

September 18, 2009

MORTGAGEE LETTER 2009-31

TO: ALL APPROVED MORTGAGEES

SUBJECT: Strengthening Counterparty Risk Management

This mortgagee letter provides notice of several FHA program changes as a result of the enactment of the "Helping Families Save Their Homes Act of 2009" (Public Law 111-22) (the HFSH Act). Section 203 of the HFSH Act contains provisions that provide limitations on those eligible to participate in FHA programs, restricts the use of a mortgagee name in advertising and promotional materials, places additional requirements on FHA-approved mortgagees, and expands FHA's authority to pursue civil money penalties for violations of program requirements. These new requirements will help to strengthen FHA's oversight of approved lenders and better manage program risks.

Ineligible Participants

The HFSH Act establishes additional ineligibility criteria for FHA-approved lenders and mortgagees. These ineligibility criteria were effective upon enactment of the HFSH Act. The HFSH Act directs that a lender or mortgagee shall not have any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, or loan originator of the applicant mortgagee who is:

- (1) currently suspended, debarred, under a limited denial of participation (LDP), or otherwise restricted under part 25 of title 24 of the Code of Federal Regulations, 2 Code of Federal Regulations, part 180 as implemented by part 2424, or any successor regulations to such parts, or under similar provisions of any other Federal agency;
- (2) under indictment for, or has been convicted of, an offense that reflects adversely upon the applicant's integrity, competence or fitness to meet the responsibilities of an approved mortgagee;
- (3) subject to unresolved findings contained in a Department of Housing and Urban Development or other governmental audit, investigation, or review;
- (4) engaged in business practices that do not conform to generally accepted practices of prudent mortgagees or that demonstrate irresponsibility;
- (5) convicted of, or who has 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 such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering;

(6) in violation of provisions of the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) or any applicable provision of State law; or

(7) in violation of any other requirement as established by the Secretary.

While this mortgagee letter advises of additional ineligibility criteria imposed by statute in determining entities that FHA may approve as lenders and mortgagees, this mortgagee letter does not alter the current procedures in place in regulation and handbook applicable to appeal of adverse determinations.

Expiration of existing FHA approval: Entities already approved by FHA will not be permitted to renew their status at the next annual recertification date if they are not in compliance with the above-listed eligibility criteria. Effective with the issuance of this mortgagee letter:

- Applications for approval submitted prior to the issuance of this mortgagee letter, but not yet approved, will be returned to the applicant, along with the application fee, for reapplication in accordance with the new criteria listed above.
- The FHA approval for mortgagees that are not approved under the new criteria will expire thirty days after the recertification date.

Change of Lender's Fiscal Year End Date

All requests by lenders to change the ending date of their fiscal year must be submitted in writing on company letterhead and signed by an executive officer to: Director, Lender Approval and Recertification Division, 451 7th St SW, Rm B-133/P3214, Washington DC 20410. FHA reserves the right to deny such requests and will notify lenders accordingly when such denials occur.

Change requests must be submitted 90 days prior to the end of a lender's current fiscal year as shown in FHA records in order to be considered. If a lender is non-supervised, the subsequent audited financial statements that must be submitted as part of the annual renewal of FHA lender approval cannot have an ending date greater than 18 months after the submission to FHA of the preceding fiscal year's audited financial statements.

Submission of Audited Financial Statements by Supervised Mortgagees

Effective January 1, 2010, and consistent with the authority of section 203(b)(1) of the National Housing Act, all supervised mortgagees must now submit an annual audited financial statement within 90 days of their fiscal year end. Audited financial statements must be submitted in accordance with HUD Handbook 4060.1 REV-2 and prepared and audited in accordance with HUD's Inspector General's most recent [Handbook 2000.04](#), *Consolidated Audit Guide for Audits of HUD Programs*. Financial Statements must be submitted electronically through FHA's Lender Assessment Sub System (LASS).

LASS is a web-based portal that allows lenders to upload their audited financial statements for FHA review. Chapter 4 of HUD Handbook 4060.1 Rev 2 provides further details on submission

of audited financial statements through LASS. This new requirement is a prudent safeguard that permits FHA to ensure that those entities with which it does business are adequately capitalized to meet potential needs. FHA is aware that the majority of supervised and non-supervised mortgagees are already required to prepare audited financial statements for various regulatory bodies, GSEs, and investors. Therefore, this additional requirement should have a minimal impact on approved mortgagees.

Use of Name

Consistent with section 203 of the HFSH Act, FHA-approved mortgagees must use their HUD registered business names in all advertisements and promotional materials related to FHA programs. HUD registered business names include any alias or “doing business as” (DBA) on file with FHA. FHA-approved mortgagees must keep copies of all advertisements and promotional materials for a period of two years from the date that the materials are circulated or used to advertise.

Change of Mortgagee Status

Consistent with section 203 of the HFSH Act, approved lenders are required to notify FHA if individual employees of the lender are subject to any sanction or any other administrative action. Additionally, lenders are required to notify FHA if there is a revocation of a State-issued mortgage loan originator license issued pursuant to the S.A.F.E. Act. In addition to notifications already required by HUD Handbook 4060.1, REV-2, Chapters 2 and 6, FHA-approved lenders must notify FHA of the following business changes:

- (1) the debarment, suspension or a Limited Denial of Participation (LDP), or application of other sanctions, other exclusions, fines, or penalties applied to the lender or to any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, or loan originator of the lender pursuant to applicable provisions of State or Federal law; and
- (2) the revocation of a State-issued mortgage loan originator license issued pursuant to the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) or any other similar declaration of ineligibility pursuant to State law.

All FHA-approved lenders must report these changes immediately in writing on company letterhead and signed by a senior officer to: Director, Lender Approval and Recertification Division, 451 7th St. SW, Rm B-133/P3214, Washington, DC 20410.

Civil Money Penalties

The HFSH Act expands FHA’s ability to seek civil money penalties against any owners, officers, or directors, of an FHA-approved mortgagee for violations of program requirements. FHA is also authorized to pursue civil money penalties against:

- (1) any non-FHA approved or unauthorized individual or entity that originates an FHA-insured mortgage;

- (2) any participant in FHA programs that causes or participates in any violation set forth in Section 536 (b)(1) of the National Housing Act;
- (3) any person, party, company, firm, partnership, or business, including sellers of real estate, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents, for any use of Federal Housing Administration, Department of Housing and Urban Development, Government National Mortgage Association, Ginnie Mae, the acronyms HUD, FHA, or GNMA, or any official seal or logo of the Department of Housing and Urban Development except as authorized by the Secretary.

In addition, the HFSH Act amended the definition of “knowingly” such that a person acts knowingly when he or she has actual knowledge of acts or should have known of the acts.

HUD’s civil money penalties regulations will be updated with a conforming rule published at a later date.

Effective Dates: Except as otherwise noted above, the provisions of the HFSH Act were effective upon enactment of the Act. The appropriate HUD handbooks pertaining to these new requirements will be updated within 120 days from the issuance of this mortgagee letter. Furthermore, HUD will issue conforming regulations as necessary. The reporting and recordkeeping requirements in this mortgagee letter are effective upon assignment of an approval number by the Office of Management and Budget (OMB). The OMB approval number when assigned will be announced.

Title I Lender Approval: All provisions of this mortgagee letter also apply to currently approved Title I lenders and future applicants for Title I lender approval.

If you have questions regarding this mortgagee letter, please call the FHA Resource Center at 1-800-CALL-FHA (1-800-225-5342). Persons with hearing or speech impairments may access this number via TDD/TTY by calling 1-877-TDD-2HUD (1-877-833-2483).

Sincerely,

David H. Stevens
Assistant Secretary for Housing-
Federal Housing Commissioner

Paperwork Reduction Act

Paperwork reduction information collection requirements contained in this document are pending by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The OMB approval number when assigned will be announced. 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.