

National Reverse Mortgage Lenders Association
1400 16th Street, N.W.
Washington, DC 20036

December 30, 2009

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW., Room 10276
Washington, DC 20410-0500

Re: [Docket No. FR 5356-P-01]; Federal Housing Administration (FHA): Continuation of
FHA Reform—Strengthening Risk Management Through Responsible FHA-Approved
Lenders

Dear Sir or Madam:

This letter responds to the Federal Housing Administration's proposed rules that would remove FHA approval requirements for FHA Loan Correspondents, increase mortgagee-lender responsibilities in sponsoring and monitoring Loan Correspondents, and impose over time an increase in the net worth requirements for FHA-approved mortgagees (Proposed Rule). This comment letter describes the views of the National Reverse Mortgage Lenders Association (NRMLA).

NRMLA is the principal nationwide trade association for financial services companies that originate, service, and invest in reverse mortgages. NRMLA was founded to enhance the professionalism of those engaged in reverse mortgage lending, and NRMLA is dedicated to assuring quality and integrity in reverse mortgage lending. Over 90% of the reverse mortgages in the United States today are originated or purchased by NRMLA members, and over 95% of the reverse mortgages originated in the United States at this time are home equity conversion mortgage ("HECM") loans insured by the FHA.

Removal of Approval Requirements for FHA Loan Correspondents for Reverse
Mortgages is not Prudent

We understand the FHA's interest in harnessing risk management capabilities of major financial institutions. We also understand the assessment that the private sector may be better able to invest in resources to manage risk than government.

However, as the Department appreciates, the delivery and origination of reverse mortgages requires special knowledge and experience. A senior's choice of obtaining a reverse mortgage often is a once in a lifetime decision. And, the asset the senior will pledge, his or her home, in order to obtain a reverse mortgage, typically is the most valuable asset the senior owns. At a time when there is some concern regarding which entities might be delivering reverse mortgages to our nation's seniors, NRMLA is concerned that FHA's removal of its approval and monitoring of FHA Loan Correspondents could enable companies and individuals lacking sufficient oversight, experience and expertise to originate HECM reverse mortgage loans, without appropriate vetting through the FHA approval process.

Specific Approval for FHA HECM Loan Correspondents is Needed (and is Required by Law)

Importantly, due to changes made to section 255 of the National Housing Act (codified at 12 U.S.C.A § 1715z-20) by the Housing and Economic Recovery Act of 2008 (or the "HERA"), discussed below, we believe that HUD not only should, but respectfully, is required by law to, , review, approve and monitor all entities that will participate in the origination of the FHA-insured HECMs, even if such entities are not FHA-approved Direct Endorsement lending mortgagees.

The preamble to the Proposed Rule states that Loan Correspondents will continue to be authorized to participate in the origination of FHA loans through association with an FHA-approved mortgagee, but that these entities no longer will be subject to the FHA lender approval process. However, this proposal appears to overlook changes in statutory language made to section 255 of the National Housing Act, as enacted under the HERA, which provide that only FHA-approved entities may participate in the home equity conversion loan program. *See* section 2122 of the HERA, which provides that "All parties that participate in the origination of a mortgage to be insured under this section shall be approved by the Secretary." Pub. L. No. 110-289, § 2122(n)(2).

Note that this language amending section 255 of the National Housing Act, as enacted by the HERA, does not contain the phrase "except as authorized by the Secretary" that is included in section 203 of the Helping Families Save Their Homes Act (the HFSH Act). *See* Pub. L. No. 111-22, § 203(b) which provides in part that: "Any person or entity that is not approved by the Secretary to serve as a mortgagee, as such term is defined in subsection (c)(7), shall not participate in the origination of an FHA-insured loan *except as authorized by the Secretary*" (codified at 12 U.S.C. § 1708(d) (emphasis added)).

Unless clarifications are made to the Proposed Rule, apparently only FHA-approved mortgagees will be able to participate in the origination of FHA-insured HECMs. For this reason, we request that HUD continue to approve and monitor Loan Correspondents

engaged in FHA HECM originations, and not impose that responsibility (and corresponding liability) upon HECM mortgagees.

Increase in Mortgagee-Lender Responsibilities

Assuming, however, that HUD determines that it has the statutory authority to dispense with FHA HECM Loan Correspondent approval and monitoring, we have the following additional comments regarding increased mortgagee-lender responsibilities under the Proposed Rule, that we trust will be helpful to the Department as it fashions its final rule in this area.

Although under the Proposed Rule Loan Correspondents no longer would be subject to FHA lender approval requirements, FHA-approved mortgagees will be required to ensure that any Loan Correspondent that the mortgagee sponsors (does business with) complies with the requirements that make loans eligible for FHA insurance.

While the Proposed Rule is not explicit on this point, it appears the Proposed Rule makes approved lender-mortgagees, as “sponsors” of such non-approved entities, responsible and ostensibly accountable for the standing, character and actions of its non-approved Loan Correspondents, apparently regardless of whether the sponsor had knowledge of a Loan Correspondent’s violation of FHA requirements.

Thus, the preamble to the Proposed Rule provides that FHA-approved mortgagees would be required to ensure that its Loan Correspondents meet applicable requirements. The sponsoring mortgagee must agree to assume responsibility for any Loan Correspondent that works with the mortgagee with respect to its FHA-insured loan origination activities, and assume liability for FHA-insured loans underwritten and closed in the name of the FHA-approved mortgagee.

Not only would FHA-approved mortgagees be required to ensure that sponsored Loan Correspondents meet standards assuring their integrity and financial soundness, including those recently emphasized in the HFSH Act, but also to ensure compliance by all parties to an FHA transaction with FHA’s requirements regarding loan origination, processing, underwriting, and servicing, and those found in relevant statutes, regulations, HUD handbooks, and mortgagee letters.

While HUD states in the Proposed Rule that these standards set out in the HFSH Act are statutory criteria that HUD does not have the discretion to alter, HUD’s subjecting sponsoring mortgagees to sanctions for its Loan Correspondent’s failure to meet these particular criteria is new.

As HUD has indicated that it welcomes comments on these criteria, NRMLA provides them below.

Provisions under the HFSH Act include that a mortgagee shall not be, and shall not have any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, or loan originator who is, currently suspended, debarred, under a limited denial of participation (LDP), or otherwise restricted under similar provisions of any other federal agency. In that connection, we think it would be helpful if HUD made clear how open and pending administrative review matters of currently approved FHA Loan Correspondents will be handled, and that mortgagees shall have no responsibility for such unresolved Loan Correspondent items unless and until they are finalized and duly reported by HUD.

Further, with respect to whether an entity is “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”, HUD should make clear, with respect to loan correspondents, under the rule as proposed, which offenses reflect adversely upon an entity’s integrity. Moreover, because under the Proposed Rule Loan Correspondents will no longer be HUD-approved, HUD should clarify whether fitness to meet the responsibilities of an approved mortgagee will continue to apply to Loan Correspondents.

HUD also should further clarify the meaning of “subject to unresolved findings contained in a Department of Housing and Urban Development or other governmental audit, investigation, or review.” Potentially, unresolved findings may include issues raised in an examination or audit that are subject to further review and consultation and opportunity to respond. Respectfully, a mortgagee should not be penalized with sanctions if one of its Loan Correspondents has open audit issues that have yet to be resolved between the Loan Correspondent and its applicable regulatory agency through on-going consultations. Such consultations, after initial audit, but prior to finalizing agreements, are common in the mortgage banking regulatory review and audit process, as the Department well knows.

HUD also should further clarify, with respect to a mortgagee’s monitoring of its Loan Correspondent, the meaning of “engaged in business practices that do not conform to generally accepted practices of prudent mortgagees or that demonstrate irresponsibility.” Respectfully, we suggest that a mortgagee should not be penalized for one of its Loan Correspondent’s failures to meet such vague and overbroad standards. HUD also should clarify and give examples of “a felony related to participation in the real estate or mortgage loan industry”.

HUD further should clarify whether a violation of a provision of the S.A.F.E. Mortgage Licensing Act of 2008, or any applicable provision of State law, that occurred prior to the enactment of such SAFE Act related laws, should be considered and taken into account in a mortgagee's monitoring of a loan correspondent.

Further, we respectfully suggest that subjecting a mortgagee to sanctions for actions of a Loan Correspondent that are "in violation of any other requirement as established by the Secretary" is overbroad and not compliant with principles of fundamental fairness and due process. The Secretary's "requirements, as the Department well knows, fill volumes.

The preamble to the Proposed Rule states that FHA-approved mortgagees also are required to ensure that sponsored Loan Correspondents meet standards assuring their integrity and *financial soundness*. Because Loan Correspondents will no longer be FHA-approved or subject to HUD net worth requirements, it is not clear what criteria mortgagees should use to assess a Loan Correspondents financial soundness. Respectfully, HUD should clarify this statement if it retains it.

Because failure to properly monitor Loan Correspondents may result in FHA seeking sanctions against the FHA-approved mortgagee, FHA should state with particularity the steps a mortgagee should take in performing due diligence on a Loan Correspondent prior to agreeing to sponsor same, and HUD should further specify that, if certain steps are taken, such steps constitute a "safe harbor" for the sponsoring mortgagee. Clearer guidance as to how mortgagees may meet the new and substantial review and approval duties would be appreciated and, arguably, is required if these provisions are to be meaningfully executed by mortgagees.

In this regard, we note that the FHA currently maintains robust regulatory procedures and mechanisms for the approval and monitoring of FHA-approved entities, including Loan Correspondents. Those mechanisms and review procedures include approval and monitoring by: the HUD Approval and Recertification Division, its Quality Assurance Division, the Neighborhood Watch System and the Credit Watch Program.

HUD should outline steps in the final rule that, if followed by a mortgagee in reviewing and agreeing to sponsor a Loan Correspondent, will act as a "safe harbor" for the mortgagee from FHA sanctions. Such steps might include obtaining a MARI report on the Loan Correspondent, and/or its loan officers, criminal background checks performed by a recognized agency or vendor, and investigative reports ordered and received from a national consumer reporting agency. A mortgagee also should be able to rely upon, to a specified degree, certifications provided to it by a Loan Correspondent.

Further, HUD should provide a “knowledge qualifier”, based upon actual (not constructive) knowledge, indicating that a mortgagee is subject to sanctions for its sponsored Loan Correspondents’ transgression only if it had actual and (not constructive) knowledge, based upon a review of the items specified and outlined above in the “safe harbor” provisions. Additionally, a mortgagee’s liability for its Loan Correspondents’ transgressions also should have a time limit, and should not apply for any loans originated by a Loan Correspondent after such loans have been paid off or satisfied and HUD has paid no claim or suffered no loss with respect to such loans.

We trust these comments are a helpful response to the Department’s invitation.

State Law Impacts; No More Table Funding for Loan Correspondents

The Proposed Rule requires that FHA-approved mortgagees underwrite and close FHA-insured loans in the mortgagee’s name. This proposal is not consistent with current practices with regard to GSE and VA loan programs. Further, this proposal effectively appears to put an end to, for all practical purposes, the purchase of FHA-insured loans by a mortgagee from a Loan Correspondent in a table-funded transaction.

Entities not approved as mortgagees under the Proposed Rule would be classified as mortgage brokers under most states’ mortgage banking and brokerage laws and regulations. Under many states’ mortgage banking and brokerage laws and regulations, the entity to which the loan note is initially payable is deemed the “lender” under the loan contract. Under the Proposed Rule, if adopted, these non-approved entities may need to obtain further licensing under state laws with regarding to mortgage brokering (as opposed to mortgage lending) activities. Also, such state laws may impose further limitations on fees entities acting as mortgage brokers may charge. Additionally, such entities will be required to provide different (mortgage broker) disclosures to seniors when acting as mortgage brokers, as opposed to lenders. And finally, there may be loan origination systems changes that such non-approved entities may need to take into account and make.

Based on all of the foregoing, respectfully, it does not appear to us that these changes will have “little economic impact” on Loan Correspondent entities.

For these reasons, should HUD decide to implement this provision of the Proposed Rule as drafted, we respectfully request a longer implementation period (up to twelve months) within which such entities may obtain the proper additional state mortgage licensing and approvals, assure that they are utilizing the proper disclosures and are otherwise in compliance with the additional state laws and regulations that might apply to them, and assure that they have sufficient time within which to make any necessary information systems changes.

Increase in Net Worth Requirement for FHA-Approved Mortgagees

The eventual net worth requirement of \$2.5 million might prove to be an insurmountable hurdle for otherwise capable companies that currently serve their markets well. The rule as proposed inevitably will result in a loss of business and have economic impact on the reverse mortgage industry. The increased net worth requirements, when combined with making sponsors responsible for non-approved entities (which we anticipate will result in a decreased willingness on the part of mortgagees to sponsor a number of Loan Correspondents), will result, in an across the board and wholesale reduction in the number of smaller HECM loan originators, because some of those very same Loan Correspondents, that will no longer have a sponsor, also will not have the capital to make the financial commitment to become an FHA-approved mortgagee.

We believe the result will be the loss of many entities participating in FHA loan programs, including the HECM program. Many of the companies that focus on serving seniors through the offering of reverse mortgages are small businesses that will be forced to discontinue operations if the Proposed Rule is adopted as drafted, as we believe a fuller consideration of its economic impact upon them would make clear. We respectfully question the wisdom of causing many small businesses to disappear, leaving many markets and seniors under-served.

In any event, we ask that such small businesses be provided with a transition path that is pragmatic and achievable. Accordingly, should HUD decide to implement this provision of the Proposed Rule as drafted, we respectfully request that also HUD consider creating a separate category for smaller mortgagees, as FHA approved HECM mortgagees, defined as a "small business" as such term is provided or defined under FHA or other federal agency guidelines, and whose principal activity is the origination of reverse mortgages; and, that HUD establish a lower net worth threshold and requirement for small business FHA approved HECM mortgagees should such smaller entities consider becoming FHA approved HECM mortgagees in order to continue to originate HECM loans in their own name. Such net worth amount should be, in our view, no greater than \$250,000, the current mortgagee net worth requirement.

Further, HUD should allow a time period (up to at least twelve months) for those entities currently approved as Loan Correspondents either to convert their approval status to that of a lending-mortgagee, or for such entities to be allowed to apply *de novo* for a general FHA mortgagee approval (not merely HECM specific) through an expedited process.

Conclusion

NRMLA appreciates the Department's consideration of its comments with respect to this important Proposal. Should questions about them arise, or additional information be helpful, please do not hesitate to contact the undersigned, at 202-939-1741 or at PBell@dworbell.com.

Very truly yours,

Peter Bell

President

cc: James A. Brodsky
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