

InfoBytes Special Alert:
FHA Revises Requirements for Obtaining, Maintaining, and Utilizing an Entity's FHA Lender Approval

September 29, 2011

The Federal Housing Administration (FHA) of the U.S. Department of Housing and Urban Development (HUD) recently issued Mortgagee Letter 2011-34 to announce revisions to FHA's requirements for obtaining, maintaining, and utilizing an entity's lender approval. See <http://portal.hud.gov/hudportal/documents/huddoc?id=11-34ml.pdf>. All changes set forth in the Mortgagee Letter became effective immediately.

Following is a summary of Mortgagee Letter 2011-34's revisions to FHA's lender approval and operational requirements:

- **Single Family Loan Origination Lending Area.** The single family origination lending area (also known as the Area Approved for Business or AAFB) for approved mortgagees now includes all HUD field office jurisdictions, subject to lenders meeting each state's origination requirements. For purposes of any Credit Watch Terminations, the AAFB will be maintained at the HUD field office jurisdiction level. This change eliminates the geographical restrictions previously imposed upon approved lenders, which limited an approved lender's FHA origination activity to the designated lending areas for each home office and registered branch office.
- **Office Facilities.** HUD no longer has approval requirements for a lender's branch office facilities, including traditional, non-traditional and direct lending branch offices. Loan origination and/or servicing activities may be conducted from an approved mortgagee's home office, branch office, and/or direct lending branch office. However, all office facilities, regardless of type, must fully comply with all state licensing requirements in effect in the jurisdiction in which the office facility is located.

Additionally, entities seeking FHA approval are no longer required to submit evidence that their home office facilities meet FHA's requirements for home offices. FHA will verify compliance with its requirements during any on-site visits to home offices.

- **Prohibited Branch Arrangement.** FHA clarified that approved mortgagees must pay all expenses incurred in the operation of their home, branch, and direct lending offices directly, and may not engage in "net branching" arrangements in which a party, other than the approved mortgagee, pays some or all of the branch office expenses.
- **Conversion of FHA Lender Approval Type.** FHA lenders seeking to convert their FHA approval type must now submit a new lender approval application package and pay a \$1,000 lender approval application fee. Previously, lenders seeking to convert their FHA approval type were subject to simplified application requirements and a reduced application fee.
- **Identifying Owners.** Entities seeking FHA approval must list within their applications for approval the appropriate owners for their business form, which includes:
 - Publicly traded company or corporation: owners with at least 10% ownership
 - Non-publicly traded company or corporation: owners with at least 25% ownership
 - LLC: all Members
 - Partnership: all General Partners.

Previously, applicants were subject to a more general requirement to disclose "owners" within their lender approval applications.

FHA-approved mortgagees must timely report to HUD any ownership changes involving the appropriate owners

for the mortgagees' business form (as described above).

- **Identifying Officers.** Entities seeking FHA approval must list within their applications for approval all "Corporate Officers" who will be directly involved in managing, overseeing, or conducting FHA business, and must provide a credit report and resume for each such Corporate Officer. "Corporate Officer" is now defined to include - in addition to an entity's Owner, President, Vice President, Chief Operating Officer, Chief Financial Officer, Director, Corporate Secretary, Chief Executive Officer, Chairman of the Board, and Member in the case of a limited liability company (LLC) - an entity's Manager in the case of a LLC.

FHA-approved mortgagees must timely report to HUD any changes in the identity of their Corporate Officers.

- **Business Changes Subsequent to Approval.** FHA-approved mortgagees must report to HUD within 10 business days if the lender or mortgagee, or any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, or loan originator of the lender or mortgagee:
 - Has been suspended, debarred, under a limited denial of participation (LDP), or otherwise restricted under 2 CFR part 2424 or 24 CFR part 25, or under similar procedures of any other federal agency;
 - Has been indicted for, or convicted of, an offense that reflects adversely upon the integrity, competency, or fitness to meet the responsibilities of the lender or mortgagee to participate in the Title I or Title II programs;
 - Is subject to unresolved findings, as that term is defined in Mortgagee Letter 2010-38, as a result of HUD or other governmental audit, investigation, or review;
 - Is engaged in business practices that do not conform to generally accepted practices of prudent mortgagees or that demonstrate irresponsibility;
 - Is 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 such felony involved an act of fraud, dishonesty, or a breach of trust or money; or
 - Is in violation of provisions of the Secure and Fair Enforcement (SAFE) Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) or any applicable provision of state law.

Note that mortgagees must continue to report any sanctions, exclusions, fines, or penalties, as described in Mortgagee Letter 2009-31, *Strengthening Counterparty Risk Management*. However, the deadline for notifying HUD of such sanctions, exclusions, fines and penalties is amended to 10 business days.

- **"Doing Business As" Names.** Lenders must register all of their "doing business as" (dba) names with HUD. Previously, lenders were only required to register dbas utilized in conjunction with FHA programs.

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