



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

September 9, 2015

MEMORANDUM NO:
2015-CF-1806

Memorandum

TO: Dane M. Narode
Associate General Counsel, Office for Program Enforcement, CACC

FROM: *//signed//*
Kimberly Randall
Director, Joint Civil Fraud Division, GAW

SUBJECT: Final Civil Action: Taylor, Bean & Whitaker Mortgage Corporation and Home America Mortgage, Inc., Settled Civil Claims Related to Failing To Comply With Federal Housing Administration Underwriting Requirements

This report was revised on September 25, 2015, to make corrections to the recommendation. The correction does not require additional HUD action.

INTRODUCTION

The U.S. Department of Housing and Urban Development (HUD), Office of Inspector General (OIG), assisted in an investigation into alleged violations of Federal Housing Administration (FHA) regulations by Taylor, Bean & Whitaker Mortgage Corporation and Home America Mortgage, Inc. Taylor, Bean & Whitaker is a former FHA-approved mortgage lender, with its principal place of business located in Ocala, FL. Home America, a subsidiary of Taylor, Bean & Whitaker, is a former FHA-approved loan correspondent,¹ with its principal place of business located in Lawrenceville, GA.

¹ A loan correspondent is a lender that may only originate FHA mortgages; may not sell insured mortgages to any lender other than an FHA-approved sponsoring lender; and may not hold, purchase, or service insured mortgages. A sponsor is a lender approved to participate in HUD's direct endorsement program, which has formally established a relationship with one or more loan correspondents and notified HUD of the relationship, performs the loan underwriting function on behalf of the loan correspondent, and may close and submit the mortgage for insurance endorsement.

The investigation included a *qui tam*² action filed under the False Claims Act, 31 U.S.C. (United States Code) 3729, in the U.S. District Court for the Northern District of Georgia.

BACKGROUND

Taylor, Bean & Whitaker and Home America participated in the direct endorsement program³ from 1991 to 2010. Taylor, Bean & Whitaker became an approved lender in August 1991 and was terminated in November 2010. Home America became an approved loan correspondent in September 2000 and was terminated in April 2010. Home America's approved sponsor was Taylor, Bean & Whitaker.

In December 2006, the relators filed a *qui tam* action in the U.S. District Court for the Northern District of Georgia. The relators alleged that Taylor, Bean & Whitaker and Home America knowingly engaged in a pattern of fraudulent activity and business practices, including falsifying and manufacturing loan documents, disregarding HUD regulations, and ignoring the absence of necessary documentation to obtain financing for FHA-insured loans.

In 2009, Taylor, Bean & Whitaker and Home America separately filed petitions for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Middle District of Florida. These separate cases were administratively consolidated into one bankruptcy case.

In May 2010, the U.S. Department of Justice, on behalf of HUD, filed a proof of claim⁴ with the bankruptcy court against Taylor, Bean & Whitaker for nearly \$179 million. The proof of claim stated that the lender was liable for "civil, monetary, and administrative claims under the False Claims Act for causing to be presented false or fraudulent claims; making, using or causing to be made false statements to get a false or fraudulent claim paid; and/or conspiring to defraud the government by getting false or fraudulent claims allowed or paid; or otherwise violating the False Claims Act, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, and/or was liable under common law doctrines of payment by mistake, unjust enrichment, and/or fraud." The United States filed a similar proof of claim against Home America for \$131 million.

In September 2010, the United States intervened⁵ in the civil action, contending that it had certain civil claims against the two debtors arising from claims the debtors made against the FHA

² The False Claims Act allows private persons to file suit for violations of the False Claims Act on behalf of the Government. A suit filed by an individual on behalf of the Government is known as a "*qui tam*" action, and the person bringing the action is referred to as a "relator."

³ The direct endorsement program authorizes private-sector mortgage lenders to approve mortgage loans for insurance by FHA. Lenders approved for the program must follow various FHA requirements and provide annual and per loan certifications that the lender complied with these requirements when underwriting and approving loans for FHA insurance.

⁴ A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

⁵ If the Government intervenes in the *qui tam* action, it has the primary responsibility for prosecuting the action.

insurance fund from May 2003 through August 2009 for Taylor, Bean & Whitaker and May 2003 through November 2009 for Home America.

RESULTS OF INVESTIGATION

In December 2013, HUD, the relators, and the Taylor, Bean & Whitaker Plan Trust entered into a settlement agreement regarding the civil action, which resulted in two approved claims by HUD against Taylor, Bean & Whitaker in the bankruptcy action for \$89.9 million and \$82.2 million, respectively. In January 2015, the U.S. District Judge approved an interim distribution to the U.S. Department of Justice, on behalf of HUD, of HUD's pro rata share of funds available to pay the \$89.9 million claim. The amount distributed was \$596,984. On January 22, 2015, HUD received \$489,527, and other entities received the remaining \$107,457.

RECOMMENDATION

We recommend that HUD's Office of General Counsel, Office of Program Enforcement

- 1A. Ensure that HUD records the \$596,984 interim distribution to recognize funds awarded as a return of an ineligible cost. The recorded transaction should include an appropriate adjustment for the portion remitted to other entities, which ultimately reduced the HUD distribution to \$489,527.

HUD has implemented the recommendation and the final action will be recorded in HUD's Audit Resolution and Corrective Actions Tracking System; therefore, the recommendation is closed concurrently upon issuance of this memorandum.