



Housing Assistance Council

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DRAFT

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Branch Chief
Regulations and Paperwork Management Branch
U.S. Department of Agriculture
STOP 0742
1400 Independence Avenue SW
Washington, DC 20250-0742

Re: Docket No. FR-2013-20447, Proposed Rule and Information Collection

To Whom It May Concern:

The Housing Assistance Council (HAC) respectfully submits comments to the U.S. Department of Agriculture (USDA) in response to the Proposed Rule and Information Collection [2013-20447] regarding the role of loan application packagers, their employers, intermediaries, and non-Agency trainers.

HAC is a national nonprofit organization that has supported affordable housing efforts in rural areas of the United States since 1971. With more than 40 years of experience supporting and developing affordable housing across rural America, and several years of partnering with USDA and others during the pilot packaging program, HAC is uniquely positioned to comment on the proposal's possible impact increasing borrowers' opportunity of working with Direct Single Family Loan Packagers and the Agency reliance on the nonprofit sector as a productive partner.

HAC applauds the Agency's efforts to ensure that rural borrowers electing to work with loan packagers to apply for Sec. 502 Direct Loan financing are in fact working with eligible and competent individuals and their employers.

Background/Context

Building Rural Communities

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National and regional nonprofits long sought a new way to work with USDA-RD to reduce the Direct loan application processing time. In 2010 development of a pilot program began, allowing nonprofits to package the loan applications and submit them to local RD Housing Specialists for approval. There is a growing array of local nonprofit packagers and intermediaries, such as the Federation of Appalachian Housing Enterprises (FAHE), Rural Community Assistance Corporation (RCAC), Texas Community Capital, Northeast South Dakota Community Assistance Program (NESDCAP), CDC of Brownsville, and others working in conjunction with Rural Development to review these loans.

HAC worked with USDA, RCAC, NeighborWorks America (NWA), and others to develop the three-day packaging training curriculum and facilitate these trainings across the country. HAC staff have co-trained with USDA, RCAC, and an NWA consultant in many of these trainings. Twenty sessions have been held to date, training around 540 participants, of which 287 went on to pass the on-line exam. To date, over 300 loan applications prepared by packagers have been approved and mortgages closed.

Comments

Collection of Information

Under the proposed rule employers will produce monthly reports outlining packaging activities, but the regulation is not clear as to what activities are to be reported. The rule mentions only certifications that the packagers are not debarred from participation in federal programs and that they are in compliance with the Secure and Fair Enforcement for Mortgage Licensing (SAFE) Act and applicable laws and regulations. HAC believes more information must be included in the regulation to set forth clear expectations, and to allow public comment on these important matters.

HAC believes that the monthly reports should focus on the packagers' loan activities, including packagers' progress on new/continuing loan applications, the anticipated date of submission to an intermediary and/or the Agency, challenges with assisting applicants, ability to collect information, and other obstacles. Monthly reports could also include program specific opportunities and challenges impacting the employers' ability to submit loan applications that are likely to proceed to closure. The packagers and employers would mainly update the progress on the loan applications they are preparing; the amount of detail that the Agency requires would determine the estimated actual amount of time and reporting burden. HAC is mindful that it is outlining more reporting than the Agency set forth in the proposed rule, but believes that the added information would ultimately help the Agency track and plan for when packaged loans would be submitted and expedite processing loan applications.

HAC recommends that the intermediaries compile reports from the employers, whether or not there is a quality assurance relationship. This system could be based on regions. The intermediaries would be responsible for assembling the reports in a prescribed format and submitting consolidated reports to USDA. This process would minimize the number of reports submitted to the Agency. Based on their expertise, having the intermediaries compile the employers' reports would also give these agencies an opportunity to monitor loan application activities and possibly help identify difficulties, including the packagers' performance and proficiency. To further reduce burden, the Agency should provide an electronic reporting format.

Quarterly, or semi-annual, reports could provide the certifications identified by the Agency. The Agency should develop a format for the packager/employer to use for reporting on the certifications and other compliance requirements.

Role of Intermediaries

The Agency asks for comments on whether intermediaries play a critical role. It appears the Agency's intent is that intermediaries play a significant role in the "on-the-job" training of loan applications packagers, but not necessarily beyond that point, since an employer can opt out of participation when all of its packagers are trained. HAC believes, however, that intermediaries are important throughout the process.

Intermediaries have demonstrated their usefulness during the pilot packaging program. From inception of the pilot program they have worked closely with national and field Agency staff to discuss streamlining the loan processing effort. In addition they work with local packagers to insure that the process works in their area to best deliver a quality package. Intermediaries cover a variety of geographies, from part of one state to several, and all have the necessary experience and strong working relationship with stakeholders such as state-level Agency staff and other nonprofits to ensure that borrowers are well assisted with their applications.

There is no doubt that intermediaries play an essential role in the training and development of successful packagers. Since it is highly likely that there will be turnover of at least some packagers in the normal course of business, the training role of the intermediaries will be ongoing.

In addition, quality assurance is a critical component of the packagers' and employers' ability to assist families and the Agency throughout the loan application process. Intermediaries can provide that assurance. HAC strongly encourages the Agency to outline a clear, continuous role for intermediaries through the rule-making process. The intermediaries' knowledge of packagers and employers and Agency expectations provide

an essential quality assurance function. This provides substantial value to the potential borrowers and the Agency.

Through the rule-making process, the Agency should establish a periodic review for approving intermediaries, perhaps on a bi-annual basis.

The regulation must also be clear about geographic coverage for packagers and intermediaries. Under the pilot program, the Agency limited participation of intermediaries and packagers to certain geographies. For the permanent program, HAC encourages the Agency to allow intermediaries to overlap geographies and provide for nationwide intermediary coverage. Employers should have the flexibility to work with intermediaries that will best assist their packaging efforts. Each intermediary must have a service area representing sufficient numbers of qualified employers and loan application volume to support its business.

Processing Priority

HAC believes that the packaging partnership would benefit greatly from both a set-aside pool as well as processing priority. The Agency used to manage set-asides for particular initiatives, such as the Rural Home Loan Partnership and Self-Help. It should reinstate this set-aside pool and include the packaged loans or establish a new set-aside pool for this category. Having access to this dedicated pool will help employers know that there is a funding commitment supporting their packaging. HAC also supports USDA's proposal to include the packaged loans with the highest processing priority possible to expedite the decisions and obligations on these requests. Without this priority, loan application packers, qualified employers, and intermediaries could not support their continued activity. HAC understands that the Agency must reduce its expenses. Giving the loan applications submitted by packagers/employers/intermediaries a priority over other requests would help ensure the value of this activity.

Limit Qualified Employers and Packagers to Nonprofit Entities

HAC believes that packaging and intermediary functions should be limited to nonprofit organizations. Nonprofit organizations have been key partners to families needing primary services, including affordable housing, and have developed relationships with public sector partners like Agency staff to make these linkages work. As the subprime mortgage crisis demonstrates, the desire to make a profit may conflict with the best interests of potential borrowers; nonprofits' missions to assist communities and families make a real difference in their actions.

It is unclear what is meant by the proposed rule's reference to "increase the packaging fees by limiting competition." Limited competition may increase fees in a for-profit

market, but packaging is not offered in such a market. Fees are capped currently and under the proposed rule. In addition, the Section 502 direct loan program has long been underfunded, and it seems unlikely that there will be enough activity to spark competition.

Definitions

Agency-certified loan application packagers – the proposed definition would permit certification of someone with at least a year of either real estate development or mortgage brokerage experience. HAC believes this level of experience, even considering the employer’s required minimum of three years direct experience with SFH Direct loan program, might be insufficient to meet the specific needs of a potential borrower. Real estate development expertise may not apply to financing for a borrower affordable housing finance. HAC believes the minimum qualification, taking into account the employer and intermediary roles, should be one year of experience in affordable housing mortgage origination and/or affordable housing counseling.

In addition, HAC believes that certification should also be predicated on a minimum number of packages submitted and approved before an individual is certified. The proposed rule states that USDA’s proficiency standards will be addressed in the Agency Handbook. This is not acceptable. HAC believes more information must be included in the regulation to set forth clear expectations, and to allow public comment on these important matters. While there would be some administrative components to the standards, the proficiency standards should be included in the regulation so that they are clearly outlined and subject to public comment.

Qualified employers – HAC is satisfied with the definition and functions of qualified employers. The rule should also clarify the definition of “employee” with regards to the Agency-certified loan application packagers. Whether packagers are full-time staff of the employer, consultants, or contractors, the employer must be responsible for supervising their activities. The proposed rule does not directly outline oversight of the packagers’ activities beyond the monthly reporting as to certifications. HAC does not agree with the Agency’s proposed rule that the relationship between the employer and intermediary diminishes when all of the packagers are certified. We are concerned that the quality assurance (Q.A.) function is lost if the packages are not reviewed by intermediaries. At the very least, an employer that is not working with an intermediary should be subject to the same Q.A. requirement as an intermediary, but this further underscores the inherent intermediary value and importance.

Agency-approved intermediaries – The definition/functions proposed raise some questions. First, intermediaries may also serve as employers themselves. May intermediaries review their own packages, or packages of their subsidiaries? Second, the

proposed rule states that intermediaries will provide Q.A. until all of the employers' packagers are certified. Again, HAC disagrees with the Agency's proposal that employers can opt out from the intermediaries' Q.A. function. If the Agency decides to keep this then the intermediaries could continue the relationship by way of the suggested reporting process. Third, the proposed rule indicates that intermediary staff involved with reviewing the loan applications must take the Agency-approved course and pass the corresponding test. HAC recommends that the Agency plan to review the intermediaries' Q.A. processes, at least initially, to make sure they are satisfactory.

The preamble to the proposed rule mentions "separation of duties," but there is no reference to this in the regulation. The Agency must clarify its expectations in this regard. What does this mean in the context of agency certified packagers, qualified employers, or Agency approved intermediaries? Some intermediaries, for example, are also employers and HAC believes that the Agency should allow these dual roles to exist. Packagers, employers and intermediaries should clearly identify to the borrower and Agency what role they undertake with a particular packaged loan application; this could occur in the monthly reports.

Non-Agency Trainers – HAC strongly encourages the Agency to assume a direct oversight role in the management of curriculum development and revisions in addition to its direct participation in the trainings, and to include information about the Agency's role in the rule. The Agency currently reviews and approves curriculum updates, and the regulations should clearly state the Agency's oversight in ensuring that the elements are clear and current. Ongoing review of the curriculum with the non-Agency trainers and Agency participation in each training will help ensure that all information the packagers, qualified employers, and Agency-approved intermediaries receive is consistent. While the Agency will ensure under the proposed rule that non-Agency trainers are experienced and competent to deliver the training, it is also important for the Agency to encourage all non-Agency trainers to collaborate and coordinate their efforts so all parties are assured of high quality training events.

The success of the packaged loan process is ensured when Agency staff are committed to this effort at both the national level and in offices across the U.S. HAC believes that all Agency staff will have a greater reliance on, and respect for, certification if the Agency clearly 'owns' and manages the designations. In the proposed rule the Agency seems to leave the maintenance of records of the certification process to the non-Agency trainers. HAC strongly believes that the Agency must have direct oversight of the records indicating who has taken the course and passed the on-line exam. This could be a shared function with the non-Agency trainers but it is important, since the packaging function and packager/employer/intermediary performance is under the Agency's responsibility, that it also oversees these records.

Packaging Fee Provisions

The proposed rule defines the fee a packager/employer can charge a borrower. It is not clear whether, if a packager/employer is unable to charge the maximum amount based on the loan size, it can charge the balance to the borrower or seller. HAC believes that the proposed fee caps should be the maximum that can ever be charged to the borrower, and the regulations should clearly state this. While it is important that borrowers, particularly very low-income families, pay no more than a reasonable fee, employers and intermediaries incur costs and should be fairly compensated. The proposed rule appears to assume that packager costs are incurred only for those loan application packages that actually close. There is nothing that prohibits an employer and intermediary from covering their costs from other sources to fund gaps in the packaging fees that cannot be covered by the borrower and costs related to preparing applications that were not approved.

HAC is pleased to have this opportunity to comment on the proposed rule regarding the various actors, reporting, and packaging fee. HAC hopes these comments are useful in addressing and strengthening the final rule so that certified packagers, qualified employers and Agency-approved intermediaries are well equipped to assist potential loan borrowers, and that the Agency continues to see nonprofit organizations as reliable, efficient, and effective partners in furthering its mission. Please contact me if any additional information is needed.

Sincerely,

Moises Loza
Executive Director