

MEMORANDUM

March 31, 2021



U.S. DEPARTMENT
OF HOUSING
AND URBAN
DEVELOPMENT

To: Janet Golrick
Acting Assistant Secretary for Housing, Acting Commissioner for the Federal Housing Administration, H

From: Brian T. Pattison
Assistant Inspector General for Evaluation, Office of Inspector General, G

Subject: Evaluation Closure – Federal Housing Administration Residency Requirements, 2021-OE-0002

In June 2020, we received letters from members of Congress, including the chairpersons of the House Committee on Financial Services and Oversight and Investigation Subcommittee, expressing concern that the U.S. Department of Housing and Urban Development (HUD) imposed a new, nonpublic, and legally erroneous policy that prohibited issuing Federal Housing Administration (FHA)-insured loans to Deferred Action for Childhood Arrivals (DACA) recipients. The letters included a concern that HUD had made DACA borrowers ineligible by changing residency requirements within the FHA Single Family Housing Policy Handbook (HUD Handbook 4000.1) in violation of the Administrative Procedures Act. In response to the letters from Congress, we announced an evaluation with the following objectives in December 2020.

To determine

1. whether HUD provided lenders with uniform and accurate guidance regarding borrower residency requirements outlined in HUD Handbook 4000.1 and
2. how HUD oversees residency eligibility requirements for single-family borrowers.

In January 2021, HUD announced that DACA recipients that are legally permitted to work in the United States may apply for FHA-insured mortgages, effective January 19, 2021. HUD shared its announcement through its FHA INFO email subscription so that FHA-approved lending partners would be aware of the change. HUD also posted the announcement to its waiver database website. To prepare to respond to inquiries from the public, HUD updated two Frequently Asked Questions (FAQ) files, and created an additional FAQ file in its FHA Resource Center to reflect the announcement. HUD plans to update HUD Handbook 4000.1 to reflect the announced eligibility change by approximately April 2021.

As a result of HUD's policy update, we have closed our evaluation. A summary of our research is included in the attachment. We researched HUD's residency requirements for FHA-insured loans. We reviewed HUD policy handbooks, congressional correspondence, including both letters and testimonies, FHA INFO announcements, and other publicly available information.

Additionally, we conducted one interview with an Office of Single Family Housing official who departed the agency in January 2021, before the Presidential transition.

We appreciate the assistance you and your staff provided throughout our research. If you have any questions, please contact me at (202) 402-5832 or BPattison@hudoig.gov or Paul Bergstrand, Director of the Program Evaluations Division, at (202) 440-1275 or PBergstrand@hudoig.gov.

Attachment

cc:

Shannon Steinbauer, Director, Audit Liaison Division, FMA
Diane Stewart, Management Analyst, Office of Housing, HROA
Angela Benson, Management Analyst, Office of Housing, HWA
Darren Jenkins, Director, Budget and Contracts Division, Office of General Counsel, CAGB
Patrice Mitchell, Budget and Financial Analyst, Budget and Contracts Division, Office of
General Counsel, CAGB

Attachment A – Related Research

FHA Insures Mortgages on Single-Family Homes That Meet Certain Requirements

FHA is one of the largest mortgage insurers in the world and insures mortgages on single-family homes, among others. FHA provides mortgage insurance on loans made by FHA-approved lenders throughout the United States and its territories. FHA mortgage insurance provides lenders with protection against losses if a property owner defaults. As a result, lenders have less risk because FHA will pay a claim to the lender for any unpaid principal balance of a defaulted mortgage. However, loans must meet certain requirements to qualify for FHA mortgage insurance.

DACA Policy Establishes Temporary Lawful Presence in the United States for Certain Individuals, Subject to Renewal

On June 15, 2012, the U.S. Department of Homeland Security (DHS) announced DACA as a policy for individuals without lawful presence who came to the United States as children. If these individuals met several guidelines, they could request deferred action¹ for a period of 2 years, subject to renewal. U.S. Citizenship and Immigration Services (USCIS) defines deferred action as a use of prosecutorial discretion to defer removal of an individual for a period, unless terminated for some reason. DACA is a type of deferred action, which is determined on a case-by-case basis and only establishes lawful presence; it does not provide immigration status of any kind. On September 5, 2017, the Acting Secretary of DHS issued a memorandum rescinding DACA and establishing a plan to phase out DACA. On June 18, 2020, the Supreme Court rejected the move to terminate DACA. The Supreme Court's conclusion prompted DHS to announce that the DACA policy will operate on the terms in place before September 5, 2017.

DACA Recipients Were Previously Ineligible for FHA-Insured Loans but Became Eligible for Them as of January 2021

HUD staff and interested outside parties questioned DACA recipients' eligibility for FHA-insured loans in 2018 and 2019. HUD's Homeownership Centers received questions from lenders about borrower eligibility based on residency. In 2018, HUD's Office of General Counsel provided a statement to the Office of Housing, stating that DACA recipients were not eligible for FHA-insured loans. In February 2019, FHA's Commissioner testified before the House Appropriations Committee that the policy for obtaining FHA-insured loans was developed in 2003 and codified into Handbook 4000.1 in 2015 and has remained unchanged. We found no evidence that this policy changed over many years, thus eliminating the potential for an Administrative Procedures Act violation. On April 3, 2019, HUD's Secretary testified before the House Appropriations Committee, where he confirmed that HUD's policy had not

¹ Individuals may have requested deferred action through DACA if they (1) were under 31 years old as of June 15, 2012; (2) came to the United States before their 16th birthday; (3) continuously resided in the United States from June 15, 2007 to June 15, 2012; (4) were physically present in the United States on June 15, 2012, and at the time of making their request with USCIS; (5) had no lawful status on June 15, 2012; (6) were currently enrolled in school, had graduated or obtained a high school certificate, or were an honorably discharged veteran of the U.S. Coast Guard or Armed Forces; and (7) had not been convicted of a felony, significant misdemeanor, or three or more misdemeanors and did not otherwise pose a threat to national security or public safety.

changed. A June 2019 letter from HUD to a Congressman stated that DACA recipients were ineligible for FHA-insured loans.

In January 2021, HUD issued [FHA INFO #21-04](#), which announced that DACA recipients are now eligible for FHA-insured loans and that HUD planned to update Handbook 4000.1 to remove the statement, “[n]on-US citizens without lawful residency in the U.S. are not eligible for FHA-insured mortgages.”² HUD shared its announcement through its FHA INFO email subscription so that FHA-approved lending partners would be aware of the change.³ HUD also posted the announcement to its waiver database website. To prepare to respond to inquiries from the public, HUD also updated two FAQ files and created an additional FAQ file in its FHA Resource Center to reflect the announcement.

HUD Handbook 4000.1 Will Be Updated To Reflect New Residency Eligibility Requirements

HUD’s policy for non-U.S. citizens without lawful residency and eligibility for FHA-insured loans is located in the FHA Single Family Housing Policy Handbook (HUD Handbook 4000.1), section II.A.1.b.ii(A)(9)(c).⁴ In the version dated November 18, 2020, HUD Handbook 4000.1 states that a borrower without lawful residency⁵ in the United States is ineligible for FHA-insured mortgages.

This section of the Handbook did not change from the initial implementation of HUD Handbook 4000.1 to the latest version published on November 18, 2020. As discussed earlier, in January 2021, HUD announced that DACA recipients that are legally permitted to work in the United States may apply for FHA-insured mortgages, effective January 19, 2021. In its announcement, HUD stated that it would update HUD Handbook 4000.1 to remove section II.A.1.b.ii(A)(9)(c). A HUD official told us that HUD Handbook 4000.1 should be updated to reflect this eligibility change by approximately April 2021.

² HUD Handbook 4000.1 section II.A.1.b.ii(A)(9)(c)

³ FHA INFO email subscription provides lenders, servicers, appraisers, and others with notifications on FHA single family housing news, which include policy announcements, mortgagee letters, Federal Register notices, HUD Handbook 4000.1 updates, training, educational offerings, and job opportunities.

⁴ Starting in 2003, the non-resident eligibility policy was located in HUD Handbook 4155.1, Mortgage Credit Analysis for Mortgage Insurance, until HUD issued HUD Handbook 4000.1.

⁵ HUD Handbook 4000.1 does not define “lawful residency.” Rather, it states that USCIS provides evidence of lawful, permanent residency status.