

**WAIVER OF CERTAIN CERTIFICATION AND PRE-ENDORSEMENT
REVIEW REQUIREMENTS AT 24 CFR §§ 203.255(b)(11) and 203.255(c)(7)**

Pursuant to § 7(q) of the Department of Housing and Urban Development Act (HUD Act) (42 U.S.C. § 3535(q)) and 24 C.F.R. § 5.110, I, Brian D. Montgomery, in my capacity as FHA Commissioner, hereby waive Federal Housing Administration (FHA) regulatory requirements as specified below.

Partial Waiver of 24 CFR § 203.255(b)(11)

Section 203.255(b) addresses the documentation that must be submitted to HUD for mortgages originated under the Direct Endorsement and Lender Insurance Programs. Subsection 203.255(b)(11) requires a mortgage certification on a form prescribed by the Secretary, stating that the authorized representative of the mortgagee has reviewed the mortgage documents and certifies that the mortgage complies with the requirements of paragraph (b) incorporating all certification items that apply to the mortgage loan as set forth in the applicable handbook (*i.e.*, HUD Handbook 4000.1). The referenced prescribed form is Form HUD 92900-A. A mortgagee must certify at the time of insurance endorsement the loan is in compliance with all FHA origination and underwriting requirements including that the borrower's employment status and ability to make mortgage payments is accurate. However, we do not believe a mortgagee could truthfully certify to the Mortgagee Certifications on Page 4 of the HUD 92900-A if the mortgagee becomes aware after closing of the mortgage transaction that a borrower has been impacted by the COVID-19 pandemic in such a way that would result in the borrower being unable to make his/her mortgage payment.

1. Therefore, for a mortgage where, after closing of the transaction, the lender grants the borrower an Accommodation as defined at 4021 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) for forbearance of mortgage payments, I hereby waive the requirement in 203.255(b)(11) that the mortgagee must certify, as prescribed on the 92900-A, at the time of insurance endorsement that the loan is in compliance with all FHA origination and underwriting requirements solely to the extent that the borrower's employment status and ability to make mortgage payments for a mortgage is accurate where the borrower has received an Accommodation as defined in section 4021 for a forbearance of mortgage payments.

Partial Waiver of 24 CFR § 203.255(c)(7)

Section 203.255(c), which addresses Pre-endorsement review for Direct Endorsement, states in part at subsection(c)(7) that “[u]pon submission by an approved mortgagee of the documents required by paragraph (b) of this section, the Secretary will review the documents and determine that ... [t]he mortgage was not in default when submitted for insurance or, if

submitted for insurance more than 60 days after closing whether the mortgage shows an acceptable payment history.”

1. For mortgages submitted less than 60 days after closing, I hereby waive the requirement that the mortgage was not in default when submitted for insurance endorsement, where such borrower received an Accommodation as defined in section 4021 of the CARES Act for a forbearance of mortgage payments after closing of the transaction.

2. For mortgages submitted more than 60 days after closing, I hereby waive the requirement that the mortgagee must provide an acceptable payment history, provided that the borrower received an Accommodation in accordance with the requirements of section 4021 of the CARES Act for a forbearance of mortgage payments after closing of the transaction, and if payment history was acceptable prior to such forbearance plan and, if any payments are due under the forbearance plan, such payments reflect an acceptable payment history.

In support of these waivers, I make the following Findings and Determinations:

FINDINGS

1. On March 13, 2020, the President declared the COVID-19 outbreak a national emergency effective March 1, 2020.¹ The Centers for Disease Control (CDC) has recommended that all citizens practice social distancing or self-quarantine to mitigate the spread of COVID-19. In addition, certain state and local jurisdictions have mandated shelter in place.² As a result, many employers are complying with the CDC guidance and mandatory shelter in place policies and have either closed or will be closing their offices. These closures have, in turn, affected the ability of borrowers to continue to make timely mortgage payments. On March 27, 2020, the President signed the CARES Act. Among the relief provided at section 4021 of the CARES Act, is an amendment to the Fair Credit Reporting Act for the reporting of debtor information during the COVID-19 pandemic. In particular, the CARES Act modifies the requirements for reporting credit accounts where a creditor has entered into an Accommodation during the “covered period” as clarified in section 4021.³ For example, an agreement for assistance or relief to a consumer who is affected by the COVID-19 such as a forbearance plan.
2. As a result of a Mortgagee’s intent to comply with a request for an Accommodation for a forbearance of mortgage payments for a borrower affected by COVID-19, a Mortgagee may not be able to comply with certain FHA program regulations including certification and pre-endorsement review requirements. This could also have negative implications for prospective FHA borrowers and seems inconsistent with the intent and purpose of the CARES Act.

¹ See <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

² See <https://www.nytimes.com/2020/03/17/us/shelter-in-place-order-bay-area.html>.

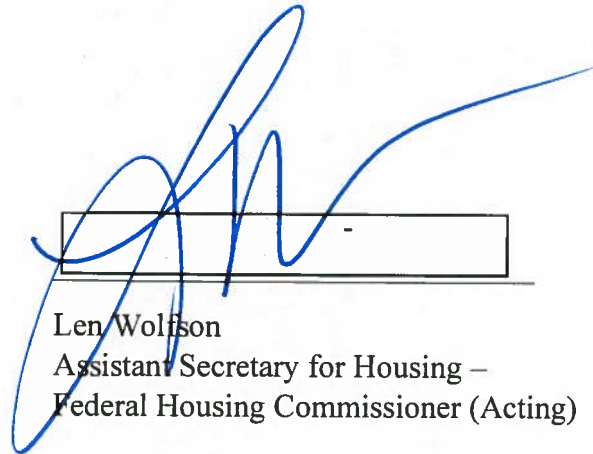
³ See CARES Act section 2021(f)(i)(II).

3. Therefore, I will waive the requirements at §§ 203.255(b)(11) and (c)(7) for reasons specified above.

DETERMINATIONS

1. Accordingly, pursuant to the authority contained in 24 CFR 5.110, good cause has been shown that it is in the public interest and consistent with the Department's objectives to waive the requirements specified in §§ 203.255(b)(11) and (c)(7) for any mortgage submitted where the Mortgagee has offered and granted a borrower an Accommodation as that term as defined at section 4021 of the CARES Act for a forbearance of mortgage payments.
2. There is no statutory authority that would preclude this waiver.
3. Granting these waivers does not unduly increase the potential risk to the Mutual Mortgage Insurance Fund.
4. Mortgages that are endorsed for FHA insurance must comply with all other requirements including FHA servicing policies pertaining to forbearance plans and other loss mitigation requirements.
5. These partial waivers shall apply to mortgages receiving an Accommodation, for a forbearance plan, beginning on January 31, 2020 and ending on the later of July 25, 2020 or 120 days after the date on which the national emergency concerning the novel coronavirus disease COVID-19 National Emergency declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601, *et seq.*) terminates.

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Washington, DC



Len Wolfson
Assistant Secretary for Housing –
Federal Housing Commissioner (Acting)