



May 10, 2018

VIA ELECTRONIC SUBMISSION

HUD Desk Officer
Office of Management and Budget
New Executive Office Building
Washington, DC 20503

RE: Notice of Proposed Information Collection: Comprehensive Listing of Transactional Documents for Mortgagors, Mortgagees and Contractors Federal Housing Administration (FHA) Healthcare Facility Documents: Proposed Revisions and Updates of Information Collection, Docket No. FR-7001-N-09¹

Dear HUD Desk Officer:

The Mortgage Bankers Association (MBA)² respectfully submits our response to the above Notice. MBA developed the attached detailed comments in consultation with MBA members who participate in the Section 232 program and who reviewed all of the related Section 232 loan documents.

Our comments focus on: ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond. While we detail specific comments in the accompanying Excel spreadsheets, we highlight here the following general recommendations with respect to the documents that are the subject of the notice.

Narrative Consistency

While HUD made corrections to some narratives, the corrections are not applied consistently across forms. We recommend that HUD compare, update and harmonize all narratives, so that they are complete, accurate and consistent with one another, including as to substance, terminology, format and organization. Specific comments on the narratives include the following.

- Professional Liability Review (PLI). We recommend that the Recommendation section of the PLI review be moved to the end of each section in the 223f narrative, to be consistent with its placement in the New Construction (NC) single stage narrative and 223a7.
- Accounts Receivable (A/R) Financing Review. We recommend that "Key question #15 (Does the Intercreditor Agreement identify a flow of funds consistent with the cash flow chart?), in the

¹ 83 Fed. Reg. 15396 (April 10, 2018).

² 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 2,300 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

223a7 narrative, be presented in the same manner as in other narratives, i.e., to enable a "yes" answer to represent a flow of funds that is "inconsistent" with the cash flow chart."

- Operator (Lessee). For both the narrative and consolidated certification, we recommended that Operators be referred to as "Operator (Lessee)." To be consistent with terminology used in the Operator Consolidated Certification, we recommend that this language also be incorporated into all narratives
- Principal Reviews. We recommend that Key Question #1 be moved to the Borrower Credit review key questions in the 223a7 narrative, to be consistent with its placement for the 223f, New Construction and Sub Rehab narratives.

Consolidated Certification Documents

The Notice indicates that HUD proposes no changes to the Legal Opinion and Consolidated Certification Documents. However, as is reflected in our detailed comments, there are a number of formatting issues and errors in the Consolidated Certifications that should be corrected. To address those issues, we recommend that, as part of its current updating process, HUD address the specific comments we submit here – and that HUD also conduct a thorough review of all Consolidated Certifications to identify and address formatting issues and errors that should be corrected to avoid disrupting the financing processes they are intended to support. Specific comments on the Consolidated Certifications include the following:

- The Borrower Consolidated Certification includes references to "Blended Rate" on lines 29 and 33, but the associated program no longer exists);
- Lines 151 and 154 of the Borrower Consolidated Certification refer to a "Section" of the consolidated certification, but the consolidated certification was reorganized into separate "Parts;"
- The Borrower Consolidated Certification includes a reference to Attachment 5 where there is no Attachment 5; and
- The Operator (Lessee) Consolidated Certification refers to an operator as an "Operator (Lessee)," but that terminology is not used consistently across certifications, narratives, forms, etc.

Loan Documents

The Request for Endorsement requires disclosure of litigation involving all "Principals" (as now defined exclusively in the 232 Handbook). This adds significant costs to transactions, because lenders will need to run multiple litigation searches to cover all of the principals. For example, litigation searches will need to be run for all officers and directors of corporate borrowers, operators, etc. The burden of provision this information outweighs its value. Accordingly, we recommend that this provision be eliminated.

User Input

While we appreciate this opportunity to comment on proposed changes to the documentation, we recommend going forward that HUD could more efficiently achieve its objectives around improving the documentation by engaging the members of the lending community who use these documents daily earlier in the process, as HUD considers what changes to propose.

For example, HUD elected to combine all a7 Narratives (base document + addenda) into one document, which has made the narrative cumbersome to work with and does not expedite the review

process.³ Prior consultation with members of the lending community who use that narrative could have avoided that outcome. MBA and its members would be pleased to collaborate with HUD staff in such efforts.

Conclusion

MBA appreciates HUD's efforts to update its Federal Housing Administration Residential Healthcare Facility transactional documents. HUD's commitment to continually updating and improving HUD's Healthcare Programs, and to solicit and consider the input of FHA lenders, will contribute to the success of these programs. As we describe above, MBA and its members would be pleased to collaborate with HUD staff even earlier in the process, as HUD identifies and considers what changes to make to the documentation.

We hope that these comments will prove useful in making the closing process more efficient and, will serve to provide clarity for HUD, our members, and their clients during the post-closing monitoring and compliance process. Thank you for your consideration of these comments. We look forward to continuing discussions with HUD on these important matters. Please contact me with any questions at 202-557-2747 or swalker@mba.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Sharon Walker", with a horizontal line extending from the end of the signature.

Sharon Walker
Associate Vice President
Commercial/Multifamily Group

Attachment

cc: Colette Pollard, QMAC
Roger Lukoff, HUD

³ A7 transactions are frequently very limited in terms of scope of review. The previous approach (base + addenda) enabled lenders to process the pertinent narratives expeditiously, enabling a more efficient review for HUD. In the new, combined narrative, lenders must walk through the full narrative, determine what sections are not applicable, delete the section and explain why it is not applicable, which results in a cumbersome process.