

Manufactured Housing Institute Loan Originator Summary

The following provides a summary of the guidance provided by the Consumer Financial Protection Bureau (the “Bureau”) for determining whether a retailer or its employees may be Loan Originators (“LO”). The Bureau has issued guidance in the form of the Loan Originator Compensation rule (“LO Comp Rule”) issued in January 2013 and updated in September 2013 (12 CFR 1026.36), the related official staff commentary and the supplemental information provided with the Rule. The effective date of the applicable section of the LO Comp Rule for this summary is January 1, 2014.

Scope of Summary

This material is intended to serve as a summary of the legal provisions for making the LO determination and not legal advice. MHI is not in a position to provide legal advice as to the exact application of the rules to any individual industry participants (e.g., retailer, its employees, community owners, lenders, etc.). It is recommended that participants review this information thoroughly and enlist the assistance of competent legal counsel to evaluate specific application of the rules to individual operations. *To help facilitate the review, Exhibit B provides a more concise list of the activities addressed by the Bureau.*

Additionally, the rules and guidance issued by the Bureau provide information for making the LO determination for creditors, parties who *intend to act as LOs* (or loan originator organization like mortgage brokers), or employees, contractors, or agents of these parties. *This summary, however, assumes that the recipients – primarily retailers, community owners, and their employees – do not intend to act as LOs.* Alternatively, if someone is an LO or intends to act as an LO (and be subject to the various federal mortgage rules), then additional advice must be sought.

LO Comp Rule vs. SAFE Act

While many of the terms used in the LO Comp Rule and the SAFE Act (or state versions of the SAFE Act) appear to be the same, these federal laws have very different applications. The Bureau stated that Congress defined “mortgage originator” in the Dodd Frank Act (from which the LO Comp term “Loan Originator” comes) to be broader in most ways than the definition of “loan originator” in the SAFE Act. The other important distinction is that the LO Comp Rule is primarily regulated at the federal level by the Bureau, while the SAFE Act is primarily regulated by the individual states through their own state SAFE Act laws (note - certain state laws may provide a state regulator with authority to enforce federal laws).

Additionally, some state SAFE Act laws and/or state regulatory guidance was favorable to retailers – for example, West Virginia’s SAFE Act provides that manufactured or modular home retailer employees who perform purely administrative or clerical tasks and who receive only the customary salary or commission from the employer in connection with the sales transaction are not mortgage loan originators under state law. This type of state law or regulatory guidance is not applicable to the determination of whether a retailer or its employees are LOs under the federal Dodd-Frank law or Bureau rules.

As such, retailers who have determined how to operate in a manner that *avoids* the requirement to be licensed under their state SAFE Act, cannot necessarily be assured that they have successfully avoided being an LO under the new Dodd-Frank LO Comp Rule. *Separate determinations must be made for a retailer’s operations under BOTH the federal LO Comp Rule and the state SAFE Act.*

Who is a Loan Originator?

A “loan originator” is a person who, in expectation of *direct or indirect* compensation or other monetary gain or for *direct or indirect* compensation or other monetary gain, performs any of the following activities:

- Takes an application
- Offers, arranges, assists a consumer in obtaining or applying to obtain a loan
- Negotiates, or otherwise obtains or makes an extension of consumer credit for another person
- Through advertising or other means of communication represents to the public that the person can or will perform any of the LO activities.

The term Loan Originator is used to cover both natural people (“*individual* loan originators”) and business entities (“loan originator *organizations*,” “LOOs”) – therefore, both the retail company and the individual employees can be deemed LOs. LOs can be employees, agents, or contractors of the creditor (usually a lender) or LOO if they meet the definition (perform activities, compensation, etc.). LOs that are not employed by a creditor are defined in the rules as “mortgage brokers.”

The form or structure of the financing can impact whether a retailer is an LO as well. The Bureau’s guidance states that an LO includes a retailer who is the named party on a retail installment contract if they engage in LO activities and do not finance the transaction at closing out of their own resources (including a bona fide warehouse line of credit or out of deposits held by the retailer) – also known as “table-funding.” The Bureau uses the following example to make this more clear – “. . . if a person closes a transaction in its own name but does not fund the transaction from its own resources and assigns the transaction after consummation to the person providing the funds, it is considered a . . . loan originator . . .” *As such, retailers and lenders that are originating transactions on 3-party retail installment sales contracts that are assigned to the lender at or after closing must evaluate this issue carefully or consider changing to 2-party direct loan promissory notes where the retailer is not a party to the financing.*

Consequences of Being a Loan Originator

The following is a summary of the consequences of being considered a LO and/or LOO under the LO Comp Rule.

As a preliminary matter, individuals or entities that are loan originators are subject to regulation by the Bureau. Any compensation paid to the retailer for LOO activities attributed to a particular transaction is considered to be loan originator compensation, and therefore is included in points and fees for HOEPA high-cost and qualified mortgage calculations. The sales price of a manufactured home is not deemed to include loan originator compensation for purposes of the points and fees trigger, unless the creditor has knowledge that the sales price includes compensation for LO/LOO activities.

Compensation paid to the LO or LOO is subject to the limitations contained in the LO Comp Rule. The LO and the LOO may be compensated by the creditor or the consumer, *but not both*. The compensation cannot be based on the terms of a single transaction or the terms of multiple transactions, other than the amount of the transaction. In addition, periodic non-deferred profits-based compensation cannot be more than 10-percent of the LO’s total periodic compensation, unless the LO works on 10 or fewer transactions per year.

Creditors will be required to maintain records of all compensation paid to the LO or LOO, as well as compensation agreements governing the payment, for three years from the date of payment. LOOs, *i.e.* retailers, will be required to maintain records of all compensation received and records of all compensation paid to individual LOs, as well as compensation agreements governing the payments, for three years from the date of payment.

Individuals engaged in LO activities likely need to be licensed as MLOs under state SAFE Acts. In that case, retailers employing those individuals will also likely need either a state license (e.g., lender or broker) or an exempt entity filing on NMLS to sponsor the individual LOs. To the extent an individual is required to be licensed as an MLO, the individual LO is subject to criminal background checks, credit reports, fingerprinting and education and testing requirements. As a licensed entity, retailers would be subject to existing states laws related to lending transactions – e.g., rate and fee limitations, disclosures, state examinations, etc. Regardless of whether an individual is required to be licensed as an MLO, the individual LO is subject to background checks and must be provided with periodic training covering Federal and State law requirements that apply to the LO’s activities.

Exclusion for Employees of Retailers of Manufactured Homes

The LO Comp Rule provides that the term Loan Originator does not include an *employee of a manufactured home retailer* who does not take a consumer credit application, offer or negotiate credit terms, or advise a consumer on credit terms. The Bureau also provided an official comment to the Rule that further defines the scope of the retailer employee exclusion – noting that the definition of loan originator does not include an employee of a manufactured home retailer that “assists” a consumer in obtaining or applying for consumer credit, provided the employee does not advise the consumer on specific credit terms, or otherwise engage in loan originator activity.

The Bureau provides examples which describe activities that, *in the absence of other activities*, do not define a manufactured home retailer employee as a loan originator. In order to provide the Bureau’s guidance concerning retailer employees in a more

tangible context, those sections of the official comment will be discussed further in the following summary of the “Activities By Topic.” The specific language of the official comment is attached as Exhibit A - reading the exhibit carefully is highly recommended.

Compensation

While compensation is not an “activity,” the LO Comp Rule connects the LO activities with compensation or gain in determining whether a party is an LO. Specifically, a “loan originator” is a person who, in expectation of direct or indirect compensation or other monetary gain or for direct or indirect compensation or other monetary gain, performs any of the LO activities.

Compensation has two applications under the LO Comp Rule – (1) determining who is an LO; and (2) *if the party is an LO*, defining the types of compensation that are permitted or prohibited. For purposes of this summary, the compensation summary is limited to the guidance provided for making the determination of who may be an LO.

The Rule broadly defines “compensation” to include salaries, commissions, and any financial or similar incentive (including, annual or other periodic bonus, awards of merchandise, services, trips, or similar purposes). “Other monetary gain” is not specifically defined by the Bureau.

The Bureau sought to address the manufactured housing industry’s concern regarding the point at which retailers and their employees would be considered loan originators. The industry urged the Bureau to exclude retailers and their employees if they received compensation which could be characterized as a commission for *sales-only activities*. The Bureau indicated that a person who *for direct or indirect compensation engages in loan origination activities* is a loan originator and that *all forms of compensation* count for this purpose—even if they are structured as a sales commission or other sales transaction-specific form of compensation. Therefore, if an employee receives compensation “in connection with” their LO activities, the employee is a loan originator regardless of the stated purpose or name of the compensation.

The reasonable conclusion from this guidance about compensation is that retailers and employees must be very careful with the activities in which they engage and the forms of compensation they pay or receive.

Activities By Topic

The following provides a summary of the LO Comp Rule and the Bureau’s LO guidance arranged by topic of activities and additional areas of interest.

(1) Interactions with Consumers Relating to Financing

Keeping in mind that much of the guidance for loan-related discussions is connected to the Bureau’s view of “credit terms” (see (6) below), the following provides a summary of the activities that are associated with interactions between retailer employees and consumers that touch on loan-related matters.

Activities that could make a retailer employee a Loan Originator:

- Arranging a credit transaction, including initially contacting and orienting the consumer to a particular loan originator’s or creditor’s origination process or particular credit terms that are or may be available to that consumer selected based on the consumer’s financial characteristics
- Offering particular credit terms to the consumer selected based on the consumer’s financial characteristics
- Negotiating credit terms, or otherwise obtaining or making an extension of credit
- Advising on particular or specific credit terms that are or may be available to that consumer based on the consumer’s financial characteristics – The Bureau noted that “advising” includes advising a consumer on *whether to seek or accept* specific credit terms from a creditor.
- Presenting particular credit terms for the consumer’s consideration that are selected based on the consumer’s financial characteristics

- Communicating with a consumer for the purpose of reaching a mutual understanding about prospective credit terms
- Recommend, refer, or steer a consumer to a particular loan originator, creditor, credit terms, or credit product

Activities that would not make retailer employee a Loan Originator:

- The Bureau stated that “advising” on particular credit terms does not include persons who merely provide general explanations or descriptions in response to consumer queries, such as by explaining general credit terminology or the interactions of various credit terms not specific to a transaction.
- Generally describing the credit application process to a consumer without advising on credit terms available from a creditor; providing general application instructions to consumers so consumers can complete an application (see details provided previously)
- In connection with preparing residential mortgage loan packages, which means compiling and processing loan application materials and supporting documentation . . . without interacting or communicating with the consumer regarding transaction terms (NOTE – “transaction terms” is not defined by the Bureau; it is unclear whether that term is included in or different from “credit terms” discussed above)

With respect to the wide array of possible conversations that could be deemed loan-related, neither the Bureau nor the rule provides sufficient guidance as to the particular activities that are permissible for retailers or their employees. For example, while the rule defines what it means to “arrange a credit transaction” that would make a person an LO, it does not provide alternative examples of activities that do not rise to the level of “arranging.”

As such, it is recommended that retailers and other industry participants study the rule and the Bureau’s guidance provided as to the activities that would make a person an LO, and then evaluate how to functionally *avoid* those activities. For example, if “advising” on specific credit terms may make a person an LO, then a retailer could direct questions from a consumer as to whether to seek or accept specific credit terms to the lender who provided the offer of credit.

(2) Credit Application Process

The Bureau states that the following activities may make a retailer/employee a Loan Originator:

- Filling out a consumer’s application
- Inputting information into an online application or other automated system
- Taking information from the consumer over the phone to complete the application
- Referring consumers to a particular creditor *by providing an application from that creditor* – The Bureau elaborates that employees (or agents or contractors) of manufactured home retailers who provide a credit application form from one particular creditor or loan originator organization that is not the entity for which they work would not qualify for the exclusion of retailer employees

The Bureau stated that it believes that an individual performing these types of functions play an important enough role in the origination process that they should be subject to the requirements of the Dodd-Frank Act. The Bureau’s concern is that consumers providing information for an application during the initial stages of the origination process are susceptible to steering influences that could be harmful – for example, the application taker could submit or characterize the application in a way that is more favorable to the application taker while limiting the consumer’s options or qualifying the consumer for a transaction the consumer cannot repay; or, when taking in the information provided by the consumer the application taker could encourage a consumer to seek certain credit terms or products or to consider a particular creditor.

The Bureau states that the following are activities that a retailer/employee may perform and NOT be considered a Loan Originator:

- Generally describing the credit application process to a consumer without advising on credit terms available from a creditor
- Compiling and processing loan application materials and supporting documentation
- Providing general application instructions to consumers so the consumer can complete an application

Referral Activity

Referring a consumer to any person who participates in the origination process as a loan originator is LO activity. The Bureau interprets that “referring” is an activity included under each of the other activities of offering, arranging, or assisting a consumer in obtaining or applying to obtain an extension of credit – in other words, a person who refers is also “offering” or “arranging.” The Bureau notes, however, that most consumers purchasing a manufactured home will need financing, and that a limited set of options may be available. As such, since there are only a small number of creditors that make loans secured by manufactured homes, the Bureau believes it is beneficial to consumers for that information about those creditors to be made available to the consumers by a retailer.

Activities defined by the Bureau that would qualify as “referring” that may make a retailer/employee a Loan Originator:

- Any oral or written action directed to a consumer that can *affirmatively influence* the consumer to select a *particular* loan originator or creditor to obtain an extension of credit when the consumer will pay for such credit—thus, the Bureau noted that employees of manufactured home retailers who refer consumers to *particular* credit providers would be considered loan originators if they are compensated for the activity (see Compensation discussion above).
- Advertising – The Bureau stated that the more an advertisement is specifically directed at and communicated to a particular consumer or small number of consumers only, the more the advertisement could constitute a referral. Presumably, the Bureau intends this to mean that the ads in question must also reference LO activities that would be performed by a retailer or particular credit terms or finance providers in order to be a referral, but not impact a retailer’s ability to market its housing product models or *sales* programs. See “Advertising” section below for more details.
- Recommending a particular creditor or loan originator or otherwise influencing the consumer’s decision of which creditor or loan originator to select

The Bureau states that the following are activities that a retailer/employee may perform and NOT be considered a Loan Originator:

- Providing or making available general information about creditors or loan originators (e.g., mortgage brokers) that may offer financing for manufactured homes in the consumer’s general area (activity must not amount to “referring”)
- Making available, in a neutral manner, general brochures or information about the different creditors or loan originators that may offer financing to a consumer

(3) Transaction Processing Support

The LO Comp Rule and the Bureau provide that retailer employees can perform certain processing-related activities without being considered to be Loan Originators, including:

- Collecting information or verifying information provided by the consumer - on behalf of a loan originator or creditor - such as asking the consumer for documentation to support the information he/she provided or for the consumer’s authorization to obtain supporting documents from third parties
- Preparing residential mortgage loan packages, which means compiling and processing loan application materials and supporting documentation, without interacting or communicating with the consumer regarding transaction terms

- Collecting information on behalf of the consumer with regard to a residential mortgage loan - including gathering information or supporting documentation from third parties on behalf of the consumer to provide to the consumer who in turn provides the information in the application or to the loan originator or creditor

(4) Advertising

The definition of Loan Originator includes advertising or other means of communication that represents to the public that the person can or will perform any of the LO activities. The Bureau noted in the analysis that the phrase “advertises or communicates to the public” is very broad and includes, but is not limited to, the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, if these items advertise or communicate to the public that a person can or will provide loan origination services or activities.

The Bureau believes a person may become an LO through its advertising activities only if the person, or an employee or affiliate of the person, advertises that that person – in our context, the retailer or retailer’s employee - can or will provide loan origination services. In contrast, the rule states that advertising the services of a third party that engages or intends to engage in loan origination activities does not make the advertiser – i.e., a retailer or employee - a loan originator. Thus, a person simply publishing or broadcasting an advertisement that indicates that a third party can or will perform loan origination services is not a loan originator (e.g., “*third-party financing may be available*”).

By way of example, if a salesperson ran a line ad that read: “Call Bob at ABC Homes – We can get you the best loan for your home purchase” – would likely be advertising in a manner that could make the retailer and salesperson an LO. In contrast, if a retailer permitted a *lender* – a third party - to display marketing material to consumers at a retailer’s location, then it is likely that this activity would qualify as “advertising the services of a third party” that engages in LO activities, which the rule and the Bureau state would not make the advertiser an LO.

Ads as Referrals - As noted in the summary of the “referral” guidance from the Bureau above, it is noted that the more an advertisement is specifically directed at and communicated to a particular consumer or small number of consumers only, the more the advertisement could constitute a referral and not an advertisement.

(5) Definition of “Credit Terms”

The LO Comp Rule and much of the Bureau’s guidance concerning loan-related discussions relates to interactions with consumers on “credit terms.” The rule defines “credit terms” to include *rates, fees, and other costs*. Prior to summarizing the activities that need to be considered in this area (see next section of summary), a more detailed summary of how the Bureau views the scope of “credit terms” is provided, which should be used in evaluating the activities.

The Bureau stated that it had concerns that the term “credit terms” could have been construed *too broadly* and in a manner that could render any person who provides general information a loan originator, which was not the Bureau’s intent. Rather, the Bureau generally intended the references to “credit terms” to refer to particular credit terms. Distinct from *particular* credit terms are *general* credit terms that a loan originator or creditor makes available and advertises to the public at large.

The Bureau provides a few examples or illustrations that can be helpful in applying their guidance concerning discussions about “credit terms:”

- For a loan originator or creditor - “We offer rates as low as 3% to qualified consumers.” – The Bureau does not deem this to be a statement concerning a *particular* credit term
- A person who discusses with a consumer that a creditor *should be able to offer* the consumer an interest rate of 3%, would be considered a loan originator
- However, a person who merely states general information such as “lenders offer rates as low as 3% to qualified consumers” would not have been considered a loan originator because the person is not offering *particular* credit terms that are or may be available to that consumer.

Additionally, the definition of credit terms in the rule provides guidance as to when a term is “selected based on the consumer’s financial characteristics,” which could result in a discussion rising to the level of LO activity. Specifically, the rule states that a

credit term is “selected based on the consumer’s financial characteristics” when those terms are selected based on any factors that may influence a credit decision, such as *debts, income, assets, or credit history*. The Bureau stated that it intended this language to capture situations where credit terms are offered or discussed as *available or potentially available* to a consumer based on that consumer’s ability to obtain such credit. For example:

- The Bureau stated that this activity would include examining the consumer’s credit history (which could include a credit score), income, debts, or assets and then selecting credit terms that are either *available or potentially available* to the consumer based on those factors.
- The Bureau does not intend this language to cover situations where, for example, an employee of a loan originator or creditor may be aware of a consumer’s assets, income, or other factors, but does not select credit terms based on those factors.

From the LO Comp Rule – 12 CFR 1026.36(a)(1)(i)

The term [Loan Originator] does not include: . . . (B) An employee of a manufactured home retailer who does not take a consumer credit application, offer or negotiate credit terms, or advise a consumer on credit terms.

From the Official Commentary to the Rule – Comment 36(a)(1)(i)(B)

Employee of a retailer of manufactured homes.

1. The definition of loan originator does not include an employee of a manufactured home retailer that “assists” a consumer in obtaining or applying for consumer credit as defined in comment 36(a)-1.i.A.3, provided the employee does not advise the consumer on specific credit terms, or otherwise engage in loan originator activity as defined in § 1026.36(a)(1). The following examples describe activities that, *in the absence of other activities*, do not define a manufactured home retailer employee as a loan originator:

- i. Generally describing the credit application process to a consumer without advising on credit terms available from a creditor.
- ii. Preparing residential mortgage loan packages, which means compiling and processing loan application materials and supporting documentation, and providing general application instructions to consumers so consumers can complete an application, without interacting or communicating with the consumer regarding transaction terms, but not filling out a consumer’s application, inputting the information into an online application or other automated system, or taking information from the consumer over the phone to complete the application.
- iii. Collecting information on behalf of the consumer with regard to a residential mortgage loan. Collecting information “on behalf of the consumer” would include gathering information or supporting documentation from third parties on behalf of the consumer to provide to the consumer, for the consumer then to provide in the application or for the consumer to submit to the loan originator or creditor.
- iv. Providing or making available general information about creditors or loan originators that may offer financing for manufactured homes in the consumer’s general area, when doing so does not otherwise amount to “referring” as defined in comment 36(a)-1.i.A.1. This includes making available, in a neutral manner, general brochures or information about the different creditors or loan originators that may offer financing to a consumer, but does not include recommending a particular creditor or loan originator or otherwise influencing the consumer’s decision.

Exhibit B

Please review the summary for more details.

LO Comp Rule vs. SAFE Act

State SAFE Act laws and/or state regulator guidance that provided favorable guidance for retailers is not applicable to the determination of whether a retailer or its employees are LOs under the *federal Dodd-Frank law or Bureau rules*. Separate determinations must be made for a retailer's operations under BOTH the federal LO Comp Rule and the state SAFE Act.

Compensation

A "loan originator" is a person who, in expectation of direct or indirect compensation or other monetary gain or for direct or indirect compensation or other monetary gain, performs any of the LO activities.

For MH retailer compensations, the Bureau noted that if a retailer's employee receives compensation "in connection with" the employee's LO activities, the employee is a loan originator, regardless of the stated purpose or name of the compensation.

Interactions with Consumers Relating to Financing

NOTE - See discussion above of "credit terms" for an understanding of how the term relates to interactions relating to financing.

Activities that could make a retailer employee a Loan Originator:

- Arranging a credit transaction, including initially contacting and orienting the consumer to a particular loan originator's or creditor's origination process or particular credit terms that are or may be available to that consumer selected based on the consumer's financial characteristics
- Offering particular credit terms to the consumer selected based on the consumer's financial characteristics
- Negotiating credit terms, or otherwise obtaining or making an extension of credit
- Advising on particular or specific credit terms that are or may be available to that consumer based on the consumer's financial characteristics – The Bureau noted that "advising" includes advising a consumer on *whether to seek or accept* specific credit terms from a creditor.
- Presenting particular credit terms for the consumer's consideration that are selected based on the consumer's financial characteristics
- Communicating with a consumer for the purpose of reaching a mutual understanding about prospective credit terms
- Recommend, refer, or steer a consumer to a particular loan originator, creditor, credit terms, or credit product

Activities that would not make retailer employee a Loan Originator:

- The Bureau stated that "advising" on particular credit terms does not include persons who merely provide general explanations or descriptions in response to consumer queries, such as by explaining general credit terminology or the interactions of various credit terms not specific to a transaction.
- Generally describing the credit application process to a consumer without advising on credit terms available from a creditor; providing general application instructions to consumers so consumers can complete an application (see details provided previously)
- In connection with preparing residential mortgage loan packages, which means compiling and processing loan application materials and supporting documentation . . . without interacting or communicating with the consumer

regarding transaction terms (NOTE – “transaction terms” is not defined by the Bureau; it is unclear whether that term is included in or different from “credit terms” discussed above)

Credit Application Process

The Bureau states that the following activities may make a retailer/employee a Loan Originator:

- Filling out a consumer’s application
- Inputting information into an online application or other automated system
- Taking information from the consumer over the phone to complete the application
- Referring consumers to a particular creditor *by providing an application from that creditor* – The Bureau elaborates that employees (or agents or contractors) of manufactured home retailers who provide a credit application form from one particular creditor or loan originator organization that is not the entity for which they work would not qualify for the exclusion of retailer employees

The Bureau states that the following are activities that a retailer/employee may perform and NOT be considered a Loan Originator:

- Generally describing the credit application process to a consumer without advising on credit terms available from a creditor
- Compiling and processing loan application materials and supporting documentation
- Providing general application instructions to consumers so the consumer can complete an application

Referral Activity

Activities defined by the Bureau that would qualify as “referring” that may make a retailer/employee a Loan Originator:

- Any oral or written action directed to a consumer that can *affirmatively influence* the consumer to select a *particular* loan originator or creditor to obtain an extension of credit when the consumer will pay for such credit—thus, the Bureau noted that employees of manufactured home retailers who refer consumers to *particular* credit providers would be considered loan originators if they are compensated for the activity (see Compensation discussion above).
- Advertising – The Bureau stated that the more an advertisement is specifically directed at and communicated to a particular consumer or small number of consumers only, the more the advertisement could constitute a referral. Presumably, the Bureau intends this to mean that the ads in question must also reference LO activities that would be performed by a retailer or particular credit terms or finance providers in order to be a referral, but not impact a retailer’s ability to market its housing product models or *sales* programs. See “Advertising” section below for more details.
- Recommending a particular creditor or loan originator or otherwise influencing the consumer’s decision of which creditor or loan originator to select

The Bureau states that the following are activities that a retailer/employee may perform and NOT be considered a Loan Originator:

- Providing or making available general information about creditors or loan originators (e.g., mortgage brokers) that may offer financing for manufactured homes in the consumer’s general area (activity must not amount to “referring”)
- Making available, in a neutral manner, general brochures or information about the different creditors or loan originators that may offer financing to a consumer

Transaction Processing Support

The LO Comp Rule and the Bureau provide certain processing-related activities that can be performed by retailer employees and NOT considered them to be Loan Originators, including:

- Collecting information or verifying information provided by the consumer - on behalf of a loan originator or creditor - such as asking the consumer for documentation to support the information he/she provided or for the consumer's authorization to obtain supporting documents from third parties
- Preparing residential mortgage loan packages, which means compiling and processing loan application materials and supporting documentation, without interacting or communicating with the consumer regarding transaction terms
- Collecting information on behalf of the consumer with regard to a residential mortgage loan - including gathering information or supporting documentation from third parties on behalf of the consumer to provide to the consumer who in turn provides the information in the application or to the loan originator or creditor

Advertising

The definition of Loan Originator includes advertising or other means of communication that represents to the public that the person can or will perform any of the LO activities.

Advertising the services of a third party that engages or intends to engage in loan origination activities does not make the advertiser – i.e., a retailer or employee - a loan originator (e.g., “*third-party financing may be available*”).

Use of Consumer's Financial Information (e.g., credit reports)

Arranging, offering, advising, presenting credit terms “selected based on the consumer's financial characteristics” is LO activity.

The rule states that a credit term is “selected based on the consumer's financial characteristics” when those terms are selected based on any factors that may influence a credit decision, such as *debts, income, assets, or credit history*.

The Bureau stated that it intended this language to capture situations where credit terms are offered or discussed as *available or potentially available* to a consumer based on that consumer's ability to obtain such credit.

With respect to use of credit reports, the Bureau provided the following examples:

- Examining the consumer's credit history (which could include a credit score), income, debts, or assets and then selecting credit terms that are either *available or potentially available* to the consumer based on those factors – is LO activity.
- An employee of a loan originator or creditor may be aware of a consumer's assets, income, or other factors, but does not select credit terms based on those factors – Bureau does not intend this to be LO activity.