

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

CEDAR BAND OF PAIUTES,
et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF
HOUSING AND URBAN
DEVELOPMENT, *et al.*,

Defendants.

Civ. Action No. 4:19-cv-30-DN

Judge David Nuffer

DECLARATION OF JULIE SHAFFER

I, Julie Shaffer, do hereby make the following declaration based on personal knowledge or good faith belief.

1. I am the Acting Associate Deputy Assistant Secretary for Single Family Housing at the United States Department of Housing and Urban Development (“HUD”).
2. In my role as the Acting Associate Deputy Assistant Secretary, I assist in overseeing the Office of Lender Activities and Program Compliance (OLA-PC).
3. On July 23, 2019, HUD issued Mortgagee Letter 2019-10, which stated, “The effective date of Mortgagee Letter 2019-06 is suspended until further notice.”
4. Contrary to that directive, a staff member from the Quality Assurance Division within OLA-PC, Wanda Bates, sent a July 30, 2019 email to Jessica Heller at DAS Acquisition Company, LLC (DAS), an FHA-insured lender, advising Ms. Heller that HUD had

determined that a loan originated by DAS (FHA Case No. 292-7268604) posed a material risk to HUD and required indemnification. Ms. Bates also sent an August 5, 2019 email to Ms. Heller advising her that the reason for HUD's determination was that funds used for the borrower's minimum cash investment "provided by Chenoa Funds are considered funds provided by a prohibited source and not in compliance with section 203(b)(9)(C) of the National Housing Act, providing funds to a subject property outside the state of Utah."

5. On August 14, 2019, Jack Higgins, Director of the Quality Assurance Division, sent an email to Ms. Heller stating that DAS could disregard the prior emails from Ms. Bates and stating that HUD had updated its Loan Review System to reflect that FHA Case Number 292-7268604 has been mitigated and therefore that an indemnification would no longer be required. A true and accurate copy of that email is attached hereto as Exhibit A.
6. On August 14, 2019, the Deputy Assistant Secretary for Single Family Housing conducted a conference call with the members of the staff responsible for overseeing the review and monitoring of compliance by FHA-approved lenders with FHA mortgage insurance requirements. In that call, the staff were reminded that Mortgagee Letter 2019-06 had been rescinded and that therefore that the staff should no longer be enforcing its provisions.
7. On August 21, 2019, I issued a memorandum to the staff further advising them not to enforce the provisions of ML 2019-06, and more specifically, that HUD does not have a basis to enforce jurisdictional limitations on governmental entities providing downpayment assistance. A true and accurate copy of that memorandum is attached hereto as Exhibit B.

8. On August 13, 2019, HUD issued Mortgagee Letter 2019-12, rescinding Mortgagee Letters 2019-06, *Downpayment Assistance and Operating in a Governmental Capacity*; 2019-07, *Extension of the Effective Date of Mortgagee Letter 2019-06, Downpayment Assistance and Operating in a Governmental Capacity*; and 2019-10, *Suspension of the Effective Date of Mortgagee Letter 2019-06, Downpayment Assistance and Operating in a Governmental Capacity*. A true and accurate copy of Mortgagee Letter 2019-12 is attached hereto as Exhibit C.
9. HUD intends to do notice and comment rulemaking with respect to the provision of downpayment assistance by governmental entities. HUD will not issue any policies with respect to jurisdictional limitations with respect to the provision of downpayment assistance other than through rulemaking.

Pursuant to the authority of 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief.

Dated: 8/21/19



Handwritten signature of Julie Shaffer in cursive script, written over a horizontal line.

JULIE SHAFFER

Acting Associate Deputy Assistant Secretary for Single Family Housing

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

EXHIBIT A

Archived: Wednesday, August 21, 2019 5:46:12 PM
From: Higgins, John S
To: jheller@dasacquisition.com
Cc: matt.pettit@chenoafund.org; ltaylor@usa-mortgage.com
Subject: FHA Case Number 292-7268604
Sensitivity: Normal

Please disregard the prior emails from Wanda Bates regarding FHA Case Number 292-7268604 (Flaughter). The funds provided by CBCMA (aka Chenoa Fund) are not considered as being provided by a prohibited source on the basis that the funds were provided with respect to a property located outside the state of Utah where CBCMA is located. Mortgagee Letter 2019-06 is not in effect. Until further notice, HUD is not requiring documentation regarding the jurisdictional authority of a Governmental Entity providing downpayment assistance.

We have updated the Loan Review System to reflect that FHA Case Number 292-7268604 has been mitigated based on documentation provided, therefore no indemnification is required.

Jack Higgins
Federal Housing Administration
Director | Quality Assurance Division

From: Jessica Heller <jheller@dasacquisition.com>
Sent: Tuesday, August 13, 2019 3:22 PM
To: Bates, Wanda <Wanda.Bates@hud.gov>
Subject: RE: FHA Response Required

Good Afternoon, I had reached out to Chenoa on this because of the indemnification and their legal team provided the below. Can you please clarify this for us as we are extremely concerned about this?
Thanks

From our legal team please see the instructions below.

You should instruct your correspondent to deny the indemnification demand and to forward the court order and retracted ML as the basis. Please have them provide any correspondence to us for review. If FHA continues to deny the claim we will get them in direct contact with them. Assure them that FHA is wrong and this will be resolved to their satisfaction.

<https://chenoafund.org/federal-court-blocks-u-s-department-of-urban-developments-new-restrictions-on-national-down-payment-assistance/>

Jessica Heller \ Risk Manager
DAS Acquisition Company, LLC
[O] 314-628-2226

12140 Woodcrest Executive Drive, Ste 150, Saint Louis, MO 63141

Company NMLS: 227262

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Equal Housing Opportunity

EXHIBIT B

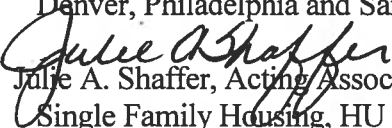


OFFICE OF HOUSING

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

August 21, 2019

MEMORANDUM FOR: Single Family Office of Program Development, Single Family Office of Lender Approval and Program Compliance, and Atlanta, Denver, Philadelphia and Santa Ana Homeownership Centers

FROM: 
Julie A. Shaffer, Acting Associate Deputy Assistant Secretary for Single Family Housing, HU

SUBJECT: Withdrawal of Mortgagee Letter 2019-06 impacting documentation Of Minimum Required Investment

As you are aware, for various reasons, FHA twice suspended the effective date of Mortgagee Letter 2019-06, which would have implemented additional documentation requirements relating to the provision of a borrower's Minimum Required Investment by Governmental Entities, including documentation relating to the entity's jurisdiction. FHA has now withdrawn ML 2019-06.

Please ensure that you and your staff understand that the provisions of ML 2019-06 are not enforceable, as they were never in effect. Moreover, enforcement of such provisions of ML 2019-06 has been enjoined by the United States District Court for the District of Utah. The court ordered HUD not to enforce the Mortgagee Letter and stated that HUD does not have a "basis to enforce jurisdictional limitations on governmental entities providing DPA."

Before your staff make any findings regarding the provision of a borrower's Minimum Required Investment by a Governmental Entity, please contact Jack Higgins at (202) 402-6730 for guidance.

EXHIBIT C



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Date: August 13, 2019

Mortgagee Letter: 2019-12

To: All FHA-approved Mortgagees
All Direct Endorsement Underwriters
All FHA Roster Appraisers
All FHA-Approved 203(k) Consultants
All HUD-Approved Housing Counselors
All HUD-Approved Nonprofit Organizations
All Governmental Entity Participants
All Real Estate Brokers
All Closing Agents

Subject Rescission of Mortgagee Letters 2019-06, *Downpayment Assistance and Operating in a Governmental Capacity*; 2019-07, *Extension of the Effective Date of Mortgagee Letter 2019-06, Downpayment Assistance and Operating in a Governmental Capacity*; and 2019-10, *Suspension of the Effective Date of Mortgagee Letter 2019-06, Downpayment Assistance and Operating in a Governmental Capacity*.

Purpose This Mortgagee Letter rescinds Mortgagee Letter 2019-06, *Downpayment Assistance and Operating in a Governmental Capacity*; Mortgagee Letter 2019-07, which extended the effective date for guidance provided in Mortgagee Letter 2019-06; and Mortgagee Letter 2019-10, which suspended the effective date of Mortgagee Letter 2019-06.

Effective Date The rescission of ML 2019-06 is effective immediately.

Public Feedback HUD welcomes feedback from interested parties for a period of 30 calendar days from the date of issuance. To provide feedback on this policy document, please send any feedback to the FHA Resource Center at answers@hud.gov. HUD will consider the feedback in determining the need for future updates.

Continued on next page

Mortgagee Letter 2019-12

Summary of Changes

This Mortgagee Letter rescinds ML 2019-06, *Down Payment Assistance and Operating in a Governmental Capacity*. Accordingly, the extension of the effective date for ML 2019-06, which was announced in a follow-up Mortgagee Letter 2019-07, and the suspension of the effective date for ML 2019-06, which was announced in Mortgagee Letter 2019-10, are also rescinded.

Paperwork Reduction Act

The information collection requirements contained in this document are approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2502-0059. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection displays a currently valid OMB control number.

Questions

For additional information on this ML, please visit www.hud.gov/answers or call FHA's Resource Center at 1-800-CALLFHA (1-800-225-5342). Persons with hearing or speech impairments may reach this number via TTY by calling the Federal Relay Service at 1-800-877-8339.

Signature

John L. Garvin
General Deputy Assistant Secretary for Housing