



OFFICE OF

INSPECTOR GENERAL

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CitiMortgage, Inc.
Foreclosure and Claims Process Review
O'Fallon, MO



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**MEMORANDUM NO.
2012-KC-1801**

March 12, 2012

MEMORANDUM

FOR: Charles S. Coulter, Deputy Assistant Secretary for Single Family Housing, HU

//signed//
FROM: Ronald J. Hosking, Regional Inspector General for Audit, 7AGA

SUBJECT: CitiMortgage, Inc.
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INTRODUCTION AND BACKGROUND

As part of the Office of the Inspector General's (OIG) nationwide effort to review the foreclosure practices of the five largest Federal Housing Administration (FHA) mortgage servicers (Bank of America, Wells Fargo Bank, CitiMortgage, JP Morgan Chase, and Ally Financial, Incorporated), we reviewed CitiMortgage's foreclosure and claims processes. In addition to this memorandum, OIG issued separate memorandums for each of the other four reviews.¹ OIG also plans to issue a summary memorandum reporting the results of all five memorandums. We performed these reviews due to reported allegations made in the fall of 2010 that national mortgage servicers were engaged in widespread questionable foreclosure practices involving the use of foreclosure "mills" and a practice known as "robo signing"² of sworn documents in thousands of foreclosures throughout the United States. We initially focused our efforts on examining the foreclosure practices of servicers in the judicial States and jurisdictions in which they do business.³

¹ See review memorandums (2012-FW-1802, 2012-AT-1801, 2012-CH-1801, 2012-PH-1801).

² We have defined the term "robo signing" as the practice of an employee or agent of the servicer signing documents automatically without a due diligence review or verification of the facts.

³ With respect to foreclosure procedures, there are three variations: those States that require a complete judicial proceeding, which are referred to as "the judicial jurisdictions"; those that do not require a judicial proceeding; and those that are a hybrid. For purposes of this review, we determined that there were 23 judicial States and jurisdictions.

CitiMortgage is a nonsupervised FHA direct endorsement lender that can originate, sponsor, and service FHA-insured loans. During Federal fiscal years 2009 and 2010⁴, CitiMortgage submitted 19,189 FHA claims totaling \$2.4 billion.⁵

CitiMortgage did not halt judicial foreclosures while it reviewed its policies and procedures, like some servicers did in the fall of 2010. According to the November 2010 testimony to Congress of a managing director of CitiMortgage, CitiMortgage believed that there was no reason to suspend its foreclosure process because it had been taking measures to strengthen its practices beginning in the fall of 2009 to ensure that foreclosures were processed correctly. Further, CitiMortgage was reviewing approximately 10,000 affidavits that were executed in pending judicial foreclosures and expected to refile affidavits executed before the fall of 2009. Separately, CitiMortgage was also reviewing approximately 4,000 pending foreclosure affidavits in judicial States that were executed at its Dallas processing center that may not have been signed in the presence of a notary. CitiMortgage expected that it would refile those affidavits as well.

Because we identified potential False Claims Act⁶ violations, we provided the U.S. Department of Justice (DOJ) with our analyses and preliminary conclusions as to whether CitiMortgage engaged in the reported foreclosure practices.

DOJ used our review and analysis in negotiating a settlement agreement with CitiMortgage. On February 9, 2012, DOJ and 49 States attorneys general announced a proposed settlement of \$25 billion with CitiMortgage and four other mortgage servicers for their reported violations of foreclosure requirements. As part of the proposed settlement agreement, each of the five servicers will pay a portion of their settlement to the United States and also must undertake certain consumer relief activities. The proposed settlement agreement described tentative credits that each mortgage servicer would receive for modifying loans, including principal reduction and refinancing, and established a monitoring committee⁷ and a monitor to ensure compliance with agreed-upon servicing standards and the consumer relief provisions. Once the final settlement agreement has been approved by the court, OIG will issue a separate summary memorandum detailing each of the five servicers' allocated share of payment due as a result of the settlement agreement.

Our objective was to determine whether CitiMortgage complied with applicable foreclosure procedures when processing foreclosures on FHA-insured loans.

METHODOLOGY AND SCOPE

To accomplish our review objective, we

- Obtained an understanding of relevant legislation, program guidance, and criteria related to FHA single-family mortgage insurance.

⁴ For the period October 1, 2008 through September 30, 2010.

⁵ Properties located in judicial foreclosure States and jurisdictions accounted for \$778 million in claims (34 percent of the claims). Properties located in nonjudicial foreclosure States and jurisdictions accounted for more than \$1.6 billion in claims (66 percent of the total loans with claims). These amounts include all categories of FHA claims.

⁶ 31 U.S.C. §3729 *et. seq.*

⁷ Comprised of representatives of the State attorneys general, DOJ, and HUD.

- Obtained and reviewed relevant CitiMortgage written policies and procedures regarding its foreclosure process.
- Obtained and examined relevant reviews of CitiMortgage’s servicing and foreclosure processes.
- Obtained and reviewed various congressional testimonies and documents from various court proceedings related to the foreclosure practices of CitiMortgage and other lenders and law firms.
- Interviewed CitiMortgage management and staff and vendor staff, including those involved in the document execution, notary, foreclosure, and claims processes.
- Coordinated with CitiMortgage’s legal counsel, our Office of Legal Counsel, and DOJ attorneys.
- Identified and reviewed a sample of 28 conveyance CitiMortgage FHA claims processed by the U.S. Department of Housing and Urban Development (HUD) during the review period. We selected a nonrepresentative sample of 28 conveyance claims to review for affidavits. A conveyance claim occurs when the servicer conveys the property to HUD in exchange for insurance benefits. We chose our first nine conveyance claims based on the number of days between the default date and the claim processed date (to get a variety of lengths of time) and based on the claim process date (to get claims from a variety of timeframes). We later chose 19 additional conveyance claims with high loss amounts in States that were listed as judicial only in a RealtyTrac listing.⁸
- Reviewed FHA claims and related documents, including affidavits, for the 28 claims in our sample.
- Obtained and analyzed FHA claims data from HUD.
- Issued one Inspector General administrative subpoena for documents and records.

During the course of our review and the drafting of this memorandum, CitiMortgage was actively engaged in negotiations with DOJ in an attempt to resolve potential claims under the False Claims Act or other statutes for the conduct we were reviewing. Accordingly, OIG determined that our work product was privileged and not releasable to CitiMortgage for any purpose, including the solicitation of written comments on our findings from CitiMortgage. For this same reason, we did not provide CitiMortgage with a copy of the draft memorandum. Both DOJ and HUD concurred with our determination that the work product was privileged.

OIG also issued memorandums reporting the results of the reviews of four other servicers. The results reported in the five OIG memorandums differ due to various factors. These factors include (1) the level of information made available to auditors at the time of the onsite reviews or that was obtained later through subpoenas or civil investigative demands⁹; (2) variances between review procedures used, including the analysis of the data, that were governed in part by the amount and types of information obtained; (3) differences between the foreclosure procedures used by the servicers; and (4) scope limitations imposed by some servicers.

⁸ RealtyTrac, Inc., is a private company operating an online marketplace for foreclosed-upon properties. It collects and aggregates foreclosure data from more than 2,200 counties, covering more than 90 percent of U.S. households.

⁹ Under 31 U.S.C. § 3733 *et. seq.*, CIDs can be served on a person to give oral testimony whenever the Attorney General has reason to believe that the person may be in control of information relevant to a false claim investigation.

Our review generally covered CitiMortgage's foreclosure and claims processes for its FHA claims initially processed by HUD between October 1, 2008, and September 30, 2010, including its procedures for signing and notarizing sworn judgment affidavits. The review included both judicial and nonjudicial foreclosure States and jurisdictions, which provided a broad overview of CitiMortgage's practices and compliance with requirements. We expanded the scope as needed to accomplish our objective. We initiated our review on October 15, 2010, and performed onsite work at CitiMortgage's office in O'Fallon, MO, between October and December 2010.

Scope Limitation

Our review was significantly hindered by CitiMortgage's lack of records. For instance, CitiMortgage did not have a mechanism for tracking how many foreclosure documents were signed during our review period or which documents were signed by each individual. The lack of tracking impaired our review because it prevented us from accurately measuring the number of foreclosure documents signed by employees and measuring the complete impact of CitiMortgage's foreclosure practices.

RESULTS OF REVIEW

CitiMortgage did not establish effective control over its foreclosure process. This failure permitted a control environment in which

- Affiants¹⁰ routinely signed foreclosure documents, including affidavits, certifying that they had personal knowledge of the facts when they did not. Specifically, affiants signed large volumes of foreclosure documents without reviewing the supporting or source documentation referenced in them.
- Notaries public routinely notarized documents without witnessing affiant signatures.
- Attorneys may have improperly prepared documents and misrepresented the work they performed.

This flawed control environment resulted in CitiMortgage's filing improper legal documents, thereby misrepresenting its claims to HUD and may have exposed it to liability under the False Claims Act.

Questionable Affidavit and Foreclosure Document Processes

CitiMortgage failed to follow HUD requirements¹¹ for properties it foreclosed upon in judicial foreclosure States and jurisdictions. These provisions required CitiMortgage to obtain and convey to the Secretary of HUD good and marketable title to properties. CitiMortgage may have conveyed improper titles to HUD because it did not establish a control environment which ensured that affiants performed a due diligence review of the facts submitted to courts and employees properly notarized documents.

Judicial foreclosures were processed through the court system beginning with CitiMortgage's filing a complaint or petition regarding a mortgage purportedly in default. The formal legal

¹⁰ An affiant is a person who signs an affidavit and attests to its truthfulness before a notary public.

¹¹ 24 C.F.R. § 203.366(a) and HUD Handbook 4330.4, paragraphs 2-6 and 2-23

document stated what the debt was and why the default should allow CitiMortgage to foreclose on the property. In many judicial foreclosures, an affidavit was part of the foreclosure documentation. Generally, a representative of CitiMortgage swore in a notarized affidavit that CitiMortgage owned or held the mortgage in question and that the borrower was in arrears. As judicial States and jurisdictions routinely resolved foreclosures through summary judgment,¹² the accuracy and propriety of the documents were essential to ensure the integrity of the foreclosure process. CitiMortgage used a flawed process to submit FHA conveyance claims for judicially foreclosed-upon properties during the review period and received FHA claim payments of nearly \$597 million.¹³

Affiants Robosigned Foreclosure Documents

Because CitiMortgage did not have written policies and procedures for the signing process before November 2009 and did not have a mechanism for tracking foreclosure documents signed during our review period, we relied on interviews to gain an understanding of its practices. We found that CitiMortgage's employees signed foreclosure documents without reviewing them for accuracy. However, CitiMortgage also made significant changes to its process for reviewing and signing foreclosure documents during our review period, which included consolidating the process.

Before November 2009, CitiMortgage employees regularly signed foreclosure documents with only a cursory review for completeness. They did not review the documents for accuracy. This process was corroborated by interviews with vice presidents, assistant vice presidents, and contractor employees; an April 2008 deposition; a November 2010 testimony before Congress; and a November 2010 internal CitiMortgage report. In our sample of 28 conveyance claims, we identified 12 with foreclosure documents signed by 6 CitiMortgage employees that contained financial figures or default information. We interviewed four of these affidavit signers, who all confirmed that they signed documents without verifying their accuracy; the other two are no longer employed by CitiMortgage. According to several employees, the process of signing documents was inherited with their positions.

Beginning in November 2009, CitiMortgage began to consolidate its process for reviewing and signing foreclosure documents into the process it uses today. The consolidation was completed in February 2010. This change resulted in the creation of a department in which nonmanagement employees were full-time document signers. These employees were made officers of CitiMortgage in September 2010. They reviewed facts and figures in foreclosure documents before signing. Since the consolidation process began, CitiMortgage had also begun various levels of tracking and review of the process.

When asked about the number of foreclosure documents they signed before the consolidation, employees were unable to provide consistent estimates. Some employees indicated that they signed 60-200 documents per day. Another employee indicated that he would sometimes receive 1- to 2-inch stacks of documents multiple times in a day. Several employees acknowledged that the number of documents increased over time.

¹² A decision made on the basis of statements and evidence presented for the record without a trial. It is used when there is no dispute as to the facts of the case and one party is entitled to judgment as a matter of law.

¹³ This amount was calculated based on information in HUD's Single Family Data Warehouse and excludes claims for deeds in lieu of foreclosure.

The process CitiMortgage used before the consolidation did not ensure that its foreclosure documents were properly executed before it submitted them to courts or that it conveyed good and marketable title to HUD.

Notaries Did Not Witness Signatures

CitiMortgage did not establish a control environment which ensured that its notaries met their responsibilities under State laws that required them to witness affiants' signatures on documents that they notarized.¹⁴ CitiMortgage employed notaries¹⁵ who notarized signatures on foreclosure documents and used notaries of its collocated vendors.

Before November 2009, CitiMortgage employees regularly signed foreclosure documents when not in the presence of a notary. This process was corroborated by several interviews with signers and notaries, including vice presidents, assistant vice presidents, and contractor employees; an April 2008 deposition; a November 2010 testimony before Congress; and a November 2010 internal CitiMortgage report. If a notary did not witness the signature, the notarization of the document was improper. Since February 2010, CitiMortgage had changed its process to require signing to take place in the presence of a notary.

As one of the primary purposes of using a notary was to verify the authenticity of the signer, CitiMortgage's failure to ensure that notaries witnessed signatures was a significant control weakness. Because this type of deficiency undermined the integrity of the control environment, the affidavits and other foreclosure documents submitted by CitiMortgage were unreliable and inauthentic, and may have exposed it to False Claims Act liability.

Attorneys May Have Improperly Prepared Documents

CitiMortgage used law firms that may have engaged in questionable practices to process FHA-insured foreclosures. These practices ranged from allegations of employees' or agents' signing documents automatically without a due diligence review or verification of the facts and unauthorized practice of law to a judge's ruling that in an attempt to collect on questionable debt, a firm filed deceptive documents.

Before October 2010, CitiMortgage indicated that there was a subset of affidavits that were signed directly by the attorneys whose firms prepared them. The number and extent of these activities is not known as affidavits were not tracked. However, in a November 2010 internal CitiMortgage report, CitiMortgage indicated that it did not have a process in place to validate the accuracy of affidavits signed under power of attorney delegation authorities.

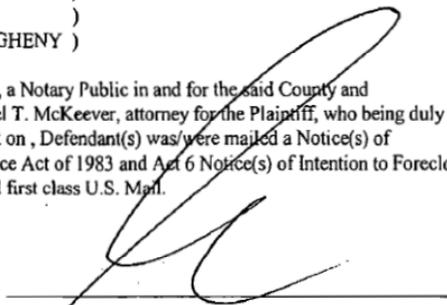
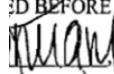
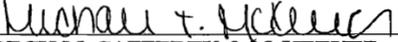
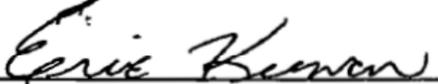
Our review found that several of the law firms used by CitiMortgage to process judicial and nonjudicial foreclosures had been named in various court proceedings throughout the country, alleging questionable foreclosure activities.

¹⁴ Every state's notary laws require that the notary personally administer an oath and/or personally verify the identity of the document signer.

¹⁵ These notaries had additional job duties and responsibilities.

For example, CitiMortgage was referred to in a complaint¹⁶ against Goldbeck, McCafferty, and McKeever, PC, a law firm that conducted foreclosure work. The complaint alleged that nonlawyers in the firm’s employ engaged in the unauthorized practice of law by preparing foreclosure complaints, signing lawyers’ names to those complaints, and filing those complaints in county courts around the Commonwealth of Pennsylvania. The complaint included 27 exhibits containing signatures to support the plaintiff’s allegation that hundreds or thousands of cases were prepared, signed, and filed by the nonlawyer defendants without attorney review. If nonlawyers, on Goldbeck, McCafferty, and McKeever’s behalf, signed and filed documents for FHA-insured foreclosures, these filings may not have been valid. As table 1 shows, the exhibits included in the complaint against the firm contained eight signatures on CitiMortgage documents for attorney Michael McKeever, several of which appeared to have been by different individuals.

Table 1: Different signatures and signers for attorney Michael McKeever

By:  GOLDBECK McCAFFERTY & McKEEVER BY: MICHAEL T. MCKEEVER, ESQUIRE ATTORNEY FOR PLAINTIFF	
) SS:)) ALLEGHENY) uthority, a Notary Public in and for the said County and Michael T. McKeever, attorney for the Plaintiff, who being duly says that on , Defendant(s) was/were mailed a Notice(s) of Assistance Act of 1983 and Act 6 Notice(s) of Intention to Foreclosure sted and first class U.S. Mail.  ED BEFORE  2009,	By:  GOLDBECK McCAFFERTY & McKEEVER BY: MICHAEL T. MCKEEVER, ESQUIRE ATTORNEY FOR PLAINTIFF
 MICHAEL T. MCKEEVER Attorney for Plaintiff	 BY: TINAMARIE Boschetti
	
	 GOLDBECK McCAFFERTY & McKEEVER BY: ERIC KEENAN Legal Secretary

In addition, the chief U.S. bankruptcy judge for Western Pennsylvania ruled that the firm filed copies of three key letters, created after the fact in an attempt to collect on questionable debt, that were not sent to the homeowner or her lawyer. The judge ordered Goldbeck, McCafferty, and McKeever and the attorney to report to the Disciplinary Board of the State Supreme Court.¹⁷

In another example, a notary for Phelan, Hallinan & Schmieg testified in a deposition that over a 3-year period, he falsely acknowledged tens of thousands of mortgage assignments for the firm, often outside the signer’s presence. The notary also acknowledged under oath that he notarized documents in New Jersey when he did not hold a notary license in that State.¹⁸ In addition, a

¹⁶ *Loughren vs. Lion, et al.*, GD-10, Allegheny County, PA
¹⁷ *In re Hill*, 437 B.R. 503 (Bankr. W.D. Pa., November 24, 2010)
¹⁸ *Bank of New York v. Ukpe*, Docket No. F-10209-08

partner was accused of having potential conflicts of interest in the assignment of mortgage notes. It was argued that the partner executed an assignment in his capacity as a Mortgage Electronic Registration Systems officer while Phelan, Hallinan & Schmiege was also a vendor for Mortgage Electronic Registration Systems, the assignor. The notary and partner had both been individually named in proceedings involving questionable foreclosure practices for servicers other than CitiMortgage.¹⁹ According to CitiMortgage's records, Phelan, Hallinan & Schmiege was used for foreclosure cases in two judicial foreclosure States.²⁰ It signed foreclosure documents for 3 of the 28 sample loans we reviewed.

On November 16, 2010, the Congressional Oversight Panel released an indepth report analyzing the robo-signing allegations.²¹ Its report concluded that "[t]he foreclosure documentation irregularities unquestionably show a system riddled with errors" and emphasized "that mortgage lenders and securitization servicers should not undertake to foreclose on any homeowner unless they are able to do so in full compliance with applicable laws and their contractual agreements."

If third-party law firms engaged in questionable practices on behalf of CitiMortgage, the foreclosures may not have complied with laws and agreements. Based upon our review, we made a determination that CitiMortgage's practices may have exposed it to liability under the False Claims Act.

CONCLUSION

CitiMortgage did not establish an effective control environment to ensure the integrity of its foreclosure process. Because it failed to establish proper policies and procedures that fostered compliance with laws and regulations, its affiants robo-signed foreclosure documents, its notaries failed to authenticate signatures, and it used law firms that may have falsified signatures on legal foreclosure documents. As a result of its flawed control environment, CitiMortgage engaged in improper practices by not fully complying with applicable foreclosure procedures when processing foreclosures on FHA-insured loans. This flawed control environment resulted in CitiMortgage's filing improper legal documents, thereby misrepresenting its claims to HUD.

During the review period, CitiMortgage submitted 5,182 conveyance claims²² totaling nearly \$597 million in the 23 judicial foreclosure States and jurisdictions. DOJ used our review and analysis in negotiating the settlement.

Once the settlement agreement is approved by the court, OIG will issue a separate summary memorandum to HUD containing recommendations to correct weaknesses discussed in this and the other four memorandums. Accordingly, this memorandum contains no recommendations.

¹⁹ *U. S. Bank NA v. Sinchegarcia*, F-18446-08. *Deutsche Bank National Trust Company v. Charlene Smith*, No. 08-3089

²⁰ CitiMortgage indicated in a foreclosures referral matrix that Phelan, Hallinan & Schmiege was used for 100 percent of its loans in New Jersey and 50 percent of its loans in Pennsylvania. However, CitiMortgage did not maintain a list of all affidavits and documents filed.

²¹ Congressional Oversight Panel, November Oversight Report Examining the Consequences of Mortgage Irregularities for Financial Stability and Foreclosure Mitigation (November 16, 2010), available at <http://cop.senate.gov/documents/cop-111610-report.pdf> (submitted under section 125(b)(1) of Title 1 of the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343)

²² Excludes deeds in lieu of foreclosure