cost of credit may be impacted?

3. What significant alternatives to the proposal may minimize such costs while accomplishing the statutory objectives addressed by the proposal?

## V. Additional Feedback

1. Are there any feasible alternatives to the proposals under consideration that would minimize any significant economic impact on your business while accomplishing the CFPB's statutory mandate and objectives?

2. Are there any other federal or state rules that you believe may duplicate, overlap, or conflict with the proposals under consideration?