

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 September 15, 2008.

NEW NATIONAL LICENSING REQUIREMENTS FOR LOAN ORIGINATORS

As part of the new Homeownership and Economic Recovery Act of 2008, (“HERA”) Senate Bill 2595 was enacted into law on July 30th. This new legislation went relatively un-noticed in the immediate coverage of HERA. However, the effects of SB 2595 will be far reaching.

The statute provides that working through the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, a Nationwide Mortgage Licensing System and Registry, (“NMLSR”) will be established. The purposes of this System are, among others, (1) to provide uniform licensing applications, (2) establish a comprehensive license database, (3) improve the flow of information between regulators, (4) provide increased accountability by tracking Loan Originators and finally, (5) streamline the licensing process and reduce the regulatory burden.

First a few definitions necessary to understand the new law and its requirements

The term Loan Originator in the Act is defined as an individual who takes a residential mortgage application, assists the consumer in obtaining or applying to obtain a residential mortgage loan or who offers and negotiates terms of a residential mortgage loan. This term includes an individual who represents to the public through advertising or other means that it can provide or perform any of these described activities.

The term Loan Originator does not include an individual who performs administrative or clerical tasks. It further does not include a person that performs real estate brokerage activity and is licensed or registered in accordance with applicable state law. Real estate brokerage is defined in detail. Suffice it to say, that it encompasses a person acting as a real estate agent or real estate broker for a buyer, seller, lessor or lessee of real property and not one involved directly with residential mortgages loans.

The statute defines a Loan Processor or Underwriter. This category includes persons performing clerical or support duties at the direction and subject to the supervision of a State Licensed Loan Originator or a Registered Loan Originator.

A State Licensed Loan Originator is a person licensed as a Loan Originator by a state.

A Registered Loan Originator is a person employed by a depository institution and also registered through NMLSA.

All originators no matter the type or the licensing/approval method will have a Unique Identifier assigned, permanently identifying them as a Loan Originator that will allow electronic tracking and uniform identification.

Registration requirements for Loan Originators

The Act establishes uniform license or registration requirements for Loan Originators who are State Licensed Loan Originators or Registered Loan Originators. Again these two terms mean, respectively, persons licensed by individual states or those who are working for a depository institution. In either case, these individuals must obtain and maintain an annual registration either as a Registered Loan Originator or a State Licensed Loan Originator and obtain the Unique Identifier. In other words, the federal registration will be accomplished by either having a state license as a Loan Originator or through employment by a depository institution as a Loan Originator. In both cases it will require registration with the Nationwide Mortgage License System and Registry.

State license and registration requirements in order to qualify.

The requirements to qualify for registration with NMLSA as a State Licensed Loan Originator are set out in detail. To begin, fingerprints must be submitted and a detailed personal history and statement of experience must be provided which will allow the licensing system to obtain an independent credit report and information related to administrative, civil or criminal claims.

Next in order for the state license to qualify for registration, the issuance of the license must be based on minimum standards including past license history, felony convictions, financial responsibility, character and general fitness, education requirements and successful completion of a written test.

The pre-licensing education requirements must include at least 20 hours of education in subjects including federal law, ethics and lending standards for sub-prime mortgages. The pre licensing education courses must be reviewed and approved by the Nationwide Mortgage Licensing System and Registry but will not be directly offered by this System. Lastly, all Loan Originators must be tested using the qualified written test developed by the System and administered by the test provider. The test will contain at least one hundred (100) questions testing the applicant's knowledge and comprehension of ethics, federal law, state law, consumer protection, sub prime mortgages and fair lending issues. A minimum 75% score is required to pass the test.

In order to renew the state license, the Originator must maintain continuing education, including eight (8) hours of education annually in the subjects just listed. Again, the providers of these education courses must be approved by NMLSA but the classes will not be provided by NMLSA.

Requirements for Registered Loan Originators

Within one year, banking agencies through the Federal Financial Institutions Examinations Council will develop and maintain a system for registering with the System, employees of depository institutions as Registered Loan Originators. These individuals must provide, at a minimum, fingerprints and a personal history. As indicated above, these Registered Loan Originators, i.e., employees of the depository institutions, will also be issued a Unique Identifier.

What happens if states do not enact appropriate Loan Originator licensing requirements?

By the end of the one year period or a two (2) year period in the case of state legislatures who meet only bi-annually, if the Department of Housing and Urban Development Secretary determines that a state does not have appropriate licensing in place or does not participate in the Nationwide Mortgage Licensing System and Registry then the Secretary will establish and maintain a similar system for the licensing and registration by HUD of Loan Originators operating in that state as State Licensed Loan Originators. This system will meet the standards required for state licensing of originators. Individuals will again be issued a Unique Identifier as in all other circumstances.

In order for state licensing law requirements to be satisfactory and escape the HUD imposed licensing system there must be affective supervision and enforcement of the state's law, all state

Licensing Loan Originators must be registered with the System and the state must regularly report violations of its laws to the System.

Many states have Loan Originator licensing education requirements in place. Most of these have been enacted in the past several years. Some states do not. California for example has education and testing and post licensing education requirements for Department of Real Estate licensees who, somewhat uniquely in the United States, have the ability to broker and/or originate mortgage loans. However, California also has licensing by the Department of Corporations for California Finance Lenders or Residential Mortgage Lenders. Neither of these licenses have requirements for Loan Originator licensing. Obviously, to comply with this Act, requirements will have to be adopted by the state legislature.

At least in theory by the end of July 2010 it is the statute's purpose to have a nationwide system in place which will license and/or register Loan Originators. Loan Originators may be licensed by state law, employed by federal depository agencies pursuant to rules of the Joint Agencies or in cases in which states have either refused or have been dilatory; Loan Originators will be licensed by HUD. All in all, it seems that this will take an amazing amount of cooperation and coordination all to happen in a short period of time, at least judged by the normal business time frame of state legislators and regulators. It will be interesting to follow.

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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