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Mike DeWine Governor of Ohio | Sean W. Thomas Executive Director

57 East Main Street | Columbus OH 43215

Date: July 22, 2019

**TO: OHFA Lending Partners**

**FROM: Erin Higgins, Operations Manager**

**RE: OHFA response to HUD ML 19-06**

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In response to HUD ML 19-06, please find enclosed the following:

1. A legal opinion composed, signed, and dated by OHFA's Chief Legal Counsel, Marlo B. Tannous, stating OHFA is a governmental entity within its jurisdiction to provide down payment assistance throughout the state of Ohio;
2. A copy of a 2012 letter from James Cannon at FHA confirming OHFA's status as a governmental entity; and
3. A sample of our existing commitment letter provided on every approved file stating OHFA has incurred a legally enforceable obligation to provide down payment funds.

We will make items 1 & 2 available on our website on the lender page, <http://ohiohome.org/partners/lenders.aspx>, in the Participation & Informational Forms section as well as under the Program Documents link on our Lender Online lender portal.

Please feel free to contact me at 614-752-7049 or via email, [ehiggins@ohiohome.org](mailto:ehiggins@ohiohome.org) with any questions.

Thank you.

July 19, 2019

Mortgagee Letter 2019-06

To whom it may concern:

I am Chief Legal Counsel to the Ohio Housing Finance Agency (“OHFA”), a body corporate and politic, performing essential governmental functions of the state as set forth in Ohio Revised Code Chapter 175.

As a basis for the opinions hereinafter set forth, I have reviewed the Mortgagee Letter 2019-16, the January 23, 2012 letter to Douglas Garver of OHFA from James Cannon confirming that OHFA is a governmental entity, the HUD Single Family Housing Policy Handbook 4000.1 (the “Handbook”), the terms and conditions of OHFA’s down-payment assistance programs that operate to provide assistance for the purchase of properties located in the state of Ohio, Chapter 175 of the Ohio Revised Code, the bylaws of OHFA, and any actions of the board of OHFA thereunder. I have also researched such Ohio and federal law as I have deemed necessary or appropriate for the opinion hereinafter expressed.

As to questions of fact material to such opinions, which were not independently established, I have relied upon my personal knowledge as an official of OHFA and upon representations and statements made to me by the staff of OHFA as it relates to the business affairs of OHFA’s homebuyer programs. In such examination, I have assumed the genuineness of all signatures on and the authenticity of all documents submitted to me.

Based upon and subject to the foregoing and the qualifications set forth below, I opine as follows:

1. OHFA has been duly created and validly exists as a body corporate and politic, performing essential governmental functions of the state pursuant to Ohio Revised Code Section 175.02(A).
2. OHFA meets the definition of a Government Entity as set forth in the January 23, 2012 letter from James Cannon to OHFA. No changes to OHFA’s organizational structure has occurred, and as a result, the January 23, 2012 should stand as valid today.
3. This loan has been made pursuant to a mortgage loan program administered by OHFA, using funds provided by OHFA for that purpose. OHFA, in its governmental capacity has incurred an enforceable legal liability or obligation to fund this loan pursuant to the Loan Commitment Approval Letter.

This opinion is limited solely to those items set forth above and is based solely upon the laws of the state of Ohio and the federal laws of the United States, and I specifically do not render any opinions pertaining to any matter not specifically stated herein. The information and opinions set forth above are as of the date of this opinion, and I disclaim any undertaking to advise you of any changes that thereafter may be brought to my attention. I assume no obligation to notify you of any changes in the laws or the court rulings of the state of Ohio occurring subsequent to the date hereof.

This opinion is for the benefit of HUD and its successors and assigns. No other person may rely upon this opinion without my prior written consent

Very truly yours,

*Marlo B. Tannous*

Marlo B. Tannous  
Chief Legal Counsel



U.S. Department of Housing and Urban Development

Columbus Field Office  
Office of Single Family Housing  
200 North High Street  
Columbus, Ohio 43215-2499

January 23, 2012

Douglas Garver  
Executive Director  
Ohio Housing Finance Agency  
57 East Main Street  
Columbus, OH 43215

Dear Mr. Garver:

Recently the Department initiated a legal review of OHFA's current structure based upon the provisions of Section 175 of the Ohio Revised Code that was passed into law in 2005. Our review considered whether OHFA was now an agency of government, an instrumentality of government or a non-profit entity. This distinction is critical to your agency's program of down payment assistance (DAP) on single family FHA-insured loans and to the approvals and FHA program parameters required to offer such assistance.

Our legal review is complete. We have determined that OHFA is indeed an agency of Ohio government and is therefore subject to the deference provided to such entities and not the heightened requirements imposed upon instrumentalities and non-profit entities. As such, no further approvals from the Department are necessary for OHFA to continue offering its DAP program to worthy FHA borrowers. Our determination will stand until or unless further changes to OHFA's organizational structure occur, at which time a further review could be necessary.

State housing finance agencies have different organizational structures in different states. In today's world of mortgage packaging and securitization, OHFA's demonstrated status as a governmental agency, and hence a direct and permanent partner with HUD, may prove useful. I encourage you to share this determination with your lenders, as several have approached me recently inquiring about this issue. Your direct contact regarding this legal opinion will be Ray Keyser, Cleveland Chief Counsel, U.S. Department of Housing and Urban Development, Cleveland Field Office, 1350 Euclid Avenue, 5<sup>th</sup> Floor, Cleveland, OH 44114-1815.

Thank you for your continued participation in the Department's programs.

Sincerely,

A handwritten signature in cursive script that reads "James Cannon".

James Cannon

Senior FHA Housing Programs Specialist - Ohio

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Director's  
Office

# Loan Commitment Approval Letter

<b>Commitment Date:</b> _____	
<b>Lender:</b> _____	
<b>LT Loan #:</b> _____	
<b>Bond Series:</b> _____	
<b>Program:</b> _____	
<b>Borrower Name:</b> _____	<b>Grant for Grads (G4G) or Down Payment Assistance (DPA) Second Mortgage LT#:</b> _____
_____	<b>G4G or DPA Second Mortgage Amount:</b> _____
<b>Co-Borrower Name</b> _____	<b>Purchase Price:</b> _____
_____	<b>First Loan Amount:</b> _____
<b>Address:</b> _____	<b>Interest Rate:</b> _____
_____	<b>Term:</b> _____
<b>City, Zip:</b> _____	<b>Application Date:</b> _____
<b>County:</b> _____	<b>Commitment Expiration:</b> _____
<b>Servicer Loan #:</b> _____	

This letter documents that the Ohio Housing Finance Agency (OHFA), a subdivision of the State of Ohio (a section 115 entity under the Internal Revenue Code) has, at or before closing, incurred a legally enforceable obligation to provide the funds of \_\_\_\_\_ towards the borrower's required Minimum Cash Investment.

OHFA has reviewed the Final Commitment Package of the Borrower and Co-Borrower listed above (collectively referred to as Borrower) along with the terms and conditions of the Mortgage Origination and Sale Agreement that governs OHFA and the Lender, and OHFA has agreed to loan the Borrower the First and Second Mortgage Loans on the terms and in the amounts referenced above.

This Commitment Letter is issued in reliance upon the review of the Borrowers' government or conventional loan application, Purchase Contract, Borrower Initial Agreement, Builder/Seller Affidavit, Federal Tax Returns, copies of Borrower's recent pay stubs, Family Income Certification and other documents which were submitted with the Borrower application and which are deemed necessary for the Loan Commitment file. If any changes occur in the circumstances or facts submitted as part of the Application under which this Commitment is issued, or any material misstatement was made in the Application, this Commitment shall be subject to revocation by OHFA. Further, if any such material misstatement was made due to fraud, this Commitment shall be automatically null and void without further action by OHFA.

If you have any questions, please contact your OHFA representative.

Manager of Operations - Homeownership