

# 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 or cases can be easily identified in the summary. Our Update includes changes in legislation available to Alt & Associates by November 17, 2005*

## FEDERAL ISSUES

### FTC’S INTERPRETATION OF “ESTABLISHED BUSINESS RELATIONSHIP”

The firm of Hudson Cook in Washington D.C., requested an informed opinion from the Federal Trade Commission regarding the application of the Telemarketing Sales Rules definition and application of the Established Business Relationship (“EBR”) exemption. The question presented was; does this exemption apply to a lender who initiates a telephone call to a consumer, based on contact information the lender obtains from a lead generator?

The FTC’s conclusion was that “under a strict reading of the language of the rule, the lender does not have an EBR [or existing business relationship] with a consumer who responds to a lead generator’s solicitation and therefore would not normally be entitled to claim an EBR exemption.” The FTC’s advisory opinion, however, states that the staff would not recommend a Do Not Call enforcement action against a lender that calls consumers who have responded to a lead generator’s solicitation.

However, this assumes that the lead generator makes full and adequate prior disclosure about the facts concerning the consequences of responding to such solicitations. The lead generator must clearly and conspicuously disclose, before the consumer divulges his/her telephone number, both that the consumer may receive telemarketing calls as a consequence of submitting his/her telephone number and the maximum number of entities from which the consumer may receive these calls. In addition, the consumer should, if possible, be informed of the identity of the lenders who may call.

## STATE ISSUES

### OHIO

#### **Ohio Supreme Court decision concerning the Cleveland Anti-Predatory lending statute.**

As you probably remember, several jurisdictions in Ohio adopted and/or considered Predatory Lending statutes for their municipalities. Because of this, since 2002, there has been considerable uncertainty concerning the states mortgage lending market. Finally, on November 20, 2006, the Ohio Supreme Court issued an opinion in a 5-2 decision. The majority of the court found that “any local ordinances that seek to prohibit conduct that the state has authorized are in conflict with the state statutes and are therefore unconstitutional.”

The suit was brought by American Financial Services Association. This decision mirrors a decision reached by the California Supreme Court in early 2004, concerning the Oakland Predatory Lending statute. As a result of these court actions, the local ordinances in these states are unconstitutional and unenforceable.

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**Our Lenders Update Manual: A Guide to State Mortgage Lending Law is available through our website at [www.altandassociates.com](http://www.altandassociates.com)**

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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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