



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

MEMORANDUM NO.
2012-CF-1811

July 23, 2012

MEMORANDUM FOR: Dane M. Narode, Associate General Counsel for Program Enforcement, CACC

FROM: Kim Randall, Director, Civil Fraud Division, GA

SUBJECT: Final Civil Action: Deutsche Bank Settled Alleged Violations of the False Claims Act by MortgageIT, Inc.

INTRODUCTION

The U.S. Department of Housing and Urban Development (HUD), Office of Inspector General (OIG), conducted a review of loans underwritten by MortgageIT, Inc. MortgageIT is a subsidiary of Deutsche Bank. Our participation in the case began at the request of the U.S. Attorney's Office, Southern District of New York. The objective of our review was to determine whether the MortgageIT loans that we reviewed were underwritten in violation of HUD's Federal Housing Administration (FHA) regulations.

SCOPE AND METHODOLOGY

We reviewed 21 loans underwritten by MortgageIT between October 2002 and December 2006 for properties located in Michigan, Illinois, Colorado, Wisconsin, and Missouri. These 21 loans had a claim paid by FHA, and we reviewed the underwriting for compliance with FHA regulations.

We reviewed MortgageIT's records for risk management, audit, and quality control functions and provided our results to the U.S. Attorney's Office. We also performed the following steps:

- Obtained pertinent data for the 21 loans from HUD's Single Family Data Warehouse,
- Analyzed the FHA loan binders,
- Coordinated with HUD staff from various offices,
- Reviewed HUD Quality Assurance Division reports,
- Reviewed HUD's Single Family Asset Management System and Single Family Data Warehouse for loss information,
- Reviewed HUD's Single Family Insurance System for preforeclosure sale data, and
- Contacted HUD's Office of Asset Sales for additional loss data for loans involving the assignment of the mortgage without HUD's taking possession of the property.

BACKGROUND

MortgageIT is a residential mortgage banking company headquartered in New York City, NY. Originally founded in 1988, MortgageIT was acquired by Deutsche Bank in 2007. It was a HUD-approved Title II nonsupervised¹ mortgage company located at 60 Wall Street, New York, NY. Its home office became a direct endorsement lender on October 28, 1999, but voluntarily terminated its FHA approval on October 16, 2009. MortgageIT was approved to participate in HUD's Lender Insurance program² on February 8, 2006. HUD removed the company from the Lender Insurance program on October 19, 2009.

RESULTS

We reviewed the 21 loans and information and documentation obtained and referred our findings to the U.S. Attorney's Office.

On May 3, 2011, the U.S. Attorney's Office commenced a civil action against Deutsche Bank and MortgageIT under the False Claims Act³ and the common law. The complaint⁴ alleged that MortgageIT abused its direct endorsement lender status to endorse thousands of mortgages that were ineligible for FHA insurance. The complaint also alleged that Deutsche Bank and MortgageIT maintained MortgageIT's direct endorsement lender status by making false representations to HUD about MortgageIT's purported compliance with HUD rules and regulations regarding quality control such that its quality control procedures egregiously violated HUD rules and regulations.

¹ A nonsupervised mortgage company is a HUD-FHA-approved lending institution that has as its principal activity the lending or investment of funds in real estate mortgages and may be approved to originate, sell, purchase, hold, or service HUD-FHA insured mortgages, depending on its wishes and qualifications.

² The Lender Insurance program enables high-performance lenders, pursuant to Section 256 of the National Housing Act, to endorse FHA mortgage loans without a preendorsement review being conducted by FHA.

³ The False Claims Act is a civil enforcement tool that allows the Federal Government to recover funds fraudulently obtained from Federal programs and impose financial penalties against offenders and serves as a strong deterrent to other would-be offenders.

⁴ *United States of America vs. Deutsche Bank AG and MortgageIT, Inc.*, Case No. 11-2976, in the U.S. District Court for the Southern District of New York, filed on May 3, 2011. The complaint was amended on August 22, 2011, to add DB Structured Products, Inc., and Deutsche Bank Securities, Inc., as defendants and to include additional examples of false certifications and update data.

On May 10, 2012, the U.S. District Judge for the Southern District of New York approved the stipulation and order of settlement and dismissal of the civil action against Deutsche Bank AG, DB Structured Products, Inc., Deutsche Bank Securities, Inc., and MortgageIT. Deutsche Bank agreed to pay \$202.3 million to the United States to resolve the Federal Government's claims for damages and penalties under the False Claims Act within 30 days of the effective date of the stipulation. Of that amount, FHA was to receive approximately \$196 million.

As part of the settlement, MortgageIT admitted, acknowledged, and accepted responsibility for various conduct alleged in the Federal Government's complaint, including

- From 1999 through 2009, HUD-FHA rules required all direct endorsement lenders, among other things, to maintain a quality control program that complied with HUD-FHA requirements and to conduct a full review of all early payment defaults on loans endorsed for FHA insurance. MortgageIT failed to conform fully to either of these requirements.
- Contrary to the representations in MortgageIT's annual certifications, MortgageIT did not conform to all applicable HUD-FHA regulations from 1999 through 2009.
- In each loan-level certification,⁵ MortgageIT certified to HUD-FHA that the loan was eligible for FHA mortgage insurance under the direct endorsement program.
- MortgageIT submitted to HUD-FHA certifications stating that certain loans were eligible for FHA mortgage insurance when they were not, FHA insured certain loans endorsed by MortgageIT that were not eligible for FHA mortgage insurance, and HUD consequently incurred losses when some of those loans defaulted.

Deutsche Bank admitted, acknowledged, and accepted responsibility for the fact that after MortgageIT became a wholly owned, indirect subsidiary of Deutsche Bank Structured Products, Inc., and Deutsche Bank AG in January 2007,

- Deutsche Bank defendants were in a position to know that the operations of MortgageIT did not conform fully to all of HUD-FHA's regulations, policies, and handbooks.
- One or more of the annual certifications was signed by an individual who was also an officer of certain of the Deutsche Bank defendants, and contrary to the representations in MortgageIT's annual certifications, MortgageIT did not conform to all applicable HUD-FHA regulations.

RECOMMENDATION

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

- 1A. Agree to allow HUD OIG to post \$196,231,000 to HUD's Audit Resolution and Corrective Actions Tracking System as funds recovered.

⁵ For every mortgage loan that MortgageIT endorsed for FHA mortgage insurance pursuant to the direct endorsement program, MortgageIT submitted a form HUD-92900-A or an equivalent form to HUD-FHA as the loan-level certification.