Issue Date July 29, 2009	
Audit Report Number 2009-FW-1013	

TO: David Stevens
Assistant Secretary for Housing—Federal Housing Commissioner, H

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FROM: Gerald R. Kirkland
Regional Inspector General for Audit, Fort Worth Region, 6AGA

SUBJECT: Bank of America, Seattle, Washington, Needs to Improve Its Compliance with HUD Requirements

HIGHLIGHTS

What We Audited and Why

We reviewed Bank of America's (servicer) home equity conversion mortgage (HECM)[1] servicing division located in Seattle, Washington. Bank of America is one of the largest lenders of HECM mortgages for properties located in the five southwest states in the U. S. Department of Housing and Urban Development's (HUD) Region VI jurisdiction.[2]

Our objective was to determine whether the servicer complied with HUD regulations, specifically, whether it verified that the properties remained the borrowers' primary residence, ensured maintenance of the properties, and processed HUD claims or property foreclosures in a timely manner.

[1] Also known as reverse mortgages.
[2] Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

What We Found

The servicer did not comply with two HUD requirements in its administration of HECM loans. It did not maintain annual certifications of residency[3] and did not notify HUD in a timely manner of the due and payable status of the mortgages of deceased borrowers.[4] Both weaknesses could result in the properties remaining vacant longer, increased property deterioration, the need for additional maintenance, and potential decline in property value.

What We Recommend

We recommend that the Assistant Secretary for Housing−Federal Housing Commissioner require the servicer to implement procedures to ensure that it completes the annual certifications of residency and notifies HUD of the due and payable status of mortgages within 60 days after a borrower's death.

For each recommendation without a management decision, please respond and provide status reports in accordance with HUD Handbook 2000.06, REV-3. Please furnish us copies of any correspondence or directives issued because of the audit.

Auditee's Response

We provided our draft report to the servicer on June 22, 2009, and requested a written response by July 20, 2009. We held an exit conference on June 30, 2009. In its July 20, 2009 response, the servicer believed they met HUD requirements and disagreed with the report. The complete text of the auditee's response, along with our evaluation of that response, can be found in appendix A of this report.

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[3] 24 CFR (*Code of Federal Regulations*) 206.211.
[4] 24 CFR 206.125.

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BACKGROUND AND OBJECTIVE

We reviewed Bank of America's (servicer)[5] home equity conversion mortgage (HECM)[6] servicing division located at 190 Queen Anne Avenue, North, #400, Seattle, Washington. Over the last 10 years, the servicer has serviced more than 4,000 HECM loans in the five southwest states in the U. S. Department of Housing and Urban Development's (HUD) Region VI jurisdiction. For the 4,000 loans, HUD has paid claims for 61 loans, with 60 claims being paid during calendar years 2007 and 2008. The 61 claims paid amounted to more than $5 million or 103 percent of the total loan value of more than $4.9 million. The average loan term was a little more than five years.

The servicer, with HUD's permission, services approximately 2,000 deferred foreclosure mortgages due to missed payments of property taxes or homeowners' insurance premiums[7] nationwide.

The servicer acquired, through an asset purchase and liability assumption, various entities including Seattle Mortgage Company in April 2007. Its Seattle office also obtained a portion of Countrywide Financial Corporation's HECM loan portfolio and services Fannie Mae's equivalent to HECM loans. All servicing was performed in Queen Anne, Washington, and Tempe, Arizona.

The purpose of our audit was to determine whether the servicer verified that the properties remained the borrowers' primary residence, ensured maintenance of the properties, and processed HUD claims or property foreclosures in a timely manner. For our audit, we reviewed 13 of the 60 claims paid by HUD during calendar years 2007 and 2008.

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5 Mortgagee servicer ID #1306500001.

6 Also known as reverse mortgages.

7 According to HUD, it grants approval for deferred foreclosure due to unpaid property taxes or insurance premiums. The servicer stated that delays at HUD caused untimely HUD approval.

RESULTS OF AUDIT

Finding: The Servicer Did Not Always Comply with HUD Requirements

The servicer did not have controls in place to ensure that it maintained annual certifications of residency[8] and notified HUD in a timely manner of the due and payable status of the mortgages of deceased borrowers.[9] Both weaknesses could result in the properties remaining vacant longer, increased property deterioration, the need for additional maintenance, and potential decline in property value. Also, in one instance, the servicer did not maintain a required appraisal in the loan file.

Files were Missing Annual Certifications of Residency

Nine of thirteen HECM loan files reviewed did not contain required annual certifications that the property remained the borrower's principal residence. Three of the thirteen loan files did not need the certification because the borrowers died during the first year of the loan. HUD required the servicer to obtain a certification that the property remained the principal residence of the borrower each year.[10]

Mitigating the effect of the lack of compliance, the servicer had controls to determine whether the borrowers died or did not pay taxes or insurance premiums. However, if the borrower moved from the property, the move could remain undiscovered for years without the annual certification of residency, especially if the borrower met other requirements such as payment of taxes and insurance premiums. HECM loans were designed to allow borrowers to borrow against their home equity and remain in their home. However, if the borrower moves for a period greater than one year, the loan becomes due and payable. The longer a property remains unoccupied, the greater the potential for deterioration, neglect, or vandalism, resulting in a larger insurance claim for HUD to pay.

8 24 CFR 206.211.
9 24 CFR 206.125.
10 24 CFR 206.211.

HUD was Not Notified in a Timely Manner When Mortgages were Due and Payable

In all of the six instances reviewed, the servicer did not notify HUD within 60 days[11] when the borrower died. The delay in notification to HUD and subsequent foreclosure on property varied from one to eleven months. The foreclosure delays subjected the properties to additional deterioration or vandalism. The servicer contracted for the maintenance and repair of properties subject to foreclosure; however, the delay in the foreclosure time increased these costs as well as property taxes and insurance premiums that became due. The servicer must have controls to ensure that it notifies HUD of the death of a borrower and ensures that it quickly and expeditiously processes the due and payable loans to limit holding costs and maintain the property's value.

One File Did Not Contain an Appraisal

The servicer stated that HUD would not process a loan or claim without required documents; however, in one instance, the servicer and HUD processed a file without a required appraisal.[12] The servicer should not rely on HUD to notify it of missing or incomplete documents. The servicer said its procedure was to send documents related to a loan to the document management team for scanning into the loan file. This procedure did not ensure the annual certifications of residency were completed on time each year or that other required documents were obtained and maintained.

Conclusion

The servicer had not implemented procedures to ensure borrowers maintained their properties as their principal residence and that HUD was notified of the due and payable status of a loan within 60 days of a borrower's death. Implementing procedures to comply with HUD requirements will minimize the time during which properties remain vacant and minimize HUD claim amounts.

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11 Mortgagee Letter 2003-22

12 We reviewed the reasonableness of the servicer's appraised value using a third-party source and did not notice a material difference.

Recommendation

We recommend that the Assistant Secretary for Housing−Federal Housing Commissioner require the servicer to

1A. Implement procedures to ensure that it obtains and maintains annual certifications of residency from borrowers, notifies HUD of the due and payable status of mortgages within 60 days after a borrower’s death, and completes foreclosures within required timeframes.

SCOPE AND METHODOLOGY

To meet our objective, we

- Obtained knowledge of the relevant HUD regulations and requirements.
- Obtained knowledge of and evaluated the servicer's procedures and internal controls.
- Inspected nine properties.
- Reviewed the documentation of 13 loan recipients.
- Interviewed HUD employees at the HUD National Servicing Center and headquarters employees

Our review was conducted between January and May 2009. Our audit period was January 1, 2007, through December 31, 2008. We limited our review to loans endorsed within the five southwest states within HUD's Region VI jurisdiction. The audit work was performed at the servicer's Seattle, Washington office and at the Office of Inspector General (OIG) offices in Seattle, Washington, and Fort Worth, Texas. We also inspected nine properties in the Dallas/Fort Worth, Texas area.

We did not select a statistical sample as we limited our review to loans based on the proximity of the mortgaged properties to the Dallas/Fort Worth area. We obtained the servicer loans using HUD's Single Family Data Warehouse database. We did not use the servicer's computer-processed data in meeting our objective; instead, we based our conclusions on information in the hard-copy files, on-site interviews, and procedures provided by the servicer.

We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

INTERNAL CONTROLS

Internal control is an integral component of an organization's management that provides reasonable assurance that the following controls are achieved:

- Program operations,
- Relevance and reliability of information,
- Compliance with applicable laws and regulations, and
- Safeguarding of assets and resources.

Internal controls relate to management's plans, methods, and procedures used to meet its mission, goals, and objectives. They include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

We determined that the following internal control was relevant to our audit objective:

- Compliance with laws and regulations—policies and procedures that management has implemented to reasonably ensure that resource use is consistent with laws and regulations.

We assessed the relevant controls identified above.

A significant weakness exists if management controls do not provide reasonable assurance that the process for planning, organizing, directing, and controlling program operations will meet the organization's objectives.

Significant Weaknesses

Based on our review, we believe that the following item is a significant weakness:

- The servicer did not have controls to ensure that it obtained and maintained annual certifications of residency from borrowers and notified HUD of the due and payable status of mortgages within 60 days as required.

Appendix A

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation **Auditee Comments**

July 20, 2009

Bank of America

Sent Via Fax and Federal Express

Gerald R. Kirkland, Regional Inspector General
U.S. Department of Housing and Urban Development
Office of the Inspector General, Region VI
819 Taylor Street, Suite 13A09
Fort Worth TX 76102

Re: Bank of America's Response to Draft Audit Report Number 2009-FW-100X

Dear Mr. Kirkland:

Bank of America, N.A. (hereinafter, "Bank of America" or the "Bank"), mortgage servicer ID # 1306500001, appreciates this opportunity to provide its comments (Response) regarding the Office of Inspector General's ("OIG") draft written observations regarding the audit of the Bank of America's Home Equity Conversion Mortgage loan servicing practices.

Bank of America Corporation is one of the world's largest financial institutions, serving individual consumers, small and middle market businesses, and large corporations with a full range of banking, investing, asset management and other financial and risk-management products and services. Bank of America Corporation provides unmatched convenience in the United States, serving more than 59 million consumer, and small business relationships with more than 6,100 retail banking offices, nearly 18,700 ATMs and award-winning online banking with nearly 29 million active users.

Bank of America understands the importance of protecting the U.S. Department of Housing and Urban Development's (HUD) interest in insured Home Equity Conversion Mortgages and takes seriously its role in reducing the probability of an insured mortgage terminating in default and foreclosure, and minimizing HUD's loss where claims cannot be reasonably avoided.

Bank of America's Response addresses the findings in the Draft Audit Report that: "it did not maintain annual certifications of residency"; and, "did not notify HUD in a timely manner of the due and payable status of the mortgages of deceased borrowers".

Initially, we note that you do not recommend civil money penalties or a further referral (beyond suggestions to HUD to review our policies and procedures) of the matters cited in your Report. We trust no penalties or any other further referrals will be recommended in your final Report, nor would any such recommendation be appropriate.

For the reasons stated below, Bank of America respectfully disagrees with several of the OIG's conclusions and its recommendations.

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Recycled Paper

Comment 1

Bank of America

First, and foremost, contrary to the statement in your the Background and Objective section of your draft Report, Bank of America, N.A. did not purchase Seattle Financial Group. Bank of America, N.A. (as purchaser) entered into an asset purchase and liabilities assumption agreement (Asset Purchase) with various entities, including Seattle Mortgage Company (the "Prior Servicer"), collectively, the "Sellers" in April of 2007. The Asset Purchase closed on July 1, 2007, with Sellers' interest in the business of Sellers, among other things, a reverse mortgage servicing portfolio, and the rights to service reverse mortgage loans for third party investors being transferred to Bank of America, including the loans sampled by OIG for its audit that is the basis of the Report.

Your Report revolves primarily around two issues: (i) an alleged failure to maintain in the loan files copies of annual certifications of occupancy, (ii) an alleged failure to notify HUD of due and payable status, and foreclose, due to deceased borrowers.

Your Report also states that Bank of America does not have in place adequate policies and procedures with respect to obtaining annual certifications of occupancy and notifying HUD of due and payable status. We respectfully disagree with this assertion.

Comment 2

As explained in more detail below, Bank of America has policies and procedures in place for its reverse mortgage servicing operations, including obtaining annual certifications of occupancy and requiring timely notice to HUD of due and payable status of HECM loans because of deceased borrowers.

Further, during the exam, Bank of America personnel specifically referenced and offered to share with OIG personnel Bank of America's policies and procedures in these and other areas.

While we are pleased to further discuss with HUD our policies and procedures in this regard, for the reasons outlined in our Response, below, we respectfully see no reason for you to make a recommendation to HUD to review the establishment of or the implementation by the Bank of its policies procedures in this regard.

Annual Certifications of Occupancy

OIG Primary Findings

The draft Report indicates that copies of annual certifications of occupancy were not contained in 13 HECM loan files. The draft Report also indicates that the OIG based its conclusions on in information contained in hard copies of files.

Relevant Regulatory Requirements

Comment 3

The Report cites to 24 C.F.R. § 206.211. This HUD regulation requires a HECM servicer to make annual certifications of borrower occupancy in connection with HECM loans. We respectfully suggest that this HUD regulation does not clearly state that a servicer must keep a copy of the annual certification in the loan file.

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Response with Respect to Loans Reviewed

Initially, we note that the OIG based its conclusions on information contained only in hard copies of the loan files. Bank of America has policies and procedures in place to make annual occupancy certifications and to maintain evidence of annual certifications in connection with the HECM loans it services. Please note that part of Bank of America's policies and procedures in this regard include the supplemental measure of subscribing to a commercial database that provides a monthly match of loan files against a Social Security database of death records. This review also would indicate if non-occupancy (due to borrower death) of loan collateral has occurred.

Further note that three (of the 13) HECM loans reviewed did not require annual occupancy certifications because the borrowers passed away during the first year of the loan. Of the remaining 10 HECM loan files, seven (7) loans have written documentation evidencing certification of occupancy. (For privacy reasons, we will forward to you redacted copies of those certificates under separate cover.)

Comment 4

On all loans reviewed, certification either was not required, was timely obtained, or if not, such lack thereof occurred prior to Bank of America's acquisition of the servicing of the loans (i.e., July 1, 2007).

In any event, Bank of America will continue to ensure that evidence of annual certifications is properly maintained within its files.

Timely Notice of Due and Payable Status

OIG Primary Findings

The draft Report indicates that the servicer did not provide HUD with timely notice of the due and payable status in connection with six (6) loans in question, and that this resulted in a delay of foreclosure proceedings.

Relevant Regulatory Requirements

The Report cites to 24 C.F.R. § 206.125 and Mortgagee Letter 2003-22. This HUD regulation requires a HECM servicer to notify HUD whenever the mortgage is due and payable under the conditions stated in §206.27(c)(1), or one of the conditions stated in §206.27(c)(2) has occurred.

Section 206.27(c) of the HECM regulations provide that the mortgage shall state that the mortgage balance will be due and payable in full if a mortgagor dies and the property is not the principal residence of at least one surviving mortgagor.

HUD HECM regulations further provide that the mortgagee shall commence foreclosure of the mortgage within six months of giving notice to the mortgagor that the mortgage is due and payable, or six months from the date of the mortgagor's death if applicable, or within such additional time as may be approved by HUD. 24 C.F.R. § 206.125(d)(1). Further HUD guidance

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provides that HUD may authorize the mortgagee to delay the beginning of foreclosure proceedings if a sale by the mortgagor's estate is in process. If the estate is making a reasonable effort to sell the property, extensions may be granted not to exceed a total of 12 months. FHA Single Family Handbook, 4330.1 REV-5: *Administration of Insured Home Mortgages*, Chp. 13: Home Equity Conversion Mortgages; ¶ 13-34: Foreclosure (09/94).

If the laws of the State in which the mortgaged property is located or if Federal bankruptcy law does not permit the commencement of the foreclosure within six months from the date of the notice to the mortgagor that the mortgage is due and payable, the mortgagee shall commence foreclosure within six months after the expiration of the time during which such foreclosure is prohibited by such laws. 24 C.F.R. § 206.125(d)(2).

Response with Respect to Loans Reviewed

We respectfully submit that, on the six (6) loans reviewed when the HECM mortgagor passed away, the mortgagor passed away prior to the loans being serviced by Bank of America.

Comment 5

Further, on three (3) of the six (6) notices, the Prior Servicer's system updated HUD's IACS system within 60 days of the occurrence of the due and payable status. Therefore, three (3) of the six (6) notifications technically occurred within the required time frame. Further, on all six (6) of these HECM loans, foreclosure was initiated between six (6) and twelve months from date of death, within the time frames allowed by HUD.

Thus, on the six (6) loans reviewed, notification to HUD of a due and payable status and commencement of foreclosure proceedings either occurred on a timely basis, or if not, such lack thereof occurred prior to Bank of America's acquisition of the servicing of the loans (i.e., July 1, 2007).

In any event, Bank of America has policies and procedures in place to timely notify HUD of a due and payable status with respect to HECM loans, and to foreclose on a HECM loan, when required, within the time periods specified in HUD regulations and additional guidance, such as Mortgagee Letter 2003-22, and relevant Handbook provisions, or to request an extension of time to do so when appropriate.

Comment 6

Copy of Appraisal in Loan File

The draft Report indicates that a copy of an appraisal was not contained within one loan file. Again, this loan was not being serviced by Bank of America during the relevant time under review. Nevertheless, Bank of America has policies and procedures in place to maintain copies of appraisal. Bank of America will ensure that copies of the appraisal are properly maintained.

Again, we appreciate this opportunity to provide this Response to the Office of Inspector General's draft written observations regarding its audit of the Bank of America's Home Equity Conversion Mortgage loan servicing practices. We assure you that Bank of America has robust policies and procedures in place with regard to its HECM loan servicing operations, and that it

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will continue to implement and follow the steps outlined above to further assure its operations continue to maintain compliance with HUD requirements.

Sincerely,

Charlie Jones
Senior Vice President, Servicing
Bank of America

Bank of America, WA3-513-04-01
190 Queen Anne Avenue North #400, Seattle, Washington 98109

OIG Evaluation of Auditee Comments

Comment 1 We clarified in the report.

Comment 2 We agree the servicer had written procedures to obtain an annual certification. However, the report concluded that the servicer did not always comply with its procedure and therefore, we made the recommendation.

Comment 3 We disagree with the servicer's opinion that the regulations did not "clearly state that a servicer must" retain documentation of its annual certification. Further, HUD required all servicing files to be retained for a minimum of the life of the mortgage plus three years.[13]

Comment 4 The servicer provided sufficient evidence to clear one of the exceptions reported.[14] We made necessary changes to the body of the report. The remaining documentation submitted still contained omissions. In response to the servicer's statement that certifications were due before the acquisition of the servicing of the loans, HUD requirements hold the acquiring mortgagee responsible for obtaining the complete file including origination as well as servicing record from the selling mortgagee or its servicer.[15]

Comment 5 We disagree with the servicer's statement that the initiation of foreclosures was timely because they were within with six to twelve months. The foreclosure proceedings were to be initiated within 6 months of the date of death. The servicer was late by one to eleven months in the initiation of foreclosures after any extension found in the file.

Comment 6 As we stated above, HUD holds the acquiring servicer responsible for obtaining the complete file including origination as well as servicing record from the selling mortgagee or its servicer.

[13] HUD Handbook 4330.1 Rev. 5, 1-4, E
[14] Loan number 422-2308197
[15] HUD Handbook 4330.1 Rev. 5, 1-4, F