

# Office of Inspector General



Office of Evaluations  
Report No. EVAL-10-003

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**Evaluation of Allegations Pertaining to the  
Chairman's Mortgage Loans with Bank of  
America**

April 2010



## Why We Did This Evaluation

A media article dated January 21, 2010, questioned whether the Chairman received favorable treatment or loan terms associated with mortgages received from Bank of America (BOA) and whether those mortgages presented a conflict of interest in the Chairman's official dealings with BOA as FDIC Chairman. Accordingly, our objectives were to review the circumstances surrounding the Chairman's application and receipt of mortgages secured from BOA to determine whether:

- As a result of her position, the Chairman received special consideration in qualifying for, or received more favorable terms on, the mortgages and
- Any evidence exists that any action taken or decision made by the Chairman in her official capacity (or that she requested or directed the agency to take) was influenced by the mortgage application process, the granting of the loans sought, or the terms and conditions of those loans.

## Evaluation Results

We saw no evidence, and nothing came to our attention to suggest that the Chairman sought, or that BOA extended, any special consideration or favorable treatment in connection with Chairman's mortgage loans, based on the Chairman's position or otherwise. Further, we saw no evidence, and nothing came to our attention to suggest that the mortgage loans influenced any action taken or decision made by the Chairman with respect to BOA.

## Management Response

We provided a draft version of this report for the FDIC's review. Because the report contained no recommendations, a written management response was not required.



**DATE:** April 9, 2010

**MEMORANDUM TO:** Martin J. Gruenberg  
Vice Chairman, FDIC

**FROM:** [Signed]  
Jon T. Rymer  
Inspector General

**SUBJECT:** *Evaluation of Allegations Pertaining to the Chairman's Mortgage Loans with Bank of America*  
(Report No. EVAL-10-003)

We have completed a review of the subject matter. A media article dated January 21, 2010, questioned whether the Chairman received favorable treatment or loan terms associated with mortgages received from Bank of America (BOA) and whether those mortgages presented a conflict of interest in the Chairman's official dealings with BOA as FDIC Chairman. On January 22, 2010, I directed my office to begin a review of this matter.

## **EVALUATION OBJECTIVE**

Our objectives were to review the circumstances surrounding the Chairman's application and receipt of mortgages secured by residential real property in Amherst, Massachusetts, and Bethesda, Maryland, from BOA to determine whether:

- As a result of her position, the Chairman received special consideration in qualifying for, or received more favorable terms on, the mortgages and
- Any evidence exists that any action taken or decision made by the Chairman in her official capacity (or that she requested or directed the agency to take) was influenced by the mortgage application process, the granting of the loans sought, or the terms and conditions of those loans.

Additional details on our objectives, scope, and methodology are presented in the Appendix to this report.

## **BACKGROUND**

A media article dated January 21, 2010, reported that the FDIC Chairman received two mortgage loans from BOA during the same period that the FDIC was negotiating terms with BOA for exiting from the asset guarantee program.<sup>1</sup> The article questioned whether the Chairman received favorable treatment or loan terms and whether securing the mortgages presented a

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<sup>1</sup> The asset guarantee program was an agreement between BOA and US Federal parties (Treasury, Federal Reserve, and the FDIC) to guarantee \$118 billion in BOA assets against losses.

conflict of interest for the Chairman. The article also raised questions about the appropriateness of a waiver issued by the FDIC Ethics Office.

5 CFR Part 3201.102(b)(1), *Supplemental Standards of Ethical Conduct for FDIC Employees*, states that no covered employee may participate in an examination, audit, visitation, review, or investigation, or other particular matter involving an FDIC-insured depository institution or other person with whom the covered employee has an outstanding extension of credit, or with whom the covered employee is negotiating an extension of credit. The FDIC's Legal Division is responsible for implementing the FDIC's Ethics Program and provides annual training to FDIC employees on ethics matters.

## **EVALUATION RESULTS**

Overall, based on our interviews and other work performed, we saw no evidence, and nothing came to our attention to suggest that the Chairman sought, or that BOA extended, any special consideration or favorable treatment in connection with Chairman's mortgage loans, based on the Chairman's position or otherwise. Further, we saw no evidence, and nothing came to our attention to suggest that the mortgage loans influenced any action taken or decision made by the Chairman with respect to BOA.

With regard to the ethics determination, the FDIC Ethics Program Manager told us that he did not issue a "retroactive waiver" with regard to the Chairman's mortgage loan application, but rather issued (a) a determination letter concluding that that application did not present a conflict of interest or the appearance of a conflict of interest and (b) a separate advisory opinion that concluded that mortgage loan transactions involving FDIC Officers and Directors did not require individual waivers under Section 3201.102(b)(1) of the supplemental ethics regulations on a going forward basis. Because the FDIC Legal Division, the FDIC Ethics Program Manager, and the Office of Government Ethics are in communication with regard to these issues, and we believe are the appropriate offices to resolve differing interpretations of applicable ethics rules, we do not intend to do further work in this area.

### **No Indication That the Chairman Sought or Received Special Treatment**

Based on interviews and review of documents, we confirmed that the Chairman's husband handled most of the mortgage application process with BOA. We also confirmed that neither the Chairman nor her husband sought or received any special consideration or favorable treatment from BOA in connection with their mortgage loans, based on her position or otherwise. The Chairman and her husband were referred to the BOA loan officer by their real estate agent. The Chairman's husband believed that he and the Chairman were treated in a manner similar to any other BOA loan applicant. We received and reviewed BOA loan files for the two mortgages and found no evidence in those files of any special consideration given by BOA with respect to rates, terms, and conditions or the underwriting applied to either of the two mortgage loans. We verified that the Chairman and her husband met typical borrower qualifications as listed in

Freddie Mac guidelines and that the mortgages were underwritten consistent with key provisions of Freddie Mac loan servicer guidance.<sup>2</sup>

Based on our interviews with BOA loan officials responsible for processing the two subject mortgages, we confirmed that BOA officials were aware of the Chairman's status, but did not treat the Chairman's mortgage applications any differently than any other BOA mortgage applicants. BOA loan officers used BOA rate sheets in determining pricing for the Chairman's mortgages, and the mortgages went through BOA's standard underwriting process at a loan processing center in North Carolina.<sup>3</sup> The loan officer stated that he had discretion to offer a rate within about one hundred basis points of the rate sheet amount.

Reasonableness of Mortgage Interest Rates: With respect to the reasonableness of mortgage rates that the Chairman received, we researched sources for average mortgage rates for the month of June 2009, the month during which the Chairman and her husband locked in interest rates for the two mortgages. We concluded that the interest rates that the Chairman and her husband received approximated BOA rates or average rates available to the public at that time.

- The Amherst, Massachusetts, mortgage was a \$204,505, 30-year conforming mortgage with a fixed rate of 5.625 percent. The mortgage rate was locked on June 23, 2009. We verified that the Freddie Mac Primary Mortgage Market Survey for 30-year fixed rate conforming loans on June 25, 2009 was 5.42 percent.
- The Bethesda, Maryland, mortgage was an \$898,400, 30-year mortgage with a fixed rate of 6 percent. BOA stated that the mortgage rate was locked on June 1, 2009. BOA provided a rate sheet that supported the 6 percent rate. BOA information showed that the loan was priced at 6 percent and one discount point for an overall annual percentage rate of 6.1 percent. Because this loan exceeded Fannie Mae and Freddie Mac's national conforming loan limit, this loan is considered a jumbo loan. Freddie Mac does not maintain market survey rates for jumbo loans. The FDIC provided our office with historical information on jumbo loan rates. We independently verified that the source of this information was from a jumbo mortgage index rate prepared by BanxQuote and presented on Bloomberg.com.<sup>4</sup> The Bloomberg information that we obtained from the FDIC presented the jumbo mortgage index rate for the period May 1, 2009 through July 31, 2009. During that time, jumbo mortgage rates averaged 6.164 percent and ranged from a low of 6.040 percent on June 30, 2009 to a high of 6.4 percent on June 9, 2009.

Rental Aspect of the Massachusetts Property: The article indicated that the Amherst, Massachusetts, property was a rental property and questioned whether mortgage documents

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<sup>2</sup> Freddie Mac's *Single-Family Seller/Servicer Guide* provides underwriting guidelines required for conforming mortgages. We were unable to find standard underwriting guidance for Jumbo mortgages, so we also used key provisions from Freddie Mac guide to assess the underwriting of the Jumbo, non-conforming mortgage.

<sup>3</sup> Rate sheets are tables of interest rates and points that establish loan prices that a lender is willing to accept. Each morning, retail lenders distribute rate sheets to their loan officer employees.

<sup>4</sup> BanxQuote.com is a consumer banking marketplace established in 1984. It features aggregated side-by-side bank rates on consumer financial products including mortgage loans. BanxQuote has been quoted in leading print and online media and the *BanxQuote Jumbo-Conforming Mortgage Index* has been used by Freddie Mac and featured in the 2008 Economic Report of the President.

allowed the rental and whether the mortgage had been properly priced to reflect the rental aspect. BOA loan officers associated with the mortgages said that they were not aware of the rental aspect. A BOA loan officer indicated that mortgage rates for rental or investment properties are usually about fifty basis points higher than owner-occupied mortgages. The Chairman's husband told us that he had notified BOA of the rental aspect and noted that the rental nature of the Amherst property was also reflected in the homeowner's insurance policy, which was provided to BOA as a part of the loan application.

### **No Indication That the Mortgage Loans Influenced the Chairman's Dealings with BOA**

Based on our interviews and work performed, we also saw no evidence, and nothing came to our attention to suggest that the mortgage loans influenced any action taken or decision made by the Chairman with respect to BOA. We interviewed the Chairman, who stated that the mortgages in no way influenced her actions or decisions with respect to BOA. We also interviewed other FDIC officials who participated in FDIC meetings and matters involving BOA, all of whom stated that the Chairman's mortgages were never discussed in meetings with BOA. Finally, we interviewed BOA's Chief Risk Officer who participated in an August 2009 meeting with the Chairman. The Chief Risk Officer stated that the Chairman's mortgages were not discussed at the August 2009 meeting and that he was unaware that the Chairman had mortgages with BOA.

### **Ethics Office Review**

The media article reported that the FDIC's Ethics Office had issued a "retroactive waiver" to the Chairman associated with the mortgage loans. We confirmed that the Ethics Office issued an Ethics Determination dated January 21, 2010, to the Chairman. During our interview, the Ethics Program Manager clarified that the Ethics Determination was not a retroactive waiver, but instead concluded that during the period May 1, 2009 through the January 21, 2010, the Chairman had not engaged, in her official capacity, in any action that created a conflict of interest or the appearance of a conflict of interest with respect to the residential home loans. The determination letter granted the Chairman an ethics waiver associated with the mortgage loans going forward. The Ethics Program Manager issued a separate advisory opinion, dated January 21, 2010, waiving the prohibitions of Section 3201.102 of the supplemental ethics regulations for Board Members and FDIC Officers and Directors on a going forward basis.

We understand that the Legal Division, the FDIC Ethics Program Manager, and the Office of Government Ethics have met to discuss both the Ethics Determination and the separate advisory opinion. We express no opinion with regard to either the Ethics Determination or the separate advisory opinion, and believe that these issues can most appropriately be handled among these various offices. Accordingly, we will not perform additional work in this area.

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We provided the FDIC an opportunity to review a draft version of this report. Because the report contained no recommendations, a formal management response was not required.

## OBJECTIVE, SCOPE, AND METHODOLOGY

### Objectives

Our objectives were to review the circumstances surrounding the Chairman's application and receipt of mortgages secured by residential real property in Amherst, Massachusetts, and Bethesda, Maryland, from BOA to determine whether:

- As a result of her position, the Chairman received special consideration in qualifying for, or received more favorable terms on, the mortgages and
- Any evidence exists that any action taken or decision made by the Chairman in her official capacity (or that she requested or directed the agency to take) was influenced by the mortgage application process, the granting of the loans sought, or the terms and conditions of those loans.

### Scope and Methodology

To accomplish our objectives we:

- Interviewed the Chairman and her husband;
- Interviewed the real estate agent and BOA loan officers who processed the mortgages;
- Interviewed the Deputy to the Chairman and the Acting Deputy Director, Complex Financial Institutions, and BOA's Chief Risk Officer who participated in meetings between the Chairman and BOA during 2009 to ensure that the Chairman's mortgages were not discussed during official FDIC meetings;
- Interviewed the FDIC Ethics Program Manager;
- Obtained and reviewed the BOA loan file for the Chairman's mortgages;
- Verified that the Chairman and her husband met typical borrower qualifications as listed in Freddie Mac guidelines and that the mortgages were underwritten consistent with key provisions of the Freddie Mac *Single-Family Seller/Servicer Guide*;
- Researched historical loan rate information; and
- Reviewed applicable ethics regulations.

We performed our evaluation during January and February 2010, in accordance with the *Quality Standards for Inspections*.