

November 02, 2015

Ms. Colette Pollard
Reports Management Officer, QDAM
U.S. Department of Housing and Urban Development
451 7th Street, SW Room 4176
Washington, DC 20410-5000

RE: FHA Lender Approval, Annual Renewal, Periodic Updates and Required Reports by
FHA-Approved Lenders
OMB Approval Number: 2502-0005
Docket No. FR-5835-N-12

Dear Ms. Pollard:

Thank you for re-noticing and providing all stakeholders the opportunity to comment again on the Department of Housing and Urban Development's revised proposal to change the annual certification requirements that lenders must make to secure Federal Housing Administration (FHA) insurance on a mortgage loan. Providing this opportunity gives all stakeholders an opportunity to process and comment on all the important changes that are proposed and explained in the proposal.

As a general principle, we want to stress that FHA should continue to have and deploy its full legal authority over all approved lenders to enforce its standards and responsibilities under the FHA insurance programs. Lenders and their affiliates that fail to uphold these standards should not be entitled to continue to receive the benefits that FHA insurance provides.

FHA has proposed to shift the obligations for mortgagees to certify that they have upheld all legal requirements from the loan-level certification to the initial and annual lender level certification requirement. In principle, we are not opposed to shifting the placement of these requirements, so long as FHA vigorously enforces these requirements and upholds the need to provide timely annual updates to their certifications and timely review and processing if and when a lender falls out of compliance with the certification requirements.

Shifting the obligation to the annual certification poses some operational challenges. An annual certification may make it more difficult for FHA to take action against any entity that experiences a disqualifying event. To be effective would require both the timely self-reporting of that disqualifying event outside of the annual recertification schedule and timely processing of that information from FHA through the Mortgagee Review Board for determination about whether they may continue to participate in the single family mortgage insurance program. It is not clear FHA has the resources necessary to enforce the former or to deliver the latter.

One way to mitigate the problem of disqualifying events occurring between annual certifications would be to add provisions requiring lenders to agree to report any new or relevant information regarding the annual certification within thirty days of the potentially disqualifying event.

The proposed changes also raise some questions as to how broadly certifications against bad acts should apply to lenders' affiliated entities and their employees. Section 4 of the annual certification proposal includes the following language:

I certify that, to the best of my knowledge and after conducting a reasonable investigation, during the Certification Period the Mortgagee was not, and did not employ or retain any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, or loan originator who was under indictment for, or had been convicted of, an offense that reflects adversely upon the Mortgagee's integrity, competence, or fitness to meet the responsibilities of an FHA-approved Mortgagee; who had been convicted of or pled guilty or nolo contendere to a felony related to participation in the real estate or mortgage loan industry during the seven-year period preceding the first day of the Certification Period; or who had ever been convicted of or pled guilty or nolo contendere to a felony related to participation in the real estate or mortgage loan industry that involved an act of fraud, dishonesty, a breach of trust, or money laundering, except for those occurrences, if any, the Mortgagee reported to HUD during the Certification Period and for which the Mortgagee received explicit clearance from HUD to continue with the certification process

This language limits disqualifying violations to felonies "related to participation in the real estate or mortgage loan industry." By contrast, prior loan-level certifications included a broader array of bad acts, including violations of Federal or State antitrust statutes, regardless of whether such violations were related to real estate activities.

This more narrow definition of disqualifying events will permit lenders or their affiliates under the same corporate management that have pled guilty to serious federal or state crimes to continue to participate in FHA single family insurance programs without even a required review by FHA or its Mortgagee Review Board.

A second question regarding the scope of the certification is whether the certifications should apply at the bank holding company level, at the individual affiliate level, or across all of a holding company's affiliates. For example, it is possible that a bank holding company has more than one affiliated entity undertaking FHA-insured mortgage lending activity. It is unclear if a violation in one mortgage lending entity would preclude continued participation in FHA single family insurance for all of the other entities under that holding company. We believe the application should apply to all entities operating under the same corporate management.

Another issue of concern is the newly proposed language providing the Mortgagee the option to self-report a violation of the Section 4 requirements and for FHA to provide explicit clearance to continue the certification process after its review. Neither the certification form nor FHA's Single Family Handbook provides criteria for FHA in reviewing a violation to determine whether to permit the lender to continue to complete the certification process. According to FHA's Single Family Handbook, "FHA will review the applicant's explanation for being unable to certify and communicate to the applicant any additional information or documentation needed

to render a final decision regarding the applicant’s ability to complete the application process.”¹ This would appear to provide FHA open-ended discretion to determine whether to permit violators of this section the ability to continue to participate in FHA single family insurance programs regardless of the nature of the violation. If consideration of self-reported violations are to remain an option for avoiding disqualification, FHA should establish some criteria for determining when such reprieves are granted.

We thank you again for the opportunity to comment on these proposed changes and look forward to working with you to ensure that FHA continues to provide effective enforcement of its rules while promoting expanded access to credit to first-time buyers who rely on it.

Sincerely,

Center for Responsible Lending
Empire Justice Center
Leadership Conference on Civil and Human Rights
NAACP
National Housing Resource Center

¹ FHA Single Family Handbook. 4000.1, I, A, 3, b, iii, (D).