

L.O. Comp Rules Delayed Five Days. Not a Cruel Joke!

Fri, Apr 1 2011, 8:39 AM

HAPPY APRIL FOOL'S DAY!

This is not a cruel joke....

From NAMB's website:

"The US Court of Appeals has granted a stay on Fed's LO Compensation rule. The hearing will be on April 5th. **The RULE IS DELAYED UNTIL THE RESULTS OF THE HEARING**. You can access the Court of Appeals order [here](#). This announcement about the delay of the loan originator compensation rule is not an April fool's joke"

National Association of Mortgage Brokers,
Appellant

National Association of Independent Housing
Professionals, Inc.,
Appellee

v.

Board of Governors of the Federal Reserve
System, et al.,
Appellees

Consolidated with 11-5079

BEFORE Henderson, Tatel, and Kavanaugh, Circuit Judges

ORDER

Upon consideration of the emergency motion for expedited relief and the emergency motion to stay implementation of final rule pending appeal, it is

ORDERED that the implementation of the rule under review in these consolidated cases, 12 C.F.R. § 226.36(a), (d), and (e), be stayed pending further order of the court. The purpose of this administrative stay is to give the court sufficient opportunity to consider the merits of the motions for emergency relief and should not be construed in any way as a ruling on the merits of those motions. See D.C. Circuit Handbook of Practice and Internal Procedures 32 (2010).

It is FURTHER ORDERED, on the court's own motion, that the government file a combined response to both motions by 12:00 noon, Monday, April 4, 2011, not to exceed 20 pages. Appellants may file a joint reply to the government's response by 10:00 a.m., **Tuesday, April 5, 2011**, not to exceed 10 pages. The parties are directed to hand-deliver the paper copies of their submissions to the court by the time and date due.

Per Curiam

Plain and Simple: The industry has five days to help the court "consider the merits of the motions for emergency relief". We need to prove that irreparable harm is being done by these regs.

MND was one of the first industry voices to publicly request the delayed implementation of these regs: **Originator Compensation Reform: Putting the Cart Before the Horse**

I guess it all boils down to HOWMUCH originators will be paid though. That seems dependent on the competitiveness of the primary mortgage market and there is definitely the potential for a backfire here. By limiting the consumer's choice of originator compensation methods to either rebate through a premium note rate or paying points to buydown the note rate, we are also limiting their "best

execution" financing options. This would imply, based on the segmented nature of the mortgage market, that some consumers might end up paying more than they would have for the same note rate before these regs were implemented (no lender prices the same as another). Also, the final rules clearly prohibit a mortgage broker or loan officer from "steering" a consumer to a lender offering less favorable terms in order to increase the broker's or loan officer's compensation. Yikes. I'm not sure how that rule will be monitored or enforced from the perspective of the consumer's most efficient buydown structure. If there is no rebate standard/originator commission standard, then how do we regulate the industry? I believe we need a better definition of what constitutes steering a consumer away from an expensive buydown (good) vs. steering a consumer toward a higher rate just to increase commission (bad). The obvious fix is rebate caps.

The final rules are effective April 1, 2011. I don't think the industry is anywhere near ready for them yet. I don't think the government is ready either! Congress pitched this reform under the pretext of consumer protection, so why are we pushing the implementation of the rule before the Consumer Finance Protection Board is even up and running?

The CFPB has a July 2011 deadline for having the organization up and running including several mandated offices for research, community affairs, consumer complaints, fair lending, and several other divisions of responsibility; the number of reports it must make to Congress, and the competing interests the Bureau will have to consider.

We need a little more time to ensure this is the right move. If not based on that argument, GSE reform is the most important issue on the mortgage industry's "to do" list and Congress hasn't made much progress on that lately, at least not publicly (too distracted by robo-closuregate or whatever we're calling it now). How can we implement new originator compensation regs without a stable housing finance system?

Perhaps we should tackle the 800lb gorilla in the room before we attack anymore internal policies and procedures? We're putting the cart before the horse. Again.

We have also published a plethora of content on originator compensation policies, including the interpretations of various lenders : [READ MORE](#)

What can we do to help NAMB/NAIHP? Let us know.

View this Article: <https://www.mortgagenewsdaily.com/news/04012011-compensation-delayed>