

Subject: Update on HUD Interpretative Rule on Minimum Cash Investment

FHA places considerable value on its partnership with state Housing Finance Agencies (“HFAs”), and understands the critical role HFAs play supporting low-to-moderate income lending. The 2008 Housing and Economic Recovery Act (“HERA”) placed a statutory prohibition on funding for the minimum cash investment from any seller or party that would financially benefit and, though likely unintended, raised some uncertainty as to the ability of HFAs to provide down-payment assistance. FHA has worked diligently over the past year to clarify and preserve that role consistent with statutory requirements.

On December 5, 2012, HUD published in the Federal Register a November 29, 2012 interpretive rule on prohibited sources of the minimum cash investment requirement under the National Housing Act. The interpretive rule clarified the scope of the prohibited sources provision: State and local government agencies and instrumentalities can contribute funds—if they do so directly—toward the minimum cash investment even if they are otherwise involved in the transaction, for example, as a seller or lender. The interpretive rule states that funds from state and local governments and their agencies, such as state Housing Finance Agencies (“HFAs”), may be provided directly toward the mortgagor’s minimum cash investment. This is an interpretation of existing law and, therefore, is effective and can be relied upon immediately.

In light of concerns that have been raised about the consistency of some HFAs’ homeownership program funding models with the standards articulated in the interpretive rule, FHA, through its normal oversight process, will review its portfolio for compliance with the prohibited sources provision beginning with loans closed on or after June 1, 2013. Prior to that date, FHA will review transactions’ audit trails to ensure that HFAs were the ultimate source of funds for the down-payment assistance.

FHA encourages its approved lenders and their state HFA partners to work together to ensure that the HFAs’ homeownership programs are consistent with all FHA statutory requirements, including the prohibited sources provision. We welcome the opportunity to work with HFAs to help them improve, where necessary, the compliance of their funding model or models.

I have asked my team to begin that process by coordinating a conference call later this week. In the meantime, please know that we value the role of HFAs in the mortgage finance system and are working diligently, within the confines of the law, to preserve the HFAs ability to provide down-payment assistance to low-to-moderate income borrowers.