# LENDERS UPDATE™

## ALT & ASSOCIATES NEWSLETTER

**A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY**


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# HUD RULES CONCERNING TPOs

**During the course of the last 2 years HUD has obviously made significant changes in the rules governing FHA approved lenders and applicants. One of the major changes involves the termination of the loan correspondent program and the substitution in its place of third-party originators (TPOs).**

**As we know:**

- **A sponsored third-party originator or TPO is an entity that originates FHA loans for an FHA approved sponsoring mortgagee. The TPO may be either an FHA approved entity or a non-FHA approved entity.**
- **The rules that apply to these types of relationships have been covered in a number of FHA documents. These primarily include HUD Mortgagee Letter 2011-34, October 25, 2011 Industry Call FAQS, Mortgagee Letter 2012-2, and FAQS for Third Party Originators revised February 10, 2012. These documents**

**can all be found under either FAQS or Mortgagee Letters on the HUD website at www.HUD.gov .**

**Unfortunately, even with this information and the numerous articles written about the information contained in the publications, there appears to be a great deal of confusion relative to their content. Because of this continuing confusion, we felt it would be a good idea to briefly summarize these rules, specifically governing the relationship between sponsoring lenders and TPOs.**

## Officers/Owners.

**FHA approved lenders but not TPOs must report all of their corporate officers. Any changes must be reported within 10 business days.**

**Corporate Officers are defined as:**

- **Owner,**
- **President,**
- **Vice President,**
- **Chief Operating Officer,**
- **Chief Financial Officer,**
- **Director,**
- **Corporate Secretary,**
- **Chief Executive Officer,**
- **Chairman of the Board, or a**
- **Member or Manager of a limited liability company.**

**Owners are defined for non-publically traded companies as persons owning 25% or more of the company. For publically traded companies the term means owners with 10% or more of ownership.**

## **Branch Offices and Loan Officers**.

**All origination activities for FHA loans must be conducted in offices approved and registered with FHA. In a major clarification/change, loan officers can be physically located at a location other than the registered branch through arrangements such as telework or telecommuting. The registered branch has the responsibility for supervising and overseeing the activities of these loan officers.**

**Obviously, the branch office facility must comply with state licensing requirements and NMLS.**

**Generally, the home office staff must have at least two full time employees, which does not include a shared receptionist. One full time employee is required at each branch office and each office must have a person assigned as manager. The underwriters must be employees of the mortgagee as well as managers and loan originators.**

**Again, in a major change, the geographic limits for lenders, home offices or branch offices, have been removed. Lenders may originate nationwide in any state in which the lender meets the state's origination requirements.**

## **Net Branching**.

**As it has been true in the past, FHA will not approve "net branches". This term involves an arrangement in which a party other than the approved lender pays some or all of an office's expenses. The approved lender is also prohibited from allowing a separate mortgage company or lender to originate loans under the approved mortgagee's number.**

**FHA approved lenders must pay all of their operating expenses. This includes expenses of its main and branch offices involved in originating or servicing. It also includes but is not**

**limited to equipment, furniture, office rent, overhead, employee compensation and similar expenses.**

## <u>Dual employment and Real Estate Sales License Issues</u>.

**While non-exclusive employment and the use of a real estate sales license while involved in FHA transactions have always been generally prohibited, HUD has offered some additional clarifications and small changes.**

**HUD does not prohibit an individual from holding any real estate license. However, a licensed real estate broker who is involved in selling real estate cannot be involved in an FHA transaction whether the individual is a supervisor of loan originators who are originating FHA loans or a loan officer. Essentially, while it is not impermissible to hold such a license, if the individual is involved as a manager overseeing FHA loan originators or an FHA loan originator that person cannot be involved in selling real estate nor have part time employment in the real estate industry.**

**As to dual employment, employees of FHA lenders must be exclusive to that entity. Dual employment with other companies engaged in financial services such as title companies, financial planning companies etc. is prohibited.**

## <u>Adherence of TPOs to HUD Rules and Regulations.</u>

**The issue has arisen as to whether sponsored TPOs who are not FHA approved, must abide by FHA staffing and employment requirements such as dual employment, the use of a real estate sales license, etc.**

**The Guidance provided by HUD is somewhat ambiguous. Generally, TPOs are required to adhere to all federal, state and local requirements governing FHA loan originations. There exists other language in the referenced publications indicating that TPOs are not required**

**to adhere to these FHA requirements. However, upon review of these documents and discussions with applicable HUD employees, we think it advisable as a matter of practice, for sponsoring FHA approved lenders to require compliance with HUD policies and requirements through their loan purchase or other guidance documents and for TPOs to comply even if this not required by the sponsoring FHA approved lender. In other words, our advice is for TPOs to comply with FHA requirements.**

## Quality Control and TPOs.

**Sponsoring mortgagees must have a Quality Control Plan that includes provisions for review of FHA loans originated through TPOs. Because the FHA does not approve or review sponsored TPOs, it does not require TPOs to maintain a Quality Control Plan. However, the sponsoring mortgagee may require one from its sponsored TPOs even if though not required by FHA.**

**The basic requirement for sponsoring mortgagees is that they must perform quality control review on an adequate sample of loans originated by sponsored TPOs and all loans that go into default within the six first payments. These efforts must be documented. As pointed out in the February 10th FAQS, "sponsored TPOs involved in FHA transactions must adhere to all applicable federal, state and local requirements governing their FHA loan origination processing activities". <u>It is the sponsoring mortgagee's responsibility to assure this compliance.</u>**

## Closing Loans.

**A loan can close only in the name of a sponsored TPO <u>if</u> they are an FHA approved mortgagee acting as a sponsored TPO. Otherwise, if the sponsored TPO is not FHA approved, the loan must close in the name of the sponsoring FHA approved mortgagee. Non-FHA approved TPOs may not close loans in their own name. An FHA approved**

**mortgagee acting as a sponsored TPO may close loans in its own name regardless of whether or not it has unconditional Direct Endorsement authority.**



**If you have any questions please contact:**

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