



MORTGAGE BANKERS ASSOCIATION

April 7, 2017

Mr. Robert Mulderig
Acting Deputy Assistant Secretary for Single Family Housing
Department of Housing and Urban Development
451 7th Street S.W., Room 9282
Washington D.C. 20410-0500

RE: Single Family Loan Quality Assessment Methodology (Defect Taxonomy) and Loan Review System (LRS)

Dear Mr. Mulderig:

The Mortgage Bankers Association (MBA)¹ thanks the Department of Housing and Urban Development (HUD) for its efforts to improve the Federal Housing Administration's (FHA) current evaluation process through the implementation of the Single Family Loan Quality Assessment Methodology (Defect Taxonomy). The Defect Taxonomy demonstrates significant progress towards furthering FHA's objectives of ensuring lender accountability for the quality of their loans, protecting consumers from lender noncompliance with FHA regulations, and assisting FHA in managing its financial risks.

MBA also commends FHA on its development of the new Loan Review System (LRS) and looks forward to its full implementation on May 15, 2017. The new system, that will include the final Defect Taxonomy, will provide substantial process improvements for both lenders and FHA. MBA believes that these developments demonstrate positive movement towards providing greater certainty and clarity regarding the types of errors that can expose lenders to False Claims Act risk through the implementation of both the new LRS and the Defect Taxonomy.

MBA appreciates FHA's willingness to engage with the industry through informational webinars and industry dialogue as it takes the initial steps towards implementation of the LRS. MBA urges FHA to continue this dialogue with lenders and industry stakeholders as FHA completes its implementation process. To this end, MBA offers the following recommendations that emphasize the need for continual improvement and clarification of the Defect Taxonomy and response timelines under the new LRS.

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

I. Recommendations

a. Defect Taxonomy

In order to truly improve and expand access to credit for consumers under the current regulatory environment, HUD still needs to take additional steps towards safeguarding lenders from excessive False Claims Act liability for minor mistakes. Mortgagee Letters 2017-03 and 2017-08 notify participating lenders and stakeholders of FHA's plan to implement its new LRS which will encompass the Defect Taxonomy, however, no additional clarity was provided. Without formal guidance that defines: 1) specific remedies for each tier; 2) which tiers will require indemnification; 3) which tiers will never require indemnification; and 4) what remedial actions will be necessary to resolve issues under each tier (i.e. monetary vs. non-monetary), participating lenders will not be able to lend with certainty under the FHA program.

As MBA stated in a letter on April 14, 2016, it is critical that HUD take the necessary steps to limit the overly broad certification regime that can lead to subjective judgments of what constitutes a "material" false claim under the False Claims Act by completing the full implementation of the Defect Taxonomy through clear and formal guidance. The creation of a known standard is critical to achieving a concrete definition to which lenders can point if DOJ asserts a False Claims action for an immaterial error. To this end, MBA recommends that the implementation of the Defect Taxonomy include publication of the Taxonomy's parameters through formal guidance, such as a mortgagee letter, that includes specific tiers and remedies.

MBA also recommends that FHA allow lenders to provide a formal response for loan file deficiencies categorized under *any* defect tier should FHA plan to consider findings from every tier in the determination of its lender ratings. Under the final Defect Taxonomy, deficient loan findings that fall into tier 3 or tier 4 may not be formally refuted, a similar process to what exists today. However, if these findings will ultimately be factored into a lender's scorecard, lenders should be offered the opportunity to resolve and correct these deficiencies with FHA.

Finally, MBA recommends that FHA include guidance regarding a revised appeals process for determinations under the Taxonomy's defect areas that allows for lenders to resolve discrepancies in opinions between FHA and the participating lender. MBA believes this guidance should include the designation of an independent third party to assist in settling these claims.

b. Loan Review System

MBA recommends that FHA seek additional industry feedback before revising its mitigation response timelines. Though MBA acknowledges that the new LRS will increase efficiency and decrease finding notification delays, shortened timeframes will create challenges for companies that operate multiple origination channels. Subsequently, MBA recommends that FHA use business days as opposed to calendar days for its response timelines, as this would allow more time and flexibility for lenders to respond to mitigation requests.

MBA urges FHA to consider the above recommendations and encourages FHA to maintain an ongoing dialogue with the industry as it moves forward with its implementation process.

II. Conclusion

FHA plays a critical role in creating access to affordable mortgage credit for many homebuyers with limited financial options. We welcome the opportunity to work with FHA to further improve its program to ensure loan quality and the development of clear standards to promote safe and sustainable financing. MBA believes that continued dialogue with the industry is critical to achieving this goal. To this end, following the implementation of the LRS and the Defect Taxonomy, we request an opportunity to facilitate a meeting with a small group of lenders and you or your staff to provide feedback and user observations to assist FHA as it continues to improve its systems and processes.

MBA greatly appreciates the efforts FHA has put into developing the new LRS and the final Defect Taxonomy and urges FHA to consider the above recommendations. Should you have questions or wish to discuss these comments, please contact Tamara King, Vice President of Residential Policy and Member Engagement, at (202) 557-2758 or TKing@mba.org, or Katherine Tung, Assistant Director of Loan Production Policy at (202) 557-2870 or KTung@mba.org.

Sincerely,

A handwritten signature in black ink that reads "Stephen A. O'Connor". The signature is written in a cursive, slightly slanted style.

Stephen A. O'Connor
Senior Vice President Public Policy and Industry Relations