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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	**AMENDED COMPLAINT**
Plaintiff,	11 Civ. 2976 (LAK)
-against-	ECF Case
DEUTSCHE BANK AG, DB STRUCTURED PRODUCTS, INC., DEUTSCHE BANK SECURITIES, INC., and MORTGAGEIT, INC.,	**Jury Trial Demanded**
Defendants.	
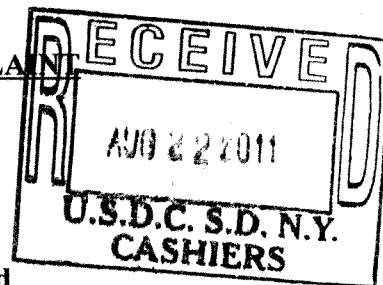
The United States of America (the "Government"), by its attorney, Preet Bharara, United

States Attorney for the Southern District of New York, brings this action against Deutsche Bank

AG, DB Structured Products, Inc., and Deutsche Bank Securities, Inc. (together, "Deutsche

Bank"), as well as MortgageIT, Inc. ("MortgageIT") (collectively, "Defendants"), alleging upon

information and belief as follows:

INTRODUCTION

1.   This is a civil mortgage fraud lawsuit brought by the United States against

Deutsche Bank and MortgageIT. As set forth below, Deutsche Bank and MortgageIT repeatedly

lied to be included in a Government program to select mortgages for insurance by the

Government. Once in that program, they recklessly selected mortgages that violated program

rules in blatant disregard of whether borrowers could make mortgage payments. While Deutsche

Bank and MortgageIT profited from the resale of these Government-insured mortgages,

thousands of American homeowners have faced default and eviction, and the Government has

paid hundreds of millions of dollars in insurance claims, with hundreds of millions of dollars

more expected to be paid in the future. The Government brings this action seeking damages and

penalties for the past and future claims that violate the False Claims Act, 31 U.S.C. §§ 3729 *et*

seq., and the common law.

2.   The Federal Housing Administration ("FHA") of the Department of Housing and

Urban Development ("HUD") is the largest mortgage insurer in the world. FHA mortgage

insurance makes home ownership possible for millions of American families by protecting

lenders against defaults on mortgages, thereby encouraging lenders to make loans to borrowers

who might not be able to meet conventional underwriting requirements. FHA accepts a fixed

level of risk set by statute and HUD rules. FHA relies on this fixed level of risk to set

appropriate mortgage insurance premiums to offset the costs of paying FHA insurance claims.

By controlling risk and setting appropriate insurance premiums, FHA has been able to operate

based solely on the income it generates from mortgage insurance premium proceeds. Since its

inception in 1934, FHA has insured more than 34 million home mortgages. FHA currently

insures approximately one third of all new residential mortgages in the United States.

3.   To assist as many qualified homeowners as possible, and to provide maximum

economic opportunities to lenders interested in obtaining FHA insurance on mortgages, FHA

operates a Direct Endorsement Lender program with lenders in the private sector. The Direct

Endorsement Lender program grants participating lenders the authority to endorse mortgages

that are qualified for FHA insurance. In reviewing mortgages for eligibility for FHA insurance,

Direct Endorsement Lenders are entrusted with safeguarding the public from taking on risks that

exceed statutory and regulatory limits. Direct Endorsement Lenders act as fiduciaries of HUD in

underwriting mortgages and endorsing them for FHA insurance.

4.   The integrity of the Direct Endorsement Lender program requires participating

Direct Endorsement Lenders to carefully review mortgages to ensure compliance with HUD

rules. HUD entrusts Direct Endorsement Lenders with great responsibility, and therefore places

significant emphasis on the lenders' qualifications. To qualify as a Direct Endorsement Lender,

a lender must implement a mandatory quality control plan. Quality control plans are necessary

to ensure that Direct Endorsement Lenders follow all HUD rules, and to provide procedures for

correcting problems in a lender's underwriting operations.

5.   An essential part of every quality control plan is the auditing of all early payment

defaults, *i.e.*, those mortgages that default soon after closing. Early payment defaults may be

signs of problems in the underwriting process. By reviewing early payment defaults, Direct

Endorsement Lenders are able to monitor those problems, correct them, and report them to HUD.

Every Direct Endorsement Lender must make an annual certification of compliance with the

Direct Endorsement Lender program's qualification requirements, including the implementation of a mandatory quality control plan. Absent a truthful annual certification, a lender is not entitled to maintain its Direct Endorsement Lender status and is not entitled to endorse loans for FHA insurance.

6.   On a mortgage-by-mortgage basis, HUD requires Direct Endorsement Lenders to conduct due diligence to ensure that each mortgage is eligible for FHA insurance as set forth in HUD rules. These rules exist to prevent HUD from insuring mortgages that exceed the risk levels set by statute and regulations. A Direct Endorsement Lender must assure HUD that every endorsed mortgage meets all HUD rules. HUD requires the Direct Endorsement Lender to certify, for each mortgage the lender endorses, that the lender has conducted due diligence in accordance with all HUD rules. Absent a truthful mortgage eligibility certification, a Direct Endorsement Lender cannot endorse a mortgage for FHA insurance.

7.   Between 1999 and 2009, MortgageIT was an approved Direct Endorsement Lender. During that time period, MortgageIT endorsed more than 39,000 mortgages for FHA insurance, totaling more than $5 billion in underlying principal obligations. These FHA-insured mortgages were highly marketable for resale to investors because they were insured by the full faith and credit of the United States. MortgageIT and Deutsche Bank, which acquired MortgageIT in 2007, made substantial profits through the resale of these endorsed FHA-insured mortgages.

8.   Deutsche Bank and MortgageIT had powerful financial incentives to invest resources into generating as many FHA-insured mortgages as quickly as possible for resale to investors. By contrast, Deutsche Bank and MortgageIT had few financial incentives to invest

resources into ensuring the quality of its FHA-insured mortgages through the maintenance of the

mandatory quality control program, or into ensuring that MortgageIT limited its endorsement of

mortgages to those loans that were eligible for FHA insurance under HUD rules.

9.   Deutsche Bank and MortgageIT repeatedly lied to HUD to obtain and maintain

MortgageIT's Direct Endorsement Lender status. Deutsche Bank and MortgageIT failed to

implement the quality control procedures required by HUD, and their violations of HUD rules

were egregious. For instance, Deutsche Bank and MortgageIT failed to audit all early payment

defaults, despite the requirement that this be done; Deutsche Bank and MortgageIT made it

impossible for their few quality control employees to conduct the required quality control by

grossly understaffing their quality control units; Deutsche Bank and MortgageIT repeatedly

failed to address dysfunctions in the quality control system, which were reported to upper

management; after its acquisition by Deutsche Bank, MortgageIT took the only staff member

dedicated to auditing FHA-insured mortgages, and reassigned him to increase production

instead; and when an outside auditor provided findings to MortgageIT revealing serious

problems, those findings were literally stuffed in a closet and left unread and unopened.

10.   Despite Deutsche Bank's and MortgageIT's egregious violations of the basic

eligibility requirement of a compliant quality control plan, every year for a decade Deutsche

Bank or MortgageIT annually certified that MortgageIT complied with the eligibility criteria of

the Direct Endorsement Lender program. They did so to maintain MortgageIT's Direct

Endorsement Lender status in contravention of HUD rules. Moreover, on various occasions

when HUD discovered evidence that MortgageIT was violating the quality control requirement,

MortgageIT deceived HUD by falsely promising HUD that it had corrected or would correct the

failures. Through these false annual certifications and deceptions, Deutsche Bank and

MortgageIT obtained and maintained MortgageIT's Direct Endorsement Lender status without

the required quality control program in place, thereby putting hundreds of millions of FHA

dollars at risk.

11.   As a Direct Endorsement Lender, MortgageIT repeatedly lied to HUD to obtain

approval of mortgages that MortgageIT underwriters wrongfully endorsed for FHA insurance.

These mortgages were not eligible for FHA insurance under HUD rules. Notwithstanding the

mortgages' ineligibility, underwriters at MortgageIT endorsed the mortgages by falsely

certifying that they had conducted the due diligence required by HUD rules when, in fact, they

had not. By endorsing ineligible mortgages and falsely certifying compliance with HUD rules,

MortgageIT wrongfully obtained approval of these ineligible mortgages for FHA insurance.

This happened both before and after MortgageIT was acquired by Deutsche Bank.

12.   As of June 2011, HUD has paid more than $368 million in FHA insurance claims

and related costs arising out of Defendants' approval of mortgages for FHA insurance. Many of

these losses were caused by the false statements Defendants made to HUD to obtain FHA

insurance on thousands of individual loans. The Government expects HUD will be required to

pay hundreds of millions of dollars in additional FHA insurance claims as additional mortgages

underwritten by MortgageIT default in the months and years ahead.

13.   In this suit, the United States seeks treble damages and penalties under the False

Claims Act, 31 U.S.C. §§ 3729 *et seq.*, and compensatory and punitive damages under the

common law theories of breach of fiduciary duty, gross negligence, negligence, and

indemnification, for the insurance claims already paid by HUD for mortgages wrongfully

endorsed by MortgageIT. In addition, the United States seeks compensatory and punitive

damages under the common law theories of breach of fiduciary duty, gross negligence,

negligence, and indemnification, for the insurance claims that HUD expects to pay in the future

for mortgages wrongfully endorsed by MortgageIT.

JURISDICTION AND VENUE

14.   This Court has jurisdiction pursuant to 31 U.S.C. § 3730(a), 28 U.S.C. §§ 1331

and 1345, and the Court's general equitable jurisdiction.

15.   Venue is appropriate in this judicial district pursuant to 31 U.S.C. § 3732(a) and

28 U.S.C. §§ 1391(b)(1) and (c) because Deutsche Bank and MortgageIT transact significant

business within this district and therefore are subject to personal jurisdiction in this judicial

district.

PARTIES

16.   Plaintiff is the United States of America.

17.   Defendant Deutsche Bank AG is a German business corporation with an office in

Manhattan. Defendant DB Structured Products, Inc. ("DB Structured Products") and Defendant

Deutsche Bank Securities, Inc. ("DB Securities") are wholly-owned subsidiaries of Deutsche

Bank AG with their principal places of business in Manhattan.

18.   Defendant MortgageIT is a New York business corporation with its principal

place of business in Manhattan. Between 1999 and 2009, MortgageIT was a Direct Endorsement

Lender. During that time period, MortgageIT employed more than 2,000 people, had branches

throughout the country, and was licensed to originate residential mortgages in all 50 states.

MortgageIT has been a wholly-owned Deutsche Bank subsidiary since January 2007.

19.   Deutsche Bank acquired MortgageIT on or about January 3, 2007, pursuant to a merger. Following the merger, MortgageIT was directly owned by DB Structured Products and indirectly owned by Deutsche Bank AG. Moreover, employees of these two Deutsche Bank entities, as well as of DB Securities, had key roles in the post-merger management of MortgageIT, as demonstrated below.

20.   As a result of the merger, and pursuant to the express terms of the merger agreement, Deutsche Bank acquired all of the pre-merger assets and liabilities of MortgageIT.

21.   Prior to the merger, and beginning on or about May 22, 2006, Deutsche Bank conducted substantial due diligence of MortgageIT. This due diligence included access to an online datasite and direct communications with MortgageIT's management. The due diligence also included access to MortgageIT's books, records, properties, and personnel.

22.   After the merger, Deutsche Bank operated the business of MortgageIT as part of its residential mortgage backed securities ("RMBS") business based in Manhattan. Deutsche Bank established MortgageIT as a business unit within its Corporate and Investment Bank Division, and used MortgageIT as a means to execute its mortgage lending strategy in the United States. Indeed, in announcing the merger on July 12, 2006, MortgageIT stated that its "management team and infrastructure will become the cornerstone of DB's existing and planned mortgage lending operations and strategy in the U.S. As part of the deal, DB's existing U.S. mortgage operations will be combined under MortgageIT."

23.   Similarly, on July 12, 2006, Deutsche Bank issued a press release in which it described the merger as "a key element of the Bank's build-out of a vertically integrated mortgage origination and securitization platform." Deutsche Bank further explained that its

"acquisition of MortgageIT is the latest in a series of steps taken to significantly increase its presence in the US mortgage markets."

24.   In the Deutsche Bank press release, Philip Weingord, the Head of Global Markets Americas at Deutsche Bank, and Anshu Jain, the Head of Global Markets at Deutsche Bank and a member of the Deutsche Bank Group Executive Committee, described Deutsche Bank's strategy to incorporate MortgageIT into its existing mortgage business. Mr. Weingord stated:

> As Deutsche Bank continues to grow its RMBS business, we believe the vertical integration of a leading mortgage originator like MortgageIT will provide significant competitive advantages, such as access to a steady source of product for distribution into the mortgage capital markets . . . . MortgageIT is a significant lender in the prime Alt-A residential mortgage sector. Uniting their business with our other channels of mortgage loan origination coupled with our trading, structuring and distribution capabilities will further advance our position as a leading RMBS player.

Mr. Jain added: "The MortgageIT team has built an outstanding business, and we are extremely pleased to have them join our effort as we continue to expand our mortgage securitization platform in the US and globally."

25.   Upon acquiring MortgageIT, Deutsche Bank retained MortgageIT's management and workforce. For example, both before and after the merger, Douglas Naidus was MortgageIT's Chairman and Chief Executive Officer ("CEO"), Gary Bierfriend was MortgageIT's President, Andy Occhino was MortgageIT's General Counsel and Secretary, Robert Gula was MortgageIT's Chief Financial Officer, and Patrick McEnerney was MortgageIT's Chief Operating Officer. Moreover, both before and after the merger, MortgageIT had the same Director of Government Lending and the same Government Loan Auditor.

26.   In announcing the merger on July 12, 2006, MortgageIT emphasized that, post-merger, there would be continuity of the MortgageIT business. MortgageIT stated that its

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"management team and personnel will continue on in their same positions, and their phone numbers and location will not change." MortgageIT assured its employees that, following the merger, "MortgageIT management and staff will retain their positions and play critical roles in the ongoing development of . . . [the] company." MortgageIT further stated that the acquisition would have "no impact" on its relationship with its business partners and customers, and that "for now and after the deal closes, it[']s 'business as usual' in every aspect of our operations."

27.   While MortgageIT's management retained their positions following the merger, many also became principals of Deutsche Bank. For example, Douglas Naidus became a Managing Director of Deutsche Bank and the Head of Mortgage Origination within Deutsche Bank's RMBS group. Similarly, Patrick McEnerney became a Managing Director of Deutsche Bank.

28.   Although Deutsche Bank retained MortgageIT's management and workforce, after the merger, Deutsche Bank supervised the various aspects of the MortgageIT business. For instance, after the merger, Deutsche Bank fully integrated MortgageIT into its compliance and risk management structure, such that Deutsche Bank was cognizant of, involved in, and ultimately responsible for MortgageIT's activities. Among other things, Deutsche Bank had its employees oversee all of MortgageIT's compliance programs.

29.   In addition, Deutsche Bank established a committee structure through which it supervised MortgageIT's credit and operational risks. To supervise credit risk, Deutsche Bank established the Credit Risk Committee, which consisted of seven senior managers from MortgageIT and five from Deutsche Bank. This committee met biweekly. To supervise operational risk, Deutsche Bank established five committees whose members also included

representatives from the senior management of both MortgageIT and Deutsche Bank. One of

those committees was the Quality Control Committee, which consisted of fifteen senior

managers from MortgageIT and two from Deutsche Bank. The other four committees were the

Loan Investigation Department Committee (sixteen senior managers from MortgageIT and seven

from Deutsche Bank); the Executive Level Repurchase Committee (eleven senior managers from

MortgageIT and eight from Deutsche Bank); the Loan Investigation Recommendation

Committee (twelve senior managers from MortgageIT and two from Deutsche Bank); and the

Client Review Committee (ten senior managers from MortgageIT and one from Deutsche Bank).

The Quality Control Committee met biweekly, the Loan Investigation Department Committee

met "frequently as needed," and the other three committees met weekly.

30.   Deutsche Bank also established a reporting structure pursuant to which

MortgageIT's senior management reported to Deutsche Bank executives. For example, after the

merger, Douglas Naidus, MortgageIT's Chairman and CEO, reported to Philip Weingord, a

Managing Director and the Head of Global Markets Americas at Deutsche Bank. Similarly,

Andy Occhino, MortgageIT's General Counsel and Secretary, reported to Jeffrey Welch, a

Managing Director in Deutsche Bank's Legal Department. In addition, MortgageIT's Director

of Government Lending reported to another MortgageIT employee, who in turn reported to

Joseph Swartz, a Deutsche Bank Director. All MortgageIT employees were required to adhere

to the Deutsche Bank Code of Professional Conduct.

31.   Furthermore, upon closing of the merger, Deutsche Bank reconfigured

MortgageIT's Board of Directors to consist of three members, all of whom were Managing

Directors of Deutsche Bank: Douglas Naidus, Philip Weingord, and Michael Commaroto. In

2008, Deutsche Bank replaced Messrs. Commaroto and Weingord on the MortgageIT Board

with two Deutsche Bank Directors: Joseph Rice and Joy Margolies.

32. The Deutsche Bank employees who were involved in the post-merger

management of MortgageIT were affiliated with a number of different Deutsche Bank entities,

including Deutsche Bank AG, DB Structured Products, and DB Securities. For example, in

addition to being a Director of MortgageIT: Michael Commaroto was a Director and Officer of

DB Structured Products, as well as the Head of Asset Backed Whole Loan Trading at Deutsche

Bank AG; Joseph Rice was a Director of DB Structured Products, as well as the Director of

Corporate Treasury and of Group Treasury Americas at Deutsche Bank AG; and Joy Margolies

was an Officer of DB Structured Products. Ms. Margolies was also an employee of DB

Securities, as was Philip Weingord and Joseph Swartz.

33. Deutsche Bank's post-merger management of the MortgageIT business included

oversight of MortgageIT's Direct Endorsement Lender business. After the acquisition, Deutsche

Bank managed the quality control functions of the Direct Endorsement Lender business, and had

its employees sign and submit MortgageIT's Direct Endorsement Lender annual certifications to

HUD.

34. When Deutsche Bank acquired MortgageIT, it was on notice of and expressly

assumed responsibility for MortgageIT's pre-merger actions as a Direct Endorsement Lender,

including the misconduct identified herein. Moreover, after the acquisition, through its oversight

of and involvement in MortgageIT's Direct Endorsement Lender business, Deutsche Bank

assumed responsibility for MortgageIT's post-merger actions as a Direct Endorsement Lender,

including the misconduct identified herein. Having assumed ultimate responsibility for

MortgageIT's actions as a Direct Endorsement Lender, Deutsche Bank is liable for the misconduct identified herein under the False Claims Act and the common law.

<div align="center">**FACTS**</div>

I. BACKGROUND

A. The FHA Direct Endorsement Program

35. FHA is the largest insurer of residential mortgages in the world. Pursuant to the National Housing Act of 1934, FHA offers various mortgage insurance programs. Through these programs, FHA insures approved lenders against losses on mortgage loans. FHA mortgage insurance may be granted on mortgages used to purchase homes, improve homes, or to refinance existing mortgages. FHA's single family mortgage insurance programs cover owner-occupied principal residences.

36. FHA mortgage insurance programs help low-income and moderate-income families become homeowners by lowering some of the costs of their mortgage loans. FHA mortgage insurance encourages lenders to make loans to otherwise creditworthy borrowers and projects that might not be able to meet conventional underwriting requirements by protecting the lenders against defaults on mortgages.

37. To qualify for FHA mortgage insurance, a mortgage must meet all of the applicable HUD requirements. Those requirements relate to, among other things, the adequacy of the borrower's income to meet the mortgage payments and other obligations, the borrower's creditworthiness, and the appropriateness of the valuation of the property subject to the mortgage.

38.   HUD operates the Direct Endorsement Program as part of the FHA-insured

mortgage program. Under the Direct Endorsement process, HUD does not itself conduct a

detailed review of applications for mortgage insurance before an FHA-insured mortgage closes.

Rather, approved lenders, called Direct Endorsement Lenders, must determine whether the

proposed mortgage is eligible for FHA insurance under the applicable program regulations. A

Direct Endorsement Lender underwrites and closes mortgages without prior HUD review or

approval. Direct Endorsement Lenders submit documentation regarding underwritten loans after

the mortgage has closed, and certify that the endorsed mortgage complies with HUD rules.

39.   The Direct Endorsement Program works as follows: The Direct Endorsement

Lender originates a proposed loan, or in some instances, acts as a sponsoring lender by

underwriting and funding proposed mortgages originated by other FHA lenders known as loan

correspondents. In either case, the Direct Endorsement Lender ultimately reviews the proposed

mortgage. The borrower, along with the Direct Endorsement Lender's representative, completes

the loan application. A loan officer collects all supporting documentation from the borrower and

submits the application and documentation to the Direct Endorsement Lender. The Direct

Endorsement Lender obtains an appraisal. A professional underwriter employed by the Direct

Endorsement Lender performs a mortgage credit analysis to determine the borrower's ability and

willingness to repay the mortgage debt in accordance with HUD rules. The Direct Endorsement

Lender's underwriter makes the underwriting decision as to whether the mortgage may be

approved for FHA insurance or not, according to HUD rules. If the underwriter has decided that

the mortgage may be approved for FHA insurance in accordance with HUD rules, the Direct

Endorsement Lender closes the loan with the borrower. Thereafter, the Direct Endorsement

Lender certifies that the mortgage qualifies for FHA insurance. FHA endorses the loan on the basis of the Direct Endorsement Lender's certification and provides the Direct Endorsement Lender with a mortgage insurance certificate.

40.   The Direct Endorsement Lender is responsible for all aspects of the mortgage application, the property analysis, and the underwriting of the mortgage. FHA endorses mortgages in reliance upon the Direct Endorsement Lender's certifications that the mortgages may be approved for FHA insurance. Direct Endorsement Lenders obligate HUD without independent HUD review.

41.   In the event that a borrower defaults on an FHA-insured mortgage, the holder of the mortgage is able to submit a claim to HUD for the costs associated with the defaulted mortgage.

42.   In the mortgage industry, the imprimatur of FHA mortgage insurance makes covered mortgages highly marketable for resale to investors both because such mortgages are expected to have met all HUD requirements and because they are insured by the full faith and credit of the United States.

B.   Direct Endorsement Lenders And Underwriters

43.   A mortgage lender must apply to FHA's Office of Lender Activities and Program Compliance to become a Direct Endorsement Lender.

44.   To qualify for FHA approval as a Direct Endorsement Lender, a lender must have a qualified underwriter on staff. The underwriter's responsibilities are critical elements of the Direct Endorsement Program, and a Direct Endorsement Lender must certify that its underwriters meet FHA qualifications.

45.   An underwriter must be a full time employee of the mortgage lender and must either be a corporate officer with signatory authority or otherwise be authorized to bind the mortgage lender in matters involving origination of mortgage loans.   An underwriter must also be a reliable and responsible professional who is skilled in mortgage evaluation and able to demonstrate knowledge and experience regarding principles of mortgage underwriting.

46.   An underwriter must "evaluate [each] mortgagor's credit characteristics, adequacy and stability of income to meet the periodic payments under the mortgage and all other obligations, and the adequacy of the mortgagor's available assets to close the transaction, and render an underwriting decision in accordance with applicable regulations, policies and procedures." 24 C.F.R. § 203.5(d). In addition, the underwriter must "have [each] property appraised in accordance with [the] standards and requirements" prescribed by HUD. 24 C.F.R. § 203.5(e).

C.   Quality Control Prerequisites For Direct Endorsement Lenders

47.   To qualify for FHA approval as a Direct Endorsement Lender, a lender must implement a quality control plan that ensures its underwriters' compliance with HUD rules.

48.   The development and implementation of a quality control plan is a basic eligibility requirement for Direct Endorsement Lenders. HUD has determined that the Direct Endorsement Lender program can be offered only if participating lenders have acceptable quality control plans. Accordingly, as a precondition to Direct Endorsement Lender approval, HUD will require each lender to have an acceptable quality control plan to manage, conduct, and review the underwriting of mortgages that are submitted for direct endorsement.

49.   A Direct Endorsement Lender must have a fully functioning quality control

program form the date of its initial FHA approval until final surrender or termination of its

approval. Thus, a Direct Endorsement Lender must implement and continuously have in place a

quality control plan as a condition of receiving and maintaining FHA approval.

50.   The purposes of quality control plans include ensuring that the procedures and

personnel used by Direct Endorsement Lenders when underwriting mortgages meet all HUD

requirements, and providing procedures for correcting problems once a Direct Endorsement

Lender becomes aware of their existence.

51.   A mandatory HUD requirement for the implementation of Direct Endorsement

Lender quality control plans is the review of all early payment defaults. Early payment defaults

are mortgages that go into default (*i.e.*, are more than 60 days past due) within the first six

payments of the mortgage.

52.   Early payment defaults are markers of mortgage fraud. Early payments defaults

reveal that the borrower – whom the Direct Endorsement Lender had certified as having met all

criteria for creditworthiness, and could thus be expected to make payments for the life of the

mortgage – could not, in fact, make even the first six payments of the mortgage.

53.   A Direct Endorsement Underwriter must review each early payment default for

compliance with HUD underwriting requirements. A Direct Endorsement Lender that lacks a

quality control program that provides for such review is in material violation of HUD's quality

control requirements.

54.   Compliance with HUD's quality control requirements is a condition of receiving

and maintaining Direct Endorsement Lender eligibility, as well as of endorsing particular loans

for FHA insurance. Without a compliant quality control program, which includes the review of all early payment defaults, a lender is not entitled to maintain its Direct Endorsement Lender status or endorse loans for FHA insurance.

55.   HUD has warned lenders that failure to comply with HUD's quality control requirements could result in the withdrawal of their Direct Endorsement Lender status.

D.   Direct Endorsement Lenders' Duties

1.   Due Diligence As Required By Regulation

56.   HUD relies on Direct Endorsement Lenders to conduct due diligence on Direct Endorsement loans. The purposes of due diligence include (1) determining a borrower's ability and willingness to repay a mortgage debt, thus limiting the probability of default and collection difficulties, *see* 24 C.F.R. § 203.5(d), and (2) examining a property offered as security for the loan to determine if it provides sufficient collateral, *see* 24 C.F.R. § 203.5(e)(3). Due diligence thus requires an evaluation of, among other things, a borrower's credit history, capacity to pay, cash to close, and collateral. In all cases, a Direct Endorsement Lender owes HUD the duty, as prescribed by federal regulation, to "exercise the same level of care which it would exercise in obtaining and verifying information for a loan in which the mortgagee would be entirely dependent on the property as security to protect its investment." 24 C.F.R. § 203.5(c).

57.   HUD has set specific rules for due diligence predicated on sound underwriting principles. In particular, HUD requires Direct Endorsement Lenders to be familiar with, and to comply with, governing HUD Handbooks and Mortgagee Letters, which provide detailed processing instructions to Direct Endorsement Lenders. These materials specify the minimum due diligence with which Direct Endorsement Lenders must comply.

58. With respect to ensuring that borrowers have sufficient credit, a Direct Endorsement Lender must comply with governing HUD Handbooks, such as HUD 4155.1, *Mortgage Credit Analysis for Mortgage Insurance on One-to-Four-Family Properties*, to evaluate a borrower's credit. The rules set forth in HUD 4155.1 exist to ensure that a Direct Endorsement Lender sufficiently evaluates whether a borrower has the ability and willingness to repay the mortgage debt. HUD has informed Direct Endorsement Lenders that past credit performance serves as an essential guide in determining a borrower's attitude toward credit obligations and in predicting a borrower's future actions.

59. To properly evaluate a borrower's credit history, a Direct Endorsement Lender must, at a minimum, obtain and review credit histories; analyze debt obligations; reject documentation transmitted by unknown or interested parties; inspect documents for proof of authenticity; obtain adequate explanations for collections, judgments, recent debts and recent credit inquiries; establish income stability and make income projections; obtain explanations for any gaps in employment; document any gift funds; calculate debt and income ratios and compare those ratios to the fixed ratios set by HUD rules; and consider and document any compensating factors permitting deviations from those fixed ratios.

60. With respect to appraising the mortgaged property (*i.e.*, collateral for the loan), a Direct Endorsement Lender must ensure that an appraisal and its related documentation satisfy the requirements in governing HUD Handbooks, such as HUD 4150.2, *Valuation Analysis for Home Mortgage Insurance*. The rules set forth in HUD 4150.2 exist to ensure that a Direct Endorsement Lender obtains an accurate appraisal that properly determines the value of the property for HUD's mortgage insurance purposes.

2. Due Diligence As Required By Common Law

61.   Direct Endorsement Lenders owe HUD a common law duty of due diligence.

62.   The exercise of due diligence is an affirmative duty of Direct Endorsement Lenders. This duty obligates Direct Endorsement Lenders to comply with HUD rules, accepted practices of prudent lending institutions, and all procedures that a prudent lender would use if it looked solely to the property as security to protects its interests. The duty further obligates the Direct Endorsement Lender to use due care in providing information and advice to FHA.

63.   Indeed, "[t]he entire scheme of FHA mortgage guaranties presupposes an honest mortgagee performing the initial credit investigation with due diligence and making the initial judgment to lend in good faith after due consideration of the facts found." *United States v. Bernstein*, 533 F.2d 775, 797 (2d Cir. 1976).

64.   HUD has apprised Direct Endorsement Lenders of this common law duty since it first created the Direct Endorsement Lender program. *See* 48 Fed. Reg. 11928, 11932 (Mar. 22, 1983) ("The duty of due diligence owed the Department by approved mortgagees is based not only on these regulatory requirements, but also on civil case law."); *id.* ("HUD considers the exercise of due diligence an affirmative duty on the part of mortgagees participating in the program.").

3. The Fiduciary Duty Of Utmost Good Faith

65.   A fiduciary relationship exists between Direct Endorsement Lenders and HUD.

66.   HUD relies on the expertise and knowledge of Direct Endorsement Lenders in providing FHA insurance. HUD places confidence in their decisions. The confidence that HUD

reposes in Direct Endorsement Lenders invests those lenders with an advantage in the Direct Endorsement Lenders' relationship with HUD.

67. Direct Endorsement Lenders are under a duty to act for HUD, and give advice to HUD, for HUD's benefit, as to whether mortgages should be insured by FHA under the Direct Endorsement Lender program.

68. As a result of the fiduciary relationship between Direct Endorsement Lenders and HUD, Direct Endorsement Lenders have a duty to HUD of *uberrmiae fidea*, or, the obligation to act with the utmost good faith, candor, honesty, integrity, fairness, undivided loyalty, and fidelity in dealings with HUD.

69. The duty of *uberrmiae fidea* also requires Direct Endorsement Lenders to refrain from taking advantage of HUD by the slightest misrepresentation, to make full and fair disclosures to HUD of all material facts, and to take on the affirmative duty of employing reasonable care to avoid misleading HUD in all circumstances.

70. The duty of *uberrmiae fidea* further requires Direct Endorsement Lenders to exercise sound judgment, prudence, and due diligence on behalf of HUD in endorsing mortgages for FHA insurance.

E. **Direct Endorsement Lender Certifications**

1. **Annual Certifications**

71. To obtain and maintain Direct Endorsement Lender status, a Direct Endorsement Lender must submit an annual certification to HUD.

72. The Direct Endorsement Lender must make the following annual certification, in sum and substance:

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I know or am in the position to know, whether the operations of the above named mortgagee conform to HUD-FHA regulations, handbooks, and policies. I certify that to the best of my knowledge, the above named mortgagee conforms to all HUD-FHA regulations necessary to maintain its HUD-FHA approval, and that the above-named mortgagee is fully responsible for all actions of its employees including those of its HUD-FHA approved branch offices.

73.   The annual certification requires compliance with the basic eligibility

requirements for Direct Endorsement Lenders, which includes compliance with the mandatory

HUD rules concerning quality control, such as the rule requiring review of all early payment

defaults.

74.   As stated above, submitting truthful annual certifications to HUD is a condition of

obtaining and maintaining status as a Direct Endorsement Lender and endorsing loans for FHA

insurance.

2.   Loan Application Certifications

75.   A Direct Endorsement Lender must submit a certification to FHA for each loan

for which it seeks FHA insurance.

76.   A Direct Endorsement Lender may use an FHA-approved automated underwriting

system to review loan applications. The automated underwriting system processes information

entered by the Direct Endorsement Lender and rates loans as either an "accept"/"approve" or a

"refer"/"caution."

77.   In cases where a Direct Endorsement Lender uses an FHA-approved automated

underwriting system, and the system rates a loan as an "accept" or "approve," the Direct

Endorsement Lender must make the following certification, in sum and substance:

This mortgage was rated as an "accept" or "approve" by a FHA-approved automated underwriting system. As such, the undersigned representative of

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the mortgagee certifies to the integrity of the data supplied by the lender used to determine the quality of the loan, that Direct Endorsement Underwriter reviewed the appraisal (if applicable) and further certifies that this mortgage is eligible for HUD mortgage insurance under the Direct Endorsement program. I hereby make all certifications required by this mortgage as set forth in HUD Handbook 4000.4.

78.   In cases where a Direct Endorsement Lender uses an FHA-approved automated underwriting system, and the system rates a loan as "refer" or "caution," or in cases where a Direct Endorsement Lender does not use an FHA-approved automated underwriting system, the underwriter must make the following certification, in sum and substance:

> This mortgage was rated as a "refer" or "caution" by a FHA-approved automated underwriting system, and/or was manually underwritten by a Direct Endorsement underwriter. As such, the undersigned Direct Endorsement Underwriter certifies that I have personally reviewed the appraisal report (if applicable), credit application, and all associated documents and have used due diligence in underwriting this mortgage. I find that this mortgage is eligible for HUD mortgage insurance under the Direct Endorsement program and I hereby make all certifications required for this mortgage as set forth in HUD Handbook 4000.4.

79.   The certifications in HUD Handbook 4000.4, incorporated by reference in the certifications above, include the certification that the mortgage complies with HUD underwriting requirements contained in all outstanding HUD Handbooks and Mortgagee Letters.

80.   Absent a truthful loan application certification, a Direct Endorsement Lender is not entitled to endorse a particular loan for FHA insurance.

II.   MORTGAGEIT'S DIRECT ENDORSEMENT LENDER ACTIVITIES

81.   MortgageIT became an FHA-approved mortgage company and Direct Endorsement Lender on October 28, 1999.

82.   MortgageIT maintained its status as an FHA-approved mortgage company and Direct Endorsement Lender through October 16, 2009.

83.   MortgageIT, and Deutsche Bank after January 2007, filed with HUD annual

certifications of MortgageIT's purported compliance with the Direct Endorsement Lender

program's qualification requirements, including the implementation of a compliant quality

control plan, a requirement of which is the review of all early payment defaults.

84.   As a Direct Endorsement Lender, MortgageIT approved more than 39,000

mortgages for FHA insurance, totaling more than $5 billion in underlying principal obligations.

For each mortgage, MortgageIT certified that it complied with all HUD rules.

85.   As of June 2011, of the more than 39,000 mortgages for FHA insurance endorsed

by MortgageIT, more than 12,900 of those mortgages (*i.e.*, approximately a third) defaulted. Of

those, more than more than 3,200 defaulted within six months, more than 4,500 defaulted within

a year, and more than 6,900 defaulted within two years of closing.

86.   As of June 2011, HUD has paid more than $368 million in FHA insurance claims

and related costs arising out of more than 3,200 mortgages.[1] Of these, HUD has paid more than

$92 million in FHA claims and related costs arising out of more than 690 mortgages that

defaulted within six months, more than $151 million in FHA claims and related costs arising out

of more than 1,200 mortgages that defaulted within a year, and more than $245 million in FHA

claims and related costs arising out of more than 2,000 mortgages that defaulted within two

years.

87.   As of June 2011, more than 7,400 additional mortgages, totaling more than $857

million in calculated unpaid principal balances, have defaulted, without any claims yet having

been paid by HUD. Of these, there are more than $255 million of calculated unpaid principal

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[1]   A list of the loans with respect to which HUD has paid FHA insurance claims
through June 2011 is attached hereto as Exhibit A.

balances for more than 1,700 mortgages that defaulted within six months, there are more than

$337 million of calculated unpaid principal balances for more than 2,300 mortgages that

defaulted within a year, and there are more than $473 million of calculated unpaid principal

balances for more than 3,400 mortgages that defaulted within two years.

III.   DEUTSCHE BANK AND MORTGAGEIT LIED TO MAINTAIN MORTGAGEIT'S DIRECT ENDORSEMENT LENDER STATUS

88.   Deutsche Bank and MortgageIT failed to comply with HUD rules and regulations

regarding required quality control procedures, even though those procedures were mandatory for

MortgageIT's maintenance of its Direct Endorsement Lender status. Instead, Deutsche Bank and

MortgageIT maintained MortgageIT's Direct Endorsement Lender status by making false

representations to HUD about MortgageIT's purported compliance with HUD rules and

regulations regarding quality control. In reality, MortgageIT's quality control procedures

egregiously violated HUD rules and regulations.

A.   Deutsche Bank And MortgageIT Certified And Represented To HUD That MortgageIT Would Comply With HUD's Mandatory Quality Control Requirements

1.   Deutsche Bank and MortgageIT Annually Certified Compliance With Quality Control Requirements

89.   Between 1999 and 2009, MortgageIT and, after January 2007, Deutsche Bank,

filed annual certifications with HUD to obtain and maintain MortgageIT's Direct Endorsement

Lender status. In those annual certifications, Deutsche Bank and MortgageIT certified

MortgageIT's compliance with all HUD rules and regulations necessary for maintenance of its

Direct Endorsement Lender status.

90.   Between 1999 and 2006, MortgageIT filed the annual certifications with HUD. For instance, on February 1, 2005, Gary Bierfriend, the President of MortgageIT, signed an annual certification stating "I know or am in the position to know, whether the operations of this mortgagee conforms to all HUD regulations and guidelines. I certify that to the best of my knowledge, the mortgagee conforms to all HUD regulations necessary to maintain its HUD/FHA approval." MortgageIT officers filed similar certifications each year between 1999 and 2006.

91.   Between 2007 and 2009, Deutsche Bank filed the annual certifications with HUD. For instance, on March 9, 2007, Patrick McEnerney, a Managing Director of Deutsche Bank, signed an annual certification stating "I know, or am in the position to know, whether the operations of the above named mortgagee conform to HUD-FHA regulations, handbooks and policies. I certify that to the best of my knowledge, the above named mortgagee conforms to all HUD-FHA regulations necessary to maintain its HUD-FHA approval." On February 6, 2009, Joseph Swartz, a Deutsche Bank Director, signed an identical certification. Deutsche Bank officers filed these certifications each year after 2007, until MortgageIT ceased its operations as a Direct Endorsement Lender in 2009.

92.   After Deutsche Bank acquired MortgageIT, there was a discussion involving, among others, the Director of Government Lending at MortgageIT about who should sign the annual certifications. It ultimately was decided that a Deutsche Bank employee should sign them. Consequently, Patrick McEnerney signed the 2007 annual certification in his capacity as a Managing Director of Deutsche Bank. Indeed, underneath his signature on the 2007 annual certification, Mr. McEnerney handwrote the title, "Managing Director." A Deutsche Bank officer also signed the annual certifications in 2008 and 2009.

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93.   A regulation necessary to maintain HUD approval for Direct Endorsement Lender

status is the HUD regulation mandating continuous implementation of a quality control plan

conforming to HUD rules, including the rule requiring review of all early payment defaults. The

individuals who signed the annual certifications – including the Deutsche Bank officers who

signed after January 2007 – either knew, deliberately ignored, or recklessly disregarded that

MortgageIT did not have a quality control plan that conformed to HUD rules when they signed.

For example, when Patrick McEnerney signed the 2007 annual certification representing that

MortgageIT was in compliance with the HUD rules necessary to maintain Direct Endorsement

Lender status, he knew that the certification was false, consciously avoided learning whether it

was true or false, or recklessly disregarded whether it was true or false. Indeed, in 2007, the

Government Loan Auditor at MortgageIT was in a position to tell Mr. McEnerney or anyone else

who asked that MortgageIT was not reviewing all early payment defaults on FHA-insured loans.

Similarly, the other MortgageIT and Deutsche Bank employees who signed the annual

certifications would have learned that MortgageIT was not reviewing all early payment defaults

on FHA-insured loans if they had conducted even a minimal inquiry before signing.

2.   MortgageIT Made Additional Representations To HUD That It Would Comply With Quality Control Requirements

94.   In addition to the annual certifications, MortgageIT made additional

representations to HUD that MortgageIT would comply with quality control requirements,

including, in particular, the review of all early payment defaults.

95.   For example, a HUD audit conducted during the week of September 13, 2003, by

the HUD Quality Assurance Division, Philadelphia Homeownership Center, revealed that

MortgageIT had "not maintained a Quality Control Plan, (QC) plan in accordance with

HUD/FHA requirements," and that, among other failures, MortgageIT had failed to "ensure that

loans that go into default within the first 6 months are reviewed." The 2003 audit required

MortgageIT to provide a statement of corrective action to prevent a recurrence of the violation.

96.   MortgageIT responded to the 2003 audit by informing HUD that it had altered its

quality control procedures to follow HUD rules, including by ensuring the review of all early

payment defaults. That representation was false.

97.   As another example, a HUD audit conducted during the week of September 20,

2004, by the HUD Quality Assurance Division, Philadelphia Homeownership Center, again

revealed that MortgageIT had failed, among other things, to ensure "that loans which go into

default within the first six months are reviewed." The 2004 audit required MortgageIT to

provide a statement of corrective action to prevent a recurrence of the violation.

98.   In response to the 2004 audit, MortgageIT promised HUD that it would review all

early payment defaults. In particular, by letter dated June 24, 2005, the Director of Government

Lending at MortgageIT acknowledged that MortgageIT's failure to review all early payment

defaults was "unacceptable," and that "mortgagees must review all loans going into default

within the first six payments." The Direct of Government Lending at MortgageIT further

represented that MortgageIT "understands HUD's directive" to review all early payment

defaults, and that MortgageIT would "comply with this request." That representation was false.

99.   Later, in February 2006, the HUD Quality Assurance Division, Philadelphia

Homeownership Center, discovered, through communications with MortgageIT, that

MortgageIT was not reviewing early payment defaults. HUD officials scolded personnel at

MortgageIT for their failure to review all early payment defaults.

100.	In response, the Director of Government Lending at MortgageIT represented to HUD that MortgageIT would review all early payment defaults. That representation was false. MortgageIT neither reviewed all early payment defaults nor had a system in place for reviewing all such defaults.

**B.	Contrary to Deutsche Bank And MortgageIT's Representations And Certifications To HUD, They Egregiously Violated HUD's Quality Control Rules**

101.	Contrary to the representations and certifications made by Deutsche Bank and MortgageIT, Deutsche Bank and MortgageIT failed to implement basic quality control requirements.

102.	Deutsche Bank's and MortgageIT's quality control violations were not trivial or innocent, but knowing, material, and egregious.

103.	These egregious quality control violations were being committed simultaneously with Deutsche Bank's and MortgageIT's false representations and certifications to HUD that MortgageIT would comply with HUD quality control requirements.

104.	In submitting false annual certifications and making false representations, including each of the examples cited in the paragraphs above, Deutsche Bank and MortgageIT had actual knowledge of the falsity of their misrepresentations.

105.	Alternatively, in submitting false annual certifications and making false representations, including each of the examples cited in the paragraphs above, Deutsche Bank and MortgageIT acted in deliberate ignorance and/or reckless disregard of the truth.

1. Deutsche Bank and MortgageIT Failed To Review All Early Payment Defaults

106. The HUD rules require Direct Endorsement Lenders to review all early payment defaults as a mandatory part of quality control.

107. Contrary to the repeated representations and certifications made by Deutsche Bank and MortgageIT, MortgageIT failed to review all early payment defaults as mandated by HUD rules. Nor did MortgageIT have a system in place to review all such defaults. Moreover, for some periods, MortgageIT failed to review any early payment defaults.

108. Deutsche Bank and MortgageIT personnel failed to review all early payment defaults. In fact, despite repeated representations to HUD that MortgageIT would conduct early payment default reviews as part of MortgageIT's quality control, MortgageIT quality control personnel did now know how to identify early payment defaults until February 2006. After MortgageIT quality control personnel learned how to identify early payment defaults, MortgageIT nevertheless failed to review all early payment defaults.

109. This failure to review all early payment defaults continued after Deutsche Bank acquired MortgageIT in January 2007. The MortgageIT employee who monitored early payment defaults on FHA-insured loans after February 2006, the Government Loan Auditor, did not review all early payment defaults in 2006 or 2007. He was not instructed to do so. Moreover, by the end of 2007, the Government Loan Auditor was not reviewing any early payment defaults, because he had been reassigned to assist with loan production.

110. In addition, outside vendors failed to review all early payment defaults for MortgageIT. Although, in certain years, MortgageIT contracted with outside vendors to conduct

audits of certain MortgageIT loans, the outside vendors were unable to review all early payment

defaults because MortgageIT failed to identify early payment defaults to the vendors.

2. Deutsche Bank And MortgageIT Ignored Quality Control

111. In addition to failing to review early payment defaults as required by HUD rules,

Deutsche Bank and MortgageIT also failed to implement the minimal quality control processes

they purportedly had in place.

a. MortgageIT Stuffed Its Vendor's Quality Control Audits in a Closet, Unread and Unopened

112. Until late 2005, MortgageIT had no personnel to conduct the required quality

control reviews of closed FHA-insured loans.

113. In or about 2004, MortgageIT contracted with an outside vendor, Tena

Companies, Inc. ("Tena"), to conduct quality control reviews of closed FHA-insured loans.

114. As noted above, those reviews did not include early payment defaults because

MortgageIT failed to identify early payment defaults to Tena.

115. Throughout 2004, Tena prepared findings letters detailing underwriting violations

it found in FHA-insured mortgages underwritten by MortgageIT.

116. The findings letters included the identification of serious underwriting violations.

Among the serious underwriting violations identified in the Tena findings were violations by a

MortgageIT underwriter in the MortgageIT Chicago branch. The underwriting violations

involved mortgages in the Michigan market, including properties in and around Dearborn,

Michigan, and certain repeat brokers in that market.

117. No one at MortgageIT read any of the Tena findings letters as they arrived in

2004.

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118.   Instead, MortgageIT employees stuffed the letters, unopened and unread, in a closet in MortgageIT's Manhattan headquarters.

119.   The letters remained unopened until December 2004 or January 2005.

120.   In December 2004, MortgageIT hired its first quality control manager. The quality control manager asked to see the Tena findings, but was not provided with any findings. After searching throughout the office, the head of the credit department at MortgageIT showed the quality control manager to a closet. The quality control manager opened the closet and found a series of envelopes, unopened and still sealed, in the closet.

121.   The envelopes were disorganized. They contained the unread Tena findings.

122.   The quality control manager opened the Tena findings, for the first time, in December 2004 or January 2005. The quality control manager quickly identified serious underwriting violations, which had remained undiscovered over the course of the preceding year, because no one had bothered to read the Tena reports.

123.   The quality control manager reported the Tena findings to her supervisor, the Senior Vice President of the Audit Department. The quality control manager subsequently discussed the Tena findings with the Vice President of Credit and, thereafter, with the President of MortgageIT. None of those individuals indicated any prior awareness of the Tena findings.

124.   MortgageIT's failure to read the audit reports from its outside vendor prevented MortgageIT from taking appropriate actions to address patterns of ongoing underwriting violations.

**b.   MortgageIT Upper Management Failed to
Fix a Dysfunctional Quality Control System**

125.   When MortgageIT hired a quality control manager for the first time in December

2004, the quality control manager attempted to implement a quality control system at

MortgageIT. The system quickly proved dysfunctional.

126.   The quality control system was supposed to work as follows: The quality control

manager would identify closed mortgages for review by an outside vendor. The outside vendor

would perform a preliminary review and send the findings to the MortgageIT quality control

manager. To evaluate the findings, the MortgageIT quality control manager would send the

findings to the branches that had underwritten the mortgages at issue. The branches were to

respond to the findings, so that the MortgageIT quality control manager could assess problems

with the quality of MortgageIT's underwriting. The MortgageIT quality control manager was to

write up her assessment in a quarterly report to upper management.

127.   The system described above never worked.

128.   In particular, the branches never provided responses to the preliminary quality

control findings of the outside vendor. The quality control system therefore broke down

halfway.

129.   As a result, the MortgageIT quality control manager was not able to generate an

assessment of quality issues to present to management in a quarterly report.

130.   The MortgageIT quality control manager complained to upper management at

MortgageIT that the quality control system was broken. The MortgageIT quality control

manager asked for assistance in addressing the problems with the quality control system. In

addition, in or around August 2005, the quality control manager's supervisor, the Senior Vice

President of the Audit Department, sent a letter to upper management at MortgageIT describing the problems that the quality control manager was facing.

131.   MortgageIT, however, failed to make any changes in response to the complaints and requests of the quality control manager or her supervisor.

c.   Deutsche Bank and MortgageIT Failed to Provide Guidance to MortgageIT Quality Control Personnel

132.   Deutsche Bank and MortgageIT failed to provide guidance, including the required quality control plan, to its personnel conducting quality control.

133.   For instance, from the first quarter of 2006 until 2009, MortgageIT's quality control for FHA-insured loans was conducted by the Government Loan Auditor. During that period, the Government Loan Auditor was the only employee at Deutsche Bank and MortgageIT tasked with reviewing closed FHA-insured mortgage files.

134.   Deutsche Bank and MortgageIT never provided the Government Loan Auditor with a copy of MortgageIT's required quality control plan.

135.   Deutsche Bank and MortgageIT never explained the contents of the required quality control plan to the Government Loan Auditor.

136.   Deutsche Bank and MortgageIT never provided the Government Loan Auditor with any guidance concerning his review of closed FHA-insured mortgage files. Among other things, Deutsche Bank and MortgageIT never provided the Government Loan Auditor with criteria as to which mortgage files to review, or how many mortgage files to review.

137.   Instead, the Government Loan Auditor was wholly without guidance as to any quality control plan at MortgageIT.

3. Deutsche Bank and MortgageIT Chronically Understaffed Quality Control

138.   Deutsche Bank and MortgageIT failed to adequately staff the quality control reviews of closed FHA-insured mortgages.

139.   When MortgageIT interviewed its first quality control manager in December 2004, MortgageIT informed the manager that she would have a full staff to conduct quality control reviews.

140.   In order to review all early payment defaults as required by HUD rules, Deutsche Bank and MortgageIT would have needed to employ a staff of at least six to eight employees.

141.   Deutsche Bank and MortgageIT never provided the quality control manager at MortgageIT with a full staff.

142.   In fact, Deutsche Bank and MortgageIT never employed more than one person to conduct quality control reviews of closed FHA-insured mortgages.

143.   Between 2006 and 2009, the sole employee at Deutsche Bank or MortgageIT conducting quality control reviews of closed FHA-insured mortgages was the Government Loan Auditor. His review of closed FHA-insured mortgages continually declined during that period, and declined most significantly after Deutsche Bank acquired MortgageIT. By the end of 2007, the Government Loan Auditor was no longer spending any time conducting quality control reviews of closed mortgage files. To increase sales, Deutsche Bank and MortgageIT shifted his work from quality control reviews of closed mortgages (*i.e.*, quality control audits) to assistance with production.

144.   By the end of 2007, not a single person at Deutsche Bank or MortgageIT was conducting quality control reviews of closed FHA-insured mortgages, as required by HUD rules.

Thus, after Deutsche Bank acquired MortgageIT, it not only failed to fix the existing quality control deficiencies at MortgageIT, but it made a very bad problem even worse by directing the one employee who had been conducting only a portion of the required quality control reviews of closed FHA-insured mortgages to stop doing so altogether. As explained below, this failure to conduct the required quality control reviews after Deutsche Bank acquired MortgageIT in January 2007 resulted in additional defaulted loans, a dramatic increase in early payment defaults, and increased damages to HUD.

C.   The Absence Of The Required Quality Control Systems Led To Patterns Of Underwriting Violations And Mortgage Fraud

145.   Deutsche Bank's and MortgageIT's failure to implement the required quality control systems rendered them unable to prevent patterns of mortgage underwriting violations and mortgage fraud.

146.   One illustration of this failure is the pattern of underwriting violations in Michigan, which MortgageIT could have and should have stopped with proper quality control systems and responses. In this example, as in other cases, the absence of the required quality control systems led MortgageIT to miss multiple opportunities to detect serious underwriting violations and mortgage fraud. Moreover, here, as elsewhere, MortgageIT failed to comply with its basic quality control obligations, including its obligation to address serious quality problems when they arise, and to report suspected mortgage fraud to HUD. Instead, MortgageIT – including upper management at MortgageIT – knowingly, wantonly, and recklessly permitted egregious underwriting violations to continue unabated. These failures caused the Government millions of dollars in losses.

147.   As noted, MortgageIT lacked a system for reviewing early payment defaults. Such a system would have identified a pattern of early payment defaults in Michigan involving a common underwriter and common brokers. If MortgageIT had conducted the required early payment default reviews, it would have recognized these problems by 2004, terminated the underwriter and MortgageIT's relationship with the brokers, and reported the problems to HUD, pursuant to HUD rules. MortgageIT failed to do so. As a result, the underwriter continued her pattern of serious underwriting violations, and the brokers continued their pattern of submitting ineligible and/or fraudulent mortgages.

148.   Throughout 2004, the Tena findings described above identified underwriting violations by this MortgageIT underwriter who engaged in a pattern of serious underwriting violations with common brokers. If MortgageIT had read, in a timely manner, the findings provided to it by Tena, it would have recognized these problems by mid-2004, terminated the underwriter and MortgageIT's relationship with the brokers, and reported the problems to HUD, pursuant to HUD rules. MortgageIT failed to do so. As a result, the underwriter continued her pattern of serious underwriting violations, and the brokers continued their pattern of submitting ineligible and/or fraudulent mortgages.

149.   In December 2004 or January 2005, MortgageIT's quality control manager read the Tena findings for the first time, and identified the MortgageIT underwriter engaging in the pattern of serious underwriting violations with common brokers. The quality control manager informed upper management within MortgageIT, including the President of the company, about these serious problems. In mid-2005, the quality control manager asked the President and other upper management at MortgageIT to take action. The President of MortgageIT failed to do so.

As a result, the underwriter continued her pattern of serious underwriting violations, and the brokers continued their pattern of submitting ineligible and/or fraudulent mortgages.

150.	In September 2005, a MortgageIT employee employed outside of the quality control group identified the same pattern of underwriting violations described above. She likewise informed upper management of the problem. MortgageIT, however, once again failed to take action against the underwriter. As a result, the underwriter continued her pattern of serious underwriting violations, and some of the brokers continued their pattern of submitting ineligible and/or fraudulent mortgages.

151.	In February 2006, HUD discovered the pattern of underwriting violations described above and discussed the pattern with MortgageIT. MortgageIT failed to take effective action for months. As a result, the underwriter continued her pattern of serious underwriting violations until May 2006, and some of the brokers likewise continued their pattern of submitting ineligible and/or fraudulent mortgages until then.

152.	If MortgageIT had the required quality control procedures in place, it would have recognized the patterns described above by at least sometime in mid-2004 and addressed them. Doing so in this instance would have prevented approximately one hundred mortgages from being endorsed for FHA insurance, which subsequently defaulted, and which have accounted for millions of dollars in claims.

153.	This is just one illustration of how Deutsche Bank and MortgageIT's failure to implement the required quality control systems rendered them unable and unwilling to prevent patterns of mortgage underwriting violations and/or mortgage fraud.

D. The False Certifications and Representations By Deutsche Bank and MortgageIT Have Caused HUD To Pay Hundreds Of Millions Of Dollars In Insurance Claims Thus Far

154.   The false certifications and representations by Deutsche Bank and MortgageIT regarding purported compliance with HUD quality control requirements permitted MortgageIT to endorse more than 39,000 mortgages for FHA insurance.

155.   Absent a truthful annual certification, a lender is not entitled to maintain its Direct Endorsement Lender status and is not entitled to endorse loans for FHA insurance. If MortgageIT and Deutsche Bank had been truthful about their egregious failures to implement the requisite quality control procedures, MortgageIT would not been able to maintain its Direct Endorsement Lender status and continue endorsing loans for FHA insurance.

156.   As of June 2011, HUD has paid more than $368 million in FHA insurance claims and related costs arising out of MortgageIT's approval of mortgages for FHA insurance.

157.   HUD expects to pay at least hundreds of millions of dollars in additional FHA insurance claims as additional mortgages underwritten by MortgageIT default in the months and years ahead.

158.   The costs relating to FHA insurance claims paid by HUD to date and the costs relating to FHA insurance claims expected to be paid by HUD are the direct result of Deutsche Bank's and MortgageIT's false certifications and representations described above.

IV. BEFORE AND AFTER ITS ACQUISITION BY DEUTSCHE BANK, MORTGAGEIT ABUSED ITS DIRECT ENDORSEMENT LENDER STATUS TO ENDORSE THOUSANDS OF MORTGAGES INELIGIBLE FOR FHA INSURANCE

159.   MortgageIT abused the Direct Endorsement Lender status that it maintained through the lies of Deutsche Bank and MortgageIT. In particular, as a Direct Endorsement

Lender, MortgageIT regularly violated HUD rules, prudent underwriting practices, and

MortgageIT's duties to HUD, by failing to conduct due diligence on mortgages that it reviewed

and approved for FHA insurance. Despite its repeated violations of HUD rules, MortgageIT

falsely certified, on a loan-by-loan basis, that it had complied with HUD rules and that the

mortgages it endorsed were eligible for FHA insurance under HUD rules. MortgageIT engaged

in this misconduct both before and after its merger with Deutsche Bank. If HUD had known that

MortgageIT's mortgage eligibility certifications were false, HUD would not have permitted

MortgageIT to endorse those loans for FHA insurance.

A.   **MortgageIT Repeatedly Certified That It Conducted Due Diligence And Complied With HUD Rules**

160.   Between 1999 and 2009, as a Direct Endorsement Lender, MortgageIT approved

more than 39,000 mortgages for FHA insurance.

161.   For each mortgage, MortgageIT certified that it complied with all HUD rules,

including HUD rules requiring due diligence.

B.   **Contrary to MortgageIT's Certifications To HUD, MortgageIT Repeatedly Failed To Conduct Due Diligence In Accordance With HUD Rules**

162.   Contrary to the certifications appearing on each and every mortgage endorsed by

MortgageIT, MortgageIT engaged in a nationwide pattern of failing to conduct due diligence in

accordance with HUD rules and with sound and prudent underwriting principles.

163.   MortgageIT knew that its certifications of compliance with HUD rules were false.

164.   In the alternative, in falsely certifying compliance with HUD rules, MortgageIT

acted with deliberate ignorance and/or reckless disregard of the truth.

165.   In the alternative, MortgageIT's false certifications, as well as its failure to

conduct due diligence in accordance with HUD rules, were reckless, grossly negligent, and/or negligent.

166.   MortgageIT's false certifications, as well as its failure to conduct due diligence in accordance with HUD rules, violated MortgageIT's duty of care to HUD.

167.   MortgageIT's false certifications, as well as its failure to conduct due diligence in accordance with HUD rules, violated MortgageIT's fiduciary obligations to HUD.

168.   This pattern of false certifications extended to MortgageIT's branches throughout the United States, as illustrated by the ten examples below. Moreover, this pattern continued after MortgageIT was acquired by, and was under the supervision and control of, Deutsche Bank, as also illustrated by the examples below. MortgageIT's actions in these ten examples were not isolated events. These examples represent a small fraction, but a representative sample, of the total number of mortgages for which MortgageIT submitted false certifications.

1.   New York Example: The Center Street Property

169.   FHA case number 372-3209567 relates to a property on Center Street in Waterloo, New York (the "Center Street Property"). MortgageIT underwrote the mortgage for the Center Street Property, reviewed and approved it for FHA insurance, and certified that MortgageIT had conducted due diligence on the mortgage application (the "Center Street Mortgage Application"). The mortgage closed on or about June 27, 2002.

170.   Contrary to the MortgageIT certification, MortgageIT did not comply with HUD rules in reviewing and approving the Center Street Mortgage Application for FHA insurance. Instead, MortgageIT violated multiple HUD rules, including HUD 4155.1, Ch. 2, § 3, HUD 4155.1, Ch. 2, § 7(F), HUD 4155.1, Ch. 2, § 10(C), and HUD 4155.1, Ch. 3, § 1.

171.   MortgageIT's violation of HUD 4155.1, Ch. 2, § 10(C), illustrates one of the multiple HUD rules that MortgageIT violated in approving the Center Street Mortgage Application. HUD 4155.1, Ch. 2, § 10(C), provides that, in order to ensure that gift funds are not provided by a party to the sales transaction, the Direct Endorsement Lender must document gift funds with a gift letter, signed by the borrower, that specifies the amount of the gift and states that no repayment is required, and that the Direct Endorsement Lender must document the transfer of the funds from the donor to the borrower. Contrary to this rule, MortgageIT failed to document the gift funds with a letter signed by the borrower, stating the amount of the gift, or stating that repayment was not required, and MortgageIT failed to document the transfer of the gift funds. In violating HUD 4155.1, Ch. 2, § 10(C), MortgageIT endorsed the Center Street Mortgage Application without proof that the borrower closed with gift funds from a proper source rather than from, for instance, the seller.

172.   MortgageIT's false certification on the Center Street Mortgage Application was material and bore upon the likelihood that borrower would make mortgage payments.

173.   Within two months after closing, the Center Street Mortgage went into default.

174.   As a result, HUD paid an FHA insurance claim of $80,198, including costs.

2.   Colorado Example: The Bittercreed Drive Property

175.   FHA case number 052-3466494 relates to a property on Bittercreed Drive in Colorado Springs, Colorado (the "Bittercreed Drive Property"). MortgageIT underwrote the mortgage for the Bittercreed Drive Property, reviewed and approved it for FHA insurance, and certified that MortgageIT had conducted due diligence on the mortgage application (the "Bittercreed Drive Mortgage Application"). The mortgage closed on or about June 29, 2004.

176.   Contrary to the MortgageIT certification, MortgageIT did not comply with HUD rules in reviewing and approving the Bittercreed Drive Mortgage Application for FHA insurance. Instead, MortgageIT violated multiple HUD rules, including HUD 4155.1, Ch. 2, § 3; HUD 4155.1, Ch. 2, § 10(C), HUD 4155.1, Ch. 3, § 1(E), and HUD 4155.1, Ch. 9, § 2(H)(2).

177.   MortgageIT's violation of HUD 4155.1, Ch. 2, § 3, illustrates one of the multiple HUD rules that MortgageIT violated in approving the Bittercreed Drive Mortgage Application. HUD 4155.1, Ch. 2, § 3, requires Direct Endorsement Lenders to develop a credit history for borrowers who do not have established credit histories. Lenders must do so by assembling payment records for recurring expenses such as utilities, rentals, and automobile insurance. Contrary to this rule, MortgageIT failed to develop a credit history by assembling any such records in reviewing the Bittercreed Drive Mortgage Application, even though the borrower had no established credit history (*i.e.*, lacked any credit score). In violating HUD 4155.1, Ch. 2, § 3, MortgageIT endorsed the Bittercreed Drive Mortgage Application without any measure of the borrower's creditworthiness based on past credit.

178.   MortgageIT's false certification on the Bittercreed Drive Mortgage Application was material and bore upon the likelihood that borrower would make mortgage payments.

179.   Within six months after closing, the Bittercreed Drive Mortgage went into default.

180.   As a result, HUD paid an FHA insurance claim of $190,977, including costs.

3.   Indiana Example: The Monument Avenue Property

181.   FHA case number 151-7978818 relates to a property on Monument Avenue in Portage, Indiana (the "Monument Avenue Property"). MortgageIT underwrote the mortgage for

the Monument Avenue Property, reviewed and approved it for FHA insurance, and certified that MortgageIT had conducted due diligence on the mortgage application (the "Monument Avenue Mortgage Application"). The mortgage closed on or about November 4, 2005.

182. Contrary to the MortgageIT certification, MortgageIT did not comply with HUD rules in reviewing and approving the Monument Avenue Mortgage Application for FHA insurance. Instead, MortgageIT violated multiple HUD rules, including HUD 4155.1, Ch. 2, § 3-1, HUD 4155.1, Ch. 2, § 4, HUD 4155.1, Ch. 2, § 10, and HUD 4155.1, Ch. 2, § 11.

183. MortgageIT's violation of HUD 4155.1, Ch. 2, § 10, illustrates one of the multiple HUD rules that MortgageIT violated in approving the Monument Avenue Mortgage Application. HUD 4155.1, Ch. 2, § 10, requires Direct Endorsement Lenders to verify and document a borrower's cash investment in a property. Contrary to this rule, MortgageIT failed to verify and document the borrower's purported investment in the Monument Avenue Property; indeed, the documentation in the Monument Avenue Mortgage Application reveals that the borrower had documented assets of thousands of dollars less than the amount the borrower was purportedly investing in the property. In violating HUD 4155.1, Ch. 2, § 10, MortgageIT endorsed the Monument Avenue Mortgage Application without proof that the borrower contributed the purported investment to the closing.

184. MortgageIT's false certification on the Monument Avenue Mortgage Application was material and bore upon the likelihood that borrower would make mortgage payments.

185. Within nine months after closing, the Monument Avenue Mortgage went into default.

186. As a result, HUD paid an FHA insurance claim of $143,302, including costs.

4.   Michigan Example: The Kentucky Street Property

187.   FHA case number 261-8886675 relates to a property on Kentucky Street in Dearborn, Michigan (the "Kentucky Street Property"). MortgageIT underwrote the mortgage for the Kentucky Street Property, reviewed and approved it for FHA insurance, and certified that MortgageIT had conducted due diligence on the mortgage application (the "Kentucky Street Mortgage Application"). The mortgage closed on or about February 15, 2005.

188.   Contrary to the MortgageIT certification, MortgageIT did not comply with HUD rules in reviewing and approving the Kentucky Street Mortgage Application for FHA insurance. Instead, MortgageIT violated multiple HUD rules, including HUD 4155.1, Ch. 3, § 1(E).

189.   MortgageIT's violation of HUD 4155.1, Ch. 3, § 1(E), illustrates one of the multiple HUD rules that MortgageIT violated in approving the Kentucky Street Mortgage Application. HUD 4155.1, Ch. 3, § 1(E), requires Direct Endorsement Lenders to verify current employment by telephone, and to record the name and telephone number of the person who verified employment on behalf of the employer. Contrary to this rule, MortgageIT failed to contact the employer, and, after the mortgage closed, the listed employer verified that the borrower was never its employee. In violating HUD 4155.1, Ch. 3, § 1(E), MortgageIT endorsed the Kentucky Street Mortgage Application based on unverified, and ultimately untrue, representations about the borrower's employment.

190.   MortgageIT's false certification on the Kentucky Street Mortgage Application was material and bore upon the likelihood that borrower would make mortgage payments.

191.   Within four months after closing, the Kentucky Street Mortgage went into default.

192.   As a result, HUD paid an FHA insurance claim of $199,119, including costs.

5. Oklahoma Example: The Sixth Street Property

193. FHA case number 421-4018115 relates to a property on Southwest Sixth Street in Oklahoma City, Oklahoma (the "Sixth Street Property"). MortgageIT underwrote the mortgage for the Sixth Street Property, reviewed and approved it for FHA insurance, and certified that MortgageIT had conducted due diligence on the mortgage application (the "Sixth Street Mortgage Application"). The mortgage closed on or about January 2, 2004.

194. Contrary to the MortgageIT certification, MortgageIT did not comply with HUD rules in reviewing and approving the Sixth Street Mortgage Application for FHA insurance. Instead, MortgageIT violated multiple HUD rules, including HUD 4155.1, Ch. 2, § 3, HUD 4155.1, Ch. 2, § 6, HUD 4155.1, Ch. 2, § 10(A), HUD 4155.1, Ch. 3, § 1(E), and HUD 4155.1, Ch. 3, § 1(F).

195. MortgageIT's violation of HUD 4155.1, Ch. 2, § 10(A), illustrates one of the multiple HUD rules that MortgageIT violated in approving the Sixth Street Mortgage Application. HUD 4155.1, Ch. 2, § 10(A), requires that Direct Endorsement Lenders must verify the source of any earnest money deposits that appear excessive in relation to the borrower's savings by completing a verification of deposit, or by collecting bank statements, to document that the borrower had sufficient funds to cover the deposit. Contrary to this rule, MortgageIT obtained neither a verification of deposit nor bank statements for the Sixth Street Mortgage Application, even though the borrower's earnest money deposit was excessive in relation to his accumulate savings. Moreover, MortgageIT approved the mortgage for FHA insurance despite the fact that closing documents reveal that the borrower received, at closing, an amount exactly equal to the amount he purportedly provided as an earnest money deposit. In

violating HUD 4155.1, Ch. 2, § 10(C), MortgageIT endorsed the Sixth Street Mortgage

Application without proof that the borrower closed with his own funds rather than funds from,

for instance, the seller.

196.   MortgageIT's false certification on the Sixth Street Mortgage Application was

material and bore upon the likelihood that borrower would make mortgage payments.

197.   Within seven months after closing, the Sixth Street Mortgage went into default.

198.   As a result, HUD paid an FHA insurance claim of $122,666, including costs.

6.   Texas Example: The Catalina Drive Property

199.   FHA case number 491-8308519 relates to a property on Catalina Drive in

Lancaster, Texas (the "Catalina Drive Property"). MortgageIT underwrote the mortgage for the

Catalina Drive Property, reviewed and approved it for FHA insurance, and certified that

MortgageIT had conducted due diligence on the mortgage application (the "Catalina Drive

Mortgage Application"). The mortgage closed on or about March 31, 2004.

200.   Contrary to the MortgageIT certification, MortgageIT did not comply with HUD

rules in reviewing and approving the Catalina Drive Mortgage Application for FHA insurance.

Instead, MortgageIT violated multiple HUD rules, including HUD 4155.1, Ch. 2, § 4(A)(1), and

HUD Handbook 4000.4, Rev-1 CHG-2 (1994) ("HUD 4000.4"), Ch. 2, § 4(C)(5).

201.   MortgageIT's violation of HUD 4000.4, Ch. 2, § 4(C)(5), illustrates one of the

multiple HUD rules that MortgageIT violated in approving the Catalina Drive Mortgage

Application. HUD 4155.1, Ch. 2, § 4(C), requires Direct Endorsement Lenders to be aware of

the warning signs of fraud by examining irregularities presented in mortgage applications.

Contrary to this rule, MortgageIT failed to reconcile a purported verification of employment

(*i.e.*, a document required for the file), which represented that the borrower worked at Employer

X from 2002 through 2004, with conflicting records in the same file, which contradicted that

verification and documented that the borrower had, in fact, worked at Employer Y from 2003

through 2004. In violating HUD 4155.1, Ch. 2, § 4(C)(5), MortgageIT endorsed the Catalina

Drive Mortgage Application without verifying the employment history of the borrower.

203.   MortgageIT's false certification on the Catalina Drive Mortgage Application was

material and bore upon the likelihood that borrower would make mortgage payments.

203.   Within five months after closing, the Catalina Drive Mortgage went into default.

204.   As a result, HUD paid an FHA insurance claim of $126,683, including costs.

7.   Oregon Example: The Lakeside Drive Property

205.   FHA case number 431-4301440 relates to a property on NE Lakeside Drive in

Madras, Oregon (the "Lakeside Drive Property"). MortgageIT, using an FHA-approved

automated underwriting system ("AUS"), underwrote the mortgage for the Lakeside Drive

Property (the "Lakeside Drive Mortgage"), reviewed and approved it for FHA insurance, and

certified as to the integrity of the data supplied to the AUS and that the loan was eligible for

FHA insurance under the Direct Endorsement Program. The mortgage closed on or about

August 27, 2007.

206.   Because the soundness of the AUS's evaluation of a mortgage is dependent on the

accuracy and reliability of the data submitted by the mortgagee, a mortgagee may only enter into

the AUS such income, assets, debts, and credit information that meets FHA's applicable

eligibility rules and documentation requirements, including those set forth in HUD Handbook

4155.1, Mortgagee Letters, the FHA TOTAL Mortgagee Scorecard User Guide, and the AUS

Certificate.

207.   Contrary to the MortgageIT certification, the data MortgageIT entered into the AUS lacked integrity and failed to meet FHA's eligibility rules and documentation requirements.

208.   Despite clear requirements, MortgageIT failed to obtain the required documentation to verify the borrower's mortgage payment history and income. In failing to verify this information, which was submitted into the AUS, MortgageIT endorsed a loan for FHA insurance that was ineligible for FHA insurance, and was supported by data lacking integrity.

209.   Moreover, HUD Handbook 4155.1, Ch. 2, § 3(C), and the FHA TOTAL Scorecard User Guide require that court-ordered judgments entered against a borrower must be paid off before a mortgage is eligible for FHA insurance. Contrary to this requirement, MortgageIT certified the Lakeside Drive Mortgage as eligible for FHA insurance, even though a credit report included in the mortgage application showed that the borrower was subject to an unpaid court-ordered judgment.

210.   MortgageIT's false certification on the Lakeside Drive Mortgage was material and bore upon the likelihood that borrower would make mortgage payments.

211.   Within ten months after closing, the Lakeside Drive Mortgage went into default.

212.   As a result, HUD paid an FHA insurance claim of $146,392.98, including costs.

8.   Idaho Example: The Wrigley Street Property

213.   FHA case number 121-2377843 relates to a property on West Wrigley Street in Boise, Idaho (the "Wrigley Street Property"). MortgageIT, using the AUS, underwrote the mortgage for the Wrigley Street Property (the "Wrigley Street Mortgage"), reviewed and

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approved it for FHA insurance, and certified as to the integrity of the data supplied to the AUS

and that the loan was eligible for FHA insurance under the Direct Endorsement Program. The

mortgage closed on or about September 28, 2007.

214. Contrary to the MortgageIT certification, the data MortgageIT entered into the

AUS lacked integrity and failed to meet FHA's eligibility rules and documentation requirements.

215. Despite clear requirements, MortgageIT failed to obtain the required

documentation to verify the borrower's employment, income, and depository assets. In failing to

verify this information, which was submitted into the AUS, MortgageIT endorsed a loan for

FHA insurance that was ineligible for FHA insurance, and was supported by data lacking

integrity.

216. MortgageIT's false certification on the Wrigley Street Mortgage was material and

bore upon the likelihood that borrower would make mortgage payments.

217. Within one month after closing, the Wrigley Street Mortgage went into default.

218. As a result, HUD paid an FHA insurance claim of $104,207.89, including costs.

9. Indiana Example #2: The Chestnut Street Property

219. FHA case number 151-8415100 relates to a property on Chestnut Street in

Michigan City, Indiana (the "Chestnut Street Property"). MortgageIT underwrote the mortgage

for the Chestnut Street Property, reviewed and approved it for FHA insurance, and certified that

MortgageIT had conducted due diligence on the mortgage application (the "Chestnut Street

Mortgage Application"). The mortgage closed on or about October 15, 2007.

220. Contrary to the MortgageIT certification, MortgageIT did not comply with HUD

rules in reviewing and approving the Chestnut Street Mortgage Application for FHA insurance.

Instead, MortgageIT violated multiple HUD rules, including HUD Handbook 4155.1, Ch. 2, §§ 3(B), 12, and 13, HUD Handbook 4155.1, Ch. 3, §§ 1(A), 1(E), and 1(G), and Mortgagee Letter 2005-16.

221.   MortgageIT's violations of HUD Handbook 4155.1, Ch. 3, §§ 1(E) and 1(G), illustrate two of the multiple HUD rules that MortgageIT violated in approving the Chestnut Street Mortgage Application. HUD Handbook 4155.1, Ch. 3, § 1(E), requires Direct Endorsement Lenders to verify a borrower's current employment and obtain the borrower's most recent pay stub. Additionally, § 1(G) requires Direct Endorsement Lenders to obtain Federal income tax returns for a self-employed borrower or a borrower paid on commission. Contrary to these requirements, MortgageIT failed to obtain the required documentation. In violating HUD Handbook 4155.1, Ch. 3, §§ 1(E) and 1(G), MortgageIT endorsed the Chestnut Street Mortgage Application based on undocumented employment and income.

222.   MortgageIT's false certification on the Chestnut Street Mortgage Application was material and bore upon the likelihood that borrower would make mortgage payments.

223.   Within eight months after closing, the Chestnut Street Mortgage went into default.

224.   As a result, HUD paid an FHA insurance claim of $104,034.73, including costs.

10.   Pennsylvania Example: The Ilona Drive Property

225.   FHA case number 441-8039970 relates to a property on Ilona Drive in Hellertown, Pennsylvania (the "Ilona Drive Property"). MortgageIT underwrote the mortgage for the Ilona Drive Property, reviewed and approved it for FHA insurance, and certified that

MortgageIT had conducted due diligence on the mortgage application (the "Ilona Drive Mortgage Application"). The mortgage closed on or about November 30, 2007.

226. Contrary to the MortgageIT certification, MortgageIT did not comply with HUD rules in reviewing and approving the Ilona Drive Mortgage Application for FHA insurance. Instead, MortgageIT violated multiple HUD rules, including HUD Handbook 4155.1, Ch. 2, §§ 3 and 4, and HUD Handbook 4155.1, Ch. 3, § 1.

227. MortgageIT's violations of HUD Handbook 4155.1, Ch. 2, §§ 3 and 4, illustrate two of the multiple HUD rules that MortgageIT violated in approving the Ilona Drive Mortgage Application. HUD Handbook 4155.1, Ch. 2, §§ 3 and 4, require Direct Endorsement Lenders to analyze a borrower's credit and obtain a credit report on all borrowers who will be obligated on the mortgage note. Contrary to these requirements, MortgageIT failed to obtain a credit report on the borrower, and thus failed adequately to analyze the borrower's credit prior to the loan closing. In violating HUD Handbook 4155.1, Ch. 2, §§ 3 and 4, MortgageIT endorsed the Ilona Drive Mortgage Application without documenting or adequately analyzing the borrower's creditworthiness.

228. MortgageIT's false certification on the Ilona Drive Mortgage Application was material and bore upon the likelihood that borrower would make mortgage payments.

229. Within three months after closing, the Ilona Drive Mortgage went into default.

230. As a result, HUD paid an FHA insurance claim of $205,935.79, including costs.

C.   The False Certifications By MortgageIT Have Caused HUD To Pay Hundreds Of Millions Of Dollars In Insurance Claims Thus Far

231. HUD has paid thousands of insurance claims relating to mortgages insured by FHA based on MortgageIT's false certifications of due diligence, similar to the examples set

forth in the previous section of this Complaint. HUD would not have made a financial commitment to pay such mortgage insurance claims absent MortgageIT's false certifications.

232. MortgageIT's false certifications, similar to the examples set forth in the previous section of this Complaint, were material and bore upon the likelihood that borrowers would make mortgage payments.

233. As of June 2011, HUD has paid more than $368 million in FHA insurance claims and related costs arising out of MortgageIT's approval of mortgages for FHA insurance. Many of those claims arose out of FHA mortgage insurance provided by HUD based on MortgageIT's false certifications of due diligence.

234. HUD expects to pay at least hundreds of millions of dollars in additional FHA insurance claims as additional mortgages underwritten by MortgageIT default in the months and years ahead. Many of those future claims will arise out of FHA mortgage insurance provided by HUD based on MortgageIT's false certifications of due diligence.

V. DEUTSCHE BANK KNEW ABOUT MORTGAGEIT'S WRONGFUL CONDUCT PRIOR TO THE MERGER AND, AFTER THE MERGER, ALLOWED THE WRONGFUL CONDUCT TO CONTINUE

235. When Deutsche Bank acquired MortgageIT, it was on notice that MortgageIT had been violating the HUD rules described herein, including the rule requiring review of all early payment defaults. Prior to the merger, and beginning on or about May 22, 2006, Deutsche Bank conducted substantial due diligence of MortgageIT. This due diligence included access to MortgageIT's books, records, and personnel, as well as direct communications with MortgageIT's management, including Douglas Naidus, MortgageIT's Chairman and CEO, and Gary Bierfriend, MortgageIT's President.

236.   Through the due diligence process, Deutsche Bank had access to documents evidencing MortgageIT's violations of HUD rules and its related false representations to HUD. For example, Deutsche Bank had access to the June 24, 2005 letter from MortgageIT to HUD in which MortgageIT's Director of Government Lending acknowledged that MortgageIT had not been reviewing all early payment defaults on closed FHA-insured loans and falsely represented that MortgageIT would do so in the future. Deutsche Bank also had access to prior letters from HUD addressing MortgageIT's failure to review all early payment defaults, including letters dated September 27, 2004, December 8, 2004, and March 14, 2005. In addition, Deutsche Bank had access to MortgageIT managers who had knowledge of these violations and false representations, including the Director of Government Lending.

237.   Moreover, MortgageIT managers with whom Deutsche Bank communicated prior to the merger had knowledge of the misconduct identified herein. For example, before the merger, in February 2005, Gary Bierfriend, MortgageIT's President, signed one of the false annual certifications. He did so knowing that the certification was false or in deliberate ignorance or reckless disregard of whether it was false. Additionally, in 2005, Mr. Bierfriend was told about the Tena findings. Therefore, before the merger, Mr. Bierfriend also knew that MortgageIT's deficient quality control practices had resulted in the approval of numerous ineligible and/or fraudulent mortgages for FHA insurance.

238.   Notwithstanding its knowledge of MortgageIT's wrongful conduct, Deutsche Bank completed the merger with MortgageIT, pursuant to which it expressly agreed to acquire all of the pre-merger assets and liabilities of MortgageIT.

239.   Following the merger, MortgageIT continued its wrongful conduct. And, it did so

with the knowledge and/or participation of Deutsche Bank. For example, shortly after the

merger, it was decided that a Deutsche Bank employee should sign the annual certifications.

Consequently, in March 2007, Patrick McEnerney signed the false annual certification for 2007

in his capacity as a Managing Director of Deutsche Bank. Indeed, he handwrote the title

"Managing Director" under his name. Thereafter, in 2008 and 2009, Deutsche Bank employees

signed two additional false annual certifications.

240.   Furthermore, after the merger, Deutsche Bank fully integrated MortgageIT into its

compliance and oversight structure, such that Deutsche Bank was cognizant of, involved in, and

ultimately responsible for MortgageIT's activities. For example, Deutsche Bank had

MortgageIT's senior officers report directly to Deutsche Bank executives, it reconfigured

MortgageIT's Board of Directors to consist of individuals who were either Managing Directors

or Directors of Deutsche Bank, and it established a series of committees through which Deutsche

Bank personnel would oversee the various aspects of the MortgageIT business, including quality

control.

241.   Deutsche Bank also corresponded directly with HUD about the business of

MortgageIT, thus confirming that it was cognizant of, involved in, and ultimately responsible for

MortgageIT's activities. For example, on or about May 16, 2008, HUD sent a letter to

MortgageIT in which it requested indemnification for certain loans that had been issued in

violation of HUD rules. On or about August 18, 2008, Joseph Swartz responded by sending a

letter to HUD enclosing a signed indemnification agreement. Mr. Swartz's letter was written on

Deutsche Bank letterhead and was signed by Mr. Swartz in his capacity as a Director of

Deutsche Bank. In the letter, Mr. Swartz identified himself as a "Director" of Deutsche Bank's "RMBS" group.

242. The wrongful conduct alleged herein not only continued after Deutsche Bank acquired MortgageIT in January 2007, but it got worse. And, so did its consequences. As explained above, and contrary to Deutsche Bank's representations to HUD, MortgageIT was not doing the required quality control reviews after January 2007. And, by the end of 2007, MortgageIT was not reviewing any early payment defaults on closed FHA-insured loans. This failure to conduct the requisite quality control reviews resulted in an explosion of early payment defaults. Before Deutsche Bank acquired MortgageIT, approximately 30 percent of all FHA loans MortgageIT originated entered into default, with approximately 10 percent of the defaults constituting early payment defaults. After Deutsche Bank acquired MortgageIT, the percentage of loans that defaulted increased to approximately 46 percent, while the percentage of defaults constituting early payment defaults skyrocketed to approximately 65 percent. Specifically, there were approximately 9,477 defaults and 992 early payment defaults for loans that closed between June 2000 and January 2007, and approximately 3,461 defaults and 2,223 early payment defaults for loans that closed between January 2007 and March 2009. On the approximately 3,461 loans that defaulted after Deutsche Bank acquired MortgageIT, HUD has paid more than $58 million in claims, and there are more than $350 million in principal balances that have not yet been submitted to HUD as insurance claims.

243. The United States Department of Justice first learned about Defendants' false claims and statements to HUD in July 2010.

FIRST CLAIM

Violations of the False Claims Act
(31 U.S.C. § 3729(a)(1) (2006), and as amended, 31 U.S.C. § 3729(a)(1)(A))
Causing False Claims

244.   The Government incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

245.   The Government seeks relief against Deutsche Bank and MortgageIT under Section 3729(a)(1) of the False Claims Act, 31 U.S.C. § 3729(a)(1) (2006), and, as amended, Section 3729(a)(1)(A) of the False Claims Act, 31 U.S.C. § 3729(a)(1)(A).

246.   As set forth above, Deutsche Bank and MortgageIT knowingly, or acting with deliberate ignorance and/or with reckless disregard for the truth, presented and/or caused to be presented, to an officer or employee of the Government, false and fraudulent claims for payment or approval in connection with its endorsement of FHA-insured mortgages, by:

   a.   Submitting false annual certifications and making false representations to HUD with respect to MortgageIT's qualifications for Direct Endorsement Lender status; and/or

   b.   Submitting false loan-level certifications to HUD in endorsing mortgages for FHA insurance.

247.   The Government paid insurance claims, and incurred losses, relating to FHA-insured mortgages wrongfully endorsed by MortgageIT because of Deutsche Bank's and MortgageIT's wrongful conduct.

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248.   By reason of the false claims of Deutsche Bank and MortgageIT, the Government

has been damaged in a substantial amount to be determined at trial, and is entitled to a civil

penalty as required by law for each violation.

SECOND CLAIM

Violations of the False Claims Act
(31 U.S.C. § 3729(a)(1)(B))
Use of False Statements

249.   The Government incorporates by reference each of the preceding paragraphs as if

fully set forth in this paragraph.

250.   The Government seeks relief against Deutsche Bank and MortgageIT under

Section 3729(a)(1)(B) of the False Claims Act, 31 U.S.C. § 3729(a)(1)(B), or, in the alternative,

under Section 3729(a)(2) of the False Claims Act, 31 U.S.C. § 3729(a)(1) (2006).

251.   As set forth above, Deutsche Bank and MortgageIT knowingly, or acting in

deliberate ignorance and/or with reckless disregard of the truth, made, used, or caused to be

made or used, false records and/or statements material to false or fraudulent claims in connection

with MortgageIT's maintenance of its Direct Endorsement Lender status and/or MortgageIT's

endorsement of FHA-insured mortgages.

252.   The Government paid insurance claims, and incurred losses, relating to FHA-

insured mortgages wrongfully endorsed by MortgageIT because of Deutsche Bank's and

MortgageIT's wrongful conduct.

253.   By reason of the false records and/or statements of Deutsche Bank and

MortgageIT, the Government has been damaged in a substantial amount to be determined at trial,

and is entitled to a civil penalty as required by law for each violation.

THIRD CLAIM

Violations of the False Claims Act
(31 U.S.C. § 3729(a)(7) (2006), and as amended, 31 U.S.C. § 3729(a)(1)(G))
Reverse False Claims

254.   The Government incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

255.   The Government seeks relief against Deutsche Bank and MortgageIT under Section 3729(a)(7) of the False Claims Act, 31 U.S.C. § 3729(a)(7) (2006), and, as amended, Section 3729(a)(1)(G) of the False Claims Act, 31 U.S.C. § 3729(a)(1)(G).

256.   As set forth above, Deutsche Bank and MortgageIT knowingly made, used or caused to be made or used false records and/or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the United States.

257.   The Government paid insurance claims, and incurred losses, relating to FHA-insured mortgages wrongfully endorsed by MortgageIT because of Deutsche Bank's and MortgageIT's wrongful conduct.

258.   By virtue of the false records or statements made by Deutsche Bank and MortgageIT, the Government suffered damages and therefore is entitled to treble damages under the False Claims Act, to be determined at trial, and a civil penalty as required by law for each violation.

FOURTH CLAIM

Breach of Fiduciary Duty

259.   The Government incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

260.   Deutsche Bank and MortgageIT were fiduciaries of the Government, and owed the Government fiduciary duties.

261.   As fiduciaries, Deutsche Bank and MortgageIT had a duty to act for, and give advice to, the Government for the benefit of the Government as to whether mortgages should be insured by FHA under the Direct Endorsement Lender program.

262.   As fiduciaries, Deutsche Bank and MortgageIT had a duty of *uberrmiae fidea*, or, the obligation to act in the utmost good faith, candor, honesty, integrity, fairness, undivided loyalty, and fidelity in their dealings with the Government.

263.   As fiduciaries, Deutsche Bank and MortgageIT had a duty to refrain from taking advantage of the Government by the slightest misrepresentation, to make full and fair disclosures to the Government of all material facts, and to take on the affirmative duty of employing reasonable care to avoid misleading the Government in all circumstances.

264.   As fiduciaries, Deutsche Bank and MortgageIT had a duty to exercise sound judgment, prudence, and due diligence on behalf of the Government in endorsing mortgages for FHA insurance.

265.   As set forth above, Deutsche Bank and MortgageIT breached their fiduciary duties to the Government.

266.   As a result of the breach of the fiduciary duties of Deutsche Bank and MortgageIT to the Government, the Government has paid insurance claims, and incurred losses, relating to FHA-insured mortgages endorsed by MortgageIT.

267.   As a result of the breach of the fiduciary duties of Deutsche Bank and MortgageIT to the Government, the Government will pay future insurance claims, and incur future losses, relating to FHA-insured mortgages endorsed by MortgageIT.

268.   By virtue of the above, the Government is entitled to compensatory and punitive damages, in an amount to be determined at trial.

FIFTH CLAIM

Gross Negligence

269.   The Government incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

270.   Deutsche Bank and MortgageIT owed the Government a duty of reasonable care and a duty to conduct due diligence.

271.   As set forth above, Deutsche Bank and MortgageIT breached their duties to the Government.

272.   As set forth above, Deutsche Bank and MortgageIT recklessly disregarded their duties to the Government.

273.   As a result of the gross negligence of Deutsche Bank and MortgageIT, the Government has paid insurance claims, and incurred losses, relating to FHA-insured mortgages endorsed by MortgageIT.

274.   As a result of the gross negligence of Deutsche Bank and MortgageIT, the Government will pay future insurance claims, and incur future losses, relating to FHA-insured mortgages endorsed by MortgageIT.

275.   By virtue of the above, the Government is entitled to compensatory and punitive damages, in an amount to be determined at trial.

SIXTH CLAIM

Negligence

276.   The Government incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

277.   Deutsche Bank and MortgageIT owed the Government a duty of reasonable care and a duty to conduct due diligence.

278.   As set forth above, Deutsche Bank and MortgageIT breached their duties to the Government.

279.   As a result of the negligence of Deutsche Bank and MortgageIT, the Government has paid insurance claims, and incurred losses, relating to FHA-insured mortgages endorsed by MortgageIT.

280.   As a result of the negligence of Deutsche Bank and MortgageIT, the Government will pay future insurance claims, and incur future losses, relating to FHA-insured mortgages endorsed by MortgageIT.

281.   By virtue of the above, the Government is entitled to compensatory damages, in an amount to be determined at trial.

SEVENTH CLAIM

Indemnification

282.   The Government incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

283. Deutsche Bank and MortgageIT owed the Government a duty of reasonable care and a duty to conduct due diligence.

284. As set forth above, Deutsche Bank and MortgageIT breached their duties to the Government.

285. As a result of the breach of the duties of Deutsche Bank and MortgageIT to the Government, the Government has paid insurance claims, and incurred losses, relating to FHA-insured mortgages endorsed by MortgageIT.

286. As a result of the breach of the duties of Deutsche Bank and MortgageIT to the Government, the Government will pay future insurance claims, and incur future losses, relating to FHA-insured mortgages endorsed by MortgageIT.

287. By virtue of the above, the Government is entitled to indemnification of its losses relating to FHA-insured mortgages endorsed by MortgageIT.

WHEREFORE, the Government respectfully requests that judgment be entered in its favor and against Deutsche Bank and MortgageIT as follows:

    a.   For treble the Government's damages for past claims paid by the Government, in an amount to be determined at trial;

    b.   For compensatory damages for past claims paid, and future claims expected to be paid, by the Government, in an amount to be determined at trial, and, in the alternative, for indemnification;

    c.   For such civil penalties as are required by law;

    d.   For punitive damages;

e.   For an award of costs pursuant to 31 U.S.C. § 3729(a); and

f.   For an award of any such further relief as is proper.

Dated: New York, New York
        August 22, 2011

                                              PREET BHARARA
                                              United States Attorney for the
                                              Southern District of New York
                                              Attorney for the United States

By: _____
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                                              CHRISTOPHER B. HARWOOD
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Exhibit A

FHA Case Numbers for Claims Paid as of June 2011

581-3117982	581-2586116	561-8394498	495-7681690	495-7032875
581-3027103	581-2585501	561-8386541	495-7660395	495-7020107
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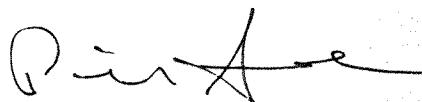
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CERTIFICATE OF SERVICE

I, Pierre G. Armand, an Assistant United States Attorney for the Southern District of New York, hereby certify that on August 22, 2011, I caused a copy of the foregoing **Amended** Complaint to be served upon the following by U.S. mail and e-mail:

Andrew J. Levander
Cheryl A. Krause
Michael H. Park
DECHERT LLP
1095 Avenue of the Americas
New York, NY 10036

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PIERRE G. ARMAND