Homeownership Counseling Act

Introduction

Section 106(c)(5) of the Housing and Urban Development Act of 1968 (the Act) (12 U.S.C. 1701x (c)(5)) provides for homeownership counseling notification by creditors to eligible homeowners. The Act has been amended at various times, with the most recent amendment on November 26, 2001, when the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 2002 (Pub. L. 107-73) was enacted. Section 1005 of that Act repealed the previous sunset provision.

Statutory Overview

Applicability

All creditors that service loans secured by a mortgage or lien on a one-family residence (home loans) are subject to the homeownership counseling notification requirements. Home loans include conventional mortgage loans and loans insured by the Department of Housing and Urban Development (HUD).

Requirements

Notice Requirements[1]

A creditor must provide notification of the availability of homeownership counseling to a homeowner, eligible for counseling, who fails to pay any amount by the due date under the terms of the home loan.

Eligibility

A homeowner is eligible for counseling if:

- The loan is secured by the homeowner's principal residence;
- The home loan is not assisted by the Farmers Home Administration; and
- The homeowner is, or is expected to be, unable to make payments, correct a home loan delinquency within a reasonable time, or resume full home loan payments due to a reduction in the homeowner's income because of:
  - An involuntary loss of, or reduction in, the homeowner's employment, the homeowner's self-employment, or income from the pursuit of the homeowner's occupation; or
  - Any similar loss or reduction experienced by any person who contributes to the homeowner's income.

Contents of Notice

The notice must:

- notify the homeowner of the availability of any homeownership counseling offered by the creditor; and
- provide either a list of HUD-approved nonprofit homeownership counseling organizations or the toll-free number[2] HUD has established through which a list of such organizations may be obtained.

Timing of Notice

The notice must be given to a delinquent homeowner borrower no later than 45 days after the date on which the homeowner becomes delinquent. If, within the 45-day period, the borrower brings the loan current again, no notification is required.

Definitions

For purposes of these requirements, the following definitions apply:

"Creditor" means a person or entity that is servicing a home loan on behalf of itself or another person or entity.

"Home loan" means a loan secured by a mortgage or lien on residential property.

"Homeowner" means a person who is obligated under a home loan.

"Residential property" means a 1-family residence, including a 1-family unit in a condominium project, a membership interest and occupancy agreement in a cooperative housing project, and a manufactured home and the lot on which the home is situated.

Examination Objective

The examination objective is to determine whether the financial institution has established procedures regarding homeownership counseling notification to ensure that it complies with the provisions of §106(c)(5) of the Housing and Urban Development Act of 1968.

Examination Procedures

Determine if the financial institution is informing eligible homeowners, within 45 days of initial loan default, of:

- the availability of any homeownership counseling offered by the creditor; and

1 The FFIEC Consumer Compliance Task Force has requested clarification from HUD on HUD's current position regarding notice requirements to first-time homebuyers. These interagency examination procedures are currently limited to determining compliance with the Act's notice provisions related to delinquent borrowers. However, should a response from HUD to the Task Force indicate that notices to first-time homebuyers should be provided under the Act, the agencies will expand these examination procedures to cover notices to first-time homebuyers.

2 The number is 1-800-569-4287.

- the availability of any homeownership counseling by nonprofit organizations approved by HUD or the toll-free telephone number through which the homeowner can obtain a list of such organizations.

Examination Checklist

Does the financial institution notify eligible homeowners, within 45 days of initial loan default, of any homeownership counseling the institution (creditor) provides?

Does the financial institution provide eligible homeowners with the names of nonprofit organizations approved by HUD or the toll-free telephone number to obtain a list of such organizations?

References

The Housing and Urban Development Act of 1968 (12 USC 1701x(c)(5)), §106(c).
There are no regulations relating to this requirement.
FIL 43-2002: Homeownership Counseling Notification Requirements

The HUD toll-free number to locate an approved housing counselor is: **1-800-569-4287**.
To locate a list of counselors, go to the HUD internet site.