

October 1, 2015

The Honorable Julián Castro
Secretary
U.S. Department of Housing and Urban Development
451 Seventh Street, S.W.
Washington, DC 20410

*Re: Proposed Changes to the Application for FHA Insured Mortgages (Form HUD-92900-A)
FR-5831-N-39*

Dear Secretary Castro:

Thank you so much for the opportunity to comment on FHA's revised proposal to change the loan-level certification requirements. The lender certification form is important to us because of the critical role that FHA lending plays to facilitate homeownership for the many creditworthy borrowers who find themselves locked out of the conventional market. Given today's credit environment, it is important to retain a range of creditors, including large lenders, in the FHA program in order to prevent an overall decline in FHA lending while ensuring the quality of mortgage production. Too much FHA dependence on smaller players can impair FHA's countercyclical role, since smaller lenders are more likely to go out of business during an economic downturn.

We appreciate that you have given very careful consideration to the input you received during the previous comment period, and the document is significantly improved. However, the new document has not yet hit the mark in providing sufficient clarity about potential costs and legal exposure for minor, inadvertent inaccuracies made in the documentation of claims.

The way you have addressed this lender concern in the current version of the certification is to use the standard of whether a particular defect would affect "insurability." However, while it may be FHA's practice not to reject an insurance claim for a very minor defect, this standard is not laid out in FHA's own procedures in sufficient detail to provide the needed clarity for lenders.

An optimal solution to the problem would be to use the FHA's recently drafted "defect taxonomy" that describes a wide variety of mistakes and classifies them into tiers of importance. While this taxonomy has not yet been incorporated into FHA's systems – and we understand that implementation of the taxonomy may take a great deal of time due to resource constraints – we suggest you consider whether there is a way for the certification to reference the taxonomy's classifications merely as a source of definition. In other words, lenders would certify that the document does not contain any major or significant errors according to the taxonomy classifications, and the taxonomy document itself could be incorporated by reference. (While such certification would not focus on compliance with all of the taxonomy categories, FHA would of course continue to otherwise seek compliance with the range of taxonomy categories.)

Alternatively, if the taxonomy classifications cannot be referenced until the system is fully implemented, you could consider whether to revise the certification form on an explicitly temporary basis until that implementation has occurred.

If using the taxonomy is not possible, however, adoption of a materiality standard may be the most workable route to provide lenders with the assurance that very minor defects will not be the basis for very serious and expensive claims against them. While we understand and share the concerns with using a materiality definition, we believe that unless and until there is some way to exclude very minor defects from the certification, communities dependent upon FHA lending will face additional constraints in accessing homeownership.

As we noted in our previous letter, we believe strongly that FHA and other enforcement agencies should continue to have the authority to take action against any pattern and practice of inadequate or faulty underwriting or other conduct – regardless of materiality or the QC regime lenders have in place – and that if any defects cause borrower harm, that lenders be required to remediate such harm. We believe that our suggestions concerning the taxonomy or a materiality requirement need not impair this authority.

Thank you for your consideration.

Sincerely,

Center for American Progress

National Consumer Law Center (on behalf of its low-income clients)