

LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

AN ALT & ASSOCIATES NEWSLETTER

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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 provide summaries of new matters so our readers can judge whether the subject impacts their operations. We recommend that our readers review the entire new statute, regulation or other material in detail where it is relevant to them. For convenience, the applicable matter can be easily identified in the summary, and, where possible, a link is provided.

The Update includes information available to Alt & Associates as of October 23, 2008.

FTC DELAYS ENFORCEMENT OF RED FLAGS RULE

As many of us, but not all, know, the Federal Trade Commission (“FTC”) pursuant to the Fair and Accurate Credit Transactions (“FACT”) Act of 2003 developed the Red Flags Rule (“RFR”). Under this rule, financial institutions and creditors with covered accounts must have identity theft policies in place to detect and respond to patterns, practices, or activities that would point to identity theft.

This applies to financial institutions regulated by Federal agencies. It also applies to other creditors. This is defined as other entities who regularly extend, renew or continue credit, or that term arrange the extension or renewal of credit. It also applies to any assignee who is involved in the decision to extend, renew or continue credit. Please note that accepting credit cards as a form of payment does not in and of itself make one a creditor. Finance companies and mortgage bankers and brokers are examples of creditors.

The deadline for enforcement of the RFR was set at Nov. 1, 2008. This deadline will remain for the institutions, subject to the oversight of the Federal Agencies. However, the FTC as part of an outreach effort to explain the rule to the many entities subject to the RFR rule and

after publishing a general alert on what the rule requires, were concerned that these companies were uncertain about the coverage or just didn't know about the RFR's existence. Perhaps, it was lost in the clutter of all the new laws and problems of this year. The FTC therefore determined that enforcement of the rule for creditors, should be delayed.

As a result, as announced yesterday, October 23, 2008, the FTC has suspended enforcement of the RFR until May 1, 2009 to give creditors additional time in which to develop and implement written identity theft prevention programs.

Please note that the FTC delay in enforcement does not affect other Federal Agencies enforcement of the original November 1, 2008 deadline, concerning entities they regulate.

Our monthly 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 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, 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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