

# LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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## AN ALT & ASSOCIATES NEWSLETTER

Main Office:  
2102 BUSINESS CENTER DRIVE  
SUITE 130  
IRVINE, CA 92612

Mailing Address:  
P.O. BOX 4125  
IDY, CA 92549-4125

**DAVID JEROME ALT**  
*Attorney at Law*  
[David.j.alt@altandassociates.com](mailto:David.j.alt@altandassociates.com)

TELEPHONE 949.253.5755  
FACSIMILE 949.253.5756  
[www.altandassociates.com](http://www.altandassociates.com)

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**July 8, 2011**

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<p><b>NEW DEVELOPMENTS</b></p>
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### **FTC AND FRB ISSUE FINAL RULE TO IMPLEMENT CREDIT SCORE REQUIREMENTS**

**Back in January 15, 2010 the Federal Reserve Board (FRB) and the Federal Trade Commission (FTC) issued their final rules to implement the Risk Based Pricing Provisions of the Fair Credit Reporting Act as amended. These rules require a creditor to provide a risk based pricing notice when the creditor uses a consumer report to grant or extend credit to the consumer if the terms are materially less favorable than the most favorable terms available to a substantial portion of consumers dealt with by the creditor.**

**The FRB and the FTC are now amending the Risk Based Pricing rules to require disclosures of credit scores and related information in risk based**

pricing notices. These changes are reflective of the Dodd-Frank Wall Street Reform and Consumer Protection Act and will be effective within 30 days after the upcoming publication in the Federal Register.

The final rules also amend certain notices required by Regulation B (Equal Credit Opportunity Act). These changes are reflected in the Adverse Action Notice requirements for Regulation B.

The entire text of the final rule and commentary can be found on the Federal Reserve Board site at: [www.federalreserve.gov](http://www.federalreserve.gov) under “News and Events” and then “Press Releases”. The press release is dated July 6, 2011.

You will also note that the final rules contain model forms for these amended notices.

### **HUD CHANGES UNEMPLOYMENT FORBEARANCE PROGRAM**

HUD has issued Mortgagee Letter 2011-23. Its purpose is to temporarily amend the Type 1 Special Forbearance as it pertains to unemployed borrowers and is effective August 1, 2011 and expires 2 years thereafter. Mortgagees must comply with the loss mitigation program originally set out in Mortgagee Letter 2000-5. In an effort to reduce insurance losses, subsequent Mortgagee Letter 2002-17 allowed mortgagees to offer forbearance to mortgagors with good payment records and stable employment histories even if the mortgagees were not able to determine if the forbearance would lead to re-instatement of the loan. The new letter amends Mortgagee Letter 2012-17

to “remove the requirement that the mortgagee verify that the mortgagor has a good payment record and stable employment history and extends the forbearance period to 12 months.

It also sets out the reasons for termination of the period of forbearance which are;

- abandonment of the property,
- mortgagor advises the mortgagee that he/she is no longer seeking employment or will not honor the agreement,
- forbearance payments become 60 days past due, or
- mortgagee finds a job and the loan is reinstated.

A copy of the letter can be found on the HUD website at: [www.hud.gov](http://www.hud.gov) under “Resources” and then “Mortgagee Letters”.

### **HUD PUBLISHES NEW LICENSING RULE** **UNDER THE SAFE ACT**

Last week the Department of Housing and Urban Development (“HUD”) published its final rules setting forth the minimum standards for state licensing and registration of residential mortgage loan originators under the SAFE Act of 2008. The rules become effective 60 days after its publication date of June 30, 2011. Again the final rule can be found at: [www.hud.gov](http://www.hud.gov) under “Press Releases”. All 50 states, plus DC, Puerto Rico, the Virgin Islands and Guam have enacted legislation to implement the Act and HUD is

**the designated agency with overall responsibility for interpretation, implementation and compliance.**

**While the Final Rule says much about the administrative process for determining whether or not a state has an adequate licensing and registration process system in place, most importantly for those in the business of making mortgage loans, the Rule, in our opinion, does a very good job of defining when a party is required to obtain a state license and be registered under the NMLS system.**

**It defines a loan originator as a person who must be registered with NMLS and licensed with the state in which the L/O does business and is engaged in the business of loan origination, if the individual, in a “commercial context and habitually”;**

- takes a residential mortgage loan application and offers or negotiates the terms of a residential mortgage loan for compensation or gain, or**
- represents to the public that such individual can perform such activities.**

**An individual takes a residential mortgage loan application;**

- if the individual receives a residential mortgage loan for the purpose of facilitating a decision whether to extend an offer of residential mortgage loan terms or accepts the offer of a borrower, and**
- the application is received either directly or indirectly from the borrower or prospective borrower.**

**An individual offers or negotiates the terms of the residential mortgage loan;**

- if the individual presents for consideration by a borrower or prospective borrower particular residential mortgage loan terms,
- communicates directly or indirectly with the borrower for the purpose of reaching a mutual understanding about prospective residential loan terms, or
- recommends or steers a borrower or prospective borrower to a particular lender in accordance with the duty to, or incentive of, any person other than the borrower or prospective borrower and expects to receive compensation.

**Many parties are excluded from the requirements of licensing and registration including;**

- an individual who performs qualifying real estate brokerage activities and is so licensed and registered in accordance with state law,
- individuals involved in extensions of credit in time share plans,
- individuals involved in clerical or support activities and subject to the supervision and instruction of a licensed and registered individual,
- individuals who perform purely administrative or clerical tasks on behalf of a loan originator appropriately licensed and registered,
- individuals who are employees of a state or local government agency or housing finance agency and who acts as a loan originator only in his/her official duties, or
- an employee of a bonafide non-profit organization who acts as a loan originator only with respect to his/her work duties to the non-profit and who acts as a loan originator only with respect to loans that are favorable to the borrower.

**Commentary to the Final Rule clarifies that individuals who only engage in loan modifications or are 3<sup>rd</sup> party loan modification specialists do not come within the definition of a loan originator under this Rule. HUD has deferred these activities to the new Consumer Finance Protection Bureau (“CFPB”). Those whose activities rise to the level of “refinancing” as defined by Federal law/regulation however, are clearly covered.**

**The Rule also sets out minimal requirements for licensing of loan originators which are consistent with those under which the industry has been operating for some time.**

**Appendix A to the new Rule sets out examples of mortgage loan originator activities. These further define and include examples of what HUD considers;**

- taking a loan application,**
- offering or negotiating terms of a loan, and**
- acting for compensation or gain.**

**Appendix B sets out definitions and examples of “Engaging in the business of loan originator: commercial context and habitualness”, and not “engaged in the business of loan originator”.**

**Appendix C sets out examples of independent contractor and loan processor and underwriter activities that require a state mortgage loan originator license and registration with NMLS.**

**Two Cautions:**

- 1. This is just a brief summary for general informational purposes. Please consult the Rule for specific questions.**
- 2. The definition of loan originator for purposes of this Rule and the definition of loan originator for purposes of the L/O Compensation Rule are vastly different.**

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[sherry.edwards@altandassociates.com](mailto:sherry.edwards@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 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:

David J. Alt, Esq.

[David.j.alt@altandassociates.com](mailto:David.j.alt@altandassociates.com)

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