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To: Clients and Friends

From: David F. Dulock

Subject: Revised FHA Lender Approval Requirements – Mortgagee Letter 2011-34

On September 23, 2011, the FHA issued Mortgagee Letter 2011-34 (ML 2011-34). The purpose of ML 2011-34 is to announce changes to the requirements for obtaining, maintaining and utilizing FHA lender approval. All requirements in ML 2011-34 are effective immediately.

Except for certain editorial changes, this memorandum restates ML 2011-34. Those who wish to print ML 2011-34 may do so by clicking on the following web address: <http://portal.hud.gov/hudportal/documents/huddoc?id=11-34ml.pdf>.

ML 2011-34 modifies or supersedes specific sections of HUD Handbook 4060.1 REV-2, “FHA Title II Mortgagee Approval Handbook,” and Handbook 4155.2, “Lenders Guide to Single Family Mortgage Insurance Process” as follows:

Identifying Officers (*modifies or supersedes ¶ 2-9.B of H.B. 4060.1*). An applicant for FHA lender approval must list all of its Corporate Officers on Form HUD 92001-A who will be directly involved in managing, overseeing, or conducting the FHA business of the applicant. The applicant also must provide, for each individual listed, a credit report and a resume in accordance with ¶ 3-2.A.4 and ¶ 3-2.A.5 of Handbook 4060.1. The term “Corporate Officer” refers to a natural person who is an Owner, President, Vice President, Chief Operating Officer, Chief Financial Officer, Director, Corporate Secretary, Chief Executive Officer, Chairman of the Board, or Member or Manager of a limited liability company. This definition of Corporate Officer supersedes the definition of “Corporate Officer” contained in Mortgagee Letter 2010-38.

Identifying Owners (*modifies or supersedes ¶ 3-3 of H.B. 4060.1*). An applicant for FHA lender approval must list in the Lender Approval Application Form 92001-A the appropriate owners for their business form, as follows:

1. Publically traded company or corporation: 10% or more ownership.
2. Non-publically traded company or corporation: 25% or more ownership.
3. Limited liability company (LLC): all members.
4. Partnerships: general partners.

Office Facilities (*rescinds ¶ 2-11.B, C and D and ¶ 3-2.A.9 of H.B. 4060.1*). An approved mortgagee may conduct loan origination and/or servicing activities from the home office, branch office, and/or direct lending branch office. 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. The home office also must comply with ¶ 2-11.A of Handbook 4060.1, but HUD is no longer regulating the branch offices facilities. Applicants are no longer required to submit evidence of acceptable home office facilities; FHA will verify compliance with these requirements through on-site visits to the home office.

Conversion of FHA Lender Approval Type (*rescinds ¶ 6-16 of H.B. 4060.1*). A lender wishing to convert its FHA approval type must submit a new lender approval application package with all required exhibits and pay a new \$1,000 lender approval application fee.

Prohibited Branch Arrangement (*removes ¶ 2-14.B of H.B.4060.1 for clarity*). An FHA approved lender must pay all expenses incurred in the operation of the home, branch, and direct lending offices directly, and may not engage in “net branching” arrangements in which a party, other than the FHA approved lender, pays some or all of the branch office expenses.

Single Family Loan Origination Lending Area. Amends ¶ 2-19.A, ¶ 2-19.B and ¶ 5-8.C of Handbook 4060.1 to expand the single family origination lending area of each home office and registered branch office to include all HUD field office jurisdictions. This origination lending area is also known as a lender’s Area Approved for Business (AAFB) and will be maintained in FHA’s system for implementation with any Credit Watch Terminations. In addition, Exhibit 12.E.2.a, “Single Family Originating Lending Areas,” in Handbook 4155.2 is rescinded. Please note, however, that this expanded AAFB does not affect an FHA approved lender’s obligation to meet each State’s origination requirements.

Business Changes Subsequent to Approval. In accordance with 24 CFR §202.5, to be approved for participation and to maintain approval, an FHA approved lender must meet and continue to meet the general requirements of subsections 202.5(a) through (n). Therefore, ¶ 6.1 and ¶ 6.26 of Handbook 4060.1 are amended to require that an FHA approved lender notify HUD within 10 business days if the lender, or any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, or loan originator of the lender:

- (1) has been suspended, debarred, under a limited denial of participation, or otherwise restricted under 2 CFR part 2424 or 24 CFR part 25, or under similar procedures of any other federal agency;
- (2) 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 to participate in the Title I or Title II programs;
- (3) 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;
- (4) is engaged in business practices that do not conform to generally accepted practices of prudent mortgagees or that demonstrate irresponsibility;
- (5) 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 laundering; or
- (6) is in violation of the Secure and Fair Enforcement Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) or any applicable state law.

An FHA approved lender must still report any sanctions, exclusions, fines, or penalties, as described in Mortgagee Letter 2009-31. However the reporting deadline listed in Mortgagee Letter 2009-31 for such sanctions, exclusions, fines and penalties is amended to 10 business days.

Doing Business As Names (“*dbas*”). Mortgagee Letter 2009-31 states that an FHA approved lender may only use business names (including *dbas*) registered with FHA in advertising and promotional materials related to FHA programs. ML 2011-34 amends ¶ 6-9 of Handbook 4060.1 to require a lender to register all of its *dbas*. The FHA Connection has been modified to allow the registration of up to 6 *dbas* for each home office or branch. If a lender has more than 6 *dbas*, its remaining *dbas* must be registered with FHA by submitting the additional *dbas*, and documentation authorizing their use, to the HUD address provided below:

U.S. Department of Housing and Urban Development
Office of Lender Activities and Program Compliance
Attn: Director, Lender Approval and Recertification Division
451 7th Street, SW Room B-133/P3214
Washington, DC 20410

Officer Changes. Amends ¶ 6-11 of Handbook 4060.1 to require an FHA approved lender to report to FHA any changes in the identity of the lender’s Corporate Officers, as defined in the **Identifying Owners** section of this memorandum.

Ownership Changes. Amends ¶ 6-13 of Handbook 4060.1 to require an FHA approved lender to report all ownership changes, including new owners and changes in ownership interests, in accordance with the ownership requirements for their business form as detailed in the **Identifying Owners** section of this memorandum.

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