Loan Officer Comp Tops CFPB's 2016 Exam Agenda

By **Kate Berry**
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Calvin Hagins, the Consumer Financial Protection Bureau's deputy assistant director for originations, warned mortgage lenders this week about four contentious areas that its examiners will zero in on next year.

CFPB examiners will spend "a lot of time" looking at loan officer compensation plans, compliance with ability-to-repay rules and Truth-in-Lending Act/Real Estate Procedure Settlement Act integrated disclosure requirements, as well as the structure of marketing services agreements, Hagins said Monday at a mortgage conference in Costa Mesa, Calif.

The four priorities make sense given that all are hot-button issues, some tied to recent rule changes.

Industry officials seem to hang on the CFPB's every word about such matters these days. When Hagins stepped to the podium to speak, a hush fell on the room as nearly 150 compliance executives and lawyers craned to hear what the CFPB would do next.

Loan officer compensation has long been a contentious issue in the mortgage industry. Some lenders have complained that their competitors find ways to pay loan originators that may be illegal.

"We're going to spend a very long time evaluating compensation schemes at every exam at every entity," Hagins said.

"So if you've got seven or eight schemes, we'll do a risk-based approach to determine which of those schemes we'll look at, and we'll also determine how deep we'll look at the individual loan originators."

He also said the CFPB has "been informed through various sources" that some mortgage lenders have "folks who perform duties of loan originators" but who may not be licensed.

"We will be asking questions through the examination process to make sure that institutions have identified all loan originators and they have received the proper credentials," he said.

Moreover, Hagins warned that examiners would pore over how lenders have paid loan officers historically, not just their current practices.

"It shouldn't come as a surprise when a CFPB examiner says, 'I understand what you did in 2014 to 2015, but what did you do in 2013 and 2012?' So expect a backward-look approach to this," he said.

A few mortgage banks have paid steep fines this year for allegedly paying bonuses and higher commissions to loan originators for steering consumers into higher-cost mortgages. Mortgage brokers and loan officers are prohibited from being paid based on a loan's terms, including if a consumer takes out a loan with a higher interest rate or higher fees.

The CFPB also will be looking at implementation of the ability-to-repay rule, which requires that lenders verify borrowers' ability to pay their mortgages. There are eight checklist factors, including proper determination of a borrower's employment status, credit history, income or assets, and debt obligations.

Hagins was emphatic that the CFPB will not make any exceptions for lenders to comply with TRID, which took effect on Oct. 3. Mortgage lenders have had two years to comply with the rule but have repeatedly sought assurances that they will not be penalized right away for failing to comply.

"There were a number of letters that were written to the regulators, meaning the prudential regulators as well as the CFPB, from a lot of different sources, all asking for a grace period, a hold-harmless period: 'We don't have enough time to comply, please extend it,'" Hagins said.

The CFPB heard those calls but no further breaks on enforcement will be given, Hagins said.

"The effective date of the rule was Oct. 3, and that's still the effective date of the rule," Hagins said.

At one point during a panel discussion, he interrupted Charles Clark, the director of consumer services in the Washington State Department of Financial Institutions, to drive home the point.

"I want to be perfectly clear," Hagins said. "There is no grace period from the bureau."

As part of its strategy in 2016, the CFPB will be asking questions about (but not performing actual reviews of) marketing services agreements. The CFPB wrote in an Oct. 8 bulletin that it is concerned that so-called MSAs may involve illegal referrals for mortgage products, a violation of the anti-kickback provisions under Respa.

"We didn't say they were illegal, we didn't say you couldn't do them, we said we have concerns," Hagins said. "We want to get information about the lay of the land, and then determine for 2017 how we want to approach this subject in terms of an examination perspective."