



MORTGAGE BANKERS ASSOCIATION

June 8, 2017

The Honorable Jeff Sessions
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW Washington, DC 20530-0001

Dear Attorney General Sessions:

On behalf of the Mortgage Bankers Association representing the housing finance industry and the consumers we serve, we respectfully urge you to suspend the Department of Justice's current practice of bringing claims under the False Claims Act against mortgage lenders who participate in the Federal Housing Administration's (FHA) Mortgage Insurance Programs. We request this moratorium until FHA has completed additional work on a comprehensive "defect taxonomy" (including identifying proportionate remedies for each tier) and revised its loan level certifications. Please note we are sending a substantially similar request to the Secretary of Housing and Urban Development.

As you are aware, Government actions under the False Claims Act can result in very significant damages and great reputational harm. Under the FHA mortgage insurance programs, mortgage lenders originate mortgages in accordance with Government requirements and FHA insures such mortgages in the event of default. These programs result in more affordable, sustainable credit for many borrowers than the conventional mortgage market provides. Although FHA lenders work hard to ensure that the programs' detailed underwriting and documentation standards are followed, the complex loan origination, insuring and servicing processes depend heavily on human efforts. As a result, a relatively small number of manufacturing errors do occur when processing millions of transactions each year. However, the vast majority of these are technical errors that do not affect a loan's insurability under the programs.

As of today, however, FHA has not articulated clear standards setting forth the errors that do affect insurability and might support further action under the False Claims Act, and those that do not. We are heartened by the fact that very recently FHA published its Loan Review System that includes a taxonomy to address certain points including the relative importance of elements reviewed for loan compliance and insurability. Unfortunately, the HUD taxonomy does not clearly outline remedies for each defect tier.

Completion of a clear and comprehensive taxonomy would provide lenders the fair notice they deserve of what errors the Government regards as affecting insurability while, at the same time, establishing a clear and unambiguous framework for action by FHA, the Justice Department and lenders themselves. The taxonomy also should be accompanied by loan level certifications requiring lenders to certify only that errors affecting insurability have not occurred. With these steps, lenders could better focus their resources and the Government would likely achieve more

Letter to Attorney General Sessions

June 8, 2017

Page 2

consistent compliance, ultimately lessening the need for Justice and HUD resources to enforce claims.

For lenders, the risk of facing a False Claims Act enforcement action in connection with FHA loans, and the absence of clear standards that would allow them to avoid potentially millions of dollars in settlements and legal costs, have caused them to limit credit under these programs or leave them altogether. Accordingly, today's use of the False Claims Act paradoxically is harming first time homebuyers and other moderate-income homebuyers and homeowners whom the FHA programs are designed to serve.

We, therefore, respectfully urge you to establish and announce a moratorium on False Claims Act actions under the FHA programs until HUD has completed a clear and comprehensive taxonomy and appropriate loan level certifications. These efforts will better serve consumers, provide lenders fair notice and the Government clear standards if it needs to pursue further claims.

Thank you for your consideration of these important matters. We would also appreciate an opportunity to meet with you to provide additional information on these concerns. If you have any questions please contact me directly or Pete Mills at pmills@mba.org or (202) 557-2858.

Sincerely,

A handwritten signature in black ink, appearing to read "D.H. Stevens". The signature is fluid and cursive, with a large initial "D" and "S".

David H. Stevens, CMB
President and Chief Executive Officer

Cc: The Honorable Ben Carson
Secretary of Housing and Urban Development