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MORTGAGE BANKERS ASSOCIATION

July 19, 2022

Julienne Joseph  
Deputy Assistant Secretary for Single Family Housing  
Office of Housing - Federal Housing Administration  
US Department of Housing and Urban Development  
451 7<sup>th</sup> Street S.W.  
Washington, D.C. 20410

**Re: FHA Servicing Defect Taxonomy**

Dear Deputy Assistant Secretary Joseph,

The Mortgage Bankers Association (MBA)<sup>1</sup> appreciates the Federal Housing Administration's (FHA) engagement with industry stakeholders to revise the proposed Servicing Defect Taxonomy. In our January response, we expressed the importance of FHA pursuing the servicing taxonomy as a long-term initiative.<sup>2</sup> We believe that an iterative process will lead to a servicing taxonomy that provides the clarity and certainty necessary to help servicers understand how FHA intends to hold them accountable for loan-level compliance. Enhancing the fairness and predictability of FHA's servicing quality control process is critical to maintaining and expanding participation in the program. Today, we request that FHA propose the next iteration of the Servicing Defect Taxonomy to the drafting table for a 60-day comment period.

We believe that FHA should address the definition of "Materiality" in the next iteration of the taxonomy. Materiality is a critical concept, as Material defects are unacceptable to FHA and require servicers to take a corrective action. We encourage FHA to retain its existing definition of Materiality – that a Material finding is one that harms the property and/or FHA. We believe that this objective definition will provide the certainty required to remedy servicing defects and create settled expectations that will encourage participation.

As part of how Materiality impacts the function of the taxonomy, we encourage FHA to reserve life-of-loan indemnification only for defects associated with material fraud or misrepresentation about which the Mortgagee knew or reasonably should have known. For lesser

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<sup>1</sup> The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 390,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,100 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: [www.mba.org](http://www.mba.org).

<sup>2</sup> <https://www.mba.org/industry-resources/resource/mba-joint-letter-to-fha-on-the-proposed-defect-taxonomy>



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types of Material defects an alternative remedy, including a two-year indemnification, is sufficient to prevent a defect from adversely impacting FHA and/or the property. This dichotomy appropriately prioritizes FHA's assessment of risk with the strictest penalty, and we believe this correctly distinguishes the risks between originating a mortgage over an average of 45 days and servicing a mortgage over 30 years.

A lender's responsibility is to appropriately apply FHA's standard policy to assess the credit quality of the borrower and value of the mortgage collateral to qualify for FHA insurance. A servicer's responsibility, on the other hand, is to enforce the mortgage contract and FHA's evolving policies throughout the servicing lifecycle where various economic factors can impact a borrower's performance. A taxonomy that eliminates unpredictable discretion and long-term uncertainty will benefit servicers and consumers alike.

We believe FHA's continued use of the drafting table for this work will better accomplish its policy goals to increase predictability for its partners by clearly assessing what constitutes material risk. It provides a transparent venue for program participants to engage with FHA to prioritize defects within each defect area, including those within existing controls, and achieve consensus on how to make the servicing defect taxonomy a successful long-term policy. Given the significance of the servicing defect taxonomy, we hope that you will consider our request. Thank you for your partnership. Should you have any questions or concerns, please feel free to contact Brendan Kelleher at [Bkelleher@mba.org](mailto:Bkelleher@mba.org) and (202) 557-2779.

Sincerely,

The Mortgage Bankers Association