LENDERS UPDATE™

ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

Main Office:
2102 BUSINESS CENTER DRIVE
SUITE 130
IRVINE, CA 92612
David.j.alt@altandassociates.com
www.altandassociates.com

DAVID JEROME ALT
Attorney at Law

April 25, 2014

LOAN ORIGINATOR COMPENSATION FAQ 2

This is our second question and answer in our FAQs series regarding the new Loan Originator Compensation Rule.

TODAY'S QUESTION

What credit transactions are subject to the Loan Originator Compensation Rule? In other words, when is a loan originator or loan origination organization subject to the Rule?

ANSWER

The answer is pretty straight forward, but has a twist.

Covered loans are "closed end" consumer credit transactions which are subject to the Truth in Lending Act. They include:

- **loans secured by a primary or secondary property,**
- **loans secured by first and second liens, or**
- **loans that are closed end reverse mortgages.**

Not covered are:

- **HELOCS**
- **loans for time share plans,**
- **payments to creditors when acting as a creditor,**
- **non-refinance loan modifications, or**
- **loans not covered by TILA because, among other reasons, they may be business purpose loans or are loans made to other than a natural person.**

The twist has come from some lenders who structure reverse mortgages as a HELOC so that they are not considered "closed end reverse mortgages" and therefore are not subject to TILA, RESPA etc. Several such programs have appeared. Some may work and some may not.

However, the test for a HELOC under Reg Z Section 104[3] is a plan in which:

- **the creditor reasonably contemplates repeated transactions,**
- **the creditor may impose a finance charge on the outstanding balance, and**
- **the amount of the credit that may be extended (up to any limit) is generally made re-available to the extent the outstanding balance is repaid.**

The applicable regulation and regulatory comment are extensive as to what is or is not a HELOC. However, suffice it to say for this comment, the regulators do not want a reverse mortgage "shammed up" to look like a HELOC just to get around regulatory requirements such as the Loan Originator Compensation Act.

We may be being overly cautious, but use of these plans seems risky, when it is arguable that the borrower really wants a traditional reverse mortgage.

The 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 personally requested this newsletter are on our distribution list.

SHOULD YOU NOT WISH TO CONTINUE TO RECEIVE THIS SERVICE, PLEASE JUST SEND US AN EMAIL TO "OP-OUT" AT:

special@altandassociates.com

ALSO, SHOULD YOU HAVE COLLEAGUES WHO WISH TO BE ADDED TO THIS COMPLIMENTARY SERVICE, PLEASE HAVE THEM E-MAIL US AT:

special@altandassociates.com

ALT & ASSOCIATES provides regulatory, compliance, operational advice and transactional assistance, as well as litigation representation, to the financial services industry. Over the past three 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:

David J. Alt, Esq.
David.j.alt@altandassociates.com

You may view previous issues on our website at:
www.altandassociates.com

Who's Who in American Law ***Martindale Hubble Pre-Eminent Attorney***