HUD Clarifies Dual Employment Limits

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In Mortgagee Letter 2022-22, dated December 15, 2022, FHA Commissioner Julia Gordon has clarified FHA's position on what dual employment and compensation is permitted for employees of FHA-approved lenders. The Mortgagee Letter outlines changes to the Handbook, which will now permit loan originators to have dual employment, including working as a real estate sales agent.

Prior to the Mortgagee Letter, the Handbook provided that the Mortgagee's employees had to work exclusively for the lender unless the company determined that the outside employment did not create conflict of interest. Further, employees were prohibited from having multiple roles or multiple sources of compensation from a single FHA transaction. Most FHA lenders concluded that this prohibited their loan officers from acting as an agent or receiving compensation as a real estate agent in an FHA transaction. Further, there was ambiguity as to whether the loan originator could act as a sales agent when even originating a conventional Fannie/Freddie loan. The prior Handbook, 4060.1, REV-2, Section 2-9(G), had clearly prohibited other outside employment in the mortgage lending, real estate or a related field.

The Mortgagee Letter now provides that "[p]articipants that have a direct impact on the mortgage approval decision" are prohibited from having multiple roles or sources of compensation. These participants include underwriters, appraisers, inspectors and engineers. Participants that do not have a direct impact on the mortgage approval process are now permitted to have multiple roles and sources of compensation for services actually performed. Of course, a sales agent also acting as a loan originator will need to be properly licensed or registered to perform both activities. Further, the lender should ensure that dual employment is permitted by state law. Finally, any such employment must be treated consistent with RESPA requirements.

The Mortgagee Letter is effective immediately for case numbers assigned after the date of the Mortgagee Letter.

For more information about this topic, contact Wayne Watkinson.