CUNA REGULATORY ADVOCACY

CUNA REGULATORY COMMENT CALL

March 13, 2012

Department of Housing and Urban Development: Federal Housing Administration Risk Management Initiatives: Revised Seller Concessions

Executive Summary

The Department of Housing and Urban Development (HUD) is proposing a rule that would limit the amount of closing costs a seller may pay on behalf of a homebuyer purchasing a home with financing insured by the Federal Housing Administration (FHA). HUD previously sought and received comments on this proposal on July 15, 2010, as one of three initiatives proposed to help restore the Mutual Mortgage Insurance Fund (MMIF) capital reserve account. HUD proposes a cap of $6,000 or 3%, whichever is greater, on the concessions a seller may pay on behalf of a homebuyer in purchasing a home insured by FHA. HUD is also proposing narrowing the definition of acceptable concessions to include paying for the following: (a) the borrower's actual costs to close on the loan, (b) the up-front mortgage insurance premium due on the loan, and (c) an interest rate buydown.

Comments must be submitted to HUD by March 26, 2012; please submit your comments directly to CUNA by **March 23, 2012**. Please email your comments to Senior Vice President and Deputy General Counsel Mary Dunn at mdunn@cuna.coop or Counsel for Special Projects Kristina Del Vecchio at kdelvecchio@cuna.coop. You can also mail them to CUNA's Regulatory Advocacy Department, 601 Pennsylvania Avenue, NW, South Building, 6th Floor, Washington, DC 20004. The proposed rule is available here.

Summary of the Proposed Rule

On July 15, 2010, HUD proposed three initiatives to help restore the MMIF, and received 902 public comments during the 30-day comment period. After reviewing the comments, HUD decided to separately implement each initiative. This is the final initiative of the three, and HUD took into account the public comments in developing this proposed rule.

The proposed rule would do two things:

1. Implement a cap of $6,000 or 3%, whichever is greater, on the amount of concessions a seller may pay on behalf of a homebuyer in purchasing a home, but in no event to exceed the seller's actual costs; and

2. Narrow the definition of acceptable concessions to permit the seller to pay for (a) the borrower's actual costs to close on the loan, (b) the up-front mortgage insurance premium due on the loan, and (c) an interest rate buydown.

Capping Seller Concession Amounts

For the cap on seller concessions, the limiting factor on the allowable dollar amount of concessions will be:

- Closing costs, when the amount is less than $6,000;
- Closing costs, when they are above $6,000 but less than 3% of the property value;
- $6,000, when that is more than 3% of property value and less than total closing costs; or
- 3% of property value, when that amount is both greater than $6,000 and less than closing costs.

The 3% cap would be based on the lesser of sale price or appraised value for the property being purchased. Additionally, the $6,000 cap is tied to an index, which means that the dollar limitation may increase annually at the same percentage rate as the national loan limit floor. When it increases, it will be rounded up to the nearest $100 for anything at or above $50 increments and rounded down to the nearest $100 for anything below $50 increments.

Most of the comments received in response to the July 15, 2010 proposal addressed the cap, calling for the inclusion of a dollar limit as an alternative to a 3% cap. HUD responded to these comments by including the $6,000 limit so as to avoid the possibility that a 3% cap would have a disproportionately negative impact on borrowers with low and moderate incomes who are purchasing moderately priced homes.

Narrowing the Definition of Acceptable Concessions

Narrowing the definition of acceptable concessions would have the effect of eliminating payment supplements paid by sellers, such as a year's worth or homeowner association fees, 6 months' worth of mortgage interest, or mortgage payment protection plans. HUD believes the impact of this revised definition should be minimal on the housing market, since its loan level review of FHA-insured loans revealed that sellers typically offer concessions that pay for borrowers' actual costs to acquire the property, rather than payment supplements.

FHA has also found that seller concessions like the advance payment of association fees or mortgage interest can negatively affect the borrower's ability to make monthly mortgage payments sometime after the mortgage loan is closed. This is because the borrower can experience payment shock once those payments become due, which can result in default on the mortgage.