January 20, 2017

McGlinchey Stafford and Youngblood & Associates PLLC

CLIENT ALERT

FHA Announces, then Suspends MIP Reduction, and Announces Implementation of Loan Review System

FHA Mortgage Insurance Premium (MIP) Rate Revision and Suspension of Revision

On January 9, 2017, the Federal Housing Administration (FHA) published Mortgagee Letter 2017-01 announcing lower annual MIP rates, as well as lower upfront MIP rates for streamline and 'simple' refinances of FHA loans, which FHA Manual 4000.1 defines as a 'no cash-out refinance of an existing FHA-insured Mortgage in which all proceeds are used to pay the existing FHA-insured mortgage lien on the subject Property and costs associated with the transaction.' The distinction in MIP rates based on loan amount was also removed. The changes were to be effective for loans funding on or after January 27, 2017.

On January 20, 2017, within hours of the inauguration of the new Trump administration, FHA published Mortgagee Letter 2017-07, which suspends indefinitely the MIP changes in Mortgagee Letter 2017-01 and restates the current MIP rate structure. Lenders that have disclosed to borrowers the lower MIP rates in reliance on Mortgagee Letter 2017-01 and assuming a funding date on or after January 27, 2017 may wish to consider Mortgagee Letter 2017-07 as a change of circumstance under federal law that will allow them to re-disclose the prior MIP rates without creating a fee tolerance issue.

If lenders have delivered a Loan Estimate (LE), but not a Closing Disclosure (CD), they have three "General" business days (days on which the lender's offices are open to the public for substantially all business functions) from today to deliver a new change of circumstance LE with the higher MIP rates. Because upfront MIP is subject to tolerance (unlike the monthly MIP included in escrow payments), failure to deliver a timely change of circumstance LE for simple and streamline refinances will result in the lender issuing credits to cover the higher cost of upfront MIP.

If lenders have already delivered a CD, they have three "General" business days from today to send out a new change of circumstance CD with the higher MIP rates. They also must close the loan within three "Specific" business days of receipt of the revised change of circumstance CD (business days here include all calendar days except Sundays and federal public holidays). Otherwise the lender will fall into the so-called 'black hole,' and will have to issue credits to cover the increased costs of upfront MIP for simple and streamline refinances. Additionally, if that MIP change causes an APR increase of .125% or more, then a change-of-circumstance Closing Disclosure will have to be accompanied with a new three-business-day waiting period before closing/consummation.

Increased upfront MIP and/or annual MIP premiums may disqualify borrowers who are close on their maximum approved loan amount or monthly payments. We highly recommend that the lender's underwriting department sign off on these increases prior to closing, and re-underwrite the loan if need be.

Mortgagee Letter 2017-07 is available here:

https://portal.hud.gov/hudportal/documents/huddoc?id=17-07ml.pdf

Announcement of FHA Loan Review System

On January 11, 2017, FHA announced in its Mortgagee Letter 2017-03 that is beginning implementation of the Loan Review System (LRS). The announcement with a link to the Mortgagee Letter is available here:

https://portal.hud.gov/hudportal/documents/huddoc?id=sfh_fha_info_17-02.pdf

The framework of the LRS comes from a restructured quality assurance process that FHA announced in June of 2015 that it calls the 'defect taxonomy.' In FHA's description, the current quality assurance process can obscure the detail on and causes of defects. The new 'defect taxonomy' identifies nine categories of defects, including borrower income, credit and assets, property appraisal, loan to value and maximum mortgage amount, lender operations and borrower, property and mortgage eligibility. Each category will have more detail on the source and severity of each defect, with the idea that the lender can identify and correct problems with its origination processes more efficiently. These changes appear to us to be an effort by FHA to bring its quality assurance process more in line with current Fannie Mae and Freddie Mac quality control practice.

FHA promises more updates to follow to help lenders prepare for implementation of the LRS for post-approval loans. The Mortgage Letter does require DE Program Test Case files (for mortgagees with conditional approval authority) to be documented and submitted under the LRS, instead of the current FHA Connection process, where the Test Case approval letter from the HUD Homeownership Center is dated on or after April 1, 2017.

If you have any questions or comments concerning this Client Alert, please do not hesitate to contact:

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*Not Certified by the Texas Board of Legal Specialization

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