



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

September 19, 2016

MEMORANDUM NO:
2016-CF-1804

Memorandum

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

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FROM: Christeen Thomas
Director, Joint Civil Fraud Division, GAW

SUBJECT: Final Civil Action: M&T Bank Settled Allegations of Failing To Comply With HUD's Federal Housing Administration Loan Requirements

INTRODUCTION

The U.S. Department of Housing and Urban Development (HUD), Office of Inspector General (OIG), assisted the U.S. Department of Justice, Washington, DC, and the U.S. Attorney's Office for the Western District of New York in a civil investigation of Manufacturers and Traders Trust Company, also known as M&T Bank, successor by merger to M&T Mortgage Corporation. Our investigation was ongoing when a qui tam¹ action was filed in the U.S. District Court for the Western District of New York. M&T Bank is a Federal Housing Administration (FHA)-approved mortgage lender with its principal place of business located in Buffalo, NY.

BACKGROUND

FHA is a component of HUD. It provides mortgage insurance for a person to purchase or refinance a principal residence. The mortgage loan is funded by a lending institution, such as a mortgage company or bank, and the mortgage is insured by FHA.

¹ The False Claims Act allows private persons to file suit for violations of the False Claims Act on behalf of the Government. A suit filed by an individual on behalf of the Government is known as a "qui tam" action, and the person bringing the action is known as a "relator." If the Government prevails in a qui tam action, the court may award the relator a share of the False Claims Act award, based on the contributions the relator made to the investigation.

HUD's direct endorsement program authorizes private-sector mortgage lenders to approve mortgage loans for FHA insurance. Lenders approved for the program must follow various FHA requirements, including providing annual and per loan certifications that the lender complied with these requirements when underwriting and approving loans for FHA insurance.

M&T Bank had participated in the FHA program since 1992 and became a direct endorsement lender in 1993. As a direct endorsement lender, M&T Bank was authorized by HUD to originate and underwrite mortgage loans on HUD's behalf, including determining a borrower's creditworthiness and whether the proposed loan met all applicable requirements. When a borrower defaults on an FHA-insured loan underwritten and endorsed by a direct endorsement lender, such as M&T Bank, the lender (or its representative) has the option of submitting a claim to HUD to compensate the lender for any loss sustained as a result of the default. Therefore, once a mortgage loan is endorsed for FHA insurance, HUD insures the risk of the borrower's defaulting on that mortgage, which is realized if an insurance claim is submitted.

RESULTS OF INVESTIGATION

On March 19, 2013, a former employee of M&T Bank filed a qui tam complaint, alleging improprieties in M&T Bank's loan origination and underwriting practices in violation of the False Claims Act. Based on further investigation, the Government discovered that M&T Bank submitted false certifications to HUD concerning compliance with program rules and certain endorsed loans between January 2006 and December 31, 2011, in violation of these rules.

On May 9, 2016, M&T Bank entered into a settlement agreement with the Government to pay \$64 million to avoid the delay, uncertainty, inconvenience, and expense of lengthy litigation of certain civil claims the Government contended that it had against M&T. As part of the settlement, M&T Bank agreed that it engaged in certain conduct in connection with its origination, underwriting, property appraisal, and quality control of certain single-family residential mortgage loans insured by FHA.² The settlement was neither an admission of liability by M&T Bank nor a concession by the United States that its claims were not well founded.

As a result of M&T Bank's conduct, HUD alleged it insured hundreds of loans approved by M&T Bank that were not eligible for FHA mortgage insurance under the direct endorsement program and that HUD FHA would not otherwise have insured. HUD incurred substantial losses when it paid insurance claims on the loans covered by the settlement agreement.

Of the total \$64 million settlement, HUD FHA received \$43.35 million, and the remaining portion was to be paid to the relator and other federal entities.

² Loans covered in the settlement agreement included loans insured by FHA between January 1, 2006, and December 31, 2011, that resulted in claims submitted to HUD on or before June 15, 2015, excluding origination or underwriting of home equity conversion mortgages under 12 U.S.C. (United States Code) 1715z-20 and streamline refinances under 12 U.S.C. 1715n(a)(7).

RECOMMENDATION

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

- 1A. Acknowledge that \$43,350,000 of the \$64,000,000 in the attached settlement represents an amount due HUD.

As of the date of this memorandum, the settlement amount due HUD had been paid in full. Therefore, no further action is required by the Office of General Counsel. At issuance of this memorandum, HUD OIG will enter a management decision into HUD's Audit Resolution and Corrective Action Tracking System, along with the supporting payment information to show that final action was completed.