BRODY | GAPP LLP
and
The Mortgage Collaborative

2025 Annual Regulatory Round-Up: Trends, Challenges, and Regulatory Actions

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BRODY | GAPP LLP

A Premier Law Firm for the Mortgage Banking Industry

Brody | Gapp LLP ("Brody | Gapp") is a high-impact law firm recognized for its work in the mortgage banking industry. Led by industry veteran James W. Brody and powered by a team of seasoned attorneys—including former in-house General Counsel, audit tested compliance counsel, fraud examiners and investigators, skilled litigators and trial attorneys. Our firm is built on a singular principle: deliver exceptional legal solutions with intelligence, tenacity and integrity. We provide deep experience and strategic counsel in the following areas:

Repurchase & Make-Whole Defense |Agency and investor claims | Bankruptcy litigation

Indemnification negotiations | Litigation | Poaching and Trade Secrets

Contract and Fraud| Employment and Labor Disputes | Regulatory Comp & Risk Mgmt.

LOS, title, CPL & appraiser liability | CFPB and State Regulatory Audits

LO comp, MSAs, HUD & RESPA | Policies & Procedures | Licensing

Mergers & Acquisitions

James W. Brody, Esq.

Founder & Managing Partner

Mr. Brody is the Founding and Managing Partner of Brody | Gapp LLP, where he leads the firm's national mortgage banking litigation, mitigation, and regulatory compliance practice. With nearly 25 years of legal experience—more than 20 of which have been exclusively focused on the mortgage banking industry—Mr. Brody brings deep insight, strategic foresight, and a results-driven approach to a broad range of high-stakes legal matters.

Throughout his career, Mr. Brody has represented independent mortgage banks, credit unions, and brokers in navigating complex business disputes and regulatory challenges. His leadership was pivotal in the growth of his former firm and now defines the success of Brody | Gapp LLP as one of the leading boutique firms in the industry.

Mr. Brody has successfully handled and resolved hundreds of cases involving mortgage fraud, government and investor audits, large-scale repurchase and make-whole claims, inter-company poaching and employment litigation, partnership and licensing disputes, and sensitive regulatory inquiries by the CFPB and state agencies. Many of these matters involve loans sold into the secondary market or securitized with institutions such as FNMA, Freddie Mac, Lehman Brothers, and Chase.

His expertise encompasses the entire lifecycle of a mortgage loan—from origination through post-closing disputes—including issues related to loan sales and transfers, securitizations, foreclosures, bankruptcies, and repurchase or indemnification demands. Mr. Brody is widely regarded for his ability to craft practical, compliant, and business-minded solutions.

Mimi T. Paxson

Vice President of Strategic Partnerships

Mimi brings over 25 years of industry experience and leads the Preferred Partner Network for The Mortgage Collaborative ("TMC"). TMC is comprised of over 200 Lender Members and 70+ best in class solution provider including organizations such as J.W. Brody | Compliance + Litigation.

Mimi and her team strive to bring innovation, efficiency and cost savings to TMC Lender Members through the partnership with their preferred partners.

TMC's network of Preferred Partners spans the entire life cycle of the mortgage origination process and supports the needs of TMC's Lender Member organizations.

tmc The Mortgage Collaborative

The Mortgage Collaborative (TMC)
“Power of the Network”

The Mortgage Collaborative was founded in 2013 with the mission of empowering mortgage lenders across the country to gain better financial execution, reduced costs, streamlined processes, personnel development, and exclusive access to a nationwide network of industry leaders to help engage with the ever-changing American consumer base.

TMC represents approximately 10% of the mortgage volume in the United States and boasts a best-in-class network of Preferred Partners offering exclusive discounts and solutions to our Members.

TMC is managed by our founding members, John Robbins, CMB, former MBA Chair; David Kittle, CMB, former MBA Chair; and Jim Park, former chair of the Asian Real Estate Association of America (AREAA), and current President and CEO, Jodi Hall.

tmc The Mortgage Collaborative

TMC's MISSION

Our mission is to foster a collaborative and innovative environment that empowers our members to grow, thrive, and positively impact the companies and the communities they serve.

For More Information:

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AGENDA

I. Loan Originator Compensation
II. Technology, Data Privacy, and Data Security
III. Rising Interest Rates & Market Volatility
IV. Fair Lending / UDAPP
V. Marketing Service Agreements
VI. Dual Employment, Dual Capacity, and Conflicts of Interest
VII. Looking Forward in 2025

Part I:

Loan Originator Compensation

LO Comp – Biggest Items

- Prohibited Practices: Steering & Dual Compensation
- Variability Based on Loan Terms or Conditions
- Recent Consent Orders & Penalties in 2023-2024

LO Compensation Rule - Review

- Prohibits compensation based on loan terms, or a proxy for loan terms other than loan amount.

- Defining "Proxy of a Loan Term"
  - Consistently varies with a term or terms of the transaction over a significant number of transactions.
  - LO has the ability, directly or indirectly, to add, drop, or change the factor when originating the transaction.

- Prohibits compensation from both the consumer and another person.

LO Compensation Rule – “Safe Harbor”

Compensation paid or received based on the below “Safe Harbor” methods will be deemed to not be based on a transaction term or proxy for a transaction term:

- LO’s overall volume – either total dollar amount of credit extended or total number of transactions originated;
- Loan term performance of the LO’s loans;
- Hourly pay rate based on actual number of hours worked;
- Loans made to new customers versus existing customers
- A “flat-fee” structure paid for every loan originated
- The percentage of the LO’s applications that close
- Quality of the LO’s files submitted to the creditor

LO Compensation Rule
Permissible v. Non-Permissible Structures

Permissible	Non-Permissible

▪ Plans that vary by Loan Officer
▪ Borrower OR Lender Paid
▪ Plans that provide for a minimum and maximum compensation per transaction
  ▪ 1.25% of loan amount, with minimum of $1,000 and maximum of $5,500 earned per loan
▪ Sign-on bonuses as well as initial guarantees
▪ “Pick a Plan” structures
▪ Periodic plan changes
  ▪ Prospective only; changes no more frequently than quarterly
▪ Lead Source Options
	▪ Varying compensation by loan product
	  ▪ E.g., FHA v. Conv.; CRA v. Non-CRA
	▪ Sliding scale percentages by buckets
	  ▪ E.g. 1% for loans > $250,000, 1.5% for loans $150,000 to $250,000, 2.5% for loans < $150,000
	▪ Varying compensation based on Sold v. Retained/Portfolio
	▪ Compensation Pools based on profits

Loan Officer Compensation Rule
- The "Gray" Areas -

The following plan elements may be permissible in certain circumstances, but extra caution is warranted before implementing:

- Varying compensation by state: This is not expressly prohibited, but can raise concerns regarding Fair Lending and Proxies, <u>depending how its implemented</u>.
- Reducing compensation to cover fees or cures: It is permissible to reduce compensation to cover rate lock extension fees or tolerance violation <u>in very specific situations</u> that are a result of <u>unforeseen</u> changes.

The following plan elements are questionable practices that should be avoided as a best practice:

- **Broker Vs Banked:** The CFPB actually found a lender to be in violation with LO comp rules for paying an LO a different compensation on broker vs banked.
- **EPO/EPD Clawback:** Rule does not address this, but you may have implications with wage and hour laws.

Part II:

Technology, Data Privacy, and Data Security

Technology Disruption in Mortgage

- AI, Machine Learning, and Automation in Underwriting
- Remote Online Notary
  - Growing Adoption Across States
  - Security and Compliance Concerns
  - How RON is Streamlining Closings
- Consent orders for discriminatory AI underwriting practices and unsecured digital activities.

Consumer Privacy

- Federal laws on consumer data privacy and data security cover various industries and individuals.

- Financial institutions are governed by the Gramm-Leach-Bliley Act (GLBA).

- Over 50 different non-federal data breach laws in the U.S.

- California Consumer Privacy Act (CCPA) – new 'gold standard.'

- Is there a legitimate business purpose for retaining the information?

Fannie Mae's Enhanced Cybersecurity Requirements

- Mandatory reporting of cybersecurity incidents within 36 hours
- Updated Information Security and Business Resiliency Supplement
- Full compliance required by August 12, 2025
- Emphasis on protecting borrower data and system integrity

Part III:

Rising Interest Rates & Market Volatility

Shifting Industry

- Impact on Mortgage Rates and Affordability
- Market Trends Driving Product Surge
- FHFA Director Bill Pulte's directive on March 25, 2025
- SPCPs provided targeted assistance to underserved borrowers
- Programs offered down payment and closing cost support
- Termination reflects a shift in FHFA's policy approach

Restrictive Immigration Policies Affecting Mortgage Eligibility

- HUD bars illegal migrants and non-permanent residents from FHA loans
- Policy includes DACA recipients and asylum seekers
- Potential reduction in eligible borrower pool
- Possible impacts on housing demand and affordability

The Shift Toward Non-QM & ARM

- Impact on Mortgage Rates and Affordability
- Non-QM Products Non-Qualified Mortgages Are Gaining Popularity
- Risk Management in Non-QM Lending and Adjustable-Rate Mortgages
- CFPB penalties for inadequate disclosures

Part IV:

Fair Lending & UDAAP

The Shift Toward Non-QM & ARM

- Fair Lending is governed by multiple federal regulations which prohibit unlawful discrimination, including the following:

Equal Credit Opportunity Act		Fair Housing Act	
▪ Race	▪ Religion	▪ Race or color	▪ National Origin
▪ National Origin	▪ Sex	▪ Religion	▪ Sex
▪ Marital Status	▪ Age	▪ Familial Status	▪ Handicap
▪ Income derived from any public assistance program			
▪ Exercising rights under the Consumer Credit Protection Act			

- The Home Mortgage Disclosure Act ("HMDA") requires lenders to disclose information about applicants, including race, ethnicity, gender.
- Many states have added protected factors to their anti-discrimination laws, such as sexual orientation.
- Fair Lending violations can be unintentional, resulting in disparate treatment or impact.

Effective Fair Lending Programs

An effective Fair Lending program should be tailored to the size and complexity of the lender's operation, and can consist of:

- Comprehensive Fair Lending training for all staff
- Published clear underwriting guidelines that ensure consistent eligibility criteria for all applicants.
- "Two To Say No" second review of underwriting denials.
- Complaint tracking and monitoring.
- Established monitoring program
  - Pricing and Underwriting exception reviews
  - Credit QC monitoring, including loan declinations
  - Matched Pair analysis
- Whistleblower hotline or confidential reporting mechanism.

What About UDAAP ?

➢ Unfair Deceptive Abusive Acts or Practices:

- Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd- Frank Act), all covered persons or service providers are legally required to refrain from committing unfair, deceptive, or abusive acts or practices (collectively, UDAAPs) in violation of the Act.
- Often UDAAP is a tool the CFPB uses when it finds an unsavory practice that does not fit neatly into its other rules.

Recent Actions

- Wells Fargo settled a redlining and discrimination cases from 2012 to now.
- Rocket Mortgage and HUD settlement regarding FHA loan violations centered on improper underwriting practices and reporting for FHA loans in the sum of $12.5 million.
- Mr. Cooper were recently involved in a pay-to-pay lawsuit that settle for a collective fine $15 million collective fine.
- Zombie Second Liens cost Bank of America fined $2 million for mishandling.

Part V:

Marketing Service Agreements

RESPA Section 8

- **RESPA Section 8(a), Prohibition Against Kickbacks and Unearned Fees, 12 U.S.C. § 2607**
  - "No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally regulated mortgage loan shall be referred to any person."
- **Implementing regulations at 12 C.F.R. §1024.14**
  - An agreement or understanding for the referral of business incident to or part of a settlement service need not be written or verbalized but may be established by a practice, pattern or course of conduct.
  - When a thing of value is received repeatedly and is connected in any way with the volume or value of the business referred, the receipt of the thing of value is evidence that it is made pursuant to an agreement or understanding for the referral of business.
  - 12 C.F.R. §1024.14(e)

- **RESPA Section 8(a), Prohibition Against Kickbacks and Unearned Fees, 12 U.S.C. § 2607**

Key RESPA Terms

Additional Key Definitions:

- **“Referral”:**
  - Essentially any action directed to a consumer that influences him/her to select a particular settlement service provider (“any oral or written action directed to a person which has the effect of affirmatively influencing the selection by any person of a provider of a settlement service or business incident to or part of a settlement service when such person will pay for such settlement service or business incident thereto or pay a charge attributable in whole or in part to such settlement service or business”)
  - Also includes “required use” of a particular provider

- **“Thing of value:”**
  - Broad definition that does not require transfer of money
  - Includes any payment, service, or other consideration, such as monies, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, distributions of partnership profits, the opportunity to participate in a money-making program, services of all types at special or free rates, trips, payments of another person’s expenses, etc.
  - Quid pro quo.

Potential Liability Under RESPA

- Unlike violations of other RESPA provisions, § 8 violations may result in criminal penalties as well as substantial civil penalties.
  - E.g., fines of up to $10,000, imprisonment for up to a year, treble damages.
- Violations of RESPA § 8 also expose both corporate entities and their individual employees to significant potential liability under RESPA and the Consumer Financial Protection Act (CFPA).
- Both parties to a prohibited relationship under RESPA § 8 are subject to its restrictions (i.e., "[n]o person shall give and no person shall accept any fee, kickback or other thing of value" in exchange for a referral), therefore either or both parties may be liable for any violations.

Marketing Compliance

RESPA § 8 governs virtually all of your relationships with business partners and referral sources, including:

- Marketing services (e.g., MSAs, co-marketing arrangements)
- Affinity arrangements, including advertisements
- Office/desk rental arrangements
- Purchasing/selling leads
- Affiliated businesses (ABAs) & joint ventures (JVs)
- Referrals by any person (incl. consumers, non-profits, relocation cos., affinity groups, other non-settlement service providers)
- Interactions among lenders, real estate agents, home builders, title companies

Impacts

Advertising for mortgage or other loan products is a highly-regulated activity in the financial industry. In addition to RESPA, there are multiple other federal regulations that play a part in marketing and advertising compliance.

- Regulation Z: Truth in Lending.
- Regulation N: Mortgage Acts and Practices in Advertising.
- Regulation B: Equal Credit Opportunity Act.
- Unfair, Deceptive, or Abusive Acts or Practices Act (UDAAP).
- Secure and Fair Enforcement for Mortgage Licensing Act (SAFE).
- Fair Lending and Redlining.

Restricted words and phrases, along with buzzwords and trigger terms.

“I didn’t know” is not a valid excuse.

What is an MSA?

An agreement between lender and marketing partner to provide the lender market exposure to marketing partner's customers

A commercial message in any medium that promotes, directly or indirectly, a credit transaction.

- Messages in newspapers, magazines, leaflets, or promotional flyers
- Radio or television announcements
- Electronic advertisements, such as on the Internet or cellular network
- Direct mail literature
- Printed material on any exterior or interior sign, such as Poster, billboard, or public transit card
- Telephone solicitations

Does not include direct personal contacts relating to the negotiation of a specific transaction.

Interest in MSAs has Increased

1. **Significant increase in FHA net worth requirements** (soured many prospective AfBA members).

2. **New QM Rules**
   - affiliated charges counted toward 3% cap

3. **Advantages to MSAs**
   - no capitalization
   - no infrastructure
   - payment not tied to volume

Section § 8(c)(2)

Section 8(c)(2) Exception:

"Nothing in this section shall be construed as prohibiting… the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed"

Two-Part Compliance Test:

i. payments must be made for services and goods that are actual, necessary and distinct
ii. payments must be commensurate with the value of the services and goods (Fair Market Value).

MSA Pitfalls

1. Steering
2. Adjustment
3. Outside services
4. Bad negotiation/formation
5. Exclusivity and Direct Marketing
6. Poor monitoring/auditing
7. Payment regardless

Affiliated Business Arrangements

- If one party wants to offer incentives to use its affiliate, consider the following, among other concerns (many are similar to affinity relationship elements):

- Required use does NOT include offering discounts/rebates to consumers for purchasing multiple settlement services.
  - Any package or discount must be optional to consumer
  - Must be a true discount

- Financing concessions generally may be contingent on use of affiliate or other lender, subject to lender/agency/investor guidelines.

  - potential for manipulation or illusory benefits that result in no real discount to consumer

- Potential state law restrictions (e.g., NC limits on seller incentives for using affiliated lender/broker).

Affinity Relationships

- Partnerships between a settlement service provider & a non-affiliated non-settlement service provider in which:
  - settlement service provider gets access to potential consumers
  - non- settlement service provider gets to point their members towards discounted services;
  - members get a discount on services

- Compliant structures include the following:
  - Any benefits/things of value should go to consumer only
  - Offered incentives must be true incentives - Cannot make up incentives by higher costs elsewhere
  - Must apply offers consistently
  - If providing the incentive, funds must come from offering party & cannot be defrayed/offset by referred party
  - No compensation or other thing of value to non-settlement service provider under other arrangements between the parties.

Co-Marketing

- Co-marketing is when two or more parties are each represented in one marketing piece
  - Marketing provider may be either one of the co-marketed parties or an independent 3rd party.
- Each party must pay pro rata share of advertisement:
  - Section 8 permits…normal promotional and education activities that are not conditioned on the referral of business and that do not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer settlement services or business incident thereto."
  - Cannot give a thing of value in exchange for the referral of settlement service business.

Office Rental Arrangements

- These may include arrangements in which a person/entity that is in a position to refer/accept the referral of settlement service business rents office space within the building/office space of another person/entity that is in a position to refer/accept the referral of such business

- § 8 requires a company to determine that office rental payment bears reasonable relationship to general market value of rental space provided & is not disguised referral fee.

Lead Generation Agreements

- A lead-generation agreement consists of just that, paying for leads.
- A Lead Generator assists in identifying consumers who may be considering or interested in the products or services you are providing.
- Interest in Lead Generation has increased as cost efficiency has become more necessary.
- Lead-sellers help minimize the risk associated with ineffective advertising campaigns.
- Leads are generated by their own advertising campaigns.
- Lead-sellers typically incorporate marketing professionals.

‘Trigger Leads’

- 'Trigger leads' involve sharing consumer credit inquiries with other lenders.
- Legislation introduced to prohibit this practice.
- Senate passed related bill; awaiting House approval.
- Texas among states enacting laws against trigger leads.

Part VI:

Dual Employment, Dual Capacity, and Conflicts of Interest

The Change

~~“Employees are prohibited from having multiple roles in a single FHA-insured transaction. Employees are prohibited from having multiple sources of compensation, either directly or indirectly, from a single FHA-insured transaction.”~~

~~“The Mortgagee must require its employees to be its employees exclusively, unless the Mortgagee has determined that the employee’s other outside employment, including any self-employment, does not create a prohibited conflict of interest.”~~

“Participants that have a direct impact on the mortgage approval decision are prohibited from having multiple roles or sources of compensation, either directly or indirectly, from a single FHA-insured transaction…”

Significance of the Change

These participants are:

- Underwriters
- Appraisers
- Inspectors
- Engineers

Indirect compensation includes any compensation resulting from the same FHA-insured transaction, other than for services performed in a direct role.

Restrictions on compensation continue to include, spouse, domestic partner, or family member with a direct role in the same transaction.

Significance of the Change

These participants are:

- son
- stepson,
- daughter,
- stepdaughter,
- adopted son,
- adopted daughter,
- placed, or fostered son or daughter
- a parent or
- grandparent,
- stepparent/grandparent or
- foster parent/grandparent;
- spouse or domestic partner;
- brother, sister, stepbrother, stepsister
- uncle; aunt……

OR

- son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law
  - of the Borrower.

Prepare, Prepare, Prepare

- Owners aren’t on the List
- Family members of the Borrowers are included in Indirect Compensation
- Compensation for underwriting and quality control staff remains the same.
- The reporting structure requirements for underwriters remains the same.
- Conflicts of interest for home equity conversion mortgage (HECM)
- originators remain the same.
- Evaluate your organization and look at the parties subject to the new policies or that could be subject to the new policies.

Part VIII:

Looking Forward in 2025

The Evolving Role of the CFPB in 2025

- Recent Regulatory Actions and Their Impact
- Predictions for Future CFPB Focus Areas
- How Lenders Can Stay Ahead of Regulatory Changes
- Multi-million-dollar penalties and consent orders

STATE CFPBs

New York

Massachusetts

New Jersey

Pennsylvania

California

- "Mini CFPB" Regulation

Audit Prep

- A review of vendors, internal procedures, and activities in general is, also, essential to an organization having a high level of audit preparedness.

- If your organization is proactive, much of what is needed already exists in the environment. If not, now is the time to get ready for the audit and ensure that your organization is always “audit ready.”

Audit Preparation Elements

1. Begin preparing before the audit even begins
2. Start with a policy management program that includes comprehensive consumer coverage
3. Make sure your procedures and department level activity is aligned with your policies
4. Understanding your consumer data and flow of information is critical
5. Be effective at coordination, information gathering and explanation

Competitive Dis-Advantage

Against Lenders that Bend the Rules

- Educate your staff and stay abreast of enforcement actions (it helps when the staff understands why these rules exist and can then buy in to idea of compliance)
- Create and implement policy and procedures
- Provide transparency on processes
- Self audit
- Measure more – and then reward based on those measurements

QUESTIONS & ANSWERS

At the conclusion of this webinar please submit your questions directly to the moderator, at:

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I will be sure to follow up on all questions submitted.

Thank you for your attendance!

THANK YOU!