



Anti-Steering Safe Harbor Disclosure Instructions

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The information contained herein does not represent legal advice. All institutions should consult with legal counsel, or the authority that governs them to ensure compliance.

1. Crescent Mortgage Company Requirements

The [Anti Steering Disclosure](#) is required on all loans that:

- Your institution is not acting as the creditor (brokered loan).
- Originators Compensation is paid by Lender (LPO).

Therefore, CMC does not require anti steering disclosure on loans that:

- Your institution is funding the loan.

Fed Rule Excerpt:

Employees of a creditor are prohibited under § 226.36(d)(1) from receiving compensation that is based on the terms or conditions of the loan. Thus, when originating loans for the employer creditor, the originator may not steer the consumer to a particular loan offered by the employer to increase compensation. Accordingly, in these cases, compliance with § 226.36(d)(1) is deemed to satisfy the requirements of § 226.36(e)(1).

- Originators compensation is paid by Borrower (BPO).

While Crescent Mortgage Company provides an [example](#) of the anti-steering safe harbor disclosure, it is not required that you use the example provided by CMC. You may use the disclosure generated by your Loan Origination System so long as it contains similar language and comparison chart.

2. How to complete the anti-steering / safe harbor disclosure.

- There are several ways to meet the requirements set forth in Reg Z as it pertains to anti-steering § 226.36(e). As a “broker”, most lenders, including CMC, require that the **safe harbor** set forth in § 226.36(e)(2) be met. Although not required by the rule, the best way for creditors to ensure the requirement has been met is evidenced by a borrower acknowledged disclosure.

- The safe harbor is met if the consumer is presented with loan offers for each type of transaction in which the consumer expresses an interest (that is, a fixed rate loan, adjustable rate loan, or a reverse mortgage); and the loan options presented to the consumer include:
 - A. **The loan with the lowest interest rate for which the consumer qualifies;**
 - B. **The loan with the lowest total dollar amount for origination points or fees, and discount points; and**
 - C. **The loan with the lowest rate for which the consumer qualifies for a loan without negative amortization, a prepayment penalty, interest-only payments, a balloon payment in the first 7 years of the life of the loan, a demand feature, shared equity, or shared appreciation; or, in the case of a reverse mortgage, a loan without a prepayment penalty, or shared equity or shared appreciation.**

To be within the safe harbor, the loan originator must obtain loan options from a significant number of the creditors with which the originator regularly does business. The loan originator can present fewer than three loans and satisfy the safe harbor, if the loan(s) presented to the consumer otherwise meet the criteria in the rule.

Fed Rule Excerpt:

Creditors with which loan originator regularly does business. To qualify for the safe harbor in § 226.36(e)(2), the loan originator must obtain and review loan options from a significant number of the creditors with which the loan originator regularly does business. For this purpose, a loan originator regularly does business with a creditor if:

- i. There is a written agreement between the originator and the creditor governing the originator's submission of mortgage loan applications to the creditor;
- ii. The creditor has extended credit secured by a dwelling to one or more consumers during the current or previous calendar month based on an application submitted by the loan originator; or
- iii. The creditor has extended credit secured by a dwelling twenty-five or more times during the previous twelve calendar months based on applications submitted by the loan originator. For this purpose, the previous twelve calendar months begin with the calendar month that precedes the month in which the loan originator accepted the consumer's application.

The loan originator must have a good faith belief that the options presented to the consumer are loans for which the consumer likely qualifies. For each type of transaction, if the originator presents to the consumer more than three loans, the originator must highlight the loans that satisfy the criteria specified in the rule.

If you regularly do not do business with 3 creditors, you can give the borrower options from the creditor(s) with whom you regularly do business, even if it is only one creditor.

Commentary: Give due significance to the term "in which a borrower expresses interest".

- *If a borrower expresses interest in not paying origination or closing costs out of pocket, then to meet requirement "A", "the lowest interest rate for which the consumer qualifies" it may be best to disclose the loan option that is "the lowest interest rate for which the consumer qualifies" that ALSO has no out of pocket closing costs to the consumer.*

- *If a borrower expresses interest in consummating the transaction in 3 weeks' time, it may be best to disclose loan options from the creditors who meet this "expressed interest" of the borrower.*

3. Completing the "Grid" comparison of loan products.

A separate disclosure should be made based on whether the interest rate will be fixed, or adjustable (ARM).

- For a loan with an interest rate that will be fixed for at least 5 years, the initial interest rate should be disclosed.
- For a loan that the initial interest rate IS NOT fixed for at least 5 years, the originator should disclose the fully indexed rate.
- For a "step-rate loan", the originator should disclose the highest rate that would be applicable in the first 5 years of the loan.

Description	Creditor Name (optional) / Loan Term
Interest Rate	Interest rate presented
Origination/Fees	Expressed as a dollar amount. Counsel has advised this box should contain fees paid out of pocket to consummate transaction – Admin fee, settlement costs, appraisal etc. Although the term ORIGINATION is used, counsel has advised that this does not always mean COMPENSATION the originator will receive, rather, the costs paid by borrower to originate / consummate the loan. However, disclosing any LPO COMPENSATION in this box in my opinion is simply over disclosure and does not present a problem. Check with the body that regulates your institution or your counsel to ensure their interpretation. Discount points used to buy the creditor rate down would be excluded from this box and disclosed below.
Discount Points	Expressed as a dollar amount, the amount borrower would pay out of pocket to buy down the creditor offered rate. Any YSP overage could be disclosed as a negative discount showing a credit to borrower.

Grid Example

Assumptions: Fixed Rate \$100,000 Loan with an LPO of being paid by creditor. Borrower has expressed interest in a 30 Year fixed rate loan.

Fixed Interest Rate Options (if applicable)

	Loan Option 1 – Lowest Rate	Loan Option 2- Lowest Origination Fees/ Points	Loan Option 3- Lowest Rate without Risky Features*
Description	Crescent Mortgage 30 Year Fixed	Crescent Mortgage 30 Year Fixed	Crescent Mortgage 30 Year Fixed
Interest Rate	4.5%	4.875%	4.5%
Origination /Fees	\$2,195	\$0	\$2,195
Discount Points	\$1,000	\$0	\$1,000

For the purposes of this disclosure, I have presented:

- A. The loan with the lowest interest rate for which the consumer qualifies:** A 30 year fixed rate at 4.5% interest. Out of pocket costs to borrower excluding discount is \$2,195. To buy down the rate to 4.5% (Net pricing after adjustments: 99.0) the borrower would be charged a discount by creditor (CMC) of 1 % expressed as dollar amount of \$1,000.
- B. The loan with the lowest total dollar amount for origination points or fees, and discount points:** A 30 Year Fixed rate at 4.875%. All costs are being paid in rate or financed into loan.
- C. The loan with the lowest rate for which the consumer qualifies for a loan without negative amortization, a prepayment penalty, interest-only payments, a balloon payment in the first 7 years of the life of the loan, a demand feature, shared equity, or shared appreciation; or, in the case of a reverse mortgage, a loan without a prepayment penalty, or shared equity or shared appreciation:** I presented the same loan option as offered in option “A” since it had no risky features and met the criteria prescribed under the rule.

This comparison would show that the loan presented as options 1 and 3 would secure a 4.5% fixed rate loan with out of pocket costs of \$3,195. Option 2 presented would show a higher interest rate with no out of pocket costs to the borrower.

Based on what the expressed interest of the borrower, you may find that the loan options presented:

- Are derived from a single creditor (no requirement that the examples presented to a borrower come from more than one creditor so long as the other criteria of the rule are met)
- All loan options presented may be the same loan option. (Must complete the three examples even if all three are same loan option) Example: A borrower expresses an interest in only being quoted the lowest rate on a 30 year fixed rate mortgage, without paying more than 1.5% in discount to receive the rate. Loan Option 1 in the grid example above may meet the criteria of A.) The loan with the lowest interest rate for which the consumer qualifies.

B.) The loan with the lowest total dollar amount for origination points or fees, and discount points. C.) The loan with lowest interest rate and no risky features.

If only one item is presented, CMC will require additional commentary to support a sole option. **(Example: Borrower expressed interest in a 30 year fixed rate refinance paying no out of pocket fees)**

Best Practice with CMC: The option with the lowest rate and option with the lowest rate with no risky features are often the same (since CMC does not offer loans with defined risky features) Adding the additional option w/ no points or fees would allow for 2 different options across the 3 boxes.

4. When have you complied with Safe Harbor Provision?

Fed Rule Excerpt:

Safe harbors: A loan originator that satisfies § 226.36(e)(2)(Safe Harbor Provision) is deemed to comply with § 226.36(e)(1)(Anti -Steering Provision)

Once you have provided the consumer the loan options required to meet the safe harbor provision and borrower acknowledges receipt, you have complied with safe harbor provision § 226.36(e)(2) and therefore have complied with anti-steering provision 226.36(e)(1).

This means:

- Borrower does not have to “choose” one of the loan options presented. Simply presenting them meets the requirement.
- If borrower does not “lock in” one of the options, a new disclosure is not required when they decide to consummate the transaction.
- Originator is not bound to send loan to creditor that was listed as one of the options presented. The disclosure of the “options that meet the criteria” and borrower acknowledgement of disclosure satisfy the requirement of safe harbor.

5. Retention of records for compliance / audit.

Fed Rule Excerpt:

Prohibited payments to loan originators.

For each transaction subject to the loan originator compensation provisions in § 226.36(d)(1), a creditor should maintain records of the compensation it provided to the loan originator for the transaction as well as the compensation agreement in effect on the date the interest rate was set for the transaction. See § 226.35(a) and comment 35(a)(2)(iii)–3 for additional guidance on when a transaction’s rate is set. For example, where a loan originator is a mortgage broker, a disclosure of compensation or other broker agreement required by applicable state law that complies with § 226.25 would be presumed to be a record of the amount actually paid to the loan originator in connection with the transaction.

Commentary: While the Fed Rule only sets forth document retention requirements for the “Creditor” (not a “broker”) it would be wise to check with the body that regulates your institution to ascertain any specific state, for example, requirements. Best practices may include:

- Retain rate sheets used as product options listed on anti-steering safe harbor disclosure.
- Make notes or keep records of loan options that “the borrower has expressed interest in” (example: Borrower only expresses interest in a 30 Year fixed rate loan where they pay no closing costs out of pocket).
- Create and adhere to an internal written QC policy at your institution that includes monitoring the safe harbor requirements being met and documented on all loans where applicable.

For further information, please contact your Crescent Mortgage Company Account Executive.

Additional Crescent Mortgage Company Loan Officer Compensation Reference Materials:

[Crescent Mortgage Company Loan Officer Compensation Guidance](#)

[Crescent Mortgage Company Loan Officer Compensation Question and Answer](#)

[Crescent Mortgage Compensation Agreement](#)

[Crescent Mortgage Company Good Faith Estimate \(GFE\) Examples for Loan Officer Compensation](#)

[Crescent Mortgage Company Anti Steering Disclosure \(PDF\)](#)

[Crescent Mortgage Company Anti Steering Disclosure \(Word Document for LOS upload\)](#)

[Crescent Mortgage Company BORROWER PAID COMPENSATION certification](#)

“We are totally committed to daily exceeding the expectations of our customers”

Fowler Williams, CMB

President

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