

# LENDERS UPDATE™

## ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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## **CFPB TAKES ON MINI-CORRESPONDENTS**

Last September we published an article in our Lenders Update which was republished in the California Mortgage Association newsletter, concerning the pitfalls of the burgeoning trend of mortgage brokers converting to mini-correspondents.

With the catalyst of the implementation of the Ability to Repay Rule, many brokers were electing to avail themselves of mini-correspondent status offered by warehouse banks/wholesalers. Among other issues, this allowed a broker to avoid the limitations on, and the disclosure requirements for, its fees.

We questioned the need to elect this step and the dangers involved down the line, if it were taken.

On Friday of last week, the Consumer Finance Protection Bureau (CFPB) spoke with authority on the same issue and warned of increased regulatory scrutiny of these arrangements and provided a reasonably exhaustive list of criteria and/or questions that

it would apply to them. The document is entitled, “*Policy Guidance on Supervisory and Enforcement Considerations Relevant to Mortgage Brokers Transitioning to Mini Correspondent Lenders*”. The Guidance can be found on the CFPB website.

The CFPB is concerned that brokers now want to consider themselves as creditors as opposed to brokers because if this transition works, many regulations and requirements of Reg. X (RESPA) and Reg. Z (TIL) are avoided, including:

- ✚ Disclosure of mortgage broker compensation,
- ✚ Inclusion of mortgage broker compensation in points and fees,
- ✚ Restrictions on mortgage broker compensation, and
- ✚ Prohibition on steering.

Thus the theory is, that by becoming a creditor, many of the restrictions placed on brokers, disappear.

The difficulty is that unless the transition is done correctly, the broker never sheds its original skin. The broker is merely seen as a table-funder. A table-funder by definition, is still considered to be a broker.

How is the CFPB going to determine if the company has made it far enough in the process to be considered a creditor and not a table-funding broker? The answer is that the Bureau will review a number of factors including:

- ✚ Does the company act as a mini-correspondent in some circumstances and then as a mortgage broker in others?
- ✚ How many investors does the company have available to purchase loans?
- ✚ Is the warehouse line provided by a third party?
- ✚ How thorough was the mini-correspondent application process?
- ✚ Does the mini-correspondent have more than one warehouse line?
- ✚ Is the warehouse bank affiliated with the company purchasing the loan?
- ✚ Is the warehouse line a “captive” line?
- ✚ What percentage of loans are sold to the entity providing the line of credit?
- ✚ What changes has the mini-correspondent made to its staff, procedures and infrastructure to support the transition?
- ✚ What training is being provided to understand the additional risks and duties flowing from the transition?
- ✚ Which entity, mini-correspondent, warehouse lender or investor is performing the majority of the principal mortgage origination activities?

No issue or question is dispositive of the conclusion but taken as a totality, the CFPB will attempt to judge the status, broker vs. creditor.

In conclusion, the Bureau has said the following;

*“The Bureau will closely monitor the practices of mini-correspondents....to insure that the protections afforded to consumers under federal consumer financial law are not being evaded.”*

For those companies who have availed themselves of this relatively new structure or are contemplating doing so, we strongly suggest using this Guidance as an analytical tool to determine its compliance with the rules of the CFPB.

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