

LENDERS UPDATE™

ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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

TELEPHONE 949.253.5755
FACSIMILE 949.253.5756
www.altandassociates.com

June 21, 2012

NEW AML AND SAR REQUIREMENTS GO INTO EFFECT FOR LOAN ORIGINATORS

The Bank Secrecy Act authorizes the Treasury Department to impose Anti-Money Laundering (AML) program requirements on financial institutions. These responsibilities have been delegated to the Financial Crimes Enforcement Network, or finCEN. Approximately 10 years ago finCEN issued a regulation which exempted loan companies from the obligation to establish AML programs. As a result, mortgage loan companies did not have to comply with the AML regulations nor with the requirement for Suspicious Activity Reports (SAR). These exempted institutions are called RMLOs, by the regulators for Non-Bank Residential Mortgage Lenders and Originators.

Beginning in 2009, finCEN proposed a Rule similar to those imposed upon banks to be effective for companies that originate mortgage loans. In February of this year this Rule was finalized by finCEN. This Rule specifies AML and SAR requirements for RMLOs.

The Rule is limited to AML and does not include additional regulations applicable to other types of institutions, under the Bank Servicing Act.

The Rule was effective April 16, 2012. **HOWEVER THE REQUIRED COMPLIANCE DATE IS AUGUST 13, 2012.**

What are you required to do to comply with finCEN's new Rule?

- If you are a person to whom a mortgage loan is initially payable, you are a residential mortgage lender and covered.
- If you are a person who accepts a residential loan application and offers terms or negotiates terms of residential mortgage loans, you are covered.

If you are covered, you must develop and implement a written anti-money laundering program reasonably designed to prevent your company from being used to “facilitate money laundering or to finance a terrorist activity”. At a minimum, the program must include:

- Policies and controls based upon the company's assessment of money laundering and terrorist risks.
- The designation of a compliance officer who is responsible for ensuring implementation, update and education of appropriate employees.
- Provisions for ongoing training of appropriate persons.
- Provisions for independent testing (not by the compliance officer) of your program.

Further, you must file with finCEN, reports of any suspicious transactions if conducted at, or through, your company if they involve aggregated funds of more than \$5000 and:

- Involve funds derived from an illegal activity or conduct to disguise these illegally derived funds.
- Conduct to evade requirements of the Bank Secrecy Act or its regulations.
- Activities which have no business or apparent lawful purpose or are not of the sort in which the particular customer would normally be expected to engage.
- The use of company to facilitate any criminal activity.

These reports must be filed within 30 calendar days of the initial detection.

Again, compliance is mandatory in approximately 1 ½ months on August 13, 2012.

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:

sherry.edwards@altandassociates.com

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

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

You may view previous issues on our website at:

www.altandassociates.com

Who's Who in American Law

Martindale Hubble Pre-Eminent Attorney