BANK COMPENSATION CONSULTING

Reg Z, Mortgage Lenders & Staff Incentive Plans

By Rob Barton

As many bankers are aware, The Dodd-Frank Act is over 800 pages long and regulators have written nearly an additional 14,000 pages, which consequently cause nearly as many headaches for bankers. Dodd-Frank creates so many new regulations for banks that it is a formidable task for community banks to be aware of what applies to them and to become fully compliant with all that it covers.

One topic covered by Dodd-Frank, that especially affects community banks, is the new restrictions on compensation for mortgage lenders. Loan originators, as the regulations refer to them, are not permitted to receive any sort of incentive pay that equals more than 10 percent of their total compensation, if that incentive pay is based on any impermissible terms of transactions of mortgage lending. Many community banks have a staff-wide bonus plan that may be based on total earnings of the bank, and commonly these plans can pay over 10% of compensation. These terms of transaction, as defined by 12 CFR Section 1026.36(d)(1), include the loan's interest rate, APR, origination points or fees, title insurance fees and even late fees associated with the loan, among other things. In banks who make mortgage loans, bank-wide incentive plans based on earnings will certainly be somewhat influenced by some of these transaction terms. For banks with such plans, there is a good chance that they are in violation of the new mortgage lending compensation rules.

Mortgage Transaction Terms

- Loan interest rate
- Annual Percentage Rate
- Origination points
- Title insurance fees
- Attorney fees
- Late fees
- Appraisal fees
- Discount points

These community banks are now faced with the task of amending, or completely scrapping, a benefit program for every one of their employees because of restrictions set on a few mortgage lenders. There are a few different approaches that banks can take to cure this problem.

One is simply to cap the current plan to the 10% limit defined in the Act. This would surely not be the most popular option with an entire staff accustom to receiving bonuses in excess of 10%. Another approach is to keep the current plan, but to amend it to remove all earnings attributed to any part of the mortgage lending arm of the bank. This seems to be a common solution that many banks have decided to adopt, but naturally it creates more work for the bank and can also lead to lower bonuses, unless the bank also amends the budgeted goals the benefit plan is based upon. Still yet another option is to remove any person who may qualify as a loan originator under the Act from the staff-wide benefit plan and design a separate incentive plan for these individuals based on permissible metrics such as loan growth, number of loans or total amount loaned. In addition, credit quality is usually part of the plan. This option affects the least amount of staff and potentially creates a more applicable incentive structure for your mortgage lenders.

If you have questions on whether Regulation Z mortgage lending compensation regulations may adversely affect your bank's staff-wide incentive bonus plan, or if you would like to discuss different possible options to make your plan compliant, please contact Rob Barton at Bank Compensation Consulting at rob.barton@bcc-usa.com or at 1-800-781-2099 or direct at 214-919-2927.

Rob Barton has been advising community banks in the areas of nonqualified benefits and Bank-Owned Life Insurance (BOLI) for over a decade. He has worked with banks nationwide and has extensive experience in the design, administration and regulatory requirements of nonqualified retirement plans.

Rob earned his B.S. from Brigham Young University, his J.D. from the University of Minnesota Law School, and his MBA from The Carlson School of Management at the University of Minnesota, where he emphasized in finance and strategic management.