NATIONAL
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REINVESTMENT
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NCRC

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Collette Pollard
Reports Management Officer, QDAM
Department of Housing and Urban Development
451 7th Street, SW, Room 4176
Washington, DC, 20410

Re: Revisions to the Application for FHA Insured Mortgage, OMB Approval Number 2502-0059

The National Community Reinvestment Coalition (NCRC) thanks the U.S. Department of Housing and Urban Development (HUD) for the opportunity to comment on proposed changes to the loan-level certifications made by direct endorsers on the Uniform Residential Loan Application for mortgages insured by the Federal Housing Administration (FHA).

The National Community Reinvestment Coalition is an association of more than 600 community-based organizations that promote access to basic banking services, including credit and savings, to create and sustain affordable housing, job development and vibrant communities for America's working families.

Introduction & Recommendations

We share FHA's commitment to identifying and implementing responsible ways to increase access to mortgage credit for underserved borrowers. To this end, we are encouraged by FHA's efforts to establish clear quality assurance rules that help lenders better anticipate the types of loan defects for which they may be required to reimburse or indemnify FHA or face other enforcement action or legal liability when errors occur or a loan defaults.

Because of recent enforcement actions by both HUD and the U.S. Department of Justice under the False Claims Act and the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) that have resulted in large damage awards, many FHA lenders have sought to minimize their exposure to such risks by tightening underwriting standards and adopting credit overlays, employing more risk-based pricing, or reducing their FHA originations overall.[1] This has resulted in far less access to mortgage credit for the minority and low- and moderate-income borrowers that rely most on the FHA insurance program. In addition, many of the small independent non-bank entities that have been assuming greater market share in the FHA program are less regulated and more thinly capitalized and may pose even greater risk to the FHA program.[2]

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[1] Goodman, Laurie. "Wielding a Heavy Enforcement Hammer Has Unintended Consequences for the FHA Mortgage Market," Urban Institute, May 2015.
[2] Ibid.

Improved loan-level certifications should provide enough clarity and transparency to facilitate robust lender participation in the FHA insurance program and greater access to mortgage credit for borrowers, but also ensure that lenders originate and underwrite sound, quality loans that minimize claims on and losses to FHA's Mutual Mortgage Insurance (MMI) Fund.

NCRC has jointly submitted comments with the Center for Responsible Lending and other organizations that propose specific language requiring that lenders exercise due diligence and good faith, that they establish, operate and monitor an appropriate Quality Control program and that they timely remediate or indemnify FHA for any defects that affect the insurability of the loan. We have also reviewed the comments submitted by the Center for American Progress and others and believe that their recommendations related to remediating borrower harm should be adopted. While a lender should be allowed to timely remediate or indemnify FHA for any defects that affect the insurability of the loan, it should also be clear that if the borrower has been harmed by that defect, then the lender should compensate the borrower for that harm by, for example, paying the borrower for any excess charges plus interest.

Impact of FHA's Quality Assurance Processes on Access to Credit

In the "Blueprint for Access" document released by the FHA in May of 2014, the agency identifies a numbers of ways to increase access for creditworthy borrowers. The economic crisis has significantly constrained credit, making it difficult for those with less than perfect credit to obtain mortgages. FHA acknowledges that establishing clear rules of the road is key to expanding access so that FHA lenders can quantify the risk of making a mortgage loan without fear of unanticipated consequences.[3] The loan-level certifications that lenders are currently required to sign contain broad language that does not adequately inform endorsers of the type of defects that will trigger liability and enforcement action under the False Claims Act and FIRREA. The FHA can help to expand credit access to underserved borrowers by providing greater certainty for lenders as to which defects will lead to lender buybacks and enforcement action by HUD and/or the U.S. Department of Justice.

We applaud FHA's ongoing efforts to provide clarity in its policy direction and lender compliance efforts through the issuance of the FHA Handbook and through development of the defect taxonomy to give guidance on how FHA intends to categorize loan defects. We encourage the FHA to make its certification changes in a manner that works together with the taxonomy and handbook to ensure that underwriting quality and lender compliance protects the FHA's MMI Fund while taking into account how current market conditions and concerns about liability and enforcement actions are impacting access to mortgage credit.

[3] See "Access Blueprint: What FHA is Doing to Expand Access to Mortgage Credit for Underserved Borrowers", 2014. http://portal.hud.gov/hudportal/documents/huddoc?id=BlueprintAcess5_9_2014.pdf

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FHA's quality assurance processes must recognize that the sheer volume of information obtained in a loan application makes it difficult to avoid some mistakes in the underwriting process. As such, loan certifications should be designed so that enforcement actions emerge from serious defects that harm borrowers and affect the insurability of the loan.

Conclusion

The goal of the quality assurance framework should be to ensure that the appropriate balance is struck between providing access to borrowers and mitigating credit risk to the FHA's MMI Fund. By reducing uncertainty related to the enforcement of underwriting requirements, the FHA can promote greater access to credit while incenting stronger underwriting practices from lenders. When enforcement actions are tied to elements that lenders cannot effectively control there will be a reduction in FHA lending. On the other hand, by designing certifications that focus on lenders exercising good faith and due diligence, developing appropriate quality control practices and timely curing defects that affect the insurability of the loan and may also create borrower harm, lenders can respond by developing stronger underwriting practices which benefits borrowers and enhances the solvency of FHA's MMI Fund.

Sincerely,

John Taylor
President and CEO
National Community Reinvestment Coalition