No. 96063-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 76510-8-I
IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION I

WASHINGTON STATE HOUSING FINANCE COMMISSION,

Petitioner,

v.

NATIONAL HOMEBUYERS FUND, INC., et al.,

Respondents.

WASHINGTON STATE HOUSING FINANCE COMMISSION'S PETITION FOR REVIEW

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I. INTRODUCTION & IDENTITY OF PETITIONER

Petitioner the Washington State Housing Finance Commission is a public entity devoted to promoting sustainable homeownership throughout this state. In pursuit of that mission, the Legislature has empowered the Commission to act as an authorized state entity within the federal mortgage insurance program. Respondent National Homebuyers Fund, Inc. ("NHF") is a California nonprofit corporation that has been asserting competing governmental authority in this state, exercising privileges under the program reserved for authorized state entities like the Commission, to generate profits at the expense of low-income borrowers.

The Commission sued NHF to protect its mission and constituents, seeking a declaration that NHF lacks requisite authority under state law for its operations in Washington. Based on NHF's lack of authority, the trial court declared its mortgage finance activities in Washington to be prohibited. On appeal, however, the Court of Appeals summarily dismissed the Commission's claims for lack of standing, holding it lacks adequate interests or injury to challenge NHF. *See* App. A (*Wash. State Hous. Fin. Comm'n v. Nat'l Homebuyers Fund et al.*, No. 76510-8-I (Wash. Ct. App. June 11, 2018) (unpublished)) ("Op.").

Discretionary review is warranted under RAP 13.4(b)(1), because the Court of Appeals applied a heightened standing analysis that conflicts

with this Court's precedents. Those precedents establish that an authorized state entity such as the Commission has sufficient interest to challenge an allegedly unauthorized competitor like NHF. Moreover, the multiple threats the Commission faces here qualify as cognizable injuries for standing purposes. Review is also warranted under RAP 13.4(b)(4), because NHF is jeopardizing a statutory scheme that provides safe and affordable housing for Washingtonians, and increasing the risk of market turmoil. The Commission respectfully requests its petition be granted.

II. ISSUES TO BE REVIEWED

A. The Legislature has delegated authority to the Commission to participate in the federal mortgage insurance program as an authorized state entity, with special privileges it exercises to benefit Washington residents. NHF is a California nonprofit corporation asserting government authority in Washington and engaging in competing activities under the federal program to fund lobbying efforts in California. Did the Court of Appeals err in holding the Commission's interests do not give it standing to challenge NHF's exercise of competing authority in this state?

B. The Commission was established as a self-sustaining government entity with a duty to promote Washington's housing policies and serve low-income borrowers. With its competing activities, NHF diverts revenues from the Commission and its programs, charges higher rates and

uncapped fees without supportive services, and substantially increases the risk of market disruption. Did the Court of Appeals err in holding the Commission has not demonstrated injury for standing?

C. The Washington Legislature has not authorized entities from other states to participate in this state's housing market in a governmental capacity. California law prohibits its counties from offering home-ownership financing outside their jurisdictions. Was the trial court correct to declare NHF's housing finance activities in Washington prohibited?

III. STATEMENT OF THE CASE

A. The Commission Operates as an Authorized State Government Entity within the Federal Mortgage Insurance Program to Assist Low-Income Borrowers with Homeownership.

The Commission is a "public body" exercising "essential government functions" in Washington. RCW 43.180.040(1). It was created to help make "affordable and decent housing available throughout the state." RCW 43.180.010. One of its primary purposes is to address problems in the mortgage market "the private sector [cannot] correct," including common "high interest rates" many citizens cannot afford. *Wash. State Hous. Fin. Comm'n v. O'Brien*, 100 Wn.2d 491, 496, 671 P.2d 247 (1983). The Commission thus focuses on special populations in need of assistance, such as first-time, low-income borrowers. CP 376.

The Commission is authorized to "[p]articipate fully in federal . . . governmental programs . . . to secure to itself and the people of the state the benefits of those programs," including federal "housing programs" in particular. RCW 43.180.050(1)(e), .010. A key theme across these programs is the cooperative involvement of state and local governments, with a federal goal of vesting "maximum . . . responsibility and flexibility" in state and local agencies like the Commission while maintaining "accountability" to the public. 42 U.S.C. § 1437; *see Resident Action Council v. Seattle Hous. Auth.*, 177 Wn.2d 417, 429, 327 P.3d 600 (2013) ("*RAC*").

This case concerns one particular federal housing program within this established cooperative framework: the mortgage insurance program. Under that program, a part of the U.S. Department of Housing and Urban Development ("HUD") known as the Federal Housing Administration ("FHA") "provides mortgage insurance on loans made by FHA-approved lenders" to homebuyers in need of assistance. HUD, *The FHA*, HUD.GOV (2018).[1] Lenders provided such insurance are afforded "protection against losses" so long as the loans "meet certain requirements established by FHA." *Id.* One such requirement is that the homebuyer must pay at least

[1] *Available at* https://www.hud.gov/program_offices/housing/fhahistory (last visited July 10, 2018).

a 3.5 percent down-payment, decreasing risk and promoting responsible lending. *See* 12 U.S.C. § 1709(b)(9)(A).

To prevent circumvention of the down-payment requirement, restrictions are also placed on the financial assistance a borrower may receive. For one thing, a "'person or entity that financially benefits from the transaction'" is not allowed to fund any portion of the required down-payment. *FHA: Proh'd Sources of Min. Cash Inv. Under NHA—Interp. Rule*, 77 Fed. Reg. 72219, 72221 (Dec. 5, 2012) ("FHA Rule") (quoting 12 U.S.C. § 1709(b)(9)(C)). More broadly, gifts of down-payment funds are generally prohibited except from a specified list of acceptable sources. *See* HUD Handbook 4000.1 at 230 (2016) ("Handbook").

Importantly, these restrictions on financial assistance do not apply to state or local government entities. *See* FHA Rule at 72220; Handbook at 225-26. That is because, unlike some nonprofits, state and local governments have a strong track record of providing "various services to assist citizens within their jurisdictions in attaining affordable housing options." FHA Rule at 72220-22. On this basis, authorized state and local entities are at liberty to fund mandatory down-payments "when acting *in their governmental capacity* . . . ." Handbook at 226 (emphasis added).

This is true of the Commission, which offers numerous tailored programs that help with the down-payment and closing costs of a home

purchase. *See* CP 376-77. These programs offer low- or no-interest loans to eligible borrowers, with payment deferred until the primary mortgage is paid off or the home is sold or refinanced. CP 386-87. The programs also include prescreening, borrower education and counseling, and caps on lender fees. CP 374-75, 378-81. The Commission generates program revenues by selling the primary mortgages as securities. CP 404-06. All such revenues are used to support the Commission's programs and provide more loans for Washington residents. CP 402-03, 409-11, 1347-50.

B. NHF Has Been Invoking State Governmental Authority in Washington to Generate and Sell Federally-Insured Mortgages for Profit, at the Expense of Low-Income Borrowers.

NHF is a California nonprofit corporation that was created to subsidize federally insured mortgages nationwide at a profit. *See, e.g.*, CP 480-81. It is the creation of Respondents Rural County Representatives of California ("RCRC") and Golden State Finance Authority ("GSFA"), each made up of several rural California counties. CP 423, 434, 480-81, 530-39, 541. RCRC lobbies on behalf of its members, while GSFA offers down-payment assistance to borrowers in California. CP 423, 435.

To subsidize federally insured mortgages nationwide, NHF initially sought approval from HUD. CP 553, 566-69. HUD rejected NHF's proposal, noting it was unsure it even had "the authority to allow NHF to do business outside the physical jurisdictions of the Governmental

entities that created NHF." CP 580, 471-73. NHF came to realize HUD has no procedures in place to adjudicate disputes over the allocation of state authority within the mortgage insurance program. CP 1425-34.

NHF then proceeded with its plan for nationwide expansion without approaching HUD. *See* CP 486, 521-22. In 2014, NHF began offering down-payment assistance in a number of states outside California, including Washington. CP 486-87, 496. NHF's assistance is in the form of a gift, or what NHF has called a "grant," which covers the borrower's minimum down-payment. CP 485-87, 630. NHF bundles and sells the subsidized mortgages as securities to generate revenues. CP 453-54, 502-07, 516-17, 544.

When primary lenders originally indicated on HUD forms that the down-payment assistance NHF provided came from a nonprofit, the mortgage loans were not approved for federal insurance. CP 613-18. Without federal insurance backing, NHF could not bundle and sell the mortgages for a substantial profit as planned. *See* CP 453-56, 469, 499-507, 510, 516-17, 523. NHF thus began telling lenders to indicate that its funds come from an instrumentality of government. *See* CP 613-18. NHF also actively marketed itself as governmental. *See, e.g.*, CP 630.

In short, NHF is falsely claiming governmental authority in Washington to operate a program designed to maximize revenues at the

expense of low-income borrowers. Its program charges higher interest rates and fees for greater profits. CP 1321-22, 1326. A higher rate means greater monthly payments for the life of the loan, while more fees give lenders an incentive to refer unsuspecting borrowers to NHF's program regardless of terms. CP 1317-19, 1321-22, 1326. This focus on revenues at the expense of borrowers is exactly why only governmental entities are permitted to offer this kind of assistance. *See* FHA Rule at 72220-22. In 2014 and 2015, NHF generated and sold $688,030,091 in Washington mortgages, making millions in profits. CP 633, 698.[2]

C. The Commission Has Suffered Numerous Forms of Injury as a Result of NHF's Activities.

The record reflects that the Commission has suffered numerous injuries from NHF's operations. First, the mere presence of NHF's program is interfering with the Commission's role as an authorized Washington agency within the mortgage insurance program. RCW 43.180.050. Second, NHF is diverting revenues from the Commission's public programs. Those revenues are being sent instead to California for RCRC's use on local lobbying efforts—not supportive services for borrowers or additional aid for Washington residents. *See* CP 423-30, 457-66, 510-11, 526-27, 530, 544, 546, 671-72, 703-04, 1511. Third, NHF is harming the Commission's constituents with disadvantageous

[2] The Court of Appeals incorrectly reported this figure as $688 *thousand*. Op. at 9.

terms and no homebuyer education, thus increasing the risk of defaults. *See, e.g.*, CP 389, 511, 1317-19, 1321-22, 1326, 1361-64. Fourth, NHF is thwarting the Legislature's express preference for loans, rather than gifts or "grants," to low-income borrowers receiving aid. *See* RCW 43.180.050(1)(d) (directing Commission to "[m]ake *loans* for down payment assistance to home buyers" (emphasis added)). Finally, NHF's harmful conduct risks serious disruption in Washington's housing market, given the sheer volume of mortgages at issue. *See* CP 633, 698.

D. After Learning NHF Was Pretending to Be a Governmental Program in Washington, the Commission Filed This Lawsuit.

The Commission filed this lawsuit in 2015, arguing that NHF was unlawfully invoking governmental authority in this state and interfering with the Commission's mission and programs. CP 1-2, 8-9. Based on its lack of authority, the trial court declared that NHF's housing activities in Washington are prohibited by law. CP 1287. NHF appealed, and the Court of Appeals reversed solely on the basis that the Commission lacks standing. Specifically, that court held the Commission is not within the applicable zone of interests under Washington or federal law, because it is merely a participant in the mortgage insurance program. Op. at 7-8. The court also held that the Commission failed to show injury for standing, because it did not provide specific evidence of economic loss. *Id.* at 9-10.

IV. ARGUMENT

The Court of Appeals' refusal to consider the Commission's challenge to NHF's allegedly unauthorized competition conflicts with this Court's precedents and presents an issue of substantial public interest. In particular, the decision conflicts with this Court's cases (1) recognizing the right of specially authorized government entities to challenge allegedly unauthorized competitors, (2) establishing the importance of state law and authorization within cooperative federal programs, and (3) establishing that the injury component of standing is a modest requirement that is presumed to be met in such cases. The Court of Appeals' failure to follow these precedents, and the public's interest in preserving a statutory framework that provides low-income borrowers with safe and affordable access to housing, warrants review. RAP 13.4(b)(1), (4).

A. This Court's Precedents Establish that, as an Authorized State Entity, the Commission Has a Sufficient Interest for Standing.

The purpose of the standing doctrine is to ensure each case is "brought and defended by the parties whose rights and interests are at stake." *Riverview Comm'y Grp. v. Spencer & Livingston*, 181 Wn.2d 888, 893, 337 P.3d 1076 (2014). Typically, this means a claimant must show injury within the "zone of interests" of a relevant legal provision. *State v. Johnson*, 179 Wn.2d 534, 552, 315 P.3d 1090 (2014). This test is "not meant to be especially demanding." *Seattle Bldg. & Constr. Trades*

Council v. Apprenticeship & Training Council, 129 Wn.2d 787, 797, 920 P.2d 581 (1996) (internal quotes omitted).

The Commission has standing because the Washington Legislature has authorized the Commission, and no other statewide entity, to participate as a government entity in the federal mortgage insurance program in this state. *See* RCW 43.180.010 (creating Commission to perform "recognized governmental function" of assisting with affordable housing and providing "affordable rates" through federal programs); RCW 43.180.050(1)(d)-(e) (empowering Commission to "[p]articipate fully" in federal housing programs and to provide "loans for down payment assistance"). In concluding that the Commission is not within the zone of interests of Washington law, the Court of Appeals ignored this Court's precedents addressing such delegated authority. *See* Op. at 7-8.

Specifically, this Court repeatedly has held that authorized actors have standing, as a matter of law, to enjoin competitors lacking the same requisite authority. *See Puget Sound Traction, Light & Pwr. Co. v. Grassmeyer*, 102 Wash. 482, 490-91, 173 P. 504 (1918) (noting someone authorized to conduct a regulated business "is entitled to injunctive relief" against anyone "who assumes to exercise the privilege . . . in the absence of authority"); *Day v. Inland Empire Optical, Inc.*, 76 Wn.2d 407, 416-17, 456 P.2d 1011 (1969) (holding "licensed members of a . . . trade . . . may

[] utilize the courts to prevent unlicensed persons from engaging in the . . . trade"). The Court of Appeals' opinion did not even address these cases, and it conflicts with them, given that the Commission is an authorized actor challenging an allegedly unauthorized competitor in NHF.

In a parallel line of authorities, this Court has also made clear that an authorized public agency may challenge another entity for engaging in unauthorized governmental competition in its territory. *See Skagit Cnty. Pub. Hosp. Dist. No. 304 v. Skagit Cnty. Pub. Hosp. Dist. No. 1*, 177 Wn.2d 718, 723-27, 305 P.3d 1079 (2013) (holding one public hospital district could be enjoined from "raid[ing] the territory of another"); *Alderwood Water Dist. v. Pope & Talbot, Inc.*, 62 Wn.2d 319, 321, 382 P.2d 639 (1963) (noting courts should "closely" analyze disputes among "potentially competing municipal corporations").

The Court of Appeals distinguished these latter cases on the basis that they involved competition between government entities, whereas NHF is a nonprofit. Op. at 9 n.4. But this misses the point: NHF is engaging in activities that require governmental authority in this state, including by asserting that its mortgage subsidies are governmental. The Legislature has delegated such authority to the Commission, and not to NHF. *Skagit* and *Alderwood* stand for the proposition that such

delegations are impliedly exclusive, and that an authorized government entity may challenge the exercise of competing authority in its territory.

Moreover, as this Court spelled out in *Alderwood*, adjudicating such a dispute is especially important when "revenue is derived from the performance of services" and unauthorized duplication "could result in a serious impairment of the 'raided' [governmental entity's] financial position." *Alderwood*, 62 Wn.2d at 322. That remains true regardless of whether the unauthorized competitor is private or public. Here, the Commission is a self-funded entity by design, generating revenues from its own public programs for the benefit of Washington residents over time. *See* RCW 43.180.010; CP 407-08. Resolving this dispute over NHF's allegedly unauthorized competition is thus especially appropriate.

The Court of Appeals' reasoning was thus directly contrary to this Court's precedents, in multiple respects. First, the court concluded that the Commission lacks standing because it is not the *only* authorized participant in the mortgage insurance program. Op. at 8. The mere fact that the Legislature delegated similar authority to certain local agencies, however, does not bar the Commission from challenging *NHF's* lack of authority. As this Court has made clear, an authorized actor has standing whether its authority is singular or shared—in either case, it falls within the relevant zone of interests and may challenge an unauthorized

competitor. *See Puget Sound*, 102 Wash. at 490 (noting authority need not be "exclusive in the sense that the sovereign power may not grant a similar right to another" because "it is exclusive against any one who assumes to exercise the privilege . . . in the absence of authority").

Second, the Court of Appeals erroneously concluded that the Commission lacks standing because it has not been granted regulatory enforcement powers. Op. at 7. The Commission is not seeking to regulate NHF, however, but only to exclude it from a restricted domain in which the Commission acts as an authorized state entity. This Court's cases make clear that the Commission's delegated authority, standing alone, is sufficient for this purpose. *See, e.g.*, *Puget Sound*, 102 Wash. at 490-91; *Day*, 76 Wn.2d at 416-17; *Skagit*, 177 Wn.2d at 723-27. In such cases, authorized actors have had standing without regulatory power.

Third, the Court of Appeals reasoned that the Commission's basis for standing improperly depends on the merits. Op. at 8-9 (citing *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001)). To begin with, *To-Ro* does not indicate that standing cannot overlap with the merits of a dispute. *See* 144 Wn.2d at 411 (requiring only that claimant's "interests" be "direct and substantial"). Regardless, there is no overlap here. As this Court's precedents establish, standing in such a case depends only on whether the claimant has special authority; if so, the claimant may

challenge its competitor's lack of such authority, which is a distinct issue. *See, e.g.*, *Puget Sound*, 102 Wash. at 490-91; *Day*, 76 Wn.2d at 416-17. There is no dispute here the Commission is an authorized entity. As such, it falls within the relevant zone of interests of its authorizing statutes and has standing to challenge NHF's lack of equivalent authority.

Finally, the Court of Appeals reasoned that the Commission lacks standing in part because HUD's Mortgagee Review Board ("MRB") can "enforce HUD rules . . . ." Op. at 8. As this Court noted in *RAC*, however, the applicability of federal rules does not undercut the distinct role of state law—including the allocation of state authority—for purposes of such a cooperative federal program. 177 Wn.2d at 429-30 (discussing framework of "cooperative federalism"). Further, this Court has held that the allocation of state and local government authority in Washington is an issue "peculiarly within the province of the courts of this state," even when that authority intersects with a federal program. *City of Tacoma v. Taxpayers of Tacoma*, 49 Wn.2d 781, 791, 307 P.2d 567 (1957) (adjudicating municipality's authority to condemn property in relation to federal permit authorizing such condemnation).[3]

[3] *City of Tacoma* was reversed due to res judicata: the plaintiff was challenging a particular project, the dispute had been "finally determined" in "earlier litigation between the parties" in federal court, and Congress had designated such review "exclusive." 357 U.S. 320, 334-37, 339, 78 S. Ct. 1209, 2 L. Ed. 2d 1345 (1958). None of these factors

Within the mortgage insurance program in particular, special privileges are afforded to authorized state and local entities. *See* 12 U.S.C. § 1735f-6; FHA Rule. And the Legislature has delegated authority to the Commission for this purpose—as a matter of Washington law. *See RAC*, 177 Wn.2d at 430 (noting authorized entities remain "subject to state law," which "establishes [the entity] in the first place, defines [its] powers and obligations, and addresses various ancillary matters related to [its] operation"). The Commission thus has standing to challenge NHF's lack of such authority as a matter of state law in state court, regardless of any federal apparatus for enforcing program rules.

The Court of Appeals' reference to the MRB is also especially problematic here because that body is limited to overseeing "mortgagees," i.e., lenders—not entities invoking state government authority to subsidize down payments, like NHF or the Commission. *See* 12 U.S.C. §§ 1707(b), 1708(c)(1). Lenders could not be and are not expected to resolve disputes between ostensibly public entities over the allocation of government authority in each state. Nor is the MRB equipped to do so. Indeed, the very reason NHF was emboldened to expand into Washington was because HUD has no procedures in place to adjudicate this distinct issue. *See* CP 580, 1345-46, 1389-90, 1394-95, 1425-27, 1431-34, 1450-51. The

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applies here. The *City of Tacoma* decision otherwise remains good law. *See, e.g.*, *Pub. Util. Dist. No. 1 v. State*, 182 Wn.2d 519, 529-30 & n.5, 342 P.3d 308 (2015).

lack of federal oversight on this point is reflected in the changed treatment of NHF loans after it instructed lenders to designate its funds as governmental (approved) rather than from a nonprofit (rejected).

B. This Court's Precedents Establish that the Commission Demonstrated a Sufficient Injury for Standing.

The Court of Appeals separately held the Commission failed to show sufficient injury for standing, because it did not offer "specific evidence of economic loss" and suffered only a "little loss of market share" from NHF's activities. Op. at 10. This holding conflicts with this Court's precedents on the injury component of standing, which is a modest requirement that was met here in multiple ways.

Initially, the Court of Appeals' singular focus on "economic loss" was incorrect. Op. at 10. As in *Puget Sound* and *Day*, the Commission's delegated authority alone is sufficient to establish injury for standing. *See, e.g.*, *Puget Sound*, 102 Wash. at 490-91; *see also Seattle Bldg.*, 129 Wn.2d at 795 (noting "alter[ed] competitive conditions" are "sufficient to satisfy the injury-in-fact requirement" (internal quotes omitted)).

Likewise, the Court of Appeals ignored that NHF offers "grants," rather than loans as the Legislature has directed for this purpose. *See* RCW 43.180.050(1)(d). The use of loans furthers numerous key interests: it establishes a vested financial stake in the borrower's success and facilitates continuing support; promotes transparency and accountability at

the outset; keeps rates and monthly payments lower; and enables the Commission to recycle funds for long-term and continuing use. *See, e.g.*, CP 402-03, 409-11, 575. NHF's conflicting approach is sufficient, in itself, to show injury to the Commission and its goals. *See Wash. Ass'n for Substance Abuse & Violence Prevention v. State*, 174 Wn.2d 642, 653, 278 P.3d 632 (2012) (claimant had standing even though it had "not suffered economic loss" because its "goals" could "reasonably be impacted" in the future).

Even as to economic loss, the Court of Appeals imposed an overly strict approach. The court ignored that the mere *potential* for such loss is sufficient to show injury, so long as the claimant has a "distinct pecuniary interest" that is at risk. *Nat'l Elec. Contractors Ass'n v. Riveland*, 138 Wn.2d 9, 25, 978 P.2d 481 (1999); *Wash. Ass'n for Substance Abuse*, 174 Wn.2d at 653; *see also City of Burlington v. Wash. State Liquor Ctrl. Bd.*, 187 Wn. App. 853, 874, 351 P.3d 875 (2015). The Commission has a distinct financial interest at risk here, given NHF's directly competing mortgage finance activities. Indeed, the Commission also presented evidence of past economic loss. *See* CP 680-86.[4]

[4] In particular, the record shows that when NHF previously suspended its program, lenders switched to the Commission's programs in direct response. CP 680-86. This shows direct competition and "supports an inference" NHF already diverted revenues, which on its own is enough for standing. *City of Burlington*, 187 Wn. App. at 868-73.

The Court of Appeals also ignored precedent establishing that public agencies suffer a representative injury when their constituents are affected or their mission is frustrated. *See, e.g., City of Seattle v. State*, 103 Wn.2d 663, 669, 694 P.2d 641 (1985) (city could challenge annexation process based on its "duty to represent the interests of area residents"); *Seattle Sch. Dist. No. 1 v. State*, 90 Wn.2d 476, 494, 585 P.2d 71 (1978) (school district had standing because funding dispute implicated "basic reason" it existed). The Commission is suffering such injury from NHF's unauthorized conduct, given the Commission's duty to promote Washington's housing finance policies and serve its residents. *See* RCW 43.180.010; *O'Brien*, 100 Wn.2d at 496. In fact, the public interest at stake here is enough on its own to find standing. *See State v. Watson*, 155 Wn.2d 574, 578, 122 P.3d 903 (2005) (noting standing inquiry is far more "liberal" when "important issue is at stake" (internal quotes omitted)).

C. Whether an Authorized State Entity May Challenge a Foreign Entity Invoking Such Authority to Profit from Low-Income Borrowers Is an Issue of Substantial Public Interest.

Finally, the Court of Appeals permitted NHF to continue unlawfully interfering with the Commission's authorized programs, harming low-income borrowers, and risking substantial disruption to Washington's housing market. CP 633, 698, 1317-19, 1321-22, 1326. This has serious implications for the public interest of Washington's

citizens. *See* RCW 43.180.010 (finding that "[d]ecent housing for the people of our state is a most important public concern"); *Wash. State Coal. for the Homeless v. Dep't of Soc. & Health Servs.*, 133 Wn.2d 894, 914, 917-18, 949 P.2d 1291 (1997) (noting provision of housing has "major public importance"). The 2008 housing crisis and ensuing Great Recession, which resulted from irresponsible mortgage practices, show why misconduct in this area must be addressed promptly. *See* FHA Rule; *O'Brien*, 100 Wn.2d at 493 (noting Commission programs help prevent a "downward spiral effect on the state's economy").

V. CONCLUSION

The Court of Appeals' decision conflicts with this Court's precedents recognizing the standing of Washington government entities to challenge other entities claiming competing governmental authority. The decision further conflicts with this Court's cases granting standing to a party facing potential economic loss (let alone demonstrated past loss), a public entity on behalf of its representative constituents, and where the case raises an issue of substantial public interest. The Commission has standing under each of these bases. Respectfully, the Commission requests that the Court grant its petition and review this case.

RESPECTFULLY SUBMITTED this 11th day of July, 2018.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington, that on July 11th , 2018 I electronically filed the foregoing document via the Washington State Appellate Courts' Secure Portal which will send e-mail notification of such filing to all active parties on the case:

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APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

WASHINGTON STATE HOUSING FINANCE COMMISSION, a public body Corporate and politic of the State of Washington, Respondent, v. NATIONAL HOMEBUYERS FUND, INC., f/k/a Homebuyers Fund, Incorporated, a California nonprofit corporation; GOLDEN STATE FINANCE AUTHORITY, f/k/a California Home Finance Authority, f/k/a California Rural Home Mortgage Finance Authority, a California joint powers authority; RURAL COUNTY REPRESENTATIVES OF CALIFORNIA, f/k/a Regional Council of Rural Counties, f/k/a Mountain Counties Water Resources Association, a California nonprofit corporation, Appellants.	No. 76510-8-I DIVISION ONE UNPUBLISHED OPINION FILED: June 11, 2018

TRICKEY, J. — The Washington State Housing Finance Commission (WSHFC) is a legislatively created agency that promotes affordable housing in Washington. National Homebuyers Fund (NHF) is a California nonprofit public benefit corporation that several California counties formed to offer home financing assistance nationwide. WSHFC sued for declaratory and injunctive relief against NHF's down payment assistance services in Washington.

Following cross motions for summary judgment, the trial court granted summary judgment in favor of WSHFC and declared that NHF's Washington

activities were prohibited by law. Because WSHFC lacks standing to bring this lawsuit, we conclude that the trial court erred in granting summary judgment for WSHFC. Therefore, we reverse and remand for dismissal of WSHFC's claims.

FACTS

WSHFC is a Washington administrative agency established under RCW 43.180.040 to increase the supply of affordable housing in Washington. The legislature created WSHFC with the express purpose of acting as "a financial conduit which, without using public funds or lending the credit of the state or local government, can issue nonrecourse revenue bonds and participate in federal, state, and local housing programs and thereby make additional funds available at affordable rates to help provide housing throughout the state." RCW 43.180.010. WSHFC is an authorized government entity for the purpose of federal housing programs, including the federal mortgage insurance program. RCW 43.180.050(1)(e).

Under the federal mortgage insurance program, the Federal Housing Administration (FHA) of the United States Department of Housing and Urban Development (HUD) provides mortgage insurance on loans made by FHA approved lenders. Federal mortgage insurance protects lenders against loss and mitigates risk. To qualify for mortgage insurance, loans must meet FHA established requirements, including a minimum 3.5 percent down payment at the time of purchase. 12 U.S.C. § 1709(b)(9)(A). This down payment requirement decreases the risk of default and promotes responsible lending.

One of WSHFC's programs promotes affordable housing by offering down payment assistance programs in order to help purchasers qualify for mortgage insurance. WSHFC is authorized to make loans to homeowners for down payment assistance. RCW 43.180.050(1)(d). These are secondary loans with low or no interest and deferred payment until the primary mortgage is paid off or the home is sold or refinanced. WSHFC also prescreens borrowers, provides education and counseling, and prevents excessive lender fees.

WSHFC generates revenue from this down payment assistance program by selling the underlying primary mortgage loans as securities. Participating lenders originate the loans, which are then delivered to WSHFC through service providers. The primary loans are pooled and sold as securities with all loans monitored and administered over time. WSHFC reinvests revenue from the security sales back into its programs to benefit the Washington housing market. WSHFC is self-funding and continually uses its revenue to increase affordable housing in Washington.

In 2014, WSHFC encountered competition from NHF, a new entity providing down payment assistance in Washington. NHF is a California nonprofit public benefit corporation that was formed by two California entities, Rural County Representatives of California (RCRC) and Golden State Finance Authority (GSFA). NHF was created with the express purpose of providing home financing services outside of California.

RCRC is a California nonprofit mutual benefit corporation founded in 1972 by several rural counties in California. RCRC advocates for rural issues, promotes

a greater understanding of rural counties among policy makers, and aims to improve the ability of small, rural California county governments to provide services.

In 1993, RCRC's member counties created GSFA to offer homeownership assistance and mortgage financing in its member counties. GSFA is a joint-powers authority that is limited to operating in California. GSFA offers down payment assistance for federally insured mortgages only within its territory in California.

In 2002, RCRC and GSFA founded NHF[1] as a separate, nonprofit public benefit corporation to offer mortgage assistance services outside of California. NHF has its own articles of incorporation and bylaws. RCRC, GSFA, and NHF share the same primary address and several officers. They also have a unified business plan, with NHF and GSFA considered to be affiliates of RCRC. NHF does not have its own employees, and instead contracts for RCRC to provide services.

NHF entered the Washington market in 2014. NHF assists with down payments to low and moderate income homebuyers by providing them with non-repayable gifts of up to 5 percent of the mortgage loan. Participating lenders originate individual mortgages with NHF supplying the gift-based down payment assistance to the homebuyer. These individual mortgages are pooled into mortgage-backed securities and sold to NHF. NHF then sells these mortgage-backed securities on the open market to investors. NHF uses the revenue from these sales to continue funding its down payment assistance program and

[1] NHF was originally incorporated under the name Homebuyer's Fund, Incorporated. By February 2003, the name had been changed to National Homebuyer's Fund, Inc.

transfers excess profits to RCRC in California. NHF does not require repayment of the down payment gift funds.

Upon NHF's entry into the Washington market, WSHFC expressed concern about the competition. WSHFC looked for ways to curtail NHF's entry into and activities within Washington. These included communicating with HUD about the legality of NHF's business, and discussing shutting down NHF's loans with NHF's mortgage partners.

In May 2015, WSHFC filed suit against RCRC, GSFA, and NHF. WSHFC claimed that RCRC, GSFA, and NHF did not have the authority to provide homeownership financing services outside of California. WSHFC requested a declaratory judgment that NHF's ongoing activities were unauthorized and could not continue. WSHFC also sought an injunction prohibiting NHF from providing homeownership financing services in Washington.

RCRC, GSFA, and NHF (collectively, NHF) filed a motion to dismiss the case for failure to state a claim and for lack of personal jurisdiction over GSFA and RCRC. After a hearing, the trial court denied NHF's motion to dismiss. WSHFC and NHF then filed cross-motions for summary judgment. The trial court denied both motions and set the matter for trial. WSHFC moved for reconsideration. On reconsideration, the trial court granted summary judgment and issued a declaratory judgment in favor of WSHFC. The trial court declared that NHF's activities were prohibited by law.

NHF appeals.[2]

ANALYSIS

NHF argues that the trial court erred in granting summary judgment in favor of WSHFC because WSHFC did not have standing to bring this suit. Specifically, NHF claims that WSHFC has no rights or legally protected interests at stake as required for standing. We agree.

WSHFC sought declaratory judgment and injunctive relief under the Uniform Declaratory Judgments Act (UDJA), chapter 7.24 RCW. To have standing under the UDJA, a party must establish that its "rights, status or other legal relations are affected by a statute." RCW 7.24.020. For the purposes of establishing standing under the UDJA, the trial court applies a two-part test. Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake, 150 Wn.2d 791, 802, 83 P.3d 419 (2004). The first part of the test asks "whether the interest sought to be protected is 'arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.'" Grant County Fire, 150 Wn.2d at 802 (internal quotation marks omitted) (quoting Save a Valuable Env't v. City of Bothell, 89 Wn.2d 862, 866, 576 P.2d 401 (1978)). A law's zone of interests is ascertained by examining the operation of the statute and the statute's general

[2] After the parties submitted their briefing to this court, WSHFC made a motion to file a supplemental brief or to strike portions of NHF's reply brief. WSHFC alleged that NHF had introduced new arguments in its reply brief. A commissioner of this court referred the issue to the panel for consideration with the merits. We have examined the briefing and conclude that NHF's reply brief does not introduce new arguments. Instead, NHF clarified its theory on standing and rebutted WSHFC's argument. This is appropriate content for a reply brief. See New Cingular Wireless PCS, LLC v. City of Clyde Hill, 187 Wn. App. 210, 219 n.5, 221 n.6, 349 P.3d 53 (2015), aff'd, 185 Wn.2d 594, 374 P.3d 151 (2016). Therefore, we deny the motion to supplement or strike and consider the entirety of NHF's reply brief.

purpose. Five Corners Family Farmers v. State, 173 Wn.2d 296, 304-05, 268 P.3d 892 (2011).

The second part of the test considers whether the challenged action has caused an "'injury in fact'" to the party seeking relief. Grant County Fire, 150 Wn.2d at 802 (internal quotation marks omitted) (quoting Save a Valuable Env't, 89 Wn.2d at 866). The harm must be personal to the party and substantial, rather than speculative or abstract. Grant County Fire, 150 Wn.2d at 802. The party seeking to establish standing must satisfy both parts of the test. Grant County Fire, 150 Wn.2d at 802.

The trial court's determination that a party has standing is a legal question that is reviewed de novo. City of Snoqualmie v. King County Exec. Dow Constantine, 187 Wn.2d 289, 296, 386 P.2d 279 (2016).

Here, WSHFC argues that it falls into the zone of interests of both Washington and federal law as an authorized state entity operating within the federal mortgage insurance program in Washington. The Washington legislature created WSHFC under RCW 43.180.040. WSHFC is "an instrumentality of the state" and "a financial conduit" for participation in federal, state, and local housing programs. RCW 43.180.040(1); RCW 43.180.010. But the statutory scheme which establishes the WSHFC does not include enforcement power. Thus, WSHFC does not have statutory authority to regulate other entities who participate in the housing programs.

Furthermore, under RCW 43.180.010, WSHFC is "*a* financial conduit" for housing programs, not *the* or *the sole* financial conduit.[3] Therefore, the statutory scheme does not establish WSHFC as the only participant in federal, state, and local housing programs in Washington. WSHFC has conceded that its power is not exclusive, with at least 25 other organizations providing down payment assistance in Washington. Therefore, WSHFC is only one of the participants in housing finance assistance and does not have a monopoly interest to protect.

WSHFC also claims that it falls within the zone of interests for federal law and has an implied right of action because it is an authorized state entity. "[C]ourts . . . recognize an implied cause of action under a statute which provides protection to a specific class of persons but creates no remedy." Bennett v. Hardy, 113 Wn.2d 912, 920, 784 P.2d 507 (1990). But HUD has a Mortgagee Review Board (Board) to enforce HUD and FHA policies. 12 U.S.C. § 1708(c). The Board can take action against mortgagees found to be violating FHA requirements. 12 U.S.C. § 1708(c)(1). Therefore, an entity exists to enforce HUD rules and an implied right of action is not necessary.

WSHFC effectively asserts standing based on the merits of the lawsuit. In its underlying complaint, WSHFC requested declaratory judgment that NHF's actions were unauthorized in Washington. Thus, WSHFC simultaneously asserts standing because NHF's activity was unauthorized, while requesting that the court declare NHF's activity to be unauthorized. In this approach, WSHFC cannot establish that it is in the "zone of interests" for the statute without reaching the

[3] RCW 43.180.010 (emphasis added).

merits of its claim. This is unpersuasive as standing must exist at the outset of the case. See To-Ro Trade Shows v. Collins, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001). Therefore, WSHFC's claims that NHF is an unauthorized entity in Washington do not provide standing to bring this lawsuit.[4]

In addition to being outside the zone of interests, WSHFC fails to demonstrate injury in fact to support standing. WSHFC expressed concerns that NHF's competition harms its ability to self-fund its housing assistance programs. WSHFC noted that NHF sold thousands of loans originating in Washington during 2014 and 2015 that amounted to over $688,000 and millions of dollars in revenue. Given the volume of business, WSHFC considered the diversion of revenue out of Washington to be "a big concern."[5]

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[4] WSHFC raised many merit-based claims for standing. For example, WSHFC claims that WSHFC has standing as an authorized government entity, while NHF improperly holds itself out as a government entity. But NHF does not purport to act as a government entity in Washington. By virtue of its status as an Internal Revenue Service Section 115 entity, HUD considers NHF an "instrumentality of government" for the purposes of secondary financing of home loans. Appellant's Opening Br. at App. 3-4 (Mortgagee Letter 2012-24). This "instrumentality of government" status only establishes that NHF can participate in the secondary financing market without HUD preapproval. While NHF has confused the issue by referring to itself as an instrumentality of government in advertising and lenders, NHF does not claim to be a government entity.

WSHFC also claims that NHF is not authorized to assert status as a government entity to provide duplicative services. Washington has "a public policy against duplication of public functions, and that such duplication is normally not permissible unless it is provided for in some manner by statute." Alderwood Water Dist. v. Pope & Talbot, Inc., 62 Wn.2d 319, 321, 382 P.2d 639 (1963). But the case law cited by WSHFC in support of this argument applies to public functions performed by public entities. See Alderwood, 62 Wn.2d at 322 (two water districts cannot overlap); Skagit County Public Hosp. Dist. No. 304 v. Skagit County Pub. Hosp. Dist. No. 1, 177 Wn.2d 718, 723-31, 305 P.3d 1079 (2013) (a rural public hospital district could not invade the territory of another rural public hospital district without its permission). Unlike water or public hospital districts, NHF is a private corporation rather than a public entity. WSHF does not demonstrate that Washington seeks to prevent overlap between private and public entities in performing public functions.

[5] Clerk's Papers (CP) at 827.

Despite this concern, WSHFC has not provided evidence in support of economic loss. While NHF admits to having made over $688,000 in loans in Washington, WSHFC has not shown that those loans would have otherwise been made by WSHFC rather than one of the other financing entities in Washington. In fact, a June 2016 deposition revealed that WSHFC had experienced very little loss of market share due to NHF's entrance into Washington. The director of the home ownership division of WSHFC testified, "[W]e didn't lose that much market share. [O]ur volumes have still continued to grow consistently with or without NHF present."[6] Without specific evidence of economic loss, WSHFC's claims of injury are merely speculative and do not satisfy the standing requirement of injury in fact. See Grant County Fire, 150 Wn.2d at 802.

We conclude that WSHFC did not have standing to bring this lawsuit against NHF. WSHFC has not shown that it falls within the zone of interests or suffered an injury in fact. Therefore, we reverse and remand for dismissal of WSHFC's claims.[7]

Trickey, J

WE CONCUR:

Spearman, J.

Dwyer, J.

[6] CP at 827.
[7] In light of this decision, we will not reach the merits of NHF's additional claims.

APPENDIX B

RCW 43.180.010

Declaration of public policies—Purpose.

It is declared to be the public policy of the state and a recognized governmental function to assist in making affordable and decent housing available throughout the state and by so doing to contribute to the general welfare. Decent housing for the people of our state is a most important public concern. Interest rates and construction costs have made it impossible for many Washington citizens to purchase their own homes. Older people, disabled persons, and low and moderate-income families often cannot afford to rent decent housing. There exists throughout the state a serious shortage of safe, sanitary and energy efficient housing available at prices within the financial means of our citizens. General economic development within the state is also impeded by a lack of affordable housing. The state's economy, which is dependent on the timber, wood products, and construction industries, has been damaged by inadequate investment in housing construction and rehabilitation. The result has been high unemployment and economic hardship affecting the prosperity of all the people of the state, particularly those in the wood products industry.

It is the purpose of this chapter to establish a state housing finance commission to act as a financial conduit which, without using public funds or lending the credit of the state or local government, can issue nonrecourse revenue bonds and participate in federal, state, and local housing programs and thereby make additional funds available at affordable rates to help provide housing throughout the state. It is also a primary purpose of this chapter to encourage the use of Washington state forest products in residential construction. This chapter is enacted to accomplish these and related purposes and shall be liberally construed to carry out its purposes and objectives.

[**1983 c 161 § 1.**]

APPENDIX C

RCW 43.180.040

Commission created.

(1) There is hereby established a public body corporate and politic, with perpetual corporate succession, to be known as the Washington state housing finance commission. The commission is an instrumentality of the state exercising essential government functions and, for purposes of the code, acts as a constituted authority on behalf of the state when it issues bonds pursuant to this chapter. The commission is a "public body" within the meaning of RCW **39.53.010**.

(2) The commission shall consist of the following voting members:

(a) The state treasurer, ex officio;

(b) The *director of community, trade, and economic development, ex officio;

(c) An elected local government official, ex officio, with experience in local housing programs, who shall be appointed by the governor with the consent of the senate;

(d) A representative of housing consumer interests, appointed by the governor with the consent of the senate;

(e) A representative of labor interests, appointed by the governor, with the consent of the senate, after consultation with representatives of organized labor;

(f) A representative of low-income persons, appointed by the governor with the consent of the senate;

(g) Five members of the public appointed by the governor, with the consent of the senate, on the basis of geographic distribution and their expertise in housing, real estate, finance, energy efficiency, or construction, one of whom shall be appointed by the governor as chair of the commission and who shall serve on the commission and as chair of the commission at the pleasure of the governor.

The term of the persons appointed by the governor, other than the chair, shall be four years from the date of their appointment, except that the terms of three of the initial appointees shall be for two years from the date of their appointment. The governor shall designate the appointees who will serve the two-year terms. An appointee may be removed by the governor for cause pursuant to RCW **43.06.070** and **43.06.080**. The governor shall fill any vacancy in an appointed position by appointment for the remainder of the unexpired term. If the **department of community development is abolished, the resulting vacancy shall be filled by a state official who shall be appointed to the commission by the governor. If this official occupies an office or position for which senate confirmation is not required, then his or her appointment to the commission shall be subject to the consent of the senate. The members of the commission shall be compensated in accordance with RCW **43.03.240** and may be reimbursed, solely from the funds of the commission, for expenses incurred in the discharge of their duties under this chapter, subject to the provisions of RCW **43.03.050** and **43.03.060**. A majority of the commission constitutes a quorum. Designees shall be appointed in such manner and shall exercise such powers as are specified by the rules of the commission.

(3) The commission may adopt an official seal and may select from its membership a vice chair, a secretary, and a treasurer. The commission shall establish rules concerning its exercise of the powers authorized by this chapter. The rules shall be adopted in conformance with chapter **34.05** RCW.

[**1995 c 399 § 98; 1985 c 6 § 14; 1984 c 287 § 90; 1983 c 161 § 4.**]

NOTES:

Reviser's note: *(1) The "director of community, trade, and economic development" was changed to the "director of commerce" by 2009 c 565.

**(2) Powers, duties, and functions of the department of community development and the department of trade and economic development were transferred to the department of community, trade, and economic development by 1993 c 280, effective July 1, 1994. The department of community, trade, and economic development was renamed the department of commerce by 2009 c 565.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW **43.03.220**.

APPENDIX D

RCW 43.180.050

Housing financing powers—Annual audit.

(1) In addition to other powers and duties prescribed in this chapter, and in furtherance of the purposes of this chapter to provide decent, safe, sanitary, and affordable housing for eligible persons, the commission is empowered to:

(a) Issue bonds in accordance with this chapter;

(b) Invest in, purchase, or make commitments to purchase or take assignments from mortgage lenders of mortgages or mortgage loans;

(c) Make loans to or deposits with mortgage lenders for the purpose of making mortgage loans;

(d) Make loans for down payment assistance to home buyers in conjunction with other commission programs; and

(e) Participate fully in federal and other governmental programs and to take such actions as are necessary and consistent with this chapter to secure to itself and the people of the state the benefits of those programs and to meet their requirements, including such actions as the commission considers appropriate in order to have the interest payments on its bonds and other obligations treated as tax exempt under the code.

(2) The commission shall establish eligibility standards for eligible persons, considering at least the following factors:

(a) Income;

(b) Family size;

(c) Cost, condition, and energy efficiency of available residential housing;

(d) Availability of decent, safe, and sanitary housing;

(e) Age or infirmity; and

(f) Applicable federal, state, and local requirements.

The state auditor shall audit the books, records, and affairs of the commission annually to determine, among other things, if the use of bond proceeds complies with the general plan of housing finance objectives including compliance with the objective for the use of financing assistance for implementation of cost-effective energy efficiency measures in dwellings.

[**2013 c 13 § 1; 1986 c 264 § 1; 1983 c 161 § 5.**]

NOTES:

Effective date—2013 c 13: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 17, 2013]." [**2013 c 13 § 2.**]

APPENDIX E

List of Subjects in 16 CFR Part 1107

Business and industry, Children, Consumer protection, Imports, Product testing and certification, Records, Record retention, Toys.

Accordingly, the Commission amends 16 CFR part 1107 as follows:

PART 1107—TESTING AND LABELING PERTAINING TO PRODUCT CERTIFICATION

■ 1. The authority citation for part 1107 continues to read as follows:

Authority: 15 U.S.C. 2063, Sec. 3, 102 Pub. L. 110–314, 122 Stat. 3016, 3017, 3022.

Subpart C—Certification of Children's Products

■ 2. Add paragraph (f) to § 1107.21 to read as follows:

§ 1107.21 Periodic testing.

* * * * *

(f) A manufacturer must select representative product samples to be submitted to the third party conformity assessment body for periodic testing. The procedure used to select representative product samples for periodic testing must provide a basis for inferring compliance about the population of untested products produced during the applicable periodic testing interval. The number of samples selected for the sampling procedure must be sufficient to ensure continuing compliance with all applicable children's product safety rules. The manufacturer must document the procedure used to select the product samples for periodic testing and the basis for inferring the compliance of the product manufactured during the periodic testing interval from the results of the tested samples.

* * * * *

■ 3. Add paragraph (a)(4) to § 1107.26 to read as follows:

§ 1107.26 Recordkeeping.

(a) * * *

(4) Records documenting the testing of representative samples, as set forth in § 1107.21(f), including the number of representative samples selected and the procedure used to select representative samples. Records also must include the basis for inferring compliance of the product manufactured during the periodic testing interval from the results of the tested samples;

* * * * *

Dated November 29, 2012.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2012–29204 Filed 12–4–12; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–5679–N–01]

Federal Housing Administration: Prohibited Sources of Minimum Cash Investment Under the National Housing Act—Interpretive Rule

AGENCY: Office of the General Counsel, HUD.

ACTION: Interpretive rule.

SUMMARY: HUD is issuing this interpretive rule to clarify the scope of the provision in the National Housing Act that prohibits certain sources of a homebuyer's funds for the required minimum cash investment for single family mortgages to be insured by the Federal Housing Administration (FHA). Uncertainty has arisen as to the effect of this provision on State and local governments and their agencies' and instrumentalities' homeownership programs that provide funds for the minimum cash investment. This rule provides HUD's interpretation that this statutory provision does not remove the availability of FHA insurance for use in conjunction with State and local government programs that provide funds toward the required minimum cash investment. Although interpretive rules are exempt from public comment under the Administrative Procedure Act, HUD nevertheless invites public comment on the interpretation provided in this rule.

DATES: *Effective Date:* November 29, 2012. *Comment Due Date:* January 4, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Millicent Potts, Associate General Counsel for Insured Housing, Office of General Counsel, U.S. Department of Housing and Urban Development Room 9226, 202–708–2212. Hearing or speech impaired individuals may access these numbers via TTY by calling the toll free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. The National Housing Act Prohibition on Certain Sources of Cash Investment

To qualify a mortgage for FHA mortgage insurance, section 203(b)(9)(A) of the National Housing Act (12 U.S.C. 1709(b)(9)) requires the homebuyer to

pay ''in cash or equivalent on account of the property an amount equal to not less than 3.5 percent of the appraised value of the property.'' Some homebuyers obtain this minimum amount from sources other than their own earnings or savings; for example, a relative may give or loan them this money or some part of it. However, section 203(b)(9)(C) of the National Housing Act provides that no part of this required minimum investment may consist of funds provided by the seller of the property or any other person or entity who benefits financially from the sale of the property, or any person who is reimbursed by any such person or entity.

B. Federally Funded Homeownership Programs

Governments—Federal, State, and local—and their agencies and instrumentalities have provided assistance toward the minimum cash investment as part of homeownership programs from various public funds, including appropriated funds, operating tax revenues, taxable and tax-exempt general obligation bonds, and surplus revenues (for example, excess reserves). Federal homeownership assistance programs that have a cash investment component include HUD's Neighborhood Stabilization Program, Community Development Block Grant (CDBG) program, and HOME Investment Partnerships program, as well as the Department of Veterans Affairs Home Loan Guaranty Service and U.S. Department of Agriculture's Rural Development Housing and Community Facilities program. These Federal homeownership assistance programs have specified public purposes, such as revitalizing communities affected by foreclosures and vacancy, increasing the homeownership rate in particular geographies, making homeownership affordable to underserved populations and in high-cost markets.

For these Federal assistance programs, Congress has authorized funds to be distributed from the Treasury, often through State and local governments or their instrumentalities, for purposes of supporting homeownership programs. At the same time, section 203(b)(9)(C) of the National Housing Act raises the question whether the distribution of these same Federal funds would cause the mortgages originated on the basis of support from such funds not to qualify for FHA insurance. Reading the prohibition in section 203(b)(9)(C) to include other Federal agencies, State and local governments, or their instrumentalities disbursing government funds in accordance with the requirements of government assistance programs would place these governments and instrumentalities in an untenable position of having governmental authority to provide assistance toward the minimum cash investment on the one hand, but being unable to use FHA-insured mortgage financing on the other. To do so would also frustrate the statutory purpose of these programs and of the FHA to encourage and support homeownership.[1]

C. Other Government Funded Homeownership Assistance Programs

Another key source of homeownership assistance programs, such as assistance with closing costs, or rehabilitation, is provided by State and local governments, primarily through housing finance agencies (HFAs). According to the National Council of State Housing Finance Agencies, HFAs are generally State-chartered authorities established by State governments to help meet the affordable housing needs of State residents.[2] Although HFAs vary widely in characteristics such as their relationship to State government, most are independent entities that operate under the direction of a board of directors appointed by their respective State governors. They administer a wide range of affordable housing and community development programs.[3] Using housing bonds, low-income housing tax credits, HOME program funds, and other Federal and State resources, HFAs have crafted hundreds of housing programs, including homeownership, rental, and all types of special-needs housing. HFAs have provided affordable mortgages to 2.6 million families to buy their first homes through mortgage revenue bond programs.[4]

A recent study of HFAs found that 100 percent of the 51 HFAs surveyed said that part of their mission is ''to assist low- and moderate-income residents to purchase homes and be successful homeowners.'' [5] A majority of those programs—in 2011, 88 percent (45 of 51) of State HFAs—include minimum cash investment as a part of advancing their mission.[6] Federally backed mortgage insurance is also a critical part of the HFAs' strategy. Of HFA loan production in 2011, 86 percent involved FHA, Veterans Administration (VA), or Rural Housing Service loan or loan insurance programs.

Many HFAs administer other State and Federal housing assistance programs such as homeless assistance, CDBG, and State housing trust funds. Local housing finance agencies operate similarly but at the county, city, or other municipal-entity level. In many cases, a local agency may be the local government itself. HFAs provide various services to assist citizens within their jurisdictions in attaining affordable housing options. These services include providing access to affordable mortgage loans for purchasing a home, counseling, money and other resources for closing costs, and assistance for any required investment in the mortgaged property. Such funds come from numerous sources. Program beneficiaries are usually low- and moderate-income individuals and families who have gone through homeownership counseling through which they receive training on money management, use of credit, and home maintenance.

D. FHA and Minimum Cash Investment Requirements

Since its enactment, the National Housing Act (NHA) has required the mortgagor to have a minimum investment in the property being purchased. For many years, the required minimum investment was 3 percent of the cost of acquisition, and is currently 3.5 percent of the home's appraised value. Prior to 2008, the statute and regulations regarding the required investment were silent, with minor exceptions, as to permissible sources of the mortgagor's required investment. However, FHA's single family mortgage credit handbook, Handbook 4155.1,[7] provided administrative guidance to approved mortgagees as to permissible sources of the funds that a homebuyer could use for the required minimum investment. HUD's policy under the handbook provisions was to permit the minimum cash investment to be financed by sources including a family

[1] In providing an overview of the Housing and Economic Recovery Act if 2008 (HERA), the Congressional Research Service in an August 19, 2008 report for Congress on HERA [RL34623] notes that HERA authorizes $4 billion for state and local governements to purchase and rehabilitate abandoned and foreclosed houisng and that this housing would be sold or rented to low- and moderate-income individuals and families. *See http://assets.opencrs.com/rpts/RL34623_20080819.pdf.*

[2] See *http://answers.usa.gov/system/self service.controller?CONFIGURATION=1000&PARTITION_ID=1&CMD=VIEW_ARTICLE&USERTYPE=1&LANGUAGE=en&COUNTRY=US&ARTICLE_ID=10182.*

[3] See *http://www.ncsha.org/about-hfas/hfa-programs.*

[4] See *http://www.ncsha.org/about-hfas.*

[5] See *http://www.chfainfo.com/documents/HFA_HEC_Report_March2012.pdf* at 1.

[6] *Id.* at 1.

[7] See *http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4155.1/41551HSGH.pdf.*

member, the borrower's employer or labor union, a governmental entity, a charitable organization, or a close friend with a clearly defined and documented interest in the borrower. HUD's policies have always expressly prohibited the seller from financing or providing a gift of the required investment.

In the 1990s, several nonprofit entities developed an approach to funding homebuyers' cash investments that circumvented the handbook prohibition. These entities obtained charitable status from the Internal Revenue Service, and then encouraged home sellers to use their services and provided homebuyers with all or part of the required cash investment amount. After the funds were provided by the nonprofit entity to the homebuyer, the seller made a donation to the nonprofit entity of the amount of the assistance plus a fee. The donated funds were directed to subsequent homebuyers for the cash investment on their homes. The nonprofit does not conduct broad-based fundraising but instead relies on sellers and other businesses in real estate for financial support. In effect, sellers and other donors were indirectly funding the homebuyer's required minimum investment by reimbursing the nonprofit entity for each transaction.[8]

As the prevalence of channeling funds from sellers through nonprofit entities increased, FHA became concerned that this practice as applied to homebuyers with FHA-insured mortgages could result in FHA insuring riskier loans. In response, FHA published a proposed rule in 1999 to prohibit this source of the minimum cash investment.[9] Under the proposed rule, a gift of the buyer's required minimum cash investment would disqualify the loan from FHA insurance if the entity providing the gift received funds directly or indirectly from the seller of the property. However, the proposed rule expressly included funds provided by a ''State or local government agency or instrumentality'' in the category of permissible sources of funds that the homebuyer can apply toward the minimum investment requirement.[10] HUD withdrew the rule in January 2001 in light of widespread opposition to the rule as proposed.[11]

The direct and indirect financing of homebuyers' minimum cash investment by sellers continued to be a source of concern following the withdrawal of the proposed rule. In 2005, the Government Accountability Office (GAO) published a report on the risks raised by the reimbursement of nonprofit entities by sellers.[12] The GAO findings noted that sales prices were increased commensurately to cover the cost incurred by the seller, and thus resulted in homeowners having less actual equity in the newly acquired home.[13] The GAO report also found that the default and claim rate for homes purchased with charitable gifts where the nonprofit entity was reimbursed by the seller was much higher than in those cases where the homebuyer provided his or her own money for the required investment.[14]

Moreover, the IRS found that organizations claiming to be charities were being used to funnel money from sellers to buyers through self-serving, circular-financing arrangements, and that in a typical scheme, there is a direct correlation between the amount of the funds provided to the buyer and the payment received from the seller.[15] On May 4, 2006, the IRS issued Revenue Ruling 2006–27, which determined that organizations that indirectly provide cash investments funded by sellers to homebuyers do not qualify as tax-exempt charities.[16] In the press announcement accompanying the ruling, the IRS stated that the ruling makes clear that organizations operating seller-funded programs are not charities because they do not meet the requirements of section 501(c)(3) of the Internal Revenue Code.[17] The IRS also found that the seller pays the organization only if the sale closes, and the organization usually charges an additional fee for its services.[18]

On May 11, 2007, HUD again published a proposed rule that prohibited funds provided by the seller as a source for the minimum cash investment.[19] This provision, entitled ''Restrictions on Seller Funding,'' proposed to prohibit cash investment amounts that consists, in whole or in part, of funds provided by any of the following parties before, during or after closing of the property sale: ''(1) The seller, or any other person or entity that financially benefits from the transaction; or (2) any third party or entity * * * that is reimbursed directly or indirectly by any of the parties listed in clause (1).''[20] Once again, the May 2007 proposed rule expressly exempted funds from ''a federal, state, or local government agency or instrumentality'' from the category of prohibited sources for funds toward the required minimum investment.[21] HUD published its final rule on October 1, 2007.[22] On the effective date of the rule, a lawsuit challenging the rule was filed against HUD in the U.S. district court for the Eastern District of California, and in February 2008 the court set aside the final rule.[23]

The 2005 GAO report, the 2006 IRS Ruling, and the judicial invalidation of HUD's final rule eventually led to congressional action on the issue in 2008. Section 2113 of the Housing and Economic Recovery Act of 2008 (HERA), signed into law on July 30, 2008, amended the NHA with language that is identical in relevant part to the language in HUD's 2007 final rule. Section 2113 of HERA amended section 203(b)(9) of the NHA to provide that mortgages eligible for FHA insurance must ''[b]e executed by a mortgagor who shall have paid in cash or its equivalent, on account of the property an amount equal to not less than 3.5 percent of the appraised value of the property or such larger amount as the Secretary may determine.'' Section 203(b)(9) was also amended to include a new subparagraph (9)(C), which specifies prohibited sources for a mortgagor's minimum investment. Section 203(b)(9)(C) of the NHA states:

> PROHIBITED SOURCES.—In no case shall the funds required by subparagraph (A) consist, in whole or in part, of funds provided by any of the following parties before, during, or after closing of the property sale:
>
> (i) The seller or any other person or entity that financially benefits from the transaction.
>
> (ii) Any third party or entity that is reimbursed, directly or indirectly, by any of the parties described in clause (i).

Since HERA's enactment, FHA has not replaced the regulation that was

[8] *See* IRS Ruling 2006–27, *available at http://www.irs.gov/pub/irs-drop/rr-06–27.pdf.*

[9] *See* Sources of Homeowner Downpayment, 64 FR 49956 (proposed Sept. 14, 1999).

[10] *See id.* at 49958.

[11] *See* Withdrawal of Proposed Rule on Sources of Homeowner Downpayment Pursuant to Section 203 of the National Housing Act, 66 FR 2851 (January 12, 2001).

[12] *See* United States Government Accountability Office, ''Mortgage Finance—Additional Action Needed to Manage Risk of FHA-Insured Loans with Down Payment Assistance,'' (Nov. 2005) available at *http://www.gao.gov/new.items/d0624.pdf.*

[13] *See id.* at 25.

[14] *See id.* at 3–4.

[15] *See http://www.irs.gov/Charities-&-Non-Profits/Seller-Funded-Down-Payment-Assistance-Programs-Are-Not-Tax-Exempt.*

[16] *See http://www.irs.gov/pub/irs-drop/rr-06-27.pdf.*

[17] *See http://www.irs.gov/uac/IRS-Targets-Down-Payment-Assistance-Scams;-Seller-Funded-Programs-Do-Not-Qualify-As-Tax-Exempt.*

[18] *Id.*

[19] *See* Standards for Mortgagor's Investment in Mortgaged Property, 72 FR. 27048 (proposed May 11, 2007).

[20] *See id.* at 27049.

[21] *See id.* at 27051.

[22] *See* Standards for Mortgagor's Investment in Mortgaged Property, 72 FR 56002 (final Oct. 1, 2007).

[23] *See Nehemiah Corp. of America* v. *Jackson,* 546 F. Supp. 2d 830, 848 (E.D. Cal. 2008).

vacated by the district court in February 2008. However, Mortgagee Letter 2008–23 provides notification of the statutory revisions to the cash investment requirements imposed by HERA.[24] Instead of 3 percent of the cost of acquisition, the required investment was changed by HERA to 3.5 percent of the appraised value of the property. Aside from the statement that closing costs (*i.e.,* the present allowed seller incentive of 6 percent) could not be used to meet the 3.5 percent appraised value minimum investment requirement, the Mortgagee Letter is silent regarding the source of the required cash investment by the mortgagor.

II. This Interpretive Issue

A. Conjunction of Government Housing Assistance Programs and FHA-Insured Mortgages

It is HUD's interpretation that section 203(b)(9)(C) of the NHA does not prohibit FHA from insuring mortgages originated as part of the homeownership programs of Federal, State, or local governments or their agencies or instrumentalities when such agencies or instrumentalities also directly provide funds toward the required minimum cash investment.[25] The addition of a statutory provision on prohibited sources of cash investment funds, as part of the amendments to section 203(b)(9) of the NHA enacted in HERA, was intended to preclude the abuse of the program where a seller (or other interested or related party) funded the homebuyer's cash investment after the closing by reimbursing third-party entities and added the cost of this reimbursement to the sales price of the home, thus inflating the price of the home beyond its market value. It is HUD's interpretation that the amended section 203(b)(9) does not exclude as a permissible source of cash investment, funds provided directly by Federal, State, or local governments, or their agencies or instrumentalities as part of their respective homeownership programs.

HUD finds support for this interpretation in the surrounding provisions in HERA and in the legislative history of the amendment to section 203(b)(9). First, HERA itself authorized governmental homeownership programs that include a cash investment component, and interpreting section 203(b)(9)(C) to deny FHA insurance to mortgages resulting from such programs would frustrate their statutory purpose. In section 2301 of HERA, Congress authorized the first increment of funding for the Neighborhood Stabilization Program (NSP). NSP provides funds to low- and moderate-income homebuyers for the cash investment on purchasing lender-foreclosed single family properties when the property will be the buyer's primary residence and is located in an eligible target area. NSP funds are distributed through State and local government agencies and instrumentalities. NSP funds are also used to purchase vacant or distressed properties, which may then be resold by the purchasing agency or instrumentality to low- or moderate-income buyers with funds toward the minimum cash investment. Access to FHA mortgage insurance is often essential to making such programs work.[26] Thus, an interpretation of section 203(b)(9)(C) that precludes governments and their agencies and instrumentalities government agencies from providing funding toward the minimum cash investment for an FHA-insured mortgage would undercut a central purpose of NSP and similar Federal, State, and local government programs.[27]

Second, the legislative history of the amendment to section 203(b)(9)(C) also supports HUD's interpretation that it does not exclude State and local government home ownership programs from FHA insurance eligibility. In a statement supporting the amendment to section 203(b)(9)(C), Senator Dodd explained that ''this bill eliminates the seller-funded downpayment assistance program.'' [28] There is no indication that State and local governments or their agencies or instrumentalities were to be within the scope of the amendment. The Senate Committee Report accompanying a 2007 bill containing statutory language [29] identical to what was eventually enacted in HERA further support this interpretation. The report explained that the ''section also prohibits seller-funded downpayment entities from providing any of this required cash investment.'' [30] It noted that ''[s]ince this legislation was passed by the Committee, HUD has promulgated a regulation that also prohibits *these entities* from providing downpayment assistance funds.'' [31] As discussed above, the 2007 HUD rule to which the Senate Report refers expressly excluded State and local government agencies and instrumentalities from the category prohibited sources for the minimum cash investment. The report's identification of ''seller-funded downpayment entities'' as the targets of both HUD's proposed rule *and* of the bill indicates that the provision, which is identical to what was enacted in HERA, does not include State and local governments or their agencies or instrumentalities.

B. Scope of Interpretive Rule

Under section 203(b)(9)(A) of the NHA, the homebuyer's investment in the property must be at least 3.5 percent of its appraised value. So long as the homebuyer makes this minimum required investment from his or her own (or other approved) funds, any person, even one associated with the transaction, may contribute additional funds towards the borrower's costs without violating section 203(b)(9)(C). This interpretive rule only applies to funds that constitute all or part of the

[24] *See* Mortgagee Letter 2008–23, *available at http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_19737.pdf.*

[25] In Mortgagee Letter 94–2, FHA defined a government agency or instrumentality for purposes of section 528 of the NHA. *See http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_16755.txt.* This definition applies here. That definition provides that the entity must have been established by a governmental body or with governmental approval or under special law to serve a particular public purpose or designated as an instrumentality by law (statute or court opinion) and the majority of governing board and/or principal officers named or approved by governmental body/officials, or the government body approves all major decisions and/or expenditures, or the government body provides funds through direct appropriations/grants/loans, with related controls applicable to all activities of entity.

[26] HERA was enacted in 2008. FHA data shows that in that year, there was a dramatic increase in FHA's market share. From 2005 through 2007, FHA's market share ranged from 2.6 to 3.9% of the national mortgage market. In 2008, it rose to almost 20% of the market share. *See* ''FHA-Insured Single Family Mortgage Originations and Market Share Report, 2009–Q4, *http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_16681.pdf* (last visited 7–3–2012). See also FHA's Annual Report to Congress on the Fiscal Year 2012 Financial Status of the FHA Mutual Mortgage Insurance Fund, issued November 16, 2012, which has updated information on FHA's market share, at *http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2012/HUDNo.12-171.*

[27] *See United Savings Ass'n* v. *Timbers of Inwood Forest Assocs., Ltd.,* 484 U.S. 365, 371 (1988) (statutory provisions should be interpreted to avoid interpreting inconsistencies between provisions); *see also Babitt* v. *Sweet Home Chapter of Communities for a Great Oregon,* 515 U.S. 687 (1995); *Gade* v. *Nat'l Solid Waste Management Ass'n,* 505 U.S. 88, 100–01 (1992).

[28] *See* 154 Cong. Rec. S6354–S6356 (July 7, 2008) *available at http://www.gpo.gov/fdsys/pkg/CREC-2008-07-07/html/CREC-2008-07-07-pt1-PgS6354-2.htm.*

[29] *See* FHA Modernization Act of 2007, S. 2338, (2007) § 103.

[30] S. Rep. No. 110–227, at 6 (Nov.13, 2007), *available at http://www.gpo.gov/fdsys/pkg/CRPT-110srpt227/pdf/CRPT-110srpt227.pdf.*

[31] *Id.* (emphasis added).

3.5 percent minimum investment requirement.

C. Conclusion

Accordingly, HUD interprets NHA section 203(b)(9)'s ''prohibited sources'' provision in subsection (C) as not including funds provided directly by Federal, State, or local governments, or their agencies and instrumentalities in connection with their respective homeownership programs.

D. Solicitation of Comment

This interpretive rule represents HUD's interpretation of section 203(b)(9)(C) and is exempt from the notice and comment requirements of the Administrative Procedure Act. *See* 5 U.S.C. 553(b)(3)(A). Nevertheless, HUD is interested in receiving feedback from the public on this interpretation, specifically with respect to clarity and scope.

Dated: November 29, 2012.

Helen R. Kanovsky,

General Counsel.

[FR Doc. 2012–29361 Filed 12–4–12; 8:45 am]

BILLING CODE 4210–67–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0202; FRL–9371–6]

Clodinafop-Propargyl; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation reduces the established tolerance for residues of clodinafop-propargyl in or on wheat, grain. Syngenta Crop Protection, LLC requested this tolerance change under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 5, 2012. Objections and requests for hearings must be received on or before February 4, 2013 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0202, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Mindy Ondish, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 605–0723; email address: *ondish.mindy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0202 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 4, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0202, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of October 17, 2012 (77 FR 63782) (FRL–9366–2), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1F7955) by Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419–8300. The petition requested that 40 CFR 180.559 be amended by lowering the established tolerance for residues of the herbicide clodinafop-propargyl in or on wheat, grain from 0.1 to 0.02 parts per million (ppm). That document referenced a summary of the petition prepared by Syngenta Crop Protection, LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C. Finally, EPA is revising the tolerance

APPENDIX F

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

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Special Attention of:
All FHA Approved Mortgagees
All Direct Endorsement Underwriters
All FHA Roster Appraisers
All FHA Roster Inspectors
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

Transmittal: Handbook 4000.1
Issued: December 30, 2016
Effective Date: Multiple; See Below

1. This Transmits:

The incorporation of previously published updates to Handbook 4000.1, FHA Single Family Housing Policy Handbook.

2. Explanation of Materials Transmitted:

This revision to the FHA Single Family Housing Policy Handbook, or Handbook 4000.1 (Handbook), is being published to update existing sections.

The Mortgagee must identify each item paid by Interested Party Contributions.

(j) Real Estate Tax Credits

Where real estate taxes are paid in arrears, the seller's real estate tax credit may be used to meet the MRI, if the Mortgagee documents that the Borrower had sufficient assets to meet the MRI and the Borrower paid closing costs at the time of underwriting.

This permits the Borrower to bring a portion of their MRI to the closing and combine that portion with the real estate tax credit for their total MRI.

(C) Reserves (TOTAL)

The Mortgagee must verify and document all assets submitted to the AUS.

Reserves refer to the sum of the Borrower's verified and documented liquid assets minus the total funds the Borrower is required to pay at closing.

Reserves do not include:

- the amount of cash taken at settlement in cash-out transactions;
- incidental cash received at settlement in other loan transactions;
- equity in another Property; or
- borrowed funds from any source.

Required Reserves for Three- to Four-Unit Properties

The Mortgagee must verify and document Reserves equivalent to three months' PITI after closing for three- to four-unit Properties.

ii. Source Requirements for the Borrower's Minimum Required Investment (TOTAL)

(A) Definition

Minimum Required Investment (MRI) refers to the Borrower's contribution in cash or its equivalent required by Section 203(b)(9) of the National Housing Act, which represents at least 3.5 percent of the Adjusted Value of the Property.

(B) Standard

The Mortgagee may only permit the Borrower's MRI to be provided by a source permissible under Section 203(b)(9)(C) of the National Housing Act, which means the funds for the Borrower's MRI must not come from:

(1) the seller of the Property;

(2) any other person or Entity who financially benefits from the transaction (directly or indirectly); or
(3) anyone who is or will be reimbursed, directly or indirectly, by any party included in (1) or (2) above.

While additional funds to close may be provided by one of these sources if permitted under the relevant source of funds requirements above, none of the Borrower's MRI may come from these sources. The Mortgagee must document permissible sources for the full MRI in accordance with special requirements noted above.

Additionally, in accordance with Prohibited Sources of Minimum Cash Investment Under the National Housing Act -Interpretive Rule, HUD does not interpret Section 203(b)(9)(C) of the National Housing Act to prohibit Governmental Entities, when acting in their governmental capacity, from providing the Borrower's MRI where the Governmental Entity is originating the insured Mortgage through one of its homeownership programs.

(C) Required Documentation

Where the Borrower's MRI is provided by someone other than the Borrower, the Mortgagee must also obtain documentation to support the permissible nature of the source of those funds.

To establish that the Governmental Entity provided the Borrower's MRI in a manner consistent with HUD's Interpretive Rule, the Mortgagee must document that the Governmental Entity incurred prior to or at closing an enforceable legal liability or obligation to fund the Borrower's MRI. It is not sufficient to document that the Governmental Entity has agreed to reimburse the Mortgagee for the use of funds legally belonging to the Mortgagee to fund the Borrower's MRI.

The Mortgagee must obtain:

- a canceled check, evidence of wire transfer or other draw request showing that prior to or at the time of closing the Governmental Entity had authorized a draw of the funds provided towards the Borrower's MRI from the Governmental Entity's account; or
- a letter from the Governmental Entity, signed by an authorized official, establishing that the funds provided towards the Borrower's MRI were funds legally belonging to the Governmental Entity, when acting in their governmental capacity, at or before closing.

Where a letter from the Governmental Entity is submitted, the precise language of the letter may vary, but must demonstrate that the funds provided for the Borrower's MRI legally belonged to the Governmental Entity at or before closing, by stating, for example:

(2) Standard

The Mortgagee may consider Private Savings Club funds that are distributed to and received by the Borrower as an acceptable source of funds.

The Mortgagee must verify and document the establishment and duration of the club, and the Borrower's receipt of funds from the club. The Mortgagee must also determine that the received funds were reasonably accumulated, and not borrowed.

(3) Required Documentation

The Mortgagee must obtain the club's account ledgers and receipts, and a verification from the club treasurer that the club is still active.

(F) Gifts (Personal and Equity) (TOTAL)

(1) Definition

Gifts refer to the contributions of cash or equity with no expectation of repayment.

(2) Standards for Gifts

(a) Acceptable Sources of Gifts Funds

Gifts may be provided by:

- the Borrower's Family Member;
- the Borrower's employer or labor union;
- a close friend with a clearly defined and documented interest in the Borrower;
- a charitable organization;
- a governmental agency or public Entity that has a program providing homeownership assistance to:
  - low or moderate income families; or
  - first-time homebuyers.

Any gift of the Borrower's MRI must also comply with the additional requirements set forth in Source Requirements for the Borrower's MRI.

(b) Donor's Source of Funds

Cash on Hand is not an acceptable source of donor gift funds.

PACIFICA LAW GROUP

July 11, 2018 - 2:33 PM

Filing Petition for Review

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	Case Initiation
Appellate Court Case Title:	National Homebuyers Fund, Inc., et al. Apps. v. WA State Housing Finance Comm., Resps. (765108)

The following documents have been uploaded:

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