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January 3, 2023

To: Clients and Friends

From: Steven Kubik

Subject: FHA Revises Conflict of Interest and Dual Employment Policies

On December 15, 2022, the FHA issued [Mortgagee Letter 2022-22](#) (the “Mortgagee Letter”) amending FHA’s policies with respect to dual employment and conflicts of interest. Most notably, the Mortgagee Letter outlines changes to the Single Family Housing Policy Handbook 4000.1 (the “HUD Handbook”) that will permit loan originators of FHA lenders to have dual employment, including working as a real estate agent or broker. It also imposes an expanded conflict of interest policy on those employees that have a direct impact on the mortgage approval decision.

Background. Before the Mortgagee Letter, an FHA lender’s employees were only permitted to work exclusively for the lender unless they determined that the employment did not create a prohibited conflict of interest. In addition, employees were prohibited from having multiple sources of compensation, directly or indirectly, from a single FHA-insured transaction. Consequently, most FHA-approved lenders would not permit loan originators to serve as a real estate agent and originator on the same FHA loan, and conservative lenders took the position that loan originators could not serve as a real estate agent on any transaction.

The Changes to the HUD Handbook. The Mortgagee Letter deletes the following provisions from the HUD Handbook:

Employees are prohibited from having multiple roles in a single FHA-insured transaction. Employees are prohibited from having multiple sources of compensation, either directly or indirectly, from a single FHA-insured transaction.

The Mortgagee must require its employees to be its employees exclusively, unless the Mortgagee has determined that” the employee’s other outside employment, including any self-employment, does not create a prohibited conflict of interest.

The Mortgagee Letter also replaces the conflict of interest provisions of the HUD Handbook and provides that FHA lender’s “employees will be subject to FHA’s [New] Conflict of Interest policy.” This new policy reads as follows:

Participants that have a direct impact on the mortgage approval decision are prohibited from having multiple roles or sources of compensation, either directly or indirectly, from a single FHA-insured transaction. These participants are

- underwriters
- appraisers
- inspectors
- engineers

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Indirect compensation includes any compensation resulting from the same FHA-insured transaction, other than for services performed in a direct role. Examples include, but are not limited to:

- Compensation resulting from an ownership interest in any other business that is a party to the same FHA-insured transaction; or
- Compensation earned by a spouse, domestic partner, or other Family Member that has a direct role in the same FHA-insured transaction.

Effective Date: The changes are effective immediately for case numbers assigned after the date of the Mortgagee Letter

Commentary. FHA policies will now permit certain employees, including loan originators, to have dual employment and receive multiple sources of compensation on FHA transactions. Of course—in the context of a loan originator also serving as a real estate agent—such individuals still require proper licensure to perform both activities. Lenders should confirm such dual employment is also permitted by state law, and RESPA requirements must still be followed (including prohibitions on kickbacks, etc.).

Only underwriters, appraisers, inspectors, and engineers will remain subject to FHA’s new, Conflict of Interest Policy and its expanded scope of “indirect compensation.” Specifically, such persons are now prohibited from having direct or indirect compensation from a business, spouse, partner, or Family Member with a direct role in the same FHA transaction. “Direct role” remains undefined, but “Family Member” is defined in the HUD Handbook as follows:

[R]egardless of actual or perceived sexual orientation, gender identity, or legal marital status:

- child, parent, or grandparent;
- a child is defined as a son, stepson, daughter, or stepdaughter;
- a parent or grandparent includes a stepparent/grandparent or foster parent/grandparent;
- spouse or domestic partner;
- legally adopted son or daughter, including a child who is placed with the Borrower by an authorized agency for legal adoption;
- foster child;
- brother, stepbrother;
- sister, stepsister;
- uncle;
- aunt; or
- son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the Borrower.

Lenders may need to review operational policies with respect to individuals subject to the new Conflict of Interest Policy to ensure they are not receiving direct or indirect compensation on FHA transactions.

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