

Mortgage Servicing: Takeaways from Interview with Source at FHA; A Close Look at FHA Certification Process for HUD Auction

Conclusion

On November 19th, the FHA's [Office of Asset Sales](#) will conduct the latest round of auctions of defaulted FHA-held mortgage notes. Bidders are likely to include investment companies tied to specialty mortgage servicers implicated in a host of problems with financial regulators related to their efficiency and fitness at servicing mortgages—for example, it has been [reported](#) that Altisource Residential, a company affiliated with Ocwen, was a losing bidder in an auction in June. These regulatory problems could jeopardize the companies' ability to bid at the auction: As part of the qualification process, potential bidders must attest to a number of questions on the qualification statement, including inquiries about regulatory risks.

As explained below, potential bidders must disclose past and ongoing regulatory sanctions including debarments and suspensions; agreements to pay penalties; federal and state enforcement actions; or investigations related to federal lending laws. While none of these factors serves as a *per se* bar to being qualified to bid on the distressed assets, they present opportunities for the bid reviewers at FHA's Office of Asset Sales to scrutinize the bidders for their regulatory risk and fitness to deal with such a pool of high-touch mortgages. Key points for stakeholders to consider include:

- **Some Risk, But FHA Reluctant.** The auction is a sealed-bid process, and FHA does not identify the bidders until the bidders are final and ranked. If they are participating, Altisource and other mortgage companies (including Nationstar and Walter Investment Management) that are currently receiving regulatory scrutiny are likely to be at some risk of not qualifying for the auction, although FHA seems reluctant to prohibit bidders from participating in auctions unless they are clearly barred from doing mortgage business by state or federal authorities. Each FHA review is fact-specific, but our investigation found two main risks facing Altisource in its efforts to qualify for future HUD auctions.
- **Takeaways from Interview with FHA Source.** The primary risk is that Ocwen's ongoing regulatory scrutiny and litigation issues are, according to our source, "very interesting" and are "bigger and more of a pattern" than those at companies that have qualified despite examples of litigation with individual borrowers.
- **A Closer Look at Qualification Criteria.** Another risk is that qualification criteria for the auction means that Altisource's arms-length business affiliates would be part of the review.

Key Points

Mass problems in mortgage servicing present a pattern of issues that attract additional attention from FHA. *The Capitol Forum* recently spoke with a source within FHA who would only discuss on background the bidder review process. The source explained that FHA goes through a qualification process with bidders where the bidder must demonstrate interest in an area of the country to bid for, as well as experience in dealing with those assets and property management. Each bid is for an individual regional asset pool, and a bidder must execute a qualification statement for the specific jurisdiction in which the Sales pool is located. The staff of the Office of Asset Sales, in conjunction with the HUD front office, then conducts a review for qualifications. Our source explained that staff

at the Office of Asset Sales reviews the bidders' stories of experience in the mortgage business and "want to make sure that the stories make sense." If that is not the case, the Office of Asset Sales staff can ask for clarification and pose follow-up questions.

The Office of Asset Sales also requires that if any bidder has been debarred from contracting or from mortgage or real estate related work, the bidder will then need to clarify why it should not be disqualified from bidding on the current asset pool. The source indicated that debarments in one locality can be relevant on a broader level: "If we thought somebody was barred from doing real estate transactions in Indiana, would we really want them to be qualified from doing them in Georgia?" The source further explained that there is generally no "bright line" for barring bidders from the auction, and the determination will be based on a review of the facts.

If there was a suspension or sanction related to mortgage business at the state level, the office will look into what the nature of the suspension or sanction was. Our source explained that, as part of this review, bidders generally are supposed to be as transparent as possible about any legal issues; for example, there have been cases in which a bidder was involved in litigation with an individual borrower, but this individual litigation did not disqualify the bidder. However, the source added that a servicer like Ocwen, who had potential issues with backdating documents en masse, would be on "a different level, something bigger, and more of a pattern." The source added that it would present "very interesting issues" in light of the disclosure requirements. Overall, the FHA source made it clear that the analysis behind the qualification process would be highly fact-specific.

The qualification criteria are written broadly enough to require answers regarding problems with related companies. Among the qualifying factors, the Qualification Statement lists a number of regulatory/law enforcement risk factors such as "debarment, suspension or exclusion," which bidders must verify that they do not meet. Those who cannot do so must "describe and explain in an attached document not to exceed one page the [sanction] and any extenuating circumstances or other information that may render such [sanction] immaterial for the purposes of qualifying for the Sale." Bidders must certify that they are not:

- "c. an individual or entity that is currently debarred, suspended, or excluded from doing mortgage related business, including having a business license suspended, surrendered or revoked, by any federal, state or local government agency, division or department;
- e. an individual or entity that has been sanctioned, required or agreed to pay any administrative, civil or criminal penalties or damages in connection with any suit or enforcement action involving single family loan origination, servicing or collection activities, or involving allegations of housing discrimination under any applicable local, state, or federal law or regulation;
- f. an individual or entity that has been subject to any Federal or State citations or enforcement actions;
- g. an individual or entity that has been prohibited from doing asset or property management related business, or has bidder within the previous three years had any license relating to the management or acquisition of assets or REO suspended, terminated, canceled, or revoked by, or involuntarily surrendered to any federal, state or local government agency, division or department;

- I. an individual or entity that is currently subject to a pending enforcement action or regulatory investigation due to any potential Real Estate Settlement Procedures Act, Fair Credit Reporting Act, or Gramm-Leach-Bliley Privacy Act violations.”

The certifications in Section 7 then sweep in contractors and companies related to the bidder: “7. Bidder represents and warrants that it, its Related Entities and Repurchase Lender(s), are not, and will not knowingly use the services, directly or indirectly, of any person or entity that is, any of the following... d. an individual or entity that knowingly uses the services, directly or indirectly, of any person or entity ineligible under Sections 6 above or this Section 7 to assist in preparing any of its bids on the Mortgage Loans.” (Section 6 refers to the regulatory questions above; Section 7 refers to persons who may have proprietary knowledge of FHA or the auction).

Taken together, these two clauses in the qualification statement would require a bidder such as Altisource to disclose and attempt to explain all regulatory problems with its subsidiaries and related companies who have been subject to settlements and regulatory scrutiny.

Recent settlements and ongoing investigations create problematic disclosures for mortgage-servicing companies including Ocwen. Taking into account the call to be transparent and the requirement to disclose both ongoing investigations and agreements to pay penalties outside of an [enforcement action](#), Ocwen-related entities would have many regulatory-risk issues that would need to be disclosed, putting their bids at risk of being barred. Further, ongoing regulatory scrutiny could result in a need for disclosures that would put future auction qualifications at risk. Using Altisource and its related company Ocwen as an example, regulatory issues would include the following:

- In December 2013, Ocwen agreed to a [\\$2.2 billion settlement](#) with the CFPB and state attorneys general over alleged violations of federal consumer financial laws.
- The New York DFS uncovered documents showing Ocwen’s pattern of backdating letters rejecting homeowner requests to modify mortgages, pushing them into foreclosure. [State attorneys general have reportedly taken interest in this practice](#) as possibly being in violation of Ocwen’s 2013 settlement.
- A [class action suit](#) was recently filed over Ocwen’s servicing practices, which the plaintiffs claim pushed numerous homeowners into foreclosure unnecessarily.
- The New York DFS investigation into Ocwen is still ongoing and may result in enforcement action or sanctions.