

UNDERWRITING DIRECTIVE No. 8

TO: All Delaware Agents
FROM: Home Office Underwriting Department
DATE: September 29, 2008
SUBJECT: Modifications to National Housing Act to eliminate seller-assisted down payment programs

On July 24, 2008, the United States Congress passed the Housing and Economic Recovery Act of 2008 (the "Act"). President Bush signed the Act into law on July 30 (Public Law 110-289). One of the provisions contained in the Act is a provision which modifies that portion of the National Housing Act codified at 12 U.S.C. 1709(b)(9) to specifically prohibit the use of funds received from a seller or any other party deriving a financial benefit from a transaction to fund the buyer's down payment on FHA insured loans. This prohibition becomes effective for any loan for which a mortgagee issues credit approval for a borrower on or after October 1, 2008.

Specifically, 12 USC 1709(b)(9)(C) states as follows:

(C) PROHIBITED SOURCES.-In no case shall the funds required by subparagraph (A) consist, in whole or in part, of funds provided by any of the following parties, before, during, or after closing of the property sale:

(i) The seller or any person or entity that financially benefits from the transaction.

(ii) Any third party or entity that is reimbursed, directly or indirectly, by any of the parties described in clause (i). This subparagraph shall apply only to mortgagees for which the mortgagee has issued credit approval for the borrower on or after October 1, 2008.

The prohibitions described above apply **only** to FHA insured loans. The most significant impact of this legislation will be to disqualify the use of seller-assisted down payment programs, such as the Nehemiah program, from participation on sales involving FHA insured loans. It remains the position of Old Republic that our direct operations and agents should close transactions involving down payment assistance on other types of loans **only if**:

1. The lender's closing instructions acknowledge and approve the use of down payment assistance funds; and
2. The credit for the buyer and contribution from the seller are reflected in the appropriate sections of the HUD-1 settlement statement.