

Mortgage Banking Update

PATTON BOGGS LLP | December 7, 2009

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DID YOU KNOW?

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or if you require additional
information, please
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NUGGETS FROM HUD ON NEW RESPA RULE

The Mortgage Bankers Association held conferences held last week to discuss the new rule under the Real Estate Settlement Procedures Act (RESPA) that will be fully implemented January 1, 2010. In addition to a presentation from Patton Boggs partner Richard Andreano, the conference featured officials from the Department of Housing and Urban Development (HUD) who provided additional guidance and addressed plans for new FAQs.

More FAQs. The guidance from HUD on the new rule appears in the form of FAQs. HUD advised that by year-end, approximately 12 to 18 more FAQs may be issued, as well as a revised version of the Settlement Cost Booklet.

GFE Format. HUD previously has advised that the good faith estimate (GFE) is a proscribed form and may not be altered except as provided by HUD. Further, additional pages may not be added. This prompted inquiries to HUD as to whether the form may be printed on legal size paper. It appears likely that HUD will clarify that the use of legal size paper is permissible, as long as the integrity of the GFE form is maintained.

Shading in GFE and HUD-1. HUD advised that the shading can be removed from the GFE form and HUD-1 form. HUD noted that the official versions of the forms published in the Code of Federal Regulations do not include the shading.

GFE Acknowledgment. HUD previously advised that signature lines cannot be added to a GFE, and that a separate acknowledgment of GFE receipt is permitted, but a lender cannot refuse to issue a GFE based on the refusal of a consumer to acknowledge receipt. HUD also had advised that an acknowledgment of receipt by itself does not signify a consumer's acceptance of the GFE. HUD added at the conferences that if an acknowledgment is obtained, the acknowledgment itself must be clear that it is an acknowledgment of receipt and not acceptance of the GFE.

GFE Expiration. HUD advised that when a GFE is mailed, the minimum 10 business day period in which the GFE may be accepted by the consumer is measured from the date the GFE is placed in the mail.

LOOKING AHEAD:

The RESPA Reform Rules: Managing the Compliance Labyrinth

December 10

Topic: Ensuring your bank is in compliance with the new RESPA reform rules

Time: 2:00 – 4:00 p.m. EST

**Patton Boggs participant:
Richard Andreano**

Mortgage Bankers Association

December 11 - Philadelphia, PA

Topic: A workshop to help with implementation of the new RESPA requirements.

Time: 8:30 a.m. – 4:30 p.m.

**Patton Boggs participant:
Richard Andreano**

AllRegs Webinar

December 14

Topic: Understanding RESPA Reform

Time: 2:00 – 4:00 p.m. EST

**Patton Boggs participant:
Richard Andreano**

ON THE FHA HORIZON—REDUCTION OF SELLER CONCESSIONS AND OTHER CHANGES

In testimony last week before the House Committee on Financial Services, Secretary Shaun Donovan announced that the Department of Housing and Urban Development (HUD) is assessing various changes to the Federal Housing Administration (FHA) lending program. Planned reforms include:

- Reducing the permissible seller concession (i.e., the amount a seller may contribute without reducing the maximum mortgage amount) from six to three percent of the sales price for the home.
- Raising the minimum credit score for borrowers. The Secretary advised that HUD is analyzing the relationship between credit scores and down payments to determine if the minimum credit score should be increased in combination with changes to other underwriting criteria for loans with lower down payments.
- Increasing the minimum cash that borrowers must contribute to an FHA loan transaction. The Secretary advised that this step is to ensure that FHA borrowers have more “skin in the game.”

The Secretary stated that HUD also is examining the current FHA premium requirements to determine if an increase is warranted in the up-front and/or annual premiums. The up-front premium currently is 1.75 percent for many loans, which is well below the statutory maximum of three percent. The annual premium currently is at the statutory maximum of 0.50 percent for loans with terms that exceed 15 years. HUD is asking Congress for authority to increase the maximum annual premium.

The Secretary also advised that HUD will increase efforts to ensure lenders assume responsibility for any losses associated with loans that are not underwritten in accordance with FHA standards. HUD will require lenders to “indemnify the FHA fund for their own failures to meet FHA requirements, and [hold] lenders accountable nationally for any improper activities, as [HUD is] presently limited to sanctioning individual branches.” Currently, FHA lenders will provide indemnification to FHA in certain cases, and face sanctions at the branch level for poor origination performance. The Secretary stated that HUD will seek additional authority from Congress “to hold all FHA lenders responsible for their fraud or misrepresentations by indemnifying the FHA fund [and] to hold lenders accountable nationally for their performance”

FEDERAL AGENCIES PUBLISH MODEL PRIVACY NOTICE

As reported in the [November 16 edition](#) of the Mortgage Banking Update, eight federal agencies have finalized a model privacy notice for use in connection with Gramm-Leach-Bliley compliance. The agencies are the Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Federal Trade Commission, Commodity Futures Trading Commission and Securities and Exchange Commission. A detailed summary of the draft final rule appeared in the [November 2 edition](#) of the Mortgage Banking Update. The final model privacy notice and corresponding joint final rule, which track the draft final rule, appeared in the Federal Register on December 1, 2009. The rule becomes effective on December 31, 2009.

DID YOU KNOW

- As a result of the SAFE Act, state regulatory agencies whose mortgage licensing laws are SAFE Act-compliant will soon require independent contractors who conduct mortgage loan processing activities to become licensed as mortgage loan originators. Unlike many other jurisdictions, Kentucky presently requires mortgage loan processors to be registered, including those who are W-2 employees of a mortgage licensee. Individuals who provide clerical or support services at the direction of and subject to the supervision and instruction of a mortgage loan originator are deemed to be mortgage loan processors and must be registered. The term, "clerical and support duties", includes a number of administrative functions such as gathering information, requesting information, word processing, sending correspondence and/or assembling files. In addition, receiving, collecting, distributing and analyzing information typically used to process or underwrite a residential mortgage loan and/or communicating with a borrower to obtain such information will typically require registration. Independent contractors who engage in mortgage loan processing activities are required to be licensed as mortgage loan originators, rather than registered as mortgage loan processors.
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