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June 3, 2010

To: Clients and Friends

From: David F. Dulock

Subject: *HUD Strikes Again!* Required Use Definition: Advanced Notice of Proposed Rulemaking (ANPR) in *Federal Register* (75 FR 31334)

In today's *Federal Register*, HUD published the above ANPR to solicit comments that can be used for future revision of the definition of "required use" contained in Regulation X (24 CFR 3500.2(b)). If you do not want the debacle the lending community experienced when HUD attempted to revise the required use definition in its November 17, 2008 final rule (*HUD withdrew this revised definition by final rule published May 15, 2009*), we urge you to comment on this ANPR before the September 1, 2010 due date.

While the ANPR seeks comments on any aspect of required use as it relates to affiliated business arrangements, it specifically requests that commenters respond to the questions set out in the ANPR.

The ANPR is self-explanatory. Please read it and send your comments to HUD by mail or electronic submission in accordance with the instructions set out in the ANPR.

A copy of the ANPR is attached to this memorandum for your information and use.

This Memorandum is provided as general information in regard to the subject matter covered, but no representations or warranty of the accuracy or reliability of the content of this information are made or implied. Opinions expressed in this memorandum are those of the author alone. In publishing this information, neither the author nor the law firm of Black, Mann & Graham L.L.P. is engaged in rendering legal services. While this information concerns legal and regulatory matters, it is not legal advice and its use creates no attorney-client relationship or any other basis for reliance on the information. Readers should not place reliance on this information alone, but should seek independent legal advice regarding the law applicable to matters of interest or concern to them. The law firm of Black, Mann & Graham L.L.P. expressly disclaims any obligation to keep the content of this information current or free of errors.

Attach.: 75 FR 31334 - 31338

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2010–0546; Directorate Identifier 2009–NM–215–AD.

Comments Due Date

(a) We must receive comments by July 19, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

It has been found that some fuel quantity probes may fail during the airplane life leading to an erroneous fuel quantity indication to the crew. This erroneous indication may lead to the airplane being operated with less fuel than indicated which may lead to an uncommanded in-flight shutdown of one or both engines due to fuel starvation.

Required actions include determining the real fuel quantity on each tank using the dripless measuring sticks, comparing the results of the fuel quantity measurement with the fuel master indicator and repeater indicator readings for each tank, and corrective actions as applicable. Corrective actions include replacing the measuring stick and its relevant magnetic float, replacing the master fuel quantity indicator, and replacing the repeater indicator, as applicable; inspecting defective tank units for contamination, corrosion and integrity of components, and repairing or replacing as necessary; inspecting system wiring from the connector at the wing root to the master indicator for condition and continuity; and correcting the fuel quantity indication system; as applicable.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Actions

(g) Within 600 flight hours or 180 days after the effective date of this AD, whichever occurs first, with at least 400 kg (882 lb) of fuel on each tank, determine the real fuel quantity on each tank using the dripless measuring sticks, in accordance with Sections 28–41–00 and 28–42–00 of Chapter 28 of the EMBRAER EMB120 Aircraft Maintenance Manual, Revision 24, dated March 30, 2009. Before further flight, compare the results of the fuel quantity measurement with the fuel master indicator and repeater indicator readings for each tank and do the applicable action in paragraph (g)(1), (g)(2), or (g)(3) of this AD.

(1) If the difference of the two measurements is greater than 60 kg (132 lb) on both tanks, before further flight do all applicable corrective actions including correcting the FQIS, in accordance with Sections 28–41–00 and 28–42–00 of Chapter 28 of the EMBRAER EMB120 Aircraft Maintenance Manual, Revision 24, dated March 30, 2009.

(2) If the difference of the two measurements is greater than 60 kg (132 lb) on only one tank, and the conditions in paragraphs (g)(2)(i), (g)(2)(ii), and (g)(2)(iii) of this AD are met, do all applicable corrective actions including correcting the FQIS, in accordance with Sections 28–41–00 and 28–42–00 of Chapter 28 of the EMBRAER EMB120 Aircraft Maintenance Manual, Revision 24, dated March 30, 2009, within 10 days after determining the real fuel quantity as specified in paragraph (g) of this AD.

(i) Before further flight after each refueling, the actions required in paragraph (g) of this AD are done;

(ii) Both fuel flow indicators are operating properly; and

(iii) The fuel used or fuel remaining function of the totalizer is operating properly.

(3) If the difference of the two measurements is greater than 60 kg (132 lb) on only one tank, and any condition in paragraph (g)(2)(i), (g)(2)(ii), or (g)(2)(iii) of this AD is not met, before further flight do all applicable corrective actions including correcting the FQIS, in accordance with Sections 28–41–00 and 28–42–00 of Chapter 28 of the EMBRAER EMB120 Aircraft Maintenance Manual, Revision 24, dated March 30, 2009.

(h) Repeat the actions required in paragraph (g) of this AD thereafter at intervals not to exceed 600 flight hours or 180 days, whichever occurs first.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: This AD requires doing all applicable corrective actions in accordance with Sections 28–41–00 and 28–42–00 of Chapter 28 of the EMBRAER EMB120 Aircraft Maintenance Manual, Revision 24, dated March 30, 2009. Corrective actions include replacing the measuring stick and its relevant magnetic float, replacing the master fuel quantity indicator, and replacing the repeater indicator, as applicable; inspecting defective tank units for contamination, corrosion and integrity of components, and repairing or replacing as necessary; inspecting system wiring from the connector at the wing root to the master indicator for condition and continuity; and correcting the fuel quantity indication system; as applicable. The MCAI does not provide a corrective action and only requires a repetitive functional check of the FQIS in accordance with Section 28–42–00 of Chapter 28 of the EMBRAER EMB120 Aircraft Maintenance Manual, Revision 24, dated March 30, 2009. This difference has been coordinated with Agência Nacional de Aviação Civil (ANAC).

Other FAA AD Provisions

(i) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

Related Information

(j) Refer to MCAI Brazilian Airworthiness Directive 2009–07–04, effective July 13, 2009; and Sections 28–41–00 and 28–42–00 of Chapter 28 of the EMBRAER EMB120 Aircraft Maintenance Manual, Revision 24, dated March 30, 2009; for related information.

Issued in Renton, Washington, on May 25, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–13304 Filed 6–2–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3500

[Docket No. FR–5352–A–01]

RIN 2502–A178

Real Estate Settlement Procedures Act (RESPA): Strengthening and Clarifying RESPA's "Required Use" Prohibition Advance Notice of Proposed Rulemaking

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Through this Advance Notice of Proposed Rulemaking (ANPR), HUD commences the process of initiating rulemaking directed to strengthening and clarifying the prohibition against the "required use" of affiliated

settlement service providers in residential mortgage transactions under section 8 of RESPA. HUD has received complaints that some homebuyers are committing to use a builder's affiliated mortgage lender in exchange for construction discounts or discounted upgrades, without sufficient time to research their contracts or to comparison shop. The purpose of this ANPR is to solicit information that can be used to inform any future revision or clarification of the regulatory definition of the "required use" of affiliated settlement service providers in residential mortgage transactions.

With this ANPR, HUD seeks comment from an array of sources with experience or knowledge of affiliated business arrangements in residential mortgage transactions. HUD also welcomes comment on actions in addition or as an alternative to rulemaking that would better address concerns with affiliated business arrangements in residential mortgage transactions.

DATES: *Comment Due Date:* September 1, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this ANPR to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Information Relay Service at 800–877–8339 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Teresa Payne, Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 9162, Washington, DC 20410–8000; telephone number 202–708–6401 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Information Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

In the late 1960s, Congress became concerned about the excessive cost of settlement services for residential mortgage loans. Congress found that many homebuyers had very little knowledge about the settlement process and that homebuyers often did not shop for, and were not involved in, choosing the settlement service providers that they would be required to pay at settlement. Instead, in many areas of the country, the delivery of settlement services was controlled by a system of referrals by those in a position to refer settlement business (such as builders, real estate agents, and lawyers), resulting in "kickbacks" by settlement service providers to those who referred business to them. In this system, settlement service providers did not compete for business by providing a quality service at a reasonable cost to homebuyers. Rather, settlement service providers generated business by providing the most lucrative kickbacks to those in a position to refer business to them.

Through the adoption of RESPA and subsequent amendments, Congress sought to change the way in which homebuyers retained settlement service providers for federally related mortgage loans. The term "federally related mortgage loan," as defined in section 3 of RESPA, includes nearly all residential mortgage loans for one- to four-family homes. In order to encourage consumers to shop for settlement services, and cause settlement service providers to compete for homebuyers' business, RESPA requires that the nature and costs of real estate settlement services be disclosed in advance to the consumer, and it forbids the payment of referral fees, kickbacks, and unearned fees for real estate settlement services.[1]

RESPA defines an "affiliated business arrangement" as "an arrangement in which (A) a person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (B) either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider." (12 U.S.C. 2602(7).) In RESPA-covered transactions, referrals to affiliated settlement service providers are subject to civil and criminal liability under section 8 of RESPA (Section 8), because the referrer's return on investment in the affiliate can be considered a prohibited kickback or thing of value for the referral. (*See* 12 U.S.C. 2607(a).) However, Section 8(c)(4) provides an exemption for affiliate referrals that allows for returns on ownership interest if the referrals involve an affiliated business arrangement and three other conditions are met. The three other conditions are: (1) The referral is accompanied by a disclosure of affiliation and estimated charges by the provider to which the consumer is referred, (2) the consumer is not "required to use" a particular settlement service provider; and (3) the arrangement does not involve otherwise

[1] In July 2008, Congress reaffirmed its interest in protecting consumers by directing HUD to recommend legislative reforms to RESPA that would "promote more transparent disclosures, allowing consumers to better shop and compare mortgage loan terms and settlement costs." *See* 12 U.S.C. 1515(b).

prohibited compensation. (*See* 12 U.S.C. 2607(c)(4).) Requiring the use of an affiliate is thus presumed to involve a violation of Section 8, insofar as it violates a condition for exemption from liability under Section 8.

The definition of "required use" in HUD's existing RESPA regulations reads as follows:

Required use means a situation in which a person must use a particular provider of a settlement service in order to have access to some distinct service or property, and the person will pay for the settlement service of the particular provider or will pay a charge attributable, in whole or in part, to the settlement service. However, the offering of a package or (combination of settlement services) or the offering of discounts or rebates to consumers for the purchase of multiple settlement services does not constitute a required use. Any package or discount must be optional to the purchaser. The discount must be a true discount below the prices that are otherwise generally available, and must not be made up by higher costs elsewhere in the settlement process. (24 CFR 3500.2)

On November 17, 2008 at 73 FR 68204, HUD published a final rule amending its RESPA regulations at 24 CFR part 3500 to further the purposes of RESPA, including protecting consumers from kickbacks and referral fees that tend to unnecessarily increase settlement costs.[2] In support of that rulemaking, HUD had received consumer complaints and comments about certain affiliated business practices. These complaints and comments included concerns that residential developers and homebuilders would offer to reduce the cost of a home (for example, by adding free construction upgrades, or discounting the home price) if the homebuyer used the developer's affiliated mortgage lender. Buyers also complained that, in some instances, because the timing of the contract with the builder precluded the buyer from shopping, the affiliated lender used by the homebuyer was able to charge settlement costs or interest rates that were not competitive with those of nonaffiliated lenders. The complaints indicated that these incentivized referrals to affiliate lenders may be steering techniques that effectively "require the use" of the affiliate.

In order to address concerns about the operation and effect of these incentivized affiliate referrals, the November 17, 2008, RESPA final rule included a revised definition of "required use" that was to take effect on January 16, 2009. The revised definition of "required use" in the November 17, 2008, final rule would have provided as follows:

Required use means a situation in which a person's access to some distinct service, property, discount, rebate, or other economic incentive, or the person's ability to avoid an economic disincentive or penalty, is contingent upon the person using or failing to use a referred provider of settlement services. In order to qualify for the affiliated business exemption under § 3500.15, a settlement service provider may offer a combination of bona fide settlement services at a total price (net of the value of the associated discount, rebate, or other economic incentive) lower than the sum of the market prices of the individual settlement services and will not be found to have required the use of the settlement service providers as long as: (1) The use of any such combination is optional to the purchaser; and (2) the lower price for the combination is not made up by higher costs elsewhere in the settlement process. (*See* 73 FR 68239–68240)

As a result of litigation challenging the revised definition,[3] HUD deferred the effective date for the revised definition, and subsequently withdrew the revision by final rule published on May 15, 2009 (74 FR 22822). When HUD withdrew the revised definition, it left in place the existing definition of "required use" pending new rulemaking on the subject. HUD's final rule withdrawing the revised definition of "required use" noted that public comments received in response to the proposed withdrawal had highlighted the potential complexity of existing affiliated business arrangement practices and the need for further clarity on the application of "required use" to such practices. The comments also underscored the need for HUD to continue to pursue reform in this area in order to protect consumers from harmful steering and referral practices.

In withdrawing the definition, HUD stated its intention to pursue new rulemaking on the subject of "required use." In the May 15, 2009, final rule, HUD also reiterated its commitment to the goals of RESPA reform and to addressing referral practices that result in required use.

II. This ANPR

HUD remains committed to furthering RESPA's goal of protecting homebuyers against unnecessarily high settlement costs by addressing both incentivized affiliate referrals and penalties that could adversely affect not only individual borrowers, but also competition in the provision of settlement services. HUD also remains committed to preserving the benefits of voluntary contracts that involve true discounts. In advance of proposing a new rule on this subject, HUD is publishing this ANPR to request information on the practices to be addressed by this rulemaking.

HUD requests information from all interested members of the public, including individual consumers, consumer advocacy organizations, housing counseling agencies, the real estate and mortgage industry, and federal, state, and local consumer protection and enforcement agencies. In addition to information about individual consumers' experiences, HUD requests information that includes empirical data, studies, and analyses regarding affiliated business arrangement practices, and that responds to the specific questions presented in this ANPR. In particular, HUD seeks information that would enable an assessment of the benefits and costs of possible regulatory alternatives. For instance, have economic incentives to use affiliated lenders facilitated inflated appraisals or lowered underwriting standards in the lending market? Has required use played any role in creating recent situations where borrowers are more likely to be "underwater?" Commenters are encouraged to provide data that would inform analysis of both the magnitude of the required use problem and the potential regulatory options to address the problem.

From individual consumers who have purchased new homes and from consumer advocates, HUD seeks information about consumers' experiences with lenders referred by builders.

From state and local consumer protection agencies and state attorneys general, HUD seeks comment and information regarding complaints received and/or investigations undertaken with respect to business arrangements that steer consumers to use affiliated settlement businesses.

To develop the necessary and appropriate protections for consumers from detrimental practices that may result from affiliated business arrangements, HUD requests further information about the structure, scope, frequency, timing, and effects of affiliated practices that impair consumers' ability to evaluate the true costs of a mortgage transaction, thereby limiting consumer choice and steering

[2] Additional information regarding the RESPA regulatory amendments, and specifically changes made by HUD subsequent to its RESPA proposed rule of March 14, 2008, published at 73 FR 14030, is provided in the preamble to the November 17, 2008, final rule.

[3] *See National Association of Home Builders, et al.* v. *Shaun Donovan, et al.,* Civ. Action No. 08–CV–1324, United States District Court for the Eastern District of Virginia, Alexandria Division.

consumers into unnecessarily high settlement costs.

HUD invites comment on any aspect of referral arrangements in residential mortgage transactions that may assist HUD in developing any new or revised protections, but HUD specifically requests information on the following questions, and requests that commenters provide as detailed and factual information or evidence as possible in responding to these questions.

1. *Tailoring "required use" to reach abusive incentive schemes, but not beneficial discounts or packages.* The definition of "required use" in the November 17, 2008, RESPA final rule, sought to prevent detrimental referral practices among affiliates, while preserving discounts offered by settlement service providers for packaged settlement services.

Some commenters have suggested that builders' incentive programs discourage homebuyers from comparison shopping for the best loan, because: (1) The value of some of the incentives offered by builders for the use of their affiliated lender (*e.g.,* kitchen upgrades) are difficult for consumers to quantify when comparing the loan terms and settlement costs of the affiliated lender with those of nonaffiliated lenders; and (2) often, in order to get the incentive a builder is offering, a new homebuyer must commit to the use of the builder's affiliated lender at the time that the contract for the construction of the home is executed, which may be many months before settlement will occur and long before the typical consumer would begin shopping for a lender; and (3) that the builder encourages the buyer to commit to the contract before the buyer has time to fully consider alternatives and comparison shop.

To assist in determining whether these claims are correct, HUD asks:

(a) What types of discounts and incentives are tied to the use of an affiliated settlement service provider such as a mortgage lender? For example, are construction upgrades, and discounts, such as free or reduced costs for options such as fireplaces, flooring upgrades, kitchen upgrades (such as granite countertops, stainless steel appliances), or decks and finished basements frequently offered? Is closing cost assistance or interest rate guarantees usually part of the incentive package? Are these incentives delivered as coupons for services, merchandise, discount deposit bank accounts, etc.?

(b) In a new home purchase transaction, at what points in time are incentives for the use of a builder-affiliated lender discussed with a potential homebuyer? Do such discussions occur with sales representatives at the initial time consumers inspect homes, and are they presented by the sales representative or are they presented only in response to a consumer request? Does the issue of incentives also arise when the contract for the purchase of the home is signed or does it arise at some point later in the process? At what point are affiliated-business arrangement disclosures provided to consumers?

(c) At what point, generally, in a new home purchase transaction, are the homebuyers expected to determine whether or not they will use a builder-affiliated lender? Is a decision expected of the homebuyer at the time that the contract for the purchase of the house is signed or at some point later in the process? Are there standard contract provisions specifying the package or combination of settlement services that are provided? Are homebuyers expected to contact the affiliated lender within a certain period of time before or after the contract has been signed?

(d) Is there evidence demonstrating that homebuyers who are offered incentives by builders to use builder-affiliated lenders are as likely or less likely to engage in comparison shopping for a lender as are those homebuyers who are not offered an incentive to use a builder-affiliated lender? Is there empirical data demonstrating a difference in the use of affiliated lenders between first-time homebuyers and other homebuyers?

(e) Is there evidence that buyers using affiliated lenders pay higher rates of interest or higher closing costs than those that use unaffiliated lenders?

(f) Is there evidence demonstrating that homebuyers benefit from some types of incentives and not from others or by incentives offered by some types of business but not others? Incentives could include benefits such as discounts on the costs of settlement, payment of settlement services, and discounts on upgrades to the house.

2. *Forward Loan Commitments.* A forward loan commitment (forward commitment), in its simplest definition, is a pledge to provide a loan at a future date. It is HUD's understanding that in the homebuilding industry, some large-scale homebuilders purchase forward commitments from lenders pursuant to which the lenders make an aggregate amount of mortgage financing available to the homebuilder's customers under the terms of the commitment. Some commenters on the March 14, 2008, RESPA proposed rule expressed concern about the effect of a revised definition of "required use" on the ability of homebuilders to purchase forward commitments.

To better understand forward commitments and their use in mortgage loan transactions, HUD seeks comment on the following:

(a) How are forward commitments purchased and used as described above, and are there alternative types, terms, or uses for builder-purchased forward commitments?

(b) Is there evidence as to the prevalence of builder-purchased forward commitments?

(c) What is the benefit to homebuyers of forward commitments in mortgage loan transactions from affiliated as well as nonaffiliated lenders?

3. *Other Issues.* A concern raised through comments submitted on the March 14, 2008, RESPA proposed rule is that certain incentives are built into the cost of the home and are therefore not true discounts. Commenters also stated a belief that an affiliated lender has a special, potentially improper, interest in financing a house at any price set by a seller. In this regard, HUD asks:

(a) Is there any data that home sellers are providing discounts or upgrades to buyers who agree to use affiliated businesses based on prices that are different from those offered to buyers who decline such offers?

(b) Is there any evidence that home sellers either include or do not include in the listed price of the house the cost of the incentives that they offer for the use of an affiliated lender?

(c) Do homes sold with incentives to the homebuyer appraise at the pre- or post-incentive price? Is it possible to isolate the effects of standard builder construction upgrades and custom upgrades requested by the consumer on the appraised value?

(d) How do affiliate-originated mortgages perform compared to the local average (e.g., in the case of default or the homeowner being "under water" statistics)?

(e) How do prices of new construction homes financed by affiliated lenders compare with prices of new construction homes financed by nonaffiliates? That is, is there evidence that builders do not negotiate down to or near to incentivized prices in the absence of an incentive to use an affiliate?

(f) Is there data on the extent to which the current affiliated business disclosure encourages consumers to comparison shop with nonaffiliated service providers before signing contracts? Can the affiliated business disclosure be improved to inform consumers of the

advantages and disadvantages of affiliated lending practices?

4. *State and Local Experience.* State and local consumer and enforcement agencies, through their investigatory and prosecutorial experiences, may be able to contribute valuable information regarding practices that steer consumers to overpriced settlement service providers, as well as provide information about successful and unsuccessful means of preventing such abuse. To these agencies especially, HUD asks:

(a) What has been and continues to be the impact of state and local regulatory enforcement in this area?

(b) What rules and forms of enforcement have proven most effective?

(c) Is there evidence available regarding specific anticompetitive or anticonsumer practices that can be provided by state law enforcement?

(d) Can state laws regulating builder-affiliated business arrangements provide an approach for evaluating options?

5. *One-Stop Shopping.* In the process of withdrawing the revised definition of "required use" in the November 17, 2008, RESPA final rule, HUD received comments indicating that limiting referrals to affiliates adversely affects one-stop shopping options that could benefit consumers. Accordingly, HUD asks whether there is any way to quantify the benefit to homebuyers of one-stop shopping. Additionally, is there any evidence that homebuyers derive greater benefit from one-stop shopping than from comparison shopping for the best loan terms and settlement costs?

6. *Incentives vs. Disincentives or Penalties.* HUD requests comments on the relationship between incentives to use an affiliated settlement service provider and disincentives or penalties for using a nonaffiliated settlement service provider, and how incentives and disincentives might be treated in the new regulation. To assist in the development of distinctions or equivalencies between incentives and disincentives, HUD asks for information concerning cases where an incentive to use a certain provider would not have the same effect as a disincentive for failure to use another provider.

While HUD specifically seeks comments on the foregoing questions, HUD welcomes additional information that will help inform HUD's views on this issue.

Dated: May 27, 2010.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2010–13350 Filed 6–2–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

Promoting Postbaccalaureate Opportunities for Hispanic Americans (PPOHA) Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Proposed requirements.

SUMMARY: The Assistant Secretary for Postsecondary Education proposes requirements under the PPOHA Program. The Assistant Secretary may use one or more of these requirements for competitions in fiscal year (FY) 2010 and later years. We take this action to establish appropriate requirements for the PPOHA Program. We have based these requirements on existing rules for the Hispanic-Serving Institutions (HSI) Program, authorized by Title V of the Higher Education Act of 1965, as amended (HEA), because the PPOHA Program and the HSI Program are governed by some common provisions and support similar institutions. We are proposing to limit the number of applications an eligible institution can submit under the PPOHA to ensure that more HSIs have an opportunity for assistance under the PPOHA Program. We are also proposing a limitation on the use of PPOHA Program funds for direct student assistance to ensure that institutions use the grant funds to best meet the broad purposes of the statute.

DATES: We must receive your comments on or before July 6, 2010.

ADDRESSES: Address all comments about this notice to Dr. Maria E. Carrington, U.S. Department of Education, 1990 K Street, NW., Room 6036, Washington, DC 20006–8513.

If you prefer to send your comments by e-mail, use the following address: *maria.carrington@ed.gov.* You must include the term "PPOHA Program Notice of Proposed Requirements" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Dr. Maria E. Carrington: (202) 502–7548, or by e-mail: *maria.carrington@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final requirements, we urge you to identify clearly the specific proposed requirement that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed requirements. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in Room 6036, 1990 K Street, NW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purposes of the PPOHA Program are to: (1) Expand postbaccalaureate educational opportunities for, and improve the academic attainment of, Hispanic students; and (2) expand the postbaccalaureate academic offerings as well as enhance the program quality in the institutions of higher education that are educating the majority of Hispanic college students and helping large numbers of Hispanic and low-income students complete postsecondary degrees.

Program Authority: 20 U.S.C.1102–1102c, 20 U.S.C.1161aa–1.

Proposed Requirements

Background

The PPOHA Program is authorized by Title V, part B, sections 511 through 514 of the HEA. It was added to the HEA by the Higher Education Opportunity Act of 2008, Public Law 110–315. The PPOHA Program supports HSIs that offer a postbaccalaureate certificate or degree granting program.