

Escrow Technical Memorandum 95-2008

On July 30, 2008 President Bush signed into effect the Housing and Economic Recovery Act of 2008. Through section 2113 of the Act the cash investment requirements and sources of down payment funds due from buyers/borrowers on FHA insured loans changed.

The most significant change which affects settlement agents involves down payment assistance programs. Subsection C says:

"(C) PROHIBITED SOURCES.-In no case shall the funds required by subparagraph (A) consist, in whole or in part, of funds provided by any of the following parties before, during, or after closing of the property sale:

"(i) The seller or any other person or entity that financially benefits from the transaction.

"(ii) Any third party or entity that is reimbursed, directly or indirectly by any of the parties described in clause (i)".

This goes into effect for mortgages wherein credit approval for the borrower is issued on or after October 1, 2008. Purchase transactions with seller funded down payment assistance involving a FHA insured loan may still close after this date if credit approval was given prior to the October 1st deadline.

It is important to note this only applies to FHA insured loans and does not include other types of loans. If a settlement agent has a transaction involving down payment assistance but does not involve a FHA loan the procedures remain unchanged.

1. Insure the lender's closing instructions specifically acknowledges the use of down payment assistance funds and the amount
2. Fully disclose the credit on the HUD-1 lines 204-209 including a complete description. (EX: Down payment assistance provided by XYZ Co.)
3. Any contributions from the seller it must be shown in the 1300 section of the HUD.
4. For loans of \$200,000 or more and the down payment assistance is 5% or more of the total sales price, refer to Underwriting Bulletin 2005-RC-01.

Lastly, settlement agents should not agree to any terms required by a third party which may interfere with or contradict their responsibilities and duties owed to the principals of the transaction. The settlement agent is not a party to the outside agreement. Signing documents provided by a third party company providing down payment assistance could put the settlement agent in direct conflict with instructions provided by the buyer or seller.

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