A large, faint, circular seal of the Federal Deposit Insurance Corporation (FDIC) is centered in the background. The seal features the text "FEDERAL DEPOSIT INSURANCE CORPORATION" around the perimeter and "1933" in the center. The seal also includes a shield with a scale of justice and a building, flanked by two stars.

**2012 FDIC  
BANKER OUTREACH  
PROGRAM**

*Compliance Management System  
and  
Regulation Overview*



# OBJECTIVES

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Provide information regarding the following:

- Compliance Management System
- Compliance Areas and Regulation Summary
- Overview regarding:
  - Safe and Fair Enforcement for Mortgage Licensing
  - Protecting Tenants at Foreclosure (PTF)
  - Flood Insurance
  - Home Mortgage Disclosure (HMDA)
  - Servicemembers Civil Relief Act
  - Fair Credit Reporting
  - Interest on Deposits
  - Overdraft Protection Program
  - Mortgage Loan Originator Compensation



# Compliance Management System (CMS)

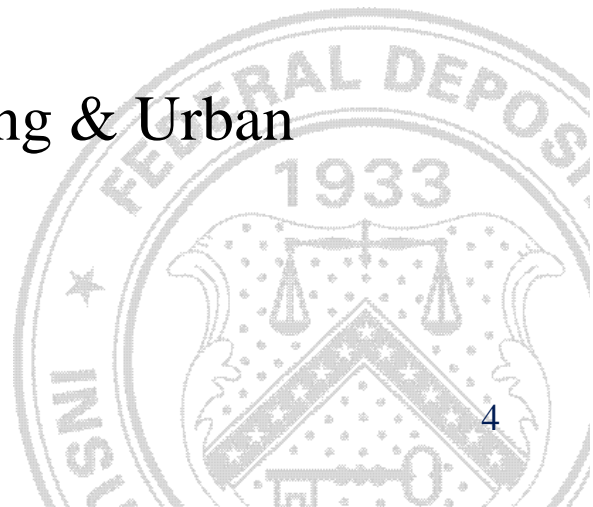
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- Board and Management Oversight
  - Ultimate Responsibility for CMS
- Program
  - Policies and Procedures
    - Written and Unwritten
  - Training
    - Board, Management, & Staff Training
  - Monitoring
    - Ongoing & Periodic Processes
  - Complaint Response
    - Complaint process in place and staff aware of process
- Audit
  - External or Internal
  - Periodic Audits, Reporting, Follow-Up

# Regulatory Areas – Loans

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- Truth in Lending Act – Reg Z – Section 226
- Real Estate Settlement Procedures Act (RESPA) – HUD Reg X – Section 3500
- Equal Credit Opportunity Act (ECOA) – Reg B – Section 202
- Fair Housing Act (FHA)
- Home Mortgage Disclosure Act (HMDA) – Reg C – Section 203
- Flood Insurance – Part 339
- Homeowners Counseling – Housing & Urban Development Act as Amended



# Regulatory Areas – Loans (con't)

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- Homeowners Protection Act (HPA)
- Protecting Tenants at Foreclosure Act
- Secure and Fair Enforcement for Mortgage Licensing Act (SAFE) – Part 365
- Preservation of Consumer Claims and Defenses – FTC Section 433
- Credit Practices Rule – Reg AA – Section 227
- Fair Debt Collection Practices Act
- Servicemembers Civil Relief Act



# Regulatory Areas – Deposits/Other

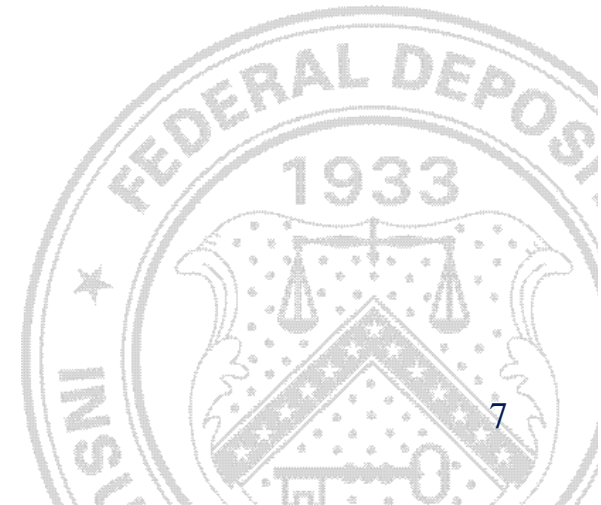
- Truth in Savings Act – TISA – Reg DD – Section 230
  - Overdraft Programs (FIL, TIS, EFT, UDAP, Third Party)
- Electronic Funds Transfer Act – EFT – Reg E – Section 205
- Expedited Funds Availability – EFA – Reg CC – Section 229
- Interest on Deposits – Part 329 (Dodd/Frank Section 627 update)
- Retail Insurance/Annuities Sales – Part 343
- Retail Investment Sales/Recordkeeping – Part 344
- Dodd/Frank Act – Section 343 – Part 330
- Third Party Risk – FIL 44-2008
- Unfair and Deceptive Acts or Practices – (UDAP) – FIL 57-2002 & FIL 26-2004



# Secure and Fair Enforcement for Mortgage Licensing Act of 2008 - SAFE Act

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- SAFE Act – Part 365
  - Policies and Procedures required if even one MLO employed
    - Effective October 1, 2010
  - MLO Registration required unless de minimis applies
    - Effective July 29, 2011





# Secure and Fair Enforcement for Mortgage Licensing Act of 2008 - SAFE Act (con't)

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- Comments

- CMS Considerations

- Criminal background check reveals offense not previously identified by the bank employer.

- Some offenses are of a nature where the FDIC can provide consent for continued employment. The bank (or employee) must file an Application pursuant to Section 19 of the FDIA (Form 6710/07) to request written consent for continued employment.





# Protecting Tenants at Foreclosure Act

## FIL 56-2009

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- Protecting Tenants at Foreclosure Act (PTFA)
- Considerations
  - CMS and PTFA Considerations
  - PFTA 90 day rule
  - Fair Lending Considerations – Disparate Treatment
  - HUD 45 day notice
  - SCRA timeframes
  - FDCPA (Fair Debt Collection Practice Act)

# Flood Insurance

## Part 339

- Common Concerns Identified
  - CMS Considerations
  - 4 Triggers
    - Make, Increase, Renew, Extend
      - Insurance & notice requirements
  - Cross-collateralization issues
  - More than one structure on secured property
  - Junior lien positions
  - Force-place procedures
  - Importance of dates regarding flood insurance requirements for trigger events and force-placements
  - Significant Violations, Pattern or Practice, CMP



# Home Mortgage Disclosure Act HMDA – Reg C

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- Common Concerns Identified
  - CMS Considerations
  - Repeat Violations
  - CMP implications
  - Omission of class of loan and/or denials
  - Failure to drill down for correct Census Tract
  - New reporter issues, staff turnover issues
  - Pre-exam validation of HMDA, in some cases



# Service Members Civil Relief Act

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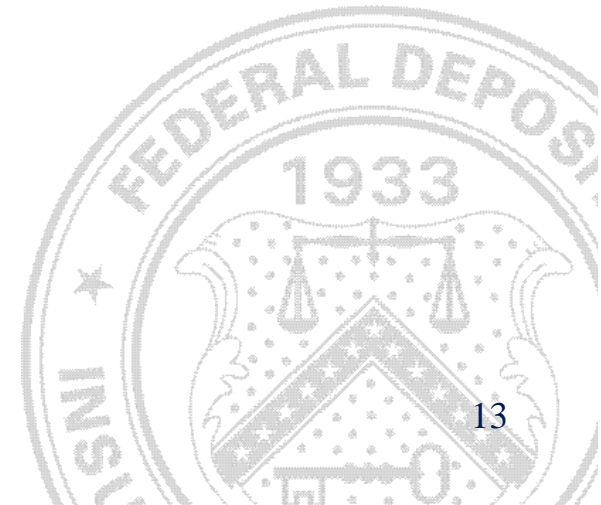
- Covers active duty military personnel, spouses and dependents
- Interest rate caps
- Foreclosure restrictions
- Termination of motor vehicle leases



# Fair Credit Reporting Act

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- Disclosure of credit scores §609(g)
- Negative information §623(a)
- Accuracy of information §623(a)
- ID theft red flags §615(e)
- Medical information §605
- Risk-based pricing §615(h)



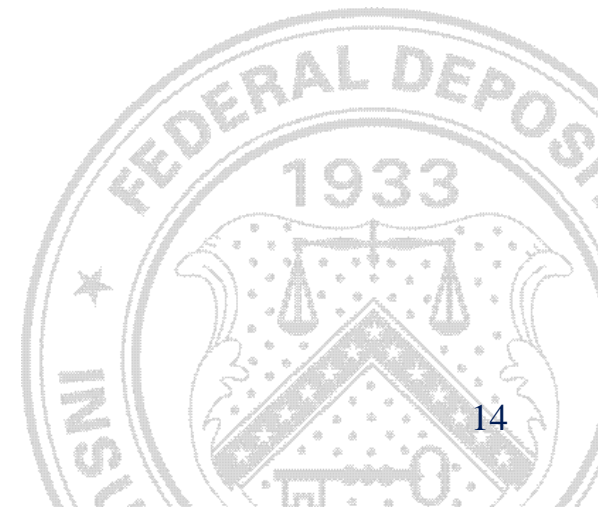


# Fair Credit Reporting Act

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## Risk Based Pricing Notice - FCRA §615(h)

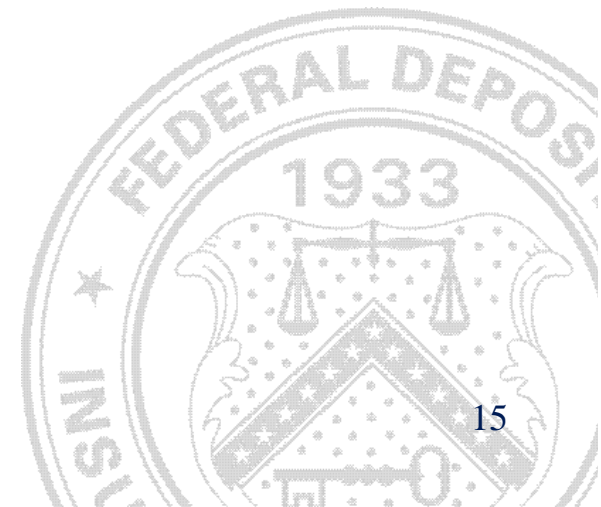
- Applies if loan is priced based on information from a credit report – even if FICO score is not used
- Methods
  - Credit Score Proxy
  - Tiered Pricing
- Common Exceptions
  - Credit Score Disclosure
  - Applied for specific terms
- Recommend use of model forms



# Regulation Q – Interest on Deposits

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- Repealed effective July 21, 2011  
Dodd-Frank Act
  
- Can pay interest on commercial accounts





**OVERDRAFT  
PAYMENT  
PROGRAMS**





# Background

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*FDIC Study of Bank Overdraft Programs* - November 2008.

- Some programs impose substantial fees and interest and some programs rely on third-party vendors to develop systems to maximize the amount of fee income.
- Overdraft fees can exceed the amount of the overdraft and can occur multiple times in a single banking day.
- A significant share of banks batch processed overdraft transactions by size, from largest to smallest, which can increase the number of overdrafts.
- Most banks automatically enrolled customers in automated overdraft programs. Customers may not have fully understood the risks and potential costs involved.
- Customer complaints and reported legal and enforcement actions have increased.



# Guidance & Regulatory Issues

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- FIL 57-2002 – Unfair or Deceptive Acts or practices: Applicability of Federal Trade Commission Act
- FIL 26-2004 Unfair and Deceptive Acts or Practices under Section 5 of the FTC Act
- FIL 11-2005 – Interagency Guidance on Overdraft Protection
- FIL 44-2008 - Third Party Risk
- FIL 47-2010 - Overdraft Payment Programs & Consumer Protection



# Guidance & Regulatory Issues (con't)

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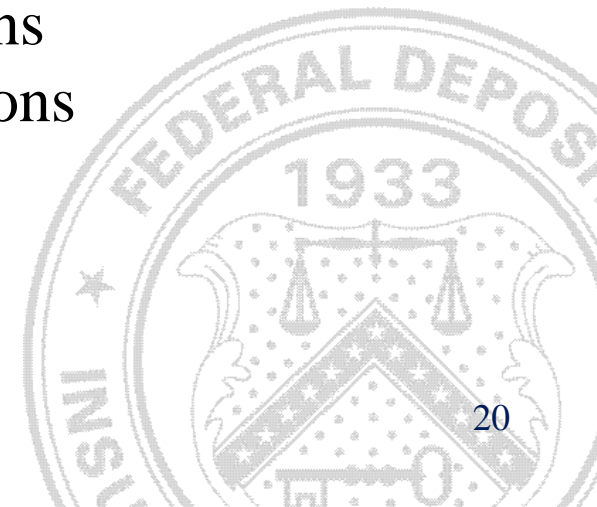
- 2010 - Electronic Funds Transfers Act and Regulation E
- 2010 - Truth in Savings Act and Regulation DD
- FIL 81-2010 - Overdraft Payment Programs & Consumer Protection: Final Overdraft Payment Guidance
- FDIC Website: FDIC ODP Program Supervisory Guidance FAQs

<http://www.fdic.gov/news/conferences/overdraft/FAQ.htm>  
1

# Interagency Guidance on Overdraft Protection

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- Concerns/Legal Risks
  - Federal Trade Commission Act
  - Truth In Lending Act
  - Equal Credit Opportunity Act
  - Truth in Savings Act
  - Electronic Fund Transfers Act
- Best Practices
  - Marketing and Communications
  - Program Features and Operations





# Regulation E

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- 205.17 – Requirements for Overdraft Services
  - Institutions should inform and provide a reasonable opportunity for customers to opt-in to the payment of ATM and one-time, POS overdrafts in exchange for a fee.
  - Institutions should inform customers of alternatives that are available (line-of-credit or transfer service)



# Regulation DD

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- 230.6 Periodic Statement Disclosures
  - (a)(5) Aggregate fee disclosure
  - If applicable, the total overdraft and returned fees required to be disclosed by 230.11(a)
  - Disclose on periodic statements the aggregate dollar amounts charged for OD and returned item fees (statement period and YTD)
- 230.11 Additional Disclosure Requirements for Overdraft Services
  - (a) Disclosure of total fees on periodic statement
  - (b) Advertising disclosures for overdraft services
  - (c) Disclosure of account balances
    - Disclosed balance through automated systems may not include additional amounts to cover insufficient or unavailable amounts

# FIL 81-2010

- Ensure boards of directors and management provide appropriate oversight of programs, including annual review of key features.
- Comply with all consumer protection laws & regulations, including providing clear & meaningful disclosures & communications about overdraft ODP programs, fees, features, & options. Train staff to explain program features and other choices.
- Prominently distinguish account balances from any available overdraft coverage amounts. (Note Reg DD)
- Demonstrate compliance with new opt-in requirements for ATM & POS debit card transactions.

# FIL 81-2010 (con't)

- Promptly honor customers' requests to decline coverage of overdrafts (*i.e.*, opt-out) resulting from non-electronic transactions.
- Give consumers the opportunity to affirmatively choose the overdraft payment product that overall best meets their needs.
- Monitor accounts and take meaningful and effective action to limit use by customers as a form of short-term, high-cost credit, including, for example, giving customers who overdraw their accounts on more than six occasions where a fee is charged in a rolling twelve-month period a reasonable opportunity to choose a less costly alternative and decide whether to continue with fee-based overdraft coverage.





# FIL 81-2010 (con't)

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- Institute appropriate daily limits on overdraft fees; and consider eliminating overdraft fees for transactions that overdraw an account by a de minimis amount.
- Consider technology to alert customers at risk of OD fee.
- Not process transactions in a manner designed to maximize the cost to consumers.
- Consider providing consumers information regarding free or low-cost financial education/counseling to more effectively manage personal finances.
- Exercise careful oversight over third-party vendor provided ODP programs.
- Monitor and mitigate credit, legal, reputational, S&S risks, including Section 5 of the FTC Act (UDAP), ECOA, TIS, EFT<sub>25</sub>



# FIL 81-2010 (con't)

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- Although the FRB did not address the payment of overdrafts resulting from non-electronic transactions, such as paper checks or automated clearing house (ACH) transfers, the FDIC believes institutions should allow customers to decline overdraft coverage (*i.e.*, opt-out) for these transactions and honor an opt-out request
- Targeting customers who may be least able to afford OD products can raise S&S concerns about potentially unsustainable consumer debt.



# FIL 81-2010 (con't)

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- Aggressive marketing / advertising / promotional activities will be scrutinized to ensure contents are not deceptive.
- Remind customers, especially chronic or excessive users, of option to opt-out (even if originally opted-in).
- Steering activity with respect to credit products and inconsistent application of waivers of OD fees, raise potential legal issues, including FL.



# Automated versus Ad Hoc

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## Automated

- Often partially or fully computerized.
- Used by institutions to determine whether NSF transactions qualify for overdraft coverage based on pre-determined criteria.
- The decision to pay or return specific items is pre-established and generally does not rely on bank employee decision-making.



# Automated versus Ad Hoc

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## Ad Hoc

- A bank employee exercised judgment in making a decision about whether to pay or return an item.
- Decisions are made based on specific considerations and knowledge of a particular customer.
- ODs are provided as an accommodation, not on a pre-determined basis.

# “Hybrid”

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- Programs incorporate both automated and ad hoc controls.
- Bank has unadvertised automated program up to \$500 on some accounts and ad hoc over the \$500
- Examiners will use judgment regarding whether or not the program is automated or ad hoc; however, bankers should be cognizant of how the program fundamentally functions.
- Unintentional paid overdraft of POS and ATM transactions charged a fee are considered automated.
- Batch systems that automatically pay POS/ATM transactions (system is not ‘live’ and bank chooses to automatically pay)



# Other Considerations

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- Concerns

- Bank does not intentionally pay POS/ATM, however bank has Opt-In for Reg E. Customers who Opt-In receive no benefit, as bank does not intentionally pay POS/ATM into overdraft. Was customer provided relevant information to make an informed decision on Opt-In versus Opt-Out?
- Bank closes account for customers who Opt-Out when bank must pay (but does not intentionally pay POS/ATM item into overdraft) and bank does not close account for customers who Opt-In when bank must pay under the same circumstances



**Regulation Z – Section 226.36**  
**Mortgage Loan Originator Compensation**  
**MLOC**





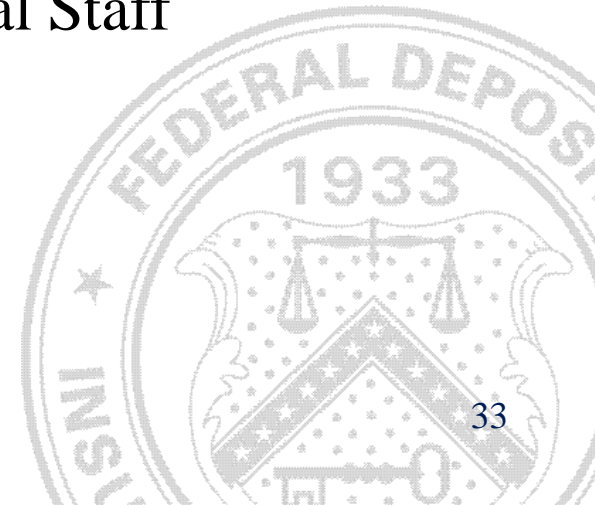


# Regulatory Area: TIL - Section 226

## Mortgage Loan Originator Compensation

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- Overview
  - Prohibition on compensation based on terms or conditions 226.36(d)(1)
  - Prohibition on dual compensation 226.36(d)(2)
  - Prohibition on steering 226.36(e)(1)
- Effective for all loan applications received on or after April 6, 2011. - 226.36 - 2 Official Staff Interpretations (OSI)
- Over 6000 comments received





# Regulatory Area: TIL - Section 226

## Mortgage Loan Originator Compensation

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- Loan Originator Definition 226.36(a)(1)
- A person who, for compensation or other monetary gain, or in expectation of compensation or other monetary gain, arranges, negotiates, or otherwise obtains an extension of credit for another person
- Includes
  - Individual, Entity, Employee, Employer
- Examples
  - Mortgage brokers, Employees of mortgage brokers, Employees of creditor (i.e., loan officers, producing managers), Creditors in table-funded transactions, Broker in a referral arrangement



# Regulatory Area: TIL - Section 226

## Mortgage Loan Originator Compensation

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- 226.36(d)(1)-1.i OSI
- What is Compensation? Includes
  - Salaries
  - Commissions
  - “Processing fee” assessed by loan originator
  - Any financial or similar incentive
- Examples:
  - Annual or other periodic bonus
  - Awards of merchandise, services, trips, or similar prizes

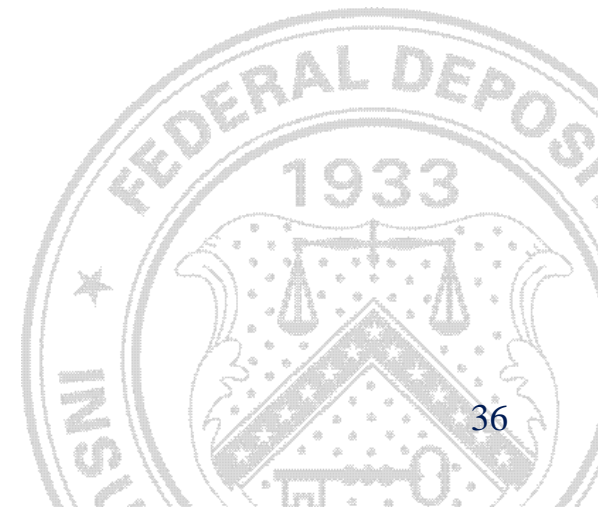


# Regulatory Area: TIL - Section 226

## Mortgage Loan Originator Compensation

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- 226.36-1 OSI
- When does this apply?
  - To consumer credit transactions that are secured by a dwelling, other than open-end credit plans and time shares
- Includes
  - First lien
  - Subordinate lien





# Regulatory Area: TIL - Section 226

## Mortgage Loan Originator Compensation

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- 226.36(d)(1)
- Payments Based on Terms or Conditions
  - Loan originator shall not receive and no person shall pay to a loan originator compensation in an amount that is based on any of the transaction's terms or conditions
- Term or condition based compensation includes compensation based on a loan's (226.36(d)(1)-2 OSI
  - Interest rate
  - APR
  - Loan-to-value ratio
  - Existence of a prepayment penalty
  - Proxy for terms and conditions
    - DTI, credit score, or other risk factors

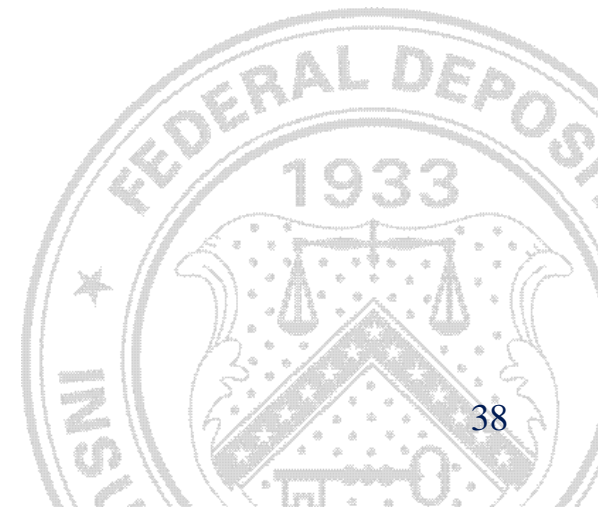


# Regulatory Area: TIL - Section 226

## Mortgage Loan Originator Compensation

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- 226.36(d)(1)-7 OSI
- Compensation Received Directly from Consumer
  - The prohibition in (d)(1) does not apply if the compensation is received directly from the consumer
    - in this situation (d)(2) would apply





# Regulatory Area: TIL - Section 226

## Mortgage Loan Originator Compensation

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- 226.36(d)(2)
- If loan originator received compensation directly from a consumer:
  - Loan originator can not receive compensation, directly or indirectly, from any other person
- If person knows or has reason to know of the consumer-paid compensation, then the person shall not pay any compensation to a loan originator
- Payments directly from Consumer:
  - Payments to loan originator out of loan proceeds
  - Amounts retained by loan originator (excluding bona fide and reasonable third-party charges)



# Regulatory Area: TIL - Section 226

## Mortgage Loan Originator Compensation

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- **Yield Spread Premiums:** Yield spread premium is the present dollar value of the difference between the lowest interest rate the wholesale lender would have accepted on a particular transaction and the interest rate the broker actually obtained for the lender
- **FRB Concern:** Loan originators who receive part or all of the yield spread premiums as part of their compensation may have an incentive to provide consumers with loans that have higher interest rates or less favorable terms. Since many consumers are not aware of the yield spread premiums or do not understand how they work, most consumers were unable to use it to their advantage.





# Regulatory Area: TIL - Section 226

## Mortgage Loan Originator Compensation

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- 226.36(e)(1)
- Prohibition on Steering
  - A loan originator shall not direct or “steer” a consumer to consummate a transaction based on the fact that the originator will receive greater compensation from the creditor in that transaction than in other transactions the loan originator offered or could have offered, unless the consummated transaction is in the consumer’s interest



# Regulatory Area: TIL - Section 226

## Mortgage Loan Originator Compensation

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- Review:
  - Prohibited from paying compensation based on loan terms or conditions
  - Prohibited from dual compensation
  - Prohibited from steering a consumer to a loan that provides greater compensation unless the loan is in the consumer's interest



# Regulatory Area: TIL - Section 226

## Mortgage Loan Originator Compensation

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- Comments:
  - Can compensation based on profits be paid to a loan originator?
  - How do 401K profit sharing plans fall into this rule? Are mortgage loan originators no longer allowed to participate in these types of plans?
  - Is CL&AH considered a Term or Condition?



# Regulatory Area: TIL - Section 226

## Mortgage Loan Originator Compensation

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- How will this affect my bank?
  - Consider CMS elements
  - Determine who the loan originators are and how compensation is paid
  - If consumer is paying compensation directly to loan originator, you must review dual compensation prohibition
  - If the loan originator compensation would differ between transactions, you must also review steering prohibition
  - Review compensation agreements



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*Questions?*

*Thank you!*

