

LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

AN ALT & ASSOCIATES NEWSLETTER

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The purpose of the Lenders Update is to provide a “heads-up” of new legislation and other issues affecting the mortgage lending industry. We provide summaries of these matters so our readers can judge whether the subject impacts their operations. We recommend that our readers review the entire statute, regulation or other material in detail where it is relevant to them. For reference, the applicable matter can be easily identified in the summary, and, where possible, a link is provided.

The Update includes information available to Alt & Associates as of August 24, 2009.

<h2>NEW RESPA RULES</h2>

FREQUENTLY ASKED QUESTIONS

On August 13, 2009 the U S Department of Housing and Urban Development announced the release of a rather detailed “Frequently Asked Questions” (“FAQs”) reflecting issues concerning the implementation of the new Real Estate Settlement and Procedures Act rule.

HUD’s news release indicated that under the new rules, for the first time, consumers will be able to use the Good Faith Estimate (“GFE”) to easily compare their estimated loan offer with the one to which they actually agree. It will “provide clear, transparent disclosure of loan information that consumers can use to shop for the best loan....” Further, HUD states that this will virtually eliminate the kinds of unfair “junk fees” that surprise so many borrowers at closing. In the end, “this greater clarity and transparency will save consumers hundreds of dollars in total loan costs.” We shall see.

The new RESPA regulations will, for the most part, take effect January 1, 2010. On that date, HUD will require that loan originators provide borrowers with the new standard Good Faith Estimate, and closing agents to provide borrowers with the new HUD-1 Settlement Statement.

The FAQs can be found at www.hud.gov/offices/hsg/ramh/res/faqfinalrev4.pdf .

Some of the areas discussed in the FAQs are as follows:

1. FAQs item 2 discusses transition issues such as how to handle a GFE which is issued prior to the implementation date and closed after that date.
2. FAQs item 6 discusses what fees can be collected before issuing a GFE. You guessed it! These fees are restricted to that for the credit report!
3. FAQs item identified as “GFE-changed circumstances” discusses what to do when a GFE expires and what to do in the case of denial.
4. The FAQs discuss in detail when loan terms or charges can change. Generally this is allowed where there are “changed circumstance”. The definition of this term is set forth in FAQs item identified as “GFE-Changed Circumstances”.
5. The FAQs also discusses at length how to complete the 3 pages of the new GFE and the HUD-1.

In short, the FAQs provide an excellent guide to the implementation of the new RESPA rules.

DISTRICT COURT RULES IN FAVOR OF HUD’S NEW RULES

The National Association of Mortgage Bankers (“NAMB”) has challenged the implementation of the new HUD Final Rule revising the required disclosure for Yield Spread Premiums on the GFE. The case was filed in the District Court of the District of Columbia under the name National Association of Mortgage Bankers, Inc. versus Donovan, No. Civ.A. 082208.

NAMB opposed the new GFE because of the method of disclosure of Yield Spread Premiums on the second page of the new GFE. A portion of the page breaks down charges into adjusted origination charges and other charges for “other settlement services”. A mortgage broker will now be required to disclose the Yield Spread Premium as part of the origination charge. This will result in a disparity between the disclosures provided by brokers and Lenders.

The District Court found in favor of HUD. However, the Court did acknowledge that the implementation may produce some anti-broker bias. Judge Robertson in writing the opinion for the Court, stated “If the new GFE distorts the marketplace by providing an artificial advantage to direct lenders, it would scuttle HUD’s reform effort ...” Nonetheless, at least at this level, the rule stands.

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<p style="text-align: center;">NEW TRUTH IN LENDING ADVERTISING RULES</p>
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In July of 2008, Regulation Z, Section 226.24 was amended. The new amendments impose significant new restrictions on closed-end consumer credit advertising. These new rules become effective on October 1, 2009. They can be found in the Revised Section 226.24 and its subsections and commentary. As amended the rules provide for a number of significant areas of concern which should be reviewed before using any advertising piece. Enforcement of these new rules may come through HUD enforcement actions, FTC enforcement actions or now, in many states, state regulator enforcement actions.

As a practical point, any advertisement also must meet the rules of the state in which it will be used.

Some of the rules to be aware of are:

1. When an advertisement discusses specific terms of a loan it must state only those terms which the lender customarily arranges or will arrange. It can however advertise future loan programs, not only those currently available, as long as the Lender actually intends to offer those programs.
2. As always, advertised rates must be disclosed as an annual percentage rate and must also disclose if the rate can change after closing as in the case of a variable rate loan. On any residential loan a simple interest rate may be stated in conjunction with APR but not more conspicuously than the APR. When the simple rate may increase, disclosing this rate “triggers” a requirement to provide an example of the way the Index and Margin work. The Index and Margin must be disclosed by using a reasonably current example.
3. Clear and conspicuous as used by the regulation means that the disclosed information must be located in close proximity and with equal prominence to the term that triggered the disclosure. Close proximity means immediately above or below the triggering term or next to it.
4. When a residential loan advertisement discloses an amount of payment, this also triggers further disclosures which include the amount of payment, the period of time during which a payment will be effective, and whether the payment does or does not include taxes and insurance premiums.
5. Additional terms which trigger additional disclosures include; the amount of percentage of down payment, the number of payments or repayment periods, or the amount of any finance charge. If any of these terms are used, then the amount or percentage of the down payment, the terms or repayment and the APR must also be disclosed.
6. The new regulations significantly restrict and regulate advertisement in electronic media. To state the obvious, this includes internet advertisements.
7. New disclosures are required concerning tax deductibility on residential loans when the amount of the loan could exceed the value of the home itself. The advertisement must disclose that interest on the amount in excess of the value of the home is not tax deductible. It must further disclose that the consumer should consult a tax advisor as to the issue of deductibility.
8. Finally, the regulations set forth additional prohibited practices. These include:
 - a. Deceptive statements about fixed rates and payments.
 - b. Advertising or comparisons that are misleading or incorrect.

- c. Disclosures which are not clear and conspicuous.
- d. Failure to include a disclosure that the payment or rate is subject to adjustment, and the time period when the first adjustment will occur, in situations where the simple annual rate is based on adjustments over the term of the loan.
- e. Misleading misrepresentations about government endorsements.
- f. Use of the current Lender's name in another's advertisement, without providing other required disclosures.
- g. Deceptive statements about debt elimination.
- h. Deceptive statements using the term "counselor".
- i. Deceptive foreign language advertisements.

The above is only a BRIEF summary of these restrictions. We strongly suggest a detailed review of any advertisement used by your companies.

Our monthly Lenders Update is published via e-mail as a complimentary service to our friends and clients in the financial industry throughout California and the United States. Only those persons who have requested this newsletter are on our mailing list. Should you have colleagues who wish to receive this complimentary service, please have them e-mail us at:

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***ALT & ASSOCIATES* provides regulatory, compliance, operational advice and transactional assistance, as well as litigation representation, to the financial services industry. Over the past two decades, members of the firm have represented Institutional Lenders and Mortgage Bankers and Brokers in all aspects of their operations. If you have any questions please contact:**

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