



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

Wells Fargo Bank
Foreclosure and Claims Process Review
Fort Mill, SC



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**MEMORANDUM NO.
2012-AT-1801**

March 12, 2012

MEMORANDUM

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

//signed//

FROM: James D. McKay, Regional Inspector General for Audit, Atlanta Region, 4AGA

SUBJECT: Wells Fargo Bank
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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, Inc.) we reviewed Wells Fargo'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 "robosigning"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 judicial States and jurisdictions in which they do business.³

¹ See memorandums 2012-FW-1802, 2012-KC-1801, 2012-CH-1801, 2012-PH-1801.

² 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.

³ With respect to foreclosure procedures there are three variations, those jurisdictions 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 States and jurisdictions.

Wells Fargo is a supervised FHA direct endorsement lender that can originate, sponsor, and service FHA-insured loans. During the period October 1, 2008, through September 30, 2010,⁴ Wells Fargo submitted 14,420 claims on foreclosed loans to FHA for payment in the 23 judicial States and jurisdictions totaling about \$1.7 billion.⁵

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 Wells Fargo engaged in the reported foreclosure practices. DOJ used our review and analysis in negotiating a settlement agreement with Wells Fargo. On February 9, 2012, DOJ and 49 State attorneys general announced a proposed settlement of \$25 billion with Wells Fargo 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 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 courts, 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 Wells Fargo 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 examined relevant Wells Fargo written policies and procedures regarding its foreclosure process.
- Obtained and reviewed relevant reviews of Wells Fargo's servicing and foreclosure processes.
- Reviewed personnel files that Wells Fargo provided for selected employees.
- Interviewed Wells Fargo management and staff, including those involved in the document execution, notary, foreclosure, and claims processes.
- Coordinated with Wells Fargo's legal counsel, our Office of Legal Counsel, and DOJ attorneys.

⁴ Federal fiscal years 2009 and 2010

⁵ Properties located in judicial foreclosure States and jurisdictions accounted for \$2.1 billion in claims (30 percent of the total loans with claims). Properties located in nonjudicial States and foreclosure jurisdictions accounted for more than \$5.4 billion in claims (70 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.

- Identified and reviewed a nonstatistical random sample of 21 loans from a database provided by Wells Fargo and verified that the 21 loans were in the U.S. Department of Housing and Urban Development's (HUD) Single Family Data Warehouse. We selected this nonstatistical sample to evaluate the foreclosure affidavits that were prepared and to identify individuals responsible for signing and notarizing affidavits. The Wells Fargo data included FHA-insured loans from October 1, 2008, through September 30 2010, for which Wells Fargo had prepared foreclosure affidavits in judicial States and jurisdictions. Analyses of the 21-loan sample revealed that all 21 loans had affidavits that were signed without a due diligence review or verification of the facts; however, only 14 of the 21 loans resulted in foreclosure and conveyance of the property to FHA. The remaining seven loans were processed through loss mitigation, and the properties had not been conveyed to HUD as of December 31, 2010; thus, they were excluded from our review.
- Reviewed FHA claims and related documents, including affidavits, for the 14 loans in our sample.
- Obtained and analyzed FHA claims data from both Wells Fargo and HUD.

During the course of our review and the drafting of this memorandum, Wells Fargo 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 Wells Fargo for any purpose, including the solicitation of written comments on our findings from Wells Fargo. For this same reason, we did not provide Wells Fargo 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 the auditors at the time of the onsite reviews or that was obtained later through subpoenas or civil investigative demands⁸; (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 Wells Fargo'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 judicial foreclosure States and jurisdictions, which provided a broad overview of Wells Fargo's practices and compliance with requirements. We expanded the scope as needed to accomplish our objective. We initiated this review on October 15, 2010, and performed onsite work at Wells Fargo's office in Fort Mill, SC, between October and December 2010.

⁸ 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.

Scope Limitation

Our review was significantly hindered by Wells Fargo's reluctance to allow us to interview employees or to provide data and information in a timely manner.

Wells Fargo provided a list of 14 affidavit signers and notaries and then initially restricted our access to interview them. Wells Fargo attorneys interviewed them first and then only allowed us to interview 5 of the 14 affidavit signers. Wells Fargo told us that we could not interview the others because they had reported questionable affidavit signing or notarizing practices when it interviewed them. After discussion with attorneys for Wells Fargo and OIG counsel, terms were agreed to, permitting us to interview these remaining nine persons. The terms that Wells Fargo set required that Wells Fargo management and attorneys attend all of the interviews as facilitators. This condition resulted in delays and may have limited the effectiveness of those interviews. Wells Fargo's terms also required that persons we interviewed have private counsel present on their behalf. Wells Fargo chose the private counsel and paid the attorney fees of the persons we interviewed. Wells Fargo was not timely in arranging the private attorneys, which further delayed our interviews.

However, as our work progressed and through other research, we began identifying many more affidavit signers and notaries that Wells Fargo did not disclose to us initially. Wells Fargo ultimately disclosed 35 persons, and we interviewed 33 of them (22 affidavit signers and 11 notaries). We did not interview the other two persons because they were on sick leave.

RESULTS OF REVIEW

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

- The affiants⁹ routinely signed and certified that they had personal knowledge of the contents of documents, including affidavits, without the benefit of supporting documentation and without reviewing the source documents referred to in the affidavits and verifying the accuracy of the foreclosure information stated in the affidavits. A number of affidavit signers admitted having signed up to 600 documents per day.
- A number of employees engaged as robo-signers had little or no education beyond high school and little or no experience in banking or real estate.
- Work histories (when available) showed a lack of qualifications to hold the titles held by affiants; for example, vice president of loan documentation. Moreover, interviews disclosed that the titles were given for the sole purpose of allowing the individual to sign documents and came with no other duties or authority. Employees who notarized documents, including affidavits, routinely did not witness the signature of the documents and notarized up to 1,000 documents per day.

⁹ An affiant is a person who signs an affidavit and attests to its truthfulness before a notary public.

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

Questionable Affidavit and Foreclosure Document Processes

Wells Fargo failed to follow HUD requirements¹⁰ for properties it foreclosed upon in judicial foreclosure jurisdictions. These provisions required it to obtain and convey to the Secretary of HUD good and marketable title to properties. Wells Fargo 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 that employees properly notarized documents.

Based upon the results of our review, Wells Fargo's practices may have exposed it to liability under the False Claims Act for submitting the claims for insurance benefits to FHA without following HUD requirements. We provided our preliminary findings to DOJ for its assessment and determination on any potential liability issues.

Judicial foreclosures were processed through the court system beginning with Wells Fargo's 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 Wells Fargo to foreclose on the property. In many judicial foreclosures, an affidavit was part of the foreclosure documentation. Generally, a representative of Wells Fargo swore in a notarized affidavit that Wells Fargo owned or held the mortgage in question and that the borrower was in arrears. As judicial jurisdictions routinely resolved foreclosures through summary judgment,¹¹ the accuracy and propriety of the documents were essential to ensure the integrity of the foreclosure process. Wells Fargo 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 \$1.7 billion.¹²

Affiants Robosigned Foreclosure Documents

We interviewed a total of 22 affidavit signers and reviewed a sample of 14 loan foreclosure files with FHA-paid claims and titles conveyed to HUD. In all 14 cases, the affidavits were robo-signed. Overall, the interviews indicated that the affidavit signers signed the great majority of the judgment affidavits without personal knowledge of or otherwise verifying the data and information contained in the affidavits they signed. Affidavit signers signed hundreds of foreclosure affidavits per day, and most only verified that their name was properly typed on the document as the signer of the affidavit. Many said that they did not read the affidavits. Many told us that a notary was not present when they signed the affidavits. These persons did the vast

¹⁰ See 24 C.F.R. § 203.366(a) and HUD Handbook 4330.4, paragraphs 2-6 and 2-23.

¹¹ 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.

¹² This amount was calculated based on information in HUD's Single Family Data Warehouse and excludes claims for deeds in lieu of foreclosure.

majority of the affidavit signing. A few affidavit signers who told us that they did verify the data in the affidavits did not routinely sign affidavits and reported signing very few affidavits during our scope.

We also reviewed personnel files and questioned whether these individuals possessed the qualifications (education, work experience, or training) and expertise typically required to verify the content of the affidavits before signing them. Reviews of personnel files and the interviews also raised concerns that Wells Fargo may have hired and designated unqualified persons as “vice president of loan documentation,” with the sole responsibility as vice president being to sign affidavits. For example, immediately before Wells Fargo hired an individual to be vice president of loan documentation, the person worked at a pizza restaurant and as a bank teller. Another had been a department store cashier and daycare worker, while another had worked on the production line in a factory. These same persons also often worked in other positions at Wells Fargo, generally without a direct relationship to foreclosure affidavits. These persons told us that Wells Fargo gave them the title vice president of loan documentation for the sole purpose of having them sign affidavits. Most affidavit signers told us that they did not have the related education or work history to prepare them to sign the affidavits. They also told us that Wells Fargo did not provide them training when they began signing affidavits. It wasn’t until October 2010 that training began and then only as result of our review.

Affidavit signers and midlevel managers responsible for the affidavits told us that Wells Fargo management was aware that they did not read or verify the information in the affidavits that they signed. Several persons we interviewed said that they had expressed concerns about signing the affidavits (such as swearing that they had personal knowledge of the loan and had verified the document’s content when they had not). Affidavit signers informed upper management that they could not handle the workload. Wells Fargo management did not correct the problem and, instead, in a March 2008 email, reduced the timeframes for processing the affidavits from 5 to 7 days to 24 to 48 hours, and the affidavit signers were required to sign the affidavits they received each day at 9 a.m. by 12 p.m. that same day, often signing in excess of 100 affidavits during that time. The following are excerpts from the email:

“The Doc executable team is working very hard to obtain a 48 hour turnaround time for our docs. Due to attorney feedback and our wonderful challenging environment, this 48 hour turnaround time is critical.”

“The doc Executable team will deliver all docs to you for signature by 9:00 EST. We need the docs signed by 12:00. In order to accommodate this schedule I want to encourage you to schedule 30 minutes in your calendar each day so that we can accomplish this turntime. (Name intentionally withheld) will work with each group to develop a pickup location for each group at 12:00.”

The midlevel manager for the affidavit process told us that she, on her own, began what was supposed to be a 2-week study, whereby she and her staff read and verified the information contained in the affidavits before signing. The midlevel manager began this study to conclusively show that her department was understaffed and what staffing level would be required to properly prepare and sign the affidavits. However, after just a few days, upper management became aware of the “unauthorized study” because the affidavits became so backlogged. The midlevel manager was directed to stop the study and return to the practice of signing affidavits without reading or verifying data.

Notaries Did Not Witness Signatures

Wells Fargo did not establish a control environment which ensured that its notaries met their responsibilities under State laws that required them to witness affiants’ signatures of documents they notarized.¹³ We also interviewed 11 notaries, and they reported notarizing documents without seeing the person sign the affidavit. Some notaries told us that they let others use their notary stamp to notarize affidavits. Some notaries also told us that they notarized documents that were unsigned. Notaries told us that Wells Fargo did not initially provide them training when they began notarizing affidavits. It wasn’t until October 2010 that training began and then only as result of our review. Wells Fargo management, in a March 2008 email, established procedures for the notaries not to witness the affiant signing the affidavits. The following is an excerpt from the email:

“Notaries: - Docs will be delivered to you by 12:30 pm each day and we will need these docs notarized by 2:00pm EST each day. I want to encourage each of you to schedule time in your calendar to accomplish this task.”

Because this type of deficiency undermined the integrity of the control environment, the affidavits and other foreclosure documents submitted by Wells Fargo were unreliable and inauthentic, exposing it to potential False Claims Act liability.

Wells Fargo Provided Belated Training and Procedures

It was not until October 2010 that Wells Fargo took substantive action based on its own concerns to address concerns about affidavit signing and notarizing. It provided training that established procedures to verify data in the affidavits and for the notary to observe the person signing the document before placing the notary seal. Although Wells Fargo had reinforced its foreclosure procedures for signing and verifying the affidavits, we remained concerned that its procedures remained inadequate. At the time of our review, affidavits continued to be processed by these same signers, who may not have been qualified, and these signers may not have adequately verified certain figures because they accessed a computer screen of data showing a compilation of figures instead of verifying the data against the information through review of the books and records kept in the regular course of business by the institution.

¹³ Every state’s notary laws require that the notary personally administer an oath and/or personally verify the identity of the document signer.

CONCLUSION

Wells Fargo did not establish an effective control environment to ensure the integrity of its foreclosure process. Because it failed to establish proper policies and procedures to ensure 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, Wells Fargo 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 Wells Fargo's filing improper legal documents, thereby misrepresenting its claims to HUD.

During the period October 1, 2008, through September 30, 2010, Wells Fargo submitted 14,420 conveyance claims for payment in the 23 States and jurisdictions totaling about \$1.7 billion. 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.