



OFFICE OF

INSPECTOR GENERAL

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Ally Financial, Incorporated
Foreclosure and Claims Process Review
Fort Washington, PA



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**MEMORANDUM NO.
2012-PH-1801**

March 12, 2012

MEMORANDUM

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

//signed//
FROM: John P. Buck, Regional Inspector General for Audit, 3AGA

SUBJECT: Ally Financial, Incorporated
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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, CitiMortgage, JP Morgan Chase, and Ally Financial, Incorporated), we reviewed Ally Financial, Incorporated's¹ foreclosure and claims processes. In addition to this memorandum, OIG issued separate memorandums for each of the other four reviews.² 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 "robosigning"³ of sworn documents in thousands of foreclosures throughout the United States.⁴

Ally is a nonsupervised FHA direct endorsement lender that can originate, sponsor, and service FHA-insured loans. During Federal fiscal years 2009 and 2010,⁵ Ally submitted 6,808 FHA claims totaling \$897.3 million.⁶

¹ In May 2010, GMAC Mortgage rebranded itself as Ally Financial, Incorporated.

² See review memorandums (2012-FW-1802, 2012-AT-1801, 2012-KC-1801, 2012-CH-1801).

³ We have defined the term "robosigning" as the practice of an employee or agent of the servicer signing documents automatically without a due diligence review or verification of the facts.

⁴ With respect to foreclosure procedures, there are three variations: those jurisdictions that require a complete judicial proceeding, which are referred to as "the judicial States and 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.

⁵ For the period October 1, 2008, through September 30, 2010

Ally issued a press release on September 24, 2010, stating that a procedural error was found to have occurred in certain of its affidavits required in certain States. It further stated in the press release that it was temporarily suspending evictions and postforeclosure closings in the 23 judicial States while it conducted a review. On October 12, 2010, Ally issued another press release, stating that it had found no evidence to date of any inappropriate foreclosures. As of September 30, 2010, Ally was servicing more than 199,000 FHA-insured mortgages, and more than 5,000 of these were going through its foreclosure process. From October 2008 through September 2010, Ally submitted 1,345 conveyance claims⁷ to the U.S. Department of Housing and Urban Development (HUD) totaling about \$160.5 million in 23 judicial foreclosure States and jurisdictions. Because we identified potential False Claims Act⁸ violations, we provided the U.S. Department of Justice (DOJ) with our analyses and preliminary conclusions as to whether Ally engaged in the reported foreclosure practices.

DOJ used our review and analysis in negotiating a settlement agreement with Ally. On February 9, 2012, DOJ and 49 State attorneys general announced a proposed settlement of \$25 billion with Ally 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 the 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 committee⁹ 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 Ally 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.
- Obtained and reviewed relevant Ally-written policies and procedures regarding its foreclosure process.
- Obtained and examined relevant reviews of Ally's servicing and foreclosure processes.
- Reviewed personnel documents that Ally provided for selected employees.
- Conducted conference calls and meetings with Ally's legal counsel, our Office of Legal Counsel, and DOJ attorneys.

⁶ Properties located in judicial foreclosure States and jurisdictions accounted for \$160.5 million in claims (18 percent of the claims). Properties located in nonjudicial foreclosure States and jurisdictions accounted for \$736.8 million in claims (82 percent of the claims). These amounts include all categories of FHA claims.

⁷ Excludes deeds in lieu of foreclosure

⁸ 31 U.S.C. 3729 et. seq.

⁹ Comprised of representatives of the State attorneys general, DOJ, and HUD

- Identified a statistical sample of 113 FHA claims processed by HUD during the review period. The sample universe included 6,808 claims records from HUD’s Single Family Data Warehouse. We randomly selected an attribute sample using a presumed error rate of 10 percent, a desired precision range of 10 percent (+/- 5 percent), and a desired confidence level of 90 percent.
- Reviewed FHA claims and related documents, including affidavits, for 96¹⁰ of the 113 files Ally provided from our sample.
- Obtained and analyzed FHA claims data from HUD.
- Issued two Inspector General administrative subpoenas to obtain foreclosure-related documents and records.
- Requested that DOJ issue 19 civil investigative demands (CID)¹¹ in an attempt to compel testimony.

During the course of our review and the drafting of this memorandum, Ally 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 Ally for any purpose, including the solicitation of written comments on our findings from Ally. For this same reason, we did not provide Ally 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 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 the auditors at the time of the onsite reviews or that was obtained later through subpoenas or CIDs; (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.

Our review generally covered Ally’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 Ally’s practices and compliance with requirements.¹² We expanded the scope as needed to accomplish our objective. We initiated our review on October 15, 2010, and performed onsite work at Ally’s office in Fort Washington, PA, between October and December 2010.

Scope Limitation

Our review was significantly hindered by Ally’s refusal to allow us to interview responsible personnel and its failure to provide the documentation we requested in a timely manner. At our request, Ally gave us a list of employees responsible for signing affidavits. We attempted to

¹⁰ This was the number of foreclosure files provided by Ally.

¹¹ Under 31 U.S.C. 3733, 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.

¹² Analysis of potential False Claims Act liability was limited to claims filed in judicial States and jurisdictions.

interview these employees to determine whether they properly processed foreclosure affidavits but were told by Ally's attorneys that we could not do so. Therefore, we worked with DOJ and served 19 CIDs to Ally¹³ and 18 current employees in December 2010 in an attempt to compel testimony. Individual counsel for each of the employees objected, citing Fifth Amendment concerns, and we were prohibited from interviewing them.

Ally also failed to produce requested documents and other information in a timely manner. Therefore, we served Ally with two Inspector General subpoenas on December 6, 2010. The information and data it provided in response to our two subpoenas were incomplete and provided only intermittently over several months despite repeated requests. Ultimately, Ally provided only 96 of the 113 foreclosure files we requested.

RESULTS OF REVIEW

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

- An affiant¹⁴ routinely signed 400 affidavits per day and up to 10,000 affidavits per month, certifying that he had personal knowledge of the facts when he did not and without reviewing the supporting documentation referenced in them.
- Notaries public routinely notarized documents without witnessing affiant signatures.¹⁵

This flawed control environment resulted in Ally'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

Ally failed to follow HUD requirements¹⁶ for properties it foreclosed upon in judicial foreclosure States and jurisdictions. These provisions required Ally to obtain and convey to the Secretary of HUD good and marketable title to properties. Ally 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 Ally's filing of a complaint or petition regarding a mortgage purportedly in default. The formal legal document stated what the debt was and why the default should allow Ally to foreclose on the property. In many judicial foreclosures, an affidavit was part of the foreclosure documentation. Generally, a representative of Ally swore in a notarized affidavit that Ally 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,¹⁷ the accuracy and propriety of the documents

¹³ Ally identified an employee to provide testimony on behalf of Ally in response to the corporate CID.

¹⁴ An affiant is a person who signs an affidavit and attests to its truthfulness before a notary public.

¹⁵ On September 2, 2011, we referred the notary violations to the Secretary of the Commonwealth of Pennsylvania.

¹⁶ 24 CFR 203.366(a) and HUD Handbook 4330.4, paragraphs 2-6 and 2-23

¹⁷ 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.

were essential to ensure the integrity of the foreclosure process. Ally used a flawed process to submit FHA conveyance claims for judicially foreclosed-upon properties during the review period and received FHA claim payments of more than \$160.5 million.¹⁸

An Affiant Robosigned Foreclosure Documents

Sworn testimony from the team leader of Ally's foreclosure department provided during two depositions in Florida and Pennsylvania on December 10, 2009,¹⁹ and June 7, 2010,²⁰ revealed that he routinely signed legal documents, including affidavits, without the supporting documentation and without reviewing and verifying the accuracy of the foreclosure information. He testified that he signed 400 affidavits per day and up to 10,000 affidavits per month. Ally eventually provided us 15 foreclosure files from judicial States and jurisdictions as a result of our subpoena. Of those 15 files, 10 contained affidavits attesting to the accuracy of financial information signed by the foreclosure team leader, who testified that he routinely did so with no knowledge of the facts and without reviewing the supporting documents.

The process Ally used 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

Ally 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 they notarized.²¹ The team leader of Ally's foreclosure department testified that he and other affiants did not sign documents in front of a notary. He stated that he delivered signed affidavits to the notary and waited for all of the documents to be notarized at once. He also stated that it was common for a notary to notarize documents a day after the document was signed by the affiant. The Commonwealth of Pennsylvania requires the notary to authenticate the signer's signature and maintain a log book detailing specific information, such as the name of the signer, document notarized, and date.

Ally failed to establish a control environment that provided reasonable and reliable assurances that it properly notarized affidavits and other foreclosure documents. As one of the primary purposes of using a notary was to verify the authenticity of the signer, Ally's failure to ensure that notaries witnessed signatures indicated a significant control weakness. If a notary did not witness the signature, the notarization of the document was improper. Because this type of deficiency undermined the integrity of the control environment, the affidavits and other foreclosure documents submitted by Ally were unreliable and inauthentic.

¹⁸ FHA claim payments data were obtained from HUD's Single Family Data Warehouse system.

¹⁹ This deposition is related to a foreclosure case in Florida, GMAC Mortgage v. Ann Neu, in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, FL, Case Number 50 2008 CA 040805XXXX MB.

²⁰ This deposition is related to a foreclosure case in Maine, Federal National Mortgage Association v. Nicole M. Bradbury, Maine District Court, District Nine, Division of Northern Cumberland, Docket Number BRI-RE-09-65.

²¹ Every State's notary laws require that the notary personally administer an oath and/or personally verify the identity of the document signer.

CONCLUSION

Ally 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, and its notaries failed to authenticate signatures. As a result of its flawed control environment, Ally 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 Ally's filing improper legal documents, thereby misrepresenting its claims to HUD.

During the review, Ally submitted 1,345 conveyance claims totaling \$160.5 million in the 23 judicial foreclosure States and jurisdictions. DOJ used our review and analysis in negotiating the settlement agreement.

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.