



# Consumer Finance Monitor

CFPB, Federal Agencies, State Agencies, and Attorneys General

## HUD Addresses FHA Loan Eligibility of DACA Recipients and Documentation Requirements For Certain Other Non-Permanent Residents

By **Richard J. Andreano, Jr.** on June 1, 2021

The U.S. Department of Housing and Urban Development (HUD) recently addressed eligibility for FHA mortgage loans for Deferred Action for Childhood Arrival (DACA) recipients in **Mortgagee Letter 2021-12**. As previously **reported**, at the end of the Trump administration HUD announced that effective January 19, 2021, individuals who are classified under DACA with the U.S. Citizenship & Immigration Service (USCIS) and are legally permitted to work in the U.S. are eligible to apply for FHA mortgages.

In the Mortgagee Letter, HUD addresses the FHA requirement that individuals without lawful residency in the United States are ineligible for FHA-insured mortgage financing. HUD explains that “[t]his requirement was included in the policy, but FHA recognizes it was not terminology that had clear consistent meaning.” After briefly addressing the history and scope of DACA, HUD then states “FHA’s requirements for ‘lawful residency’ pre-date the establishment of DACA and thus FHA did not anticipate the scenario where a prospective borrower may be authorized by DHS to be present during the period of deferred action and eligible for work authorization. Because of this confusion, as announced in FHA INFO #21-04 under the prior Administration, FHA waived Handbook 4000.1 Section II.A.1.b.ii(A)(9)(c) in its entirety in order to provide further clarity regarding the eligibility of FHA-insured mortgage financing for DACA recipients for endorsements on or after January 19, 2021.”

HUD also addresses documentation requirements regarding employment authorization for citizens of the Federated States of Micronesia, the Republic of the Marshall Islands, and the

Republic of Palau, and individuals with H-1B nonimmigrant classification and maintaining H-1B status. In particular, the documentation requirements for non-permanent residents in HUD Handbook 4000.1 are revised to provide as follows:

“[T]he Borrower is eligible to work in the United States provided the borrower provides either:

- an Employment Authorization Document (USCIS Form I-766) showing that work authorization status is current;
- a USCIS Form I-94 evidencing H-1B status, and evidence of employment by the authorized H-1B employer for a minimum of one year;
- evidence of being granted refugee or asylee status by the USCIS; or
- evidence of citizenship of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau.”

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