

C A M P A I G N F O R ACCOUNTABILITY

January 6, 2017

Andrew Weissmann
Chief, Fraud Section
Department of Justice
601 D Street, NW
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By Fax: 202-514-7021

Morris Morgan
Senior Deputy Comptroller for
Large Bank Supervision
Office of the Comptroller of the Currency
Department of the Treasury
400 7th Street, SW
Washington, DC 20219

By Fax: 202-649-5736

Re: Request for Investigation of OneWest Bank, FSB

Dear Mssrs. Weissmann and Morgan:

Campaign for Accountability (“CfA”) respectfully requests that you immediately open an investigation into whether the bank OneWest, FSB violated federal laws by rushing delinquent homeowners out of their homes by violating notice and waiting period statutes, by illegally backdating documents and by gaming foreclosure auctions.

Background

On January 3, 2017, *The Intercept* reported that, according to a previously undisclosed 2013 memo prepared by prosecutors in the California Attorney General’s office, OneWest appeared to have engaged in “widespread misconduct.”¹

The deputy attorneys general in the Consumer Law Section explained that since starting operations in 2009, OneWest foreclosed on approximately 35,000 California homes and initiated foreclosure actions on an additional 45,000.² In 2011, OneWest had entered into a consent order

¹ David Dayen, Treasury Nominee Steve Mnuchin’s Bank Accused of “Widespread Misconduct” in Leaked Memo, *The Intercept*, January 3, 2017 (available at <https://theintercept.com/2017/01/03/treasury-nominee-steve-mnuchins-bank-accused-of-widespread-misconduct-in-leaked-memo/>).

² Memorandum from Nicholas G. Campins *et al.* to Frances T. Grunder *et al.*, Re: Executive Summary-Request for Authorization to File Action Against OneWest Bank, FSB, at 2, January 18, 2013 (available at

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with the Office of Thrift Supervision (“OTS”) that included findings that the bank had “recorded documents that were not properly notarized, initiated non-judicial foreclosures without proper authority, failed to devote sufficient resources to ensure proper administration and oversight of its foreclosure process, and failed to sufficiently oversee vendors.”³ The combination of the OTS’s findings, consumer complaints and the large number of foreclosures prompted the Consumer Law Section investigation.⁴

After engaging in an extensive inquiry and analysis, the four deputy attorneys general reported OneWest had, among other things, “signed and backdated false instruments, acknowledged them to notaries” and then had them recorded with county recorders; “made and directed unlawful credit bids” resulting the wrong parties to win auctions and the “unlawful evasion of documentary transfer tax obligations”; and failed to comply with legal requirements related to the “execution, timing, and mailing of foreclosure documents.”⁵

The attorneys general also reported that not only had OneWest resisted subpoenas for documents, the bank also had obstructed the state’s efforts to obtain evidence from third parties.⁶ Notably, one of the third parties believed to have relevant information and from which the California attorney general’s office attempted to obtain documents was Lender Processing Service (“LPS”).⁷

In 2013, LPS entered into a settlement with the Department of Justice in which it agreed to pay \$35 million to resolve criminal fraud violations regarding its role in a six-year scheme, lasting from 2003-2009, for preparing and filing more than one million fraudulently signed and notarized mortgage-related documents with property records’ offices throughout the United States.⁸

For unknown reasons, then-California Attorney General Kamala Harris did not proceed with the case against OneWest.⁹

The former Chief of Executive Officer of OneWest is Steve Mnuchin, President-elect Donald Trump’s nominee for Secretary of the Department of the Treasury. A spokesperson for Mr. Mnuchin told *The Intercept* that “state attorneys general have no jurisdiction to investigate

<https://www.documentcloud.org/documents/3250383-OneWest-Package-Memo.html>) (hereinafter “OneWest Memo”).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ OneWest Memo at 10.

⁷ *Id.*

⁸ Department of Justice Press Release, Florida-Based Lender Processing Services, Inc. to Pay \$35 Million in Agreement to Resolve Criminal Fraud Violations Following Guilty Plea from Subsidiary CEO, February 15, 2013 (available at <https://www.justice.gov/opa/pr/florida-based-lender-processing-services-inc-pay-35-million-agreement-resolve-criminal-fraud>).

⁹ Dayen, *The Intercept*, Jan. 3, 2007.

federally chartered banks like OneWest.”¹⁰ Therefore, it is incumbent on federal authorities, including the Department of Justice and the Comptroller of the Currency to investigate whether OneWest, under the leadership of Mr. Mnuchin defrauded consumers in violation of federal law.

Legal Violations

Through its conduct, OneWest may have violated numerous federal laws including wire fraud, mail fraud, conspiracy, and obstruction of justice.

As you know, 18 U.S.C. § 1341 states that anyone who sends or delivers anything through the U.S. Postal Service in furtherance of an effort to defraud may be charged with mail fraud. Similarly, 18 U.S.C. § 1343 provides that anyone who uses the wires to further a fraud scheme may be charged with wire fraud.

If, as appears likely, any employee of OneWest bank signed or caused documents to be backdated and then transmitted those documents either via mail or wire, they may have engaged in mail and/or wire fraud.

If two or more people agreed to engage in such illegal acts, they may be charged with conspiracy pursuant to 18 U.S.C. § 1349. Given the facts laid out in the OneWest Memo, it seems likely that numerous employees of the bank would have been involved in the improper foreclosures and/or attempted foreclosures of 80,000 California homes.

18 U.S.C. § 1517 prohibits anyone from obstructing or attempting to obstruct any examination of a financial institution by an agency of the United States with competent jurisdiction. While this statute does not apply to the efforts by California prosecutors to investigate OneWest, if the bank were to interfere with the efforts of either the Department of Justice or the Comptroller of the Currency to obtain information from third parties such as LPS – as OneWest did when the California Attorney General’s office was conducting its investigation – a charge of obstructing examination of a financial institution might be warranted.

Finally, the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (“FIRREA”), 12 U.S.C. § 1833a, authorizes the Attorney General to institute a civil action in which subpoenas may be issued and evidence taken to discover whether there has been a conspiracy to violate several criminal statutes, including 18 U.S.C. §§ 1341 and 1343. Relying on FIRREA, the government need only OneWest committed one of the predicate offenses by a preponderance of the evidence, rather than beyond a reasonable doubt. 12 U.S.C. § 1833a(f). Further, FIRREA has a ten-year statute of limitations period, 12 U.S.C. § 1833a(h), leaving DOJ ample time to investigate and initiate action against OneWest.

¹⁰ *Id.*

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Given that the California Attorney General's office was stymied in its investigation of OneWest, a grand jury investigation or an investigation instituted under FIRREA could reveal evidence of other potentially illegal conduct as well.

Conclusion

Unfortunately, and to the great discouragement of many Americans, the federal government has virtually ignored the large-scale mortgage fraud that rocked the nation. While the country's banking system nearly collapsed as a result of reckless mortgage lending, federal prosecutors sat on the sidelines, pressing almost no cases for the misconduct that led to the meltdown. Now, there is strong evidence propounded by not just aggrieved homeowners but by independent, unbiased California prosecutors that a large bank appears to have knowingly and willfully engaged in illegal conduct. As Mr. Mnuchin's spokesperson noted, this matter is the jurisdiction of the federal government. CfA agrees and, therefore asks that both the Department of Justice and the Comptroller of the Currency to immediately open an investigation into OneWest.

Thank you for your attention to this important matter.

Sincerely,



Daniel E. Stevens
Acting Executive Director

cc: Benjamin Singer
Chief, Securities and Financial Fraud Unit

David Barrett
Chief, Civil Fraud Section

Richard Cordray
Director, Consumer Financial Protection Bureau