

CFPB Policy Guidance [Supervisory and Enforcement Considerations Relevant to Mortgage Brokers Transitioning to Mini-Correspondent Lenders](#)

July 2014

The CFPB issued policy guidance in July 2014 to address a perceived trend of mortgage brokers restructuring their businesses to become mini-correspondent lenders in order to evade certain consumer protection requirements.

Under the Real Estate Settlement Procedures Act (RESPA), the compensation paid to a mortgage broker must be disclosed on the Good Faith Estimate and HUD-1 Settlement Statement, whereas compensation received by a correspondent lender for sale of the loan in the secondary market need not be disclosed. Under the Truth in Lending Act (TILA), compensation paid to a mortgage broker is counted toward the points-and-fees cap for qualified mortgages and in determining whether the loan is a “high-cost mortgage” under the Home Ownership and Equity Protection Act (HOEPA). TILA also places restrictions on the source of compensation for mortgage brokers, as well as a prohibition on steering consumers into certain loan products in order to increase the mortgage broker’s compensation. These restrictions do not apply to correspondent lenders that are not otherwise defined as loan originators.

The difference between a correspondent lender and a mortgage broker turns primarily on whether the entity is operating in the primary or secondary mortgage market. As defined in RESPA and TILA, a mortgage broker serves as an intermediary between borrowers and wholesale lenders in the primary market. A correspondent lender closes loans in its own name, funds them (often through a warehouse line of credit), and sells them to an investor in the secondary market through a prior agreement.

This distinction gets blurry, however, when a mortgage broker utilizes “table funding” to close a transaction. In a table-funded transaction, the mortgage broker closes the loan in its own name, and a third party lender contemporaneously funds the loan and receives assignment of the loan from the broker. A table-funded transaction is very similar in execution to the sale of a loan by a correspondent lender, but table-funding is subject to RESPA and TILA restrictions, while correspondent lending is not.

The policy guidance states that the CFPB will be monitoring correspondent lending very closely to determine “whether the parties are engaging in good faith in a secondary market transaction between a lender and a third-party investor, or, in fact, a typical primary market transaction involving a mortgage broker and a wholesale lender.” The CFPB notes that this determination will turn on the real source of funding for the transaction, and the real interest of the funding lender. The guidance includes a list of questions that the CFPB will consider when evaluating mini-correspondent lender transactions, including whether the lender sells its loans primarily or exclusively to the institution providing its warehouse line of credit, or its affiliates.

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