



ASSISTANT SECRETARY FOR HOUSING
FEDERAL HOUSING COMMISSIONER

Date: May 28, 2021

Mortgagee Letter 2021-12

To: All FHA-Approved Mortgagees
All Direct Endorsement Underwriters
All Eligible Submission Sources for Condominium Project Approvals
All FHA Roster Appraisers
All FHA-Approved 203(k) Consultants
All HUD-Approved Housing Counselors
All HUD-Approved Nonprofit Organizations
All Governmental Entity Participants
All Real Estate Brokers
All Closing Agents

Subject Eligibility Requirements for Certain Non-Permanent Resident Borrowers

Purpose The purpose of this Mortgagee Letter (ML) is to clarify the eligibility of Federal Housing Administration (FHA) insured financing for Deferred Action for Childhood Arrivals (DACA) recipients, while amending the documentation requirements for citizens of the Freely Associated States (FAS) and H-1B nonimmigrants.

Effective Date The guidance in this ML may be implemented immediately, but must be implemented for mortgages with case numbers assigned on or after July 26, 2021.

Public Feedback HUD welcomes feedback from interested parties for a period of 30 calendar days from the date of issuance of this ML. To provide feedback on this policy document, please send feedback to the FHA Resource Center at answers@hud.gov. HUD will consider the feedback in determining the need for future updates.

Affected Programs This guidance applies to all FHA Title II Single Family forward mortgage programs.

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Background Under FHA's longstanding requirements, Non-Permanent Residents are eligible for FHA-insured single-family mortgage financing provided:

- the Property will be the Borrower's Principal Residence;
- the Borrower has a valid Social Security Number (SSN), except for those employed by the World Bank, a foreign embassy, or equivalent employer identified by HUD;
- the Borrower is eligible to work in the United States, as evidenced by the Employment Authorization Document, Form I-766 (EAD), issued by the U.S. Citizenship and Immigration Services (USCIS); and
- the Borrower satisfies the same requirements, terms, and conditions as those for U.S. citizens.

FHA requirements also stated that individuals without lawful residency in the United States are ineligible for FHA-insured mortgage financing. This requirement was included in the policy, but FHA recognizes it was not terminology that had clear consistent meaning.

On June 15, 2012, the Secretary of Homeland Security announced that individuals who arrived in the United States as minors and meet certain additional guidelines may request consideration of deferred action from prosecution for removal for a period of two years under the DACA policy, subject to renewal. These DACA recipients are also eligible for work authorization in the United States during the period of deferred action. Deferred action is an exercise of prosecutorial discretion to defer removal action against an individual for a certain period of time. An individual who has received deferred action is authorized by the Department of Homeland Security (DHS) to be present in the United States during the period deferred action is in effect. FHA's requirements for "lawful residency" pre-date the establishment of DACA and thus FHA did not anticipate the scenario where a prospective borrower may be authorized by DHS to be present during the period of deferred action and eligible for work authorization. Because of this confusion, as announced in FHA INFO #21-04 under the prior Administration, FHA waived Handbook 4000.1 Section II.A.1.b.ii(A)(9)(c) in its entirety in order to provide further clarity regarding the eligibility of FHA-insured mortgage financing for DACA recipients for endorsements on or after January 19, 2021. This ML clarifies existing policies and implements the eligibility requirements instituted by the waiver.

In addition to the requirement for lawful residency, FHA has generally required evidence of employment authorization for Non-Permanent Residents, except for individuals granted asylee or refugee status. However, under the respective Compacts of Free Association (CFAs) between the United States and the FAS of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau; citizens of the

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FAS may apply for admission to the United States as nonimmigrants without visas and are authorized to work without obtaining an EAD. In recognition of such employment authorization, in April 2020, FHA waived the EAD requirement in Handbook 4000.1, II.A.1.b.ii(A)(9)(b) for citizens of the FAS. This ML will update Handbook 4000.1 to remove this requirement. This policy update is also consistent with the respective CFAs between the FAS and the United States. These borrowers still must meet all other pertinent eligibility requirements for FHA-insured financing.

FHA is also aware that non-citizens admitted to the United States under the H-1B nonimmigrant classification and maintaining H-1B status may be eligible to work in the United States without obtaining an EAD. FHA addresses in this ML the eligibility requirements for such individuals.

Summary of Changes

This ML clarifies and continues existing eligibility requirements for Non-Permanent Residents granted deferred action pursuant to DACA policy previously addressed in the January 19, 2021 waiver.

This ML eliminates the requirement to obtain an EAD for Non-Permanent Residents who are citizens of the FAS and certain individuals maintaining lawful H-1B nonimmigrant status who have demonstrated stable employment.

The Residency Requirements section of Handbook 4000.1 is being updated to incorporate these requirements and for further clarity.

Single Family Housing Policy Handbook 4000.1

Handbook 4000.1 Section II.A.1.b.ii(A)(9) is revised as follows:

(9) Residency Requirements

The Mortgagee must determine the residency status of the Borrower based on information provided on the mortgage application and other applicable documentation. A Social Security card is not sufficient to prove immigration or work status. **The following categories of individuals are eligible for FHA-insured financing in accordance with the requirements set forth below:**

(a) Permanent Residents

(i) Standard

A Borrower with lawful permanent resident status may be eligible for FHA-insured financing provided the Borrower satisfies the same requirements, terms and conditions as those for U.S. citizens.

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(ii) Required Documentation

The mortgage file must include evidence of lawful permanent residence and indicate that the Borrower is a lawful permanent resident on the URLA.

The U.S. Citizenship and Immigration Services (USCIS) within the Department of Homeland Security provides evidence of lawful permanent resident status.

(b) Non-Permanent Residents

A Borrower who is a non-permanent resident may be eligible for FHA-insured financing provided:

- the Property will be the Borrower's Principal Residence;
- the Borrower has a valid SSN, except for those employed by the World Bank, a foreign embassy, or equivalent employer identified by HUD;
- the Borrower is eligible to work in the United States provided the borrower provides either:
 - an Employment Authorization Document (USCIS Form I-766) showing that work authorization status is current;
 - a USCIS Form I-94 evidencing H-1B status, and evidence of employment by the authorized H-1B employer for a minimum of one year;
 - evidence of being granted refugee or asylee status by the USCIS; or
 - evidence of citizenship of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau; and
- the Borrower satisfies the same requirements, terms and conditions as those for U.S. citizens.

If the Employment Authorization Document (USCIS Form I-766) or evidence of H-1B status will expire within one year and a prior history of residency status renewals exists, the Mortgagee may assume that continuation will be granted. If there are no prior renewals, the Mortgagee must determine the likelihood of renewal based on information from the employer or the USCIS.

A Borrower residing in the United States by virtue of refugee or asylee status granted by the USCIS must provide documentation:

- Employment Authorization Document (USCIS Form I-766) or USCIS Form I-94 indicating refugee or asylum status, or
 - USCIS Form I-797 notice indicating approval of a USCIS Form I-589, Application for Asylum or Withholding of Removal substantiating the refugee or asylee status.
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Questions Any questions regarding this ML may be directed to the FHA Resource Center at 1-800-CALL-FHA. Persons with hearing or speech impairments may reach this number by calling the Federal Relay Service at 1-800-877-8339. For additional information on this ML, please visit www.hud.gov/answers.

Signature

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