



Portfolio Media. Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 |
www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Mortgage Co. Settles Loan Insurance FCA Case For \$14.5M

By **Daniel Wilson**

Law360 (December 12, 2018, 10:16 PM EST) -- Finance of America Mortgage will pay \$14.5 million to resolve a whistleblower lawsuit alleging that a predecessor company originated and underwrote deficient loans backed by federal insurance in violation of the False Claims Act, the U.S. Department of Justice announced Wednesday.

Finance of America Mortgage LLC has agreed to settle over claims that Gateway Funding Diversified Mortgage Services LP, acquired by FAM in 2015, knowingly created loans that did not live up to the requirements of the Federal Housing Administration's insurance program, in which Gateway had participated as a direct endorsement lender, or DEL, the DOJ claimed.

DELs can originate, underwrite and endorse mortgages covered by FHA insurance and make a claim on that insurance if a covered loan later defaults. As a condition of program participation, they are required to ensure that their loans meet certain quality standards set by the FHA's parent agency, the U.S. Department of Housing and Urban Development.

"Gateway misrepresented that its federally insured loans met HUD's quality standards, harming borrowers who were left underwater on their homes and taxpayers who backed the mortgages," Grant C. Jaquith, U.S. attorney for the Northern District of New York, said in a statement Wednesday. "We are committed to holding mortgage lenders accountable when they abuse government programs for their own gain."

As part of the settlement, FAM agreed — although it did not admit liability — that Gateway failed to meet FHA quality control standards between 2007 and 2014, when Gateway bowed out of the DEL program.

This included failing to properly audit early-payment default, or EPD, loans and glossing over concerns raised by its compliance department over the company's poor EPD rate, according to the DOJ. EPD loans are those that become 60 or more days delinquent within the first six payment periods.

Markers of an increasing default rate and related issues with underwriting standards were effectively ignored by some senior Gateway executives, and loans with underwriting errors

were not reported to the FHA or HUD, as required, the DOJ said.

Gateway's conduct resulted in many loans being approved despite their failure to live up to the standards required for FHA insurance, and HUD incurred "substantial losses" — about \$7.2 million worth, the settlement agreement says — when related loans defaulted, according to the DOJ.

The federal investigation that led to the settlement was triggered by a qui tam FCA suit filed by Debra McGeehan, a former quality control underwriter for Gateway who worked for the company between 2009 and 2015, the DOJ said. She will receive just under \$2.4 million as her cut of the settlement, according to the DOJ.

"It is extremely frustrating when a mortgage company identifies issues with loans as part of its quality control process, but then deliberately ignores those findings," McGeehan said in a statement Wednesday. "Gateway was only interested in its own financial interests, and was willing to ignore its own quality control findings in order to defraud the FHA program."

A representative for FAM did not immediately respond to a request for comment late on Wednesday.

The government is represented by Grant C. Jaquith and Adam J. Katz of the U.S. Attorney's Office for the Northern District of New York and Christopher Reimer and Harin Song of the DOJ's Civil Division.

McGeehan is represented by Patrick J. Solomon and Jonathan Ferris of Thomas & Solomon LLP.

FAM is represented by Phillip Schulman of Mayer Brown LLP.

The case is U.S. ex rel. McGeehan v. Gateway Funding Diversified Mortgage Services LP nka. Finance of America Mortgage LLC, case number 1:16-cv-00750, in the U.S. District Court for the Northern District of New York.

--Editing by Peter Rozovsky.