

LENDERS UPDATE™

ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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SUPERVISORY GUIDANCE **LAW, REGULATION OR ???**

The Joint Agencies (CFPB, OCC, NCUA, FRB and FDIC) have recently issued a joint statement to explain how supervisory guidance will fit in to the agency's regulatory frame work. Guidance may include interagency statements, advisories, bulletins, policy statements, and frequently asked questions. How does this guidance differ from law or regulation?

Laws obviously are binding. Regulations often have the force and effect of law. Regardless of past practice, this is not true of supervisory guidance which does not have the force and effect of law. The agencies may not take enforcement actions based on supervisory guidance.

The agencies have set forth policies and practices related to supervisory guidance. We set them out as presented:

- ✚ The agencies intend to limit the use of numerical thresholds or other “bright-lines” in describing expectations in supervisory guidance. Where numerical thresholds are used, the agencies intend to clarify that the thresholds are exemplary only and not suggestive of requirements. The agencies will continue to use numerical thresholds to tailor, and otherwise make clear, the applicability of supervisory guidance or programs to supervised institutions, and as required by statute.
- ✚ Government agencies issue regulations that generally have the force and effect of law. Such regulations generally take effect only after the agency proposes the regulation to the public and responds to comments on the proposal in a final rulemaking document.
- ✚ Examiners will not criticize a supervised financial institution for a “violation” of supervisory guidance. **RATHER, ANY CITATIONS WILL BE FOR VIOLATIONS OF LAW, REGULATION, OR NON-COMPLIANCE WITH ENFORCEMENT ORDERS OR OTHER ENFORCEABLE CONDITIONS** (emphasis added). Examiners may identify unsafe or unsound practices or other deficiencies in risk management, including compliance risk management, or other areas that do not constitute violations of law or regulation. In some situations, examiners may reference (including in writing) supervisory guidance to provide examples of safe and sound conduct, appropriate consumer protection and risk management practices, and other actions for addressing compliance with laws or regulations.
- ✚ The agencies also have at times sought, and may continue to seek, public comment on supervisory guidance. Seeking public comment on supervisory guidance does not mean that the guidance is intended to be a regulation or have the force and effect of law. The comment

process helps the agencies to improve their understanding of an issue, to gather information on institutions' risk management practices, or to seek ways to achieve a supervisory objective most effectively and with the least burden on institutions.

- ✚ The agencies will aim to reduce the issuance of multiple supervisory guidance documents on the same topic and will generally limit such multiple issuances going forward.**

Sometimes progress may be made by going backward.

ABOUT ALT & ASSOCIATES

Alt & Associates publishes the *Lenders Update* via e-mail as a complimentary service to our friends and clients in the financial industry throughout California and the United States. Over the past three decades, members of the firm have represented Institutional Lenders and Mortgage Bankers and Brokers in all aspects of their business operations. Legal counsel provided to the mortgage industry includes, but is not limited to:

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- ✚ Operational advice
- ✚ Transactional work Agreements such as Loan Officer
- ✚ Compensation Agreements etc.
- ✚ Various forms of employee, officer, and/or manager contracts
- ✚ Litigation representation

You may direct any questions or comments directly to:

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