

LENDERS UPDATE™

ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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REGULATORY REQUIREMENTS FOR CLOSING AGENTS

QUALIFICATION REQUIRED?

Over the past 10 days we have been contacted by clients and friends involved in the escrow or mortgage industry reporting that lenders or wholesalers have contacted them requiring escrow employees involved in conducting the closing of loans and the disbursement of loan funds, be registered, qualified, or vetted by a third-party company. Having reviewed the material provided to this firm, we find that these solicitations or directives primarily cite as support for this requirement, positions taken by the Consumer Finance Protection Bureau (CFPB or Bureau) and Fannie Mae.

The CFPB issued its Bulletin 2012 – 03 on April 13, 2012. The purpose of the Bulletin is to provide the Bureau's expectations concerning supervision of

Service Providers, in this case, escrow agents. The Bureau's expectations are that lenders must have an effective process for managing the risks in these relationships. The process should include the following steps:

- Due diligence to verify compliance with consumer financial law,
- Review of policies and procedures and also of controls and training materials,
- Clear expectations to be contained in the service provider contract requiring compliance and for consequences in the event of violation,
- The establishment of internal controls and ongoing monitoring, and
- Prompt action to address problems identified through monitoring.

Fannie Mae provides in its Selling Guide and in its Lender Letter LL – 2010 – 03, that lenders must confirm that companies or individuals involved in the origination, underwriting or servicing of the mortgage transaction are not on the General Service Administration “excluded parties” list or the HUD “limited denial of participation list”. Regardless of the reason for the party being excluded, any party to the subject transaction who is included on either list will cause the loan to be ineligible for delivery. Companies or individuals involved in the mortgage transaction include:

- A person with management or supervisory responsibilities within a seller's company,
- Any person or entity with critical influence on, or substantive control over, the origination and servicing of a mortgage, or
- Any individual involved in any function related to the origination or servicing of a mortgage.

What is not required is that this process, as set out by the CFPB or the "scrubbing" of the applicable lists, be conducted by a third-party or that "registration" with such a party is required. In our judgment it would seem that

this process can be adequately performed in-house pursuant to a written compliance policy. To repeat, *the use of a third-party is not required by the cited authorities.*

This is particularly true in states, such as California, which require a rigorous regulatory scheme for the relevant party; for example, escrow agents must 1) submit their own personal information to the California Department of Corporations (DOC), 2) provide for surety and fidelity bonds, 3) require minimum experience for managers, and 4) submit an annual list of personnel to the DOC. These parties also must undergo an audit at least every four years. An appropriate policy requiring and overseeing compliance with this regulatory scheme and the required scrubbing would, in this limited regard, seem to be compliant with CFPB and Fannie Mae requirements.

A brief word about policies.

In our last Lenders Update we referenced the recent CFPB Supervisory Report. One of the core lessons in the report was the requirement for appropriate policies and evidence of compliance with those policies. **Buying a “canned” policy and storing it electronically or physically without adaption to your company and without oversight demonstrating company compliance, is not sufficient.**

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ALT & ASSOCIATES provides regulatory, compliance, operational advice and transactional assistance, as well as litigation representation, to the financial services industry. Over the past three decades, members of the firm have represented Institutional Lenders and Mortgage Bankers and Brokers in all aspects of their operations.

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