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MORTGAGE BANKERS ASSOCIATION

March 31, 2020

Colette Pollard, Reports Management Officer  
QDAM  
Department of Housing and Urban Development  
451 7th Street S.W., Room 4176  
Washington, D.C. 20410-5000

**RE: FR-7027-N-06 Project Approval for Single-Family Condominiums**

Dear Ms. Pollard,

The Mortgage Bankers Association (MBA)<sup>1</sup> thanks the Department of Housing and Urban Development (HUD) for its efforts to improve the Federal Housing Administration's (FHA) condominium program. This program enables FHA-approved lenders to extend government-insured mortgage financing to single-family units in condominium projects as affordable options for first-time and low- to moderate-income homebuyers. MBA appreciates the opportunity to comment on FHA's revisions to documents facilitating the condominium program and welcomes the chance to contribute to the development of clear and consistent FHA forms and policies.

The two collection forms presented for review, HUD-9991 and -9992, are used in the approval of FHA insurance for condominium purchase and refinance transactions. HUD-9992 seeks project-level approval and is completed by a condominium association or management company and the "submitter," which can be the mortgagee, the builder, the condominium association itself, or another "eligible submission source." HUD-9991 is a loan-level form to be completed by the mortgagee and the condominium association or management company for FHA-insurance approval on a condominium purchase within an FHA-approved project. In other cases, the HUD-9991 is required for single-unit approvals in projects that have yet to receive FHA approval. While the forms refer to condominium associations and their management companies as eligible sources to submit portions of the forms, for the purposes of this comment MBA refers to condominium associations,

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<sup>1</sup> 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, DC, the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to 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, credit unions, thrifts, REITs, Wall Street conduits, life insurance companies, and others in the mortgage lending field. For additional information, visit MBA's website: [www.mba.org](http://www.mba.org).

homeowner associations overseeing condominium projects, and management companies collectively as “the Associations.”

MBA’s general response to the questions posed in the Proposed Information Collection is as follows:

1. **Overall, the collection of data from the Condominium Association/Management Company has little practical utility as it is largely misrepresented, misunderstood, or missing.**

MBA members report that the data provided by Associations administering condominium projects frequently is not of a high-quality standard. Associations often fill in data fields with “N/A,” “unknown,” or simply leave fields blank. FHA should consider these trends while considering revisions to forms -9992 and -9991. If “N/A” or “unknown” are acceptable answers to FHA, as some Homeownership Center (HOC) staff advise they are, then that category should be included on the form to provide greater certainty to the parties certifying the information.

Additionally, MBA would like to address two specific requirements that lack clarity, are often misrepresented, and present little practical utility for FHA. First, while MBA understands and appreciates FHA’s desire to track owner-occupancy ratios, the degree of accuracy of the Association’s tracking of this data is questionable enough to merit potential exclusion on the questionnaire. MBA supports FHA’s position that owner occupants serve to stabilize the financial viability of a project and are more incentivized to cooperate with other unit owners to ensure the successful operation of a project. In the past, MBA has supported FHA policy outlining a minimum owner-occupancy ratio.<sup>2</sup> Collection of owner-occupancy data, however, is problematic in part due to the fluctuation in units becoming rental properties without the knowledge of the Association. Serious deficiencies in reporting the ratio are present in new construction projects, as well. Unsold units may be acquired with financing outside of FHA, permitting units to be purchased as investment or second home properties. MBA recommends that FHA reevaluate the practical utility of this data collection. If the lack of accuracy of the data merits reconsideration of the inclusion of this data field, and FHA decides to remove this data collection from the questionnaire, FHA should further consider allowing the questionnaire to stand for a reasonable amount of time. MBA’s review of the questionnaire finds that collection of owner-occupancy data is the greatest impediment to allowing for the re-use of a completed questionnaire on a project. The other information on the questionnaire can reasonably stand for a year’s time. Further, if lenders and Associations are asked to continue to provide the information, FHA should clarify how lenders and Associations are to effectively determine the owner/renter ratio on projects that have yet to receive FHA approval.

Second, it has proven to be extremely difficult for Associations and lenders to accurately

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<sup>2</sup> MBA, “RE: FR 5715-P-01, Project Approval for Single-Family Condominiums.” November 28, 2016. Available at:

<https://www.mba.org/Documents/1%20FINAL%20MBA%20FHA%20Condo%20Comment%20Letter.pdf>.

determine the ownership rate of a single entity or related parties. Associations and lenders alike are hesitant to certify whether they have identified familial relationships in residential units. The current guidance does not clearly explain how Associations or lenders are to determine the familial relationship of borrowers, or the degree to which they are to be identified (i.e., siblings, cousins, relationships by marriage, etc.). MBA believes that investigating familial relations within a condominium project is onerous and unnecessarily complex. MBA recommends that the questionnaire forms be amended to collect information that solely documents the units owned by a single owner and remove the requirement that Associations identify “Related Parties” that also own units within the project.

**2. FHA is not accurately estimating the burden of this information collection, as working with the Associations often leads to significant fees, frustrating delays, and/or deterioration of purchase contracts.**

Lenders have reported that working with Associations administering condominium projects frequently is onerous and negatively impacts customer experience. First, the Associations can charge either a flat fee, or fees by the page for completion of the HUD forms. These fees are often in the hundreds of dollars – a cost that is ultimately passed on to the consumer at loan closing. Additionally, many lenders report that the Associations can be difficult to work with and slow to respond. They often are not motivated to complete the lender’s forms in a timely fashion. Many Associations fail to complete the required fields on the forms or opt to not participate in the completion of the form at all. Some Associations’ unwillingness to complete the required forms has resulted in borrowers seeking more expedient forms of financing, or consequently, choosing to withdraw from the mortgage transaction altogether.

**3. Allowing lenders to elect to obtain and certify information increases the quality, utility, and clarity of the information to be collected.**

Given that the burden of the information collection lies in the working relationship between the Associations and mortgagees, MBA recommends that FHA grant the option to mortgagees to complete the portions of forms -9991 and -9992 currently identified for completion by the Associations, providing relevant documentation and certification of accuracy. Under this system, mortgagees would work with Associations on a case-by-case basis in a manner that fosters expediency and accuracy. There are several systems by which a mortgagee may find it to be a more efficient business practice to obtain and certify data collected in Sections 3 and 4 of -9991 and Sections 2 and 3 or -9992. For example, mortgagees may choose to develop their own form that they believe is easier to comprehend or provides more clarity for the Associations than the HUD form. Similarly, this policy would alleviate an issue many of MBA’s members have reported, that suggests Associations currently using certain business software refuse to complete any outside (HUD-provided) forms, opting to singularly provide mortgagees with the report generated by that software. In that case, mortgagees could complete the HUD form using the Association’s report, certifying to its accuracy and providing the Association’s report as documentation. MBA recommends that FHA provide clear guidance that allows for mortgagees to elect to

complete the questionnaire in its entirety, provided the presence of supporting documentation.

**4. Enabling electronic submission of responses by automating the form via FHA Connection, and/or providing the form in an editable pdf form, would minimize the burden of the collection of information.**

Automating wherever possible via FHA Connection will allow all parties access to more current information on data points required. MBA strongly urges FHA to consider including this information collection process within the technology improvement plans funded by Congress in recent appropriations. It could be particularly helpful to explore ways in which Associations administering FHA-approved condominiums could access a portal such as FHA Connection to directly update information regarding owner occupancy rates, individual owner concentration, units in arrears and insurance requirements. At a minimum, FHA should ensure that forms -9991 and -9992 are provided in an electronic format that is editable and facilitates the extraction of information. MBA also recommends that FHA provide periodic updates to the Association once Form 9992 is received. Doing so allows the Association to better advise mortgagees of projects' pending approval status. This is particularly important for new construction, as the Association is likely to receive numerous applications for project approval, with each mortgagee paying the Association to complete the same Form 9992 required for FHA's consideration.

MBA puts forth the following line-item questions, comments, and suggested revisions to HUD Form 9991:

- In the "General" paragraph on page one, language should be added to allow for mortgagees to elect to obtain and certify information otherwise provided by the Associations directly.
- In the "General" paragraph, FHA should consider defining "mortgagee."
- In addition to checking the boxes beneath the "General" paragraph, FHA should add check boxes next to the sections to be completed (potentially) by the Associations for clarity.
- Section 2.a includes a field requesting the FHA Condo-ID Number. This should include a parenthetical "(if applicable)," as this form is used for condominium projects that do not yet have an FHA case ID number.
- Section 2.b includes a field requiring the Association Tax ID Number. This should be marked optional, as lenders report many Associations are unwilling to provide the information.
- Section 3.a.3.a.ii should be eliminated as it is impossible to know if future transactions will be owner-occupied or not. Often, the only information that is tracked is onsite or offsite addresses.
- Section 3.b.1 and 3.b.2 should only inquire about single owners, as certifying level of relation between owners is overly burdensome.
- It is highly unlikely that Associations will have the knowledge necessary to furnish information for Section 4.a.3.
- Consider rephrasing Section 4.a.9 for clarity.

- FHA should outline or provide a parenthetical litany for the circumstances in which Section 4.b.1 is not required.
- The question in section 4.f.1 is broad enough to diminish its practical utility. It is difficult if not impossible to imagine any and every litigation risk. At a minimum, qualifying the litigation to be “pending” adds more clarity.

MBA puts forth the following line-item questions, comments, and suggested revisions to HUD Form 9992:

- In the “General” paragraph on page one, FHA should include a link to a list of eligible submission sources.
- FHA should clarify whether a submitter can select multiple boxes under organizational type of submitter.
- Section 1.c should include an “N/A” box to accommodate for mortgagee submitters.
- Sections 2 and 3 should include parenthetical language reminding Associations that these are the sections to be completed by the Associations.
- Section 2.a includes a box requesting the FHA Condo-ID Number. This should include a parenthetical “(if applicable),” as this form is used for condominium projects that do not yet have an FHA case ID number.
- Section 2.b includes a field requiring the Association Tax ID Number. This should be marked as optional, as lenders report many Associations are unwilling to provide the information.
- Section 3.a should include a third column for “unknown,” and/or Section 3.a.3 should be removed as it is unknown to the Associations.
- Section 3.c.3 through 3.c.9 should include an additional response column labeled “Unknown.”
- Section 3.d.3.a.ii should be eliminated as it is impossible to know if future transactions will be owner-occupied or not.
- Section 3.e.1 and 3.e.2 should only inquire about single owners, as certifying level of relation between owners is overly burdensome.
- Section 3.j.1 should be amended to include information asked in Section 4.l.5, “could legal action impact the future solvency of the Condominium Association?”
- Section 4.a.5 should be asked of the Condominium Association.
- Section 4.d.1 should be clarified for new construction, indicating that if operating income has not been in place for two years, a demonstration that the Project has not shown any decrease in income would suffice.
- Section 4.l.5 is too broad and should be removed.
- Section 4.l.9 and Section 4.l.10 should be properly indented for clarity.
- Section 4.l.11 is too broad and should be removed.

Finally, MBA strongly encourages FHA to train HOC staff on the implementation of HUD-9991 and -9992 to provide clear and consistent messaging to mortgagees. Lenders have cited several incidents in which inquiries regarding the approval process have generated conflicting guidance from different

HOCs. The administration of a strong FHA condominium program relies on lender certainty in the execution of its contracts, a certainty dependent on the clarity and consistency of its guidance.

FHA plays a critical role in creating access to affordable mortgage credit for many homebuyers throughout the country – particularly low- to moderate-income homebuyers. MBA values the importance of FHA's condominium program, particularly as condominium purchasing trends continue to increase. 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 greatly appreciates the efforts HUD has put into developing and maintaining FHA's condominium program and urges HUD to consider the above recommendations. Should you have questions or wish to discuss these comments, please contact Julienne Joseph at (202) 557-2782 and [jjoseph@mba.org](mailto:jjoseph@mba.org), or Hanna Pitz at (202) 557-2796 and [hpitz@mba.org](mailto:hpitz@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 Member Engagement  
Mortgage Bankers Association