

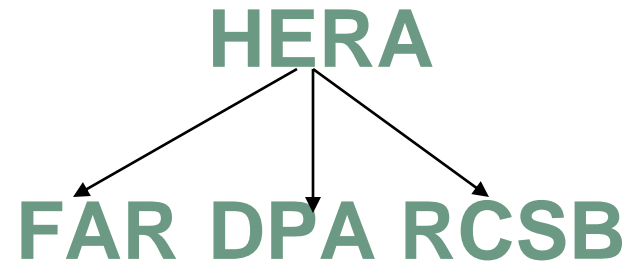
**WEINER
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MBA Regulatory Compliance Conference

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The New Alphabet Soup of Fraud



Housing and Economic Recovery Act of 2008

(HERA – H.R. 3221)

“Fraudulent Activity Report”

GSE FAR Requirements

HERA Section 1115 – Reporting of Fraudulent Loans

GSE FAR REQUIREMENTS

Director = Director of the Federal Housing Finance Agency

Regulated Entity = Fannie Mae, Freddie Mac, and any Federal Home Loan Bank

Requirements to Report: The Director shall require a regulated entity to submit to the Director a timely report upon discovery by the regulated entity that it has purchased or sold a fraudulent loan or financial instrument, or suspects a possible fraud relating to the purchase or sale of any loan or financial instrument. The Director shall require each regulated entity to establish and maintain procedures designed to discover any such transactions. (12 U.S.C. § 4631)

GSE FAR REQUIREMENTS

Protection from Liability for Reports: Any regulated entity or entity-affiliated party (e.g., director, officer, employee, controlling stockholder, agent, affiliate, consultant, or joint venture partner, independent contractor) that in good faith makes a report (or requires another to make a report) shall not be liable to any person under any provision of law or regulation, any constitution, law, or regulation of any state or under any contract or other legally enforceable agreement for such report or for any failure to provide notice of such report to the person who is the subject of such report or any other persons identified in the report.

GSE “FAR & SAR” REQUIREMENTS

Suspicious Activity Reports: Section 1115 FAR requirements similar to the suspicious activity reporting requirements imposed by the Bank Secrecy Act.

CURRENT GSE FAR REQUIREMENTS

12 C.F.R. § 1731.1 *et seq.*

- Currently imposes similar FAR-type reporting requirements.
- Requires Fannie Mae and Freddie Mac to report instances of mortgage fraud to OFHEO.

FHA FAR REQUIREMENTS/ CRIMINAL PENALTIES

HERA Section 2129 – Fraud Prevention

- Amends 18 U.S.C. § 1014: Prohibits knowingly making false statement/report (which includes an insurance agreement (or an application for insurance) or willfully overvaluing property for purposes of influencing the FHA.
 - ❑ Penalty: Up to (a) \$1,000,000 fine, (b) 30 years in prison, or both.

- 18 U.S.C. § 1010: Currently prohibits knowingly making false statement for purposes of obtaining a loan that will be offered to HUD for insurance.

HERA FRAUD-INSPIRED PROVISIONS

Down Payment Assistance Ban

DPA Requirements

HERA Section 2113 – Cash Investment Requirement and Prohibition of “Seller-Funded” (and more) Down Payment Assistance

DPA BAN

Prohibited Sources: In no case shall the down payment consist of funds provided before, during, or after closing by (1) the seller or any other person or entity that financially benefits from the transaction or (2) any third party or entity that is reimbursed directly or indirectly by the seller or any other person or entity that financially benefits from the transaction. (12 U.S.C. § 1709(b)(9))

DPA BAN

- Effective Date: Applies to mortgages for which the lender has issued credit approval for the borrower on or after October 1, 2008.

- Scope: More than Home Sellers (i.e., Builders)
 - ❑ Entity that “Financially Benefits”

 - ❑ Entity “Indirectly Reimbursed”

DPA BAN



➤ Update

H.R. 6694: FHA Seller-Financed Downpayment Reform and Risk-Based Pricing Authorization Act of 2008

✓ Authorizes and automatically qualifies mortgagors for seller-financed DPA with credit scores of 680 and higher

✓ Authorizes risk-based insurance premiums and/or DPA for others

H.R. 6694 Hearing: Tomorrow, September 16.

➤ House Financial Services Committee (Barney Frank)

Substantial public campaign to restore DPA

DPA BAN

- New Industry Study: “Seller Funded Downpayment Assistance: New Data Suggests Government Claims Exaggerated”
 - ❑ Authored by Alex M. Brill, Research Fellow, American Enterprise Institute
 - ❑ Analyses of downpayment assistance performed by the GAO and HUD are flawed and exaggerate the effects of SF DPA on mortgage default and claims
 - ❑ Reforms to restrict recipients of SF DPA to borrowers with adequate credit scores would ensure SF DPA loans perform similarly to loans with downpayment assistance from other sources (see H.R. 6694)

HERA FRAUD-INSPIRED REQUIREMENTS

Reverse Cross Selling Ban

RCSB Requirements

HERA Section 2122(a) – Home Equity Conversion
Mortgage (HECM)

➤(Amends 12 U.S.C. § 1715z-20)

RCSB Requirements

The lender that participates in the origination of a HECM shall:

➤(A) not participate in, be associated with, or employ any party associated with any other financial or insurance activity (the Separate Sales Force Approach);

OR

RCSB Requirements

- (B)(1) demonstrate that the lender maintains firewalls and other safeguards designed to ensure that individuals participating in the origination of the mortgage shall have no involvement with or incentive to provide the borrower with any other financial or insurance product; **AND**
- (B)(2) that the borrower shall not be directly or indirectly required as a condition of obtaining a mortgage to purchase any other financial or insurance product (the “Separate Sale” Requirement).

RCSB Requirements

- (C) The borrower shall not be required by the lender to purchase an insurance, annuity, or other similar product as a requirement or condition of eligibility for insurance (the “Required Annuity Purchase” ban).
 - ❑ Exceptions: Title insurance, hazard, flood, or other peril insurance, or other such products that are customary and normal.
- Scope/Interpretation
- Other Restrictions: NRMLA, FINRA, Insurers, Insurance Regulators.

Thank You

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