

## DPA MORTGAGE LOAN DISCLOSURE REQUIREMENTS

The Consumer Financial Protection Bureau (“CFPB”) provided new disclosure guidance for eligible down payment assistance second mortgage loans meeting certain parameters (all HFA DPA Loans should satisfy these requirements) with an effective date of October 1, 2018. [12 CFR §1026.18]

CFPB Rule 12 CFR §1026.3 describes which mortgage loans will be partially exempt from the full disclosure requirements applicable to conventional mortgage loans. To be exempt, the mortgage transaction must meet the following criteria:

- (1) The transaction is secured by a subordinate lien;
- (2) The transaction is for the purpose of:
  - (i) Down payment, closing costs, or other similar home buyer assistance, including principal or interest subsidies,
  - (ii) Property rehabilitation assistance,
  - (iii) Energy efficiency assistance; **or**
  - (iv) Foreclosure avoidance or prevention;
- (3) The credit contract does not require the payment of interest;
- (4) The credit contract provides that repayment of the amount of credit extended is:
  - (i) Forgiven either incrementally or in whole, at a date certain, and subject only to specified ownership and occupancy conditions, such as a requirement that the consumer maintain the property as the consumer’s principal dwelling for five years,
  - (ii) Deferred for a minimum of 20 years after consummation of the transaction,
  - (iii) Deferred until sale of the property securing the transaction, **or**
  - (iv) Deferred until the property securing the transaction is no longer the principal dwelling of the consumer;
- (5) (i) The costs payable by the consumer in connection with the transaction at origination are limited to:
  - (A) Recording fees,
  - (B) Transfer taxes,
  - (C) A bona fide and reasonable application fee, **and**
  - (D) A bona fide and reasonable fee for housing counseling services; **and**
  - (ii) The total of costs payable by the consumer under (5)(i)(C) and (D) above is less than 1 percent of the amount of credit extended; **and**
- (6) The following disclosures are provided
  - (i) Disclosure described in §1026.18; or
  - (ii) Alternatively, disclosure described in §1026.19(e) and (f).

The disclosure described in §1026.19(e) and (f) is the customary type of disclosure required for first mortgage loans and mostly requires the delivery of information that is simply not applicable to DPA Second Mortgage Loans typically made by HFAs. The disclosure required by in §1026.18 is similar to what HFAs have been providing. Specifically, the information required to be disclosed [the list excludes disclosure items not relevant to typical DPA loans] is:

- (a) The identity of the creditor (i.e.: HFA).
- (b) The amount financed calculated by determining the principal amount of the loan, adding any other amounts that are financed by the HFA and not part of the finance charge, and subtracting any prepaid finance charge. Generally this should be the principal amount of the DPA loan.
- (c) The HFA must itemize the amount financed using one of three methods:
  - (1) Provide a separate written itemization of the amount finance, including the amount of any proceeds distributed directly to the homebuyer, the amount credited to the homebuyer's account with the creditor, any amounts paid to other persons by the creditor on the homebuyer's behalf in a manner that identifies the payee (which may be by generic or similar terms such as public officials, appraisers, credit reporting agencies and insurance companies), and specify any prepaid finance charge.
  - (2) The HFA need not comply with paragraph (1) above if the HFA provides a statement that the homebuyer has the right to receive a written itemization of the amount financed, together with a space for homebuyer to indicate whether it is desired, and the homebuyer does not request it.
- (d) The ***finance charge*** (using that term) must be stated with a brief description such as "the dollar amount the credit will cost you is \$\_\_\_\_\_".
- (e) The ***annual percentage rate*** (using that term) must be stated with a brief description such as "the cost of your credit as a yearly rate". If the finance charge is \$7.50 or less on an amount financed of \$75 or more, the HFA need not disclosure the annual percentage rate.
- (f) The number, amount and timing of payments scheduled to repay the DPA Loan must be disclosed.
- (g) The ***total of payments*** (using that term) must be disclosed, with a descriptive explanation such as "the amount you will have paid when you made all scheduled payments will be \$\_\_\_\_\_". If the DPA loan involves a single payment, the total of payments does not need to be disclosed.
- (h) If the DPA Loan has a demand feature, that fact must be disclosed, such as "due on sale" or "due on refinance".
- (i) Any dollar or percentage charge that may be imposed before maturity due to a late payment, other than a deferral or extension charge, must be disclosed.

- (j) The fact that the HFA will acquire a security interest in the property purchased as part of the transaction must be disclosed.
- (k) A statement that the homebuyer should refer to the appropriate contract document for information about nonpayment, default, the right to accelerate the maturity of the loan, and prepayment rebates and penalties. At the HFA's option, the statement may also include a reference to the contract for further information about the HFA's security interest and about assumption of the DPA loan.
- (l) A statement whether or not a subsequent purchaser of the home from the homebuyer may be permitted to assume the remaining obligation.
- (m) A statement that there is no guarantee that you will be able to refinance to lower your rate and payments.