

June 24, 2019

The Honorable Brian Montgomery
Acting Deputy Secretary and Assistant Secretary for Housing
U.S. Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

**Request for Additional Clarity and Guidance Related to Mortgagee Letter 19-06:
*Downpayment Assistance and Operating in a Governmental Capacity***

Dear Mr. Montgomery:

The Mortgage Bankers Association (MBA)¹, the National Association of Local Housing Finance Agencies (NALHFA)², and the National Council of State Housing Agencies (NCSHA)³ write to express our concerns and submit recommendations regarding the recently-published U.S. Department of Housing and Urban Development (HUD) Mortgagee Letter (ML) 19-06.⁴

HUD Published ML 19-06 on April 18, 2019, to attempt to clarify the parameters of eligible downpayment assistance (DPA) sources for loans insured by the Federal Housing Administration (FHA). On April 25, 2019, HUD issued ML19-07,⁵ extending the effective date to July 23, 2019 for DPA and operating capacity requirements included in

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, 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.

² The National Association of Local Housing Finance Agencies (NALHFA), founded in 1982, is the national association of professionals working to finance affordable housing in the broader community development context at the local level. As a non-profit association, NALHFA is an advocate before Congress and federal agencies on legislative and regulatory issues affecting affordable housing and provides technical assistance and educational opportunities to its members and the public.

³ NCSHA is a nonprofit, nonpartisan organization. None of NCSHA's activities related to federal legislation or regulation are funded by organizations that are prohibited by law from engaging in lobbying or related activities.

⁴ HUD Mortgagee Letter 19-06: Downpayment Assistance and Operating in a Governmental Capacity, April 18, 2019. Available at: <https://www.hud.gov/sites/dfiles/OCHCO/documents/19-06hsgml.pdf>.

⁵ HUD Mortgagee Letter 19-07: Extension of the Effective Date of Mortgagee Letter 19-06, Downpayment Assistance and Operating in a Governmental Capacity, April 25, 2019. Available at: <https://www.hud.gov/sites/dfiles/OCHCO/documents/19-07ml.pdf>.

ML 19-06. Prior to the issuance of the new ML, these requirements would have been effective for FHA case numbers issued on or after April 18, 2019.

The requirements described in the ML have important implications for state and local housing finance agencies (HFAs) and lenders alike. While we support FHA's efforts to ensure proper administration of DPA programs, some of the newly published requirements within the ML leave state and local HFAs susceptible to losses and complicate their ability to comply with the revised certification process. Lenders and HFAs would both benefit from standardized documentation requirements for determining eligibility.

For example, language found on pages 5 and 6 of the ML is written in such a manner that it could be interpreted as prohibiting HFAs from establishing a sales contingency on the first mortgage when committing to fund DPA to lenders. Such a policy will make it exceedingly difficult for HFAs to generate sufficient funds to administer sustainable downpayment assistance programs, as HFAs generate income from the sale and servicing of these loans. Therefore, this restriction becomes problematic should the lender choose to sell the mortgage and the servicing to another investor after the HFA has funded the DPA.

We do not believe that FHA intended to prohibit HFAs from making the commitment of downpayment assistance funds contingent on the first mortgage loan being originated through their program and transferred to the HFA. However, as currently constructed, the language in the ML is overly broad and could be interpreted to forbid governmental entities from placing any contingencies on their downpayment assistance commitments, even those that simply require that the first mortgage be originated through their programs and transferred to them. We respectfully request that HUD issue a clarifying ML that permits transfers from the originating lenders to the governmental entity or the governmental entity's dedicated mortgage servicer.

The ML also establishes new documentation standards that lenders must follow to verify whether HFA programs meet HUD's requirements. HFAs throughout the country have different business models and varying levels of operational capacity. Therefore, requiring each lender and governmental entity to certify its respective jurisdictional and governmental authority without an FHA-approved template will result in discontinuity and dissimilar interpretations of compliance with the ML. We recommend that FHA utilize a platform, such as the FHA "Drafting Table," to develop a standardized form that will assist stakeholders in complying with the certification requirements in the ML.

MBA, NALHFA, and NCSHA support FHA's efforts to promote safe and sustainable financing for borrowers utilizing downpayment assistance and offer the above recommendations to preserve the viability of these programs.

We appreciate your consideration of our concerns and recommendations. Should you have questions or wish to further discuss these comments, please contact Julienne Joseph, Assistant Director of Government Housing Programs at MBA, at (202) 557-2782 and jjoseph@mba.org, Jonathan Paine, Executive Director at NALHFA, at (202) 367-1197 and jpaine@nalhfa.org, or Greg Zagorski, Senior Legislative and Policy Associate at NCSHA, at (202) 624-7730 and gzagorski@ncsha.org.

Sincerely,



Pete Mills

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Mortgage Bankers
Association



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