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To: Clients and Friends

From: David F. Dulock

Subject: FHA Final Rule Prohibits Post-Payment Interest Charges for Prepayment of FHA Mortgages under the FHA Single Family Mortgage Insurance Program

In the August 26, 2014, *Federal Register* (79 FR 50835), the Federal Housing Administration (FHA) published a final rule ([click here](#)) that effective for FHA-insured mortgages closing on or after January 21, 2015, revises FHA's regulations to prohibit an FHA approved mortgagee from charging the mortgagor interest through the end of the month in which the mortgage is being prepaid, allowing them instead to charge interest only through the date the mortgage is prepaid, and prohibits the charging of interest beyond that date. This change to FHA prepayment regulations is in response to the Ability-to-Repay and Qualified Mortgage regulations (ATR/QM Rule) that became effective January 10, 2014. The ATR/QM Rule defines "prepayment penalty" in closed-end transactions as "a charge imposed for paying all or part of the transaction's principal before the date on which the principal is due." The ATR/QM Rule specifically excludes a post-payment interest charge currently allowed by FHA regulations as a prepayment penalty for FHA loans closed before January 21, 2015. For FHA loans closed on or after January 21, 2015, a post-payment interest charge will be considered a prepayment penalty by the ATR/QM Rule, thus making it necessary for FHA to amend its regulations.

Effective January 21, 2015, the final rule revises FHA regulations in 24 CFR §§203.9, 203.22(b), and 203.558 as follows: **(Note:** We have underlined the final rule revisions.)

§203.9 Disclosure regarding interest due upon mortgage prepayment.

Each mortgagee with respect to a mortgage under this part shall at or before closing with respect to any such mortgage, provide the mortgagor with written notice in a form prescribed by the Commissioner describing any requirements the mortgagor must fulfill upon prepayment of the principal amount of the mortgage to prevent the accrual of any interest on the principal amount after the date of such prepayment. This paragraph shall apply to any mortgage executed after August 22, 1991, and before January 21, 2015.

§203.22 Payment of insurance premiums or charges; prepayment privilege.

(b) *Prepayment privilege.* The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part at any time and in any amount. The mortgage shall not provide for the payment of any charge on account of such prepayment.

§ 203.558 Handling prepayments.

(a) Handling prepayments for FHA-insured mortgages closed on or after January 21, 2015. With respect to FHA-insured mortgages closed on or after January 21, 2015, notwithstanding the terms of the mortgage, the mortgagee shall accept a prepayment at any time and in any amount. The mortgagee shall not require 30 days' advance notice of prepayment, even if the mortgage instrument purports to require such notice. Monthly interest on the debt must be calculated on the actual unpaid principal balance of the loan as of the date the prepayment is received, and not as of the next installment due date.

(b) *Handling prepayments for FHA-insured mortgages closed before January 21, 2015.* (1) With respect to FHA mortgages insured before August 2, 1985, if a prepayment is offered on other than an installment due date, the mortgagee may refuse to accept the prepayment until the first day of the month following expiration of the 30-day notice period as provided in the mortgage, or may require payment of interest to that date, but only if the mortgagee so advises the mortgagor, in a form approved by the Commissioner, in response to the mortgagor's inquiry, request for payoff figures, or tender of prepayment. If the installment due date (the first day of the month) falls on a nonbusiness day, the mortgagor's notice of intention to prepay or the prepayment shall be timely if received on the next business day.

(2) With respect to FHA mortgages insured on or after August 2, 1985, but closed before January 21, 2015, the mortgagee shall not require 30 days' advance notice of prepayment, even if the mortgage instrument purports to require such notice. If the prepayment is offered on other than an installment due date, the mortgagee may refuse to accept the prepayment until the next installment due date (the first day of the month), or may require payment of interest to that date, but only if the mortgagee so advises the mortgagor, in a form approved by the Commissioner, in response to the mortgagor's inquiry, request for payoff figures, or tender of prepayment.

(3) If the mortgagee fails to meet the full disclosure requirements of paragraphs (b)(1) and (b)(2) of this section, the mortgagee may be subject to forfeiture of that portion of the interest collected for the period beyond the date that prepayment in full was received and to such other actions as are provided in part 25 of this title.

(c) *Mortgagee annual notice to mortgagors.* Each mortgagee, with respect to a mortgage under this part, shall provide to each of its mortgagors not less frequently than annually a written notice, in a form approved by the Commissioner, containing a statement of the amount outstanding for prepayment of the principal amount of the mortgage. With respect to FHA-insured mortgages closed before January 21, 2015, the notice shall describe any requirements the mortgagor must fulfill to prevent the accrual of any interest on the principal amount after the date of any prepayment. This paragraph shall apply to any outstanding mortgage insured on or after August 22, 1991.

(Note: Existing subsections (c), (d), (e) and (f) of §203.558 are deleted by the final rule and their text, as revised, is incorporated into revised §203.558(b).)

Effective January 21, 2015, the above revisions to the FHA prepayment rules in §§203.9, 203.22, and 203.558 will require applicable revisions to your FHA-insured mortgage policies and procedures, forms, and TILA disclosures.

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