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June 3, 2013

Douglas R. Miller
Assistant Federal Public Defender
Office of the Federal Public Defender
100 S. Charles Street, Tower II, Ninth Floor
Baltimore, MD 21201

Re: *United States v. Kimberly McMillian*
Crim. No. GLR-12-0663

Dear Mr. Miller:

This letter, together with the Sealed Supplement, confirms the plea agreement which has been offered to the Defendant by the United States Attorney's Office for the District of Maryland ("this Office"). If the Defendant accepts this offer, please have her execute it in the spaces provided below. If this offer has not been accepted by Friday, June 14th, it will be deemed withdrawn. The terms of the agreement are as follows:

Offense of Conviction

1. The Defendant agrees to plead guilty to Count Seven of the Superseding Indictment now pending against her, which charges her with Wire Fraud Affecting a Financial Institution, in violation of 18 U.S.C. § 1343. The Defendant admits that she is, in fact, guilty of that offense and will so advise the Court.

Elements of the Offense

2. The elements of the offense to which the Defendant has agreed to plead guilty, and which this Office would prove if the case went to trial, are as follows:

- First, there was a scheme or artifice to defraud, or to obtain money by means of materially false and fraudulent pretenses, representations and promises, as charged in the Indictment;

- Second, the Defendant knowingly and willfully participated in the scheme or artifice to defraud, with knowledge of its fraudulent nature and with the specific intent to defraud, or that she knowingly and intentionally aided and abetted others in the scheme;

- Third, in the execution of the scheme, the Defendant caused the use of interstate wires, as specified in the Indictment; and

- Fourth, the scheme affected a financial institution, as that term is defined in 18 U.S.C. § 20.

Penalties

3. The maximum sentence provided by statute for the offense to which the Defendant is pleading guilty is as follows: thirty (30) years of imprisonment, followed by a five (5) year term of supervised release, and a fine of up to $250,000.00, or (pursuant to 18 U.S.C. § 3571(d)) the greater of twice the defendant's gross gain or the victims' gross loss. In addition, the Defendant must pay $100.00 as a special assessment pursuant to 18 U.S.C. § 3013, which will be due and should be paid at or before the time of sentencing. This Court may also order her to make restitution pursuant to 18 U.S.C. §§ 3663, 3663A, and 3664.[1] If a fine or restitution is imposed, it shall be payable immediately, unless, pursuant to 18 U.S.C. § 3572(d), the Court orders otherwise. The Defendant understands that if she serves a term of imprisonment, is released on supervised release, and then violates the conditions of her supervised release, her supervised release could be revoked -- even on the last day of the term -- and the Defendant could be returned to custody to serve another period of incarceration and a new term of supervised release. The Defendant understands that the Bureau of Prisons has sole discretion in designating the institution at which the Defendant will serve any term of imprisonment imposed.

Waiver of Rights

4. The Defendant understands that by entering into this agreement, she surrenders certain rights as outlined below:

a. If the Defendant had persisted in her plea of not guilty, she would have had the right to a speedy jury trial with the close assistance of competent counsel. That trial could be conducted by a judge, without a jury, if the Defendant, this Office, and the Court all agreed.

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[1] Pursuant to 18 U.S.C. § 3612, if the Court imposes a fine in excess of $2,500 that remains unpaid 15 days after it is imposed, the Defendant shall be charged interest on that fine, unless the Court modifies the interest payment in accordance with 18 U.S.C. § 3612(f)(3).

b. If the Defendant elected a jury trial, the jury would be composed of twelve individuals selected from the community. Counsel and the Defendant would have the opportunity to challenge prospective jurors who demonstrated bias or who were otherwise unqualified, and would have the opportunity to strike a certain number of jurors peremptorily. All twelve jurors would have to agree unanimously before the Defendant could be found guilty of any count. The jury would be instructed that the Defendant was presumed to be innocent, and that presumption could be overcome only by proof beyond a reasonable doubt.

c. If the Defendant went to trial, the government would have the burden of proving the Defendant guilty beyond a reasonable doubt. The Defendant would have the right to confront and cross-examine the government's witnesses. The Defendant would not have to present any defense witnesses or evidence whatsoever. If the Defendant wanted to call witnesses in her defense, however, she would have the subpoena power of the Court to compel the witnesses to attend.

d. The Defendant would have the right to testify in her own defense if she so chose, and she would have the right to refuse to testify. If she chose not to testify, the Court could instruct the jury that they could not draw any adverse inference from her decision not to testify.

e. If the Defendant were found guilty after a trial, she would have the right to appeal the verdict and the Court's pretrial and trial decisions on the admissibility of evidence to see if any errors were committed which would require a new trial or dismissal of the charges against her. By pleading guilty, the Defendant knowingly gives up the right to appeal the verdict and the Court's decisions.

f. By pleading guilty, the Defendant will be giving up all of these rights, except the right, under the limited circumstances set forth in the "Waiver of Appeal" paragraph below, to appeal the sentence. By pleading guilty, the Defendant understands that she may have to answer the Court's questions both about the rights she is giving up and about the facts of her case. Any statements the Defendant makes during such a hearing would not be admissible against her during a trial except in a criminal proceeding for perjury or false statement.

g. If the Court accepts the Defendant's plea of guilty, there will be no further trial or proceeding of any kind, and the Court will find her guilty.

h. By pleading guilty, the Defendant will also be giving up certain valuable civil rights and may be subject to deportation or other loss of immigration status. The Defendant recognizes that if he/she is not a citizen of the United States, pleading guilty may have consequences with respect to his/her immigration status. Under federal law, conviction for a broad range of crimes can lead to adverse immigration consequences, including automatic removal from the United States. Removal and other immigration consequences are the subject of a separate proceeding, however, and the Defendant

understands that no one, including his/her attorney or the Court, can predict with certainty the effect of a conviction on immigration status. Defendant nevertheless affirms that he/she wants to plead guilty regardless of any potential immigration consequences.

Advisory Sentencing Guidelines Apply

5. The Defendant understands that the Court will determine a sentencing guidelines range for this case (henceforth the "advisory guidelines range") pursuant to the Sentencing Reform Act of 1984 at 18 U.S.C. §§ 3551-3742 (excepting 18 U.S.C. §§ 3553(b)(1) and 3742(e)) and 28 U.S.C. §§ 991 through 998. The Defendant further understands that the Court will impose a sentence pursuant to the Sentencing Reform Act, as excised, and must take into account the advisory guidelines range in establishing a reasonable sentence.

Factual and Advisory Guidelines Stipulation

6. This Office and the Defendant understand, agree and stipulate to the Statement of Facts set forth in Attachment A hereto with the exceptions noted therein, which the Defendant acknowledges this Office could prove beyond a reasonable doubt, and to the following applicable sentencing guidelines factors:

> The base offense level in this case is a level **seven (7)**, pursuant to U.S.S.G. § 2B1.1(a)(1). The parties agree that because the amount of the loss caused by the defendant's conduct is in excess of $400,000 but less than $1 million, a **fourteen (14)** level enhancement is merited pursuant to U.S.S.G. § 2B1.1(b)(1)(H). Thus, the Defendant's adjusted offense level prior to applying any reductions is a level **twenty-one (21)**.

This Office does not oppose a **two (2)** level reduction in the Defendant's adjusted offense level, based upon the Defendant's apparent prompt recognition and affirmative acceptance of personal responsibility for her criminal conduct. This Office agrees to make a motion pursuant to U.S.S.G. § 3E1.1(b) for an additional **one (1)** level decrease in recognition of the Defendant's timely notification of her intention to plead guilty. This Office may oppose *any* adjustment for acceptance of responsibility if the Defendant (a) fails to admit each and every item in the factual stipulation; (b) denies involvement in the offense; (c) gives conflicting statements about her involvement in the offense; (d) is untruthful with the Court, this Office, or the United States Probation Office; (e) obstructs or attempts to obstruct justice prior to sentencing; (f) engages in any criminal conduct between the date of this agreement and the date of sentencing; or (g) attempts to withdraw her plea of guilty.

7. The Defendant understands that there is no agreement as to her criminal history or criminal history category, and that her criminal history could alter her offense level if she is a career offender or if the instant offense was a part of a pattern of criminal conduct from which she derived a substantial portion of her income.

8. This Office and the Defendant agree that with respect to the calculation of the advisory guidelines range, no other offense characteristics or sentencing guidelines factors set forth in the United States Sentencing Guidelines will be raised or are in dispute. The Defendant agrees that if she wishes to argue for any potential departures or adjustments set forth in the United States Sentencing Guidelines or variances pursuant to 18 U.S.C. § 3553(a) that could take the sentence outside of the advisory guidelines range, her counsel will notify the Court, the United States Probation Officer and government counsel not less than thirty (30) days in advance of sentencing of the facts or issues she intends to raise, and the evidence, testimony or other information upon which she expects to rely, in order to afford the government and the Probation Officer an adequate opportunity to investigate and research the issue or issues in question.

Obligations of the United States Attorney's Office

9. At the time of sentencing, this Office will recommend that the Defendant be sentenced at a point within the final adjusted sentencing guideline range that the Court determines to be applicable. This Office will determine its exact sentencing recommendation after reviewing the Pre-Sentence Investigation Report and considering any submissions filed by the defense in connection with sentencing, and in light of the Court's final rulings on any requests by the defense for variances pursuant to 18 U.S.C. § 3553(a). At the time of sentencing, this Office will move to dismiss the remaining open counts of the Indictment against the Defendant.

10. The parties reserve the right to bring to the Court's attention at the time of sentencing, and the Court will be entitled to consider, all relevant information concerning the Defendant's background, character and conduct, including the conduct that is the subject of the counts of the Indictment that this Office has agreed to dismiss at sentencing.

Restitution

11. The Defendant agrees to the entry of a Restitution Order for the full amount of the victims' losses. The Defendant agrees that, pursuant to 18 U.S.C. §§ 3663 and 3663A and §§ 3563(b)(2) and 3583(d), the Court may order restitution of the full amount of the actual, total loss caused by the offense conduct that the Court finds at sentencing. The Defendant further agrees that she will fully disclose to the probation officer and to the Court, subject to the penalty of perjury, all information, including but not limited to copies of all relevant bank and financial records, regarding the current location and prior disposition of all funds obtained as a result of the criminal conduct set forth in the factual stipulation. The Defendant further agrees to take all reasonable steps to retrieve or repatriate any such funds and to make them available for restitution. If the Defendant does not fulfill this provision, it will be considered a material breach of this plea agreement, and this Office may seek to be relieved of its obligations under this agreement.

However, the parties disagree as to how the "full amount of the victims' losses" for restitution purposes is to be determined. The parties agree that under 18 U.S.C. § 3663A(b)(1)(B), the amount of the restitution payment should be calculated based upon "the value of the property on the date of the . . . loss", which in this case, is the amount of the loan issued by the lender, minus "the value (as of the date the property is returned) of any part of the property that is returned . . . ."

The government's view is that, in the mortgage fraud context, "the date the property is returned" refers to the date that the lender receives back the cash proceeds from the sale of the real estate that secured the loan, and that "property" as used in the statute refers first to the cash amount of the loan that was extended by the lender, and then to the cash proceeds that are returned to the lender as a result of the foreclosure sale. This view is supported by the following decisions: *United States v. Robers*, 698 F.2d 937, 939, 941-53 (7th Cir. 2012) ("we hold that in calculating a restitution award where, as in this case, cash is the property taken, the restitution amount is reduced by the eventual cash proceeds once any collateral securing the debt is sold"); *United States v. Statman*, 604 F.3d 529, 537-38 (8th Cir. 2010); *United States v. James*, 564 F.3d 1237, 1246-47 (10th Cir. 2009); *United States v. Himler*, 355 F.3d 735, 744-45 (3d Cir. 2004); *see also United States v. Smith*, 944 F.2d 618, 630-32 (9th Cir. 1991) (O'Scannlain, J., dissenting) (reasoning that "The majority . . . erroneously treats the five collateral properties as if they were somehow equivalent to the stolen capital.").

The defendant's view is that the phrase "the date the property is returned" refers to the date that the lender obtains title to the property securing the loan by means of foreclosure, and that the Court should determine the property's fair market value as of the date based upon its tax assessed value at that time. This view is supported by the following decisions: *United States v. Boccagna*, 450 F.3d 107, 113, 115-16 (2d Cir. 2006); *United States v. Holley*, 23 F.3d 902, 915 (5th Cir. 1994); *United States v. Smith*, 944 F.2d 618, 625 (9th Cir. 1991) (2-1).

The parties further agree that if other individuals who would be jointly and severally liable with her for the loss caused to the victim are subsequently prosecuted and ordered to pay restitution, and if restitution should be collected from any of them with regard to the loss suffered by the victim in this case, then the Defendant may seek an appropriate modification of the Court's restitution order to reflect the funds collected from that other source or sources.

Collection of Financial Obligations

13. The Defendant expressly authorizes the U.S. Attorney's Office to obtain a credit report in order to evaluate the Defendant's ability to satisfy any financial obligation imposed by the Court.

In order to facilitate the collection of financial obligations to be imposed in connection with this prosecution, the Defendant agrees to disclose fully all assets in which

the Defendant has any interest or over which the Defendant exercises control, directly or indirectly, including those held by a spouse, nominee or other third party.

The Defendant will promptly submit a completed financial statement to the United States Attorney's Office, in a form this Office prescribes and as it directs. The Defendant promises that the financial statement and disclosures will be complete, accurate and truthful, and understands that any willful falsehood on the financial statement will be a separate crime and may be punished under 18 U.S.C. § 1001 by an additional five years' incarceration and fine.

Waiver of Appeal

14. In exchange for the concessions made by this Office and the Defendant in this plea agreement, this Office and the Defendant waive their rights to appeal as follows:

a. The Defendant knowingly waives all right, pursuant to 28 U.S.C. § 1291 or otherwise, to appeal the Defendant's conviction;

b. The Defendant and this Office knowingly waive all right, pursuant to 18 U.S.C. § 3742 or otherwise, to appeal whatever sentence is imposed (including the right to appeal any issues that relate to the establishment of the advisory guidelines range, the determination of the defendant's criminal history, the weighing of the sentencing factors, and the decision whether to impose and the calculation of any term of imprisonment, fine, order of forfeiture, order of restitution, and term or condition of supervised release), except as follows: (i) the Defendant reserves the right to appeal any term of imprisonment to the extent that it exceeds **thirty-three (33)** months' imprisonment; (ii) this Office reserves the right to appeal any term of imprisonment to the extent that it is below **twenty-seven (27)** months' imprisonment; (iii) the Defendant reserves the right to appeal any order of restitution in an amount greater than $450,052.00; and (iv) this Office reserves the right to appeal any order of restitution in an amount less than $983,411.91.

c. Nothing in this agreement shall be construed to prevent the Defendant or this Office from invoking the provisions of Federal Rule of Criminal Procedure 35(a), or from appealing from any decision thereunder, should a sentence be imposed that resulted from arithmetical, technical, or other clear error.

d. The Defendant waives any and all rights under the Freedom of Information Act relating to the investigation and prosecution of the above-captioned matter and agrees not to file any request pursuant to that statute for documents from this Office or any investigating agency.

Obstruction or Other Violations of Law

15. The Defendant agrees that she will not commit any offense in violation of federal, state or local law between the date of this agreement and her sentencing in this case. In the event that the Defendant (i) engages in conduct after the date of this agreement which would justify a finding of obstruction of justice under U.S.S.G. § 3C1.1, or (ii) fails to accept personal responsibility for her conduct by failing to acknowledge her guilt to the probation officer who prepares the Presentence Report, or (iii) commits any offense in violation of federal, state or local law, then this Office will be relieved of its obligations to the Defendant as reflected in this agreement. Specifically, this Office will be free to argue sentencing guidelines factors other than those stipulated in this agreement, and it will also be free to make sentencing recommendations other than those set out in this agreement. As with any alleged breach of this agreement, this Office will bear the burden of convincing the Court of the Defendant's obstructive or unlawful behavior and/or failure to acknowledge personal responsibility by a preponderance of the evidence. The Defendant acknowledges that she may not withdraw her guilty plea because this Office is relieved of its obligations under the agreement pursuant to this paragraph.

Court Not a Party

16. The Defendant expressly understands that the Court is not a party to this agreement. In the federal system, the sentence to be imposed is within the sole discretion of the Court. In particular, the Defendant understands that neither the United States Probation Office nor the Court is bound by the stipulation set forth above, and that the Court will, with the aid of the Presentence Report, determine the facts relevant to sentencing. The Defendant understands that the Court cannot rely exclusively upon the stipulation in ascertaining the factors relevant to the determination of sentence. Rather, in determining the factual basis for the sentence, the Court will consider the stipulation, together with the results of the presentence investigation, and any other relevant information. The Defendant understands that the Court is under no obligation to accept this Office's recommendations, and the Court has the power to impose a sentence up to and including the statutory maximum stated above. The Defendant understands that if the Court ascertains factors different from those contained in the stipulation set forth above, or if the Court should impose any sentence up to the maximum established by statute, the Defendant cannot, for that reason alone, withdraw her guilty plea, and will remain bound to fulfill all of her obligations under this agreement. The Defendant understands that neither the prosecutor, her counsel, nor the Court can make a binding prediction, promise, or representation as to what guidelines range or sentence the Defendant will receive. The Defendant agrees that no one has made such a binding prediction or promise.

Entire Agreement

17. This letter supersedes any prior understandings, promises, or conditions between this Office and the Defendant and, together with the Sealed

Supplement, constitutes the complete plea agreement in this case. The Defendant acknowledges that there are no other agreements, promises, undertakings or understandings between the Defendant and this Office other than those set forth in this letter and the Sealed Supplement and none will be entered into unless in writing and signed by all parties.

If the Defendant fully accepts each and every term and condition of this agreement, please sign and have the Defendant sign the original and return it to me promptly.

Very truly yours,

Rod J. Rosenstein
United States Attorney

By: _____
Jefferson M. Gray
Assistant United States Attorney

I have read this agreement, including the Sealed Supplement, and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Specifically, I have reviewed the Factual and Advisory Guidelines Stipulation with my attorney, and I do not wish to change any part of it. I am completely satisfied with the representation of my attorney.

_____ _____
Date Kimberly Eileen McMillian

I am Ms. McMillian's attorney. I have carefully reviewed every part of this agreement, including the Sealed Supplement with her. She advises me that she understands and accepts its terms. To my knowledge, her decision to enter into this agreement is an informed and voluntary one.

_____ _____
Date Douglas R. Miller, Esq.

ATTACHMENT A
STATEMENT OF FACTS

The parties agree that had this matter proceeded to trial, the government could have presented testimonial and documentary evidence sufficient to establish the facts indicated below beyond a reasonable doubt. Where the government has evidence to establish particular facts but the defendant's position is otherwise, those differences are noted.

In the late summer of 2007, defendant Ms. McMillian approached Mr. E.S., who had recently gone into the business of purchasing and renovating houses in Baltimore City. Mr. E.S. had three properties – two of which were partly or fully renovated, and one of which was unrenovated – that he was then marketing or was willing to sell. Ms. McMillian, who identified herself to Mr. E.S. as a loan officer with a mortgage lending company, advised Mr. E.S. that she had a number of well-off clients from New York City who were eager to buy residential properties in Baltimore. Mr. E.S. subsequently agreed to sell three properties he owned in the Reservoir Hill neighborhood of Baltimore City (21217) – 1204 Clendenin Street, 2413 McCulloh Street, and 2243 Madison Avenue – to three of Ms. McMillian's clients, whom she respectively identified as Soumaila Sylla, Aboubacar Fofana, and Anthony Johnson. Ms. McMillian never brought her "clients" by to inspect any of these properties, however, and Mr. E.S. never actually met any of the "buyers."

Ms. McMillian then contacted Mr. R.P., a loan officer with Equitable Trust Mortgage Corporation, a mortgage lender which at that time operated a number of offices in the Baltimore area. Ms. McMillian advised Mr. R.P. that she was working as a mortgage loan officer and had several loan application packages for clients who had agreed to purchase houses in Baltimore City that she wanted to submit to Equitable Trust for financing. Ms.

McMillian told Mr. R.P. that her own company (which he understood to be Clipper City Mortgage) would not be able to get these loans approved in time to meet the currently scheduled closing dates, and that she was therefore willing to pass the loan packages along to Equitable Trust to handle in order to avoid jeopardizing her relationships with her clients. Ms. McMillian further advised Mr. R.P. that she did not expect to be paid for submitting these loans to Equitable Trust. Mr. R.P. agreed to review the loan packages. These typically consisted of the purchase agreement for the property; a loan application identifying the purchaser of the house and detailing their employment history, earnings, assets, and debts; supporting documentation such as pay stubs or vouchers and bank account statements, which were not always fully complete or the most recent available; an appraisal on the property; and an analysis run on the standard Federal National Mortgage Association (FNMA or "Fannie Mae") approved software program Desktop Underwriter showing that the applicant qualified for financing. If any documentation was missing or needed to be updated to be more current, an employee of Equitable Trust would contact Ms. A.F., a loan processor whom Ms. McMillian employed as an independent contractor. Ms. A.F. advised investigators that she would contact Ms. Ms. McMillian to obtain any additional documentation sought by Equitable Trust.

Ms. McMillian submitted or caused to be submitted three loan packages to Mr. R.P. in connection with the three houses she arranged to purchase from Mr. E.S. These loan packages were respectively in the names of Soumaila Sylla (1204 Clendenin Street), Aboubacar Fofana (2413 McCulloh Street), and Anthony Johnson (2243 Madison Avenue). Ms. McMillian subsequently submitted or caused to be submitted a fourth loan package to Mr. R.P. for a transaction involving the purchase of 2359 McCulloh Street in which she

herself was the listed seller, and the purchaser was identified as Tola Omatayo. (Mr. R.P. believed that he received most of these from Ms. McMillian in person, although he thought that one might have come by fax or by e-mail.)

Virtually all of the material information included in the loan packages Ms. McMillian submitted or caused to be submitted to Equitable Trust subsequently proved to be false or fraudulent. The names and other personal identifying information of the prospective borrowers listed on each of the loan applications consisted of either stolen or fictitious identities (in the cases of Sylla and Omatayo) or belonged to foreign individuals who had already returned or shortly planned to return to their native countries in Africa (in the cases of Fofana and Johnson). On none of the four properties was there a real individual with the name indicated who intended to purchase and live in the property and keep up its mortgage payments. The representations made on each loan application submitted or caused to be submitted to Equitable Trust by Ms. McMillian relating to the employment, income, and financial assets for each purchaser were likewise false, and the supporting documentation provided in the loan package on each prospective borrower, including pay stubs, W-2s, and copies of bank statements, was also fraudulent.

Ms. McMillian maintains that the information about the borrowers included in the loan packages was produced by her co-defendant Olutoyin "Tony" Oladosu, and asserts that she was not aware that the information relating to each borrower's income, employment, assets, and intention to live in each property was fraudulent. However, Ms. McMillian represented to Mr. E.S. that her borrowers were investors from New York, when this was inconsistent with the biographical information supplied in the loan packages themselves. Moreover, the loan application that Ms. McMillian submitted or caused to be submitted for

Aboubacar Fofana for 2413 McCulloh Street falsely represented that he was employed as an engineer with a company called "Axis Engineering," whose business address was listed as 2361 McCulloh Street. According to the Thompson-Reuters CLEAR database, Ms. McMillian lived directly across the street from this address at 2356 McCulloh Street from May 2006 through early October 2007, and she later stated to the investigating agents that she knew there was no engineering company located at that address, which was located in an inner city residential block, during that time period. Ms. McMillian maintains that she never personally saw the Fofana loan application and that her acknowledgment in response to the agents' question that there was no engineering company located at 2361 McCulloh Street in 2006-07 was not an acknowledgment that she had reviewed the Fofana loan application at that time.

Ms. McMillian also knew that the "buyer" of 2359 McCulloh was Tony Oladosu, but nevertheless she submitted or caused to be submitted a loan application for that property in the name of "Tola Omatayo." Ms. McMillian maintains that she believed that they were the same person; i.e. that "Tola Omatoyo" was the legal name of the person she knew by the adopted American name "Tony O." Ms. McMillian maintains that the settlement agent, Ms. D.S., must have held the same belief, because she claims that Oladosu had identified himself as "Tony" at two prior settlements, yet Ms. D.S. accepted his identification in the name of "Tola Omatoyo" and allowed him to execute documents under that name at the 2359 McCulloh settlement. However, Oladosu had certainly never previously put himself forward as the buyer of one of the earlier properties – the driver's licenses presented as identification at the three prior settlements depicted different individuals – and Ms. D.S.

has stated that she cannot specifically recall a person named "Olutoyin Oladosu" attending any of the three settlements she handled.

Ms. McMillian did not advise Equitable Trust that she herself was going to buy 2359 McCulloh for $75,000 and then flip it to Oladosu in a same-day transaction at a price of $250,000. She knew that Equitable would never have agreed to finance the transaction had it been aware of these facts. She was fully aware of the poor condition of 2359 McCulloh because she was had not only herself purchased this property, but she had recently lived directly across the street from it for more than a year. And she proceeded with the settlement for 2359 McCulloh even when Oladosu arrived on that occasion and presented a driver's license identifying himself as "Tola Omatayo."

Ms. McMillian also knew that the sales prices of the four properties were inflated, particularly in the case of the third and fourth properties, 2243 Madison and 2359 McCulloh Avenue. Both of these properties were completely unrenovated inner city Baltimore row houses. A review appraisal of 2359 McCulloh subsequently conducted in June 2009, for example, described it as a 102-year-old property with "holes in the plaster walls and ceilings, old plumbing and fuse box electric, kitchen floor is rotted and weak, no kitchen and old bath," adding, "This property has never been renovated or updated." Nevertheless, the sales contracts submitted to Equitable Trust in connection

with "Johnson's" and "Omatayo's" loan applications reflected a sales price of $350,000 for 2243 Madison and $250,000 for 2359 McCulloh.

Ms. McMillian further admits that she sought out Glenroy Day to prepare real estate appraisal reports on each of the four properties because she knew he would provide an appraisal at whatever the specified contract price was regardless of its actual condition or valuation. Ms. McMillian claims that Glenroy Day submitted all four of his appraisals to Equitable Trust, and she asserts that she did not see those appraisals and had been told by Glenroy Day that his appraisals of 2243 Madison and 2359 McCulloh were so-called "subject to" appraisals.[2]

However, Mr. R.P., the Equitable Trust loan officer, recalled that the appraisals were part of the loan application package when he received these from Ms. McMillian, and Glenroy Day has also advised the government that he gave his appraisals to Ms. McMillian in person at her residence and was paid for them by her at that time, rather than mailing or delivering them to Equitable Trust. Nor were the appraisals on 2243 Madison and 2359 McCulloh "subject to" appraisals. Instead, they were "As Is" appraisals, and none of the "Subject To" boxes referenced in footnote 1 were checked. Instead, both appraisals falsely represented that these properties had been recently renovated and upgraded, specifically and falsely claiming, for example, that a new kitchen and bathrooms had been added to

[2] A "subject to" appraisal refers to an appraisal at a conditional value, in which one of the following boxes is checked on the Uniform Standard Appraisal Report with reference to the conditional value: "□ subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, □ subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or □ subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair."

2243 Madison, and the lead paint removed. The appraisals which Day submitted on both 2243 Madison and 2359 McCulloh even included interior photographs taken in completely different and thoroughly renovated houses. Mr. Day does acknowledge that he told Ms. McMillian that the value he had put on both of those properties reflected what the value would be if the substantial renovations she told him were contemplated were done.

After his initial review of the loan application packages submitted or caused to be by defendant Ms. McMillian, Mr. R.P. turned them over to another Equitable Trust employee for further review and processing. As part of this process, Equitable Trust sought to verify the employment of the prospective borrowers. In doing so, Equitable Trust relied upon the information supplied or caused to be supplied as part of the loan application by Ms. McMillian, which included the telephone number for the prospective borrower's employer. When an employee of Equitable Trust called the telephone numbers shown on each of the four loan applications as those of the applicant's employer, a person there falsely confirmed the listed employment information for each of these borrowers.

Based upon the information submitted or caused to be submitted by Ms. McMillian as part of the four loan application packages and the false employment verifications, Equitable Trust agreed to extend financing on all four of the requested loans in the amounts shown below:

Name of "Purchaser"	Property Address	Amount of Financing Extended
Soumaila Sylla	1204 Clendenin Street, Baltimore, MD 21217	$195,000
Aboubacar Fofana	2413 McCulloh Street, Baltimore, Maryland 21217	$299,000
Anthony Johnson	2243 Madison Avenue, Baltimore, Maryland 21217	$350,000
Tola Omatayo	2359 McCulloh Street, Baltimore, MD 21217	$250,000
TOTAL:		$1,094,000

Once each loan application was approved by Equitable Trust, a settlement date was scheduled on which each loan would go to closing. In this case, the settlements on 1204 Clendenin Street, 2243 Madison Avenue, and 2359 McCulloh Avenue were conducted by Title Company # 1, while that on 2413 McCulloh was conducted by Title Company # 2. Shortly before or on the scheduled date for the closing on each of the four properties, Equitable Trust directed that funds be sent from its lines of credit at Sovereign Bank locations in Pennsylvania and New Jersey by means of interstate wire transfers to either Title Company # 1's or Title Company # 2's accounts at BB&T branches located in Maryland.

The 1204 Clendenin Street ("Soumaila Sylla") Transaction

The loan application that Ms. McMillian submitted to Equitable Trust in connection with the purchase of 1204 Clendenin Street included false information concerning Sylla's employment (it represented that he was a "Senior Network Engineer" who had worked for

a company called "Servicom Technology, Inc." for four years), income (it represented that he earned $8,247 monthly), assets (it represented that he had assets of $60,000 in an account at Chevy Chase Bank) and current residence (it represented that he resided at 4129 Garrett Park Road, Silver Spring, Maryland 20906, when actually, at that time, an individual named Mr. M.S. was living there). The following documents which proved to be false were submitted to Equitable Trust by Ms. McMillian or her processor, Ms. A.F., in support of the Soumaila Sylla loan application: two fraudulent Chevy Chase Bank checking account statements for an account in the name of Soumaila Sylla, which falsely represented that he had a balance of $64,902.49 in the checking account as of September 7, 2007, whereas as of that date, the account actually contained a minimal amount ($100) of funds; fraudulent pay stubs from Servicom Technologies for the pay periods ending September 15, 2007 and August 31, 2007, which falsely represented that Sylla had gross pay of $4,123.96 during each of those pay periods, and had earned $70,107.32 as of September 15, 2007; and a false IRS Form W-2 wage reports for Soumaila Sylla purportedly issued by Servicom Technology reflecting that he had income of $89,007.54 in 2005 and $94,262.13 in 2006.

Prior to the closing on October 24, 2007, SunTrust Mortgage, Inc., a wholly-owned subsidiary of SunTrust Bank, agreed to purchase the loan, which it did on November 8, 2007. SunTrust Mortgage thereby assumed the responsibility for servicing the loan and receiving the mortgage payments tendered by Sylla. Because the operations of SunTrust Mortgage are financed by SunTrust Bank, any losses sustained by SunTrust Mortgage had an effect on the finances of SunTrust Bank. The closing

documents for 1204 Clendenin Street further provided notice to the purchaser that SunTrust had bought the loan and would be servicing it.

"Soumaila Sylla," the named purchaser of 1204 Clendenin Street, was required to contribute $8,612.00 at closing for the down payment and his share of the closing costs. These funds were actually provided by Oladosu, who obtained an official check in this amount using an account he had established at SunTrust Bank in the name of Dee-Ladok Investments. Oladosu received the funds necessary to obtain this bank check from another person on October 23, 2007, the day before the settlement.

In connection with the closing, a handwritten letter signed by Oladosu was submitted to the settlement agent falsely representing that a company of his named Kaycee Associates, Inc. had performed renovations on 1204 Clendenin Street and should be paid $93,267.41 to cover the costs of its work. (The settlement agent, Ms. D.S., has stated that "to the best of my recollection," it was Ms. McMillian who gave her this letter.) In fact, as Ms. McMillian was well aware, Kaycee Associates had not performed any renovations on 1204 Clendenin Street; rather, the only renovations done on the property since it was acquired by Mr. E.S. in August 2006 were performed by the contractors hired and paid by Mr. E.S. Ms. McMillian further instructed the settlement agent from Title Company # 1 that she should receive $30,000 from out of the funds owed to Kaycee Associates for its "renovations" because of services that the agent understood Ms. McMillian had provided in connection with the renovations.

Accordingly, after the closing, in accordance with the instructions it had received from Ms. McMillian and Oladosu, Title Company # 1 issued two checks for $58,267.41 and $5,000 to Kaycee Associates, and one check totaling $30,000.00 to Ms. McMillian. These

checks were funded from the proceeds of the $195,000 mortgage loan issued by Equitable Trust. Mr. E.S., the owner of 1204 Clendenin and the person who was actually responsible for renovating the property, was paid $95,000.00.

No mortgage payments were made on 1204 Clendenin Street after January 2008. The mortgage then went into default. The property was foreclosed upon in October 2008, at which time the most recent tax assessed value was $33,650.00, and the property was subsequently sold in May 2010 for $13,000.00, which, after expenses, netted $7,852.65. SunTrust Mortgage also incurred an additional $16,055.90 in expenses for taxes and insurance, mortgage insurance premiums, attorney's fees and costs, property maintenance, appraisals, and utilities, and Fannie Mae also incurred $981 in expenses. After excluding lost interest, which is not an allowable item in loss calculations under the Sentencing Guidelines, the final loss on the 1204 Clendenin transaction comes to $199,711.99.

After the mortgage on 1204 Clendenin Street went into default, Mr. R.P. visited the property and found that there were individuals (although no one by the name of "Soumaila Sylla") living in the house. These individuals advised him that they were paying their rent to Ms. McMillian, who lived around the corner at 2413 McCulloh Street, the property supposedly purchased by Aboubacar Fofana. Ms. McMillian acknowledges that she knew the individuals who were living at 1204 Clendenin Street, but maintains that they were neighborhood squatters who did not pay her any rent, and that she never represented herself as the owner or manager of the property.

The 2413 McCulloh Street ("Aboubacar Fofana") Transaction

In October 2007, defendant Ms. McMillian tendered a real estate sales contract to Mr. E.S. for his signature. This contract provided that a buyer named Aboubacar Fofana had agreed to purchase the house located at 2413 McCulloh Street in Baltimore City from Mr. E.S.'s business, Kenonik Real Estate Investments, for the price of $237,000.00. Mr. E.S. signed the contract and faxed it to Ms. McMillian's processor, Ms. A.F. Ms. McMillian did not submit this contract to Equitable Trust, however. Instead, a different version of the sales contract, which listed the sales price as $299,000 and on which someone had forged Mr. E.S.'s signature, was included in the loan application package that Ms. McMillian subsequently submitted or caused to be submitted to Equitable Trust on behalf of Aboubacar Fofana in connection with the purchase of 2413 McCulloh Street.

This loan application included false information concerning Fofana's employment (it represented that he was a "Senior Computer Analyst" who had worked for a company called "First Axis Engineering Services" for ten years), income (it represented that he earned $6,833.55 monthly), and assets (it represented that he had assets of just over $70,000 in two bank accounts at Wachovia Bank and Bank of America). There was a real person named Aboubacar Fofana who resided at the address shown on the loan application (6735 New Hampshire Avenue, Takoma Park, Maryland 20912), but he actually worked as a driver for Pizza Hut and Papa John's Pizza during the year 2007 with combined earnings from both sources of less than $19,000.00. False supporting documents, including fraudulent Bank of America and Wachovia Bank checking account statements, a fraudulent pay stub from First Axis Engineering, and false IRS Form W-2 wage reports for Aboubacar Fofana purportedly issued by First Axis Engineering Services, were submitted to Equitable

Trust in support of Fofana's loan application, along with an appraisal prepared by Ms. McMillian's co-defendant Day that substantially overvalued 2413 McCulloh Street and which falsely reflected that it had been reviewed by Mr. J.G., a licensed appraiser. When an Equitable Trust employee contacted the number provided for Mr. Fofana's employer, a person there falsely confirmed that he worked for First Axis Engineering.

Based upon these material and false representations, Equitable Trust agreed to extend a home mortgage loan in the amount of $299,000.00 to finance Aboubacar Fofana's purchase of 2413 McCulloh Street. Prior to the closing on October 31, 2007, BB&T Mortgage, a division of BB&T, agreed to purchase the loan, which it did effective January 1, 2008. BB&T Mortgage thereby assumed the responsibility for servicing the loan and receiving the mortgage payments tendered by Fofana. Any losses sustained by BB&T Mortgage therefore would affect the finances of BB&T. The closing documents for 2413 McCulloh Street provided notice to the purchaser that BB&T had bought the loan effective January 1, 2008 and would be servicing it after that date.

The loan closed on October 31, 2007 at Title Company # 2. Aboubacar Fofana, the named purchaser, was required to contribute $6,000.00 for the down payment and his share of the closing costs. The source of these funds is unknown. Ms. McMillian provided documents to the settlement agent instructing it that $44,263.64 should be paid to her pursuant to an assignment agreement, and after the closing, Title Company # 2 issued a check in the amount of $44,263.64 to Ms. McMillian. Once she received this amount, Ms. McMillian then sent a wire transfer in the amount of $20,000 to a bank account in the name of Mr. M.S., who was the individual living at the address given for "Soumaila Sylla" in connection with the 1204 Clendenin Street transaction. (Ms. McMillian maintains that

she was instructed to do this by Mr. Oladosu.) Ms. D.S., the settlement agent on the 1204 Clendenin, 2243 Madison Avenue, and 2359 McCulloh Street transactions, identified a photo of Mr. M.S. and said that he had represented himself as the purchaser at either the "Sylla" or "Omatayo" settlements, while Mr. R.P. likewise identified a photo of Mr. M.S. as looking like a man he recalled attending one of the settlements. (Because Mr. M.S. resided at the address given for "Soumaila Sylla," the government believes it is most likely that he impersonated Sylla at the closing on 1204 Clendenin Street.) Mr. E.S., the owner of 2413 McCulloh, received a payment of $110,000 at the closing.

Only a handful of payments were made on the home mortgage loan issued by Equitable Trust for 2413 McCulloh Street after it was taken over by BB&T. It soon went into default, and the property was foreclosed upon in October 2008, at which time the most recent tax assessed value was $169,180. According to the Thompson-Reuters CLEAR database, from at least May 16, 2008 through February 6, 2009, Ms. McMillian herself resided at 2413 McCulloh, which is consistent with the information provided to Mr. R.P. by the individuals living at 1204 Clendenin Street in 2008.

2413 McCulloh was sold for a price of $82,950 (before expenses) on November 4, 2010. The proceeds of that sale went to the Federal Home Loan Mortgage Corporation (Freddie Mac), which had guaranteed this loan. BB&T's charge-off amount on this transaction was $327,862.21, which was derived from the total of the unpaid principal on the loan and various other miscellaneous expenses ($315,766.13); the escrow expenses it had suffered, such as making payments for real estate taxes ($5,737.07); and the foreclosure expenses ($6,359.01). Freddie Mac paid it $322,071.91. This reduced BB&T's loss to $5,790.30. Freddie Mac's loss totaled approximately $239,121.91, reflecting the

difference between the amount it paid to BB&T and the amount that was received from the sale of the property.

Thus, the total amount of the losses suffered on the 2413 McCulloh transaction by Freddie Mac and BB&T totaled $244,912.21, which the parties agree is the appropriate figure for sentencing guidelines purposes. The government asserts that this figure should also be used for calculating restitution, since it reflects the value that was ultimately returned to the lender. The defense asserts that the proper figure for restitution is $129,820.00, representing the difference between the loan amount and the tax assessed value of the secured property at the time it was returned to the victim via foreclosure.

The 2243 Madison Avenue ("Anthony Johnson") Transaction

In the latter part of October or the first part of November 2007, defendant Ms. McMillian reached an agreement with Mr. E.S. whereby Mr. E.S. agreed to sell a house located at 2243 Madison Avenue in Baltimore City to a buyer named Anthony Johnson for a price of $195,000. Subsequently, however, Mr. E.S.'s name was forged to a different contract of sale for 2243 Madison Avenue that listed the sales price as $350,000. This sales contract with Mr. E.S.'s forged signature was subsequently included in the loan package for Johnson that Ms. McMillian submitted or caused to be submitted to Equitable Trust in early November 2007.

This loan application included false information concerning Johnson's employment (it represented that he was a "Sales Manager" who had worked for a company called "Ace Imports Inc." for five years), income (it represented that he earned $7,167 monthly), assets

(it represented that he had assets of over $42,000 in an account at Chevy Chase Bank) and current residence (it represented that he then resided at 6814 Furman Parkway in Riverdale, Maryland, whereas the real Anthony Johnson, a Nigerian national, had briefly resided at that address a year or two previously). Two fraudulent Chevy Chase Bank checking account statements in Johnson's name and a fraudulent pay stub in Johnson's name from a car dealership located in Washington, D.C. for the pay period ending November 9, 2007 were also submitted to Equitable Trust as part of the loan application, along with an appraisal prepared by Glenroy Day that fraudulently appraised 2243 Madison Avenue for $358,750. This house had been purchased by Mr. E.S. in December 2006 for $145,000.00, and he had not performed any significant renovation work on it since its purchase. Day's appraisal included interior photographs showing gleaming hardwood floors and a renovated kitchen and bathroom, but these photographs were actually from a different property. Day's appraisal also falsely reflected that it had been reviewed by Mr. J.G., a licensed appraiser.

Based upon these material and false representations, Equitable Trust agreed to extend a home mortgage loan in the amount of $350,000.00 to finance Anthony Johnson's purchase of 2243 Madison Avenue. Prior to the closing on November 29, 2007, BB&T Mortgage agreed to purchase the loan. BB&T Mortgage thereby assumed the responsibility for servicing the loan and receiving the mortgage payments tendered by Johnson. The closing documents for 2243 Madison Avenue provided notice to the purchaser that BB&T had bought the loan and would begin servicing it effective February 1, 2008.

Prior to the closing at Title Company # 1, Title Company # 1 received an "Assignment Agreement" dated October 30, 2007, which represented that Ms. McMillian and another

person named Mr. T.G. had previously agreed to purchase 2243 Madison Avenue from Mr. E.S.'s real estate business for $195,000.00, but were now prepared to assign their rights to that purchase to an unnamed individual in return for a payment of $140,130.16. Of this amount, $1,500 was to be paid to Mr. T.G., and the balance to Ms. McMillian. This Assignment Agreement was supplemented by a contract of sale dated November 1, 2007 that purported to sell 2243 Madison from Kenoik [*sic*] Real Estate to one M.H. for $350,000.00, but which was later amended to substitute Anthony Johnson for M.H. as the purchaser on November 12, 2007. As noted above, Mr. E.S.'s signature on this document was forged.

The loan closed at Title Company # 1 on November 29, 2007. Anthony Johnson, the named purchaser, was required to contribute $5,703.12 to cover his share of the down payment and his share of the closing costs. This did not happen. Instead, Ms. McMillian, who was supposed to receive approximately $138,360 pursuant to the "Assignment Agreement," instructed the settlement agent that she should pay $87,000 of Ms. McMillian's share to Kaycee Associates, the entity owned by Oladosu. Ms. D.S. understood that this payment was to cover renovation work that had been performed on 2243 Madison by Kaycee Associates; in fact, no such renovation work had been performed. Ms. McMillian accordingly received a check in the amount of $50,665.45 after closing. According to the settlement agent, Ms. D.S., Ms. McMillian also instructed her to apply $5,703.12 from the $87,000 that was to be paid to Kaycee Associates to cover the sum that was supposed to be tendered by Anthony Johnson for the down payment and his share of the closing costs; Ms. McMillian maintains that it was Oladosu who instructed the settlement agent to do this. This reduced the amount that Title Company # 1 paid to Kaycee Associates following the

closing to $81,296.88. According to Ms. D.S., the settlement agent, Ms. McMillian represented that "Johnson" would repay this amount within the near future; Ms. Ms. McMillian denies she represented this. In any case, no such "reimbursement" ever occurred.

Following the closing on 2243 Madison, the home mortgage loan on that property swiftly went into default. The property was foreclosed on in June, 2009, at which time the most recent tax assessed value was $300,780 – a number that was based in significant part on the substantially inflated $350,000 sale price in late October 2007. This property was sold by BB&T on January 13, 2010 for $27,500.00, resulting in net sale proceeds of $22,619.77. BB&T's eventual loss on this transaction was $214,946.39, which is derived as follows:

BB&T's Expenses

Unpaid Principal Balance	$ 349,134.29
+ Unpaid Escrow Balance	$ 6,902.61
+ Property Preservation Expenses	$ 1,104.00
+ Foreclosure Expense	$ 5,832.91
+ FHLMC/FNMA Expenses	$ 33,263.28
= Subtotal:	$ 351,645.76

BB&T's Recoupments

Mortgage Insurance Proceeds (UGIC)	$ 98,841.31
+ Sale Proceeds	$ 22,619.77
+ Claim Amount Received (FNMA)	$ 15,238.29
= Subtotal:	$ 136,699.37
= Final Loss to BB&T:	$ 214,946.39

UGIC, the insurer, suffered an additional loss of $98,841.31, for a final total loss on this transaction of $313,787.71, which the parties agree is the appropriate figure for sentencing guidelines purposes. The government asserts this figure should also be used for calculating restitution. The defense asserts that the proper figure for restitution is $49,220.00, representing the difference between the unpaid principal balance on the loan and the tax assessed value of the secured property at the time it was returned to the victim via foreclosure.

The 2359 McCulloh Street ("Tola Omatayo") Transaction

In February 2007, Ms. McMillian reached an agreement to purchase 2359 McCulloh Street from Uptown Realty Company for the price of $75,000.00, although the transaction did not close until December 17, 2007. (At the time, the CLEAR database indicates that Ms. McMillian was residing at 2356 McCulloh Street, directly across the street from this

property, where she apparently resided from May 2006 through early October 2007.) On December 5, 2007, Ms. McMillian submitted or caused a loan application to be submitted to Equitable Trust in the name of Tola Omatayo requesting a home mortgage loan in the amount of $299,000 in connection with the purchase of 2359 McCulloh Street. This loan application included false information concerning Omotayo's employment (it represented that he was a "Senior Systems Analyst" who had worked for a company called "MapComps" for over four years), his income (it represented that he earned $7,483 monthly), and his assets (it represented that he had assets of $38,294 in an account at Chevy Chase Bank). Various false documents were also submitted to Equitable Trust in support of the Tola Omatayo loan application for 2359 McCulloh Street, including a fraudulent Chevy Chase Bank checking account statement for an account in the name of Tola Omatayo, which falsely represented that he had a balance of $39,760.32 in his checking account there as of November 3, 2007, whereas in fact, this account had a balance at that time of approximately $100; a fraudulent pay stub from MapComps for the pay period ending November 30, 2007, which falsely represented that Omatayo had gross pay of $3,273.97 during that pay period, and had earned $78,575.28 as of November 30, 2007; a fraudulent Form 1040 U.S. Individual Tax Return in the name of Tola Omatayo for the year 2005, which falsely reflected that he had earned $79,680 that year; and an appraisal prepared by Glenroy Day that fraudulently appraised 2359 McCulloh Street for $253,150.00. Again, Day's appraisal included photographs showing gleaming hardwood floors and a renovated kitchen and bathroom that were actually from another property, and it also falsely reflected that it had been reviewed by Mr. J.G., a licensed appraiser. In response to a telephone call from a processor at Equitable Trust, a person falsely identifying himself as "Samuel Puku,"

a supervisor for MapComps, provided a false verification of employment for Tola Omatayo.

On December 6, 2007, Oladosu or a co-conspirator acting on his behalf transmitted by facsimile an "Agreement of Purchase and Sale" dated December 2, 2007, whereby "Tola Omatayo" agreed to purchase 2359 McCulloh Street from Uptown and/or its assignee, Ms. McMillian, for a price of $250,000. This sales agreement was submitted to Equitable Trust and included in the loan application file for 2359 McCulloh.

Based upon these material and false representations, Equitable Trust agreed to extend a home mortgage loan in the amount of $250,000.00 to finance "Tola Omatayo's" purchase of 2359 McCulloh Street. Prior to the closing on December 17, 2007, BB&T agreed to purchase the loan, which it did effective January 9, 2008. BB&T thereby assumed the responsibility for servicing the loan and receiving the mortgage payments tendered by "Omatayo." The closing documents for 2359 McCulloh Street provided notice to the purchaser that BB&T had bought the loan and that the borrower's first payment, which was due on February 1, 2008, should be tendered to BB&T.

The loan closed on December 17, 2007 at Title Company # 1. Tola Omatayo, the named purchaser, was required to contribute $7,340.25 for the down payment and his share of the closing costs. No such funds were tendered at the closing, however. According to the settlement agent, Ms. D.S., Ms. McMillian again told her to apply funds that were part of the proceeds of the Equitable Trust loan to cover this amount, representing that "Omatayo" would pay her back within the near future. Ms. McMillian insists that it was "Omatayo" who instructed Ms. D.S. to do this. In any case, no such "reimbursement" of Ms. McMillian ever occurred.

Ms. McMillian's share of the sale proceeds was $153,495.50, while Uptown Realty received $74,736.35. Ms. McMillian provided wiring instructions to the settlement agent so that she received her share of the sale proceeds by wire. Upon her receipt of these funds into her account at Wachovia Bank, Ms. McMillian then caused $102,659.75 to be transmitted by wire to an account (# xxxxx6065) of Dee-Ladok Investments at SunTrust Bank, which Ms. McMillian knew was associated with Oladosu. On the wiring form, Ms. McMillian recorded, "construction paid in full for 2359 McCulloh St Baltimore, MD 21217." In fact, no construction had been performed by Dee-Ladok Investments on 2359 McCulloh Street. Ms. McMillian maintains that she believed that renovations would be performed in the future on this property, financed by the loan proceeds.

Following the closing, only a single monthly mortgage payment was made to BB&T. The property was foreclosed on in February 2009, at which time the most recent tax assessed value was $138,330. (The property's recent tax assessed values are as follows: in 2012-13: $101,200; in 2011-2012: $101,200; in 2010-2011: unknown; in 2009-2010: $138,330; in 2008-2009: $138,330; in 2007-2008: $57,443; in 2006-2007: $17,000.) As of this date, the property remains unsold.

Pursuant to U.S.S.G. § 2B1.1, Application Note 3(E)(iii), where a property in a mortgage fraud case remains unsold as of the time of sentencing, the Court is to calculate the amount of the fraud loss for purposes of calculating the defendant's offense level under the Sentencing Guidelines by determining "fair market value of the collateral as of the date on which the guilt of the defendant has been established." The application note provides that in that case, there is a rebuttable presumption that the most recent tax assessment value is a reasonable estimate of the property's fair market value. Here, the most recent tax

assessment value of 2359 McCulloh Street was $101,000 for the year 2011, and the defendant maintains that this figure should be used in calculating the current value of 2359 McCulloh Street.

The government submits, however, that the tax assessment value is of dubious utility here, because it was undoubtedly affected by the inflated price of $250,000 engineered by Ms. McMillian when this property, which was admittedly in poor condition, was sold in December 2007. Ms. McMillian herself had agreed to pay $75,000 for the property when she committed to buy it earlier in 2007, and no renovations were performed on it between then and that time it was sold to "Omatayo" in December. A review appraisal obtained by BB&T in June 2009 valued the property at $45,500; subsequent appraisals reached the following opinions as to its value: $16,000 as of 6/9/2010; $19,900 as of 6/7/2011; and $24,000 as of 11/12/2011. The government submits that the latter figure is a more reasonable measure of the property's current value than the most recent tax assessed value. The unpaid principal balance on the 2359 McCulloh Street loan is $249,795.07, and BB&T has likely suffered additional losses for real estate taxes it has been obliged to pay, foreclosure expenses, and property maintenance fees. Thus, in the government's view, the appropriate loss and restitution figure for 2359 McCulloh Street is at least $225,000.00, reflecting what is likely to be the real amount of the loss suffered by BB&T when the property is finally sold. The defense maintains that the figure for Sentencing Guideline loss calculation purposes should be $148,800.00, and that the proper figure for the restitution order on this property is $111,670.00, representing the difference between the unpaid principal balance on the loan amount and the tax assessed value of the secured property at the time it was returned to the victim via foreclosure.

Sentencing Guideline Loss Figure

The known loss figures for purposes of calculating the loss amount under § 2B1.1 on the first three properties are therefore $199,711.99 (1204 Clendenin Street), $244,912.21 (2413 McCulloh Street), and $313,787.71 (2243 Madison Avenue). The fraud loss amount on 2359 McCulloh is either at least $225,000 (in the government's view) or $148,800 (in the defense's view). If the Court finds that the government's view of the loss on 2359 McCulloh is correct, then the total fraud loss amount on all four properties is $983,411.91. If it accepts the defense's view of the loss on 2359 McCulloh, then the total fraud loss amount is $907,211.91.

Loss Figure for Restitution Purposes

If the Court finds that the government's view is correct regarding the method of calculating restitution, then the total loss figure on all four properties for restitution purposes is $983,411.91 (i.e., the same as the figure for sentencing guidelines purposes.) If the Court finds that the defense's view is correct regarding the method for calculating restitution, then the total loss figure on all four properties for restitution purposes is $450,052.