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

September 20, 2017

MEMORANDUM NO:
2017-LA-1801

Memorandum

TO: Gisele G. Roget
Deputy Assistant Secretary for Single Family Housing, HU

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

//SIGNED//
FROM: Tanya E. Schulze
Regional Inspector General for Audit, Los Angeles Region, 9DGA

SUBJECT: Venta Financial Group, Inc., Las Vegas, NV, Improperly Originated FHA-Insured Loans With Restrictive Covenants

INTRODUCTION

We audited Venta Financial Group's Federal Housing Administration (FHA) loan origination because it was one of the top lenders that originated FHA-insured loans with downpayment assistance from the City of Las Vegas. A previous U.S. Department of Housing and Urban Development, Office of Inspector General (HUD OIG) audit (Evergreen Home Loans, 2016-LA-1011) found that Evergreen originated FHA-insured loans in connection with the City of Las Vegas' downpayment assistance program that contained prohibited legal restrictions on conveyance.

The objective of our audit was to determine whether Venta improperly originated FHA loans for properties with restrictive covenants.

HUD Handbook 2000.06, REV-4, provides specific timeframes for management decisions on recommended corrective actions. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued because of the audit.

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The Inspector General Act, Title 5 United States Code, section 8M, requires that OIG post its publicly available reports on the OIG website. Accordingly, this report will be posted at http://www.hudoig.gov.

METHODOLOGY AND SCOPE

We performed our fieldwork at our Las Vegas, NV, and San Francisco, CA, field offices from May through August 2017. Our audit generally covered loans with closing dates from July 2010 through June 2012.

To accomplish our objective, we reviewed

- Applicable Code of Federal Regulations and HUD program requirements.
- Reports and information from HUD's Neighborhood Watch system.[1]
- Venta's FHA-insured loan documents, including downpayment assistance closing documents.
- Venta's policies and procedures for reviewing closing documentation.

During a previous audit of another lender, we determined that closing documents associated with the City of Las Vegas' Neighborhood Stabilization Program (NSP) downpayment assistance program contained prohibited legal restrictions on conveyance. We obtained a listing of all NSP downpayment assistance loans awarded by the City. Using HUD's Single Family Data Warehouse,[2] we identified which downpayment assistance loans were associated with FHA loans and originated by Venta. We determined that Venta originated nine FHA-insured loans that received NSP downpayment assistance. Of the nine loans, only eight were active FHA loans at the time of the audit. The outstanding mortgage balance for the eight loans was $853,627. We obtained and reviewed the closing documents for all eight active loans. The results of our audit are limited to the nine loans reviewed and cannot be projected to all FHA-insured loans originated by Venta.

We conducted the audit in accordance with generally accepted government auditing standards, except that we did not consider the internal controls or information system controls of Venta. We did not follow standards in these areas because our primary objective was to determine whether closing documents related to downpayment assistance signed by borrowers contained prohibited legal restrictions on conveyance. To meet our objective, it was not necessary to fully comply with the standards, nor did our approach negatively affect our review results.

BACKGROUND

FHA provides mortgage insurance on single-family home loans made by FHA-approved lenders. Since its creation in 1934, it has insured more than 41 million properties, making it the largest mortgage insurer in the world. FHA's mortgage insurance protects lenders against losses resulting from homeowners defaulting on their mortgage loans. This decreases the lender's risk

[1] Neighborhood Watch is a system that aids HUD-FHA staff in monitoring lender progress and performance. The system also aids lenders and the public in self-policing the industry.
[2] Single Family Data Warehouse is an extensive collection of database tables organized and dedicated to support analysis of single-family housing data.

because FHA will pay a claim to the lender should a default occur. However, loans must meet certain requirements established by FHA to qualify for this insurance.

Venta Financial Group, Inc., is a nonsupervised direct endorsement lender.[3] In July 2012, Venta Financial Group became Alterra Group, LLC. However, we refer to the lender as Venta Financial Group because it originated the loans reviewed before the change to Alterra Group, LLC. Venta currently has 77 active branch offices throughout the United States. Its home office is located at 350 South Rampart Boulevard, Suite 310, Las Vegas, NV. Venta was approved by FHA in August 2007.

The HUD OIG audit of Evergreen Home Loans (audit report 2016-LA-1011) identified loans that received home-buyer downpayment assistance from the City of Las Vegas. The audit concluded that the agreements used to secure those loans subjected the borrower to contractual liability other than the repayment of assistance provided, which violated HUD regulations.

RESULTS OF REVIEW

Venta improperly originated FHA loans for nine properties that contained prohibited restrictive covenants. This condition occurred because Venta did not have adequate policies and procedures in place to identify the prohibited restrictive covenants. As a result, Venta placed the FHA fund at unnecessary risk for potential losses of $418,277.[4] In addition, HUD paid partial claims on two of the nine loans, resulting in actual losses of $5,482.

Venta Originated Loans That Contained Prohibited Legal Restrictions on Conveyance

Venta improperly originated FHA loans for nine properties that contained prohibited restrictive covenants. HUD's policy of free assumability with no restrictions states that a mortgage is not eligible for insurance if the mortgaged property is subject to legal restrictions on conveyance.[5] However, legal restrictions are acceptable if they are part of an eligible government or nonprofit program as long as the restrictions do not subject the borrower to contractual liability other than requiring repayment of downpayment assistance received. In addition, the borrower must be allowed to recover the sum of the original purchase price, the borrower's reasonable cost of sale, and the reasonable cost of improvements made by the borrower.[6] The borrowers of these nine loans received downpayment assistance from NSP through the City of Las Vegas. In exchange for the downpayment assistance, the borrowers agreed to a repayment clause that required repayment to the City of an amount equal to the current market value of the property, less any portion of the value attributable to expenditures of non-NSP funds for acquiring or improvements to the property. The repayment clause did not allow the borrower to recover the reasonable cost of sale as required. Under these circumstances, the borrower could repay more than the assistance received.

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[3] A nonsupervised direct endorsement lender is one that has as its principal activity the lending or investing of funds in real estate mortgages and is permitted by HUD to underwrite single-family mortgages without FHA's prior review and submit them directly for FHA insurance endorsement.

[4] The estimated potential loss amount is based on a 49 percent loss rate from HUD's Single Family Acquired Asset Management System's case management profit and loss by acquisition as of June 2017.

[5] 24 CFR (Code of Federal Regulations) 203.41(b)

[6] 24 CFR 203.41(d)(1)(i)

As a result, the nine Venta loans contained legal restrictions on conveyance that violated HUD's policy of free assumability; thus, all nine loans were ineligible for FHA insurance. Of the nine loans with prohibited restrictive covenants, only eight were still active FHA-insured loans at the time of our review. The total unpaid mortgage balance of these eight loans with restrictive covenants was $853,627, with an estimated loss to HUD of $418,277. Of the eight active loans, HUD paid partial claims on two loans totaling $5,482.[7] The following table identifies the active FHA-insured loans that contained prohibited restrictive covenants.

FHA loans with prohibited restrictive covenants

FHA case no.	Mortgage balance	Estimated loss to HUD (49%)[8]
332-5570133	$154,793	$75,849
332-5383884	70,221	34,408
332-5256384	199,744	97,875
332-5531327	50,959	24,970
332-5212801	87,040	42,650
332-5172583	122,659	60,103
332-5402103	85,390	41,841
332-5216015	82,821	40,582
Totals	853,627	418,277

Conclusion

Venta improperly originated FHA loans for nine properties that contained prohibited restrictive covenants. We reviewed Venta's closing policies and procedures and determined that they did not contain enough detail to ensure that Venta identified prohibited restrictive covenants. As a result, HUD paid claims totaling $5,482, and the Venta placed the FHA fund at unnecessary risk for potential losses of $418,277.

[7] FHA loan numbers 332-5531327 and 332-5216015

[8] Estimated loss to HUD is determined by multiplying the Mortgage Balance by the 49 percent loss rate.

RECOMMENDATIONS

We recommend that the Deputy Assistant Secretary for Single Family Housing require Venta to

1A. Work with HUD to nullify the restrictions on conveyance that violate HUD policy or indemnify HUD. This action will protect HUD against future losses of $418,277 for the eight loans.

1B. Repay HUD $5,482 for partial claims paid on two FHA loans that contained prohibited restrictive covenants.

1C. Develop and implement policies and procedures to identify prohibited restrictions on conveyance to ensure that it does not originate FHA loans with prohibited restrictive covenants.

1D. Provide training to its employees regarding HUD's requirements related to prohibited restrictions on conveyance.

We also recommend that the Associate Counsel for the Office of Program Enforcement

1E. Determine legal sufficiency and if legally sufficient, pursue civil and administrative remedies, civil money penalties, or both against Venta, its principals, or both for incorrectly certifying to the eligibility for FHA mortgage insurance or that due diligence was exercised during the origination of FHA loans.

Appendix A

SCHEDULE OF QUESTIONED COSTS

Recommendation number	Ineligible 1/	Funds to be put to better use 2/
1A		$418,277
1B	$5,482	
Totals	**5,482**	**418,277**

1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law; contract; or Federal, State, or local policies or regulations. In this case, ineligible costs of $5,482 relate to partial claims paid by HUD on two FHA loans that were not eligible for FHA insurance due to prohibited restrictive covenants.

2/ Recommendations that funds be put to better use are estimates of amounts that could be used more efficiently if an OIG recommendation is implemented. These amounts include reductions in outlays, deobligations of funds, withdrawal of interest, costs not incurred by implementing recommended improvements, avoidance of unnecessary expenditures noted in preaward reviews, and any other savings that are specifically identified. If HUD implements our recommendations to indemnify eight loans not originated in accordance with FHA requirements, it will reduce FHA's risk of loss to the insurance fund. The questioned costs of $418,277 represent the estimated loss to HUD based on HUD's Single Family Acquired Asset Management System's case management profit and loss by acquisition calculation as of June 2017. FHA estimates that it loses on average 49 percent of the claim amount when it sells a foreclosed-upon property.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments

Alterra Home Loans
Building Wealth Through Homeownership

September 5, 2017

Ms. Tanya E. Schulze
Regional Inspector General for Audits
U.S. Department of Housing & Urban Development
300 N. Los Angeles Street, Suite 4070
Los Angeles, CA 90012

Re: Audit conducted on Venta Financial Group
Now known as Alterra Group LLC
Memorandum No. 2017-LA-180X

Dear Ms. Schulze:

This letter is in response to your letter dated August 19, 2017 concerning, the draft audit report of memorandum no. 2017-LA-180, for the audit that the OIG performed on nine of Venta/Alterra's loans and concluded that, Venta/Alterra improperly originated FHA loans for nine properties that contained prohibited restrictive covenants. Further it states that the condition occurred because Venta/Alterra did not have adequate policies and procedures in place to identify the prohibited restrictive covenants. As a result, Venta/Alterra placed the FHA fund at unnecessary risk for potential losses of $418,277. In addition, HUD paid claims on two of the nine loans, resulting in actual losses of $5,482.

Therefore, the OIG's recommendation to the Deputy Assistant Secretary for Single Family Housing to require Venta/Alterra to:

1A. Work with HUD to nullify the restrictions on conveyance that violate HUD policy or indemnify HUD. This action will protect HUD against future losses of $418,277 for eight loans.

1B. Repay HUD $5,482 for partial claims paid on two FHA loans that contained prohibited restrictive covenants.

1C. Develop and implement policies and procedures to identify prohibited restrictions on conveyance to ensure that it does not originate FH loans with prohibited restrictive covenants.

1D. Provide training to its employees regarding HUD's requirements related to prohibited restrictions on conveyance.

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EQUAL HOUSING LENDER

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Regional Inspector General for Audits
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Development

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We also recommend that the Associate Council of the Office of Program Enforcement:

1E. Determine legal sufficiency and if legally sufficient, pursue civil and administrative remedies, civil money penalties, or both against Venta/Alterra, its principals, or both for incorrectly certifying to the eligibility for FHA mortgage insurance or that due diligence was exercised during the origination of FHA loans.

Venta/Alterra's Response:

Comment 1

First, I would like to say that we think that we have been unfairly singled out here in this audit because Venta/Alterra specializes in servicing borrowers that theses product, are designed to assist. In addition, as Venta/Alterra is the only minority owned nationwide mortgage banking company in the country and we originate a large percentage of our loans to minority located in underserved communities.

- *Sixty (60%) percent of the loans we originate are purchase loans under $225,000.*
- *Sixty (60%) percent of the loans we originate are to First-Time Home Buyer.*
- *Sixty-five (65%) percent of the loans we originate are FHA Loans*
- *Forty five percent of the loans we originate are to borrowers who require a down payment assistance program.*
- *Seventy (70%) of our loans are made to Hispanic borrowers*
- *Ten (10%) of our loans are made to Black borrowers*

We truly serve the underserved markets, which is why HUD was created and exist.

Comment 2

Secondly, we think that since HUD is the one who approved these Government Agencies and Municipalities to participate in the HUD Approved Down Payment Assistance Programs, we believe that HUD bears responsibility for the use of inaccurate documents. HUD failed to review and approved the Agencies and Municipalities, Notes and Deeds of Trust, prior to HUD approving the Agencies and Municipalities, to ensure that the Agencies and Municipalities Documents were compliant to HUD own rules. We think this is similar, to the OIG findings against HUD in report 2017-LA-0002. HUD permitted Agencies and Municipalities to release documents to the public without "proper department review". In turn, it is reasonable for a mortgage banking firm to rely upon the documents distributed by HUD approved Agencies and Municipalities.

Comment 3

Thirdly, based upon the above responses, we think that the OIG's recommendation 1E, is totally out of line for a False Claims Act cause of action and recommendation 1A is inapplicable in this audit. Beyond a doubt, Venta/Alterra did not "know" or "knowingly" submit any false documents to HUD. Furthermore, it was reasonable for Venta/Alterra to rely upon the Agencies and Municipalities approved by HUD and the related documents distributed by these Agencies and Municipalities which was accepted by HUD.

Comment 4
Comment 2

Fourthly, Venta/Alterra should not be required to indemnify these loans when HUD itself is responsible for approving these Agencies and Municipalities to participate in its Down Payment Assistance Programs. All eight of said loans are performing loans and have been on the books for more than five (5) years. Because HUD failed to review the Agencies and Municipalities

Ms. Tanya E. Schulze
Regional Inspector General for Audits
U.S. Department of Housing & Urban
Development

Notes and Deeds of Trust documents, prior to approving the Agencies and Municipalities, we should not be held responsible, nor be required to indemnify these loans.

Comment 5

However, going forward, since HUD did not do its job, we will adopt the OIG's recommendation 1C and develop and implement policies and procedures to identify prohibited restrictions on conveyance to ensure that Venta/Alterra does not originate FHA loans with prohibited restrictive covenants. We will pull the Notes and Deeds of Trusts of all the Agencies and Municipalities that we are currently doing business with and review their Notes and Deeds of Trusts documents for compliance with HUD's rules. If we find that the Notes and Deeds of Trusts are not compliant to HUD's rules, we will work with the Agencies and Municipalities to get them to revise their documents to meet HUD's rules and if we are unsuccessful in getting the Agencies and Municipalities to bring their documents into compliance with HUD's rules, we will terminate our relationship with these Agencies and Municipalities.

Comment 6

Comment 7

We value our relationship with HUD in assisting us to achieve our goal of helping our borrowers in "Building Wealth Through Homeownership", and we also value the existence of HUD and want to do anything possible to ensure the safe and soundness of the FHA Insurance Fund; however, we think to comply with the OIG's recommendation 1B, to reimburse HUD, $5,482 for the partial claim paid by HUD on two FHA loans that the OIG claim contained prohibited restrictions covenants is unfair and unreasonable. We ask that you reconsider compelling Venta/Alterra with paying the $5,482. Based on the OIG's recommendation 1D, we will provide training to our employees regarding HUD's requirements related to prohibited restrictions in conveyance.

Comment 8

Due to our response to the OIG's Audit, we think you will find our response sufficient to consider this matter closed and resolved with no further action required by Venta/Alterra. However, if you have any questions concerning this response, or would like to discuss this matter further, please contact me at (702) 425-3374 at your convenience.

Respectfully submitted,

Ben Slayton
Executive Vice President,
Enterprise Risk Officer &
Chief Compliance Officer

OIG EVALUATION OF AUDITEE COMMENTS

Comment 1 We did not single out Venta based on its borrowers. We audited Venta because it was among the top lenders that originated FHA-insured loans in connection with the City of Las Vegas' down payment assistance program. Concurrent with this audit, we are reviewing other lenders that originated FHA-insured loans in connection with the City of Las Vegas' down payment assistance program.

Comment 2 We disagree that it was HUD's responsibility to ensure the downpayment assistance program documents met FHA requirements. HUD Handbook 4000.1, II.A.6.a.iii states that the mortgagee must determine whether there are any legal restrictions on conveyance in accordance with 24 CFR 203.41. We also disagree that there are similarities between the findings of this report and OIG audit report 2017-LA-0002. OIG audit report 2017-LA-0002 discussed the FHA departmental clearance process. The City of Las Vegas created the homebuyer assistance documents, not HUD. As a result, the documents would not be part of the departmental clearance process. Further, the City's homebuyer assistance program was funded through the Neighborhood Stabilization Program under HUD's Office of Community Planning and Development. The City's program was not an FHA-funded program and it was not exclusive to FHA-insured mortgages. As an FHA lender, Venta had the responsibility to ensure its loans met FHA requirements.

Comment 3 We disagree that our recommendation to pursue civil and administrative remedies and civil money penalties is inapplicable. Venta stated that it relied on documents provided by other agencies. As such, Venta did not exercise due diligence by performing its own review of the documents. Additionally, Venta certified to the integrity of the data contained within these documents and that the loans were eligible for FHA mortgage insurance. However, since the loan documents contained prohibited restrictive covenants, the loans were not eligible for FHA-insurance.

Comment 4 We recommended that Venta remove the restrictions on conveyance or indemnify the eight loans. These loans were not eligible for FHA insurance because the loans included prohibited restrictions on conveyance. Venta can work with HUD's Office of Single Family Housing during the audit resolution process to remove the restrictions on conveyance or indemnify the eight loans.

Comment 5 We are encouraged that Venta will develop policies and procedures to identify prohibited restrictive covenants when originating FHA loans. Venta can submit the new policies and procedures to HUD for review during the audit resolution process.

Comment 6 We disagree that the partial claims should not be repaid. HUD paid partial claims totaling $5,482 for loans that were not eligible for FHA insurance. Because the loans were not eligible for FHA insurance, Venta should repay the partial claim payments it received.

Comment 7 We are encouraged that Venta will provide training to its employees regarding FHA requirements related to prohibited restrictions on conveyance. Venta can provide documentation of this training to HUD during the audit resolution process.

Comment 8 We acknowledge that Venta has agreed to take action to improve its policies and procedures and provide training to its employees. However, the recommendations in the report are not resolved at this time. Venta will need to work with HUD during the audit resolution process to resolve the audit recommendations.