



LEGISLATIVE BULLETIN

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In the last Legislative Bulletin, the main features of the Housing and Economic Recovery Act of 2008 (HERA) were summarized. Since that time, FNMA and FHLMC have been taken over by the U.S. Government, the Wall Street investment banks have either merged with banks, filed bankruptcy, or become bank holding companies subjecting themselves to much stricter regulation and capital requirements. Events are moving at a record pace and many new regulations will be forthcoming, along with the writing of regulations for the HERA provisions. MBA and MBAG will lend their input into those deliberations.

HOPE FOR HOMEOWNERS (Title IV of HERA)

As for the FHA rescue portion of HERA, the details are being left with the regulators from four different agencies that comprise an oversight board made up of the Treasury, HUD, The Federal Reserve Board, and the FDIC. The plans of this oversight board are to be revealed by October 1, 2008, which is probably an unrealistic date given the usual pace of governmental rule making. The eligibility requirements for this program are still being discussed as of this date.

We do know that the statute mandates that the lender (investor) agree to write down the existing loan to 87% of the current market value of the home. The existing loan must be the homeowner's sole mortgage and must have originated before January 2008. The borrower must be able to afford the payments, and his mortgage debt-to-income ratio had to be at least 31% as of March 2008. The borrower must certify that he did not commit fraud and must document income by producing his two most recent tax returns.

After the write down, the loan may not exceed \$550,440 and must have a fixed rate term of at least 30 years. In addition, the borrower must make the first monthly payment before FHA can insure the loan. Everything else is left to the oversight board. The hope is that the underwriting criteria will be flexible enough to bring as many potential borrowers into the system as possible. A debt-to-income ratio as high as 55% has been mentioned. Servicers and lenders need these requirements as soon as possible so they can begin to identify which of their borrowers might qualify. Since there can be no subordinate liens, the existing subordinate lien holders are a significant stumbling block in making this program successful. Since the homeowners must share the appreciation of the home with FHA at the time of sale or refinance, the idea of FHA sharing some of this appreciation with lien holders who are releasing the property from their liens might possibly work for everyone.

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CHARITABLE FUNDED SELLER REINBURSED DOWNPAYMENT ASSISTANCE

As of October 1, 2008, charitable assisted down payments reimbursed by the seller will be prohibited on FHA loans. Rep. Frank has introduced a bill that will reinstate the charitable funded seller reimbursed down payment program in return for allowing FHA to use risk-based premiums on these loans. As of this date, it is not known if this bill will gain enough traction to become law. There would not appear to be time this year for the bill to come out of committee, go the House and then to the Senate before Congress adjourns prior to the election. Any loan where credit approval is obtained after October 1, 2008 will not be eligible for FHA insurance if charitable assisted downpayments which are reimbursed by the seller are used. If credit approval has been obtained prior to October 1, 2008, FHA has advised lenders not to order updated credit reports or scores because any change in credit standing will mean the credit approval would then deem to be after October 1, 2008.

FIRST TIME HOMEBUYER TAX CREDIT (Division D, Title 1)

Because there seems to be a great deal of confusion and misinformation concerning the tax credit for first time homebuyers, listed below are some of the most frequently asked questions of our members concerning this issue.

What are the income limitations for this tax credit and how large can the tax credit be? This is a refundable tax credit equal to 10% of the purchase price of a home up to \$7,500 (\$3,750 for married individuals filing separately). The tax credit phases out for married couples filing jointly with modified adjusted gross income between \$150,000 and \$170,000 and for single taxpayers with modified adjusted gross income between \$75,000 and \$95,000.

Can the tax credit be obtained at closing? No, the tax credit is not being given as cash at closing. The individual must claim the credit on a 2008 or 2009 tax return. However, a first time homebuyer who purchases a principal residence in 2009 after filing a 2008 tax return has the option of filing an amended 2008 return to claim the credit. Purchasers could also investigate adjusting their wage withholdings or estimated tax payments for the balance of the year to account for the credit. The home must have been purchased between April 9, 2008 and April 1, 2009.

Who is a first time homebuyer? A person is considered a first time homebuyer if he or she (or spouse) had no ownership interest in a principal residence during the past three years. Renters who own a vacation home would qualify since the three-year look-back period applies only to a principal residence.

How long does the homebuyer have to remain in the home? The IRS will disallow the credit if the taxpayer disposes of the residence (or the residence ceases to be the taxpayer's principal residence) before the close of the tax year for which the credit would be allowed (2008 or 2009).

Does the homeowner have to repay this tax credit? Yes. The homebuyer will have 15 years to repay the tax credit interest-free. Repayments start two years after the year in which the residence is purchased. Payments must be made in equal installments over those 15 years. As an example, the homebuyers purchase their home in June of 2008 and file an a 2008 tax return to claim the credit. Repayments of the \$7,500 tax credit would begin at \$500 per year in 2010 and end in 2024.

What happens if the house is sold or is no longer the homebuyer's principal residence before repaying the tax credit? The unpaid balance of the tax credit becomes due in the year in which the residence is sold or no longer as the taxpayer's principal residence. However, the amount of recaptured credit may not exceed the amount of gain from the sale of the residence to an unrelated person. The credit does not have to be repaid if the taxpayer dies.

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RESPA REFORM

At an MBA Regulatory Compliance Conference in Washington last week, a panel of experts, which included MBAG member Loretta Salzano, discussed RESPA and HUD's effort at reform. Last month, 243 Congressmen signed a letter asking HUD to withdraw its RESPA Reform Proposal. Unfortunately, HUD has chosen to ignore this letter and proceeded to send a revised proposal on to OMB and the White House for review and then publication. The feeling of the panel was that HUD needs to save face and publish something. The White House has said it will not allow any new regulations after October 15th, so if we are to have a new RESPA Rule, it will come before October 15th. The new rule will most likely not contain the closing script and will have a shorter version of the Good Faith Estimate. It is felt that HUD will also try to make the GFE and HUD 1 more in sync so that comparisons may be more easily made by the borrower. Since the rule would probably not be implemented for twelve months, there will be a new administration that might well rescind the proposed rule before that time, and with all of the turmoil in the lending markets, we might not see a new rule for quite some time.

If you have any questions about anything contained in this bulletin, please e-mail Richard Raymer at richarderaymer@aol.com.