



August 17, 2011

Mr. Mark Savitt
President and Chief Executive Officer
National Association of Independent Housing Professionals
601 Pennsylvania Ave., N.W.
South Building, Suite 900
Washington, D.C. 20004

Dear Mr. Savitt:

We appreciated the opportunity to meet with both you and Brian Benjamin of NAIHP on August 9. During the meeting, we agreed to send you a letter describing in greater detail the procedures and standards that the Federal Deposit Insurance Corporation ("FDIC") Professional Liability and Financial Crimes Section ("PL&FCS") uses in investigating and pursuing mortgage malpractice and mortgage fraud ("MMF") claims.

As we communicated to you during our meeting, the purpose of the FDIC's professional liability program is to hold accountable directors, officers, and professionals, including mortgage loan brokers, who through negligence, breach of contract, fraud, or otherwise, cause losses to financial institutions that later fail and are placed in FDIC receivership. On behalf of the FDIC in its receivership capacity, the Professional Liability Unit ("PLU") within PL&FCS and the Investigations Department of the FDIC's Division of Resolutions and Receiverships ("DRR") conduct an investigation of every failed financial institution but pursue professional liability claims only if they both are meritorious and expected to be cost-effective.

MMF claims are one of 11 areas of investigation that are undertaken for every failed bank or thrift. All professional liability investigations, including MMF investigations, are confidential until a lawsuit is filed. The number of professional liability lawsuits, including MMF lawsuits, is updated monthly on the FDIC's public website – fdic.gov/industry/analysis/failed_banks/professional_liability_lawsuits. As noted on the FDIC's website, currently FDIC has 172 mortgage malpractice and mortgage fraud lawsuits that are pending before various courts around the country.

Mortgage loan brokers are not singled out to be special targets of FDIC MMF claims. The facts of each fraud loan determine who the defendants may be and in the vast majority of bank failures no claims are identified. If a failed bank or thrift had a significant residential loan portfolio, or if the FDIC discovers or receives information about possible MMF claims, PLU and DRR will investigate the failed institution's mortgage loans. Where warranted, outside counsel is retained to assist in the investigation. The FDIC does not pay any of its MMF outside counsel on a contingency fee basis.

When an investigation of a failed institution's mortgage loans is initiated, an audit is conducted of mortgage loan files with significant losses and possible claims are identified. MMF claims that FDIC pursues include claims against appraisers, attorneys and/or closing agents, title companies and title insurance companies, and mortgage loan brokers. In the case of loan brokers, claims that are vigorously investigated and pursued are those for which there is substantial evidence that the broker breached its legal obligations, including aiding, abetting, or participating in falsifying a loan application. Most often this is done by misrepresenting the borrower's intention to occupy the residence as his or her primary residence, overstating the borrower's income, misrepresenting the borrower's employment, and concealing other debt that the borrower has while knowing that the lender subsequently will rely on the falsified application to approve a residential mortgage loan to the borrower. In accordance with the terms of the standard mortgage broker agreement that brokers often sign with lenders, the broker warrants that each loan application submitted to the lender for its approval satisfies all representations and warranties in the agreement. These "reps and warrants" include, most importantly, that no error, omission, misrepresentation, negligence, fraud or similar occurrence with respect to the mortgage loans has taken place by *any person* (including the borrower, appraiser, or any other person involved with the loan). If the lender concludes that a representation or warranty is inaccurate, the broker is contractually obligated to repurchase the loan or, failing to do so, to indemnify the lender for all loss incurred by the lender's reliance on the materially inaccurate information.

If the FDIC's audit reveals grounds for a meritorious claim, FDIC or its outside counsel communicates with the broker, sharing the findings of the audit, and providing an opportunity for the broker to supply additional information or an explanation of the audit findings. Once the broker's response and information are evaluated, if the claim continues to be meritorious, FDIC will seek to settle the claim with the broker without filing a lawsuit. If the claim cannot be settled pre-suit, PLU and DRR will request authority from delegated authority within the FDIC to file a lawsuit to pursue the claim. The FDIC seeks in every broker case to resolve a professional liability claim prior to filing a lawsuit.

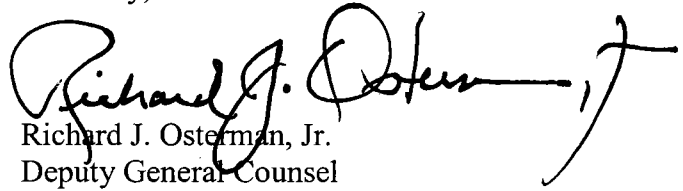
As you also are aware, the FDIC is not unique in its approach to MMF claims. Banks and other lenders with large residential mortgage loan portfolios typically have employees dedicated to investigating and resolving similar claims. Indeed, many of the MMF claims that the FDIC currently has in litigation were inherited from thrifts and banks when they failed. Inherited cases are reviewed and are not pursued if they fail to meet FDIC standards as meritorious and cost-effective.

If mortgage loan brokers have any questions about MMF claims in which they may be involved we suggest that they contact the FDIC attorney who is handling their case. If outside counsel is involved and can not provide sufficient information, the brokers can obtain the name of the FDIC oversight attorney who can address the issue or determine if the matter needs to be raised to a higher level within the agency for response.

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Thank you for your interest in the FDIC's professional liability program and for the opportunity to address the questions you have raised regarding our pursuit of mortgage malpractice and mortgage fraud claims.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard J. Osterman, Jr.", with a stylized flourish at the end.

Richard J. Osterman, Jr.
Deputy General Counsel
Litigation and Resolutions Branch