

# OIG FRAUD INITIATIVES

AHACPA Lender Update  
December 5, 2011



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STOP MORTGAGE FRAUD



# Current Issues Impacting FHA

- Concerns about the financial health of FHA's insurance fund
- Will FHA need a bailout?
- Depressed housing prices throughout the country
- Continuing defaults and backlog of foreclosures
- Increased losses on REO properties

# Current FHA Market and Housing Trends

- Comparing the time period of October through August for FY 2010 to the same time period in FY 2011:
  - Insurance in force increased by 10% (above already historic highs)
  - Purchase endorsements down 31% for 2011 compared to 2010
  - Insurance claims increased nearly 5%
- FHA portfolio is well over \$1 Trillion.
- Continued high default rate – currently 8.43 percent (as of Aug 2011)

# Increase in Lenders

- New lender approvals increased dramatically during FY 2008 (3,148) compared to 655 in FY 2006.
- New approvals still high during 2009 (2,426), but lower in 2010 – no new loan correspondents after May 2010
- 13,511 approved lenders at end of FY 2009
- Loan Correspondents maintained their approval through December 2010

# Elimination of Loan Correspondents

- An estimated 9,000 loan correspondents were eliminated (no longer subject to FHA oversight)
- Now operating as sponsored third party originators
- Remaining mortgagees now have strict liability for origination and underwriting

# Elimination of Loan Correspondents

- Loans must close in the name of the sponsoring mortgagee
- Quality control plan needs to cover third party originators
- Approved mortgagees are to diligently monitor and evaluate the activities and performance of those they sponsor.

# Helping Families Save Their Homes Act of 2009

Public Law 111–22, May 20, 2009

- Requirements for FHA mortgagees – no officer, etc
  - currently suspended, debarred, or under LDP
  - under indictment or convicted
  - subject to unresolved HUD findings
  - engaged in business practices that do not conform to generally accepted practices of prudent mortgagees or that demonstrate irresponsibility



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# Helping Families Save Their Homes Act of 2009

Public Law 111–22, May 20, 2009

- Requirements for FHA mortgagees – no officer, etc
  - felony related to real estate or mortgage loan industry
  - in violation of provisions of the S.A.F.E. Mortgage Licensing Act of 2008
  - in violation of any other requirement as established by the Secretary



# Helping Families Save Their Homes Act of 2009

Public Law 111–22, May 20, 2009

- Prohibition against misleading use of federal entity designation
- Expanded review of FHA mortgagee applicants and newly approved mortgagees

# Fraud Enforcement and Recovery Act of 2009

Public Law 111–22, May 20, 2009

- Amended the definition of “financial institution” to extend Federal fraud laws to nonsupervised mortgagees
- Made clarifications to the False Claims Act

# Fraud Enforcement and Recovery

## Act of 2009

Public Law 111–22, May 20, 2009

- Amended the false statements in mortgage applications statute to make it a crime to make a materially false statement or to willfully overvalue a property

# What is Fraud

- A false representation which deceives and is intended to deceive another so they will act upon it to their legal injury
- Fraud can be prosecuted through criminal statutes, through common law, or through civil remedies statutes.
- All have common elements –
  - Falsity
  - Intent
  - Materiality/Reliance

# Civil Fraud Remedies

- Common Law Fraud (common law)
- **False Claims Act**
- **Program Fraud Civil Remedies Act**
- Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA)
- Administrative Remedies

# Criminal Prosecution vs. Civil Remedies

- Beyond Reasonable Doubt vs. Preponderance of the Evidence
- Confinement as Punishment vs. Triple/Double Damages
- Different Elements in certain instances
- Grand Jury Process for criminal prosecutions
- United States Attorney or Main Justice vs. Administration /Program Enforcement

# False Claims Act

31 U.S.C. § 3729

- Imposes liability for seven prohibited acts.
- Most commonly use the first 2 acts.
  - Sec. 3729(a)(1) - Presentment of a false or fraudulent claim
  - Sec. 3729(a)(2) - Knowingly uses a false record or statement to get a claim paid
- No requirement that the United States be damaged or pay the claim.
- No requirement that the claim be submitted to the Government – can be made to a recipient of HUD assistance

# False Claims Act - Elements

- A false or fraudulent claim
  - A claim is actually submitted
  - The claim is false
  - The defendant knew the claim was false
- False Statement/Record
  - Claim is submitted for payment by the United States
  - Defendant made a record or statement
  - The record or statement was false
  - The defendant knew or should have known the record or statement was false
  - The defendant intended to cause the government to pay the false claim

# False Claims Act – Elements

- Violations were committed knowingly if made with actual knowledge of the falsity, deliberate indifference (willful blindness) or reckless disregard for the truth.
- Claim is defined to cover nearly any kind of document or other communication that could be reasonably expected to cause the United States to make or approve a payment. The definition also includes claims to third parties who are paid or reimbursed by the government.



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# False Claims Act – Examples

- A false certification of compliance creates liability under the False Claims Act when the certification is a prerequisite to obtaining a government benefit.
- False underwriter certification.
- False flood plain certification.
- Certification relating to delayed endorsement
- Company can be liable if the false claim provides a benefit to the company, or it furthers the company's business.

# Examples of False Statements Supporting a False Claim

- False HUD 1
- False FHA insured Loan Application
- False Financial Statement
- False Accounting Report
- False Certifications required by Program Regulation or Handbook
- False Appraisal

# False Claims Act

- Damages
  - Penalty - \$5,000 to \$10,000 per violation
  - Triple damages
- Statute of Limitations
  - Six years, or,
  - Three years after discovery if more than 6 years have passed
  - But in no case more than 10 years
  - Only applies where U.S. has intervened



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# Program Fraud Civil Remedies Act

31 U.S.C. § 3802

- Congress was concerned that small false claims were not being pursued
- Gave the agencies the ability to bring actions on false claims that are less than \$150,000
- Similar to False Claims Act, but administrative, not judicial
- 24 CFR Part 28

# PFCRA imposes liability for

- False Claims
  - Any request or demand for the payment of money, property, or services
  - Including grant funds, if the US provided any portion of the funds or will reimburse any portion of the funds
- False Certified Statements
  - There must be an express certification or affirmation of the truthfulness and accuracy of the statement

# PFCRA

- Penalty not to exceed \$7,500 per violation
- Damages not to exceed twice the amount of the claim
- Six year limitations period, no extensions
- Generally limited by the potential for recovery. Company can be liable if the false claim or statement confers a benefit on the company, or it furthers the company's business.

# FIRREA

(12 U.S.C. § 1833a)

- Civil penalties for a violation of, or conspiracy to violate, certain criminal statutes involving financial fraud
  - \$1,000,000 - \$5,000,000
  - (or gain or loss, whichever greater)
- Amended in 2008 – covers any FHA loan after July 30, 2008.

# Injunctions Against Fraud

(18 USC § 1345)

- Allows DoJ to commence a civil action to enjoin a person who is committing or is about to commit fraud or false claims
- Frauds are defined in Chapter 63 of Title 18
  - Mail fraud
  - Wire fraud
  - Fraudulent schemes

# Administrative Remedies

- Nonprocurement Debarments and Suspensions
  - 2 CFR Part 180 (OMB)
  - 2 CFR Part 2424 (HUD)
  - Government –wide
  - Excluded Parties List System ([www.wpls.gov](http://www.wpls.gov))
- Limited Denials of Participation
  - HUD specific; limited program area; limited geographical area

# Mortgagee Review Board

12 USC § 1708(c)

- 24 CFR Part 25
- To protect the integrity of mortgage insurance by issuing sanctions for violations of FHA requirements, the non-discrimination requirements of the Equal Credit Opportunity Act, and the requirements of the Fair Housing Act.

# MRB Remedies

- Letter of reprimand - warning
- Probation – 6 months
- Suspension – immediate – 6 months to a year
- Withdrawal – Minimum of 1 year – permanent

# Civil Monetary Penalties

## HUD Specific

- 24 CFR Part 30
- Various programs and various monetary remedies
- 24 CFR § 30.35 – identifies 15 different violations by mortgage lenders – imposed by MRB – up to \$7,500 for each violation – not to exceed \$1,375,000
- 24 CFR § 30.36 – submitting false information in connection with insured mortgage – imposed by FHA Comm'r- up to \$6,050 for each violation – not to exceed \$1,210,000

# FBI National Mortgage Fraud Team

- In December 2008, the Federal Bureau of Investigation (FBI) officially launched the National Mortgage Fraud Team (NMFT).
- HUD OIG is a full member
- Develop national partnership
- Assist field offices and local task forces with mortgage fraud audits and investigations
- Leverage intelligence and data analysis capabilities
- Criminal and Civil Prosecutions

# HUD-OIG and DOJ Initiatives

- The HUD-OIG reorganized its Office of Audit by moving a group of forensic auditors from the Office of Investigations to the Office of Audit.
- HUD-OIG forensic auditors are now concentrating their focus on civil prosecutions and are working in coordination with the US Attorneys Office.
- DOJ hired an additional 17 civil attorneys to concentrate on mortgage fraud.

# HUD-OIG and DOJ Initiatives

- At DOJ's request, we recently identified lenders throughout the country that had high risk indicators on their FHA loan originations, warranting further review
- Currently OIG has over 100 open civil cases relating to single family mortgage fraud.

# MortgageIT

- In May 2011, DOJ filed a civil lawsuit in U.S. District Court against MortgageIT and Deutsche Bank
- Deutsche Bank acquired MortgageIT in January 2007 pursuant to a merger
- MortgageIT endorsed 39,000 FHA mortgages from 1999-2009 worth more than \$5 Billion

# MortgageIT

- As of June 2011, more than 12,900 loans have defaulted – more than 3,200 within six months and more than 4,500 within an year
- \$368 million in claims so far
- \$93 million in claims for 690 mortgages that defaulted within six months
- 7,400 additional mortgages in default (no claims yet), totaling more than \$857 million

# MortgageIT

- HUD QAD review – MortgageIT did not maintain an adequate quality control plan
- MortgageIT represented that deficiencies had been corrected
- Statements were false, along with annual certifications
- All loans underwritten under this system are suspect

# HUD Audit Guide

## Chapter 7

- Applies to supervised and non-supervised mortgagees
- Revisions in process to bring the guide into alignment with mortgagee letters

# Report Fraud

**Report fraud**, waste, and mismanagement in HUD programs and operations by:

- Calling the OIG Hotline: 1-800-347-3735
- Faxing the OIG Hotline: 202-708-4829
- Sending written information to:  
Department of Housing and Urban Development  
Inspector General Hotline (GFI)  
451 7th Street, SW  
Washington, DC 20410
- E-mailing the OIG Hotline: [hotline@hudoig.gov](mailto:hotline@hudoig.gov) or through:  
[http://www.hud.gov/complaints/fraud\\_waste.cfm](http://www.hud.gov/complaints/fraud_waste.cfm)

All information is confidential, and you may remain anonymous.

- Independent auditors should call the HUD-OIG Single Audit Coordinator at 215-430-6733





Questions?