

Mortgage Banking Update

PATTON BOGGS LLP | OCTOBER 26, 2009

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HUD ANNOUNCES MAJOR REVISIONS TO H4H

The Department of Housing and Urban Development (HUD) announced significant changes to the special Federal Housing Administration (FHA) Hope for Homeowners (H4H) Program in Mortgagee Letter 2009-43, dated October 20, 2009. The changes are effective for endorsements on or after January 1, 2010. The new Mortgagee Letter supersedes in their entirety Mortgagee Letters 2008-29, 2008-30 and 2009-03.

Preclosing Review. To offer the H4H Program, mortgagees will have to submit their first five H4H loans to HUD for a preclosing review. While in the preclosing review status, a mortgagee may take applications, order case numbers and appraisals, order credit reports, obtain verifications of deposit and employment and otherwise process the applications in accordance with all direct endorsement policies and guidelines up to the point of closing the loans. At that point, the loan packages must be submitted to HUD for underwriting review.

If HUD grants permission for the mortgagee to close all five of the submitted loans, the mortgagee is then released from preclosing status and granted unconditional approval to underwrite H4H loans. However, if one or more of the five loans exhibits "significant deficiencies," the mortgagee must submit a total of 10 acceptable H4H loans for review. If a mortgagee does not submit 10 acceptable H4H loans within 180 days of entering preclosing status, the mortgagee can no longer offer H4H loans. "Significant deficiencies" include, without limitation, lack of appropriate signatures and certifications, insufficient supporting documentation regarding payment history on the prior mortgage, the prior mortgage payment not exceeding 31 percent of the borrower's gross monthly income and lack of evidence that the first payment was made from the borrower's own funds. HUD likely will need to provide further guidance on the preclosing review requirements.

HUD notes that while the processing of preclosing review cases is a priority, it advises mortgagees not to contact the Homeownership Center for status reports until four working days have passed. HUD also cautions lenders not to schedule closings too closely after the submission of preclosing review cases.

Borrower Eligibility. Additional borrower eligibility requirements will include an exclusion for borrowers who intentionally defaulted on their existing mortgage(s), or any other debt exceeding \$100,000, in the past five years, and an exclusion for borrowers with a net worth exceeding \$1 million at the time of loan application, not counting assets in qualified retirement plan accounts.

LOOKING AHEAD:

LBA's Bank Counsel Conference

November 13

Location: The Ritz Carlton, New Orleans

Topic: RESPA Reform: The Latest from Washington, DC

Time: 10:35-11:35 a.m. CST

Patton Boggs participant:
Richard Andreano

Mortgage Lending Practices Under Fire Webinar

December 2

Topic: Compliance, enforcement and litigation risks resulting from the changing regulatory regime in mortgage lending

Time: 1:00 – 2:30 p.m. EST

Patton Boggs participants:

Patrick McManemin

Michael Waldron

50% Off the Webinar when you use the promo code ZDFCT

Shared Equity/Shared Appreciation. The requirement that the borrower share with HUD any equity created as a result of the H4H refinancing will be replaced with an exit premium that is similar to the shared equity approach. An exhibit to the mortgagee letter includes a new exit premium note and exit premium mortgage. The requirement that the borrower also share with HUD any appreciation in the value of the security property will be eliminated.

Appraisals. The special requirement that generally limited the age of an appraisal to three months at the time of loan closing will be eliminated. Standard FHA loan requirements for the age of appraisals will apply. Note that in Mortgagee Letter 2009-30, the standard appraisal requirements were revised effective for case numbers assigned on or after January 1, 2010 to reduce from 180 days to 120 days the limit on the age of appraisals.

Mortgage Insurance Premiums. The up front and annual mortgage insurance premiums will be reduced from 3 percent and 1.5 percent, respectively, to 2 percent and 0.75 percent, respectively.

Qualifying Mortgage Payment-to-Income Ratio. The required minimum mortgage payment-to-income ratio of greater than 31 percent to qualify for an H4H loan will be assessed based on whether the borrower at the time of the loan application had, or due to a loan reset will likely thereafter have, a ratio that exceeds such percent.

Loan-to-Value (LTV). Originally a 90 percent LTV ratio limit applied to H4H loans. A higher limit then was added so that (a) a 96.5 percent limit applies if the new mortgage payment-to-income ratio does not exceed 31 percent and if the new total debt-to-income ratio does not exceed 43 percent, and (b) the original 90 percent limit applies if the new mortgage payment-to-income ratio does not exceed 38 percent and if the new total debt-to-income ratio does not exceed 50 percent. This approach will apply to borrowers who are delinquent on their existing mortgage loan. For borrowers who are current on their existing mortgage loan, a 105 percent LTV ratio limit and standard FHA debt-to-income limits will apply (under the standard limits, generally a 31 percent new mortgage payment-to-income ratio and a 43 percent total debt-to-income ratio apply). Finally, all of the LTV ratio limits will be computed by excluding the up front mortgage insurance premium.

Tax Returns. The requirement to obtain either an income tax return transcript of the borrower's income tax returns or a copy of the borrower's income tax returns from the Internal Revenue Service (IRS) for the two most recent years will be eliminated. In cases in which an FHA loan is a higher-priced mortgage loan under the Truth in Lending Act (TILA)

regulations, lenders should be mindful of the obligations to assess repayment ability and verify income.

Certifications. The requirement that the underwriter and mortgagee provide special certifications that the loan is in compliance with the underwriting and appraisal standards of the H4H Program rule and that the loan meets all requirements applicable to the H4H Program will be eliminated.

DID YOU KNOW

During January 2010, State Regulatory Registry, LLC will launch a new Web site, which will be known as NMLS Consumer Access. The NMLS Consumer Access Web site will make a significant amount of information about licensees available to the public. The Web site will include, among others, detailed contact information for the licensee, a summary of the licenses and approvals held by each licensee, the status of those approvals and state-by-state registered agent information. The individual records for licensed mortgage loan originators also will include summaries of their employment history, including positions that were outside the financial services industry. Licensees should also be aware that, at some date subsequent to its launch, the Web site will include information on past administrative orders and actions that each licensee has experienced.

MORE HUD FAQs

Our HUD issued an October 22, 2009 version of the FAQs on the new Real Estate Settlement Procedures Act (RESPA) rule to be implemented on January 1, 2010. The new version of the FAQs includes 12 new FAQs addressing reverse mortgage loans, two FAQs addressing the lender-broker relationship and one FAQ addressing government programs with approved service providers.

One of the new FAQs regarding the lender-broker relationship provides as follows:

Q: When a mortgage broker receives an application or information sufficient to complete an application, when does the lender who agrees to go forward on the application have to provide the GFE?

A: No later than 3 business days after the mortgage broker received the application or information sufficient to complete the application, either the lender or the mortgage broker must

provide a GFE. The lender is responsible for ascertaining whether the GFE has been provided.

Not expressly addressed by HUD are the implications of a situation in which a broker submits an application to a lender after three business days from the broker's receipt of the application without the broker having issued a good faith estimate (GFE). If HUD takes the position that the lender would be responsible for the failure to timely provide a GFE in such situation, then

HUD should clearly state its position. Of course, if HUD were to take such a position, the likely result is that lenders would refuse to accept applications in cases in which brokers have not timely delivered a GFE.

The other FAQ regarding the lender-broker relationship provides as follows:

Q: If a lender agrees to proceed with a transaction for which a mortgage broker has provided the GFE to the borrower, may the lender provide a revised GFE?

A: The lender may provide a revised GFE consistent with the provisions of 24 CFR § 3500.7(f).

The cited section provides that a GFE is binding, subject to the tolerances and the exceptions set forth in the section for changed circumstances, borrower-requested changes and newly constructed homes. HUD has yet to state expressly what appears to be its position—if a lender accepts an application and GFE from a broker the lender is bound by the GFE as if the lender had issued the GFE.

The new FAQ addressing government loan programs provides:

Q: If a governmental loan program requires a borrower to select an "approved" service provider, such as a HUD approved housing counselor, should the service be disclosed in Block 3 or Block 6 on the GFE?

A: Even if a governmental loan program requires a borrower to select from only "approved" service providers (such as HUD approved housing counselors) the service must be disclosed in Block 6 on the GFE. If the loan originator selects a particular settlement service provider, the service must be disclosed in Block 3.

HUD does not address the requirement to provide the consumer with a list of available providers when the loan originator permits the borrower to shop for the providers of required services. In particular, if there is a list of approved service providers for a particular service under the government loan program, it is not clear if the loan originator must include one, any or all of the providers in the lender's list of available providers in cases in which the lender will allow the borrower to select the provider of the service under the government program.

With the three FAQs addressed above, HUD continues the trend in the FAQs of not actually providing needed answers. Whether this is intentional or not, the result is the same—lack of clear guidance.

IRS UNVEILS SIMPLIFIED FORM FOR APPLICATIONS UNDER HAMP

The IRS recently unveiled a new version of its Form 4506T-EZ, Short Form Request for Individual Tax Return Transcript (revised form), in order to facilitate applications for modification or refinancing of a mortgage. While available for any debtor that needs to provide tax return information to a lender in connection with a mortgage, the revised form has been highlighted by the IRS for providing tax information for applications under the administration's Home Affordable Modification Program (HAMP).

In 2005, Congress recognized the need for mortgage debtors to supply tax return information to lenders, even though many debtors do not have access to their tax returns from past years. Accordingly, debtors were allowed to request a "transcript" showing most of the line items on a tax return filed in a previous year. The transcript can be sent directly to lenders for free, and processing of the request for a transcript should take about 10 days. (Alternatively, a debtor must pay \$57 to request a complete copy of a past year's tax return, and the request may not be processed for up to 60 days.) The revised form has been simplified to facilitate these requests.

The revised form is only for use by individuals that filed a Form 1040 for the applicable tax year. Debtors can fill out the revised form on the IRS Web site: <http://www.irs.gov/pub/irs-pdf/f4506tez.pdf>, or they can mail or fax the form directly to the IRS. For more information on the revised form please contact Jonathan Babu at jbabu@pattonboggs.com.

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