



MORTGAGE BANKERS ASSOCIATION

June 8, 2017

The Honorable Ben Carson
Secretary, U.S. Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20006

Dear Secretary Carson:

On behalf of the Mortgage Bankers Association and the customers we serve, we would like to formally request that as Secretary of Housing and Urban Development you seek a moratorium on the Department of Justice's bringing claims under the False Claims Act against mortgage lenders who participate in the Federal Housing Administration's (FHA) Mortgage Insurance Programs.

In the attached letter sent today, which is substantively the same as this letter, we urge the Attorney General to suspend and establish a moratorium on such actions until FHA has completed additional work on its comprehensive "defect taxonomy" (including identifying proportionate remedies for each tier) and revised loan level certifications.

As you are aware, Government actions under the False Claims Act can result in very significant damages and great reputational harm. Although FHA-approved 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 indemnification or a False Claims action, and those that do not. We are heartened by the fact that FHA very recently finalized 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 taxonomy does not yet clearly outline the 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 consistent compliance, ultimately lessening the need for HUD and Justice resources to enforce claims.

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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 seek a moratorium on False Claims Act actions under the FHA programs until the Department 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 of review if it chooses 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 any additional information needed 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 "H" followed by a period and the name "Stevens".

David H. Stevens, CMB
President and Chief Executive Officer

Cc: The Honorable Jeff Sessions
Attorney General