Government of the District of Columbia
Department of Insurance, Securities and Banking

Thomas E. Hampton
Acting Commissioner

BULLETIN
06-BB-01-5/08

TO: ALL MORTGAGE BROKERS AND LENDERS

FROM: ACTING COMMISSIONER THOMAS E. HAMPTON

RE: YIELD SPREAD PREMIUMS

DATE: MAY 8, 2006

This bulletin applies to all persons making or brokering a residential mortgage loan in the District of Columbia ("District"). The purpose of the bulletin is to inform such persons that District law requires that a yield spread premium be disclosed on both the Good Faith Estimate and HUD-1 Settlement Statement.[1]

Mandatory Disclosure of Yield Spread Premium

Under District law, a yield spread premium must be disclosed on both the Good Faith Estimate and HUD-1 Settlement Statement. Federal regulations governing the Truth in Lending Act require that "any ... fee or payment received by the mortgage broker from either the lender or the borrower arising from the initial funding transaction, including a ... yield spread premium, is to be noted on the Good Faith Estimate and listed in the 800 series of the HUD-1 Settlement Statement."[2] The District's Mortgage Broker and Lender Act ("MBL Act") requires compliance with federal laws regulating mortgage loans; the MBL Act also requires a lender to ensure that the borrower is provided with a HUD-1 Settlement Statement and any disclosure required by the Truth in Lending Act.[3]

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[1] Although yield spread premiums have not been formally defined by the Department of Insurance Securities and Banking or the U.S. Department of Housing and Urban Development ("HUD"), HUD has described a yield spread premium in the following terms: "Payments to brokers by lenders, characterized as yield spread premiums, are based on the interest rate and points of the loan entered into as compared to the par rate offered by the lender to the mortgage broker for that particular loan (e.g., a loan of 8% and no points where the par rate is 7.50% will command a greater premium for the broker than a loan with a par rate of 7.75% and no points." 64 Fed. Reg. 10081. Essentially, yield spread premiums are payments made by lenders to brokers where the broker arranges a loan to the borrower at a rate above the par rate. *See, e.g.*, Heimmermann v. First Union Mortgage Corporation, 305 F.3d 1257, 1259 (11th Cir. 2002).

[2] *See* 24 C.F.R. Part 3500 Appendix B

[3] *See* sections 15(a)(7) and 19(a)(4) of the Mortgage Lender and Broker Act of 1996, effective September 9, 1996 (D.C. Law 11-155; D.C. Official Code §§ 26-1114(a)(7) and 26-1118(a)(4))

Therefore, it would be a violation of District law if the payment of a yield spread premium is not disclosed on the Good Faith Estimate or HUD-1 Settlement Statement. The Department also notes that the Department of Housing and Urban Development has stated that the "[Good Faith Estimate]/HUD-1 disclosure framework is often insufficient to adequately inform consumers about yield spread premiums" and that "HUD regards full disclosure and written acknowledgment by the borrower, at the earliest possible time, as a best practice."[4]

Should you have any questions regarding these matters, please e-mail BankingBureau@dc.gov.

[4] HUD, RESPA Statement of Policy 2001-1, pages 16 and 18.