



December 23, 2009

The Honorable David Stevens
Assistant Secretary for Single-Family and FHA Commissioner
U.S. Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

Re: Federal Housing Administration (FHA): Continuation of FHA Reform – Strengthening Risk Management Through Responsible FHA-Approved Lenders, Docket No. FR 5356–P–01, RIN 2502–A181

Dear Commissioner Stevens:

The Mortgage Bankers Association (MBA)¹ appreciates the opportunity to respond to the Department of Housing and Urban Development's (HUD) proposal to reform and strengthen the risk management of the Federal Housing Administration (FHA) (Proposed Rule).² Under the Proposed Rule, FHA will preclude certain lending entities from originating an FHA-insured loan; increase the net worth requirement for FHA-approved mortgagees; and no longer approve loan correspondents as approved participants in FHA programs.

MBA Position

MBA supports limiting the FHA approval process to qualified mortgagees and increasing the net worth requirements for FHA-approved mortgagees. However, MBA disagrees with the FHA's assertion that the Proposed Rule will not have a significant economic impact. We therefore request that the net worth phase-in period be increased from three to five years. We also request the FHA to issue supervisory guidance to assist FHA-approved mortgagees in implementing the new loan correspondent approval procedures. Furthermore, MBA requests the FHA to clarify that the increased net worth requirements apply to FHA-approved single family mortgagees, and set a separate net worth requirement for FHA-approved multifamily mortgagees at \$500,000 plus one percent of annual origination volume (based on commitments issued), up to \$1.5 million.

Additional comments regarding the Proposed Rule are below.

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

² 74 Federal Register 62521 – 62531, (Nov. 30, 2009).

Limiting Approval to Mortgagees

Under the Proposed Rule, FHA would no longer approve loan correspondents as approved participants in FHA programs and would instead require FHA-approved mortgagees to ensure the qualifications of their loan correspondents. FHA believes this change is appropriate because it focuses the administrative burden of the lender approval process to those entities that bear the greatest responsibility for the validity and eligibility of the loan for FHA insurance.³

Minimum Standards for Loan Correspondents

MBA fully appreciates the FHA's objective in directing the agency's limited supervisory resources to the most critical lending party to a mortgage transaction. As with any new procedure, however, consistency and clarity are vital to its successful implementation and enforcement. Therefore, MBA requests that the FHA issue guidance to establish minimum standards that lenders should incorporate into their loan correspondent management and oversight practices. FHA should provide clarity around requirements of mortgagees to ensure integrity of loan processors in broker and correspondent transactions. For example, MBA believes that the minimum net worth for brokers should be raised to \$150,000. This amount is less than the average FHA loan balance, but considerably more than the current \$63,000 requirement. FHA also should require Mortgagees to maintain a suitable ongoing broker recertification program. MBA suggests the following additional criteria serve as thresholds for inclusion in FHA guidance for approving loan correspondents. Brokers should be required to:

1. Have a net worth of at least \$150,000. At least 20 percent of assets must be liquid.
2. Provide certified (original) audited financial statement with a computation of adjusted net worth within the past year;
3. Demonstrate quality control policies and procedures;
4. Provide copies of appropriate state license and/or registration;
5. Provide original Residential Mortgage Credit Reports on senior officers and all persons having 25 percent or more ownership interest and an original business credit report or Dunn & Bradstreet on applicant;
6. Provide resumes of Senior Corporate Official designated to handle FHA affairs (must show at least three years of experience in loan origination);
7. Show proof of compliance with all bonding requirements; and
8. Show proof of compliance with the Secure and Fair Enforcement Mortgage Licensing Act of 2008 ("SAFE Act").

MBA believes that minimum standards, helps to level the playing field for all lenders and reduces the ability of unscrupulous lenders to condone poor lending practices from their brokers. Responsible lending and high quality must not be compromised. MBA is committed to working with FHA to maintain the integrity of our industry and ensure that bad actors are purged the system. For example, MBA believes Neighborhood Watch is a critical resource for lenders to use as a monitoring tool. We urge FHA to avoid

³ Id. at 62523.

implementing the Proposed Rule in a way that compromises the effectiveness of Neighborhood Watch.

Furthermore, MBA requests that minimum standards for correspondents and any future modifications be developed through the public notice and comment procedures of the Administrative Procedures Act. We believe this approach serves the dual purpose of ensuring that FHA's actions are conducted transparently, and enabling the FHA to obtain input from a diverse range of interested parties.

Statutory and Regulatory Clarifications

MBA also requests clarification of the implications associated with HUD no longer approving a loan correspondent's Areas Approved for Business (AAFB). Under the Proposed Rule it is unclear whether eliminating the AAFB approval process for loan correspondents means that FHA-approved mortgagees would be permitted to accept FHA loan applications outside of the mortgagee's own AAFB. Given that FHA-approved mortgagees would be responsible for the relevant requirements of their correspondents, we recommend eliminating FHA's AAFB policy. We do understand that this would affect the monitoring process with Neighborhood Watch, but we do believe that it can be managed.

Operational Considerations

MBA notes that the Proposed Rule generates several operational issues that we urge FHA to clarify before changing its mortgagee approval policy. These operational considerations include:

- Will the Principal Agent/Authorized Agent relationship between two FHA-approved lenders remain the same?
- Will there be any specific mandatory standards for FHA-approved mortgagees to follow during the approval process? Will there be any restrictions on lender overlays?
- What are the additional sanctions to the FHA-approved mortgagee for any violations? Does this include monetary, suspension, termination, etc. or all of the above?
- Since this proposed policy prohibits a correspondent and/or non-approved broker from closing in its own name, how would this effect state licensing, RESPA, pricing, fee restrictions, etc.?
- How does this policy impact the monitoring of existing lenders' performance?

As mentioned above, without adequate direction, lenders will interpret requirements differently and results will be inconsistent. MBA stands ready to work with FHA on helping to establish or clarify expectations, policies and procedures to ensure an efficient transition to any new policy.

Net Worth Requirements: FHA-Approved Mortgagees – Single family

MBA has supported and continues to support rigorous standards for mortgage bankers as a part of maintaining adequate consumer protections. Mortgage bankers lend money and offer mortgage products directly to consumers through their own retail sales forces, by funding loans arranged by brokers and by purchasing loans originated by other mortgage bankers. In most cases, mortgage bankers maintain exacting guidelines for their mortgage products. Mortgage bankers also must operate in accordance with multiple levels of both federal and state government regulations and oversight. In addition, mortgage bankers must meet the guidelines and requirements of secondary market participants, loan insurers and guarantors, and other investors.

Maintaining capital is an important component of mortgage banking. However, high net worth does not automatically equate to high integrity. Lenders of all sizes have served their communities for years by meticulous respect for their customers and responsible lending.

MBA supports the Proposed Rule's requirement of up to \$2.5 million for corporate net worth for mortgage lenders and that 20 percent of the net worth must be in liquid assets. However, we strongly believe market conditions merit an increased phase-in period to reach that amount. We also suggest that the new net worth requirement for lenders of FHA products should be consistent across all states in an effort to uniformly protect and lower costs to consumers through maximum competition. We also support mortgage bankers maintaining a bond in accordance with requirements of each state sufficient to provide reasonable protection to consumers and others.

Increase Phase-In Period

MBA requests that FHA-approved mortgagees be permitted to increase their net worth to \$2.5 million over the next five years instead of three as currently proposed, with lenders meeting a minimum net worth of \$1 million by the end of year one. HUD's analysis in support of the Proposed Rule underestimates the economic impact on small lenders to meet the terms of the proposed requirements. Moreover, the fact that FHA's minimum net worth requirement has not changed in 16 years, does not justify a tenfold increase during the next three years. The normal mortgage business is cyclical, with lenders experiencing both good and bad years. Because the country is in the midst of an especially unstable economy with a volatile housing market, the current business cycle is especially hard to predict. Given the current market conditions, lenders who have operated under the current net worth requirements for many years must be given adequate time to adjust to the new requirement of a minimum \$2.5 million net worth. Based on MBA analysis, it will take companies with a current net worth of approximately \$1 million five years to retain enough earnings to reach the \$2.5 million threshold.⁴ Smaller lenders need time to build retained earnings, change business models and/or find additional sources of capital.

⁴ Based on Q209 retained earnings. Assumes no change in current operating expenses.

We also request clarification on whether or not correspondents can convert to mortgagees. We recommend that if current lender correspondents can gain the net worth and meet approval requirements then they should be allowed to become approved FHA mortgagees.

Net Worth Requirements: FHA-Approved Mortgagees – Multifamily

The proposed rule appears to include mortgagees originating multifamily mortgages, although there is no specific mention of either a rationale for the increase in net worth for multifamily lenders or the effects of the change on multifamily mortgagees. The Supplementary Information accompanying the Proposed Rule states several reasons for increasing net worth but few would apply to the multifamily programs. Moreover, the Supplementary Information does not address the affects of the Proposed Rule on multifamily mortgagees nor does it consider the differences in the multifamily business model. HUD's current requirements recognize the differences in both operation and experience and set minimum net worth for single family mortgagees at \$250,000 plus one percent of mortgage volume exceeding \$25 million, up to \$1 million. Multifamily lenders are required to hold only \$250,000 in net worth.

MBA agrees that a net worth increase is justified for all mortgagees, based on inflation. However, inflation has been only a little more than 50 percent from 1993 to 2009, which would support an increase from \$250,000 to approximately \$375,000. We also agree that larger volumes of lending should require a higher net worth, thus imposing less of a burden on small companies originating smaller loans. MBA submits the following additional factors that support a different net worth requirement for FHA-approved multifamily mortgagees.

- 1) The Proposed Rule asserts that the net worth increases “reflect ... the lessons learned as a result of the housing market crisis.” While FHA has experienced significantly increased defaults and claims in its single family programs, increases have been modest in FHA multifamily programs. A comparison of the most recent 30-day delinquency percentages for single family (6.34 percent in the third quarter of 2009) to the 30-day delinquency percentages for multifamily programs (1.7 percent for FY2009) clearly demonstrates that the problems being experienced in single family are not being manifested in multifamily. Claims rates are similarly disparate with multifamily claims rates at 0.3 percent for FY09 while single family seriously delinquent rates are currently 8.67 percent. While delinquencies may increase in the multifamily programs as the recession plays out (although they decreased from FY08 to FY09), we expect that they will, in large part, be the result of economic conditions, not poor or inadequate underwriting or fraudulent mortgagee activities.
- 2) The processing of multifamily loans in the FHA programs differs significantly from the single family direct endorsement program. FHA multifamily programs (while heavily reliant on mortgagees' development of data, processing and underwriting) require that each loan be reviewed and approved by HUD staff. The FHA's full approval authority not only helps assure prudent underwriting but

also is a significant deterrent to fraudulent activity by any unscrupulous mortgagees.

- 3) The Proposed Rule notes that mortgagees should be “sufficiently capitalized to meet the potential needs associated with the financial services they provide.” While this is not explained, we assume that, unless a lender is also a Ginnie Mae issuer, the “needs” are intended to cover acts of fraud. Admittedly, increased net worth should be a deterrent to mortgagees submitting applications with fraudulent information. And the net worth could be seized to compensate FHA for losses resulting from the fraud. Absent some evidence that fraud has been a problem in the multifamily programs, it is difficult to argue that net worth should be increased to mitigate losses.
- 4) The Proposed Rule asserts that small businesses will not be affected by the increased net worth requirement as mortgagees have the option of remaining in business as loan correspondents. However, there are no provisions for loan correspondents in the multifamily programs or in the proposed rule and brokers have limited ability to operate in FHA multifamily programs. A significant number of approved existing multifamily mortgagees would be forced out of business if a \$2.5 million net worth requirement is imposed. A ten-fold increase in net worth will be impossible for many lenders to achieve. The proposed rule cites a \$1 million net worth requirement by Ginnie Mae as a justification for increasing the FHA net worth requirement. However, the minimum net worth for Ginnie Mae is not \$1 million but rather \$500,000 plus .2 percent of outstanding Ginnie Mae securities. For many mortgagees, this is significantly less than \$2.5 million. Also a higher net worth can be justified because of the requirement that Ginnie Mae issuers advance their own funds to security holders in the event of delinquency or default on the underlying mortgage. There is no similar requirement in the FHA program.
- 5) The Proposed Rule also cites the \$2.5 million (plus 0.25 percent of outstanding servicing volume) net worth requirement of Fannie Mae as justification for increasing the FHA net worth requirement. It should be noted that Fannie Mae does not have a standard minimum net worth requirement for its non-risk sharing lenders who deliver multifamily affordable housing, as each relationship is reviewed on a case-by-case basis by Fannie Mae which considers, among other factors, whether the servicing is released or retained, the financial strength of the organization and the expected business volume. Freddie Mac multifamily lenders have a minimum net worth requirement of \$2 million and Freddie Mac requires that multifamily lenders service a certain volume of multifamily loans, which would justify the need for a higher net worth.

Based on these factors, MBA recommends the minimum net worth requirement for multifamily lenders be set at \$500,000 plus one percent of annual origination volume (based on commitments issued), up to \$1.5 million.

Expanded Ineligibility Criteria and Adverting Requirements

MBA also requests HUD clarify the requirements for mortgagee eligibility criteria in the Proposed Rule, as authorized by Section 203 of the Helping Families Save Their Homes Act⁵ (HFSH Act). This section limits participation in the origination of an FHA-insured loan. According to the Supplementary Information accompanying the Proposed Rule, HUD believes the statutory criteria are sufficiently specific as to not merit rulemaking.⁶ MBA disagrees. For example, one statutory criteria bars an applicant mortgagee that is under indictment for an offense that reflects adversely upon the applicant's competence. MBA believes the Proposed Rule would be improved by incorporating specific, tangible criteria to augment the statutory language.

MBA also notes that FHA has access to information that is difficult, if not impossible for lenders to access. MBA requests guidance on how lenders would be able to obtain information about "unresolved findings contained in a Department of Housing and Urban Development or other governmental audit, investigation, or review."⁷ MBA also requests clarification on who would be responsible for monitoring the storage and maintenance on all advertisements and promotional materials of a lender for two years. MBA also requests clarification of whether an FHA-approved mortgagee is required to monitor a correspondent's advertising.

Economic Impact

In the Supplementary Information accompanying the Proposed Rule, FHA asserts that the Proposed Rule will not "result in any loss of business by any currently FHA-approved lending entity."⁸ MBA disagrees. MBA believes that if the Proposed Rule is adopted as proposed, it will dramatically alter the mortgage industry and significantly affect the relationships between FHA-approved mortgagees and their correspondents.

MBA requests that HUD consider the significant additional administrative burdens and costs placed on the lender with the adoption of this rule that will ultimately increase consumers' costs. Lenders will need to increase staff, add new processes and acquire new expertise. Since correspondents who are not FHA-approved mortgagees cannot close loans in their own names, the sponsoring lender will need to ensure compliance with a variety of consumer protection requirements such as pricing, fee restrictions and disclosures. MBA would like clarification on whether an FHA-approved lender would be responsible for activities such as transferring cases, cancelling cases, updating cases, and remitting all Mortgage Insurance Premiums based on the Proposed Rule. If so, this will add additional burden and staff requirements for the lender. Additionally, restructuring internal operations and personnel will take time to implement and we request that HUD take this into consideration when finalizing any proposed change.

⁵ Pub. L. 111–22, May 20, 2009.

⁶ 74 Federal Register 62524, (Nov. 30, 2009).

⁷ 74 Federal Register 62523 (November 30, 2009)

⁸ Id. at 62525.

Conclusion

MBA appreciates the multitude of new risk management changes that FHA is undergoing in an effort to secure its viability to serve the market well into the future. MBA, however, requests that these changes be made in a manner that minimizes the disruption of business for responsible lenders and does not ultimately undermine the competition and effective business channels of the mortgage industry. MBA requests that you consider the modifications suggested above. Please contact Tamara King at 202-557-2758 or tking@mortgagebankers.org if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "John A. Courson". The signature is written in a cursive style with a large initial "J" and "C".

John A. Courson
President and Chief Executive Officer