



# Single Family Lending Program Bulletin

January 25, 2013

Program Bulletin #2013-01

To: CalHFA Approved Lenders

## Temporary Suspension of California Homebuyer's Downpayment Assistance Program (CHDAP) Subordinate Loans Combined with FHA-Insured First Mortgages

Effective immediately and temporarily, CalHFA will not accept reservations for new CHDAP subordinate loans that are combined with FHA-insured first mortgage loans. This temporary pause does not apply to CHDAP reservations combined with Conventional/USDA/VA insured first mortgage loans. These latter reservations will continue to be accepted.

This temporary measure is a result of the Department of Housing and Urban Development's (HUD) recent interpretive rule governing a provision of the Housing and Economic Recovery Act of 2008, that affects how all Housing Finance Agencies (HFAs) provide down payment assistance on FHA-insured loans. HUD's interpretive rule requires HFAs to provide such assistance directly at closing. Under this interpretive rule, it is not permissible for HFAs to purchase down payment assistance loans from lenders after the loan is closed, which is the way CalHFA currently conducts business with all its approved lenders under state law. First mortgage loans combined with subordinate loans not complying with HUD's recent interpretive rule may be uninsurable by FHA. HUD's interpretive rule is effective for loans closed on or after November 29, 2012. Again, this only applies to CHDAP loans combined with FHA-insured first mortgages.

CalHFA will continue to process and purchase active CHDAP loans in the pipeline, but will require lenders to execute two separate blanket liability waivers. One waiver will apply to loans in the pipeline but not yet closed, and one waiver will apply to loans that have closed (See attachments). After executing each waiver, lenders must fax it to CalHFA at 916.326.6424 or email it to [sangst@calhfa.ca.gov](mailto:sangst@calhfa.ca.gov). The signed original must then be mailed to 1040 Riverside Parkway, Ste. 110, MS-140, West Sacramento, CA 95605, Attn: Sheryl Angst. CalHFA is aggressively pursuing several solutions to again offer CHDAP loans, which we expect to release in the near future.

CalHFA's Single Family Division thanks you for your business and we look forward to continuing to support your affordable housing loan needs. For questions about this bulletin, contact the CalHFA Single Family Division by phone 916-326-8000; fax 916.327.8452; or email [sflending@calhfa.ca.gov](mailto:sflending@calhfa.ca.gov). In addition you can always visit CalHFA's web site at: [www.calhfa.ca.gov](http://www.calhfa.ca.gov) or Single Family Lending at [www.calhfa.ca.gov/homeownership](http://www.calhfa.ca.gov/homeownership).

**RELEASE AND WAIVER OF LIABILITY AGREEMENT  
[FOR LOANS ALREADY FUNDED BY LENDER]**

For and in consideration of the California Housing Finance Agency (“Agency”) purchasing California Homebuyer’s Downpayment Assistance Program (“CHDAP”) subordinate loans, \_\_\_\_\_ (“Lender”) acknowledges that it has voluntarily and knowingly entered into this waiver and release of liability agreement (“Agreement”) and agrees to the following:

1. Acknowledgements:

- a. The Lender acknowledges and is aware of the Department of Housing and Urban Development’s (“HUD”) interpretive rule (“Interpretive Rule”) of a provision of the Housing and Economic Recovery Act of 2008, which requires housing finance agencies (“HFAs”) to provide down payment assistance directly at closing.
- b. Lender acknowledges and is aware that under this Interpretive Rule, it is not permissible for HFAs to purchase down payment assistance loans from lenders after the loan is closed. Lender is aware that the Agency currently administers the CHDAP subordinate loan program by purchasing the CHDAP subordinate loan after the loan is closed.
- c. Lender acknowledges and is aware that first mortgage loans combined with subordinate loans not complying with HUD’s Interpretive Rule may be uninsurable by FHA. Lender acknowledges and is aware that the CHDAP subordinate loan may not comply with HUD’s Interpretive Rule.
- d. Lender acknowledges and is aware that HUD’s Interpretive Rule is effective for loans closed on or after November 29, 2012.
- e. Lender has already funded certain CHDAP loans associated with FHA guaranteed first mortgages, and submitted those CHDAP loans to the Agency for purchase.
- f. Notwithstanding the facts acknowledged in 1.a through 1.d above, Lender wants the Agency to purchase those certain CHDAP loans subject to this Agreement.

2. Waiver. Lender hereby waives, releases, and discharges the Agency from any and all liability claims, demands, damages, losses, and causes of action of any kind that Lender may now have or may hereafter have arising out of the transactions leading to, and the Agency’s purchase of CHDAP subordinate loans already funded by Lender and submitted to the Agency for purchase.

3. Indemnity. Lender agrees to indemnify and hold harmless the Agency against any and all claims, suits or causes of actions of any kind whatsoever for liability, damages, compensation costs or expenses, including attorney fees and other litigation costs, which may in



any way arising out of the transactions leading to, and the Agency's purchase of the subject CHDAP subordinate loans already funded by Lender and submitted to the Agency for purchase.

4. Warranty of Authority. The undersigned hereby represents and warrants that he/she is a corporate officer of Lender, and is authorized to execute this Agreement and bind Lender to its terms.

**LENDER HAS READ THIS DOCUMENT AND UNDERSTANDS IT. LENDER FURTHER UNDERSTANDS THAT BY SIGNING THIS RELEASE, LENDER VOLUNTARILY SURRENDERS CERTAIN LEGAL RIGHTS.**

**LENDER**

\_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_, 2013  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_

**APPROVED:**

By: \_\_\_\_\_ Date: \_\_\_\_\_, 2013  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_  
Attorney for Lender

**RELEASE AND WAIVER OF LIABILITY AGREEMENT  
[FOR LOANS RESERVED BUT NOT YET FUNDED BY LENDER]**

For and in consideration of the California Housing Finance Agency (“Agency”) purchasing California Homebuyer’s Downpayment Assistance Program (“CHDAP”) subordinate loans, \_\_\_\_\_ (“Lender”) acknowledges that it has voluntarily and knowingly entered into this waiver and release of liability agreement (“Agreement”) and agrees to the following:

1. Acknowledgements:

- a. The Lender acknowledges and is aware of the Department of Housing and Urban Development’s (“HUD”) interpretive rule (“Interpretive Rule”) of a provision of the Housing and Economic Recovery Act of 2008, which requires housing finance agencies (“HFAs”) to provide down payment assistance directly at closing.
- b. Lender acknowledges and is aware that under this Interpretive Rule, it is not permissible for HFAs to purchase down payment assistance loans from lenders after the loan is closed. Lender is aware that the Agency currently administers the CHDAP subordinate loan program by purchasing the CHDAP subordinate loan after the loan is closed.
- c. Lender acknowledges and is aware that first mortgage loans combined with subordinate loans not complying with HUD’s Interpretive Rule may be uninsurable by FHA. Lender acknowledges and is aware that the CHDAP subordinate loan may not comply with HUD’s Interpretive Rule.
- d. Lender acknowledges and is aware that HUD’s Interpretive Rule is effective for loans closed on or after November 29, 2012.
- e. Lender has already reserved certain loans with the Agency associated with HFA guaranteed first mortgages, but has not yet funded said CHDAP loans.
- f. Notwithstanding the facts acknowledged in 1.a through 1.d above, Lender wants the Agency to purchase those certain reserved CHDAP loans once they have been funded and submitted to the Agency subject to this Agreement.

2. Waiver. Lender hereby waives, releases, and discharges the Agency from any and all liability claims, demands, damages, losses, and causes of action of any kind that Lender may now have or may hereafter have arising out of the transactions leading to, and the Agency’s purchase of certain CHDAP subordinate loans associated with FHA guaranteed first mortgages which have already been reserved with the Agency but not yet funded by Lender, once said loans have been funded and submitted to the Agency for purchase.

3. Indemnity. Lender agrees to indemnify and hold harmless the Agency against any and all claims, suits or causes of actions of any kind whatsoever for liability, damages,



compensation costs or expenses, including attorney fees and other litigation costs, which may in any way arising out of the transactions leading to, and the Agency's purchase of the subject CHDAP subordinate loans associated with FHA guaranteed first mortgages already reserved but not yet funded by Lender once such loans have been funded by Lender and submitted to the Agency for purchase.

4. Warranty of Authority. The undersigned hereby represents and warrants that he/she is a corporate officer of Lender, and is authorized to execute this Agreement and bind Lender to its terms.

**LENDER HAS READ THIS DOCUMENT AND UNDERSTANDS IT. LENDER FURTHER UNDERSTANDS THAT BY SIGNING THIS RELEASE, LENDER VOLUNTARILY SURRENDERS CERTAIN LEGAL RIGHTS.**

**LENDER**

\_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2013

**APPROVED:**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2013

Attorney for Lender