NCSHA

April 23, 2019

The Honorable Brian D. Montgomery
Assistant Secretary for Housing, Federal Housing Commissioner
U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410-8000

Attention: Mortgagee Letter 2019-06, "Downpayment Assistance and Operating in a Governmental Capacity"

Dear Mr. Montgomery:

On behalf of the state Housing Finance Agencies (HFAs) it represents, the National Council of State Housing Agencies (NCSHA)[1] thanks the Federal Housing Administration (FHA) for issuing Mortgagee Letter 2019-06 (hereafter, "the ML"). The ML clarifies FHA's policy regarding documentation requirements that FHA-approved mortgagees must satisfy when originating a mortgage for a borrower using funds from another person or entity to satisfy a portion or all of the "Minimum Required Investment," as defined by FHA.

While we wholeheartedly support the overall intent of the ML and generally support the specific direction it provides, we are deeply concerned that one provision may significantly reduce the ability of state HFAs to provide down payment assistance to low-income families who need it as part of HFAs' proven programs for supporting affordable homeownership.

Several HFAs have already suspended their down payment assistance programs in connection with FHA-insured mortgages because of this provision. HFAs have also heard from mortgage loan originators operating in their markets have done the same.

We urge FHA to modify this provision as soon as possible and communicate its intention to do so immediately.

The balance of this letter contains information on state HFA affordable homeownership programs, the problematic provision's impacts in the market, and our recommendation for modifying the provision.

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[1] NCSHA is a nonprofit, nonpartisan organization. None of NCSHA's activities related to federal legislation or regulation are funded by organizations that are prohibited by law from engaging in lobbying or related activities.

State Housing Finance Agencies' Affordable Homeownership Programs

Even as the national homeownership rate has risen slightly after a long fall, the American Dream remains elusive for growing numbers of younger households, working families, and people of color. These are the households that state HFAs, like FHA, exist to serve.

State HFAs provided more than $28 billion in loan financing to help more than 150,000 households become homeowners in 2017, with more than one quarter of these loans helping minority buyers and more than half benefitting from FHA insurance.

The median state HFA-assisted homeowner's income was $52,115 (15 percent below the national median income) and their average home price was $166,525 (13 percent below the national median home sale price).

A 2018 study of more than one million low- and moderate-income mortgages found that single-family loans originated through state HFA programs perform better than similar non-HFA loans to low- and moderate- income borrowers. Overall, HFA loans were 20 percent less likely to experience a long-term default. They were also 20–30 percent less likely to be foreclosed.

According to the report: "Not only are HFAs more likely to require full documentation and careful underwriting, they also serve as a third-party monitor on the partner lenders originating loans through the state program, creating an additional incentive for careful screening by the lender."[2]

State HFAs generally do not originate home mortgage loans. Instead, they provide liquidity to originating lenders though the issuance of tax-exempt bonds, sales of mortgage-backed securities, and other executions.

HFA homeownership programs are often structured to generate funds for down payment assistance, which research suggests is perhaps the primary barrier to affordable homeownership for low- and moderate-income families: more than two-thirds of renters cited saving for a down payment as an obstacle to homeownership, according to the Urban Institute.[3]

State HFAs generally do not receive grants to generate their down payment assistance. They generate those resources through the financing structures they create to provide liquidity to originating lenders for home mortgage loans. Lacking that ability, state HFAs will provide far less down payment assistance.

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[2] "Low Income Homeownership and the Role of State Subsidies: A Comparative Analysis of Mortgage outcomes," Moulton, Record, and Hembre, 2018, Fannie Mae.

[3] "Barriers to Accessing Homeownership Down Payment, Credit, and Affordability," Goodman, et. Al., 2018, Urban Institute.

Recommended Modification to Mortgagee Letter 2019-06

The problematic provision is on pp. 5 – 6 of the ML, specifically the requirement that lenders obtain documentation from any government entity committing to fund down payment assistance and stipulating that such a commitment, "is not contingent upon any future transfer of the insured Mortgage to a specific entity."

This language would appear to mandate that HFAs must fund down payment assistance for a borrower even if the lender does not transfer the first mortgage loan to the HFA or the HFA's Master Servicer. Consequently, HFAs would not be able to condition the provision of down payment assistance on the lender's commitment to sell the first mortgage loan to the HFA.

If not required to transfer a first mortgage with HFA-provided down payment assistance to the HFA, lenders may decide to hold such loans on their books or sell them to private investors. This will eliminate the ability of HFAs to generate financing for down payment assistance through a proven and effective approach, as evidenced above.

This provision will also prevent borrowers from benefitting from HFAs' proactive and borrower-friendly servicing policies. HFAs have a strong track record working with struggling borrowers to help them remain in their homes. If lenders sell a first mortgage loan originated through an HFA program in the private market, it will be serviced by whichever entity purchases the rights, rather than an HFA or its servicing partner.

We do not believe that FHA intended to prohibit HFAs from making the commitment of down payment assistance funds contingent on the first mortgage loan being originated through their program and transferred to the HFA or its servicer. Rather, the language appears intended to ensure that government entities take responsibility for underwriting down payment assistance loans originated through their programs and do not outsource their down payment assistance programs to private entities – both objectives NCSHA supports.

We respectfully request that HUD either amend the Mortgagee Letter or issue official guidance making it clear that the language cited above does not include transfers from the originating lenders to the government entity or the government entity's dedicated mortgage servicer. Below is a suggested revision to the Mortgagee Letter that we feel would effectively address this issue. The proposed addition is in bold type for your reference.

> *…evidence that the downpayment assistance is being provided by the Governmental Entity by collecting either: a letter from the Governmental Entity, signed by an authorized government official, establishing that the funds provided towards the Borrower's MRI were provided in the Governmental Entity's governmental capacity in the jurisdiction in which the Property is located consistent with its downpayment assistance program and that the provision of such funds is not contingent upon any future transfer of the insured Mortgage to a specific entity* ***other than the Governmental Entity that provided such funds or that Government Entity's mortgage***

***servicer**, and a canceled check, evidence of wire transfer or other draw request showing that prior to or at the time of closing the Governmental Entity had authorized a draw of the funds provided towards the Borrower's MRI from the Governmental Entity's account*

Thank you for your consideration. We would be happy to discuss these issues with you at your convenience.

Sincerely,

Garth B. Rieman
Director of Housing Advocacy and Strategic Initiatives, NCSHA

cc: Gisele Roget