

October 1, 2015

Colette Pollard
Reports Management Officer, QDAM
Department of Housing and Urban Development
451 7th Street SW, Room 4176
Washington, D.C.

Re: Docket No. FR-5831-N-39

Dear Ms. Pollard:

The American Bankers Association appreciates this opportunity to comment on the latest proposed changes to the Federal Housing Administration's loan-level certification form, HUD 92900-A. We concur with and support the goals of the revision to clarify the scope of liability associated with errors arising in the origination of FHA insured mortgages, and fostering a strong culture of quality control within the FHA program.

ABA has significant concerns that the latest proposed changes do not in fact meet these goals, and may actually undermine them. In particular, we are concerned that the proposal expands the scope of certifications, leading to less legal certainty and increased compliance costs.

We maintain that the certifications at the loan level should provide that lenders are only liable for significant underwriting errors – those which lenders cannot cure and which would render a mortgage uninsurable. This is necessary to avoid the potential of lenders being subjected to false claims risk for minor, unintended errors which would not impact a loan's insurability or pose risk of loss to the FHA. Such risk under the existing certification process has already caused costs for borrowers to increase as lenders impose credit overlays to offset compliance and legal costs. It has also caused lenders, including some ABA members, to reduce engagement with FHA further limiting mortgage options available to customers. Further potential liability or uncertainty over such liability will surely lead to further cost increases and limits on FHA business by the banking industry.

Neither the current proposal nor the changes proposed earlier in the year adequately address these concerns over minor, unintended errors subjecting lenders to false claims

litigation. The current proposed changes to the Pre-Endorsement review, while likely an attempt to increase certainty for lenders, actually makes this problem worse. The current Pre-Endorsement review is a post-closing process undertaken by lenders to ensure that a borrower's file contains all required documentation. The proposed language appears to convert this review to an additional underwriting exercise undertaken as part of the loan certification. In effect, it changes a review to ensure that all necessary documents are included in a file into an additional underwriting with the intent of certifying the accuracy of all information, with potential false claims liability if the documents contain even minor errors. It does nothing to address concerns over liability for minor or unintended errors while increasing the potential for liability for such errors.

ABA strongly urges that this proposed change in the function of the Pre-Endorsement review be deleted. Instead, to address concerns over minor and unintended errors not impacting the insurability of the loan or posing losses to the FHA, we endorse the following principles already articulated by the Mortgage Bankers Association:

- Loan-level underwriting certifications should recognize that underwriting entails subjective judgments.
- Liability should only arise in the event of a) knowing or reckless reliance on false statements, or b) significant underwriting errors, defined as errors that cannot be cured, would render a mortgage uninsurable, or would affect potential loss severity.
- HUD should evaluate loans based on the evidence available to the lender at the time of origination. This policy is key to HUD ensuring that lenders are held to a fair and reasonable standard. A loan should not be subject to indemnification or false claims risk when the lender underwrites a loan based on supported and verified income documentation in the original loan file, but new information becomes available after the closing that may contradict that verified data.

These principles, if properly applied, restrict stronger enforcement tools, such as false claims liability, to serious and/or intentional violations. Minor, correctable, and unintended errors and violations should be dealt with in a more measured, predictable manner to ensure that lenders are not forced to leave FHA lending due to the high compliance and reputational costs associated with more punitive enforcement mechanisms.

FHA remains a vital tool for assisting lenders in providing affordable and reliable credit for first-time and other borrowers with limited financial options. Providing lenders with certainty and reasonable opportunities to correct minor and unintended errors will help to ensure broad partnering between lenders and FHA. To do otherwise, will inevitably lead to a shrinkage of lenders willing to engage with FHA, an outcome that is harmful to both the banking industry and the customers we serve.

Again, thank you for this opportunity to comment. If you have questions or wish to discuss these matters in greater detail, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph Pigg". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Joseph Pigg
SVP and Sr. Counsel
Mortgage Finance, Mortgage Markets, Financial Management, and Public Policy
American Bankers Association

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