



DEPARTMENT OF  
**SAVINGS AND  
MORTGAGE LENDING**

HECTOR RETTA, COMMISSIONER

# Exam Findings: Frequently Cited and Emerging Issues

Ellena Meier  
Chief Mortgage Examiner



# Topics

- Loan Originator Compensation
- Loan Processor Violations
- Loan Processor Licensing Requirements
- RESPA Violations
- Emerging Exam Findings
  - HELOCs
  - Equity Advance Programs
  - Wrap Loans
  - Seller Finance / Private Investor
- Mortgage Call Reports
  - State Specific Supplemental Form (SSSF)
- Common Exam Findings
- Resources

# Loan Originator Compensation Violations

✗ **Compensation Based on Loan Terms:** A loan originator's compensation cannot be based on the terms of the transaction (other than the loan amount). (Regulation Z, 12 C.F.R. § 1026.36(d)(1))

## Prohibited Transaction Terms

- **Interest Rate**
- **Annual Percentage Rate (APR)**
- **Collateral Type** – Such as a condo, co-op, detached home, or manufactured housing.
- **Prepayment Penalty**
- **Origination Points or Fees**
- **Title Insurance Fees** – Required by the creditor.

✗ **Steering Incentives:** Compensation structures must not create incentives for loan originators to steer consumers into loans that are not in their best interest. (Regulation Z, 12 C.F.R. § 1026.36(e))

✗ **Dual Compensation:** A loan originator cannot receive compensation from both the consumer and another party (e.g., the lender) for the same transaction. (Regulation Z, 12 C.F.R. § 1026.36(d)(2))

✗ **Inadequate Recordkeeping:** No written agreements and/or lacking supporting documentation.  
(Regulation Z, 12 C.F.R. § 1026.25(c)(2)(ii))

# LO Compensation Violation Examples

**Example: Compensation.** The Loan Officer will receive 80% of the loan compensation for self-sourced loans, both lender-paid and borrower-paid. For company-sourced leads, the Loan Officer will receive 40% of the loan compensation, both lender-paid and borrower-paid. The maximum payout for the Loan Officer is \$15,000. The Company will receive 20% of the loan compensation on both lender-paid and borrower-paid loans, with a minimum of \$1,000 on borrower paid.

**Minimum Compensation.** The Loan Officer is responsible for ensuring that the commission for a loan exceeds \$1,000 in addition to the Loan Officer Assistant (LOA) bonus of 20 basis points on the loan amount. This means that the Loan Officer should make sure that the loan compensation on a borrower-paid loan is high enough to cover the Company \$1,000 minimum plus the LOA payout. If the loan compensation does not meet this minimum requirement to cover the LOA bonus and the \$1,000 minimum, the Loan Officer will not receive their partial or full commission. Therefore, it is important for the Loan Officer to be aware of this requirement and ensure that they meet the minimum commission amount to cover the Company minimum and LOA bonus if one was used on the loan. The Loan Officer may be required to repay a portion of their commission to the Company in order to fulfill the minimum \$1,000 requirement.

## ✗ Lender compensation varies

- Compensation agreements from nine different lenders ranged from 2.00% - 2.75%

## ✗ Potential for steering

- Compensation based on a loan term – loan origination fee. Loan originators must not be incentivized to steer loans to the lender that pays the most.

## ✗ Varying compensation

- Loan originators are prohibited from changing compensation based on the terms of the loan.

# LO Compensation Violation Examples

**Example:** If a loan is closed in a state requiring another MLO's licensing oversight, a separate license fee of .25% of the loan amount will be charged to the visiting MLO. If a visiting MLO is provided license oversight for a state where they are not licensed, the Company requires that processing be performed in-house. This is a Company audit requirement that protects the licensed/host MLO and satisfies the Company's investors and warehouse banks.

## ✗ Unlicensed Activity

The visiting **Mortgage Loan Originator (MLO)**, who was not licensed in the state where the loan was originated, used the NMLS ID of a licensed MLO ("host") to originate the loan. The licensed MLO received 25 basis points of the commission, while the visiting MLO (unlicensed) retained the majority of the compensation.

# LO Compensation Violation Examples

**Example:** The MLO received lender-paid compensation for loan origination and a borrower-paid processing fee paid directly to the MLO at closing.

✗ **Dual Compensation:** If a loan originator receives compensation directly from a consumer in a transaction, no other person may provide any compensation to the loan originator, directly or indirectly, in connection with that same transaction.

**Example:** The Mortgage Company paid commissions to MLOs through the MLO's unlicensed business entities.

✗ **Unlicensed Activity:** Commissions must be paid directly to the sponsored MLO.

# Permissible Compensation Methods

- Compensation based on a fixed percentage of the loan amount.
- The loan originator's overall dollar volume (total dollar amount of credit extended or total number of transactions originated) delivered to the creditor.
- The long-term performance of the originator's loans.
- An hourly pay rate based on the actual number of hours worked.
- Loans made to new customers versus loans to existing customers.
- A payment that is fixed in advance for every loan the originator arranges for the creditor (for example, \$600 for every credit transaction arranged for the creditor, or \$1,000 for the first 1,000 credit transactions arranged and \$500 for each additional credit transaction arranged).
- The percentage of the loan originator's applications that close.
- The quality of the loan originator's loan files (for example, accuracy and completeness of the loan documentation) submitted to the creditor.

Regulation Z , 12 CFR § 1026.36 – Comment 36(d)(1)-2.i

# Loan Processor Violations

**Scenario 1:** An individual/company is paid as a 1099 employee for processing and/or paid directly at closing and is not properly licensed by SML.

→ **✗ Violation: All independent contractor companies/individuals must be licensed to process.**

**Scenario 2:** An individual is a W-2 employee of an entity with an SML Independent Contractor Processor/Underwriter Company license and is not licensed by SML.

→ **✗ Violation : All processors working for a company that holds an SML Independent Contractor Processor/Underwriter Company License must be licensed and sponsored by that company.**

**Scenario 3:** An individual/company is not licensed by SML but is licensed by another state.

→ **✗ Violation: An SML license is required to process loans.**

**Scenario 4:** A company is properly licensed as an SML Independent Contractor Processor/Underwriter Company and employs unlicensed 1099 processors.

→ **✗ Violation: All processors working for a company that holds an SML Independent Contractor Processor/Underwriter Company License must be licensed and sponsored by that company**



# Loan Processor Violations Cont.

**Scenario 5:** An individual/company is paid at closing for processing and is not properly licensed by SML.

→ **✗ Violation: A license is required to be paid as a third-party processor.**

**Scenario 6:** An individual is not licensed by SML and is a W-2 employee of an SML Mortgage Company/Banker. The individual processes for companies other than the sponsoring company and is paid as an individual contractor by those companies or paid directly at closing.

→ **✗ Violation: An independent contractor loan processor must be licensed and paid through a properly licensed company that sponsors them.**

**Scenario 7:** An individual is properly licensed by SML and sponsored by an entity properly licensed by SML. The individual processes for companies other than their sponsoring company and receives payment directly (1099 or paid at closing) for processing, not through their sponsoring company.

→ **✗ Violation: The individual must be paid through a properly licensed company or registered banker that sponsors them.**

# Loan Processor Licensing Requirements

## Who is Required to Have This License?

- An “independent contractor loan processor or underwriter company” is a corporation, company, partnership, or sole proprietorship that receives compensation for an individual performing clerical or support duties as an independent contractor loan processor or underwriter at the direction of a licensed residential mortgage loan originator. See Texas Finance Code § 156.002(4-a).
- A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless the independent contractor loan processor or underwriter obtains and maintains the appropriate residential mortgage loan originator license and complies with the requirements of Chapter 180 of the Texas Finance Code. See Texas Finance Code § 180.051(b).
- An independent contract loan processor or underwriter company is treated as a type of residential mortgage loan company for purposes of Chapter 156 of the Texas Finance Code. See Texas Finance Code § 156.002(13).
- **Note:** All loan processors and underwriters working for the Independent Contractor Loan Processor and Underwriter Company are required to obtain a Texas-SML mortgage loan originator license even if the employee is paid as a W2 employee. See 7 Texas Administrative Code § 55.100(6).

# Loan Processor Licensing Requirements Cont.

## **Residential Mortgage Loan Originators - 7 TAC §55.100(6)**

(6) being a loan processor or underwriter who is an independent contractor, as provided by Finance Code §180.051(b). An individual working for a mortgage company licensed by SML or a mortgage banker registered with SML, whose compensation for federal income tax purposes is not reported on a W-2 form (e.g., a self-employed worker who is issued an IRS Form 1099-NEC), that acts as a loan processor or underwriter, is deemed to be an independent contractor loan processor or underwriter for purposes of Finance Code §180.051(b) and must be licensed as an originator. All individuals working for a mortgage company that is an independent loan processor underwriter company, regardless of how their income is documented (including W-2 employees), who act as a loan processor or underwriter or otherwise perform work in connection with the provision of loan processing or underwriting services by the company, are deemed to be independent contractors for purposes of Finance Code §180.051(b) and must be licensed as an originator.

# RESPA Violations

**Example:** Borrowers paid third-party processing fees at closing to ABC Processing, an affiliate of ABC Mortgage. The loans were processed by loan originators sponsored by ABC Mortgage not loan processors working under ABC Processing. The processing fees were disclosed as a third-party processing fee and billed as third-party processing fees under ABC Processing.

✗ **Unearned fees:** Regulation X, 12 CFR § 1024.14(c) - No split of charges except for actual services performed. No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed. A charge by a person for which no or nominal services are performed or for which duplicative fees are charged is an unearned fee and violates this section.

# RESPA Violations Cont.

**Example:** The Closing Disclosures included charges for Mortgage Broker or Loan Coordinator fees. In each instance, the Mortgage Broker or Loan Coordinator fees were charged to the consumers, collected by the Mortgage Company, and paid to an individual or entity that referred the consumer to the Mortgage Company. The Mortgage Company was the originator of the loan, lender on file, and collected origination fees. The person receiving the Mortgage Broker or Loan Coordinator fee did not act in the capacity of a mortgage broker, loan coordinator, or loan originator and did not actually perform the services for which they were paid.

**✗ Referral fees:** Regulation X, 12 CFR § 1024.14(b) No referral fees. No person shall give and no person shall accept any fee, kickback or other thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a settlement service involving a federally related mortgage loan shall be referred to any person. Any referral of a settlement service is not a compensable service, except as set forth in § 1024.14(g)(1). A company may not pay any other company or the employees of any other company for the referral of settlement service business.

**✗ Unearned fees:** Regulation X, 12 CFR § 1024.14(c) No split of charges except for actual services performed. No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed. A charge by a person for which no or nominal services are performed or for which duplicative fees are charged is an unearned fee and violates this section.

# Emerging Exam Findings

## **Home Equity Line of Credit (HELOC) - Time Restricted Fees**

Article XVI, Section 50(t)(4) of the Texas Constitution prohibits any fees to be charged and collected before the time the extension of credit is established and prohibits any fees to be charged and collected in connection with any debit or advance. Regulation 7 Texas Administrative Code § 153.85(b) provides that the time the extension of credit is established for a HELOC refers to the date of closing.

## **Equity Advance Programs - Home Equity Fee Limitation**

Regulation 7 Texas Administrative Code § 153.5 - An equity loan must not require the owner or the owner's spouse to pay, in addition to any interest or any bona fide discount points used to buy down the interest rate, any fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, two percent of the original principal amount of the extension of credit, excluding fees for an appraisal performed by a third party appraiser, a property survey performed by a state registered or licensed surveyor, a state base premium for a mortgagee policy of title insurance with endorsements established in accordance with state law, or a title examination report if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law.

# Emerging Exam Findings Cont.

## Unlicensed Wrap Lenders

Texas Finance Code §159.001(6) A “wrap lender” is “a person who makes a wrap mortgage loan; or an owner of residential real estate who contracts with another person to make a wrap mortgage loan to a wrap borrower on the owner’s behalf to finance the purchase of the owner’s residential real estate. A person is considered to make a residential mortgage loan “when a person determines the credit decision to provide the residential mortgage loan, or the act of funding the residential mortgage loan or transferring money to the borrower. A person whose name appears on the loan documents as the payee of the note is considered to have ‘made’ the residential mortgage loan.

## Seller Finance / Private Investor Loans

- Tolerance violations
- Excessive fees
- Unearned fees
- Referral fees

## Final Loan Applications

- Must be signed/dated by the Originator and Borrowers

# Mortgage Call Reports

## Mortgage Call Reports

- Failure to file before the quarterly filing deadline
- Accuracy
  - Reporting zero production when the company had production
  - Carryover of applications from quarter to quarter does not match
  - Data does not match the transaction log
  - Only reporting closed files
  - Failing to report denied and withdrawn files

## NMLS State Specific Supplemental Form (SSSF)

- Required for mortgage companies (especially independent contractor loan processor or underwriter companies) and mortgage bankers that employ independent loan processors/underwriters starting Q1-2026



# State Specific Supplemental Form (SSSF)

## Licensed Processors and Underwriters

*Enter the type of action taken on applications during the period.*

### **Data Format:**

Amount (\$ US Dollars) - Positive dollar amount to the nearest dollar. Do not enter \$, commas or decimals.

Count (#) - Positive whole number. Do not enter any symbols.

SF600	Applications In Process at Beginning of Quarter	Number of applications assigned by a third-party entity for processing or underwriting that were outstanding at the end of the previous period.
SF610	Applications Received for Processing/Underwriting During the Quarter	Applications you received during the period from a third-party entity for processing or underwriting. These applications are contracted to be returned to the third-party entity for a lending decision.
SF620	Applications Returned to Creditor, Incomplete	All assigned applications returned to the originating third-party entity because the processor or underwriter could not complete the processing or underwriting due to a non-responsive borrower.
SF630	Net Changes in Application Amount	Any changes to the loan amount that occurred while the loan was assigned to you by a third-party entity for processing or underwriting. This entry must be expressed as a positive or negative adjustment. This line only allows changes to the application amount.

# State Specific Supplemental Form (SSSF)

Item #	Name	Definitions and Instructions
SF640	Other Changes to Applications	Any other changes, directed by the assigning third party entity not meeting the definition in SF630
SF650	Applications Processed/Underwritten, Completed	All assigned applications, which were returned to the originating third party entity as complete and ready for the third party entity to render a lending decision.
SF660	Applications In Process at End of Quarter	Number of applications assigned by a third-party entity for processing or underwriting outstanding at the end of the period.

# Common Exam Findings

- Inadequate Record-keeping / Loan File Maintenance
- Unlicensed Processor
- Unlicensed Activity
- Information Security Program
- Remote Work Policy
- Advertisements / Team Names
- Transaction Log
- Conditional Letters (Pre-Qualification, Qualification, Pre-Approval & Approval Letters)
- Texas Mortgage Banker Disclosure / Texas Mortgage Company Disclosure
- Adverse Action Notice
- Initial Privacy Notice
- Notice of Penalties for Making False or Misleading Statement
- Anti-Money Laundering (AML) Program
- Identity Theft Prevention Program / Red Flags Rule
- Written Service Providers List

# Resources

- **Common Mortgage Exam Violations**

- Available on the Department website under Mortgage Examination Resources
- <https://www.sml.texas.gov/mortgage-origination/examination/>

- **Mortgage Compliance Guide**

- Available on the Department website under Mortgage Examination Resources
- <https://www.sml.texas.gov/mortgage-origination/examination/>

- **FAQs**

- <https://www.sml.texas.gov/mortgage-origination/faqs/>

- **Emerging Issues Meeting** held monthly on the 3<sup>rd</sup> Tuesday at 9:30 a.m. (Microsoft Teams)

- Email [mortgage.exam@sml.texas.gov](mailto:mortgage.exam@sml.texas.gov) to sign-up for the Mortgage Contact Group

# Questions?

Ellena Meier  
Chief Mortgage Examiner  
[emeier@sml.texas.gov](mailto:emeier@sml.texas.gov)