



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

September 8, 2016

MEMORANDUM NO:
2016-CF-1803

Memorandum

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

FROM: *//signed//*
Christeen Thomas
Director, Joint Civil Fraud Division, GAW

SUBJECT: Final Civil Action: Cunningham and Company Settled Alleged Violations of Failing To Comply With Federal Housing Administration Loan Requirements

INTRODUCTION

The U.S. Department of Housing and Urban Development (HUD), Office of Inspector General (OIG), investigated Cunningham and Company¹ to determine whether it violated HUD requirements when underwriting loans insured by the Federal Housing Administration (FHA). Cunningham is an FHA mortgage lender, formerly located in Greensboro, NC.

BACKGROUND

FHA is a component of HUD. Cunningham was approved to participate in FHA's direct endorsement program on April 30, 1990. The program authorizes private-sector mortgage lenders to approve mortgage loans for insurance by FHA. Lenders approved for the program must follow FHA requirements and provide annual and per loan certifications that the lender complied with these requirements when underwriting and approving loans for FHA insurance. HUD's FHA program encourages lenders to lend to borrowers by insuring qualifying mortgages against loss. To qualify for mortgage insurance, borrowers must satisfy cash investment, income, and credit requirements. When a borrower defaults on an FHA-insured loan, HUD pays the insurance claim submitted by or on behalf of the lender.

¹ On December 30, 2011, Cunningham was sold to Capital Markets Cooperative, LLC, and is now known as CMC Funding, Inc., with a "doing business as" name of Cunningham and Company.

RESULTS OF INVESTIGATION

Based on OIG's review, HUD contends that Cunningham may be liable under the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. (United States Code) 3801-3812,² as implemented by 24 CFR (Code of Federal Regulations) Part 28, for material violations of HUD's underwriting requirements for an FHA-insured mortgage loan originated and underwritten by Cunningham. HUD contended that Cunningham failed to document any effective income on behalf of the borrower. Additionally, income documentation used to qualify the borrower indicated fraud. An underwriter has an obligation to be aware of indications of fraud and resolve conflicting information, which may indicate fraud. HUD further contended that these underwriting failures made Cunningham's certification of due diligence and eligibility false, resulting in a false claim on the FHA insurance fund.

On December 8, 2015, Cunningham entered into a settlement agreement with HUD to avoid expense and administrative proceedings and to reach a satisfactory resolution. Cunningham agreed to pay \$77,527 to HUD to satisfy all claims in the matter, which it paid at the time of settlement. The settlement agreement did not constitute an admission of liability or fault on the part of any party.

RECOMMENDATION

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

- 1A. Acknowledge that the attached settlement agreement for \$77,527 represents an amount due HUD.

As of the date of this memorandum, the settlement amount due HUD was 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 the final action was completed.

² The Program Fraud Civil Remedies Act establishes remedies for false statements and false claims valued at a \$150,000 or less that are submitted to Federal authorities or their agents.