



September 12, 2019

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

RE: OMB Approval Number: 2502-0005
Title of Information Collection: FHA Lender Approval, Annual Renewal, Periodic Updates and Required Reports by FHA-Approved Lenders

The Housing Policy Council, the Mortgage Bankers Association, the American Bankers Association, and the Bank Policy Institute are jointly writing in response to the U.S. Department of Housing and Urban Development's ("HUD" or "Department") request for comments on the proposed amendments to the Federal Housing Administration ("FHA") lender annual certification statements, which HUD published in the Federal Register on August 14, 2019 ("Proposal").¹ We understand that the Proposal's certification statements reflect public comments submitted to FHA in response to the previous draft posted on the FHA Office of Single Family Housing "Drafting Table"² in May 2019, including comments that we submitted. We appreciate the opportunity to provide additional feedback on this updated and formal proposal for revised annual certification statements.

We appreciate HUD's efforts to align the certification statements more directly with the existing regulatory requirements for the annual recertification process. We also share HUD's view that it is critical both to create an environment in which lenders can operate with clarity and certainty regarding FHA's program requirements and to clarify the potential penalties for noncompliance. We believe that the Proposal's annual certification statements will assist in accomplishing these goals. The revised certification statements reinforce a mortgagee's obligation to adhere to FHA program rules and support HUD's objective to hold lenders accountable and protect the FHA Mutual Mortgage Insurance ("MMI") Fund. The statements accomplish these important goals without requiring overly broad attestations of compliance with regulatory and HUD Handbook 4000.1 ("Handbook") provisions to

¹ 84 Fed. Reg. 40,435 (Aug. 14, 2019).

² See https://www.hud.gov/program_offices/housing/sfh/SFH_policy_drafts. The Department first solicited public comment on the information collection on March 12, 2019. See 84 Fed. Reg. 8,888 (Mar. 12, 2019).

which the mortgagee is already subject that would increase the risk of potential liability under the False Claims Act.

We wholeheartedly support replacing the current annual certification statements with the Proposal's certification statements, and we recommend that implementation of the new statements occur as quickly as reasonably possible. We also offer the following suggestions:

- **Sanction Definition** – We respectfully ask the Department to consider making one change to the Proposal's annual certification language. Specifically, in certification statement #3 in Appendix A to the Proposal, we recommend capitalizing the words "sanctioned" and "Sanctions" (if our suggestion below is implemented) to make clear that either word carries the definition of "Sanction" set forth in the Glossary to the Handbook.³ This amendment would be consistent with the Department's use of other capitalized terms in the annual certification statements to reference Handbook definitions, such as "Certification Period" and "Mortgagee," and would create uniformity between the annual certification statements and Handbook requirements.
- **Re-disclosures** – The Department should also clarify – in the annual certification statements, the Handbook guidance regarding the annual certification process, and/or the FHA Lender Electronic Assessment Portal ("LEAP") User Manual – that any events reported to HUD during the course of a mortgagee's Certification Period, as that term is defined in the Handbook, and for which the mortgagee received explicit clearance from HUD to continue with the certification process, would not render any of the Proposal's annual certification statements inaccurate. This change would mirror the reporting practice that exists in today's annual recertification process. Further, the recertification process would be more accurate and more efficient for both mortgagees and HUD staff without re-disclosure of items previously reported, reviewed, and cleared during the Certification Period.

Assuming HUD incorporates this concept into the certification statements, we recommend using language from the existing certification. Specifically, we recommend amending statements #2 and #3 in Appendix A to the Proposal by adding the bolded language as follows:

Statement #2: I certify that, during the Certification Period, the Mortgagee, or any Corporate Officer (as defined at HUD Handbook 4000.1 I.A.3.c.iv.(B)) was not: (a) Subject to a suspension, debarment, or under a Limited Denial of Participation (LDP); or (b) Refused or had revoked, any license necessary to

³ The Glossary to HUD Handbook 4000.1 currently defines the term "Sanction" as follows: "A Sanction is any penalty, punitive or restrictive measure taken for a failure to comply with a court order, federal, state or local government law, rule or regulation."

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conduct normal operations in the mortgage loan industry by any State(s) (as defined at 12 U.S.C. 1707(d)) in which the Mortgagee will originate insured mortgages or Title I loans; **except for those occurrences, if any, that the Mortgagee reported to HUD and for which the Mortgagee received explicit clearance from HUD to continue with the certification process.**

Statement #3: I certify that during the Certification Period the Mortgagee was not Sanctioned by any State(s) (as defined at 12 U.S.C. 1707(d)) in which the Mortgagee will originate insured mortgages or Title I loans, **except for those Sanctions, if any, that the Mortgagee reported to HUD and for which the Mortgagee received explicit clearance from HUD to continue with the certification process.**

We welcome FHA's commitment to provide the clarity and certainty necessary to increase lender participation in the FHA program. Implementation of a coordinated and complementary annual certification, loan-level certification, and Defect Taxonomy is necessary to create and foster a regulatory environment that will boost lender confidence in the FHA program. The Proposal's annual certification statements provide a positive first step for FHA to achieve this objective, which should help to increase and diversify lender participation in the FHA program, strengthen the MMI Fund, and ultimately expand access to credit to the benefit of FHA, homeowners, and communities.

We thank you for the opportunity to comment on the Proposal, and we look forward to continuing this dialogue with HUD representatives in furtherance of our shared crucial objectives. We would welcome the opportunity to meet with HUD representatives to discuss the Proposal's annual certification statements. If you have any questions regarding our comments, please feel free to contact MBA's Fran Mordi, Associate Vice President for Tax, Accounting, and Financial Management, at (202) 557-2860, HPC's Meg Burns, Senior Vice President for Mortgage Policy, at (202) 589-1926, ABA's Rod Alba, Senior Vice President for Mortgage Markets, at (202) 663-5592, or BPI's Naeha Prakash, Senior Vice President and Associate General Counsel, at (202) 589-2429.

Thank you for your consideration.

Sincerely,

Housing Policy Council
Mortgage Bankers Association
American Bankers Association
Bank Policy Institute