

Mortgage Banking Update

PATTON BOGGS LLP | January 18, 2010

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DID YOU KNOW?

If you have any questions or if you require additional information, please contact:

Richard J. Andreano, Jr.
202-457-7517 (Direct)
202-457-6315 (Fax)
randreano@pattonboggs.com

John D. Socknat
202-457-7513 (Direct)
202-457-6315 (Fax)
jsocknat@pattonboggs.com

Michael S. Waldron
214-758-3436 (Direct)
214-758-1550 (Fax)
mwaldron@pattonboggs.com

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VA ISSUES GUIDANCE ON MAKING HOME AFFORDABLE PROGRAM

The United States Department of Veterans Affairs (VA) recently issued guidance on the use of the Making Home Affordable (MHA) program with VA-guaranteed loans. The guidance is set forth in [Circular 26-10-02](#) dated January 8, 2010.

The Circular focuses on the Home Affordable Mortgage Program (HAMP) component of MHA. VA loan servicers are provided with temporary authority to modify VA-guaranteed loans in a manner similar to HAMP. The authority may be used only if the following requirements are met: (1) the borrower does not qualify for traditional home retention loss mitigation applicable to a VA-guaranteed loan, (2) the property is the borrower's primary residence and (3) the VA HAMP modification is agreed upon by December 31, 2012 (which is the expiration date for HAMP). Thus, significantly, a servicer first must determine that a borrower does not qualify for standard loss mitigation options that allow the borrower to remain in their home before assessing if the borrower is eligible for a VA HAMP modification.

Servicers may not solicit borrowers who are current on their loans for a VA HAMP. The VA notes that borrowers who are current should be considered for refinancing with programs such as the VA's Interest Rate Reduction Refinancing Loan. However, if a veteran contacts a servicer to advise of "imminent danger of default" the loan may be evaluated under the VA HAMP guidelines. The modification of a current loan requires prior approval of the VA.

Servicers must perform a two-step net present value evaluation to determine if a borrower qualifies for a VA HAMP. One step takes into account the existence of the VA guaranty, and the other step assumes that there is no VA guaranty. The VA explains that this process "is necessary to ensure a veteran receives appropriate consideration for loan modification, even when the VA guaranty makes foreclosure a more financially attractive option for a servicer."

If under the step that considers the VA guaranty the loan meets HAMP eligibility requirements, a VA HAMP modification must be executed pursuant to HAMP guidelines. However, only the standard VA servicer incentives will apply to a VA HAMP. VA-guaranteed loans are not eligible for the incentives under the MHA program. Additionally, the VA does not require servicer participation agreements. The VA guaranty amount on a HAMP modification will be calculated pursuant to the loan modification guaranty provisions (38 CFR Section 36.4815).

LOOKING AHEAD:

Webinar: Preparing for Changes to FHA Appraisals

January 20, 2010

Topic: FHA's impending changes to appraisal order guidelines

Time: 1:00 – 2:00 p.m. EST

Patton Boggs participant:
Michael Waldron

RESPA Ready 2010 - What You Need to Know to Comply

January 28, 2010 New Orleans,

LA 8:30 - 4:30 p.m., CST

February 4, 2010 Washington,

DC 8:30 -4:30 p.m., EST

Topic: New RESPA Requirements

Patton Boggs Participant:
Richard Andreano

Webinar: 2010 NMLS User Conference & Training

February 11, 2010

Topic: Emerging Issues Pertaining to the NMLS

Time: 9:00 – 10:00 a.m. PST

Patton Boggs participant:
Haydn Richards

If the loan does not meet HAMP eligibility requirements under the step that considers the VA guaranty, and modification is favored under the method that does not consider the guaranty, the loan may be eligible for purchase by the VA (referred to as “refunding”). In such case the servicer must notify the VA for consideration of the loan for refunding.

The Circular contains guidance for servicers and VA staff on VA HAMP modifications and the consideration of refunding.

HUD INVESTIGATES MORTGAGEES WITH HIGH CLAIM RATES

The Department of Housing and Urban Development (HUD) Inspector General and Federal Housing Administration (FHA) Commissioner [recently announced](#) an investigation of 15 FHA mortgagees with “significant claims rates” against the FHA insurance fund. HUD’s Office of Inspector General (OIG) served subpoenas on the mortgagees seeking documents and data relating to failed loans.

The Inspector General noted that OIG is not “making any accusations at this time, we have no evidence of wrongdoing, but we will aggressively pursue indicators of fraud.” The OIG explained that it identified the particular mortgagees from an analysis of loan data focusing on companies with significant claims, a certain loan underwriting volume, a high ratio of defaults and claims compared to the national average, and claims that occurred earlier in life of the loan. The OIG states that these factors “are indicators of problems at the origination or underwriting stages.”

The announcement notes that the probe is a new type of approach in which the HUD OIG is focused on a mortgagee’s entire operations rather than individual branch offices. HUD Secretary Shaun Donovan advised that HUD would take this approach in [testimony](#) before the House Committee on Financial Services in December 2009.

HUD AND ALASKA SETTLE WITH TITLE AGENCY

The Department of Housing and Urban Development (HUD) and Alaska Department of Insurance (DOI) entered into a [settlement agreement](#) with Alyeska Title Guaranty Agency (Alyeska) that was finalized on January 11, 2010. HUD and DOI (the “Agencies”) allege that Alyeska, a title agency conducting business in Alaska, engaged in a sham employment arrangement with a referral source in violation of the kickback and fee splitting prohibitions of the federal Real Estate Settlement Procedures Act (RESPA) and the Alaska anti-rebating statute.

Specifically, the Agencies allege that Alyeska had a sham employment arrangement with the owner of FSBO System, Inc. (FSBO) pursuant to

which the owner purportedly worked as a “title marketer” to market Alyeska’s services to FSBO and received a percentage of title premiums from Alyeska. The Agencies also allege that the owner did not provide any actual services to Alyeska and that the employment arrangement was created to disguise payments of referral fees to the owner. Alyeska denies that its conduct violated RESPA or Alaska law.

Alyeska agreed to pay \$100,000 in two installments, with HUD and DOI each receiving half of the payments. The settlement also provides for an additional \$55,000 payment, but that payment will be waived if Alyeska fully complies with the terms of the settlement and does not violate RESPA or Alaska insurance law.

The settlement agreement notes that Alyeska had terminated the arrangement in January 2009, and that nothing in the agreement shall be construed as an admission of wrongdoing, liability or legal fault.

FINAL RISK-BASED PRICING RULES PUBLISHED

The Federal Reserve Board (Fed) and Federal Trade Commission (FTC) published joint final rules to implement the risk-based pricing notice requirement under the Fair Credit Reporting Act (FCRA). The final rules appear in the January 15, 2010 edition of the *Federal Register* and are effective on January 1, 2011. Please see the January 4, 2010 [edition](#) of Mortgage Banking Update for an article regarding the final rules.

HUD WAIVES FLIPPING RESTRICTION

To help provide for sales of foreclosed homes, the Department of Housing and Urban Development (HUD) announced on January 15, 2010 a one-year waiver of a resale restriction under rules applicable to Federal Housing Administration (FHA) insured loans. The waiver becomes effective on February 1, 2010.

Under an FHA rule designed to prevent the use of FHA insured mortgages to support property flipping, in general no FHA loan may be used to finance the purchase of a home from a seller who acquired the home within the prior 90 days. There are various exceptions to this restriction, including exceptions for HUD or other government agency real estate owned, and for property owned by a state or federally chartered financial institution. There is no general, permanent exception for the sale of a foreclosed home. However, a temporary exception to the restriction exists for sales agreements entered into by May 10, 2010 with respect to real estate acquired by FHA mortgagees.

To qualify for the new waiver (1) the sale of the property must be an arms-length transaction, with no identity of interest between the buyer and seller or other parties participating in the sales transaction, and (2) if the sales price of the property is 20 percent or more over and above the seller's acquisition cost, certain conditions must be satisfied, including (a) the retention in the loan file of supporting documentation and/or a second appraisal that verifies that the seller has completed sufficient legitimate renovation, repair and rehabilitation work on the property to substantiate the increase in value or (b) when no such work is performed, the appraiser provides appropriate explanation of the increase in property value.

The waiver applies to only forward mortgages. Mortgages under the FHA Home Equity Conversion Program are not eligible for the waiver.

Although HUD announced that the waiver would be for one year, it also advised that the waiver could be extended or could be withdrawn immediately before the end of the one-year period.

DID YOU KNOW?

- The Wyoming Department of Audit recently revised its regulations pertaining to licensed Mortgage Lenders and Mortgage Brokers. The updated regulations provide clarification with respect to surety bond amounts. All initial licensees will be required to maintain a surety bond in the amount of \$25,000 and the surety bond will subsequently be subject to annual adjustment based upon the annual Wyoming loan volume of the licensee. The regulations also provide guidance with respect to loan originator licensing matters, including confirming that a mortgage loan originator license will only be considered "active" if an individual is sponsored by one residential mortgage lender or broker licensee. The regulations also provide a mechanism for challenging information that is set forth in an individual's Nationwide Mortgage Licensing System & Registry record.
- On January 15, 2010, Fannie Mae issued an announcement (SVC-2010-01) for approved servicers of reverse mortgage loans. Fannie Mae will require that all reverse mortgage loans with unpaid principal balance differences greater than \$250 must be reconciled no later than March 31, 2010. In the event such reconciliation does not take place by March 31, 2010, Fannie Mae may issue repurchase letters for unreconciled loans. Also, effective April 1, 2010, reverse mortgage servicers will be required to complete and submit trial balance transaction files to Fannie Mae via the eBoutique application by the 6th calendar day of each month.

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