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MORTGAGE BANKERS ASSOCIATION

August 27, 2020

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

**RE: 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 increase the availability of Federal Housing Administration (FHA) insurance in condominium lending. This insurance enables FHA-approved lenders to extend 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 HUD's revisions to documents facilitating FHA-insured condominium lending and welcomes the chance to contribute to the development of clear and consistent FHA forms and policies.

MBA also thanks HUD for its work to incorporate previous suggestions provided by MBA on Forms -9991 and -9992. MBA was pleased to see that Form -9991 is now to be completed by the lender. This development is accompanied by an important policy change allowing the information collected on the form to be deemed valid for 90 days. The 90-day window is a welcome improvement to ease the industry burden associated with this information collection. MBA's position remains, however, that HUD align with the policies of Fannie Mae and Freddie Mac ("the government-sponsored enterprises", or "GSEs") to allow the information collection to be deemed valid for a year.

MBA is also pleased to see that HUD intends to provide editable Portable Document Format (PDF) versions of the forms. Automating the completion and submission

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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 2,100 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).

process of the forms in FHA Connection will relieve some of the burden of information collection for lenders.

As was described in detail in our prior comments, MBA believes there is certain information required on the forms that is difficult to obtain and lacks robust quality by virtue of the collection, and therefore offers little risk management utility for FHA. First, MBA supports HUD'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.

It has also proven to be extremely difficult for Associations and lenders to accurately determine the ownership rate of 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 provides little value to reduce FHA's risk exposure when insuring these projects. MBA appreciates HUD's response that it "concur[s] it is difficult for condominium associations to provide this information and is considering updates to the policy that will remove the 'Related Parties' requirement."<sup>3</sup> MBA also appreciates the incorporation of our suggested revision to Form -9991 Section 3.b.1 to refer only to single owners owning more than one unit in a project.

Further, FHA should reevaluate the phrasing of questions that require detailed knowledge of, or advanced research into, local laws and regulations. For example, Form -9991 questions whether governing documents have been recorded "as required by local law." This question places undue burden on the lender to review the entirety of local statutes; instead, it is sufficient for the lender to certify that governing documents have been recorded.

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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>.

<sup>3</sup> 85 FR 46154.

MBA also notes that some questions on the forms remain vague and can lead to inconsistencies in interpretation and, ultimately, the responses. With respect to projects that have commercial space, for example, Form -9992 asks if the residential and commercial spaces are “independently viable.” The evaluation of this independence and viability is quite subjective, and some may argue that by virtue of inhabiting the same building there is always some degree of reliability on each other. In another case, Form -9991 asks if there is any “pending litigation risk.” While MBA acknowledges the qualifier “pending” narrows the scope, on FHA’s instructional document for Form -9991, it stipulates consideration of pending “or any other litigation risk,” which is far too broad. “Any other litigation risk” is arguably ubiquitous to every endeavor.

In prior comments, MBA provided section-by-section suggestions for the forms.<sup>4</sup> MBA thanks HUD for incorporating some of the recommendations in the revised proposed questionnaires and supporting materials. Many of our concerns, however, remain outstanding. Most importantly, MBA urges HUD to reconsider adding boxes such as “N/A” or “unavailable,” or identify optional fields with language like, “if applicable,” should the lender determine that the information needed to respond is unattainable for that particular question. If HUD and the Home Ownership Centers (HOCs) intend to verbally grant leniency on certain items in the information collection, MBA suggests using this opportunity to build such permissions into the forms.

As always, MBA strongly encourages HUD to train HOC staff on the implementation of Forms -9991 and -9992 to provide clear and consistent messaging to lenders and other market participants. Lenders have cited several incidents in which inquiries regarding the approval process have generated conflicting guidance from different HOCs. The administration of strong FHA-insured condominium lending relies on lender certainty in the execution of contracts – a certainty dependent on the clarity and consistency of HUD’s guidance.

FHA lending plays a critical role in creating access to affordable mortgage credit for many homebuyers throughout the country – particularly low- to moderate-income homebuyers. In many regions, condominium units are the best source of affordable housing for these homebuyers. This demand underscores the importance of FHA’s role in improving the efficiency of the forms and the overall condominium approval process to encourage lenders’ continued participation in the program and consumers’ access to credit in this segment of the market. MBA values the importance of condominium lending, particularly as condominium purchasing trends continue to increase, and hopes that HUD will continue to work with lenders to create an efficient process for FHA-insured condominium lending.

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<sup>4</sup> See Addendum for revised section-by-section analysis.

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We welcome the opportunity to work with HUD to further improve its processes and guidelines 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 policies and urges HUD to consider the above recommendations. Should you have questions or wish to discuss these comments, please contact Julianne 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

## **Addendum**

The following section-by-section analysis has been edited to correspond to the latest versions of Forms -9991 and -9992.

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

- Section 2.b includes a field requiring the Association Tax ID Number. This field should be marked as optional, as lenders report many Associations are unwilling to provide this information.
- Section 3.a.3.a.ii should be eliminated, as it is impossible to know whether future transactions will be owner-occupied. Often, the only information that is tracked is onsite or offsite addresses.
- It is highly unlikely that Associations will have the knowledge necessary to furnish information for Section 4.a.3.
- The question in section 4.e 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:

- HUD should clarify whether a submitter can select multiple boxes under organizational type of submitter.
- Sections 2 and 3 should include parenthetical language reminding Associations that these are the sections to be completed by the Associations.
- Section 2.b includes a field requiring the Association Tax ID Number. This field should be marked as optional, as lenders report many Associations are unwilling to provide this information.
- Section 3.b should include a third column labeled “Unknown.”
- Section 3.d.3 through 3.d.6 should include an additional response column labeled “Unknown.”
- Section 3.e.2.b should be eliminated, as it is impossible to know whether future transactions will be owner-occupied.
- Section 3.h.7 should include an “N/A” option for new construction projects with no closed units.
- Section 3.h.7 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 3.j.1 should be amended to align with a similar question on the 9991 Section 4.a.2, “Do the governing documents allow for Live/Work arrangements that comply with FHA requirements?”

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- Section 4.h.10 is too broad and should be removed.
- Section 3.s.1 should be amended to include the word “final” before “Legal Phase” for clarity.