

3. Actual false statements about when and how a loan has been transferred since its origination.
4. False identification of signatory.
5. Forged signatures.
6. Execution outside the presence of a notary, who nevertheless notarizes the signature.

On a national scale these kinds of irregularities in preparation of documents to support mortgage foreclosures manifested themselves in a practice that became known as “robo-signing,” where a person would sign hundreds of affidavits or certifications a day with no personal knowledge of the contents of any of them. In many instances the underlying facts asserted in the documents submitted to support foreclosures may have actually been true but because of the false representations concerning the process by which the documents were created, there was no way for courts to be able to separate assertions that were accurate from those that were not.

If each uncontested mortgage foreclosure were to be heard by a judge with the presentation of oral testimony, the judge could cross-examine the witnesses to determine the reliability and veracity of testimony presented. However, uncontested foreclosures represent over 90% of all residential mortgage foreclosure proceedings pending in New Jersey and presentation of oral testimony is not a sensible or practical way to resolve the thousands of foreclosures filed every year. Therefore courts have traditionally relied upon the truthfulness of affidavits or certifications submitted to support a mortgagee’s request for a judgment of foreclosure. When confidence in the reliability of such submissions is lost, the court must be persuaded by the mortgagee that it has processes and procedures in place that will restore the necessary confidence to justify the court’s reliance on documents submitted.

Toward that end, on December 20, 2010, General Equity Judge Mary C. Jacobson, designated by the Chief Justice to oversee uncontested foreclosure cases in the State, entered an Order to Show Cause directed at: Bank of America, d/b/a BAC Home Loan Servicing, LP; Citibank, N.A. and Citi Residential Lending, Inc.; GMAC Mortgage, LLC; JPMorgan Chase Bank, N.A. and Chase Home Finance LLC; OneWest Bank, FSB; and Wells Fargo Bank, N.A. (collectively, "Respondents") requiring each to show cause why the processing of pending uncontested residential mortgage foreclosure actions filed by them should not be suspended. While the Order to Show Cause did not order an immediate suspension of foreclosure processing for the Respondents, *de facto* there has been such a suspension, either because Respondents or some of them had earlier ceased processing foreclosures in New Jersey on their own while attempting to address the "robo-signing" issue or because the effect of the Rule Amendments, as worded in the December 20th emergency revisions, was to make it impractical or unfeasible for Respondents to pursue foreclosures.

The six Respondents were selected specifically for the Order to Show Cause for two reasons. First, the six Respondents account for a large majority of the foreclosure actions in the New Jersey courts. Any Judiciary-wide correction of the "robo-signing" issue in the State of New Jersey must logically begin with these six Respondents. Second, the six Respondents were selected for inclusion in the Order to Show Cause because there has been deposition testimony and/or other materials forming a public record in various jurisdictions across the United States indicating that each of the six Respondents has encountered "robo-signing" problems concerning their foreclosures in the past.

In response to the Order to Show Cause, Respondents and court appointed counsel entered into discussions resulting in a Consent Order. That Order appointed a Special Master

charged with responsibility to conduct a review to determine whether each of the respective service providers has processes and procedures in place which, if adhered to, will ensure that the information set forth in affidavits/certifications submitted in foreclosure proceedings is personally reviewed by an affiant authorized to act on behalf of the plaintiff in the foreclosure action and that each affidavit or certification submitted is properly executed and is based upon knowledge gained through a personal review of relevant records which are made in the regular course of business as part of the regular practice of that business to make them. The review also contemplated a process to verify that the respective servicers are, in fact, adhering to those processes and procedures following the resumption of residential mortgage foreclosure activities in New Jersey.

While there has also been much public discussion and litigation concerning complex issues relating to the standing of mortgagees and loan servicers to foreclose, including issues flowing from the securitization of mortgages, assignments of mortgages, and the utilization of Mortgage Electronic Registration Systems, Inc. ("MERS"), these broad issues of standing, assignments, and MERS, though important, are beyond the scope of the Special Master's charge. The focus of the Consent Order entered by Judge Jacobson is on Respondents' business practices and procedures that generate the sworn documents that are submitted to the Judiciary in support of final judgments and other relief requested in uncontested foreclosure cases. Nothing in this report is intended, nor should be construed in any way, to prejudice or comment on issues concerning a plaintiff's standing to foreclose in any individual case.

THE REVIEW PROCESS

The review by the Special Master is systems oriented and not intended to deal with individual pending cases, although selected individual cases may be reviewed as part of the process. The first phase of the review process, involving an examination of the respondents' business practices, required that each respective servicer make a prima facie showing that it has processes and procedures in place which, if adhered to, will assure the Judiciary that it can rely on the veracity of representations contained in documents filed by the servicer. Upon a determination that such a showing had been made the Judiciary would resume processing uncontested foreclosure cases filed by the servicer. The second phase, to be commenced later, will involve a monitoring process to ensure that the servicers' processes and procedures are effective and, in fact, are being followed.

In determining whether a respondent had made the requisite prima facie showing, the inquiry focused on three major areas:

1. Respondent's authority to pursue the foreclosure proceeding.
2. The evidential admissibility of data from Respondent's records.
3. The reliability of Respondent's document preparation and execution process.

As part of the inquiry in the first phase of this work, each Respondent was directed to respond to the following requests for information about its business processes:

(a) If the Respondent is acting on behalf of a mortgagee, but is not the mortgagee itself, provide examples of the source of the Respondent's authority to act, including providing representative samples of documentation evidencing the authority to act on behalf of mortgagees;

(b) Does the Respondent have a record keeping system of Business Records that provides accurate up to date information on the payment history and status of the loan? If so, describe the system;

(c) Describe the Respondent's case processing steps for the review of information contained in, and the execution of, affidavits/certifications submitted in support of foreclosure proceedings;

(d) Has the Respondent established specific procedures for staff to ensure that the information set forth in affidavits/certifications submitted in foreclosure proceedings is based on a personal review of Business Records? If so:

- (i) Describe the procedures;
- (ii) Produce all documents evidencing establishment of the procedures;
- (iii) Produce samples of all documents or screens reviewed by staff in the affidavit/certification of indebtedness process; and
- (iv) Provide the numerical range and average of how much time is spent per loan to review the Respondent's business records and complete an affidavit/certification of indebtedness.

(e) Has the Respondent implemented a training program for its staff to review relevant Business Records and source documents and complete foreclosure affidavits/certifications based on a personal review of such materials? If so:

- (i) Describe the program;
- (ii) Produce copies of all written materials used and screen samples from any powerpoint or other presentations; and
- (iii) Produce a statement that all staff who are preparing affidavits/certifications have received this training.

(f) Has the Respondent established quality assurance procedures to insure that the established procedures for review of relevant source documents and completion of foreclosure affidavits/ certifications based on a personal review of Business Records are followed in each case? If so:

- (i) Describe the procedures; and
- (ii) Produce copies of all documents evidencing establishment of quality assurance procedures.

(g) Does the Respondent have a process for insuring effective and timely communication with foreclosure counsel in connection with the completion and execution of foreclosure affidavits/certifications? If so:

- (i) Describe the process; and
- (ii) Describe the procedures that will enable foreclosure counsel to comply with their duties concerning the completion and execution of

foreclosure affidavits/certifications, under the Court Rules as they are finally adopted by the New Jersey Supreme Court.

After reviewing the documentation submitted, the Special Master and counsel to the Special Master conducted follow-up telephone conferences on a number of occasions with representatives of each respondent to obtain further explanation and clarification of the materials submitted and to request supplemental information. Each respondent provided the clarification, explanation, and supplemental information by way of at least one supplemental certification. If further clarification or supplemental information was required, this was communicated to the respondent through counsel and additional certifications were submitted.

FINDINGS

The initial Prima Facie submission¹ of Citibank, N.A. and Citi Residential Lending, Inc. was accompanied by the certification of Steven M. Smith, Managing Director and head of Default Servicing at CitiMortgage, Inc. In his initial certification, Mr. Smith provided: a description of the Citi entities' information systems of record; a description of the Citi entities' foreclosure referral process; details as to Respondent's authority to foreclose in various scenarios; a description of the foreclosure document review and execution process; details about the training foreclosure employees receive; and a description of the Citi entities' quality assurance procedures concerning sworn documents in foreclosure cases. Mr. Smith's initial certification also was supported by eleven exhibits, which included: copies of two sample pooling and servicing agreements in which CitiMortgage is the servicer; the training materials used for foreclosure document reviewers and signers; copies of Respondent's policy materials concerning foreclosure affidavit review and

¹ The entire Citibank submission has been posted on the Judiciary website at http://www.judiciary.state.nj.us/superior/f_59553_10.htm.

execution; five sample certifications of proof of amount due that have been submitted in uncontested New Jersey foreclosures, along with the source documents verifying the information contained in the certifications; and Respondent's quality control monitoring policies.

Thereafter a supplemental certification from Mr. Smith was submitted, providing: greater detail on CitiMortgage's authority to service loans owned by other Citi-related entities; information on Citi's quality control process for loan files it has acquired from other parties through merger or acquisition; further details on the currency of the information in Respondent's system of record; clarification as to the role of third parties in the document review and execution process; details on the Citi entities' oversight and monitoring of outside foreclosure counsel. Mr. Smith's supplement certification also contained twenty exhibits, which included: agreements concerning CitiMortgage's authority to service loans owned by other Citi-related entities; examples of screenshots from Respondent's system of record; and additional training materials.

Finally, Citi submitted a certification from Robin Kramer, Senior Vice President of Default Servicing at CitiMortgage, Inc. Ms. Kramer's certification provided details on Citibank's intended procedures for ensuring foreclosure counsel's compliance with the June 9, 2011 amendments to Rules 4:64-1 and 4:64-2.

The certifications described above pertained to all foreclosures in which Citigroup Inc. is the servicer. CitiMortgage acts as the servicer for all loans originated by affiliates of Citigroup, Inc., which includes Citibank, N.A., CitiResidential Lending, Inc., CitiFinancial, Inc. and CitiMortgage itself (all such affiliates collectively referred to as "Citi"). Citibank is the servicer on approximately 3600 loans that are the subject of pending foreclosure proceedings in New Jersey.

RESPONDENT'S AUTHORITY TO PURSUE FORECLOSURE PROCEEDINGS

The first element of proof in any type of case is to establish that the party initiating the proceeding has authority to ask the court for relief. Respondent is involved herein in its capacity as a mortgage loan servicer. In some foreclosure cases initiated by Respondent it may be servicing its own mortgage loan. But in other cases it may be servicing the mortgage loan of a Citi affiliate or an independent party. For that reason the inquiry began with an examination of respondent's authority to pursue foreclosure proceedings under the various circumstances in which it appears before the court.

There are three types of situations in which CitiMortgage acts as the primary servicer. Either (1) CitiMortgage is the original mortgagee and continues to be the mortgagee at the time the foreclosure action is instituted, (2) CitiMortgage was assigned the mortgage prior to institution of the foreclosure action, or (3) CitiMortgage was given authority to act on behalf of the mortgagee in the foreclosure action through a servicing agreement.

In the first two circumstances CitiMortgage's authority to pursue foreclosure proceedings will be evidenced by documents filed in the proceedings. In the case of mortgage loans originated by a Citi affiliate, CitiMortgage will act, either pursuant to a servicing agreement by which the Citi affiliate transfers all servicing responsibilities to CitiMortgage, or through the use of corporate resolutions authorizing CitiMortgage to execute documents on behalf of the respective affiliate.

In the case of mortgage loans serviced for a Government Sponsored Enterprise (GSE), Citi will derive its authority from a servicing agreement that incorporates published guidelines of the GSE. Page 801-3 of the Fannie Mae 2010 Servicing Guide Update Part VII and Part VIII, dated

April 2010,² requires servicers generally to initiate “foreclosure proceedings for a first mortgage loan...30 to 34 days after an acceleration or breach letter is sent upon the completion of the pre-referral account review and after any applicable notice and waiting period under state law is met. The Servicing Guide also provides: “A servicer must process foreclosures, conveyances, and claims in accordance with the provisions of the mortgage loan; state law; the requirements of FHA, HUD, VA, RD, or the mortgage insurer; and any special requirements that Fannie Mae may have.” Freddie Mac’s Single-Family Seller/Servicer Guide at Section 66-1 provides that “the Servicer must initiate foreclosure in accordance with this chapter when there is no viable alternative to foreclosure.” The Guide also requires the Servicer to manage the foreclosure process to acquire title to the property in a cost-effective and efficient manner. Freddie Mac’s Single-Family Seller/Servicer Guide at Section 66-1 provides that “the Servicer must initiate foreclosure in accordance with this chapter when there is no viable alternative to foreclosure.” The Guide also requires the Servicer to manage the foreclosure process to acquire title to the property in a cost-effective and efficient manner. Because Fannie Mae and Freddie Mac usually require that foreclosure proceedings be initiated in the name of the servicer the mortgage will be assigned to Citi immediately prior to institution of the foreclosure action and Citi will also obtain possession of the note prior to initiating the proceeding. Thus its authority to prosecute the foreclosure action is also grounded in the fact that it is the assignee of the mortgage and holder of the note.

With regard to servicing mortgage loans for non-GSEs, Citi has submitted two sample Pooling and Servicing Agreements. In relevant part the Agreements provide that “CitiMortgage will use its best efforts, consistent with its customary servicing procedures, to foreclose upon or

² The Fannie Mae 2010 Servicing Guide Update Part VII and Part VIII is available at <https://www.efanniemae.com/sf/guides/ssg/svcg/svc042810.pdf>.

otherwise comparably convert the ownership of properties securing any mortgage loans that continue in default..." and that "The Trustee will furnish CitiMortgage with any powers of attorney and other documents reasonably necessary or appropriate, and will take any other actions that CitiMortgage reasonably requests, to enable CitiMortgage to carry out its servicing duties." The agreements further provide:

For the servicing or foreclosure of any mortgage loan, including collection under a primary mortgage insurance policy, the Trustee will, upon CitiMortgage's request and its delivery to the Trustee of a receipt signed by a Servicing Officer, direct the Mortgage Note Custodian to release the related mortgage note to CitiMortgage. The Trustee will execute such documents furnished it as are necessary to the prosecution of any such proceedings.

CitiMortgage may, however, undertake any such action it deems desirable to enforce or secure the rights and duties of the parties of the interest of the certificate holders.

Respondent has certified that the categories cited accurately describe the types of cases it has filed with the court in its capacity as a mortgage loan servicer. It has also certified that the examples submitted are representative of its source of authority to prosecute foreclosure proceedings in such cases. For the purposes of this review, Respondent's submission meets the standard of a Prima Facie showing that it has authority to ask the court for relief in the foreclosure proceedings within its portfolio.

ADMISSIBILITY OF DATA FROM RESPONDENT'S RECORDS

An essential element of proof in a foreclosure case is the existence of a note and mortgage and a default on the part of the mortgagor. Most typically the claim of default is based on allegations of non-payment of amounts due on the note. To prove that fact the servicer of the mortgage will usually offer proof in the form of a statement of account produced from its records.

Such evidence is classified as “hearsay” under our Rules of Evidence. “Hearsay” evidence is considered inherently unreliable and is therefore generally inadmissible in court proceedings. There are exceptions to this rule, however, where circumstances warrant considering “hearsay” evidence as reliable. Evidence Rule 803(c)(6) is one of those exceptions, providing for admissibility of data from business records under the following circumstances:

Records of regularly conducted activity. A statement contained in a writing or other record of acts, events, conditions, and, subject to Rule 808, opinions or diagnoses, made at or near the time of observation by a person with actual knowledge or from information supplied by such a person, if the writing or other record was made in the regular course of business and it was the regular practice of that business to make it, unless the sources of information or the method, purpose or circumstances of preparation indicate that it is not trustworthy.

This inquiry has therefore focused on how Respondent maintains the data that it offers as evidence to support its requests for judgments of foreclosure.

Citi relies upon four systems for information storage and communication of data: (1) “CitiLink,” a proprietary database of information relating to the origination, payment, and interest of mortgage loans; (2) “Maestro,” another proprietary database of information relating to the origination, payment, and interest of mortgage loans; (3) “DRI,” a “case management, communications, and record keeping software system,” which receives information from CitiLink and Maestro through a “live feed” and “presents it in a user-friendly and functional manner;” and (4) “FileNet,” a software system that contains images of mortgage loan documents, such as the note, and makes those images available for viewing and printing.

CitiLink and Maestro are the two primary databases used in the regular course of business that contain critical data concerning mortgage loans serviced by Citi. FileNet is an imaging system, Where the mortgage loan was originated by a Citi-related entity, mortgage loan data is

entered into either CitiLink or Maestro via a feed from CitiMortgage's or CitiFinancial's proprietary loan processing and underwriting software systems, and images of the mortgage loan documents are scanned into File Net. Where the mortgage loan was not originated by a Citi entity, the mortgage loan data is fed into CitiLink and images of mortgage loan documents are entered into FileNet by "electronic interface" from the entity possessing the loan data and documents; or if electronic interface is not available, then mortgage loan data is input into CitiLink and images of mortgage loan documents are scanned into FileNet manually.

For mortgage loans purchased by Citi that were originated by a third party, Citi conducts a review to confirm that the information it receives is accurate and complete. Citi's Data Analysis Department confirms that the financial package received contains all critical documents and necessary data, including the value of the loan, payment history, borrower information and adjustable loan features. After the data is entered into Citi's system, the Pre-Purchase review team checks the accuracy of all critical data against the loan documents in the financial package. Then a quality control review is conducted of a sampling of loans previously reviewed by the Pre-Purchase team. For sellers of loans who have been pre-approved by Citi an E-Purchase process is used. For loans purchased through this process, sellers submit all critical documents to Citi prior to purchase and data is entered electronically into Citi's system. Within fifteen days of the purchase of the loan, the seller sends a complete financial package for each loan. Citi's Post-Purchase review team then compares all critical data in the system against the loan documents in the financial package for accuracy. This is followed by a quality control review process. In addition Citi uses a standard contract for the purchase of loans that contains representations and warranties from the seller that the information contained in the documentation for each loan

does not contain any misrepresentation or untrue statement of fact or omission of a fact necessary to make the information not misleading.

After information is initially entered for all loans serviced by Citi, updated information, such as a name change, is inputted into CitiLink or Maestro at the time Citi is notified of the information. Payment information is updated on a contemporaneous basis primarily through automated processes. Typically, borrowers send payment checks with tracking tags provided by Citi. The tag and the check are electronically read and payment is applied to the correct account based on the tag information. This payment information is automatically loaded into CitiLink or Maestro. Other methods of payment also automatically feed into CitiLink or Maestro: for example, web and phone payments result in an electronic transfer of the payment information into CitiLink or Maestro. When the automated systems cannot find the account associated with a payment, payment information must be manually entered into the system. This will be done within 24 to 48 hours of receipt of the payment.

In order for information contained in the electronic record keeping system to be admitted in evidence the record has to be made at or near the time of observation by a person with actual knowledge, or from information supplied by such a person, and must be made in the regular course of business as part of a regular practice of that business to make the record. The information in the electronic record keeping system will then be admissible unless the sources of information or the method, purposes, or circumstances of preparation indicate that it is not trustworthy.

For the purposes of this review, Citi has met the standard of a Prima Facie showing that data in its record keeping system is entered at or near the time of the transaction recorded as a part of a regular practice to make such records and that there is nothing in the sources of

information or the method, purposes or circumstances of preparation to indicate that the data is not trustworthy.

THE RELIABILITY OF RESPONDENT'S DOCUMENT PREPARATION AND EXECUTION PROCESS

Citi's training of affiants, consists of an annual program "emphasizing that an affidavit is the legal equivalent of swearing to personal knowledge of the information in the affidavit and the importance of verifying each piece of information contained in an affidavit against relevant business records." The training materials consist of a general description of the nature of an affidavit and its requirements: specifically, that the document is a sworn statement made on personal knowledge. The materials emphasize that the affiant must review all business records prior to signing an affidavit and that, if notarization is required, the affidavit must be signed in the presence of the notary public. The materials instruct affiants that in the event of any doubt or question, they should not sign the affidavit but should bring the document to a supervisor. The trainee participates in an 8-question multiple choice "Knowledge Check" at the end of the presentation. Citi requires its affiants to review the training materials online annually and to certify each year as to their completion of the course and understanding of the materials. Citi does not use third-party vendors in its document review and execution process. Under the New Jersey Rules of Court, the Judiciary accepts unnotarized certifications in lieu of notarized affidavits and thus the vast majority of sworn documents submitted in New Jersey foreclosure cases are not notarized. However, Citi's employees are trained about the notarization process, the necessity for personal

appearance before the notary, and the importance of notarization in states where the process is required and for those instances in which notarization may be needed in New Jersey as well.

Citi's document execution process goes through three steps: (1) the Pre-foreclosure Unit reviews loans to determine whether foreclosure is appropriate and provides information to foreclosure counsel; (2) the Document Execution Unit verifies the information on the Affidavits of Indebtedness or their New Jersey equivalent ("AOIs") and executes same; and (3) the Quality Assurance Unit reviews the performance of the Document Execution Unit.

When Citi's Pre-foreclosure unit determines that foreclosure is appropriate it will gather supporting documentation and data relating to the mortgage loan and transmit it to the foreclosure law firm. The transmission will include the note and mortgage, information concerning assignments of the mortgage, borrower's indebtedness, and information sufficient to run bankruptcy and military status checks. Citi has a policy that requires that it physically possess the note prior to the commencement of a foreclosure action. To implement this policy a Document Control Officer ("DCO") will review a screen in the CitiLink system utilized for document tracking. The screen contains a code reflecting whether the original note is in Citi's collateral file. If the note is not in the file, it will be obtained and once that fact is confirmed the foreclosure action may be commenced.

Once a mortgage loan has been referred to foreclosure counsel, (unless a mitigation or loan modification program is thereafter agreed to by Citi and the borrower), Citi will cease accepting any payment for less than the full delinquent

amount necessary to bring the loan current. Any such partial payment will be remitted to the borrower. If a loan modification program is agreed to, the foreclosure process will be halted.

Citi communicates with its foreclosure counsel through Vendorscape Service Gateway ("Vendorscape"), a web-based function that permits communication of messages, information and documents between Citi and its foreclosure counsel across the country, including communications regarding foreclosure affidavits. Outside foreclosure counsel drafts the foreclosure AOIs based on the data and documents provided by Citi. Counsel projects expected judgment date ranges to use for purposes of the information in the affidavit/certification. Foreclosure counsel then submits the draft AOI to Citi's Document Execution Unit for verification and execution, either via email to an email address monitored by CoreLogic, a vendor retained by Citi, or by uploading it to Vendorscape.

If the draft AOIs are transmitted by email to the address monitored by CoreLogic, CoreLogic prints the draft AOI with exhibits and delivers it to a DCO in Citi's Document Execution unit for review and execution as subsequently described. After the AOI is executed, a Citi employee returns the executed AOI to CoreLogic, who then forwards it to the foreclosure attorney for filing. Citi has certified that CoreLogic has no other role or involvement in the document review or execution process.

A DCO will receive documents from either CoreLogic or directly via Vendorscape. The DCO will review the draft documents with exhibits and verify them against Citi's business records, including CitiLink, Maestro, DRI and/or FileNet. The DCO will confirm the mortgagor's name, the property address, the default date,

defendant's military status, the property occupancy status, principal and interest amount due, to verify that all this information is current. If the information in the AOI is incorrect or missing, the DCO either corrects it with available information or rejects it. The DCO is instructed then to review the AOI carefully to verify all facts and only to sign the affidavit if it is complete, fact-checked by the signor, and has all attachments affixed at the time of signing. The executed AOI is then sent to foreclosure counsel for submission to the court.

For Citi and CoreLogic employees who are determined to require access to CitiLink, a user name and password are generated for the employee to log into the system. The security code associated with each unique user name restricts the employee's access to the information on CitiLink necessary for the employee to perform his or her particular job function. Neither Citi DCOs nor CoreLogic employees are able to add or subtract fees in CitiLink without the approval of Accounting and/or Finance units within Citi. When changes to a borrower's demographic information must be made in CitiLink, a customer service case is opened within CitiLink and that case number is assigned to Citi's Customer Service group to review and input any changes.

The Quality Assurance unit reviews the performance of the Document Execution unit. Each day, samples of affidavits and supporting documentation are collected from each DCO after they have been executed. Every week, at least four samples per day from each DCO are reviewed by an auditor for quality assurance purposes. The Quality Assurance auditor follows the same procedures that the DCO utilized in verifying the AOI prior to execution. The auditor compares the information in the AOI to the information in Citi's databases and verifies all of the same information that the affiant

did, such as the mortgagor's name, the property address, the default date, defendant's military status, the property occupancy status, principal and interest amount due, and that all this information is current. The auditor then determines if the affidavit appears to have been properly signed and, if applicable, notarized.

The auditor also reviews entries on the Vendorscape platform for errors in the records that DCOs are required to create as they perform their review of AOI files. The auditor also checks to make sure the DCO uploaded the correct draft of the AOI into Vendorscape. If necessary, steps to resolve any issue with the executed affidavit are discussed with foreclosure counsel and/or Citi legal personnel and are also reflected in the audit log.

For the purposes of this review, the process described by Respondent's submissions meets the standard of a Prima Facie showing that each certification submitted to the court is reviewed and executed by an authorized person who has been trained in how to understand Respondent's business records and source documents and who has personal knowledge of the content of the relevant records and documents upon which the certification is based. Respondent has also shown, on a Prima Facie basis, that it has a training process and a post-certification review process to ensure that its established procedures are in fact followed. The process described in these submissions, if followed, could justify reliance by the court on the accuracy of the information contained in certifications submitted to the court by the Respondent. This conclusion should not be deemed as dispositive of issues in any individual foreclosure case, each of which must be determined upon its own facts and record.

RESPONDENT'S OVERSIGHT AND COMMUNICATION WITH COUNSEL

During the period of this review the New Jersey Supreme Court adopted further amendments to Rules 4:64-1 and 4:64-2. The pertinent part of revised Rule 4:61-4 provides,

In all residential foreclosure actions, plaintiff's attorney shall annex to the complaint a certification of diligent inquiry:

(A) confirming that the attorney has communicated with an employee or employees of the plaintiff or of the plaintiff's mortgage loan servicer (i) who personally reviewed the complaint and confirmed the accuracy of its content, as mandated by paragraphs (b)(1) through (b)(10) and (b)(12) through (b)(13) of this rule, based on business records kept in the regular course of business by the plaintiff or the plaintiff's mortgage loan servicer, and (ii) who, if employed by the plaintiff's mortgage loan servicer, (a) identified the relationship between the mortgage loan servicer and the plaintiff, and (b) confirmed the authority of the mortgage loan servicer to act on behalf of the plaintiff; and

(B) stating the date and mode of communication employed and the name(s), title(s) and responsibilities in those titles of the plaintiff's or plaintiff's mortgage loan servicer's employee(s) with whom the attorney communicated pursuant to paragraph (2)(A) of this rule.

The revised Rule 4:64-2 now provides in relevant part:

(c) Time; signatory. The affidavit prescribed by this rule shall be sworn to not more than 60 days prior to its presentation to the court or the Office of Foreclosure. The affidavit shall be made either by an employee of the plaintiff, if the plaintiff services the mortgage, on the affiant's knowledge of the plaintiff's business records kept in the regular course of business, or by an employee of the plaintiff's mortgage loan servicer, on the affiant's knowledge of the mortgage loan servicer's business records kept in the regular course of business. In the affidavit the affiant shall confirm:

(1) that he or she is authorized to make the affidavit on behalf of the plaintiff or the plaintiff's mortgage loan servicer;

(2) that the affidavit is made based on a personal review of business records of the plaintiff or the plaintiff's mortgage loan servicer, which records are maintained in the regular course of business;

(3) that the financial information contained in the affidavit is accurate; and

(4) that the default remains uncured.

The affidavit shall also include the name, title, and responsibilities of the individual, and the name of his or her employer. If the employer is not the named plaintiff in the action, the affidavit shall provide a description of the relationship between the plaintiff and the employer.

(d) Affidavit. Plaintiff's counsel shall annex to every motion to enter judgment in a residential mortgage foreclosure action an affidavit of diligent inquiry stating: (1) that the attorney has communicated with an employee or employees of the plaintiff or the plaintiff's mortgage loan servicer who (A) personally reviewed the affidavit of amount due and the original or true copy of the note, mortgage and recorded assignments, if any, being submitted and (B) confirmed their accuracy; (2) the date and mode of communication employed; (3) the name(s), title(s) and responsibilities in those titles of the plaintiff's employee(s) or the employee(s) of the plaintiff's mortgage loan servicer with whom the attorney communicated pursuant to this rule; and (4) that the aforesaid documents comport with the requirements of R. 1:4-8(a).

The revisions to the Rules require an examination of Respondent's procedures for oversight and communication with foreclosure counsel. In March 2011, Citi implemented a supervisory review process for law firms it has retained to do foreclosure work. Citi requires each of its foreclosure law firms to complete a Supervisory Visit Questionnaire that provides information concerning the firm's foreclosure processes. Thereafter a team of Citi personnel will conduct a two-day supervisory visit interviewing senior management and personnel of the firm and conducting a review of the firm's processes for preparing foreclosure documentation in order to ensure it is consistent with Citi's Law Firm Work Standards, the firm's policies and procedures, and applicable statutes, rules and regulations. Law firms dealing with more than 200 foreclosures a year will receive two annual visits. Firms that process between 20 and 199 foreclosures in a year will receive one visit. Firms handling smaller numbers of cases will be supervised on a case-by-case basis. All law firms will receive a rating based on the visits. A firm's rating may impact the number of future referrals or whether Citi's Law Firm Management and Supervisory Review Committee will certify the firm to process foreclosures in the future. All law firms must receive a certification by the Review Committee at least once a year.

As previously noted the primary method of ongoing communication with foreclosure counsel is through the use of Vendorscape. In addition, a member of the CitiMortgage Foreclosure Processing Group is assigned to each account that has been referred to foreclosure counsel. Foreclosure counsel is provided with the contact information for this employee and can speak to him or her directly as foreclosure counsel deems necessary.

With respect to the June 9, 2011 amendments to Rules 4:64-1 and 4:64-2, Citi has described how it intends to provide information to its New Jersey foreclosure law firms in support of the law firms' compliance with the new Rules. For both the certification of diligent inquiry required by Rule 4:64-1(a)(2) and the affidavit of diligent inquiry required by Rule 4:64-2(d), foreclosure counsel will send a copy of the draft complaint or AOI to Citi's Document Execution unit through either CoreLogic or Vendorscape. A Citi DCO will review the draft complaint or AOI and confirm that the information contained therein is accurate. In the case of AOIs, the DCO will then execute the document. The DCO will also complete a dated memorandum which will include the following information, if true: (a) the DCO's name, title responsibilities, and that the DCO is an employee of Citi; (b) that Citi is the mortgage loan servicer for the plaintiff in the foreclosure action; and (c) that the DCO has personally reviewed the complaint or AOI and the underlying note, mortgage, and recorded assignments, if any, and confirmed their accuracy. The DCO will then send the complaint or executed AOI, along with the completed memorandum, back to foreclosure counsel via Vendorscape.

Once the memorandum and complaint or AOI are sent through Vendorscape, the DCO will personally send directly to the law firm an email providing the contact information for the DCO who reviewed the documents and completed the memorandum. The DCO will then be available

for foreclosure counsel to initiate real-time communication with the DCO under the amended Rules.

PROPOSED DETERMINATION

Based on the submissions discussed herein it is my proposed determination that Citi has shown, on a Prima Facie basis, that it has processes and procedures in place which, if adhered to, will ensure that the information set forth in affidavits or certifications submitted in foreclosure proceedings is provided by an affiant authorized to act on behalf of the plaintiff in the action and that each affidavit or certification submitted is properly executed and is based upon knowledge gained through a personal review of relevant records which were made in the regular course of business as part of Citi's regular practice to make such records. Citi has filed the required Service Portfolio with the court and has certified that all uncontested mortgage foreclosure cases in that portfolio will be prosecuted under the processes outlined in its Prima Facie showing. Therefore it is my recommendation that Citi be permitted to resume prosecution of the uncontested residential mortgage foreclosure proceedings included in its Servicer Portfolio.

Consistent with paragraph 3 of the Court's March 29, 2011 Order Approving the Recommended Stipulation and Appointing Special Master in this case, nothing in this report and recommendation should be construed as altering or interfering with the right of any party to a foreclosure action to contest the foreclosure in any way that party sees fit, nor altering or interfering with the discretion of any Superior Court Judge of the State of New Jersey to adjudicate all issues raised by the parties in contested foreclosure matters.

Respectfully submitted,

Richard J. Williams
Special Master