

LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

AN ALT & ASSOCIATES NEWSLETTER

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The purpose of the Lenders Update is to provide a “heads-up” of new legislation and other issues affecting the mortgage lending industry. We provide summaries of these matters so our readers can judge whether the subject impacts their operations. We recommend that our readers review the entire statute, regulation or other material in detail where it is relevant to them. For reference, the applicable matter can be easily identified in the summary, and, where possible, a link is provided.

The Update includes information available to Alt & Associates as of October 1, 2009.

HIGHLIGHTS OF HUD CHANGES TO THE FHA PROGRAM IN 2009

In our last Lenders Update in September, 2009, we discussed major changes in the FHA Title II loan program, including a new annual requirement of Audited Financial Statements, changes to the Streamline Refinance Program and amendments to the appraiser and appraisal requirements. These changes will all take effect on January 1 of next year.

Perhaps most interesting, HUD also announced a proposed rule change for FHA originators approval and net worth requirements (please see our September issue at www.altandassociates.com). At the moment these approval and net worth proposals are, just that, proposals.

As a result of these and other ongoing FHA changes in the course of the last calendar year, we have had numerous questions concerning their effect and applicability. Therefore, we thought it would be a good idea to summarize at least the high points.

FHA 1 % FEE LIMITATION REMOVED

On November 17, 2008 the Department of Housing and Urban Development published a massive final rule principally amending its RESPA regulations. Buried in this rule, HUD announced an amendment to 24 CFR Section 203.27 (a) (2) which governs allowable fees for FHA loans. Up until the change, HUD had placed specific limits on the amount a mortgagee could collect from a Mortgagor to compensate a Mortgagee for its costs in origination of an FHA loan. This new rule removed these limitations on mortgagees. The FHA Commissioner continues to maintain authority to set limits for any fees that mortgagees charge borrowers directly.

HUD's believes that its policy relative to RESPA in general, restricts total origination charges, including those for FHA mortgages, to reasonable compensation for services. It also feels that the improvements and disclosure requirements for all loans as a result of the new RESPA disclosure rule would make loan charges more transparent and allow market forces to regulate these charges. HUD therefore adopted the rule to remove the current specific limitations on the amount mortgagees are presently allowed to charge borrowers for originating an FHA loan.

NEW HANDBOOKS

On April 9, 2009, in its Mortgagee Letter 2009-14, HUD announced 2 new Mortgagee Handbooks. The letter announced new online Handbooks 4155.1, Mortgage Credit Analysis for Mortgage Insurance; and 4155.2, Lender's Guide to Single Family Mortgage Insurance Processing. The online handbook 4155.1 replaces handbook 4155.1 REV-5, Mortgage Credit Analysis for Mortgage Insurance, 1-4 Family Properties. The online Handbook 4155.2 replaces

3 Handbooks, 4000.2 REV-3, Mortgagee's Handbook, Applications Through Insurance; 4000.4 REV-1, Single Family Endorsement Program; and Handbook 4165.1 REV-2 Endorsement for Insurance for Home Mortgage Programs (Single Family).

The new online Handbooks update policies and procedures and allow electronic access to index and search features, including hyperlinks to other relevant documents. The new online Handbooks were to be effective 31 days from the date of the publication of this Mortgagee Letter. However, in our last check with HUD, these Handbooks were currently offline and were still being revised.

NEW APPRAISAL REGULATIONS.

On September 18 of this year, HUD published Mortgagee Letters 2009-29, 29, and 30.

MORTGAGEE LETTER 2009-28 RE: APPRAISER INDEPENDENCE

While remembering that the new Home Valuation Code of Conduct ("HVCC") applies to FannieMae and FreddyMac loans, and not FHA loans, many of the themes in the HVCC are found in these new FHA guidelines. To hit the high points:

- Mortgage Brokers and commission based lender staff are prohibited from participating in the appraisal process. In addition to restricting appraisers selected or compensated by real estate agents, now appraisers selected or compensated in any manner by a Mortgage Broker or by any member of a lender's staff (compensated on a commission basis tied to the success or completion of a loan) are also prohibited.
- Lenders are responsible for ensuring that the appraiser who produced the appraisal is correctly identified in FHA Connection. Apparently, often the appraiser identified is not actually the appraiser who conducted the appraisal.
- While FHA does not require an appraisal management company, they are allowed and when used, the following is required:
 - FHA appraisers are not prohibited by the lender, AMAC or any other third party from recording the fee the appraiser was paid in the appraisal report.

- FHA appraisers must be compensated in a customary and reasonable amount based upon the market area.
- Fees for FHA appraisals may not include fees for the management of the appraisal process or any other activity other than the performance of the appraisal.
- Management fees charged by an AMC must be for actual services related to ordering, processing or reviewing of appraisals and these fees must be customary and reasonable.
- FHA roster appraisers must avoid conflicts of interest or the appearance of a conflict of interest. No loan production staff member or person who receives compensation on a commission basis from the closing, or who reports to any officer of the lender not independent of the loan production staff and processing, can have any substantive communication with the appraiser. However, the DE underwriter may request clarifications and discuss with the appraiser, components of the appraisal that may affect its quality.
- FHA published a series of Mortgagee Letters in the 1990's in an evolutionary attempt to set forth appraiser independence safeguards. This new Mortgagee Letter reaffirms these requirements and sets out ten separate prohibitions for Mortgagees or third parties. Because of the length involved, we refer you to Mortgagee Letter for the specifics, but they closely resemble the HVCC requirements.
- Finally, lenders are responsible, along with the appraiser for the quality and accuracy of the appraisal. Appraisers must be qualified and knowledgeable in the specific market area including educational training and actual field experience.

MORTGAGEE LETTER 2009-29 APPRAISAL PORTABILITY

The FHA prohibits “appraiser shopping” which means ordering additional appraisals to obtain the highest possible values. However, FHA allows ordering a second appraisal by a second lender if the appraisal obtained by the first lender 1) contains material deficiencies determined by the DE, 2) the appraiser is on the exclusionary list of appraisers of the second lender or 3) the first lender fails to provide the second lender a timely copy of the first appraisal. Copies of both appraisals must be retained in the file.

If the borrower switches lenders, the first lender must, at the borrower's request, transfer the case to the second lender but the client name need not be changed on the first appraisal when it is transferred.

MORTGAGEE LETTER 2009-30 APPRAISAL VALIDITY PERIOD

For any case number assigned on or after January 1st of next year, appraisals will be valid for 120 days. This constitutes a reduction in the period of validity from 6 months for completed/existing properties and 12 months for construction properties.

MISCELLANEOUS

On October 1, 2009 the State Bar of California issued a press release in which it announced it was taking action "to aid homeowners in the foreclosure crisis".

Because of its concern with lawyers who were preying on homeowners, the California Bar Association identified 16 attorneys who were currently under investigation for misconduct. Using a waiver of the confidentiality of these proceedings, the Bar specifically identified the 16 attorneys, almost all of whom are from the Orange County and Los Angeles Metropolitan area.

The announcement can be found on the Bar website at www.calbar.ca.gov/state/calbar . The named attorneys purportedly received fees for promised services which were not performed, misrepresented services or failed to communicate with the client or returned unused fees.

The Bar Association published a list of circumstances which consumers should beware of in an offer of loan modification services by attorneys. These include such practices as:

- failing to identify the specific attorney responsible for the business,

- failure of the attorney in charge of the office or the case, to meet personally with the client,
- advice to the consumer to stop paying existing mortgages,
- superlatives in the advertisement which sound “too good to be true” and
- the demand for a payment of a large fee even before obtaining perspective clients’ basic income and expense information and other information about the existing mortgage and home security.

Our monthly Lenders Update is published via e-mail as a complimentary service to our friends and clients in the financial industry throughout California and the United States. Only those persons who have requested this newsletter are on our mailing list. Should you have colleagues who wish to receive this complimentary service, please have them e-mail us at

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ALT & ASSOCIATES provides regulatory, compliance, operational advice and transactional assistance, as well as litigation representation, to the financial services industry. Over the past two decades, members of the firm have represented Institutional Lenders and Mortgage Bankers and Brokers in all aspects of their operations. If you have any questions please contact:

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