

Mortgage Banking Update

PATTON BOGGS LLP | March 1, 2010

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Did You Know?

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HUD RESPA GUIDANCE ON DISCLOSURE OF FEES

As reported in the February 22, 2010 [edition](#) of Mortgage Banking Update, the Department of Housing and Urban Development (HUD) recently conducted a meeting in Washington, DC with major Federal Housing Administration (FHA) lenders to help promote consistency with regard to the implementation of the new rule under the Real Estate Settlement Procedures Act (RESPA). In addition to the guidance summarized in the prior Mortgage Banking Update, HUD also provided guidance on where various fees should appear in the good faith estimate (GFE) and HUD-1.

In cases in which a borrower is refinancing from one FHA loan into another FHA loan, lenders had raised the question of how to address the refund of part of the upfront mortgage insurance premium due to the borrower on the existing loan. HUD advised that the GFE and HUD-1 should disclose the net upfront premium due on the new loan (i.e., the full upfront premium due on the new loan less the refund on the existing loan). HUD also advised that lender-paid mortgage insurance is not disclosed in the GFE or HUD-1.

HUD confirmed that homeowners association dues, homeowners association transfer fees, condominium dues, the fee for a home inspection voluntarily obtained by the borrower and property taxes are not disclosed in the GFE. The first four items are disclosed in the 1300 Series of the HUD-1. Property taxes also appear in the HUD-1. The amount of taxes paid at closing is disclosed in the 900 Series, and the amount paid for deposit in an escrow or impound account is included in the 1000 Series.

The fee paid to a condominium association for completion of a condominium certificate or condominium questionnaire is disclosed in Block 3 of the GFE and the 800 Series of the HUD-1.

Document stamps, mortgage stamps and excise taxes are disclosed in Block 8 of the GFE and Line 1203 of the HUD-1 as transfer taxes. HUD also has advised that government taxes imposed on the loan amount or sales price are disclosed as transfer taxes, even if designated as document stamps, mortgage stamps, excise taxes, intangible taxes or recordation taxes.

Rate lock extension fees and escrow waiver fees are disclosed in Block 2 of the GFE and Line 802 of the HUD-1. HUD is treating such fees as charges for the rate chosen. However, HUD has also advised that if at the time an initial GFE is prepared the originator knows that an escrow waiver fee will be charged, the fee could be included in Block 1 or Block 2.

LOOKING AHEAD:

27th Annual Regional Conference of MBAs

March 18, 2010

Atlantic City, NJ

Critical Issues Panels: 9:00 a.m. - 12:00 p.m. & 1:30 p.m. - 4:00 p.m.

Patton Boggs participant:
Richard Andreano

MBA Legal Issues and Regulatory Compliance Conference

May 2 - 5, 2010

Patton Boggs participant:
Michael Waldron
John Socknat
Richard Andreano

The following loan originator charges are included in Block 1 of the GFE and Line 801 of the HUD-1: application fee, commitment fee, MERS registration fee, processing fee, fee for an appraisal by a staff appraiser, document review fee, document preparation fee, fee for document review or preparation by the originator's attorney, document delivery fee, email fee, underwriting fee, wire fee, origination point, copy fee, courier fee, originator closing fee, subordination processing fee, Patriot Act search fee, survey review fee and regulatory compliance fee.

While, as noted above, an originator's fee to process a subordination would be included in Block 1 of the GFE and Line 801 of the HUD-1, the fee paid to a second lien holder to subordinate its loan is disclosed in Block 3 of the GFE and the 800 Series of the HUD-1.

A fee for a tax service provider is disclosed in Block 3 of the GFE and Line 806 of the HUD-1 if the originator selects the provider. A tax service fee is included in Block 6 of the GFE and Line 1301 of the HUD-1 if the borrower may shop for the provider.

In addition to the lender's title insurance premium, the following title-related charges are included in Block 4 of the GFE and Line 1101 of the HUD-1: title commitment/binder fee, notary fee, settlement/closing fee, email fee, the fee for an endorsement related to the lender's title insurance policy, deed preparation fee, document recording service fee, document delivery fee, fee for document preparation by the title company's attorney, title lien certificate charge, abstract/title search fee, title examination fee, judgment search fee, copy fee, fee for survey required to issue the lender's title insurance policy, survey review fee, abstract fee charged to seller, fee to clear title defects, state title guaranty charge, wire fee, courier fee, Patriot Act search fee, lien search fee and regulatory compliance fee.

NEWS FROM THE HILL: SENATE READIES PLAN FOR FINANCIAL REGULATORY REFORM, CONSUMER FINANCIAL PROTECTION

With the March 29 State Work Period approaching quickly, senators continue to try to progress with financial regulatory reform legislation. The Senate Banking Committee is currently formulating its counterpart to the House-passed Wall Street Reform and Consumer Protection Act of 2009, which was approved by a vote of 223-202 on December 11, 2009.

Senate Banking Committee Chairman Christopher Dodd (D-CT) has sought to achieve bipartisan support for his legislative proposal. Ranking Member Richard Shelby (R-AL) has consistently voiced opposition to the creation of the House-proposed Consumer Financial Protection Agency, a new independent agency charged with regulating mortgages, credit cards and other consumer finance industries. In his absence, first-term Republican Senator Bob Corker of Tennessee has shown a willingness to work with

Senator Dodd on these issues, and the two Senators have met to discuss the various issues addressed by the legislation.

With respect to a new consumer protection agency, Senator Dodd last week proposed creation of a new Bureau of Financial Protection within the Treasury Department, chaired by a director appointed by the president. This new unit in the Treasury Department would be authorized with broad powers to address unfair or deceptive acts or practices, and to mandate new disclosures. A draft proposal being considered at the time would have provided the new unit with direct rule writing, examination and enforcement authority for all banks and nonbank mortgage firms with more than \$10 billion in assets, but would be required to consult with safety and soundness regulators. The proposal would have also created a new Systemic Risk Council, a risk-monitoring body that would be headed by the Treasury Department.

In response, Senator Shelby reportedly proposed to create a new consumer protection division within the Federal Deposit Insurance Corporation (FDIC) and with consumer protection rules subject to approval by the agency's board. His proposal includes a presidentially appointed director with a five-year term. As the primary regulator of depository institutions, Senator Shelby's proposal would expand jurisdiction to permit regulation of state-regulated depository institutions and some large state-chartered nondepository mortgage issuers. The rulemaking process is more burdensome under Senator Shelby's approach, with the director of the new consumer protection division reporting to the FDIC Chairman and requiring all rules to be approved by the majority of the FDIC's board, which includes the Comptroller of the Currency and the head of the Office of Thrift Supervision.

Most recently, it has been reported that Senator Dodd countered Senator Shelby's idea with a proposal to house the new consumer protection division within the Federal Reserve, which has traditionally served as a central bank focused on monetary policy. Senator Dodd's newest proposal was made with the hope that it would attract Republican support and ensure bipartisan approval of the comprehensive legislative proposal.

The negotiations related to this legislation are still ongoing, and the consumer financial protection issue remains a primary topic of discussion. It is expected that the Senate Banking Committee will circulate a discussion draft by the end of the week. Other topics to be addressed by the legislative proposal include the regulation of over-the-counter derivatives, the ability to dissolve systemically risky financial institutions and the role of the Federal Reserve as a prudential regulator.

For more details or if you have any questions, please contact any member of the [Patton Boggs Financial Services Group](#).

REGULATORY ISSUES AT FOREFRONT OF MBA'S NATIONAL SERVICING CONFERENCE

Last week in San Diego, a record setting number of industry members gathered to address the most pressing issues facing residential mortgage servicers. With more than 2,200 people registered for the conference, sessions were full and break out areas bustled with industry leaders discussing ways to navigate the current regulatory and operational landscape. In attendance from Patton Boggs' Mortgage Banking Practice Group was Michael Waldron, who spent much of the conference meeting with clients and industry friends interested in the servicing-related work Patton Boggs currently is involved with, including licensing requirements under the SAFE Act, identifying trends in loss mitigation litigation, assisting with compliant liquidation strategies, addressing repurchase demands and assessing insurance coverage issues associated with such demands and providing advice regarding complying with government programs and servicing guidelines.

In addition, Michael used the occasion to deliver additional value to several firm clients in attendance by arranging for, and participating in, meetings between clients and other industry members where the firm's Mortgage Banking Practice Group identified synergies that have the potential to create opportunities for those clients.

The Mortgage Banking Practice Group looks forward to connecting with clients and industry friends in a similar way at the MBA's Legal Issues and Regulatory Compliance Conference in May 2010.

HARP EXTENSION

On March 1, 2010 the Federal Housing Finance Agency [announced](#) that the Home Affordable Refinance Program (HARP) is extended through June 30, 2011. HARP was scheduled to end June 10, 2010.

IN FORECLOSURES, COURTS CONTINUE TO "DO EQUITY"

When a defaulted borrower's house is foreclosed upon and is acquired by a third-party or reacquired by the original lender, there is a time when the borrower loses his ownership in the mortgaged property (or the right to redeem his ownership in some states). In an interesting foreclosure case in New York state¹ (where a borrower's ownership is lost upon a foreclosure sale), the court seemingly allowed the borrower, Ms. Ray, to exercise a new right of redemption after the sale of her property under a judgment of foreclosure. A closer examination of the case shows that the court wasn't

trying to make new law, but was trying to do equity by correcting a mistaken foreclosure.

The case started when the servicer of Ms. Ray's securitized mortgage loan sued in the name of the trustee for foreclosure, despite the existence of the following facts that were later disclosed by the court: (1) the servicer had agreed to accept payments from Ms. Ray and entered into a forbearance agreement with her that was to be forwarded to her; (2) Ms. Ray relied upon a conversation with the servicer that the auction sale of her home would be stopped; (3) she sent agreed-upon arrearage funds to the servicer, who accepted them; and (4) on the day of sale, she told the subsequent buyer of her home under a foreclosure sale that she had a payment agreement with the lender (i.e., the securitization trust) made through the servicer, and had made payments to the servicer.² The court treated the sale as a mistake, and not entirely one of the borrower's making (as had been argued by the foreclosure sale buyer). The court's ruling is recent, so we don't know if the foreclosure sale buyer will appeal or sue the servicer. So what is the take-away for a lender or securitization servicer? Make sure your foreclosure people (including the outside attorneys) coordinate with your work-out people, knowing what each other are doing regarding a defaulted mortgage loan—especially during the days leading up to the foreclosure and the subsequent foreclosure sale. This should not be a new lesson to lenders or mortgage loan servicers.

Any questions about this article may be referred to [Jerry Phelps](mailto:jphelps@pattonboggs.com) at 214-758-3507 or jphelps@pattonboggs.com.

HUD ANNOUNCES PLAN TO MODIFY FHA INSURANCE PREMIUMS

Department of Housing and Urban Development (HUD) Secretary Shaun Donovan, in [written testimony](#) before the House Appropriations Subcommittee on Transportation, Housing and Urban Development, and Related Agencies, addressed a plan to modify insurance premiums for Federal Housing Administration (FHA) loans.

Secretary Donovan noted that HUD already increased the upfront insurance premium for FHA loans to 2.25 percent effective for loans with case numbers assigned on or after April 5, 2010. Please see the [January 25, 2010 edition](#) of Mortgage Banking Update for an article on previously announced FHA program changes.

Secretary Donovan stated that HUD plans to eventually reduce the upfront insurance premium to 1.0 percent, and that this reduction would be offset by a planned increase in the annual insurance premium to 0.85 percent for loans with loan-to-value ratios of up to 95 percent and to 0.90 percent for loans with loan-to-value ratios over 95 percent. The Secretary noted that such change will require legislative authority from Congress.

DID YOU KNOW?

- The Hawaii Division of Financial Institutions (HDFI) recently made available its Mortgage Servicer License Application. Pursuant to the Hawaii Mortgage Servicers Act, certain mortgage servicers must be licensed in Hawaii as of July 1, 2010. The required application materials can be found on the HDFI website at the following link:
http://hawaii.gov/dcca/dfi/forms/application/DFI_Form_AP-MS.pdf/view.
- The National Flood Insurance Program (the "Program") expired on February 28, 2010 after legislation in the Senate that includes an extension to fund the Program was blocked. The legislation also includes an extension of unemployment benefits. The Senate approved legislation that includes restoration of funding for the Program late on March 2, 2010.

This information is not intended to constitute, and is not a substitute for, legal or other advice. You should consult appropriate counsel or other advisers, taking into account your relevant circumstances and issues. While not intended, this update may in part be construed as an advertisement under developing laws and rules. You may receive this industry update from other people, which often occurs. To SUBSCRIBE or change your address, e-mail mortgagebanking@pattonboggs.com.