



Answers to the most common questions about the new Federal Reserve rule governing Loan Originator Compensation.

The following information is based on HighTechLending's interpretation of the new regulations and its implementation and should not be construed as legal advice. Due to the complexity of the regulations, brokers are advised to seek their own counsel and consult a licensed attorney.

COMPENSATION PLANS

- Q.** Can a mortgage broker establish different compensation plans with each lender?
- A.** Yes, however the individual loan officer employed by the mortgage broker may not be paid based via varying lender compensation. For example, a mortgage broker may have an agreement with one lender at 1.00% and another lender at 1.50%. The loan officer's compensation may vary based on the mortgage broker's compensation and can be set as a fixed percentage or a fixed dollar amount of the mortgage broker's compensation (i.e., it can be set at 80% of mortgage broker's compensation).
- Q.** What are the advantages and disadvantages of a Borrower-Paid Plan vs. a Lender-Paid Plan?
- A.** A Borrower-Paid Plan is most similar to business as usual. However, the YSP must never exceed the third-party closing costs. Also, the mortgage broker must pay the loan officer either a salary or on an hourly basis (bonuses are allowed). There is no ability to offer no-cost loans on a Borrower-Paid Plan. The mortgage broker does have the ability to reduce compensation to pay for borrower fees, lock extension fees, mortgage broker errors, or fees that exceed the high-cost tolerance. On a Lender-Paid Plan, the mortgage broker may have the ability to still offer no-cost loans, depending on the lender's price and how much the mortgage broker wants to earn on the loan. The mortgage broker must have a written compensation plan in place with the lender. The mortgage broker must pick the compensation in advance and adhere to the pre-selected compensation for all loans for the time period specified by the lender. HighTechLending's competitors require a mortgage broker to set compensation for 90 days. HighTechLending's time period is only two weeks, offering mortgage brokers an opportunity to change their compensation often. The mortgage broker may not increase or decrease compensation to pay for lock-extension fees, errors caused by the mortgage broker (i.e., neglecting to notify the lender of a changed circumstance per RESPA), or to cover high-costs loans. Mortgage brokers may pay their loan officers based on a fixed percentage of the mortgage broker's compensation. Here is a summary:



	Borrower Paid	Lender Paid
Reduce Fees	Yes	No
Pay LO a % of Mtg Broker Comp.	No	Yes
Negotiate Comp by Loan	Yes	No
No cost Loans	No	Possibly
Written Comp Plan with Lender	No	Yes
Written Comp Plan with LO	No	Yes
Source of Payment to Broker	Escrow	Lender

- Q. When does a broker have to indicate if the compensation is lender-paid or borrower-paid?
- A. The mortgage broker needs to complete the *Mortgage Broker Compensation Agreement and Addendum* prior to his/her/it's first loan submission after April 1st, 2011. HighTechLending will ask for them by 3/25/11. Then the broker or loan officer will indicate at time of submission whether each loan will be lender-paid or borrower-paid in accordance with the plan(s) that the mortgage broker selected in the *Agreement/Addendum*.
- Q. There are also originator compensation rules in the Dodd-Frank regulation. Will the Federal Reserve incorporate the Dodd-Frank requirements into their originator compensation rule?
- A. The Federal Reserve has not yet incorporated the Dodd-Frank provisions into their regulation. Thus there may be additional *and/or* conflicting requirements introduced in the Dodd-Frank regulation.
- Q. If the agreed-upon compensation between lender and mortgage broker is 2% (Lender-Paid Plan), can we credit 1% to the borrower?
- A. No. The Federal Reserve views this as a pricing concession.
- Q. Does the loan officer have to offer the borrower a choice between borrower-paid and lender paid? Otherwise, wouldn't everyone choose borrower-paid due to the flexibility?
- A. The loan officer does not have to offer the borrower a choice between borrower-paid and lender paid. This is a decision between the mortgage broker and the lender, as well as the mortgage broker and the loan officer. Choosing a plan is a personal choice. There are advantages and disadvantages to both. Understanding the differences is key to making the right selection. On the surface it appears there is more flexibility in a Borrower-Paid Plan, however keep in mind that the borrower will always be paying the originator's compensation (either in cash or financed), and the mortgage broker must pay the loan officer on a salary or hourly basis (bonuses are allowed).



LOAN OFFICER COMPENSATION

- Q. Can a mortgage broker pay a loan officer a different percentage based on tiers of loan amounts (i.e. 3% for loans up to \$100,000, and 2% for loans between \$100,001 and \$300,000)?
- A. No. On a Lender-Paid Plan, compensation may not be paid based on a variable percentage. The percentage must be fixed. On a Borrower-Paid Plan, compensation must be paid as a salary or hourly rate. In addition, bonuses may be paid (i.e., bonuses on quality and overall volume are allowed).
- Q. Can a mortgage broker pay each loan officer differently?
- A. Yes. The Federal Reserve does not require that every loan officer be paid the same, as long as the originator's compensation is not varied based on loan terms or conditions other than loan amount. In addition, the compensation cannot vary from one transaction to another on a Lender-Paid Plan.
- Q. On a Borrower-Paid Plan, the loan officers must be paid by the hour? Can they still get a 1099, or do they need a W2?
- A. On a Borrower-Paid Plan, the loan officers must be paid *either* on a fixed salary or on an hourly basis. Periodic bonuses are allowed. 1099s are not allowed. A W2 would be required, and the employer must comply with all other state or local laws pertaining to employees (e.g., minimum wage requirements). We recommend seeking legal advice for further requirements regarding employment law.
- Q. If my loan officers are on the Lender-Paid Plan, can I continue to pay them by commission and continue to 1099 them?
- A. Yes and yes. However, please keep in mind that the commission must be an allowable calculation such as a fixed percentage of the mortgage broker's compensation.
- Q. The amount negotiated on a Borrower-Paid Plan is paid to the brokerage. Isn't the loan officer paid the same basis points specified in the contract between the mortgage broker and loan officer, even though more money is paid by the borrower?
- A. On a Borrower-Paid Plan, the loan officer must be paid a fixed salary or paid on an hourly basis. Bonuses are allowed. A loan officer may not be paid basis points on a Borrower-Paid Plan. And yes, this compensation would remain set even though there may be more money paid by the borrower.
- Q. Where does a mortgage broker obtain compensation contracts for their Loan Officers?
- A. The mortgage broker should refer to an attorney for advice or assistance in preparing compensation agreements.



Q. There has been discussion about a “Point Bank” whereby a loan officer is paid a flat rate for each loan, but then points are assigned to the loan officer for production. The employer keeps score and then awards bonuses based on these points. Is it possible for mortgage brokers to offer such a plan to their loan officers?

A. It is possible, but we highly recommend seeking legal advice prior to implementing such a plan. If the originator is the loan officer, then the originators compensation must be paid by the mortgage broker. We recommend seeking advice from the specific state regulators. Also, current HUD regulations require loan officers to be paid as W2 employees.

Q. Will HighTechLending require copies of the mortgage broker's compensation agreements with their loan officers?

A. No, not at this time.

PRICING

Q. How will wholesale pricing work?

A. Rate sheets will look the same as they do now, with a pricing adjuster grid for the pre-selected compensation tier for a Lender-Paid Plan. Example:

Borrower Paid		Lender Paid (@2.00%)	
5.000%	<2.00%>	5.000%	0.000%
4.875%	<1.500>	4.875%	0.500%
4.750%	<0.500>	4.750%	1.500%
4.625%	0.750%	4.625%	2.750%
4.500%	1.300%	4.500%	3.300%

Q. Can a mortgage broker choose the maximum compensation offered by a lender, and then still price each loan anywhere in between the tier range? For example if the lender offers a compensation tier range of 1.00 to 3.50 and the compensation selected is 2.00, can the mortgage broker select any rate, or must they select the rate associated with a 2.00 rebate?



A. The mortgage broker can select any interest rate. The mortgage broker is not limited to the one interest rate that is associated with the compensation tier selected. For example, let's say the broker reviews the compensation tiers (between 1.00% and 3.50%) and selects 2.00% (this assumes a Lender Paid Plan). The mortgage broker will always be paid 2.00 on any loan that the broker funds, regardless of interest rate (although he can also pre-select a maximum dollar amount and an additional pre-determined flat fee on top of the compensation tier). Here's a sample comparison of a Borrower-Paid Plan and a Lender-Paid Plan:

Borrower Paid		Lender Paid (@2.00%)	
4.500%	<1.00%>	4.500%	<1.000> to Borrower
4.750%	<1.500>	4.750%	<0.500> to Borrower

In this example, the mortgage broker will always make 2% in the Lender-Paid Plan, so 2% is always added to the Borrower-Paid Plan. The Borrower-Paid Plan is our existing rate sheet. So the mortgage broker may select any rate that is offered on the rate sheet. Then the compensation is added to the selected rate to determine the final rebate/discount.

Q. Does a mortgage broker have to choose one compensation tier, and that is the only choice for each borrower?

A. For a Lender-Paid Plan, the mortgage broker must select a specific compensation that he/she/it wants to earn. Again, in the above example, the mortgage broker has selected 2%. So, 2% will remain in effect for all loans in which the mortgage broker chooses the lender-paid option (although he/she/it can also preselect a maximum dollar amount and an additional pre-determined flat fee in addition to the compensation tier). At HighTechLending, this selection will remain in effect for either a minimum of two weeks and two loans funded; or 30 days and no loans funded under the Lender-Paid Plan.

Q. On Lender-Paid Plans, who pays for the costs of the loan, such as FICO adjustments and cash-out fees?

A. Pricing adjustments will be treated as they are today and factored into the price.

Q. On a Lender-Paid Plan, can a mortgage broker or loan officer offer any interest rate to the borrower, even though his own compensation may be fixed?

A. Yes.

Q. I understand that HighTechLending requires the Safe Harbor Form with each submission, but what if the loan is floating?



- A. The Intent of the Safe Harbor Form is to provide borrowers with the loan options upfront. While the regulation does not specify a specific time when the loan options are presented to the borrower, it would be advisable to present them upfront in order to properly prepare the GFE in accordance with the borrower's choice.

SELLER CONCESSIONS

- Q. Can a seller pay the originator's compensation?

- A. Seller concessions are considered borrower funds. Thus under a Borrower-Paid Plan, the seller can pay the originator's compensation. Under a Lender-Paid Plan, the seller may not.

- Q. If seller concessions are given to pay an origination fee, then these are considered borrower-paid funds and thus all monies to the originator must come from the borrower. Seller concessions on a Lender-Paid Plan may not pay the origination fee. However can the seller pay third-party closing costs under either plan?

- A. Yes. However under a Lender-Paid Plan, the seller concessions must not exceed the third-party closing costs.

Yield Spread Premium (“YSP”)

- Q. Is Yield Spread eliminated?

- A. No. YSP is still offered.

- Q. RESPA states that YSP is paid to the borrower as a credit. Does TILA view it the same way?

- A. No. TILA ignores RESPA and considers YSP as compensation paid by the lender. It may be used to pay for third-party closing costs In either a Borrower-Paid or Lender-Paid Plan, or it may be used to pay the Originator's compensation In a Lender-Paid Plan (but all compensation must then come from the lender).

- Q. In order to remain competitive, some mortgage brokers choose to under-quote fees and then use the YSP from the lender to pay any overages. Can a mortgage broker still conduct this practice?

- A. On a Lender-Paid Plan, the mortgage broker may not reduce compensation to pay any overages of under-quoted fees. On a Borrower-Paid Plan, the borrower can allow the mortgage broker to reduce compensation.

- Q. Under a Lender-Paid Plan, what happens if there is excess YSP beyond all third-party fees?



- A. TILA does not regulate excess YSP. However, RESPA does have existing regulations that would dictate actions on excess YSP. According to RESPA, the excess may be used as a principal reduction; the loan may be considered cash out; or the interest rate (and accordingly the credit) may be reduced.
- Q. Under a Lender-Paid Plan, does the YSP also pay for HighTechLending's underwriting fees as a third-party fee?
- A. HighTechLending is a creditor under TILA. Creditors are exempt from the Loan Originator Compensation regulation, thus YSP can cover HighTechLending's fee and not be considered originator compensation.

FEES, ADJUSTMENTS AND ERRORS

- Q. Can a mortgage broker pay a lock extension fee?
- A. On a Lender-Paid Plan, the mortgage broker's compensation cannot increase or decrease. Thus the mortgage broker cannot pay for a lock extension fee. On a Borrower-Paid Plan, the borrower can choose to allow the mortgage broker to reduce compensation to pay the lock extension fee.
- Q. On a Lender-Paid Plan, can a mortgage broker pay some of the borrower's fees to avoid triggering a high-cost loan.
- A. No.
- Q. Under RESPA, any credit provided by the lender is first applied to the lender's and broker's origination charges and then any remainder is applied to third-party charges. If a consumer agrees to pay the mortgage broker and lender directly, and asks the lender to pay some or all third-party charges, the RESPA documents will reflect the credit from the lender as paying the lender's and broker's origination charges. Is the RESPA treatment of charges and credits disregarded in all respects for purposes of the loan originator compensation rule?
- A. Yes. TILA is a substantive rule and RESPA is a disclosure rule. The Federal Reserve governs TILA and HUD governs RESPA. It is not in the purview of the Federal Reserve to determine how the originator compensation is disclosed on the GFE, and it is not in the purview of HUD to determine how the originator gets paid. In the above example, while the RESPA documents would reflect the credit from the lender as a borrower credit, TILA would determine how the YSP was used. If any portion of the YSP was used to pay the originator's compensation, then this would be considered a Lender-Paid Plan. However, if the YSP only paid the third-party closing costs and the borrower paid the originator's compensation, then that would be considered a Borrower-Paid Plan.



MISCELLANEOUS

- Q. If lender-paid compensation and Block 1 of the GFE are 2%, would Block 2 show a 2% YSP credit based on the rate chosen on the GFE?
- A. Block 1 would remain as it is today. All broker and lender's fees are included in Block 1. Block 2 would reflect the Lender-Paid Plan price for the rate selected, plus the broker's compensation. For example, on a \$100,000 loan, if the broker's fees were \$2,000 and the lender's fees were \$1,000, then \$3,000 should show in Block 1. For Block 2, the price of the loan must be considered. For example, if a borrower-paid rate sheet reflected a 1% rebate for a 5.0% rate, then on a 2% compensation plan the lender-paid price would be a 1% discount for the same rate (1 % rebate - 2% compensation = 1% discount). Thus, the 1% discount would normally be reflected in Block 2. However, In addition, the 2% comp must be added back again to equate to a 1% rebate to the borrower In Block 2. Thus, the adjusted origination charges would be \$2,000. This is an origination charge payable by the borrower to the lender. The lender will then in turn pay the mortgage broker. Therefore, the GFE is done as it is today, except that the adjusted origination charges are payable to the lender, not the broker and the lender will, in-turn, pay the mortgage broker.
- Q. How do we know if we have a high-cost loan?
- A. HighTechLending normally performs the high-cost loan test at time of docs. In addition, HighTechLending has identified certain loans which are at greater risk of failing the high-cost test. Thus, HighTechLending will also perform the high-cost test at time of submission on FHA loans \leq \$150,000, and Conventional loans \leq \$100,000.
- Q. Is it best for a mortgage broker who selects a Lender-Paid Plan to calculate the third-party closing costs, add the set compensation, then select a rate which would reflect enough rebate discount to cover the costs and compensation?
- A. This would be considered a best practice; however, the mortgage broker must also comply with the Safe Harbor provisions of the Anti-Steering rule and provide the required loan options to the borrower.
- Q. Who will govern the new Loan Originator Compensation rule, and how will they know what an originator is paid?
- A. The FTC (Federal Trade Commission) enforces TILA. In addition, each originator's (creditor, broker, loan officer) regulator may also enforce this rule. If audited, an auditor would look at the compensation payroll records, compensation agreements, and possibly review loan documents to determine compliance.



-
- Q. If there are multiple producing mortgage brokers who all own part of the same corporation, can each mortgage broker participate in the profits of the corporation?
- A. Yes, but ownership must be proven. We recommend seeking legal advice.
- Q. Is the Anti-Steering provision applicable to a Borrower-Paid Plan?
- A. No.