



September 1, 2015

## SUMMARY OF PUBLIC COMMENTS

**Office of Single Family Program Development:  
Application for FHA Insured Mortgages  
Proposed Revisions to HUD 92900-A, FHA/VA Addendum to URLA  
Solicitation of Comment (FR-5835-N-06)**

### **I. Background**

On May 15, 2015, HUD published a Notice in the Federal Register at 80 FR 27998 requesting public comment on its proposed revisions to HUD 92900-A (“*form 92900-A*”), FHA/VA Addendum to Uniform Residential Loan Application. The purpose of the proposed revisions to form 92900-A is to:

- Differentiate between initial and final Uniform Residential Loan Application (URLA);
- Revise mortgagee certification on debarment and suspension to be loan-level specific;
- Remove references to HUD Handbooks no longer in use by the Office of Single Family Housing;
- Update language regarding acceptable sources of funds;
- Provide updated non-discrimination language; and
- Update terminology to reflect new Single Family Housing Handbook 4000.1.

### **II. About this Summary**

This summary of public comments presents the main questions and concerns raised by the commenters. The underlined headings present the comments, which are followed by a brief substantive description of the commenter.

### **III. Comments, Generally**

The public comment period for the proposed revisions to form 92900-A opened on May 15, 2015 and closed on July 14, 2015. HUD received eight public comments on the notice. Comments were received from a state housing finance agency, industry partners, mortgagees, Members of Congress and advocacy groups.

In general, the comments were supportive of HUD’s efforts to revise certification language as it is in the best interest of mortgagees, FHA, and consumers. The proposed revisions ensure that FHA can continue to provide access to affordable homeownership options for low- to moderate-income Americans. However, a majority of the respondents stated that HUD should make additional revisions to the certifications beyond the current proposal and one of the comments suggested that HUD should withdraw the notice.

### **IV. The Public Comments**

#### **A. Recommendations for inclusion of HUD’s Quality Control policy in certification.**





Comment: The loan level certification should be tied to FHA's own quality control plan. Five commenters state that FHA should improve its current proposal and adopt an enhanced certification requirement that requires mortgagees to certify that they meet all three of the following:

- Exercise due diligence and good faith in underwriting the mortgage and submitting the application for insurance, which is proposed;
- Establish, operate and monitor a Quality Control program that complies with all FHA requirements; and
- For any defects that occur notwithstanding compliance with the first two mortgagee duties, timely remediate or indemnify FHA for any defects that affect the insurability of the loan.

*HUD's Response: HUD considered the broader certification standards regarding due diligence and good faith; however, the use of undefined terms would be inconsistent with the Department's goal of providing clarity to stakeholders participating in Single Family programs.*

*In addition, as part of its application, the Mortgagee, through a Corporate Officer, must complete a series of lender-level certification statements that address the applicant's compliance with FHA requirements. A Mortgagee that originates, underwrites, closes, endorses, or services FHA-insured Mortgages must have a QC Plan that meets FHA's requirements, as described in the Quality Control, Oversight and Compliance portion of HUD Handbook 4000.1. The Mortgagee must maintain and update its QC Plan as needed to ensure it is fully compliant with all applicable FHA requirements at all times. Form 92900-A addresses loan-level specific certifications and as such, HUD does not believe it is appropriate to capture certifications regarding compliance with non- loan level standards on form 92900-A. HUD considers the required Quality Control processes to be "in addition to" the established review processes and certifications necessary to induce the Department to insure an individual loan. However, HUD recognizes that Mortgagees now conduct a pre-endorsement review of each mortgage. Accordingly, HUD has added subpart (h) to page 4, Mortgagee Certification, which states, "(h) A Pre-Endorsement Review has been completed and revealed no deficiencies or defects in the documents listed at HUD Handbook 4000.1, II.A.7.b. that would render the loan ineligible for FHA insurance endorsement."*

*Finally, based upon its statutory and regulatory authorities, HUD requires the loan to be insurable when submitted for endorsement. Therefore, HUD did not choose to include the ability to remediate defects or indemnify HUD post-endorsement.*

## **B. Other Concerns or Suggestions**

Comment: Occupancy language requires revision. Two commenters stated this proposed language is clearly inconsistent, noting that the first sentence requires the borrowers to certify that they will occupy the property, while the second sentence requires the borrowers to certify that they do not intend to occupy the property as their primary residence.

*HUD's Response: Page 2, Part V, Item 25 of form 92900-A has been further revised to include instructions to the borrower to check the applicable box for occupancy certification.*





Comment: Page 3, Direct Endorsement Approval for a HUD/FHA-Insured Mortgage needs additional revisions. A commenter stated that currently, a mortgagee representative as opposed to the direct endorsement underwriter is required to certify that a loan received an "accept" or "approve" rated by the FHA Total Mortgage Scorecard. If HUD intends to completely remove the "mortgagee representative" from the FHA underwriting process, this needs to be made specific. However, the commenter believes that such a change would add unnecessary costs and delays to the review and underwriting of a typical FHA loan, and ultimately make the FHA program less competitive.

*HUD's Response: Page 3 of form 92900-A, Accept or Approve section cited above has been further revised to reflect the Mortgagee Representative in the paragraph content and on the signature line.*

Comment: HUD should update the entire form, not just the information in connection with the new FHA Handbook. One commenter asked for the following revisions on page one:

- a. Box 20 is very confusing and needs to be simplified.
- b. What is the purpose of Boxes 22a-d? This information duplicates information found on the URLA and now serves no purpose. These boxes should be deleted.
- c. Box 22f is inaccurate. HUD requires the Form 92561 to be signed when the borrower owns more than one dwelling unit. See Handbook 4000.1 page 106.

*HUD's Response:*

- a. *Box 20 requests Purpose of Loan (purchase, refinance, or improvement), Property Type (Condo, Co-op, Manufactured Home, Manufactured Home and Lot), and Status of Construction (Existing or Proposed). The requested information is used for both VA and FHA loan purposes and is required information.*
- b. *The Mortgagee certification in boxes 22 a-d, are not duplicated on the URLA.*
- c. *Box 22f is accurate and states the following:*

*“The Mortgagee must obtain a completed form HUD-92561, Borrower’s Contract with Respect to Hotel and Transient Use of Property, for each Mortgage where the Borrower owns:*

- *more than one Dwelling Unit (two to four); or*
- *a Single Family dwelling that is one of a group of five or more dwellings within a two block radius.”*

Comment: Request that the implementation date of form 92900-A be extended.

One commenter made this request to minimize the compliance burden on credit unions. The respondent cited the Consumer Financial Protection Bureau rule for TILA-RESPA Integrated Disclosure (TRID) and requested that HUD consider extending implementation until October 3, 2015 to coincide with the implementation of TRID.

*HUD's Response: HUD recognizes the competing priorities in the industry and anticipates the implementation date of the form 92900-A to be in November 2015, which HUD believes will be adequate time to implement the form.*





Comment: Request that the Paperwork Reduction Act (PRA) Notice be withdrawn and reissued pursuant to the Administrative Procedure Act (APA) to address the removal of, and change to, certain sections and the rationale for those changes. One comment requested that HUD withdraw and reissue the proposed changes pursuant to the APA requesting comment regarding the removal of Paragraph 21, section G(2)-(4) on page 1.

*HUD's Response: Form 92900-A is a form that is subject to the PRA and HUD must comply with the PRA process. One of the advantages of the notice and comment process under the PRA is that the statute mandates two comment periods – a 60-day comment period and a 30-day comment period. As evidenced by the comments HUD received from a range of stakeholders including advocacy groups, industry partners, mortgagees, and elected officials, HUD considers the initial PRA Notice on changes to form 92900-A to have provided adequate notice to elicit comment on the paperwork burdens in accordance with the requirements of the PRA.*

*In order to address this comment, HUD intends to publish a separate 60-day PRA Notice on the proposed incorporation of the specific language found in Paragraph 21, section G(2)-(4) of form 92900-A, with minor technical changes, into its Online Application for Lender Approval and the Annual Certification for FHA-approved lenders and mortgagees (the Lender Certification Notice). HUD believes that these lender-level certifications are the more appropriate vehicles to ensure lender compliance with HUD requirements so that any instances of noncompliance are subject to the procedures of HUD's Mortgagee Review Board. Rationale for the inclusion of the language in the lender-level certifications is provided in the Lender Certification Notice, giving interested parties an opportunity to comment on the proposed revisions. The proposed comment period for the Lender Certification Notice is expected to end mid-October, allowing time for an alternative approach for changes to form 92900-A, if comments warrant, before the revised form 92900-A is anticipated to come into effect in November 2015.*

Comment: Explain why Sections G(2)-(4) were removed from form 92900-A. One comment asked HUD to explain the rationale for the removal of Paragraph 21, section G(2)-(4) on page 1 of form 92900-A.

*HUD's Response: As noted above, HUD is proposing to incorporate the specific language found in Paragraph 21, section G(2)-(4) of form 92900-A, with minor technical changes, into its Online Application for Lender Approval and the Annual Certification for FHA-approved lenders and mortgagees. HUD proposed this change in order to better align the certification statements with the intent of the certifications. Form 92900-A is intended to manage the risks associated with an individual loan's compliance with HUD requirements while the lender-level certifications are intended to manage lender institution-level risk.*

*The changes to the form 92900-A must be considered within the context of an overall evaluation of FHA's loan-level and lender-level certifications. HUD has discussed the language and concepts contained in these certifications with the Department of Justice to ensure that HUD is maintaining the enforcement capabilities currently in place. Specifically, HUD and the Department of Justice have been at the forefront in pursuing enforcement actions against FHA-approved lenders that have engaged in fraudulent and other illegal practices. HUD is not retreating from its strong stance that approved lenders abide by all FHA and other applicable*





*federal requirements. The proposed revisions to form 92900-A and other FHA certifications have been made with the goal of improving clarity and enforcement capabilities, not limiting them.*

Comment: Describe the impact that these changes to form 92900-A will have on FHA lenders that have parent companies that commit crimes unrelated to their FHA business. A comment inquired about how these changes would impact several FHA lenders whose parent companies have recently pled guilty to antitrust violations for other issues, such as illegally manipulating foreign currency prices.

*These changes are not intended to have any impact on FHA's approach to enforcement actions regarding parent or sibling companies. As noted above, HUD is proposing to incorporate the specific language found in Paragraph 21, section G(2)-(4) of form 92900-A, with minor technical changes, into its Online Application for Lender Approval and the Annual Certification for FHA-approved lenders and mortgagees.*

*FHA's lender-level enforcement actions - through the Mortgagee Review Board (MRB) - are directed toward the FHA-approved mortgagee, which is a specific legal entity with a separate Federal Taxpayer Identification Number. In cases where an FHA-approved mortgagee is a wholly-owned subsidiary of a non-FHA-approved parent, these enforcement actions by the MRB are not targeted to the parent company or separate subsidiaries of the same parent. However, HUD could pursue sanctions against an FHA-approved mortgagee if its parent company or separate subsidiaries of the same parent are convicted of criminal actions that impact the FHA-approved mortgagee's integrity, competence or fitness to meet the responsibilities of FHA approval.*

*Officers, owners and other individuals are only subject to FHA lender eligibility requirements when they are employed or retained by the FHA-approved mortgagee and/or participate in an FHA-insured transaction. FHA lender eligibility requirements do not extend to personnel employed or retained by non-FHA-approved parent companies or separate subsidiaries of the same parent.*

*In cases where a mortgagee is unable to complete the Annual Certification due to sanctions or criminal activities that occurred or were discovered during the Certification Period, it must submit a separate statement and supporting documentation to FHA. FHA evaluates the information provided and makes a determination as to whether the event places the mortgagee in violation of FHA eligibility requirements or otherwise impacts the mortgagee's integrity, competence, or fitness to meet the responsibilities of FHA approval. If FHA determines that an event rises to this level, the mortgagee is referred to the Mortgagee Review Board, which has the authority to make a determination for official withdrawal, sanction or other enforcement action.*

Comment: Align the new certifications with Federal Acquisition Regulations. One comment asked the Department to explain the deviation from the certifications made by federal contractors under the Federal Acquisition Regulations at 48 C.F.R. Section 52.209-5 and providing the rationale for those changes.





*The Federal Acquisition Regulations are not applicable to mortgage insurance contracts entered into by FHA. However, FHA does require compliance with government-wide debarment regulations and Mortgagee Review Board regulations. To avoid any confusion on the part of program participants, the Department has revised the form 92900-A at Part II, paragraph 21E as follows to clearly provide the appropriate legal authority for this certification:*

*“To the best of my knowledge, neither I nor any other Participant (as that term is clarified in HUD Handbook 4000.1, II.A.1.b.ii.(B)) in this Covered Transaction (as that term is clarified at 2 C.F.R. § 180. 200) is suspended, debarred, under a limited denial of participation, or otherwise restricted under 2 C.F.R. part 2424 or 24 C.F.R. part 25, or under similar procedures of any other federal agency.”*

