

April 29, 2019

Brian Montgomery  
Acting Deputy Secretary  
U.S. Department of Housing and Urban Development  
451 7th Street, SW  
Washington, DC 20410

The Honorable Rae Oliver Davis  
Inspector General  
Office of Inspector General  
U.S. Department of Housing and Urban Development  
451 7th Street, SW  
Washington, DC 20410

Dear Mr. Montgomery and Ms. Davis:

On behalf of the low-income clients and communities we represent, we write in response to the deeply flawed report regarding Bank of America's servicing of FHA-insured loans sold through the Distressed Asset Stabilization Program (DASP) that HUD's Office of Inspector General (OIG) issued on April 9, 2019. While we greatly appreciate HUD OIG's previous reports on DASP, this current report relies on flawed methodology, ignores important input from FHA-insured borrowers, and misstates basic requirements for FHA-insured loans. HUD OIG should immediately rescind the report and properly review servicer performance.

In its report, HUD OIG concludes that there were no problems in Bank of America's servicing of over 47,000 loans that were eventually sold through DASP. It bases this conclusion on review of only ten loan files. HUD OIG admits that this is a "non-statistical" sample, yet, from these ten loans, it makes a broad conclusion about Bank of America's performance. OIG Report, pg. 6. Rather than rely on this flawed method, HUD should engage in a deeper assessment of lender practices.

The experience of twenty-three Philadelphia homeowners with Bank of America in one court's mediation program over a short period of time directly illustrates the problem with HUD OIG's conclusion. As described in detail in NCLC's *Opportunity Denied* report on DASP, Bank of America sold these homeowners' loans through DASP while the borrowers were being actively evaluated for FHA loss mitigation in a court-sponsored mediation program. The number of mishandled cases appearing around the same time is clear evidence of a systemic failure of oversight by the bank.<sup>1</sup> Bank of America's failures with the Philadelphia homeowners contradict HUD OIG's conclusion.

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<sup>1</sup> Geoff Walsh, National Consumer Law Center, *Opportunity Denied: How HUD's Note Sale Program Deprives Homeowners of the Basic Benefits of Their Government-Insured Loans* (May 2016), available at <https://www.nclc.org/issues/opportunity-denied.html>.

The sample size is not the only flaw in the OIG report. HUD OIG's complete reliance on Bank of America's files and the failure to interview borrowers discounts well-documented and persistent problems that borrowers have reported regarding servicer loss mitigation performance. In reviewing files, HUD OIG laments that six of the homeowners failed to give lenders "all of the financial information necessary for Bank of America to verify their eligibility." OIG Report, pg. 5. However, by choosing not to interview the homeowners to find out what they submitted, HUD OIG failed to consider that the homeowners may have in fact submitted documents or made calls that Bank of America lost or mishandled.

The issue of lost documents is especially relevant given the timing of most DASP sales. The relevant servicing on the loans subject to sale likely occurred prior to the effective date of the 2014 RESPA servicing rules that sought to reduce rampant lost document issues. According to one pre-2014 GAO report, housing counselors reported that servicers lost documents in around 60% of cases.<sup>2</sup> Lost documents and improper requests also show up in Consumer Financial Protection Bureau's complaint database but are unlikely to be reflected in lender files.

By relying only on Bank of America's files, HUD OIG ignored the possibility of confusing or overbroad document requests not tailored to the borrowers' situation. In the January 23, 2018 letter to HUD and HUD OIG sent by many of the undersigned groups regarding previous reports, we specifically stated the need for audits to include borrower feedback over a much larger sample size, but these suggestions were not incorporated in the April 9, 2019 study. HUD's assessment is fundamentally one-sided and cannot stand as a full story.

The Report's reference to borrowers who filed for bankruptcy relief is confusing. OIG Report, pg. 5. It suggests that the Report's authors did not understand bankruptcy law and HUD's guidelines that allow servicers continue helping borrowers who file for bankruptcy relief.<sup>3</sup> These borrowers remain eligible for FHA loss mitigation and servicers must continue to assist them regardless of the bankruptcy filing. It is not clear why the authors considered the bankruptcy filings as relevant to their assessment.

Finally, the HUD OIG report wholly mischaracterizes Bank of America's obligations in servicing FHA-insured loans. The report recognizes that Bank of America had to follow HUD mortgagee letters and stated that loss mitigation only works if borrowers respond to lender requests. It omits, however, regulatory requirements that Bank of America and other FHA-lenders must follow that require specific and affirmative steps to help borrowers complete documentation requests and evaluate

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<sup>2</sup> Government Accountability Office (GAO), *Troubled Asset Relief Program: Results of Housing Counselors Survey on Borrowers' Experiences with the Home Affordable Modification Program* at 4 (May 26, 2011), available at <https://www.gao.gov/assets/100/97516.pdf>.

<sup>3</sup> HUD, Handbook 4000.1, FHA Single Family Housing Policy Handbook 603 (Mar. 27, 2019).

modification options, such as the face-to-face meeting and mandatory notices regarding loss mitigation. HUD OIG's failure to consider Bank of America's compliance with the face-to-face meeting requirement is particularly problematic since lenders frequently fail to comply with this requirement. Simply put, HUD OIG cannot conclude that Bank of America followed the law when the agency did not consider mandatory requirements.

HUD OIG should rescind this report and start again based on a proper statistical sample, a comprehensive approach that includes input from borrowers, and an accurate view of the law. Its conclusion is unfounded and obscures a critically important policy discussion. It is especially important to have a clear analysis of servicer performance now that there are indications that HUD may soon start the DASP process again. An inaccurate view of servicer performance clouds the debate regarding the need for future sales and the risk of selling notes where the loan is still being processed through loss mitigation.

Sincerely,

Advocates for Basic Legal Equality  
Americans for Financial Reform Education Fund  
Community Legal Services of Philadelphia  
Connecticut Fair Housing Center  
Consumer Action  
Housing and Economic Rights Advocates (HERA)  
Legal Aid Society of Southwest Ohio  
Legal Aid Society of the District of Columbia  
Mobilization for Justice  
Mountain State Justice, Inc.  
National Consumer Law Center (on behalf of its low-income clients)  
National Fair Housing Alliance  
National Housing Law Project  
North Carolina Justice Center  
Ohio Poverty Law Center