

# LENDERS UPDATE™

## ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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## **CFPB BEGINS ITS MORTGAGE SUPERVISION PROGRAM OF ORIGINATORS AND BROKERS**

Last year the CFPB began its supervision program for large banks, thrifts and credit unions. Effective on January 5<sup>th</sup> of this year, the CFPB now has the authority to oversee “non-bank” businesses. Non-banks include mortgage originators, brokers and servicers and loan modification or foreclosure relief services.

The source of this authority is, of course, the Dodd-Frank Act. The CFPB states that the purpose of the supervision is to prevent harm to consumers and promote and develop markets for consumer financial products and services that are fair, transparent and competitive. It will do so by determining whether the companies are conducting their businesses in compliance with federal consumer financial laws which the CFPB is

now charged with enforcing. The Bureau supervision staff will cover the nation and have regional offices in New York, Washington DC, Chicago and San Francisco.

Following the initial notice, on January 11<sup>th</sup> the CFPB announced its mortgage origination examination procedures. These relate directly to the examination of lenders and brokers.

The mortgage examination procedures outline the Bureau's supervisory approach to ensure that mortgage originators-lenders and brokers comply with federal consumer financial laws. The procedures describe the types of information that the agency examiners will gather and the CFPB policies and procedures to ensure compliance. It will cover areas from initial advertisements and marketing practices to closing practices.

The CFPB is also supervising mortgage servicers. Its procedures regarding examination of these companies was published in October 2011 and can be found on the CFPB site at:

[www.consumerfinance.gov](http://www.consumerfinance.gov)

CFPB states that it will be coordinating with other Federal and State regulators to maximize overall supervisory capability and minimize the regulatory burden. As an editorial comment, one can only imagine how the regulatory burden will be minimized. The Bureau describes its activities as “an ongoing process of pre-examination scoping and review of information, data analysis, on site examinations and regular communication with supervised entities as well as follow up monitoring.” (Quite a mouthful!)

The actual mortgage origination and examination procedures can be found at:

[www.consumerfinance.gov/wp-content/uploads/2012/01/Mortgage-Origination-examination-proceedures.pdf](http://www.consumerfinance.gov/wp-content/uploads/2012/01/Mortgage-Origination-examination-proceedures.pdf)

The procedures encompass 23 pages plus attachments. We will leave the bulk of the written procedures to speak for themselves. However, a number of areas seem to be of

particular interest. Among other objectives, the procedures cite the goals of the examination to be:

- A review of the quality of the compliance system of the business,
- Identification of conduct that increases the risk of violation and might be likely to violate the Federal Consumer Finance Law,
- A review of advertising and marketing strategies,
- Compliance, particularly in regard to the Truth in Lending Act, RESPA, ECOA and the SAFE Act, and
- Review of operations to find material misrepresentations or misleading representations that the lender or broker is acting in a fiduciary capacity.

The examination procedures mention at several points that the CFPB's obligations include the review of loan originator compensation, appraisals and underwriting practices. Among other areas, it will review risks to consumers to determine if the lender's policies include verifiable standards for qualifying borrowers, express processes for approving exceptions to these and policy procedures to determine the borrower's ability to repay.

Finally, the examinations will include a standard review of closing practices, a determination of whether the creditor discriminated on a prohibited basis in its policies or practices and a review of the lenders compliance with privacy requirements.

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