

LENDERS UPDATE™

ALT & ASSOCIATES NEWSLETTER

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CALIFORNIA DEPARTMENT OF CORPORATIONS CHANGES ITS POSITION ON LICENSING REQUIREMENTS FOR “WHOLESALE BRANCHES”

Yesterday, with very little fanfare, the Department of Corporations (DOC) issued a new FAQ clarifying its position concerning MLO licensing requirements and “wholesale branches”. We quote the substance of the FAQ herein.

Whether an individual is considered to be an MLO is not based on the title or position of the person, but rather whether the activity of the person fits within the definition of MLO. The definition of an MLO can be found in Section 22013(a) of the CPLL and Section 50003.5 of the CRMLA, which states in a pertinent part: "Mortgage loan originator" means an individual who, for compensation or gain, or in the expectation of compensation or gain, takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan..."

Subsection (b)(7)(ii) of Appendix A of HUD's final rule provides that offering or negotiating terms of a loan does not include offering or negotiating loan terms solely through a third-party licensed loan originator, so long as the nonlicensed individual does not represent to the public that he or she can or will perform covered activities and does not communicate with the borrower or potential borrower. For example, an individual who works solely for a lender, when the individual offers loan terms exclusively

to third-party licensed loan originators and not to borrowers or potential borrowers. (Federal Register Vol. 76, No. 126, June 30, 2011)

Therefore, any account executive or person who works solely for a lender that offers or negotiates loan terms solely through third-party licensed mortgage loan originators and not to borrowers or potential borrowers is not required to be licensed as a mortgage loan originator.

Up to this point, DOC had taken the position that a “wholesale branch” required a licensed MLO. Practice point is that no one at such a wholesale branch can offer or negotiate a loan, or have any contact directly with the borrower.

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