



November 2, 2015

Ms. Colette Pollard
Reports Management Officer, QDAM
Department of Housing and Urban Development
451 7th Street SW, Room 4176
Washington, D.C. 20410

RE: Docket No. FR-5835-N-12

Dear Ms. Pollard:

The Mortgage Bankers Association (MBA)¹ thanks the U.S. Department of Housing and Urban Development (HUD) for the opportunity to comment on the proposed changes to the Federal Housing Administration's (FHA) annual lender-level certification form. MBA continues to support and agree with HUD's objectives:

- To ensure lenders meet approval, renewal, and compliance requirements;
- To assist FHA in managing its financial risks; and
- To protect consumers from lender noncompliance with FHA regulations.

MBA supports these objectives because they promote a program that operates to safeguard lenders, consumers, and FHA, while maintaining a commitment to affordable mortgage credit. In addition, MBA believes that it is in the best interest of all stakeholders to have an annual lender-level certification that acknowledges the good faith compliance objectives of a vast majority of lenders.

MBA has concerns, however, that the proposed certification's language does not help FHA meet these objectives. MBA believes that section 10 of the annual lender-level certification should reflect existing quality control (QC) self-reporting standards required of lenders throughout the year that call for the reporting of only fraud, material misrepresentation, or material findings. This requirement is set forth in HUD Handbook 4000.1. The proposed language requires lenders to report all errors, regardless of their materiality to compliance. Under this strict standard – meeting all requirements at all times – the FHA certification does not recognize good faith compliance by the majority of its approved lenders and causes them to qualify certifications under a more stringent and inconsistent annual reporting standard.

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.mba.org.

The Importance of Lender-Level Certification

Lenders must make lender-level certifications annually to attest to an entity's compliance with FHA program requirements, including net worth and quality control requirements. Every year, a lender must certify its compliance with FHA program requirements within 90 days of the end of the prior fiscal year. Lenders unable to certify on their FHA annual renewal must supply HUD with a written explanation of the reasons for its inability to certify compliance. This process is intended to enable HUD to monitor lender entity behavior, as well as any government actions faced by FHA lenders. This is in order to protect consumers from non-compliant lenders and to ensure quality underwriting and sound risk management by FHA participants. Lenders review these certifications carefully, as a failure to comply with these requirements has serious ramifications including, reputational damage, the loss of FHA-approval, and the possibility of legal liability that results in steep fines.

Most notably, liability under the False Claims Act remains a significant concern for lenders. The use of the False Claims Act by the Department of Justice has had a significant effect on lenders' willingness to expand access to credit to borrowers with less-than-pristine credit. As a direct consequence of the uncertainty surrounding legal liability, lenders have begun to impose new credit overlays and/or limit involvement in FHA lending in an attempt to minimize risk.

Additionally, many responsible lenders with high performing, low defect FHA programs have chosen not to sign the annual loan-level certifications and provide extensive clarifying explanations due to the risk and uncertainty of legal liability. MBA encourages FHA to revise the certification so that lenders can sign this important document with confidence.

MBA's Concerns with HUD's Proposal

Given lenders' acute attention to the importance of compliance and the risk of substantial legal penalties, MBA is concerned that section 10 of the proposed version of the annual certification does not include a materiality standard. This standard is important for consistency among certification and reporting requirements as the reporting of "material" findings is already a standard used in quality control reporting throughout the year. The current broad language in the lender-level certification, requiring each lender to attest to compliance with every single HUD/FHA requirement at all times, opens the door for lenders to either over report or refuse to certify in order to shield themselves from financial liability for even minor errors. The addition of a materiality standard would ensure that lenders and HUD are able to conduct more focused compliance reviews and still hold lenders to high standards.

MBA's Recommendation

MBA strongly encourages HUD to revise section 10 of the lender certification as well as the certification clearance language in sections 3-10 with the language in the Addendum. The recommended language in the Addendum supports the following statements:

- Annual certification language should mirror the self-reporting standards that tie into the existing QC process, which requires the reporting of fraud, material misrepresentation, or material findings as set forth in HUD Handbook 4000.1. Otherwise, the annual certification should include an explicit materiality standard.
- HUD should streamline its certification clearance process through reliance on the lender's certification statement, or on lender information disclosed throughout the

normal reporting process to reduce review burdens on HUD and reporting burdens on mortgagees. Without this streamlining, lenders must re-report all findings that have not received clearance from the Department regardless of whether the findings were reported throughout the year.

MBA believes the addition of a materiality standard is critical to lender-level certifications because lenders should be able to sign an annual certification with the appropriate qualifications based on consistent and realistic standards. MBA also believes that the streamlining of the review process will alleviate burdens for both HUD and FHA lenders throughout the certification process. The attached revisions to the certification language reflect these goals.

Conclusion

FHA plays a critical role in creating access to affordable mortgage credit for many homebuyers with limited financial options. Delivering on this objective requires a partnership among stakeholders. This proposed revision to the lender-level certification is an opportunity for HUD to provide additional clarity and certainty to the industry while minimizing one of the barriers to accessible and affordable mortgage credit. MBA urges FHA to consider the above concerns and adopt the specific revisions to the certification attached below.

Should you have questions or wish to discuss any aspect of this letter, please contact me at 202-557-2878 or Tamara King at (202) 557-2758 or TKing@mba.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Mills". The signature is fluid and cursive, with a large initial "P" and "M".

Pete Mills
Senior Vice President
Residential Policy and Membership Engagement

Addendum

HUD Instructions: The capitalized terms used in this form refer to those terms as used in the relevant sections of the current version of Single Family Housing Policy Handbook, HUD 4000.1.

1. I certify that I am a Corporate Officer of the abovementioned Mortgagee (hereinafter referred to as “the Mortgagee”); that I am authorized to execute these certifications on behalf of the Mortgagee; and that throughout the Certification Period I have known, or been in the position to know, whether the operations of the Mortgagee conformed to all applicable HUD-FHA regulations, handbooks, guidebooks, Mortgagee Letters, Title I Letters, and policies.

2. I acknowledge that the Mortgagee is responsible for all actions of its officers, partners, directors, principals, managers, supervisors, loan processors, loan underwriters, loan originators, and other employees of the Mortgagee, and for the actions of any Affiliates² participating in FHA programs for or on behalf of the Mortgagee.

3. 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 subject to a current suspension, debarment, Limited Denial of Participation (LDP) or other restriction imposed under Part 24 of Title 24 of the Code of Federal Regulations, Part 180 of Title 2 of the Code of Federal Regulations as implemented by Part 2424 of Title 2, or any successor regulations to such parts, or under similar provisions of any other federal or state agency, except for those actions or sanctions, 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.~~

4. 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.~~

5. I certify that, to the best of my knowledge and after conducting a reasonable investigation, during the Certification Period I, my firm (i.e., the Mortgagee) and its principals (i.e., the Mortgagee’s Corporate Officers): (a) were not Debarred, Suspended, Proposed for Debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency; (b) have not,

² Please note that HUD Handbook 4000.1 defines the term “Affiliates” to mean “contractors, agents, vendors, subservicers, and sponsored TPOs who participate in FHA programs on behalf of an FHA-approved Mortgagee.” HUD Handbook 4000.1 - I.A.6.k.

within a three-year period preceding this certification, been convicted of or had a civil judgment rendered against them for (i) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; (ii) violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (c) were not indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in 5(b) of this certification; and (d) have not, within a three-year period preceding this certification, had one or more public transactions (Federal, State or local) terminated for cause or default, 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.~~

6. I certify that, to the best of my knowledge and after conducting a reasonable investigation, during the Certification Period the Mortgagee was not sanctioned by any federal, state, or local government agency or by any other regulatory or oversight entity with jurisdiction over the Mortgagee, except for those sanctions, 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.~~

7. I certify that, to the best of my knowledge and after conducting a reasonable investigation, during the Certification Period the Mortgagee was not subject to any Unresolved Findings, except for those Unresolved Findings, 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.~~

8. I certify that, to the best of my knowledge and after conducting a reasonable investigation, during the Certification Period the Mortgagee did not employ or retain any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, or loan originator who was subject to any sanctions or Unresolved Findings, except for those sanctions or Unresolved Findings, if any, that 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.~~

9. I certify that, to the best of my knowledge and after conducting a reasonable investigation, during the Certification Period the Mortgagee was not refused, or had revoked, any license necessary to conduct its normal operations in the real estate or mortgage loan industry. I further certify that, to the best of my knowledge and after conducting a reasonable investigation, throughout the Certification Period the Mortgagee maintained compliance with all applicable provisions of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) (12 U.S.C. § 5101 et seq.) or its equivalent under state law, including all Nationwide Mortgage Licensing System and Registry requirements, except for those instances of non-compliance, if any, that 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.~~

10. [ALTERNATIVE ONE: I certify that, to the best of my knowledge and after conducting a reasonable investigation, the Mortgagee does now, and did at all times throughout the Certification Period, in all material respects and taken as a whole comply with ~~all~~ HUD-FHA regulations and requirements applicable to the Mortgagee's continued approval and operations, including those contained in HUD handbooks, guidebooks, Mortgagee Letters, Title I Letters, policies, and any agreements entered into between the Mortgagee and HUD, except for those instances of fraud, material misrepresentation, and Material Findings of non-compliance, if any, that the Mortgagee reported to HUD during the Certification Period pursuant to HUD Quality Control requirements set forth in HUD

Handbook 4000.1 and for which the Mortgagee received explicit clearance from HUD to continue with the certification process.

[ALTERNATIVE TWO: I certify that, to the best of my knowledge and after conducting a reasonable investigation, the Mortgagee maintains policies, procedures, and internal controls that are reasonably designed to assure compliance in all material respects taken as a whole with the general regulations and program requirements of HUD-FHA that are applicable to the Mortgagee's continued approval and operations, including those contained in HUD handbooks, Mortgagee Letters, Title I Letters, policies, and any agreements entered into between the Mortgagee and HUD, and including its obligation to make all reports pursuant to HUD Quality Control requirements set forth in HUD Handbook 4000.1.

11. Each of my certifications is true and accurate to the best of my knowledge and after conducting reasonable investigation. I understand that if I have made any false, fictitious, or fraudulent material statement(s), representation(s), or certification(s) knowingly on this form, I may be subject to administrative, civil and/or criminal sanctions, including damages, penalties, fines, imprisonment, and debarment under applicable federal law.