



Using Auditing Concepts & Practices in Furtherance of Civil Sanctions in the Mortgage Industry

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Caveats

- Speaking primarily to Federal audience, but State and Local governments may have similar remedies
- Civil process is complex – only introducing concept
- Intent is to plant the seed
- Focusing on mortgage industry, but use concepts and practices in all other Dept. of HUD program areas



Audits vs. Civil Remedy Pursuits

- Performance & compliance audits – help governments identify and address problems; bring about positive change
- Positive change - many definitions
- Focus today:
 - Bringing funds back to Federal programs that were paid out under alleged false pretenses
 - Stop the bleeding



Audits vs. Civil Remedy Pursuits

- Division within HUD OIG conducts civil work, not traditional audits
- Division works with traditional audit teams
 - Pursue civil outcomes from audits
 - Pursue civil remedies, in lieu of audits



Audits vs. Civil Remedy Pursuits

- Division identifies potential subjects via risk assessments & data analysis
- Division “generally” establishes scope and methodology
- Audits normally do not seek damages and penalties, but civil efforts do
- Key component of civil cases is monetary outcome – making the government whole, and stop the bleeding



Key Statutes for Federal Civil Pursuits

- False Claims Act (FCA)
 - DOJ stands in agency's shoes – brings the case
 - False statement/claim made to the government
 - Subject knew claim was false
 - Government paid out when it should not have
 - However, actual payment not necessary to establish falsity
 - Up to treble damages, plus penalties



Key Statutes for Federal Civil Pursuits

- Program Fraud Civil Remedies Act (PFCRA)
 - “baby” False Claims Act – each claim not to exceed \$150,000
 - DOJ approves case, but Agency brings case (admin action)
 - False statement/claim made to the government
 - Subject knew claim was false
 - Express certification of truthfulness and accuracy of statement
 - Government paid out when it should not have
 - However, actual payment not necessary to establish falsity
 - Up to double damages, plus penalties



Department of HUD – Mortgage Program

- Federal Housing Administration (FHA)
 - Component of HUD
- Provides mortgage insurance to purchase or refinance a principal residence
- Mortgage loan funded by a lending institution
- Mortgage is insured against default by FHA



Department of HUD – Mortgage Program

- FHA-approved lenders certify to HUD annually to following HUD/FHA program rules
- FHA-approved lenders certify to HUD on each loan to following HUD/FHA underwriting rules on that loan
- Insurance protects lenders when borrowers default



Department of HUD – Mortgage Program

- Lenders file claims with HUD/FHA upon borrower default
- HUD/FHA pays the claim and related expenses
 - Relies on lender certifications that the claim (and related statements) made the loan eligible for FHA insurance and payment of the claim



HUD OIG Involvement

- Multiple mortgage cases (past and present) with DOJ Main Justice, U.S. Attorney's Offices, and HUD Office of General Counsel
- One key role in case – assist in 're-underwriting' loans
- If material deficiencies identified, loan may not have been insurable, and resulting claims may be deemed actionable



HUD OIG Involvement

- Between February 2012 and August 2014, for FCA cases:
 - Settlements of **\$13 Billion** in cash payments (primarily to government agencies)
 - FHA, VA, and conventional (not government-sponsored) loans
 - FHA loans represented **\$3.2 Billion** in these settlements
 - FHA cash infusion of **\$2.2 Billion** to the insurance fund
 - Some cases involve additional funds to help borrowers negatively affected



Moral of the Story

- Look beyond traditional audit recommendations
- Reach out to your agency's legal counsel & relevant prosecutors
- Learn what options you have for pursuing civil remedies or State/Local legal remedies
- Learn what is needed to make your civil case



Moral of the Story

- Collect the information
- Coordinate (early and often) with attorneys
- Warning:
 - Attorneys are in charge of this approach
 - Essentially dictate timing, scope, methodology, & resolutions





Questions?