

LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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The purpose of the Lenders Update is to provide a “heads-up” of new legislation and regulations affecting the mortgage lending industry. We try to provide brief summaries of new matters so our readers can judge whether the subject impacts their operations. We recommend that our readers review the entire new material in detail where relevant. For your convenience, the applicable statute, regulation, cases or website can be easily identified in the summary. Our Update includes information available to Alt & Associates by May 17, 2007

FEDERAL ISSUES

FEDERAL RESERVE PROPOSES TO AMEND FINANCIAL SERVICES AND FAIR LENDING REGULATIONS.

On **April 20, 2007**, the Federal Reserve announced proposals to amend Regulations B, E, M, Z, and DD in an effort to clarify requirements for providing consumer disclosures in electronic form. Interim final rules were issued by the Fed in 2001. Compliance was ultimately never required. As stated in the proposals, the new rules would:

- Ø Withdraw certain portions of the 2001 interim final rules that restate or cross-reference provisions of the Electronic Signatures in Global and National Commerce Act which is known as the E-Sign Act,
- Ø Withdraw provisions of the interim rules that impose undue burdens on commerce and are not really necessary for consumer protection, and
- Ø Retain certain provisions of the interim final rules that provide guidance on the use of electronic disclosures.

The rules and comment instructions can be found at:

<http://www.federalreserve.gov/boarddocs/press/bcreg/2007/>

STATE ISSUES

TEXAS

Confidentiality Notice

HB 2061 was signed by the Governor of Texas on **March 30, 2007**. This relieves recorders of any potential criminal liability for allowing social security numbers to appear on recorded documents. The new statute repeats the requirement that a "Notice of Confidentiality Rights" be contained in any recorded document relative to an interest in real property. In theory, the County Clerk may not reject an instrument presented for recording because it fails to contain this notice.

OKLAHOMA

Oklahoma has proposed new rules relative to continuing education requirements. The rules would reflect that education requirements are required not only of mortgage brokers, but for mortgage loan originators also. Mortgage loan brokers and mortgage loan originators would have to complete 16 credit hours of continuing education before license renewal or reactivation. However, continuing education would not be required for the renewal of any mortgage loan originator licenses for 2007. Originators shall have until **December 31, 2007** to complete their education hours for the renewal of their licenses in 2008. With the exception of adding mortgage loan originators as a group to be included and regulated by Oklahoma continuing education requirements, the continuing education requirements would remain essentially the same for mortgage brokers.

PREDATORY LENDING

MINNESOTA

Minnesota House Bill 10004, known in Minnesota as MN H.F. 1004 has been signed into law. The Attorney General of Minnesota has indicated that all loans closed after **August 1, 2007** will have to comply with its requirements and prohibitions. For those of you operating in Minnesota this should be mandatory reading.

Among other provisions, the new statute makes it a violation of law to make or arrange a residential mortgage loan without verifying the borrower's reasonable ability to pay the scheduled payments where interest rates can vary. The reasonable ability to pay must be determined on a fully indexed rate and a repayment schedule which achieves full amortization over the life of the loan. Further, it provides that for all residential mortgage loans the borrower's income and financial resources must be verified by tax returns, payroll receipts, bank records, or other similarly reliable documents. This will obviously seem to significantly restrict or eliminate all "stated income" loans. Residential mortgage loans also, with the exception of reverse mortgages, cannot have any repayment option which will result in negative amortization during any six month period.

As has been pointed out by numerous commentators, there are ambiguities to be worked out. What evidence must be used to establish the ability to repay? What does "Net Tangible Benefit" mean when used and construed with whether a borrower should refinance? It also appears that YSP must be included in the limitation on points and fees.

Our monthly Lenders Update is published via e-mail as a complimentary service to our subscribers and clients in the financial industry throughout California and the United States. Our Lenders Update Manual: A Guide to State Mortgage Lending Law is available through our website at

www.altandassociates.com

Only those persons who have requested this newsletter are on our mailing list. Should you have colleagues who wish to receive this complimentary service, please have them e-mail us at

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ALT & ASSOCIATES provides regulatory, compliance and licensing services, 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:

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