OFFICE OF AUDIT
REGION VI
FORT WORTH, TX

MEMORANDUM OF REVIEW

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

Bank of America Corporation
Foreclosure and Claims Process Review
Charlotte, NC

MEMORANDUM NO. 2012-FW-1802

MARCH 12, 2012

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MEMORANDUM NO. 2012-FW-1802

March 12, 2012

MEMORANDUM

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

Craig Clemmensen, Director, Departmental Enforcement Center, CACB

//signed//

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

SUBJECT: Bank of America Corporation
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Charlotte, NC

INTRODUCTION AND BACKGROUND

As part of the Office of Inspector General's (OIG) nationwide effort to review the foreclosure practices of the five largest Federal Housing Administration (FHA) mortgage servicers (Bank of America, Wells Fargo Bank, CitiMortgage, JP Morgan Chase, and Ally Financial, Incorporated), we reviewed Bank of America'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. OIG 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.[3]

Bank of America is a supervised FHA direct endorsement lender that can originate, sponsor, and service FHA-insured loans. During Federal fiscal years 2009 and 2010, it submitted 36,095 FHA claims totaling $5 billion.[4] Bank of America acquired Countrywide Home Loans Servicing, LP, in 2008 and processed claims using Countrywide's FHA servicing identification

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1 See memorandums 2012-AT-1801, 2012-KC-1801, 2012-CH-1801, and 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 States that require a complete judicial proceeding, which are referred to as "the judicial jurisdictions;" those that do not require a judicial proceeding; and those that are a hybrid. For purposes of these reviews, we determined that there were 23 judicial States and jurisdictions.

4 Properties located in judicial foreclosure States and jurisdictions accounted for $1.3 billion in claims (26 percent of the claims). Properties located in nonjudicial foreclosure States and jurisdictions accounted for $3.7 billion in claims (74 percent of the claims). These amounts include all categories of FHA claims.

number during the review period.[5] Approximately 90 percent of its claims during the review period, totaling more than $4.5 billion, were for loans previously serviced by Countrywide.

In early October 2010, Bank of America stated that it would halt judicial foreclosures while it reviewed its policies and procedures. On October 18, 2010, it issued a press release reporting that it had completed its review of judicial foreclosures and while it had identified no problems, it would resubmit 102,000 affidavits in judicial foreclosure cases that had not yet gone to judgment. On October 22, 2010, the U. S. Department of Housing and Urban Development (HUD) issued a notice of violation informing Bank of America that it was considering administrative actions and civil money penalties based on findings identified in its July 2010 servicing review.

From the beginning of our review in October 2010, Bank of America limited our access to employees and information. After attempting to conduct interviews within Bank of America's established protocols without success, the U. S. Department of Justice (DOJ) assisted us by obtaining testimony through civil investigative demands (CID).[6] Because we identified potential False Claims Act[7] violations, in February 2011, we provided DOJ with our analyses and preliminary conclusions as to whether Bank of America engaged in the alleged foreclosure practices.

DOJ used our review and analysis in negotiating a settlement agreement with Bank of America. On February 9, 2012, DOJ and 49 State attorneys general announced a proposed settlement of $25 billion with Bank of America 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 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 committee[8] 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 Bank of America 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.

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5 October 1, 2008, through September 30, 2010

6 DOJ conducted the CID proceedings in Fort Worth, TX, and Washington, DC, between February 28 and September 20, 2011.

7 31 U.S.C.§ 3729 *et.seq*.

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

- Obtained and reviewed available Bank of America written policies and procedures regarding its foreclosure process.[9]
- Obtained and examined relevant reviews of Bank of America's servicing and foreclosure processes.
- Obtained and examined the excerpts of personnel documents that Bank of America provided for selected employees.
- Obtained and reviewed various court documents related to the foreclosure practices of Bank of America and law firms that conducted work on its behalf.
- Interviewed Bank of America management and staff, including those involved in the document execution, notary, foreclosure, and claims processes.
- Worked with DOJ to issue 35 CIDs[10] to compel testimony.
- Attended testimonies given by 17 individuals pursuant to CIDs issued by DOJ. Our audit and legal staff met with DOJ attorneys and provided information, analyses, and relevant documentation to prepare for the CID testimony proceedings.
- Coordinated with Bank of America's legal counsel, our Office of Legal Counsel, and DOJ attorneys from its Washington, DC, Civil Division Fraud Section and the Northern District of Texas.
- Identified and reviewed a statistical sample of 118 Bank of America FHA claims processed by HUD during the review period. The sample universe included 32,699 claims records from HUD's Single Family Data Warehouse associated with Bank of America and affiliated entities. 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. The sample did not include claims processed in the names of Countrywide or Taylor, Bean & Whitaker. However, 100 of the 118 claims in our sample were previously held by Countrywide.[11]
- Reviewed FHA claims and related documents for the 118 claims in our sample.
- Obtained and analyzed FHA claims data from both Bank of America and HUD.
- Obtained and analyzed Bank of America shipping logs[12] that identified documents signed and notarized during the review period and identified the attorney who prepared the document. However, as described in the following section, the data were incomplete.
- Issued two Inspector General administrative subpoenas for documents and records.
- Analyzed data for Bank of America FHA claims in the 23 judicial foreclosure States and jurisdictions.

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9 Although we repeatedly requested policies and procedures in effect during the entire review period, Bank of America would provide only those that generally became effective between May and October 2010.

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

11 In August 2009, the Government National Mortgage Association hired Bank of America to service roughly $25 billion in FHA receivables it seized from the firm Taylor, Bean & Whitaker. Our review incorporated loans previously assigned to Taylor, Bean & Whitaker only if Bank of America filed FHA claims in its own name.

12 Bank of America's shipping logs included FHA and non-FHA foreclosure documents. While Bank of America had separate teams that handled FHA and non-FHA foreclosures, it could not explain material differences in the processing of the foreclosures, and its shipping logs did not distinguish between FHA and non-FHA foreclosures. Bank of America provided incomplete data, which impeded identification of all affiants, notaries, and attorneys and the complete volume of documents.

During the course of our review and the drafting of this memorandum, Bank of America 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 Bank of America for any purpose, including the solicitation of written comments on our findings from Bank of America. For this same reason, we did not provide Bank of America 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 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 Bank of America'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 comprehensive overview of Bank of America's practices and compliance with requirements.[13] We expanded the scope as needed to accomplish our objective. We initiated our review on October 15, 2010, and performed onsite work at Bank of America's offices in Fort Worth, Plano, and Addison, TX, and Simi Valley, CA, between October 2010 and January 2011.

Scope Limitation

Our review was significantly hindered by Bank of America's reluctance to allow us to interview employees. When interviews were permitted, the presence or involvement of attorneys limited the effectiveness of those interviews. On a number of occasions, Bank of America's attorneys refused to allow employees to answer questions, stopped them in the middle of clarifying information already provided, or counseled them in private before allowing them to provide a response. Further, Bank of America would not permit an effective walkthrough of its document execution process that would have facilitated an understanding of its process.

In addition, we issued Inspector General administrative subpoenas because Bank of America did not provide information and data in a timely manner or a point of contact who could explain and clarify data. However, the information and data provided in response to our subpoenas were not complete. For instance, Bank of America provided only excerpts of subpoenaed personnel files, did not provide complete foreclosure documents for the items in the sample, provided conflicting information regarding who its affiants were, and could not identify all authorized notaries. As a result, it was not possible to know how much information Bank of America omitted that was relevant to our review. For example, although several employees described Bank of America's foreclosure process, it was not until its employees provided sworn testimony that they disclosed that personnel in India conducted the critical foreclosure function of verifying judgment figures.

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

Further, Bank of America provided FHA insurance claims data for only two of its five servicing identification numbers. In another instance, it provided data that identified signers, notaries, and attorneys for each claim for only one-third of its FHA claims records. These omissions impaired our review because they prevented us from measuring the complete impact of Bank of America's foreclosure practices.

In an effort to mitigate the scope limitation, DOJ issued CIDs to Bank of America and 34 current and former employees to compel testimony. Of those, 1 corporate representative and 16 current and former employees gave sworn testimony about their knowledge concerning Bank of America's operation of and/or reliance upon so-called foreclosure mills or robosigners to process foreclosures. In addition, DOJ facilitated discussions regarding Bank of America's response to our Inspector General administrative subpoenas.

RESULTS OF REVIEW

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

- Affiants[14] routinely signed foreclosure documents, including affidavits, certifying that they had personal knowledge of the facts when they did not. Specifically, affiants signed large volumes of foreclosure documents without reviewing the supporting documentation referenced in them. They also consistently failed to verify the accuracy of the foreclosure documents they signed.
- Notaries public routinely notarized documents without witnessing affiant signatures. They also failed to keep required records of the documents they notarized.[15]
- It may have allowed attorneys to improperly prepare documents and misrepresent the work they performed.

Review of 118 FHA claim files showed that Bank of America did not consistently retain legal documents supporting the foreclosure. Analysis of the mathematical accuracy of seven affidavits containing judgment figures showed inconsistent per diem interest calculations and discrepancies in accrued interest totals. Also, in one instance, it conveyed a property to HUD with the incorrect legal description. This flawed control environment resulted in Bank of America 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

Bank of America failed to follow HUD requirements[16] for properties it foreclosed upon in judicial foreclosure States and jurisdictions. These provisions required Bank of America to obtain and convey to the Secretary of HUD good and marketable title to properties. Bank of America may have conveyed flawed or improper titles to HUD because it did not establish a

[14] An affiant is a person who signs an affidavit and attests to its truthfulness before a notary public.
[15] On July 11, 2011, we referred the apparent notary violations to the Texas Secretary of State.
[16] 24 C.F.R. § 203.366(a) and HUD Handbook 4330.4, paragraphs 2-6 and 2-23

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 Bank of America 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 Bank of America to foreclose on the property. In many judicial foreclosures, an affidavit was part of the foreclosure documentation. Generally, a representative of Bank of America swore in a notarized affidavit that Bank of America 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 were essential to ensure the integrity of the foreclosure process. Bank of America used a flawed process to submit FHA conveyance claims for judicially foreclosed-upon properties and received FHA claim payments of more than \$1.1 billion[18] during the review period.

Affiants Robosigned Foreclosure Documents

Because Bank of America would not provide us written foreclosure policies and procedures in effect during the review period, we relied on interviews and CID testimony to gain an understanding of its foreclosure practices. Employees confirmed that affiants routinely signed legal documents, including affidavits, without the supporting documentation and without reviewing and verifying the accuracy of the foreclosure information. Many affiants stated that they only checked to determine whether the foreclosure documents listed them as the signer. In an interview, a vice president in the document execution group stated that her department only checked foreclosure documents for formatting and spelling errors.[19]

Further, Bank of America had no effective quality assurance function. For example, employees who performed quality control auditing and training for the document execution group testified that their focus consisted of ensuring that name and title stamps on foreclosure documents were straight and legible. In addition, while giving sworn testimony employees could not explain to DOJ the process by which personnel in India verified the judgment figures included in foreclosure documents.[20]

When asked about the number of foreclosure documents they signed, employees were unable to provide DOJ with accurate estimates. However, they acknowledged that foreclosure document volume increased exponentially over time. For example, one notary testified that daily volume went from 60 to 200 documents per day to 20,000 documents per day with half being duplicates. One former employee described signing 12- to 18-inch stacks of documents at a time without review. Employees also admitted signing large volumes of foreclosure documents during unrelated meetings without reading them. An employee testified that she was instructed to send out an email message recruiting affiants because Bank of America needed more signers for

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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.

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

19 We have outlined this vice president's affiant and notary activities in appendix A, as manager 1.

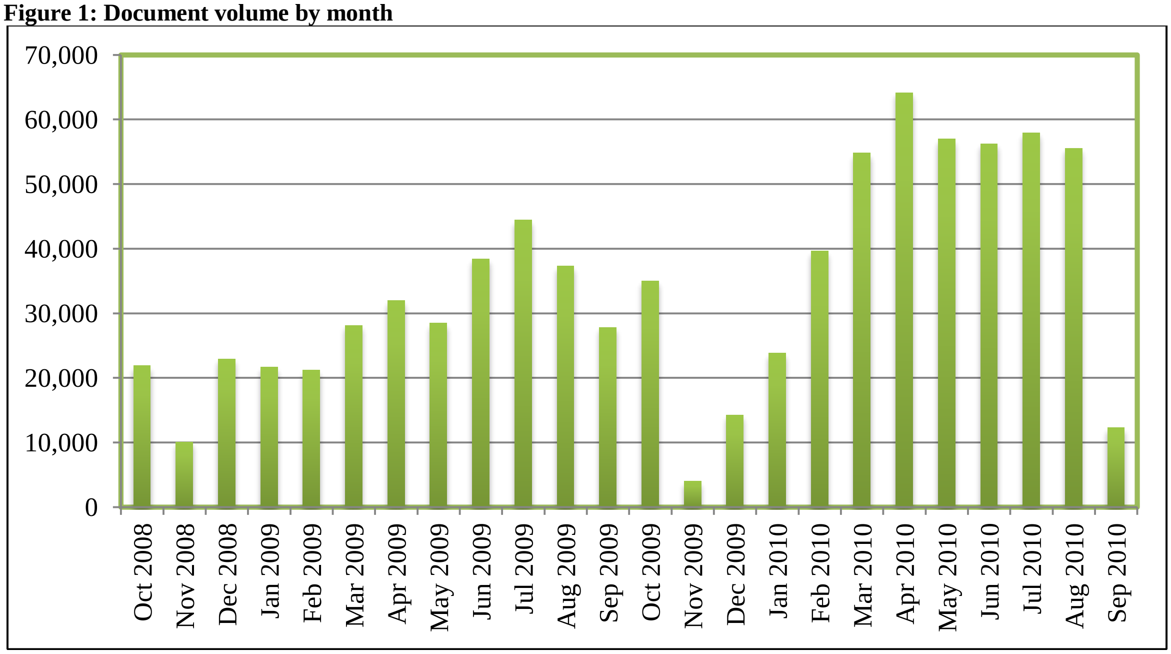
20 Bank of America did not provide policies and procedures that included its India operations.

foreclosure documents. In addition, a former vice president in an unrelated business unit testified that he was required to sign foreclosure documents.

Many employees testified that they relied on a system to ensure that documents they signed were accurate. However, none effectively described the system. One manager testified that she was volunteered to be an affiant. According to the manager, the vice president in charge of foreclosure told her that the information had been verified and she "just simply needed to locate the sticky in which it had Sign Here and sign my name." When asked whether she verified the information, the manager stated that she trusted that the information had been verified because the vice president told her so. In addition, managers discussed in performance reviews an unprecedented volume increase due to high foreclosures, which resulted in Bank of America hiring additional contractors and new employees to prepare foreclosure documents.

Information provided by Bank of America also reflected an increased volume of foreclosure documents over the review period and showed that it evaluated employee performance based in part on metrics for processing high volumes of documents. As shown in figure 1, the total monthly volume of documents signed varied from 4,000 in November 2009 to more than 64,000 in April 2010, with a total of 809,000 documents during the review period. The 10 most prodigious affiants signed between 31,000 and 78,000 documents during the review period.[21] Appendix A contains affiant and notary narratives that describe the monthly volume of documents signed and notarized by selected employees.

Figure 1: Document volume by month



21 As discussed in the Scope and Methodology section, Bank of America provided incomplete data, which impeded identification of the complete volume of documents each affiant signed.

Bank of America's foreclosure process during the review period did not ensure that it properly executed foreclosure documents before submitting them to courts or ensure that it conveyed good and marketable title to HUD.

Notaries Did Not Witness Signatures or Maintain Required Records

Bank of America did not establish a control environment that ensured that its notaries met their responsibilities under State laws that required them to witness affiants' signatures on documents they notarized.[22] Bank of America employed notaries[23] who notarized signatures on foreclosure documents, but it could not provide a complete list of these employees. Our sample included documents with notary stamps from Texas and California. Both States required the notary to authenticate the signer's signature and maintain a notary log book detailing specific information, such as the name of the signer, document notarized, and date.[24]

Employees stated that affiants did not routinely sign documents in front of a notary. There was no indication that Bank of America required them to do so. If a notary did not witness the signature, the notarization of the document was improper. Two employees specifically testified that they raised concerns about the notary process to management, but management told them to continue the process. In CID testimony, one of the referenced managers said she did not recall any 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. According to 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 notary, in violation of Texas law, notarized her own signature on two documents.

Despite management representations to the contrary, employee performance reviews demonstrated that Bank of America used defined goals and metrics to evaluate performance based on production in its document execution group. For instance, the manager progress notes section of two document execution employees' 2009 and 2010 performance reviews stated:

- "Your Stats so far this year are as follows: Affidavits 46.97 per hour (standard is 49 per hour), Assignments 54.74 per hour (standard is 51 per hour) and DocEx 49.67 per hour (standard is 46 per hour."
- "Your stats so far this year are as follows: Affidavits 40.11 (standard is 49.00 an hour), Assignments 43.12 (standard is 51.00 an hour) and DocEx 36.91 (standard is 46.00 an hour). Your numbers are low but I understand why so they are acceptable."
- "…maintains the production standards set by the Document Execution group and has very few errors…numbers are exceptional for department stats: Printing 140.77%, Prepping 148.08%, Stapling 148.02% and Notarizing 121.81%."

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

23 These notaries had additional job duties and responsibilities.

24 Texas Government Code, Chapter 406, Notary Public, Commissioner of Deeds, and State of California Notary Law Section 8200

As one of the primary purposes of using a notary was to verify the authenticity of the signer, Bank of America's failure to ensure that notaries witnessed signatures was a significant control weakness.[25] Because this type of deficiency undermined the integrity of the control environment, the affidavits and other foreclosure documents submitted by Bank of America were unreliable and inauthentic, and may have exposed it to False Claims Act liability.

Law Firms May Have Engaged in Improper Practices

Bank of America used law firms that may have engaged in questionable practices to process FHA-insured foreclosures. These practices ranged from allegations of robosigning and 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 its lawyers lied in court.

For example, a high-level Bank of America official was referred to in a complaint[26] against Goldbeck, McCafferty, and McKeever, PC (GMM), a law firm that conducted foreclosure work for Bank of America. 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 plaintiff averred that Bank of America knew of, directed, and profited from the conduct of the nonlawyers and that the high-level official, an attorney, was present in a courtroom when Mr. McKeever testified that it was "standard practice" for nonlawyers to engage in the unauthorized practice of law. The complaint included transcript excerpts from the December 8-9, 2009, hearing and 27 exhibits containing signatures supporting the allegation that nonlawyer defendants prepared, signed, and filed hundreds of thousands of cases without attorney review.

GMM processed 469 foreclosure documents for Bank of America in Pennsylvania and New Jersey. Of the 118 sample loans, 2 were processed by the firm. As figure 2 shows, it appeared that at least 5 different individuals signed 13 documents for attorney Michael McKeever for the 2 sample loans. If nonlawyers, on GMM's behalf, signed and filed documents for FHA-insured foreclosures, these filings may not have been valid and may have caused Bank of America to file false claims.

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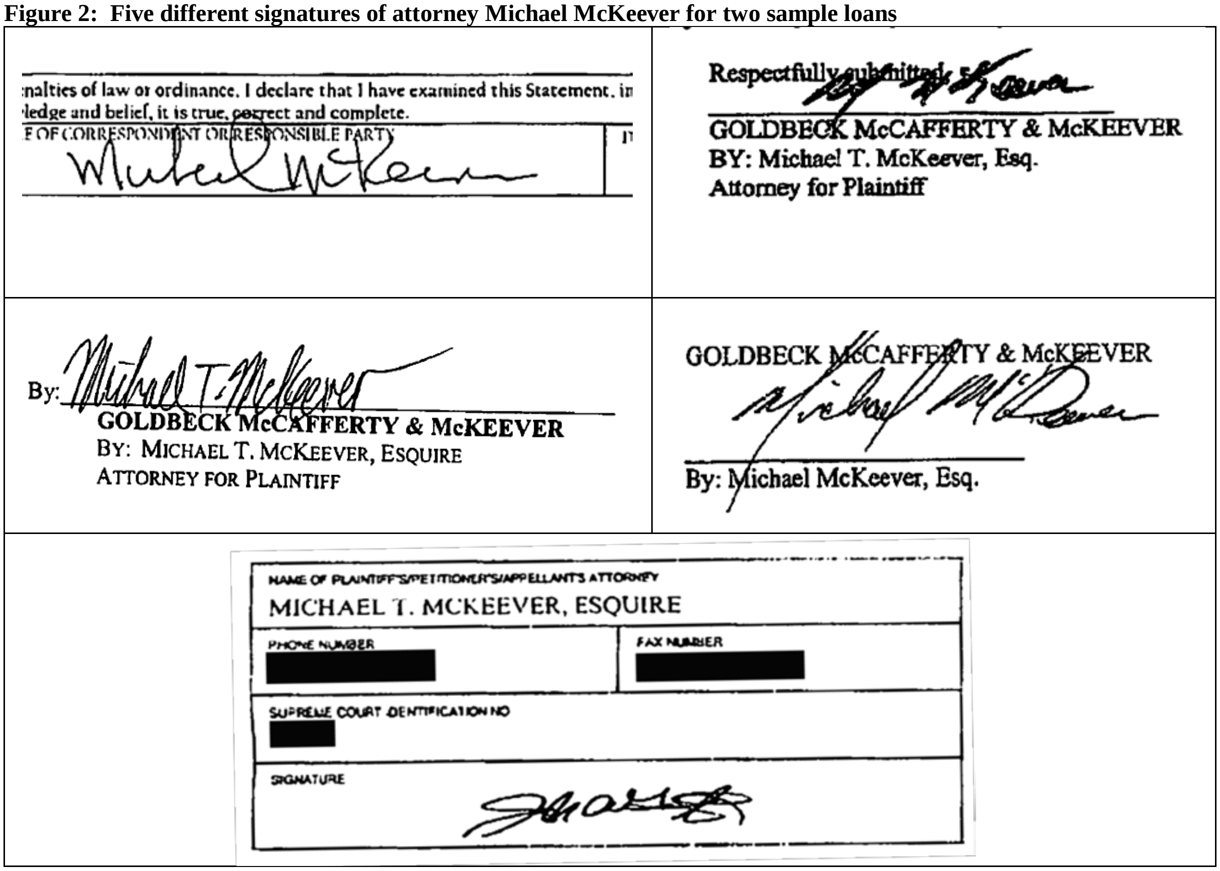
[25] According to Bank of America, it implemented new procedures in October 2010 that required notaries to witness affiants' signatures on foreclosure documents. However, we did not test the procedures, as Bank of America limited our review to the stated review period.

[26] *Loughren vs. Lion, et al.*, GD-10, Allegheny County, PA

Figure 2: Five different signatures of attorney Michael McKeever for two sample loans



In addition, the Chief U.S. Bankruptcy Judge for Western Pennsylvania issued a memorandum opinion and order[27] and a memorandum order[28] that were "intended to serve as a public reprimand"[29] of GMM and one of its attorneys, Leslie M. Puida. The judge sanctioned the firm and its attorney for filing deceptive documents in a foreclosure proceeding and found that "Puida, and by extension GMM, had not been honest with this Court."[30] 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 never sent to the homeowner or her lawyer. The judge stated that "the evidence that Puida lied was considerable"[31] and publicly reprimanded GMM and Leslie M. Puida for their misconduct and ordered them to report to the Disciplinary Board of the State Supreme Court.

In another Bank of America example, a notary for Phelan, Hallinan & Schmieg testified in a deposition that over a 3-year period, "he falsely acknowledged tens of thousands of mortgage assignments"[32] for the firm, often outside the signer's presence. The notary also acknowledged under oath that he notarized documents in New Jersey when he did not hold a notary license in that State. In addition, a partner was accused of having potential conflicts of interest in the

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27 *In re Hill*, 437 B.R. 503 (Bankr. W.D. Pa., October 5, 2010)
28 *In re Hill*, 437 B.R. 503 (Bankr. W.D. Pa., November 24, 2010)
29 *In re Hill*, 437 B.R. 503 pg 8 (Bankr. W.D. Pa., November 24, 2010)
30 *In re Hill*, 437 B.R. 503 pg 4 (Bankr. W.D. Pa., November 24, 2010)
31 *In re Hill*, 437 B.R. 503 pg 5 (Bankr. W.D. Pa., November 24, 2010)
32 *Bank of New York v. Ukpe,* pg 6 Docket No. F-10209-08

assignment of mortgage notes.[33] It was argued that the partner executed an assignment in his capacity as a Mortgage Electronic Registration Systems[34] officer while Phelan, Hallinan & Schmieg was also a vendor for Mortgage Electronic Registration Systems, the assignor. The notary and partner had both been individually named in proceedings involving questionable foreclosure practices for servicers other than Bank of America.[35] According to Bank of America's records, Phelan, Hallinan & Schmieg processed 931 documents for proceedings in 3 judicial foreclosure States.[36]

Our analysis of Bank of America's shipping logs showed that Bank of America used a small group of law firms to process foreclosures. As shown in table 1, 10 law firms processed 62 and 81 percent of Bank of America's judicial and nonjudicial foreclosure documents, respectively. Many of these law firms had been named in various court proceedings throughout the country, alleging questionable foreclosure activities.

Table 1: Top 10 law firms that processed Bank of America foreclosure documents

Judicial foreclosure States			Nonjudicial foreclosure States		
Law firm	**Number of documents**	**Percentage**	**Law firm**	**Number of documents**	**Percentage**
Feiwell & Hannoy, PC	976	9.81	Prommis Solutions, LLC	4,892	36.77
Phelan Hallinan & Schmieg	931	9.35	Barrett Daffin Frappier Turner & Engel	1,875	14.09
Reisenfeld and Associates	732	7.35	Millsap & Singer, LLC	788	5.92
Carlisle, McNellie, Rini, Kramer & Ulrich Co.	680	6.83	Trott & Trott	761	5.72
Luper Neidenthal & Logan	610	6.13	McFadden, Lyon & Rouse, LLC	580	4.36
Pierce and Associates	520	5.22	Bierman, Geesing, Ward & Wood	501	3.77
Lerner, Sampson & Rothfuss	492	4.94	Martin, Leigh, Laws & Fritzlen, PC	479	3.60
Goldbeck McCafferty & McKeever	469	4.71	Sirote & Permutt, PC	454	3.41
Codilis & Associates, PC	398	4.00	Adams & Edens	274	2.06
Adorno & Yoss	395	3.97	Barrett Burke Wilson Castle Daffin & Frappier	220	1.65
Subtotal - top 10 firms	**6,203**	**62.32**	**Subtotal - top 10 firms**	**10,824**	**81.36**
Subtotal - all others	3,750	37.68	Subtotal - all others	2,480	18.64
Total judicial documents	**9,953**		**Total nonjudicial documents**	**13,304**	

33 *Bank of New York v. Ukpe*, Docket No. F-10209-08
34 Commonly referred to as MERS
35 *U. S. Bank NA v. Sinchegarcia*, F-18446-08. *Deutsche Bank National Trust Company v. Charlene Smith*, No. 08-3089
36 Bank of America provided data that accounted for only about one-third of its FHA foreclosures during our review period. This lack of data impeded identification of the complete volume of documents each law firm prepared.

On November 16, 2010, the Congressional Oversight Panel released an in-depth report analyzing the robosigning allegations.[37] Its report concluded that "[t]he foreclosure documentation irregularities unquestionably show a system riddled with errors" and emphasized "that mortgage lenders and securitization servicers should not undertake to foreclose on any homeowner unless they are able to do so in full compliance with applicable laws and their contractual agreements."

If third-party law firms engaged in questionable practices on behalf of Bank of America, the foreclosures may not have complied with laws and agreements. These questionable practices may have exposed Bank of America to liability under the False Claims Act.

Legal Documents Were Not Consistently Maintained

Bank of America's FHA claim files for the 118 sample loans did not consistently contain relevant preforeclosure information that supported the legal basis for foreclosure. Therefore, Bank of America could not demonstrate that it conveyed clear and marketable title to HUD. In addition, the file reviews identified 23 affiants who signed foreclosure documents on Bank of America's behalf but were not authorized to do so by appropriate board resolution as provided by Bank of America. According to its records, the 23 individuals signed 820 foreclosure documents during the review period. HUD should require Bank of America to retain in its FHA claim files legal documents supporting the foreclosure and the underlying supporting business records for those legal documents.

Affidavits Contained Inconsistencies and Errors

We reviewed the seven affidavits that contained judgment figures in judicial foreclosure States to determine whether they were mathematically correct. Bank of America calculated per diem interest charges inconsistently and had discrepancies in accrued interest totals. Specifically, it calculated per diem interest using a 360-day year in three cases, 365 days in two cases, an undetermined method in one case, and both methods in different versions of the document in the last case. Errors in interest calculations 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. However, the unpaid principal balance on each affidavit matched the amount on the FHA insurance claim in all seven cases.

Bank of America Conveyed a Property That Had an Incorrect Legal Description to HUD

Bank of America conveyed a property located in Modesto, CA, to HUD with an incorrect legal description.[38] California is a two-deed State, requiring a trustee deed and a grant deed. The grant deed conveying the property title to HUD used a legal description for a property on another street. Because the legal description was incorrect, Bank of America did not give HUD good and

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[37] 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)

[38] FHA case number 045-6483650

marketable title to the property. HUD regulations[39] required Bank of America to convey good and marketable title as well as satisfactory title evidence. Because its internal controls did not prevent the error, its foreclosure and later conveyance of title to HUD were improper. HUD should require Bank of America to remedy the apparent defect in title for this property.

CONCLUSION

Bank of America 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 robosigned foreclosure documents, its notaries failed to authenticate signatures, and it used law firms that may have falsified legal foreclosure documents. As a result of its flawed control environment, Bank of America engaged in improper practices by not fully complying with applicable foreclosure procedures when processing foreclosures on FHA-insured loans, thereby misrepresenting its claims to HUD.

During the review period, Bank of America submitted 8,973 conveyance claims[40] totaling $1.1 billion in the 23 judicial foreclosure States and jurisdictions. DOJ used our review and analysis in negotiating the settlement agreement.

RECOMMENDATIONS

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 recommendations to address only specific Bank of America deficiencies.

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

1A. Ensure that Bank of America retains appropriate legal documentation supporting all FHA-insured foreclosures in its FHA claim files.

IB. Require Bank of America to remedy the apparent defect in title for the property it conveyed to HUD with the incorrect legal description (FHA case number 045-6483650).

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

1C. Pursue appropriate administrative sanctions against notaries who may have violated State notary requirements.

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

Appendix:
Appendix A Affiant and Notary Narratives

[39] 24 C.F.R. § 203.358
[40] Excludes deeds in lieu of foreclosure

APPENDIX

Appendix A

AFFIANT AND NOTARY NARRATIVES

The affiant and notary narratives in this appendix detail the volumes of documents signed or notarized by selected affiants and notaries. We selected six examples of the affiant and notary narratives to include in this memorandum from the 34 employees to whom DOJ served CIDs.[41] As stated in the body of the memorandum, the data Bank of America provided accounted for only approximately one-third of its FHA foreclosures. Therefore, we have no assurance that the figures presented in the narratives were complete and reliable.

The narratives also include excerpts from relevant testimony from CID proceedings conducted by DOJ and excerpts from personnel records provided by Bank of America. In response to our December 2, 2010, subpoena, Bank of America submitted partial personnel documentation instead of providing complete personnel records as required. As a result, it was not possible to know whether Bank of America omitted information relevant to our review. However, the excerpts demonstrated that document volumes increased during the review period and Bank of America evaluated employee performance based at least in part on whether employees met predetermined metrics for processing foreclosure documents. The primary purpose of the narratives was to assist DOJ in preparing for CID proceedings.

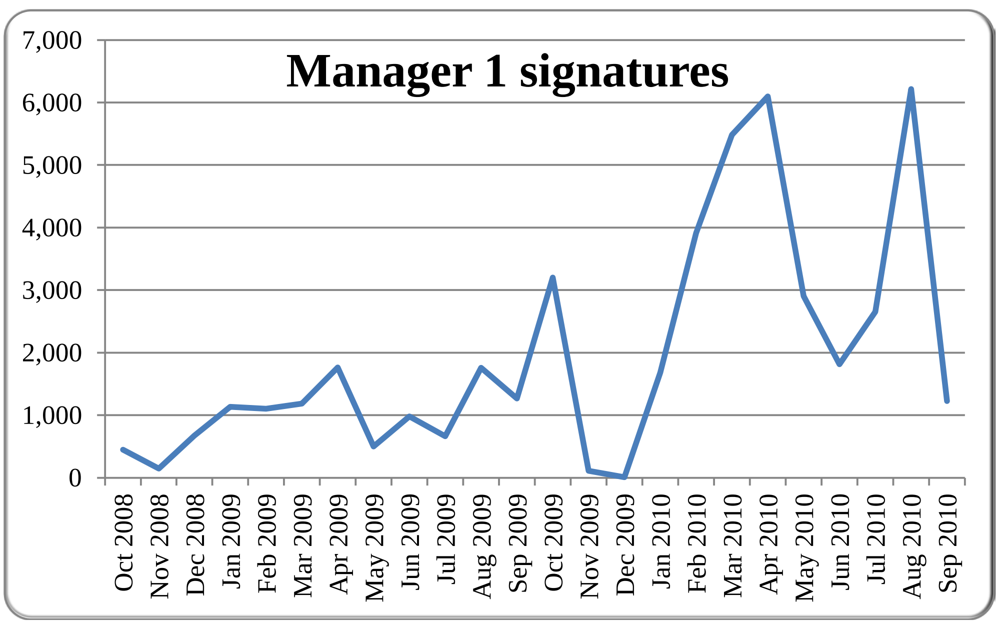
[41] Two employees who served as both an affiant and notary, two employees who were affiants, and two employees who were notaries

Manager 1 – Affiant and Notary

Manager 1 signed 12 foreclosure documents for 8 of our 118 sample loans, 2 of which were potentially presented as evidence in judicial State court proceedings.

Affiant Statistics
According to Bank of America's shipping logs, manager 1 signed 46,936 and notarized 45 foreclosure documents during the 2-year review period.

Manager 1 signatures by month			
Month	**Documents**	**Month**	**Documents**
Oct 2008	449	Oct 2009	3,203
Nov 2008	148	Nov 2009	111
Dec 2008	673	Dec 2009	8
Jan 2009	1,136	Jan 2010	1,681
Feb 2009	1,104	Feb 2010	3,911
Mar 2009	1,187	Mar 2010	5,486
Apr 2009	1,765	Apr 2010	6,098
May 2009	499	May 2010	2,903
Jun 2009	979	Jun 2010	1,812
Jul 2009	664	Jul 2010	2,652
Aug 2009	1,760	Aug 2010	6,213
Sep 2009	1,269	Sep 2010	1,225
Total documents signed			**46,936**



Manager 1 routinely signed foreclosure documents, including affidavits, certifying that she had personal knowledge of the facts when she did not. She consistently failed to verify the accuracy of the foreclosure documents she signed.

CID Testimony
Manager 1 testified that Bank of America's process did not require her to verify the information in foreclosure documents before signing. She agreed that the standard industry practice was to execute affidavits without reading documents. She did not specifically recall reading documents. She also agreed that it was industry practice to have documents notarized outside the presence of the signer. In her testimony, manager 1 responded that her direct supervisor, a vice president, was aware and approved of the industry standard being followed. She assumed her supervisor's boss would have approved and been aware of the same.

When asked about a paragraph manager 1 signed stating that she had personal knowledge, manager 1 said that she "didn't read the document to read personal knowledge. Again, the process was just to sign the document." When asked if she did anything to verify an amount that was due and owing, manager 1 responded, "No. The process at the time was just to sign the document." Manager 1 gave similar answers throughout her testimony. She was also a notary and testified that she did not typically witness signatures.

Personnel File Excerpt
Manager 1's supervisor (manager 3) discussed goals, metrics, and a reengineered document execution process in her 2010 performance review:

- Your group "now has clear goals and metrics by which to evaluate performance. There exists an opportunity to address poor performance issues more rapidly."
- "You have completed the re-engineering of the document execution proicess [*sic*]. This was a significant initiative you formulated that has enabled your group to rapidly scale up to match increasing volumes as well as improve turnaround time and communication."

Manager 2– Affiant and Notary

Manager 2 signed foreclosure documents for 4 of our 118 sample loans, 1 of which was potentially presented as evidence in a judicial State court proceeding. Manager 2 also notarized one judicial State foreclosure document.

Affiant Statistics
According to Bank of America's shipping logs, manager 2 signed 67,908 and notarized 1,390 foreclosure documents during the 2-year review period. Bank of America's records indicated that manager 2 notarized her own signature on two documents.

Manager 2 signatures by month					
Month	**Count**	**Month**	**Count**	**Month**	**Count**
Oct 2008	2,070	Jun 2009	3,471	Feb 2010	178
Nov 2008	590	Jul 2009	3,411	Mar 2010	552
Dec 2008	830	Aug 2009	3,796	Apr 2010	3,345
Jan 2009	1,303	Sep 2009	652	May 2010	5,482
Feb 2009	3,217	Oct 2009	1,068	Jun 2010	7,443
Mar 2009	4,267	Nov 2009	324	Jul 2010	8,884
Apr 2009	5,115	Dec 2009	5	Aug 2010	8,753
May 2009	2,155	Jan 2010	27	Sep 2010	970
Total documents signed					**67,908**

Manager 2 routinely signed foreclosure documents, including affidavits, certifying that she had personal knowledge of the facts when she did not. She consistently failed to verify the accuracy of the foreclosure documents she signed. Manager 2 also routinely notarized documents without witnessing affiant signatures and failed to keep required records of the documents she notarized.

CID Testimony
Manager 2 acknowledged that she did not have personal knowledge when she signed foreclosure documents. Further, she would not typically have additional case-related documents available to her when she signed affidavits, but the information was available in Bank of America's computer system. However, she acknowledged that she did not routinely inform herself by looking at the computer system.

Manager 2 testified that she would read the first paragraph of the document before locating the "sign here" sticky directing her attention to the particular place she would need to sign. She estimated that she spent approximately 1½ to 2 hours per day signing documents and spent 2 to 3 minutes on each document. Notaries were not present when manager 2 signed documents, and other signers in her group did not make a habit of signing with notaries present. Further, as a notary, she did not typically witness the signing of documents and referred to Bank of America's shipping log as an electronic notary log.

Personnel File Excerpt
In her 2009 performance review, manager 2 and her supervisor (manager 1) discussed volume increases and departmental growth:

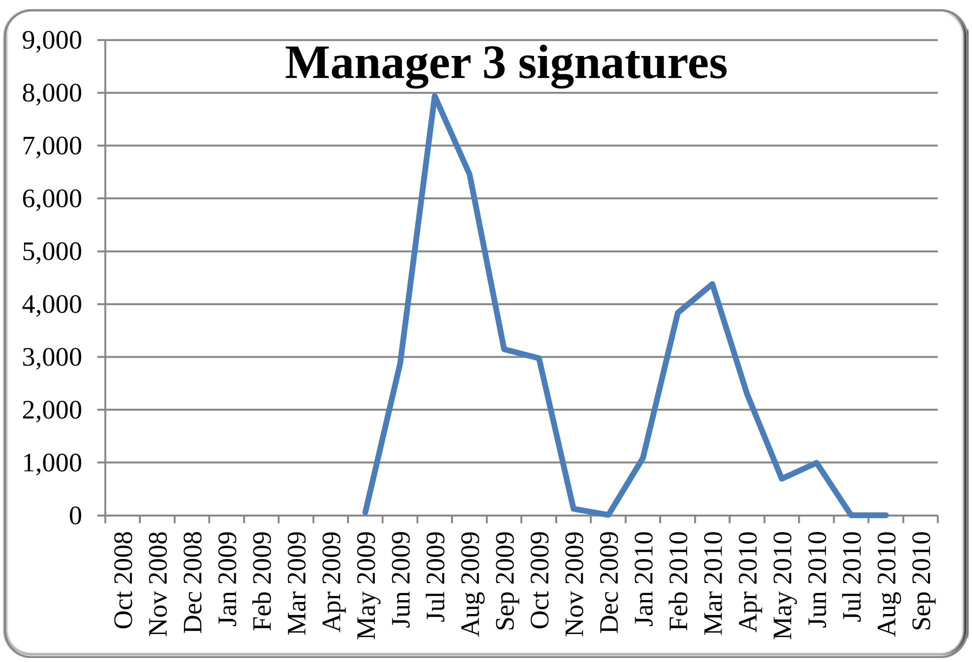
- "Your team continues to grow through this time of unprecedented volume."
- "When assumed the group late in 2006 had no idea, like others, volume would result with a dramatic increase. Due to the volume group has evolved from 15-20 associates to 30+ and continues to grow."
- "In order to assist the huge increase in the document request volume, contractors were hired July-August to assist with the prepping of documents…By 3rd quarter, document request volume exceeded expectations due to high foreclosure referral volume. To address increased volume, in addition to the four above new associates and [*sic*] additional eight associates were hired."

Manager 3 – Affiant

Manager 3 signed 7 foreclosure documents for 6 of our 118 sample loans, 1 of which was potentially presented as evidence in a judicial State court proceeding.

Affiant Statistics
According to Bank of America's shipping logs, manager 3 signed 36,885 foreclosure documents during the 2-year review period.

Manager 3 signatures by month			
Month	**Documents**	**Month**	**Documents**
Oct 2008	0	Oct 2009	2,976
Nov 2008	0	Nov 2009	128
Dec 2008	0	Dec 2009	9
Jan 2009	1	Jan 2010	1,090
Feb 2009	0	Feb 2010	3,835
Mar 2009	1	Mar 2010	4,380
Apr 2009	0	Apr 2010	2,294
May 2009	56	May 2010	696
Jun 2009	2,880	Jun 2010	997
Jul 2009	7,938	Jul 2010	2
Aug 2009	6,456	Aug 2010	2
Sep 2009	3,144	Sep 2010	0
Total documents signed			**36,885**



Manager 3 routinely signed foreclosure documents, including affidavits, certifying that she had personal knowledge of the facts when she did not. She consistently failed to verify the accuracy of the foreclosure documents she signed.

CID Testimony
Manager 3 testified that documents were checked before they came to her for signature. However, she acknowledged that she did not verify information or undertake a review of a specific loan file to give herself "firsthand knowledge of the business records with respect to an actual loan before signing a document." She stated that she looked at the document, looked at the investor, and signed it. While manager 3 stated that sometimes notaries watched as she signed documents, she acknowledged that generally they did not watch her sign the documents.

Manager 3 explained that as a vice president, she managed four groups: foreclosure group, quality control group, reporting group, and document execution group. These groups were managed by three vice presidents and an assistant vice president. For the quality control group, manager 3 did not recall any written quality control policies or procedures, and she did not participate in the creation of policies. She acknowledged an increase in document volume and an expansion of the document execution group because of the increase. She knew that there were a number of affiants who were not assigned to the document execution group who signed foreclosure-related legal documents. According to her, the preparation process simply involved a stamp being placed on a particular document with a sticky identifying the page to be signed.

Manager 3 also testified that recruiting new affiants was an ongoing process and that managers made recommendations for them. She was not familiar with the process for the review team in India. In addition, she acknowledged that she understood that courts relied on documents that she signed in deciding foreclosure cases.

Manager 4 – Affiant

Manager 4 signed foreclosure documents for 13 of our 118 sample loans, 5 of which were potentially presented as evidence in judicial State court proceedings.

Affiant Statistics
According to Bank of America's shipping logs, manager 4 signed 42,926 foreclosure documents during the 2-year review period.

Manager 4 signatures by month					
Month	**Count**	**Month**	**Count**	**Month**	**Count**
Oct 2008	1,330	Apr 2009	2,533	Oct 2009	3,380
Nov 2008	788	May 2009	4,477	Nov 2009	147
Dec 2008	2,052	Jun 2009	3,927	Dec 2009	220
Jan 2009	3,059	Jul 2009	2,077	Jan 2010	3,179
Feb 2009	2,031	Aug 2009	5,439	Feb 2010	1,156
Mar 2009	3,683	Sep 2009	3,424	Mar 2010	24
Total documents signed					**42,926**

Manager 4 routinely signed foreclosure documents, including affidavits, certifying that she had personal knowledge of the facts when she did not. She consistently failed to verify the accuracy of the foreclosure documents she signed.

CID Testimony
When asked how she went about gaining an understanding of what she was supposed to do with documents that were brought to her, manager 4 testified, "I don't recall if anybody – if my supervisor spoke to me about it, I mean, you know, you just see it. You just, you know." Her standard process in signing documents was to scan the document, ensure that her name was listed, and then sign it. Manager 4 estimated that she would execute 100 documents per day in ½ hour or less. She stated that notaries were not present when she executed documents. Manager 4 stated that she understood that the documents were verified before she signed them, but she did not recall how she gained that understanding.

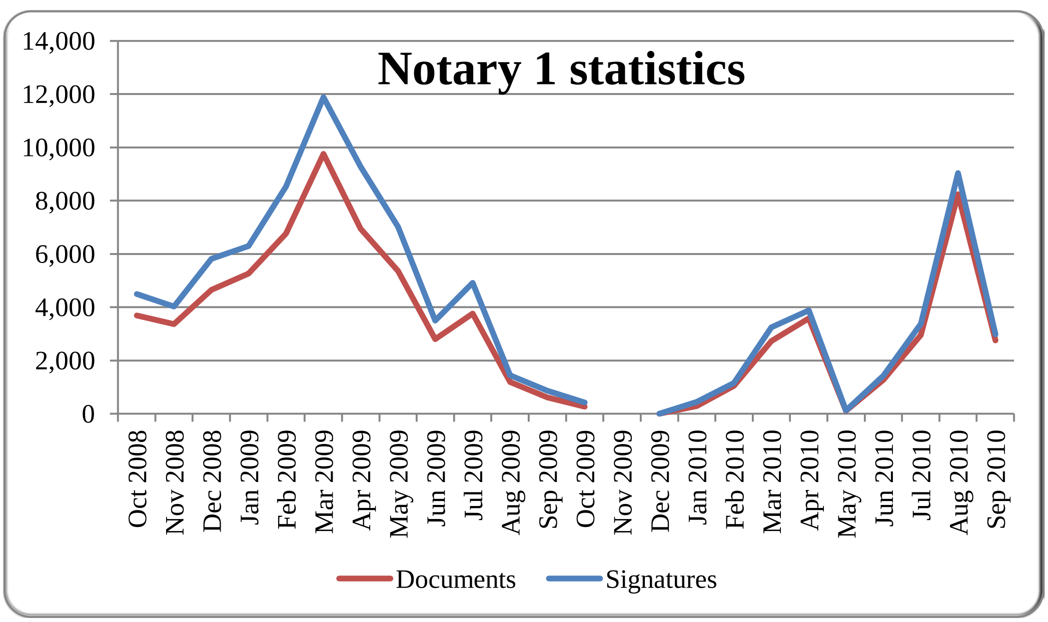
Notary 1

Notary 1 notarized 7 foreclosure documents for 6 of our 118 sample loans, 3 of which were potentially presented as evidence in judicial State court proceedings. Notary 1 notarized the highest volume of documents during the 2-year review period.

Notary Statistics
According to Bank of America's shipping logs, notary 1 notarized 77,447 foreclosure documents, containing 94,167 signatures, during the 2-year review period.

Documents notary 1 notarized			
Month	**Documents**	**Month**	**Documents**
Oct 2008	3,687	Oct 2009	267
Nov 2008	3,370	Nov 2009	0
Dec 2008	4,653	Dec 2009	4
Jan 2009	5,266	Jan 2010	294
Feb 2009	6,769	Feb 2010	1,049
Mar 2009	9,760	Mar 2010	2,728
Apr 2009	6,948	Apr 2010	3,584
May 2009	5,355	May 2010	111
Jun 2009	2,807	Jun 2010	1,273
Jul 2009	3,761	Jul 2010	2,960
Aug 2009	1,188	Aug 2010	8,244
Sep 2009	616	Sep 2010	2,753
Total documents notarized			**77,447**

Signatures notary 1 notarized			
Month	**Signatures**	**Month**	**Signatures**
Oct 2008	4,493	Oct 2009	419
Nov 2008	4,021	Nov 2009	0
Dec 2008	5,817	Dec 2009	4
Jan 2009	6,302	Jan 2010	444
Feb 2009	8,535	Feb 2010	1,160
Mar 2009	11,880	Mar 2010	3,252
Apr 2009	9,273	Apr 2010	3,885
May 2009	7,016	May 2010	120
Jun 2009	3,493	Jun 2010	1,430
Jul 2009	4,917	Jul 2010	3,382
Aug 2009	1,448	Aug 2010	9,031
Sep 2009	865	Sep 2010	2,980
Total signatures notarized			**94,167**



Notary 1 routinely notarized documents without witnessing affiant signatures and failed to keep required records of the documents she notarized.

CID Testimony

Notary 1 testified that she did not maintain a notary log book, but Bank of America had an Excel spreadsheet. She explained that she knew she was required to keep a log as an individual but as an employee of the bank, she did not feel it was her responsibility. Notary 1 also did not witness signatures or swear an oath for affiants. She also testified that she observed affiants signing documents without reading them.

Notary 1 testified that when she began her employment, her department processed 60 to 200 documents per day. It increased to 10,000 to 20,000 documents sitting in an in-box. She stated that employees wondered how they were going to process them. According to notary 1, half of the documents were duplicates, and they had a 24- to 48-hour turnaround timeframe, which notary 1 believed was unreasonable. Notary 1 stated that employees tried to relay the unreasonableness of the turnaround time to team leaders and supervisors but were told to continue with what they were doing.

Notary 1 also testified that she and others thought they should be notarizing documents in front of the affiant. When she raised this issue, she was told that it was acceptable not to be in the presence of an affiant when notarizing a document if the notary knew the affiant and his or her signature. Further, she was told by management to stop checking the details on documents such as assignments, deeds, and affidavits.

Review of Personnel File Excerpts

Although managers represented that Bank of America had no quota system, it appeared that employees were evaluated based on production. For example, in her 2009 evaluation, notary 1's manager made the following comment: "continues to meet the deadlines and complying with the requirements of the attorneys. She meets the production standards set by the Document Execution Group." In addition, notary 1 commented that she had "always been able to meet or exceed required stats and deadlines," and her manager commented on notary 1's understanding the need to meet the set timelines.

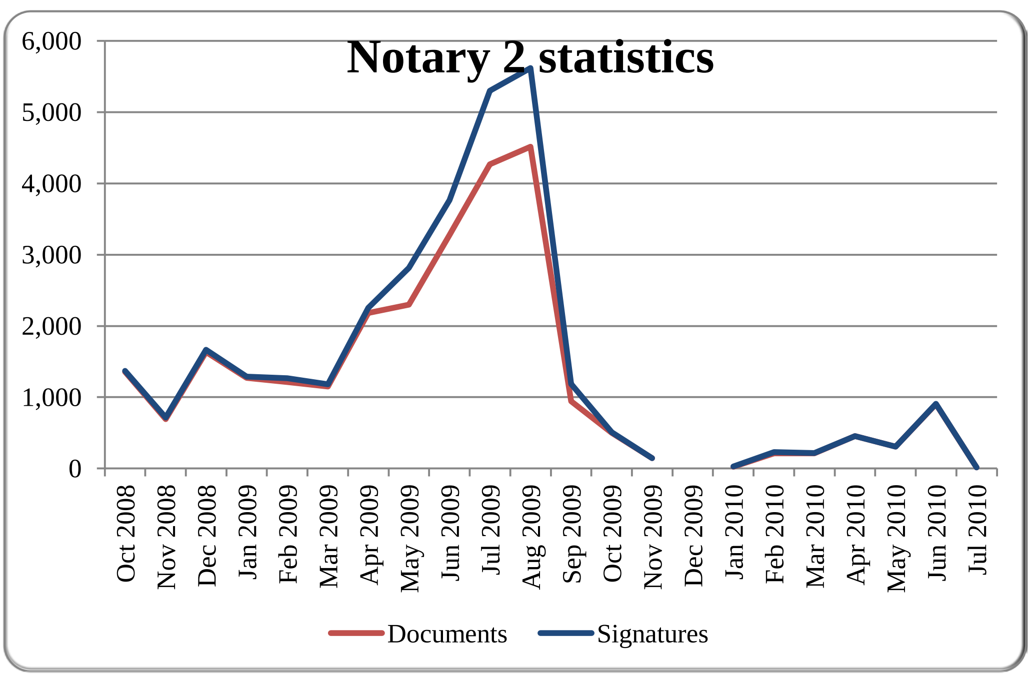
Notary 2

Notary 2 notarized foreclosure documents for 3 of our 118 sample loans, 2 of which were potentially presented as evidence in judicial State court proceedings.

Notary Statistics
According to Bank of America's shipping logs, notary 2 notarized 27,585 foreclosure documents, containing 31,236 signatures, during the 2-year review period.

Documents notary 2 notarized			
Month	**Documents**	**Month**	**Documents**
Oct 2008	1,356	Oct 2009	502
Nov 2008	691	Nov 2009	145
Dec 2008	1,635	Dec 2009	
Jan 2009	1,272	Jan 2010	26
Feb 2009	1,215	Feb 2010	213
Mar 2009	1,152	Mar 2010	211
Apr 2009	2,182	Apr 2010	457
May 2009	2,299	May 2010	305
Jun 2009	3,278	Jun 2010	902
July 2009	4,268	July 2010	16
Aug 2009	4,514	Aug 2010	0
Sep 2009	946	Sep 2010	0
Total documents notarized			**27,585**

Signatures notary 2 notarized			
Month	**Signatures**	**Month**	**Signatures**
Oct 2008	1,372	Oct 2009	507
Nov 2008	715	Nov 2009	145
Dec 2008	1,666	Dec 2009	0
Jan 2009	1,288	Jan 2010	30
Feb 2009	1,268	Feb 2010	229
Mar 2009	1,180	Mar 2010	217
Apr 2009	2,253	Apr 2010	457
May 2009	2,814	May 2010	305
Jun 2009	3,763	Jun 2010	907
July 2009	5,299	Jul 2010	16
Aug 2009	5,617	Aug 2010	0
Sep 2009	1,188	Sep 2010	0
Total signatures notarized			**31,236**



Notary 2 routinely notarized documents without witnessing affiant signatures and failed to keep required records of the documents he notarized.

CID Testimony

Notary 2 testified that generally he was not present when affiants signed documents and he did not maintain a notary log book. He stated that this was the normal practice at Countrywide and Bank of America. In cases of rush documents (approximately 1 percent of the documents), he would witness signatures. Notary 2 testified that supervisors were aware of his and other notaries' practice of not witnessing affiants signing documents. Productivity was monitored by the team managers, and they would periodically change the performance metrics.

According to notary 2, Countrywide's instructions on how to notarize documents was nothing more than where to place the notary stamp and sign the document. He received no other notary training, written materials, or oral instructions. When he became a Bank of America employee, his process did not change. To his recollection, Bank of America did not perform an operational review of his area when it acquired Countrywide.