



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

**MEMORANDUM NO.  
2012-CH-1803**

September 28, 2012

**MEMORANDUM FOR:** Charles S. Coulter, Deputy Assistant Secretary for Single Family Housing, HU  
Dane M. Narode, Associate General Counsel for Program Enforcement, CACC  
Craig T. Clemmensen, Director of Departmental Enforcement Center, CACB

*Kelly Anderson*

**FROM:** Kelly Anderson, Regional Inspector General for Audit, 5AGA

**SUBJECT:** A Summary of the Foreclosure and Claims Process Reviews for Five Mortgage Servicers That Engaged in Improper Foreclosure Practices

**INTRODUCTION AND BACKGROUND**

In October 2010, the U.S. Department of Housing and Urban Development's (HUD) Office of Inspector General (OIG) began its nationwide effort to review the foreclosure practices of the five largest Federal Housing Administration (FHA)<sup>1</sup> mortgage servicers (Ally Financial, Incorporated, Bank of America, CitiMortgage, JPMorgan Chase, and Wells Fargo Bank). We performed these reviews due to reported allegations made in the fall of 2010 that national mortgage servicing lenders were engaged in widespread questionable foreclosure practices involving the use of foreclosure "mills" and a practice known as "robosigning"<sup>2</sup> of sworn documents in thousands of foreclosures throughout the United States. On March 12, 2012, we issued separate memorandums to HUD, which detailed our results for each of the five reviews.<sup>3</sup> We initially focused our efforts on examining the foreclosure practices of servicers in the judicial States and jurisdictions in which they do business.<sup>4</sup>

<sup>1</sup> FHA provides mortgage insurance on loans made by FHA-approved lenders throughout the United States and its territories. Mortgage insurance provides lenders with protection against losses as the result of homeowners defaulting on their mortgage loans.

<sup>2</sup> We have defined the term "robosigning" as the practice of an employee or agent of the servicer signing documents automatically without performing a due diligence review or verification of the facts.

<sup>3</sup> See memorandums (2012-PH-1801, 2012-FW-1802, 2012-KC-1801, 2012-CH-1801, and 2012-AT-1801).

<sup>4</sup> With respect to foreclosure procedures, there are three variations: those States that require a complete judicial

The five servicers were either supervised or nonsupervised FHA direct endorsement lenders that could originate, sponsor, and service FHA-insured loans. During the period October 1, 2008, through September 30, 2010,<sup>5</sup> the servicers collectively submitted 93,120 FHA insurance claims totaling more than \$12.04 billion. Of the 93,120 claims, 34,357 conveyance<sup>6</sup> claims totaling more than \$4.1 billion were for foreclosed-upon properties in the 23 judicial foreclosure States and jurisdictions. Between September and October 2010, three of the five banks (Ally, Bank of America, and Chase) stated that they had temporarily halted judicial foreclosures or suspended evictions and postforeclosure closing in the 23 judicial States while they conducted a review of their processes.

Because we identified potential False Claims Act<sup>7</sup> violations, we provided the U.S. Department of Justice (DOJ) with our analyses and preliminary conclusions as to whether these lenders engaged in the reported foreclosure practices. DOJ used our reviews and analyses in negotiating a settlement agreement with the servicers. On February 9, 2012, DOJ and 49 State attorneys general<sup>8</sup> announced their proposed joint settlement agreement totaling \$25 billion with the five mortgage servicers for their reported violations of foreclosure requirements. On March 12, 2012, DOJ and the State attorneys general filed proposed consent judgments with the court to resolve violations of State and Federal law. The consent judgments provided details of the servicers' financial obligations under the agreement, such as payments to borrowers whose properties were foreclosed upon and the Federal and State governments. They also included more than \$20 billion, collectively, in consumer relief activities, such as principal reductions and refinancing and new standards the servicers would be required to implement regarding loan servicing and foreclosure practices, and established a monitoring committee<sup>9</sup> and a monitor to ensure compliance with agreed-upon servicing standards and consumer relief provisions.

The judgments also included a Federal payment settlement amount of more than \$684 million. The funds would be used for (1) losses incurred to FHA's capital reserve account and the Veterans Housing Benefit Program Fund or as otherwise directed by the U.S. Department of Veterans Affairs and the U.S. Department of Agriculture's Rural Housing Service and (2) the resolution of qui tam<sup>10</sup> actions. Of the \$684 million, as of July 15, 2012, more than \$315.2 million had been deposited into FHA's account.

The objective of our reviews was to determine whether the servicing lenders complied with applicable foreclosure procedures when processing foreclosures on FHA-insured loans. We

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proceeding, which are referred to as "judicial jurisdictions"; those that do not require a judicial proceeding; and those that are a hybrid. For the purposes of this review, we determined that there were 23 judicial States and jurisdictions.

<sup>5</sup> Federal fiscal years 2009 and 2010

<sup>6</sup> Excludes deeds in lieu of foreclosure

<sup>7</sup> 31 U.S.C. (United States Code) 3729 et.seq.

<sup>8</sup> The State of Oklahoma elected not to participate in the settlement agreement. This means that borrowers from Oklahoma will not be eligible for any of the relief directly available for homeowners.

<sup>9</sup> The monitoring committee is comprised of State attorneys general and staff, representatives from the State mortgage regulator for the State of Maryland, DOJ, and HUD.

<sup>10</sup> A lawsuit brought by a private citizen (popularly called a "whistle blower") against a person or company who is believed to have violated the law in the performance of a contract with the government or in violation of a government regulation, when there is a statute which provides for a penalty for such violations.

reported our results in individual memorandums to HUD. This memorandum summarizes the results of the foreclosure and claims process reviews and presents OIG's recommendations to correct weaknesses identified in the five individual memorandums that were issued.

We provided the draft memorandum to HUD on August 17, 2012. We asked HUD to provide written comments to the draft memorandum by September 17, 2012. On September 18, 2012, HUD proposed alternative language for the recommendations and opted not to provide formal written comments to the memorandum.

## **METHODOLOGY AND SCOPE**

To accomplish the objective, we<sup>11</sup>

- Obtained and reviewed relevant written policies and procedures and reviews for all five of the servicers' servicing and foreclosure processes.
- Obtained and reviewed personnel documents or excerpts of personnel documents that three servicers (Ally, Wells Fargo, and Bank of America) provided for selected employees.
- Interviewed management officials and staff members of four of the five mortgage servicers (Bank of America, Chase, CitiMortgage, and Wells Fargo), including those involved in the document execution, notary, foreclosure, and claims processes.
- Coordinated with the servicers' legal counsel, our Office of Legal Counsel, and DOJ attorneys.
- Identified samples of 388 claims processed by HUD during the review period. Additionally, for Chase, we selected and reviewed 30 FHA-insured loans, the borrowers of which were identified as currently undergoing foreclosure actions.
- Reviewed FHA claims and related documents, including affidavits, for 364 of the 388 claims in our samples (see Scope Limitation section).
- Obtained and analyzed FHA claims data from the five servicers or HUD.
- Obtained and analyzed Chase's production records<sup>12</sup> and Bank of America's shipping logs<sup>13</sup> that identified documents that were signed and notarized during the review period. However, as described in the following section, the data were incomplete and did not represent our entire review period.
- 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. Additionally, we obtained and reviewed various court documents related to the foreclosure practices of Bank of America and law firms that conducted work on its behalf.
- Worked with DOJ to issue 54 civil investigative demands (CID)<sup>14</sup> to compel testimony for our review of Ally and Bank of America. Additionally, we attended testimonies given by 17 individuals pursuant to CIDs issued by DOJ.

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<sup>11</sup> For additional details on the scope and methodology used in the reviews of the five servicers, see the related memorandums.

<sup>12</sup> Chase's production records in Microsoft Excel

<sup>13</sup> Bank of America's shipping logs included FHA and non-FHA foreclosure documents.

<sup>14</sup> Under 31 U.S.C. 3733 et.seq., CIDs can be served on a person to give oral testimony whenever the attorney

- Issued Inspector General administrative subpoenas for documents and records of all of the servicers, with the exception of Wells Fargo.
- Reviewed and extracted pertinent information from each of the five issued memorandums to summarize the information.

Additionally, we

- Obtained and reviewed default and claim information from HUD’s Single Family Data Warehouse system<sup>15</sup> for each of the five servicers and
- Identified the number of foreclosures in which an insurance claim had yet to be filed and determined the number of days the property had been in foreclosure.

During the course of our reviews and the drafting of the memorandums, all five lenders were 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 the lenders for any purpose, including the solicitation of written comments on our findings from the lenders. For this same reason, we did not provide them with a copy of the draft memorandums. Both DOJ and HUD concurred with our determination that the work product was privileged.

The results reported in the five memorandums differed due to various factors. These factors included (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 in review procedures used, including the analysis of the data, that were governed in part by the amount and types of information obtained; (3) differences in the foreclosure procedures used by the servicers; and (4) scope limitations imposed by some servicers.

The reviews generally covered the servicers’ foreclosure and claims processes for their FHA claims initially processed by HUD between October 1, 2008, and September 30, 2010, including their procedures for signing and notarizing sworn judgment affidavits. Additionally, they either focused on FHA-insured loans for properties located primarily in judicial foreclosure States and jurisdictions, because foreclosures in these States would require the filing of some form of sworn affidavit of indebtedness with a court, or included both judicial and nonjudicial foreclosure States and jurisdictions to provide a comprehensive overview of the servicers’ practices and compliance with requirements. The scope of the reviews was expanded as needed to accomplish the objective. We initiated the reviews on October 15, 2010, and performed the onsite work at the lenders’ offices<sup>16</sup> between October 2010 and January 2011.

### **Scope Limitation**

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general has reason to believe that the person may be in control of information relevant to a false claim investigation.

<sup>15</sup> We relied in part on data maintained in HUD’s system to obtain loan level data. Although we did not perform a detailed assessment of the reliability of the data, we performed a minimal level of testing and found the data to be adequately reliable for our purposes.

<sup>16</sup> Ally’s office in Fort Washington, PA; Bank of America’s offices in Fort Worth, Plano, and Addison, TX, and Simi Valley, CA; Chase’s office in Columbus, OH; CitiMortgage’s office in O’Fallon, MO; and Wells Fargo’s office in Fort Mill, SC.

The reviews were significantly hindered due to (1) restricted or denied employee interviews because of the involvement of the servicers' management or attorneys, (2) limited access to data or documents, (3) incomplete records, or (4) delays in obtaining requested records or reports. Due to these limitations, we were not always able to review the requested records.

## **RESULTS OF REVIEW**

The five servicers did not establish effective control over their foreclosure process. This failure permitted control environments in which

- Affiants<sup>17</sup> routinely signed foreclosure documents, including affidavits, certifying that they had personal knowledge of the facts when they did not and without reviewing the supporting or source documentation referenced in them. Also, the affiants for two of the servicers (Bank of America and Chase) consistently failed to verify the accuracy of the foreclosure documents they signed.
- A number of employees at one servicer (Wells Fargo) engaged as “robosigners” had little or no education beyond high school and little or no experience in banking or real estate. Additionally, available work histories revealed a lack of qualifications to hold the titles held by affiants. Interviews at Wells Fargo and Chase disclosed that employees were given titles such as vice president for the sole purpose of allowing the individual to sign documents, and the titles came with no other duties or authority.
- Notaries public for three of the servicers (Bank and America, Chase, and Wells Fargo) routinely notarized documents without witnessing affiant signatures.
- Attorneys for two of the servicers (Bank of America and CitiMortgage) may have improperly prepared documents and misrepresented the work they performed.
- Occasionally, one servicer's (Chase) operations specialists<sup>18</sup> obtained affidavits from foreclosure counsels that already contained the amounts of the borrowers' indebtedness, since foreclosure counsels had read-only access to certain data screens in Chase's mortgage servicing system.
- For two of the five servicers (Bank of America and Chase), the amounts of borrowers' indebtedness were unsupported or mathematically inaccurate.

The servicers' flawed control environments resulted in their filing improper legal documents, thereby misrepresenting their claims to HUD, which exposed them to potential liability under the False Claims Act. Further, during our review of the five servicers' foreclosure practices, we determined that they appeared to have temporarily ceased submitting claims for FHA insurance benefits, thus creating a backlog. If these five servicers were to file these withheld claims, the FHA insurance fund would suffer a significant loss.

### **Questionable Affidavit and Foreclosure Document Processes**

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<sup>17</sup> An affiant is a person who signs an affidavit and attests to its truthfulness before a notary public.

<sup>18</sup> Chase employees who prepared legal documents including affidavits

The five servicers failed to follow HUD requirements<sup>19</sup> for properties they foreclosed upon in judicial foreclosure States and jurisdictions. These provisions required these servicers to obtain and convey to the Secretary of HUD good and marketable title to properties. The mortgage servicers may have conveyed flawed or improper titles to HUD because they did not establish a control environment which ensured that affiants performed a due diligence review of the facts submitted to courts and that employees properly notarized documents.

Judicial foreclosures were processed through the court system, beginning with each of the five servicers filing 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 any of these lenders to foreclose on the property. In many judicial foreclosures, an affidavit was part of the foreclosure documentation. Generally, a representative of each lender swore in a notarized affidavit that the lender owned or held the mortgage in question and the borrower’s mortgage payments were in arrears. As judicial States and jurisdictions routinely resolved foreclosures through summary judgment,<sup>20</sup> the accuracy and propriety of the documents were essential to ensure the integrity of the foreclosure process. All five servicers used flawed processes to submit 34,357 conveyance<sup>21</sup> claims for judicially foreclosed-upon properties during the review period and received payments totaling more than \$4.1 billion.<sup>22</sup>

Servicer	Number of conveyance claims	Total claim payments <sup>23</sup>
Ally Financial	1,345	\$161
Bank of America	8,973	1,127
CitiMortgage	5,182	597
JPMorgan Chase	4,437	547
Wells Fargo	<u>14,420</u>	<u>\$1,684</u>
<b>Total</b>	<b>34,357</b>	<b>\$4,116</b>

### *Affiants Robosigned Foreclosure Documents*

Based on sworn or CID testimonies or interviews with the servicers’ management and staff and legal representations, we determined that affiants routinely signed and certified that they had personal knowledge of the contents of documents, including affidavits, without reviewing the source documents. Additionally, some affiants acknowledged that they did not reverify the accuracy of the foreclosure information stated in the affidavits. For instance, sworn testimony from the team leader of Ally’s foreclosure department, provided during depositions in Florida<sup>24</sup> and Pennsylvania,<sup>25</sup> revealed that he routinely signed legal documents, including affidavits,

<sup>19</sup> 24 CFR (Code of Federal Regulations) 203.366(a) and HUD Handbook 4330.4, paragraphs 2-6 and 2-23  
<sup>20</sup> 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.  
<sup>21</sup> Excludes deeds in lieu of foreclosure  
<sup>22</sup> This amount was calculated based on information in HUD’s Single Family Data Warehouse and excludes claims for deeds in lieu of foreclosure.  
<sup>23</sup> In millions  
<sup>24</sup> This disposition on December 10, 2009, was related to a foreclosure case in Florida: GMAC Mortgage v. Ann Neu, in the Circuit Court of the Fifteen Judicial Circuit in and for Palm Beach County, FL, Case Number 50 2008 CA 040805XXXX MB.  
<sup>25</sup> This disposition on June 7, 2010, was related to a foreclosure case in Maine: Federal National Mortgage

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.

Affidavits generally require an affirmation that the person executing the legal document had personally reviewed borrowers' accounts and applicable records and had personal knowledge of the amounts due on those accounts. Therefore, the processes used by the five servicers did not ensure that (1) their foreclosure documents were properly executed before submitting them to courts or (2) they conveyed good and marketable title to HUD.

The consent judgments outlined provisions for documents used in foreclosure and bankruptcy proceedings. Some of the provisions that addressed the apparent robo-signing of foreclosure documents by the five servicers required them to ensure that

- Affidavits, sworn statements, and declarations executed by the servicers' affiants were based on the affiants' review and personal knowledge of the accuracy and completeness of the assertions in the affidavit, sworn statement, or declaration and
- Affiants confirmed that they reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and required loan ownership information.

Further, affiants for Wells Fargo signed hundreds of foreclosure affidavits per day, and most verified only that their name was properly typed on the document as the signer of the affidavit. In reviewing the personnel files for these affiants, we identified that Wells Fargo may have hired and designated unqualified persons as "vice president of loan documentation," with their sole responsibility as vice president being to sign affidavits. Affiants for Chase also signed affidavits using titles such as "vice president of Chase Home Finance," although they were not.

In accordance with the provisions of the settlement, servicers should have standards for qualifications, training, and supervision of employees. The servicer should train and supervise employees who regularly prepare and execute affidavits, sworn statements, or declarations. Further, each employee should sign a certification stating that he or she has received training.

#### *Notaries Did Not Witness Signatures*

The five servicers did not establish a control environment which ensured that notaries<sup>26</sup> met their responsibilities under State laws that required them to witness affiants' signatures on documents they notarized.<sup>27</sup> For instance, during interviews with employees at Wells Fargo, it was mentioned that they notarized documents without witnessing the person signing the documents. Further, some of the notaries acknowledged that they notarized documents that were unsigned or

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Association v. Nicole M. Bradbury, Maine District Court, District Nine, Division of Northern Cumberland, Docket Number BRI-RE-09-65.

<sup>26</sup> The notaries had additional job duties and responsibilities.

<sup>27</sup> Every State's notary laws require that the notary personally administer an oath and personally verify the identity of the document signer.

allowed others to use their notary stamp to notarize the affidavits. Wells Fargo notaries also stated that they had not received training when they began notarizing affidavits. It was not until October 2010 that training began and then only as a result of our review.

According to Bank of America's employees, affiants did not routinely sign documents in front of a notary. Two of its employees specifically testified that they had raised concerns about the notary process to management but were told to continue the process. In CID testimony, one of the referenced managers said that she did not recall concerns about the notary process being brought to her attention. One notary stated that Bank of America set a target of notarizing 75 to 80 documents per hour and he was evaluated on whether he met the target. In reviewing the data provided, the 10 most active notaries each notarized between 14,000 and 77,000 foreclosure documents during the 2-year review period. The data also showed that one of Bank of America's notaries, in violation of Texas law, notarized her own signature on two documents.

One of the primary purposes for using a notary is to verify the authenticity of the signer. The servicers' failure to ensure that notaries witnessed signatures indicated a significant control weakness. Because this type of deficiency undermined the integrity of the control environment, the affidavits and other foreclosure documents submitted by the servicers were unreliable and inauthentic and may have exposed the servicers to false claims liability. Under the terms of the settlement, servicers must maintain records that identify all notarizations of documents executed by each notary employed by them and cannot rely on an affidavit, sworn statement, or declaration that was not properly executed as required. The servicers are also prohibited from paying volume-based or other incentives to employees that encourage undue haste or lack of due diligence over quality.

#### *Law Firms May Have Engaged in Improper Practices*

Bank of America and CitiMortgage used law firms that may have engaged in questionable practices to process FHA-insured foreclosures. These practices ranged from robo-signing and the unauthorized practice of law to a judge's ruling that in an attempt to collect on questionable debt, a firm filed deceptive documents and one of the lawyers lied in court. For example, our reviews of Bank of America and CitiMortgage included a complaint<sup>28</sup> against Goldbeck, McCafferty, and McKeever, PC, a law firm that conducted foreclosure work for both servicers. The complaint alleged that nonlawyers in the firm 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.

In addition, the Chief U.S. Bankruptcy Judge for Western Pennsylvania issued a memorandum opinion and order<sup>29</sup> and a memorandum order<sup>30</sup> that were "intended to serve as a public reprimand"<sup>31</sup> of Goldbeck, McCafferty, and McKeever and one of its attorneys. The judge

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<sup>28</sup> *Loughren vs Lion, et al.*, GD-10, Allegheny County, PA

<sup>29</sup> *In re Hill*, 437 B.R. 503 (Bankr. W.D. Pa., October 5, 2010)

<sup>30</sup> *In re Hill*, 437 B.R. 503 (Bankr. W.D. Pa., November 24, 2010)

<sup>31</sup> *In re Hill*, 437 B.R. 503 pg 8 (Bankr. W.D. Pa., November 24, 2010)

sanctioned the firm and the attorney for filing deceptive documents in a foreclosure proceeding and found that “the attorney, and by extension GMM [Goldbeck, McCafferty, and McKeever], had not been honest with this Court.”<sup>32</sup> The judge 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 publicly reprimanded the firm and the attorney for their misconduct and ordered them to report to the Disciplinary Board of the State Supreme Court. We determined that Goldbeck, McCafferty, and McKeever processed 469 foreclosure documents for Bank of America in Pennsylvania and New Jersey.

In interviews with Chase’s management and staff, they acknowledged that on occasion, Chase’s operations specialists obtained affidavits from their foreclosure counsel that already contained the amounts of the borrowers’ indebtedness, since the foreclosure counsel had read-only access to certain data screens in Chase’s mortgage servicing system. Additionally, in some cases, before the foreclosure counsel filed the complaints with the court, he or she sometimes added verbiage and clauses to the affidavits regarding borrowers or the subject properties. In these instances, the information on the affidavits was not verified or validated by Chase.

The provisions of the settlement require that the servicers not pay volume-based or other incentives to third-party providers or trustees that encourage undue haste or lack of due diligence over quality. The servicers must also

- Adopt policies and processes to oversee and manage foreclosure firms, law firms, etc., retained by or on behalf of the lenders that provide servicing activities.
- Ensure that attorneys are licensed to practice in the relevant jurisdiction and have the experience and competence necessary to perform the services requested and that their services comply with applicable regulations.
- Adopt policies and procedures to oversee and manage foreclosure firms, law firms, etc., retained by or on behalf of the servicers that provide servicing.
- Adopt policies requiring third-party providers to maintain records that identify all notarizations of documents executed by each notary employed by the provider.

#### *Affidavits Contained Inconsistencies and Errors*

For two of the five servicers, Bank of America and Chase, we reviewed the affidavits to determine whether the amounts of the borrowers’ indebtedness were supported or mathematically accurate. In reviewing seven of Bank of America’s affidavits that contained judgment figures in judicial foreclosure States, we identified mathematical errors with the per diem interest calculations, which ranged from \$16 to \$470. This error rate indicated that Bank of America lacked proper controls to ensure that it correctly and consistently calculated accrued interest charges in documents it filed in courts to support its foreclosure actions.

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<sup>32</sup> *In re Hill*, 437 B.R. 503 pg 4 (Bankr. W.D. Pa., November 24, 2010)

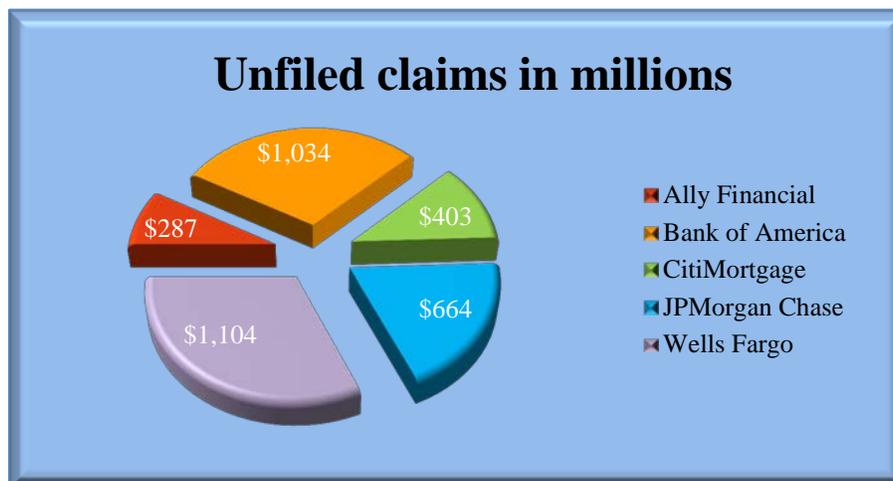
For Chase, we also reviewed 36 affidavits for foreclosures in judicial States to determine whether the amounts of borrowers' indebtedness were supported. Chase was unable to provide documentation to support the amounts of borrowers' indebtedness listed on the affidavits for all except four.<sup>33</sup> When we reviewed the four affidavits, three were inaccurate. Specifically, the amounts of the borrowers' late charges and accumulated interest did not reconcile with the information in Chase's mortgage servicing system.

Therefore, both Chase and Bank of America lacked proper controls to ensure that they correctly and consistently calculated borrowers' indebtedness and in most cases, the accrued interest charges in documents they filed in courts to support their foreclosure actions.

On November 16, 2010, the Congressional Oversight Panel released an indepth report analyzing the robo-signing allegations.<sup>34</sup> 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."

#### *The Five Largest Mortgage Servicers Had Unfiled Claims*

As of April 2012, a little over 1 month after the settlement, the five largest FHA mortgage servicers (Ally, Bank of America, CitiMortgage, Chase, and Wells Fargo) had not filed FHA insurance claims for 26,306 foreclosed-upon properties with unpaid mortgage balances of more than \$3.49 billion. According to HUD's Annual Report to Congress regarding the financial status of the FHA Mutual Mortgage Insurance Fund, as of the end of fiscal year 2011, FHA's total capital resources stood at \$33.7 billion. Of that total, \$29 billion was in its financing accounts to offset expected claims, and \$4.7 billion was in its capital reserve account.



Source – HUD's SFDW system retrieved on May 3, 2012

<sup>33</sup> Chase's foreclosure processing software overrode account histories when applying claim payments, which caused the principal and interest records necessary for verifying the affidavits to display as zero.

<sup>34</sup> 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).

Using HUD's December 2011 estimated loss severity rate of 66 percent on the resale of foreclosed-upon properties,<sup>35</sup> the insurance fund may be reduced by as much as \$2.3 billion. Of the \$3.49 billion in unfiled claims, nearly \$1.64 billion represented 11,953 properties that had been in foreclosure for more than 180 days. Some of these unfiled claims were for properties foreclosed upon in November 2009.

As of August 3, 2012, HUD's Single Family Claims division had a backlog of 4,776 unpaid claims due to a significant increase in the volume of claims received in March and April 2012. Additionally, as of August 3, 2012, it had a backlog of 27,343 supplemental claims.<sup>36</sup> Consequently, if the servicers were to consecutively file these claims or file these claims all at once, the backlog of unpaid claims would significantly increase, thus potentially impacting HUD's ability to process and pay claims in a timely manner.

### **CONCLUSION**

The five servicers did not establish an effective control environment to ensure the integrity of their foreclosure process. Because they failed to establish proper policies and procedures that fostered compliance with laws and regulations, their affiants signed foreclosure documents automatically without performing a due diligence review or verification of the facts, their notaries failed to authenticate signatures, and they used law firms that may have included inaccurate information on foreclosure documents. As a result, the servicers engaged in improper practices by not fully complying with applicable foreclosure procedures when processing foreclosures on FHA-insured loans. Their flawed control environments resulted in the five mortgage servicers' filing improper legal documents, thereby misrepresenting their claims to HUD.

As previously mentioned, on March 12, 2012, DOJ and the State attorneys general filed proposed consent judgments with the court to resolve violations of State and Federal law. The judgments included, collectively, a Federal payment settlement amount of more than \$684 million. Of the \$684 million, as of July 15, 2012, \$315,250,829 had been deposited into FHA's capital reserve account for incurred losses.

### **RECOMMENDATIONS**

We recommend that HUD's Deputy Assistant Secretary for Single Family Housing

- 1A. Consult with HUD's Office of General Counsel to determine the changes needed to FHA's servicing and foreclosure policies based on the consent judgments. Once determined, ensure that the servicers incorporate the necessary changes into their procedures for servicing FHA-insured loans.

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<sup>35</sup> Single Family Acquired Asset Management System's case management profit and loss by acquisition as of December 2011.

<sup>36</sup> Adjustments to the initial claim payment in the event of delayed disbursements and to correct errors in the original claim or payment.

- 1B. Ensure that the servicers establish or implement adequate procedures and controls to address the control deficiencies cited in the five issued memorandums, including but not limited to, the withholding of claims for insurance benefits, and the retention of appropriate legal documentation supporting the appropriateness of the foreclosure for all FHA-insured properties for the life of the loans.

We recommend that HUD's Associate General Counsel for Program Enforcement

- 1C. Agree to allow HUD OIG to record the recovery amount of \$315,250,829 in HUD's Audit Resolution and Corrective Action Tracking System as resolution of the civil actions against the five servicers identified in this memorandum.

We recommend that the Director of HUD's Departmental Enforcement Center

- 1D. Pursue appropriate administrative sanctions against attorneys who may have violated professional obligations related to the foreclosure of FHA-insured properties.

For each recommendation without a management decision, please respond and provide status reports in accordance with HUD Handbook 2000.06, REV-4. Please furnish us copies of any correspondence or directives issued because of the review.

## APPENDIXES

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### Appendix A

#### SCHEDULE OF QUESTIONED COSTS

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Recommendation number	Ineligible 1/
1C	<u>\$ 315,250,829</u>
Total	<u>\$ 315,250,829</u>

- 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 polices or regulations.