

Navigating the New FHA Regulations

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HUD's Focus Is on Risk Management

New FHA Regulations

1. Eliminates HUD-approved Loan Correspondents
2. Tenfold increases in Net Worth requirements for FHA-approved mortgagees
3. Completely refigures Principal-Agent relationships

Elimination of Loan Correspondent Approval

- **May 20, 2010** – HUD stopped approving new loan correspondent applicants
- Currently approved loan correspondents maintain approval through **December 31, 2010**
- **January 1, 2011** – currently approved loan correspondents become non-FHA-approved “third-party originators” – TPOs – provided they are eligible and sponsored

Increased Net Worth Requirements

- **Effective May 20, 2010:** New applicants for FHA approval must have a minimum net worth of \$1 million in HUD acceptable assets

- **Effective May 20, 2011:**
 - \$500,000 for currently approved mortgagees that are small businesses (<\$7.0 million in annual revenues)

 - \$1 million for all other currently approved mortgagees

Increased Net Worth Requirements

- **Effective May 20, 2013:** All applicants and all FHA-approved mortgagees – regardless of size – must have:
 - **Minimum** net worth of \$1 million, plus
 - Additional incremental net worth based on FHA volume up to a **maximum** net worth of \$2.5 million

Principal-Authorized Agent Changes

■ The Good News

- Loans can close in the name of either the Principal or the Agent

■ The Bad News

- Both parties must have unconditional Direct Endorsement authority
- Principal must originate and the authorized agent must underwrite the loan

Implications of the Regulatory Changes

1. Increased responsibility and liability for approved lenders
2. *Activities for* Non-Approved TPOs will be restricted
3. Sure to be fallout from the *Principal-Authorized Agent* changes

Increased Responsibility and Liability

- FHA-approved lenders will be:
 - Responsible for
 - monitoring the eligibility of sponsored TPOs
 - as well as the TPOs' actions in originating FHA-insured loans
 - Liable to FHA for all FHA aspects of loans they underwrite
 - liable for TPO's infractions even if the lender has no knowledge of the violation

Increased Responsibility and Liability

- To accept FHA loan applications from a TPO, a lender must determine the TPO is not ineligible to participate in the FHA Program
- New ineligibility criteria set forth in the regulation. Includes being:
 - suspended or disbarred
 - subject to unresolved findings in governmental audits
 - in violation of the SAFE Act

Increased Responsibility and Liability

- HUD will not dictate the procedures a sponsoring lender must utilize to approve and monitor its TPOs
 - provides suggestions in the Preamble
 - will not prohibit sponsors from charging TPOs an application fee to determine eligibility

Increased Responsibility and Liability

- Increased Responsibility = Increased Costs
 - For **Sponsors** – Costs of determining and monitoring eligibility and performance of TPOs
 - For **TPOs** – Costs of complying with multiple sponsors' standards for FHA participation
 - sponsors may continue to require audited financials and/or minimum net worth

Restrictions on Non-Approved TPO Activities

1. Non-Approved TPOs **cannot** close FHA-Insured Loans in the TPO's Name
2. TPOs **cannot** directly access FHA Connection

Restriction on Closing in TPO's Name

- All FHA-insured loans must close in the sponsoring lender's name
- Only sponsoring lenders can submit loans to HUD for insurance endorsement
- Currently approved loan correspondents can continue to close loans in their name through **December 31, 2010**
- **As of January 1, 2011**, all loans must close in the sponsor's name

Restriction on Closing in TPO's Name

- Implications of the restriction:
 - TPOs will be required to broker FHA loans to their sponsors
 - Will put an end to the purchase of FHA-insured loans on a table-funded basis for those lenders and loan correspondents that become TPOs
 - TPOs will become mortgage brokers under state laws
 - TPOs will be required to disclose back-end compensation – may result in lower revenue streams

Restriction on Closing in TPO's Name

- Preamble states HUD is continuing to consider this prohibition
- Particularly harsh results for small lenders and loan correspondents that cannot meet the increased net worth requirements

Restriction on TPO Access to FHA Connection

- Sponsors can choose to allow TPOs to perform processing functions
- TPOs cannot, however, access or utilize FHA Connection
- Sponsors must order FHA Case Numbers

Restriction on TPO Access to FHA Connection

- Lenders can transmit data from internal loan processing systems to FHA Connection
- HUD will permit the input of data by TPOs into a sponsor's internal loan origination system, which the sponsor can use to carry out FHA Connection tasks via an automated process

Fallout From Principal-Agent Changes

- Requirement that both parties have unconditional Direct Endorsement authority
 - eliminates the reason mortgage companies generally enter into these relationships to begin with
 - with the elimination of loan correspondent approval, this change requires DE authority to participate in FHA Program as an approved lender
 - what's HUD really up to here?

Fallout From Principal-Agent Changes

- HUD has indicated that the Authorized Agent, as the underwriting entity in the relationship, will be held responsible for the performance of loans originated through these relationships
- Requiring the Principal to originate and the Authorized Agent to underwrite may alter current relationships – need to ensure agency agreements comply with new regulations

Fallout From Principal-Agent Changes

- The Regulation does not address issues raised by allowing the loan to close in the Agent's name but be originated by the Principal:
 - which entity's geographic authority will apply?
 - who will be the mortgagee for purposes of other federal statutes – RESPA and TILA?
 - how will such transactions be reflected in FHA Connection to document the activities of each entity and reflect that the loan closed in the agent's name?