



U.S. Department of Justice
U.S. Department of Housing and Urban Development



Washington, D.C.

**MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF
JUSTICE**

**INTER-AGENCY COORDINATION OF CIVIL ACTIONS UNDER THE FALSE
CLAIMS ACT AGAINST PARTICIPANTS IN FHA SINGLE FAMILY
MORTGAGE INSURANCE PROGRAMS**

INTRODUCTION

The U.S. Department of Housing and Urban Development (“HUD”) and the U.S. Department of Justice (“DOJ”) set forth this Memorandum of Understanding (“MOU”) to further the effective and efficient enforcement of the False Claims Act (“FCA”), 31 U.S.C. § 3729, *et seq.*, with respect to participants in all Federal Housing Administration (“FHA”) single family mortgage insurance programs.

DOJ has primary responsibility for enforcement of federal laws in the United States District Courts, including the handling of FCA litigation related to HUD’s mortgage insurance programs. Nothing in this MOU restricts the ability of DOJ to investigate and litigate alleged violations of applicable law.

HUD provides mortgage insurance to FHA-approved mortgagees in part to encourage those parties to make credit available to creditworthy borrowers who otherwise may not have access to that credit. HUD exercises oversight over FHA approved lenders via the Mortgagee Review Board (“MRB”), which was created by section 202(c) of the National Housing Act, 12 U.S.C §1708(c). The MRB has the authority to review alleged violations of FHA requirements by FHA-approved mortgagees and to take appropriate administrative action, which may include, among other things, the withdrawal of FHA-approval, indemnification, and the imposition of civil money penalties. Nothing in this MOU restricts the ability of HUD to refer matters

to DOJ if the Secretary of HUD determines that litigation under the FCA is in HUD's interest.

As part of a broad initiative to ensure that the severity of certain violations is matched with the appropriate remedy, HUD has worked to provide clarity and certainty to program participants concerning FHA's requirements. Specifically, HUD has considered how the False Claims Act fits within the spectrum of remedies that may be utilized to address violations of program requirements. This effort is consistent with the issues raised and recommendations contained in the Department of Treasury's fourth report in response to Executive Order 13772, "A Financial System That Creates Economic Opportunities: Nonbank Financial Firms, Fintech, and Innovation" (July 2018).

To address these matters, HUD has focused on three related initiatives:

- **Certifications.** A significant number of certifications are applicable to FHA's single family programs, at both an institutional and the individual loan level. HUD continues to refine the language and streamline the certifications.
- **Defect Taxonomy.** In May 2017, FHA launched its new Loan Review System ("LRS"), the computerized system implementing the Single Family Housing Loan Quality Assessment Methodology (commonly referred to as the "Defect Taxonomy"), which is FHA's method of evaluating lender performance through loan-specific reviews. The current Defect Taxonomy captures data on the sources and causes of defects. This data is then analyzed to categorize each defect into one of four tiers by level of severity. While generally supported, additional work has been undertaken to tie the Defect Taxonomy to applicable HUD remedies for violations.
- **FHA-related False Claims Act Enforcement.** Consistent with Treasury's fourth report in response to Executive Order 13772, HUD and DOJ are issuing this MOU regarding the process supporting the appropriate use of the False Claims Act to address knowing non-compliance by FHA-approved mortgagees.

DOJ and HUD share a mutual goal of addressing violations of FHA program requirements and in particular the submission of knowingly false and fraudulent claims to the Government, thereby protecting FHA's mortgage insurance funds and programs. This MOU describes HUD's process for determining whether certain conduct by FHA-approved mortgagees should be enforced through administrative proceedings or other remedies directly available to HUD, or referred to DOJ to pursue under the FCA. It also describes the collaboration between HUD and DOJ where a matter has been referred to DOJ by a third party for potential False Claims Act litigation. It does not address referral of criminal activity.

First, with respect to violations of FHA requirements by FHA-approved mortgagees or other participants in FHA mortgage insurance programs, HUD expects that violations will be enforced primarily through HUD's

administrative proceedings, except when action beyond HUD's administrative capabilities is warranted.

Second, when HUD identifies violations of FHA requirements under the Defect Taxonomy that may meet HUD's FCA Evaluation Standards, as more fully described below, the violation(s) will be referred to the MRB. Where the MRB finds the violations rise to an unacceptable level under the Defect Taxonomy, the MRB will evaluate the matter for potential action under the FCA.

The MRB intends to refer to DOJ for potential FCA litigation mortgagees where the following standards (the "FCA Evaluation Standards") are met: (1) Tier 1 or equivalent violations exist in at least 15 loans, or Tier 1 or equivalent violations exist in loans with unpaid principal balance (UPB) or claims of at least \$2.0 million, and (2) aggravating factors warranting pursuit of FCA litigation such as evidence that the violations are systemic or widespread. In general, HUD recommends that FCA matters be pursued only where such action is the most appropriate method to protect the interests of FHA's mortgage insurance programs, would deter fraud against the United States, and would generally serve the best interests of the United States.

HUD intends to provide a written referral for FCA litigation to DOJ for any allegations approved by the MRB. Such notice shall be delivered by the HUD General Counsel on behalf of the MRB and will contain such information as HUD and DOJ deem appropriate.

Third, DOJ will confer with HUD in the event a party other than HUD, such as a *qui tam* relator or HUD's Office of Inspector General, refers a matter to DOJ for potential FCA litigation or in the event the matter is directly initiated by DOJ (including any U.S. Attorney's Office) based, in whole or in part, on alleged violations of FHA requirements. The purpose is to confer with and work with HUD during the investigative, litigation, and settlement phases of the matter to obtain HUD's views, including, for example, HUD's support of or opposition to the FCA litigation.ⁱ HUD may also provide its view on whether the matter would meet HUD's FCA Evaluation Standards described above. In any event, HUD will make known to DOJ whether and to what extent any alleged defects or violations regarding the relevant FHA requirements are material or not material to the agency so that DOJ can determine whether the elements of the FCA can be established.

Fourth, in connection with any case filed by a *qui tam* relator, HUD may recommend that DOJ seek dismissal of the case if HUD does not support the FCA litigation. Among other reasons, HUD may recommend dismissal because the alleged conduct fails to meet the HUD FCA Evaluation Standards, the alleged conduct does not represent a material violation of FHA requirements, or the litigation threatens to interfere with HUD's policies or the administration of its FHA lending

program and dismissal would avoid these effects. While the decision of whether to seek dismissal remains the exclusive authority of DOJ, DOJ will consult with HUD in making such a decision.

Fifth, if the MRB decides to decline referral or recommend against filing suit under the FCA, the MRB may still exercise its discretion under the applicable statutes and regulations to seek administrative action, indemnification, or civil money penalties for any violation of FHA policy. In particular, HUD may request DOJ approval to file a complaint under the Program Fraud Civil Remedies Act in accordance with 31 U.S.C. §§ 3801, *et seq.*

This MOU does not confer any rights or benefits enforceable at law by any third party against the United States.

APPROVED BY:

Signature: W.P. Barr
William P. Barr
Attorney General
U.S. Department of Justice

Date: 10/21/19

Signature: B. Carson
Benjamin S. Carson, Sr.
Secretary
U.S. Department of Housing and Urban Development

Date: 10-21-19

¹ DOJ's practice is to solicit the views of an agency with respect to any significant enforcement action. See 28 C.F.R. Part 0, Subpart Y, Appendix.