



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

November 17, 2010

Mortgagee Letter 2010-38

To: ALL APPROVED MORTGAGEES

Subject Mortgagee Eligibility Requirements and Clarification of FHA's Electronic Annual Certification Requirements and Procedures

Purpose of this Mortgagee Letter Recent regulatory guidance for individuals and entities participating in the origination of FHA-insured mortgage loans have listed a number of changes to the eligibility criteria for participation in FHA programs. Section 203 of the "Helping Families Save Their Homes Act of 2009" (HFSH Act); the Final Rule FR 5356-F-02, "Continuation of FHA Reform: Strengthening Risk Management through Responsible FHA-approved Lenders"; and Mortgagee Letter 2009-31 all make mention of new or revised eligibility criteria. This Mortgagee Letter provides additional information about FHA's implementation of these requirements and provides clarification regarding FHA's electronic annual certification requirements and procedures.

Effective Date All requirements contained in this Mortgagee Letter are effective immediately.

Information Collection Requirements Paperwork reduction information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB Control Number 2502-0005. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB Control Number.

Questions If you have questions concerning this Mortgagee Letter, please call 1-800-CALLFHA (1-800-225-5342). Persons with hearing or speech impairments may reach this number via TDD/TTY by calling 1-877-TDD-2HUD (1-877-833-2483).

Clarification of the Term “Unresolved Findings”

In accordance with the HFSH Act and Mortgagee Letter 2009-31, FHA-approved mortgagees shall not be “subject to unresolved findings contained in a Department of Housing and Urban Development or other governmental audit, investigation, or review.” Therefore, all Principal Owners and Corporate Officers of FHA-approved mortgagees must confirm that their institutions and the officers, partners, directors, managers, principals, supervisors, loan processors, loan underwriters, and loan originators of their institutions who participate in FHA programs are not subject to any unresolved findings or federal lawsuits resulting from an investigation, audit, or review by the Department of Housing and Urban Development or other federal, state, or local governmental agencies, or any other regulatory/oversight entities (e.g., banking institution) with jurisdiction over the activities of their institutions and/or employees. The above referenced lawsuits and findings may include, but are not limited to, Fair Housing Act lawsuits by the Department of Justice alleging an ongoing pattern or practice of discrimination; or HUD letters of findings or charges alleging systemic violations of the Fair Housing Act; open issues in any HUD OIG audit, investigation or review; any action by HUD’s Mortgagee Review Board; the suspension, surrender, or revocation of a license of any kind (e.g., Mortgage Broker License, CPA) by a state or local jurisdiction; the imposition of fines, settlement agreements, or other monetary sanctions by a state or local entity; or any other action taken by a government agency. In addition, all Principal Owners and Corporate Officers of FHA-approved mortgagees must confirm that none of its employees or their subsidiaries are involved in investigations or reviews that may be due to an instance of fraud, embezzlement, forgery, or any other crime related to the real estate or mortgage loan industry. The Department considers matters to be “unresolved” until such time as an action is taken by the investigating entity, or the entity formally determines that no action is warranted.

Definition of a Corporate Officer

FHA defines a Corporate Officer as a person with one of the following titles: Owner, President, Vice President, Chief Operating Officer, Chief Financial Officer, Director, Corporate Secretary, Chief Executive Officer, Member (i.e., of a Limited Liability Corporation) and Chairman of the Board. These titles amend paragraph 6-11 of HUD Handbook 4060.1, REV-2.

Properly Notifying HUD of Business Changes

In accordance with Chapter 6 of HUD Handbook 4060.1, REV-2, FHA-approved mortgagees are required to notify HUD in writing of any business change affecting a mortgagee’s approval status or its ability to effectively and efficiently engage in FHA activity. For example, FHA-approved mortgagees are required to notify HUD of any subsequent changes to corporate officers, shareholders, ownership, partnerships or control. All business changes must

be submitted to HUD on the FHA-approved mortgagee's letterhead and must be signed by a principal owner or corporate officer. Notification of business changes must be sent to the following address:

U.S. Department of Housing and Urban Development
Office of Lender Activities and Program Compliance
Attn: Director, Lender Approval and Recertification Division
451 7th Street, SW Room B-133/P3214
Washington, DC 20410

**Properly
Notifying HUD
of Address
Changes**

As previously stated, FHA-approved mortgagees are required to notify HUD in writing of any business changes. Such notifications include changes in a mortgagee's address. A mortgagee is required to ensure that FHA Connection maintains its current addresses at all times. To ensure that HUD's Office of Lender Activities and Program Compliance, Mortgagee Review Board, Office of General Counsel, and Office of Inspector General are able to send official notices to FHA-approved mortgagees, an address field has been designated in FHA Connection for this specific purpose. The new field is labeled as "Administrative Address." The address the mortgagee inputs in the "Administrative Address" field must be a street address in order for HUD to ensure delivery confirmation of a notice.

**Timeframes
Associated with
Criminal
Activity**

As previously stated in 24 CFR Part 202 and Mortgagee Letter 2009-31, all Principal Owners and Corporate Officers must confirm that their officers, partners, directors, managers, principals, supervisors, loan processors, loan underwriters, and loan originators participating in FHA programs have not been convicted of, or pled guilty or nolo contendere to, a felony related to participation in the real estate or mortgage loan industry:

- (i) during the 7-year period preceding the date of the application for licensing and registration; or
 - (ii) at any time preceding such date of application, if the felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering.
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Clarification of Compliance with SAFE Act Requirements

All Principal Owners and Corporate Officers of FHA-approved mortgagees must confirm that their institution and its officers, partners, directors, principals, managers, supervisors, loan processors, loan underwriters, or loan originators participating in FHA programs are not in violation of the provisions of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act) (Public Law 12 U.S.C. 5101 et seq.) or any applicable provision of state law. Principal Owners and Corporate Officers must confirm that all employees, as required, consistently meet their respective state's licensing requirements as well as all federally-mandated licensing or registration requirements including registration with the Nationwide Mortgage Licensing System and Registry (NMLS).

Reminder of HUD's Annual Recertification Requirements and Definition of "Acceptable" Audited Financial Statements

As a reminder, there are three steps to FHA's Annual Recertification process. The Annual Recertification process includes: (1) the completion of the online Annual Certification; (2) electronic payment of the Annual Renewal Fee; and (3) electronic submission of "acceptable" Audited Financial Statements. In order for a mortgagee's Audited Financial Statements to be deemed "acceptable", they must be prepared in accordance with Generally Accepted Accounting Principles (GAAP), Generally Accepted Auditing Standards (GAAS), Generally Accepted Government Auditing Standards (GAGAS), and HUD's Office of Inspector General's Handbook 2000.04, "Consolidated Audit Guide for Audits of HUD Programs."

All FHA-approved mortgagees must complete the entire Annual Recertification process online via the FHA Connection in order to maintain their FHA approval status. Mortgagees are required to complete the Annual Recertification process within 90 days of their fiscal year end. Government Mortgagees are not required to electronically submit the Annual Renewal Fee and Audited Financial Statements.

New Guidance on Completing the Electronic Annual Certification

FHA's Annual Recertification process requires all mortgagees to complete the online Annual Certification (formerly known as the Yearly Verification Report) prior to electronically submitting the annual renewal fee and audited financial statements. Each Principal Owner or Corporate Officer responsible for completing a company's Annual Certification is required to have his or her own FHA Connection user ID and password, and be registered with HUD as an owner or officer. FHA Connection Users are not permitted to share their user IDs and passwords. Doing so will result in a user's FHA Connection rights being suspended or revoked.

**New
Information
for Mortgagees
Unable to
Certify**

The online Annual Certification requires mortgagees to certify to the accuracy of each of the statements found in the certification. Certification of these statements is required to ensure that mortgagees provide FHA with the most current information about their institution and its compliance with all applicable laws for the fiscal year in which the mortgagee is renewing its FHA approval status. Consequently, a mortgagee's Principal Owner or Corporate Officer's online Annual Certification covers the period for the fiscal year the mortgagee is recertifying.

If a mortgagee's Principal Owner or Corporate Officer is not sure whether one or more of the statements comprising the online Annual Certification is accurate for their institution, then the "Unable to Certify" box must be checked. Checking this box requires the mortgagee to provide an explanation for its inability to certify.

FHA will review a mortgagee's explanation for being "Unable to Certify" within 15 days and render a final decision regarding the mortgagee's ability to complete the Annual Recertification process. If additional documentation is needed prior to making a final decision, the mortgagee will be advised and given a date on which the documentation must be provided to FHA. Mortgagees who falsely certify for any reason will be referred to the Mortgagee Review Board.

Signature

David H. Stevens

Assistant Secretary for Housing-Federal Housing Commissioner