



U.S. DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT  
OFFICE OF INSPECTOR GENERAL

September 30, 2014

**MEMORANDUM NO:**  
2014-FW-1808

*Memorandum*

TO: Dane M. Narode  
Associate General Counsel, Office of Program Enforcement, CACC

//signed//

FROM: Gerald Kirkland  
Regional Inspector General for Audit, 6AGA

SUBJECT: Final Civil Action: Bank of America, Charlotte, NC Settled Allegations of  
Failing To Comply With HUD's FHA Underwriting Requirements

**INTRODUCTION**

Our office assisted the U.S. Department of Justice (DOJ), U.S. Attorney's Office, Eastern District of New York, in conducting an investigation of Bank of America's origination of mortgage loans insured by the Federal Housing Administration (FHA) from May 1, 2009,<sup>1</sup> through March 31, 2012.

**BACKGROUND**

Bank of America, headquartered in Charlotte, NC, is a mortgage lender that participates in the U.S. Department of Housing and Urban Development's (HUD) direct endorsement program. Subject to the requirements of the program, Bank of America is authorized to originate mortgage loans that are insured by FHA, an agency within HUD. In exchange for having the authority to originate and underwrite FHA-insured loans, Bank of America was obligated to determine whether prospective borrowers met certain requirements established by HUD to qualify for

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<sup>1</sup> The United States fully released Bank of America with respect to all claims for relief concerning the origination and underwriting of FHA-insured mortgage loans that went to claim before January 1, 2012, and which were "secured by a one- to four-family residential property either that was insured by FHA on or before April 30, 2009, or for which the terms and conditions of the mortgage loan were approved by an FHA direct endorsement underwriter on or before April 30, 2009." Consent Judgment, *United States of America v. Bank of America Corp. et al.* (No. 12 0361, DC, April, 4, 2012).

insurance. It also had to certify to HUD that its borrowers met those requirements. Additionally, it had to provide annual certifications that it complied with HUD requirements when underwriting and approving loans for FHA insurance. Bank of America has participated in the FHA program since 1993 and became a direct endorsement lender in 1999.

## **RESULTS OF INVESTIGATION**

On August 20, 2014, Bank of America entered into a settlement agreement to pay \$16.65 billion, of which \$9.65 billion<sup>2</sup> resolved pending and potential legal claims. Of the \$9.65 billion, Bank of America agreed to pay \$800 million to settle its submission of claims through December 31, 2013, for FHA loans it originated on or after May 1, 2009. Of the \$800 million attributable to FHA's direct endorsement lender program, the FHA insurance fund was to receive \$437.6 million, with the remaining \$362.4 million going to other Federal agencies.<sup>3</sup> Further, as a term of the agreement to remediate harms resulting from its alleged unlawful conduct, Bank of America agreed to provide \$7 billion in consumer relief.

According to the agreement, Bank of America routinely approved loans for FHA insurance that did not meet applicable underwriting requirements and were, therefore, ineligible for FHA insurance during the period May 1, 2009, through March 31, 2012. FHA insured the loans based on per loan certifications submitted by Bank of America that it had complied with FHA requirements. The review of samples of FHA loans originated by Bank of America showed unacceptable rates of material underwriting defects. As a result of Bank of America's conduct, FHA insured loans that were not eligible for insurance and that FHA would not have otherwise insured. Consequently, when borrowers defaulted on the loans, FHA incurred substantial losses.

As part of the agreement, Bank of America acknowledged that it engaged in the following types of conduct:

- It did not establish income stability,
- It did not verify income,
- It inaccurately evaluated borrower's previous mortgage or rental payment history,
- It did not account for a major derogatory on borrower's credit,
- It did not verify and document earnest money,
- It did not verify and document checking and savings account information,
- It did not document gift funds and verify wire transfers of those funds,
- It did not document and verify borrower's investment in the property,
- It underreported borrower liabilities,
- It did not always present adequate compensating factors when borrower exceeded HUD-established income-to-debt ratios, and
- It sometimes incorrectly calculated income for purposes of such ratios.

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<sup>2</sup> Of this amount, \$5.02 billion was to be paid as a civil monetary penalty.

<sup>3</sup> DOJ will remit to the FHA insurance fund that portion of a False Claims Act recovery that equals single damages (that is, FHA's actual damages) to compensate FHA for its losses. DOJ remits the balance of the damages into the general fund of the U.S. Treasury as miscellaneous receipts. DOJ will retain up to 3 percent of the total amount recovered based on 28 U.S.C. (United States Code) section 527.

## **RECOMMENDATION**

We recommend that HUD's Office of General Counsel, Office of Program Enforcement,

- 1A. Allow us to post \$437,646,483 to HUD's Audit Resolution and Corrective Actions Tracking System as ineligible costs.