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# 2019 Federal Legislative and Regulatory Update

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## 2019 Taxpayer First Act [Public Law No. 116–25]

The Taxpayer First Act was signed into law on July 1, 2019 and takes effect December 28, 2019. It amends 26 USC 6103(c) – an existing provision authorizing the IRS to disclose a taxpayer’s return information to those persons so designated to receive it by the taxpayer – to require mortgage borrowers with loans closed on or after December 28, 2019 to give their express written consent to share their ***tax return information*** with any other party and to limit such information’s use to express purposes consented to.

On November 8, 2019, MISMO®, the mortgage industry’s standards organization, issued model form Taxpayer Consent Language that will permit, with the borrower’s express consent, lenders and servicers to share tax return information received from the IRS with other parties involved in the mortgage transaction.

[[http://www.mismo.org/standards-and-resource/additional-tools-and-resources/taxpayer-consent-language.](http://www.mismo.org/standards-and-resource/additional-tools-and-resources/taxpayer-consent-language)]

# MLO Temporary Authority - (2018) Economic Growth, Regulatory Relief and Consumer Protection Act

Section 106 of the 2018 Act amends the SAFE Mortgage Licensing Act to authorize states to grant temporary MLO authority to originate residential mortgage loans for loan officers who:

- are moving from a depository institution to a state-licensed mortgage company, or
- are employed by a state licensed mortgage company and wishing to move interstate.

## Of Note:

- Maximum TA period: 120 days.
- MLO surety bond must be in place during TA period.
- MLO must be assigned to a licensed location (HQ or branch).
- State-licensed mortgage companies must sponsor and exercise the same oversight over MLOs in Temporary Authority as if MLO state licensing were in place.

Effective date: November 24, 2019.



## State and Federal Legislative and Regulatory Update

December 3, 2019

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# Economic Growth, Regulatory Relief and Consumer Protection Act (EGRRCPA)

- 2018 Law in implementation phase
- (Sec.101) Smaller Institutions QM –Under EGRRCPA, a mortgage loan is deemed to have QM status if
  - Originated and retained in portfolio by an insured depository institution or insured credit union that, together with its affiliates, has less than \$10 billion in total consolidated assets;
  - Maximum prepayment penalty that may be imposed during the first year after the mortgage loan is consummated is 3% of the loan's outstanding balance, reducing down to 2% in the following year, and 1% the year after that, with no prepayment penalty being able to be imposed following the third year after consummation;
  - Total points and fees payable in connection with the mortgage loan do not exceed the applicable points and fees limit in relation to the total loan amount;
  - Loan does not have negative amortization or interest-only features;
  - Institution holding the mortgage loan considers and documents the debt, income, and financial resources of the consumer.
- Bureau indicated provision is self-executing and does not require Bureau rules to be effective. 15 U.S.C. § 1639c(b)(2)(F). But CFPB may issue regulations for housekeeping purposes.

# Economic Growth, Regulatory Relief and Consumer Protection Act (EGRRCPA) (cont'd)

- (Sec. 307) PACE loans - Directs CFPB to promulgate ability-to-repay regulations regarding property assessed clean energy financing
  - Regulations must carry out the purposes of TILA's ability to repay requirements for PACE loans accounting for the unique nature of PACE financing
  - CFPB issued ANPR in March, 2019 and is reviewing comments, NPRM anticipated

# Economic Growth, Regulatory Relief and Consumer Protection Act (EGRRCPA) (cont'd)

- (Sec. 104) Exempts depository institutions and credit unions from that originate fewer than 500 closed-end loans or fewer than 500 open-end loans from certain HMDA public disclosure requirements
  - CFPB issued interpretative rule on this provision on September 7, 2018

# Economic Growth, Regulatory Relief and Consumer Protection Act (EGRRCPA) (cont'd)

- (Sec. 108) Exempts from certain escrow requirements residential mortgage loan held by a depository institution or credit union that: (1) has assets of \$10 billion or less, (2) originated 1,000 or fewer mortgages in the preceding year, and (3) meets other specified requirements.
- Released in 2019, Bureau conducted preliminary analysis of lenders potentially impacted by Sec. 108, which shows limited number of lenders would be exempt
- Further guidance from Bureau may be forthcoming



# Protecting Affordable Mortgages for Veterans Act of 2019 [Public Law 116-33.]

This Act, enacted July 25, 2019, corrects the drafting error in the 2018 Economic Growth, Regulatory Relief and Consumer Protection Act that prevented certain VA loan refinancings (“Orphan Loans”) from being pooled into Ginnie Mae securities.

Ginnie Mae issued APM 19-05 to **revise the seasoning requirements for VA loan refinancings**. Effective with mortgage-backed securities guaranteed on or after August 1, 2019, a VA refinance loan is eligible for Ginnie Mae securities only if it meets the following condition:

The note date of the refinance loan must be on, or after, the later of:

- (1) the date on which the borrower has made at least **six monthly payments** on the loan being refinanced; and
- (2) the date that is **210 days after the first payment due date** of the loan being refinanced

# Protecting Affordable Mortgages for Veterans Act of 2019 [Public Law 116-33.]

In addition to correcting drafting language in the 2018 Act, the Section 309 of the 2019 Act (38 USC §3709) imposes **new IRRL standards for fee recoupment, net tangible benefit, loan seasoning, and initial/final disclosures.**

In advance of publishing proposed IRRL regulations to implement these standards, VA issued interim **Updated Policy Guidance on VA IRRLs (Circular 26-19-22)** on August 8, 2019. This Circular also serves to consolidate and supersede previously issued policy guidance for IRRLs (Circulars 26-18-1, 26-18-13).

For current VA (interim final) rules on **cash-out refinancings including seasoning and fee recoupment requirements**, see

<https://www.federalregister.gov/documents/2018/12/17/2018-27263/loan-guaranty-revisions-to-va-guaranteed-or-insured-cash-out-home-refinance-loans>.

# Blue Water Navy Vietnam Veterans Act of 2019 [Public Law 116–23, 133 Stat.966]

Blue Water Act was enacted on June 25, 2019 and applies to all VA loans closed on or after January 1, 2020,

- It expands maximum guaranty amounts for purchase, construction and cash-out refinance loans greater than \$144,000 to 25 percent of the loan or, in certain circumstances where the veteran holds less than full entitlement, 25 percent of the Freddie Mac conforming loan limit (CLL).
- It replaces the existing loan fee table with a new table summarizing allowable funding fee rates for the most common types of VA home loans that are closed on or after January 1, 2020 and before January 1, 2022.
- It authorizes the VA to establish policies that enable VA Fee Panel appraisers to rely on third parties for appraisal related information.
- It waives VA funding fees for active duty personnel who provide evidence prior to loan closing of having been awarded the Purple Heart.

The VA issued *interim guidance* in the form of Circular 26-19-23 (August 9, 2019) in advance of publishing proposed regulations. **VA has not scheduled appraisal rulemaking.**

# S.540 Self-Employed Mortgage Access Act Warner-Rounds Bill

- Bills have been introduced, but not enacted into law, in the Senate by Senators Warner and Rounds (and in the House of Representatives by Representatives Foster and Emmer) to help expand access to mortgages for the self employed, gig workers, and other creditworthy individuals with non-traditional forms of income
- Would permit lenders to use either (1) Appendix Q or (2) income and debt determination standards developed by the GSEs, FHA, VA, or USDA/RHS, when determining the borrower's income, debt, and debt-to-income ratios for purposes of QM requirements.

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# HUD Disparate Impact Proposed Rule [84 Fed. Reg. 42854 (August 18, 2019)]

HUD published a proposed rule for the purpose of aligning **HUD's 2013 Disparate Impact Rule** with the **US Supreme Court's 2015 decision** in *Texas Department of Housing and Community Affairs v. Inclusive Communities*, 135 S. Ct. 2507 (2015). Comment period ended 10/18/2019.

HUD's proposal places the burden on plaintiffs to prove **5 key elements** of *prima facie* burden of proof:

1. The challenged policy/practice is arbitrary, artificial and unnecessary to achieve a valid interest or legitimate objective such as practical business, profit, policy consideration or legal requirement.
2. A "robust causal link" between the challenged policy/practice and the resultant disparate impact on protected classes indicative of direct causation.
3. The challenged policy/practice has an adverse effect on protected class(es).

4. The disparity caused by the policy/practice is “significant.”
5. There is a direct link between the disparate impact and the plaintiff’s alleged injury.

HUD’s proposal further provides **3 defense methods** through which a defendant can rebut the plaintiff’s *prima facie* case alleging discriminatory effect caused by a model, **including risk assessment algorithms:**

1. Providing the material factors that make up the model inputs and showing the inputs are not substitutes or close proxies for protected classes, and model serves a legitimate purpose.
2. Showing that a reputable third party is responsible for the model and defendant is using the model as it is intended.
3. Showing that the model has been subjected to critical review and validated by an objective and unbiased third party finding (a) the model to be a demonstrably and statistically sound algorithm that accurately predicts risk or other valid objectives and (b) deriving the same conclusion as #1.

# FHA Re-Proposes Changes to Loan-Level Certifications [84 Fed. Reg. 207, 57464 (Oct. 25, 2019)]

FHA's Objective: to reduce uncertainty regarding the risks of originating FHA loans. Comment period ends December 24, 2019.

This re-proposal would modify form HUD-92900-A, *HUD/VA Addendum to Uniform Residential Loan Application* by **reducing the number of statements** a lender makes in connection with each file and generally limits lender certifications to those involving **material deficiencies**.

- The lender certifies generally to the loan's compliance with FHA requirements pertaining to the final underwriting decision and post-closing and endorsement.
- The lender acknowledges that its certifications are materially correct and indicates understanding that HUD will interpret inaccuracies in accordance with Defect Taxonomy.
- Part II certifications on page 1 are removed; underwriter and mortgagee certifications, Parts IV and V on pp. 3-4 are revised.



# FHA Issues Version 2 of Loan-Level Defect Taxonomy (Single Family Housing Loan Quality Assessment Methodology)

On October 24, 2019 in conjunction with its proposed revisions to the loan-level certifications (to reduce uncertainty of risks in originating FHA loans), HUD issued a new version of its Defect Taxonomy that includes the types of penalties lenders may expect to face for loan-level violations of FHA requirements. Version 2 will be effective for loan reviews beginning January 1, 2020.

See, [https://www.hud.gov/sits/SFH/documents/sfh\\_defect\\_taxonomy\\_v2\\_01\\_01\\_20.pdf](https://www.hud.gov/sits/SFH/documents/sfh_defect_taxonomy_v2_01_01_20.pdf).

Version 2 applies 4 potential severity tiers for 9 identified loan defect areas:

**Tier 1:** Fraud or material misrepresentation about which the lender knew or should have known is identified; lender must respond in LRS; life-of-loan indemnification.

**Tier 2:** Unacceptable deficiencies found; lender must respond in LRS; either 5-year or life-of-loan indemnification..

**Tiers 3 and 4:** Identified deficiencies are deemed immaterial; optional responses from lenders will be accepted.

# Changes to FHA Certs

- New FHA Recertification Requirements
  - Long controversy over annual and loan level certifications
    - False Claims Act issues and FHA sanctions
  - Annual certification changes – effective January 1, 2020
  - Loan level certification changes proposed – comments due December 24, 2019 (see <https://www.federalregister.gov/documents/2019/10/25/2019-23240/60-day-notice-of-proposed-information-collection-application-for-fha-insured-mortgages>)
- While the certification statements were recently amended, the process remains the same.
- Revised annual certifications incorporate public comments and feedback (mostly positive) received by HUD after releasing the initial proposed changes.

# Overview of Revised Requirements

- Some of most significant and beneficial changes include eliminating from the revised certification statements:
  - Language requiring person certifying to broadly state that lender's operations conformed to all HUD regulations and requirements
  - Acknowledgement that lender is responsible for actions of its employees, including loan underwriters and originators
  - Certifications of whether lender was under indictment for, or convicted of, an offense that reflects adversely on integrity, competence or fitness
  - General certifications relating to criminal misconduct of lender's staff including loan underwriters and originators.
  - Certifications relating to compliance with SAFE Act

# Contents of Revised Requirements

Revised certification statements include following:

- “I acknowledge that I am a Corporate Officer of the abovementioned Mortgagee (hereinafter referred to as “the Mortgagee”) authorized to execute these certifications and acknowledgements on behalf of the Mortgagee.”
  - Previously, statements also required person to certify that throughout Certification Period they have known, or been in position to know, whether operations of Mortgagee conformed to all HUD regulations and requirements necessary to maintain Mortgagee’s FHA approval.

# Revised FHA Recertification Requirements

- Revised certification statements also include (cont'd):
  - “I certify that, during the Certification Period, the Mortgagee, or any Corporate Officer (as defined at HUD Handbook 4000.11.A.3.c.iv.(B)) was not:
    - (a) Subject to a suspension, debarment, or under a Limited Denial of Participation (LDP); or
    - (b) Refused or had revoked, any license necessary to conduct normal operations in the mortgage loan industry by an State(s) (as defined at 12 U.S.C. 1707(d)) in which the Mortgagee will originate insured mortgages or Title I loans; except for those occurrences, if any, that the Mortgagee reported to HUD and for which the Mortgagee received explicit clearance from HUD to continue with the certification process.”
  - Previously, the statements included language that the person must certify to these facts for the mortgagee and any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, or loan originator employed by or under contract with the Mortgagee, as well as that such persons were not subject to various other restrictions or actions under specific provisions of law or regulation.

# Revised FHA Recertification Requirements

- Revised certification statements also include (cont'd):
  - “I certify that during the Certification Period the Mortgagee was not sanctioned by any State(s) (as defined at 12 U.S.C. 1707(d)) in which the Mortgagee will originate insured mortgages or Title I loans, except for those Sanctions, if any, that the Mortgagee reported to HUD and for which the Mortgagee received explicit clearance from HUD to continue with the certification process.”
    - Previously, the statements required that the person certify that in addition to not being sanctioned by a state, they also were not sanctioned by a federal or local government agency, or other regulatory or oversight entity, or other specific acts, unless previously reported.

# Revised FHA Recertification Requirements

- Revised certification statements also include (cont'd):
  - “I certify that the preceding statements are materially correct to the best of my knowledge.”
    - Notably, the revised certification statements no longer require the person making the certifications to certify that they know or should know that the Mortgagee complies with all HUD regulations and requirements necessary to maintain FHA approval.

# New DOJ HUD MOU

- October 28, 2019, HUD and DOJ announced Memorandum of Understanding (MOU) between two agencies providing guidance regarding the application of False Claims Act (FCA) to FHA lenders.
- MOU intended to address “concerns that uncertain and unanticipated FCA liability for regulatory defects” led many lenders to withdraw from FHA lending. HUD noted “depository institutions originate less than 14 percent of FHA-insured mortgages, down significantly from approximately 45 percent in 2010.”
- MOU summarizes process agencies will follow and explains FHA requirements will be enforced primarily through HUD’s administrative proceedings, and provides guidance on the scope of the FCA’s use



# New DOJ HUD MOU (cont'd)

MOU states, among other things, that:

- Violations of FHA requirements by FHA-approved mortgagees or other FHA insurance participants will be enforced through HUD's administrative proceedings, unless additional action is warranted.
- Violations of FHA requirements identified by HUD will be referred to the MRB for evaluation.
- MRB may refer potential FCA violations to the DOJ where: (i) "Tier I or equivalent violations exist in at least 15 loans, or Tier 1 or equivalent violations exist in loans with unpaid principal balance or claims of at least \$2.0 million;" and (ii) aggravating factors—such as evidence of systemic or widespread violations—warrant pursuit of FCA litigation.
- "HUD recommends FCA be pursued only where such action is the most appropriate method to protect the interests of FHA's mortgage insurance program, would deter fraud against the United States, and would generally serve the best interests of the United States."
- DOJ will confer with HUD during investigative, litigation, and settlement phases of a matter where a *qui tam* relator or HUD's Office of Inspector General, refers a matter to DOJ, or in the event the matter is directly initiated by DOJ or a U.S. Attorney's Office.
- HUD may recommend DOJ seek dismissal of case filed by a *qui tam* relator if HUD does not support the FCA litigation.
- If MRB does not refer matter to DOJ, or recommends against filing an FCA action, MRB may still seek administrative action, indemnification or civil money penalties.

# Financial Status of FHA MMIF

- November 14., 2019, HUD released *Federal Housing Administration (FHA) Annual Report to Congress* on financial status of FHA's Mutual Mortgage Insurance Fund (MMIF) for fiscal year (FY) 2019.
- MMIF Capital Ratio for FY 2019 was 4.84 percent, the highest level since FY 2007.
- FHA had insurance-in-force on single family mortgages valued at almost \$1.3 trillion at the end of this past fiscal year.
- Performance of forward book of business posted stand-alone capital ratio of 5.44 percent.
- Home Equity Conversion Mortgage (HECM) reverse mortgage portfolio continues to show negative stand-alone capital ratio, but improved substantially from negative (-) 18.83 percent capital ratio in FY 2018, to negative (-) 9.22 percent in FY 2019.

# HUD Issues Temporary Guidance on Condo Lending [Mortgagee Letter 2019-13 (Aug. 21, 2019)]

This Mortgagee Letter was published in connection with HUD's published Final Rule, "**Project Approval for Single-Family Condominiums**" on August 15, 2019 [84 Fed. Reg. 41846].

The Rule became **effective October 15, 2019**. This Mortgagee Letter applies to case numbers assigned on or after October 15, 2019.

FHA will insure a mortgage on a Unit in a Condominium Project that is not included in the list of FHA- approved condominiums if the project meets certain minimum requirements, including maximum FHA insurance concentration for Single-Unit Approval.



## HUD Reduces Maximum LTV/CLTV on Cash-Out Refinancings [Mortgagee Letter 2019-11 (Aug. 1, 2019)]

For SFH case numbers issued on or after September 1, 2019, FHA is capping the maximum LTV/CLTV on cash-out refinance mortgages to 80% (a reduction from pre-existing 85% maximum LTV/CLTV).

# Ginnie Mae Issues Servicer Rating Requirements, New Counterparty Risk Factors (APM 19-06)

On August 21, 2019, Ginnie Mae issued APM 19-06. **Effective September 1, 2020,**

- Issuers with a Ginnie Mae Single Family Servicing Portfolio in excess of \$25 billion in UPB will be required to obtain an **external primary servicer rating**.
- Issuers with a Ginnie Mae Single Family Servicing Portfolio in excess of \$50 billion in UPB will be required to obtain **credit ratings plus** external primary servicer rating.

Ginnie Mae is also instituting revised Financial Requirements for applicants (effective Aug. 21, 2019) and Issuers (**effective Fiscal Year 2020**). These changes affect the manner in which liquidity and net worth are calculated. [See, Chapters 2-3 of MBS Guide.]

Finally Ginnie Mae is reducing the period of acceptable inactivity from 18 months to 12 months, with removal of exemption for state housing finance agencies.

# Treasury's Housing Reform Plan

- Issued September 6, 2019
- Calls for (1) conservatorship to end but no timeline, (2) GSEs to play smaller role in housing finance with private sector to play bigger one, (3) secondary market to have more competition, (4) taxpayers to be protected from another “bailout”, and (5) the 30-year fixed rate mortgage to be protected.
- Legislative and administrative recommendations but great deal is undefined, studies suggested
- Administrative possibilities mostly through FHFA (since legislative action unlikely soon) include:
  - Some reduction of GSE footprint
  - Attention to when and how sweep or payment to Treasury will end
  - FHFA Capital rule setting target to exit conservatorship; capital to be raised
  - Reduction in allowable investment portfolio
  - And more

# FHFA Issues 2020 Strategic Plan for the Conservatorship of GSEs (October 2019)

Coinciding with the release of a **2020 Supervisory Scorecard** (next slide) and on the heels of **Treasury's Housing Reform Plan**, FHFA published a comprehensive, multi-prong plan for the GSEs exit from conservatorship.

Acknowledging changes needed to FHFA's supervisory role itself, **the Plan highlights FHFA's request to Congress for additional authorities** in order to function on par with other federal financial regulators:

- authority to grant Enterprise charters to new market participants,
- the power to examine third parties that do business with Enterprises, and
- discretion to appropriately tailor risk-based capital requirements and leverage limits for the Enterprises and any other future guarantors of mortgage backed securities.

Further noted: only **Congress** can create an **explicit government guarantee**.

# GSE Reform – FHFA Issues 2020 Scorecard (October 28, 2019); Announces GSE Capital Rule Re-Proposal in 2020

FHFA's Scorecard serves as an oversight tool and a roadmap for the transition out of conservatorship. It is comprised of 3 focus areas:

- 1. Foster Competitive, Liquid, Efficient, And Resilient (CLEAR) National Housing Finance Markets.**
- 2. Ensure Safety and Soundness that will enable GSEs to provide mortgage market liquidity through the economic cycle with a prudent risk profile.**
- 3. Prepare for a Transition Out of Conservatorship, with no set time frame for finalizing the exit.**

Critical to this exit is creating capital rules that will sustain Fannie and Freddie through the exit and beyond. FHFA announced that it is scrapping the 2018 proposed capital rules and will issue new proposals in 2020.



# FHFA - Uniform Residential Loan App

- **Mandatory use of URLA postponed. No longer required beginning February 1, 2020.**
  
- Troublesome questions are removed from redesigned form and instead on voluntary consumer information form developed to collect information including:
  - Language Preference question
  - Homeownership Education and Housing Counseling question
  - Also, statement on "Use and Sharing of Information" revised to address specific uses of borrower data
  
- **Mandatory use date has not been reset...yet**

## FFHA – GSE's 2020 Loan Limits

- November 26, 2019, Federal Housing Finance Agency (FHFA) announced the maximum conforming loan limits for most mortgages on properties in most of the U.S. to be acquired by Fannie Mae and Freddie Mac
- In most of the U.S., 2019 maximum conforming loan limit for one-unit properties will be \$510,400 an increase from \$484,350 in 2018.
- For properties in high cost areas, where the local median home value is at least 15% higher than the baseline limit, the loan limit is adjusted higher based on local prices, but not higher than 150% of the baseline or to \$765,600 next year.
- As examples, highest limit will apply in all San Francisco Bay Area counties except three.

# FHFA Raises Maximum GSE Conforming Loan Limits for 2020; With GSEs Adds traditional Chinese Language Interpretations to “Mortgage Translations” Clearinghouse

- The 2020 maximum conforming loan limit for single unit properties is rising \$514,400 from \$484,350 in 2019. The new ceiling loan limit for single unit properties in most high-cost areas will be \$765,600.
- FHFA plans to add three additional language interpretations to the “Mortgage Translations” Clearinghouse in coming years to further facilitate access to credit for borrowers with limited English proficiency - Vietnamese, Korean and Tagalog.

## **Overview - The GSE Patch and GSE Reform**

- July 25, 2019 Announcement/ANPR that Temporary GSE QM or “Patch” would expire and inviting comments on changes to General QM
- Why is this important?
- Quick Review
  - Basic ATR/Non QM
  - General QM
  - Temporary GSE QM
- CFPB’s Rationale for Expiration
- Questions in the ANPR
- Comments on the ANPR
- Cross Currents – What’s Next

# Thank You

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