

Statement of
John Walsh
Acting Comptroller of the Currency
before the
Committee on Banking, Housing, and Urban Affairs
United States Senate
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Chairman Dodd, Ranking Member Shelby and members of the Committee, I appreciate this opportunity to discuss improprieties in the foreclosure process and the steps being taken by the Office of the Comptroller of the Currency to address them. When I appeared before the Committee in September, I described early steps to address the foreclosure problem at eight of the largest mortgage servicers the OCC supervises. I can report today that we have greatly expanded our efforts to address this critical problem, working with other government agencies.

Let me state clearly that the shoddy practices that have come to light, including improperly executed documents and attestations, are absolutely unacceptable. They raise questions about the integrity of the foreclosure process and concerns about whether some homes may have been improperly taken from their owners. The OCC is moving aggressively to hold banks accountable and fix the problem.

In recent years, as problem loans surged, the OCC's primary focus was on efforts to prevent avoidable foreclosures by increasing the volume and sustainability of loan modifications. When we saw, using loan-level data from our mortgage metrics project, that an inordinate number of modifications initiated in 2008 were re-defaulting, we directed national bank servicers to take corrective action. Since then, we have seen a sharp increase in modifications that lowered monthly payments and fewer re-defaults.

While these efforts are preventing some foreclosures, many families are still struggling and face the prospect of losing their home. We owe these homeowners our best efforts to assure that they receive every protection provided under the law.

Questions have arisen about the practice of continuing foreclosure proceedings even when a modification has been negotiated and is in force. We agree that this dual track is unnecessarily confusing for distressed homeowners, and the OCC is directing national bank servicers to suspend foreclosure proceedings for successfully performing modifications where they have the legal ability and are not already doing so. It is important to remember, however, that GSEs and private investors dictate the terms for non-HAMP modifications, so this option may not always be available to servicers.

It is also the case that foreclosures are governed by state law, and requirements vary considerably across jurisdictions. As a result, most nationwide servicers hire local firms familiar with those requirements. Both Fannie Mae and Freddie Mac require servicers to use law firms they pre-approve for a given locality.

The OCC reviews a bank's foreclosure governance process to determine if it has appropriate policies, procedures, and internal controls necessary to ensure the accuracy of information relied upon in the foreclosure process and compliance with federal and state laws. We expect banks to test these processes through periodic internal audits and their on-going quality control function.

Examiners generally do not directly test standard business processes or practices such as the validity of signed contracts or the processes used to notarize documents, absent red flags that indicate systemic flaws in those business processes. Unfortunately, neither internal quality control tests, internal audits, nor data from our consumer call center suggested foreclosure document processing was an area of systemic concern.

When problems were identified outside the national banking system at Ally Bank, we immediately directed the eight largest national bank servicers to review their operations and take corrective action. We began organizing on-site examinations at each of those major servicers which are now well underway, with more than 100 national bank examiners assigned to this task.

In concert with other regulatory agencies, these examiners are reviewing whether foreclosed borrowers were appropriately considered for loan modifications, whether fees charged were appropriate, documents were accurate and appropriately reviewed, and that proper signatures were obtained. We are reviewing whether servicers complied with state laws and whether they had possession and control over documents necessary to support a legal foreclosure proceeding.

The OCC is heading an on-site interagency examination of the Mortgage Electronic Registration System, or MERS, in coordination with the Federal Reserve, the FDIC, and Federal Housing Finance Agency, and we are participating in an examination led by the Federal Reserve of Lender Processing Services, which provides third-party foreclosure services to banks.

Where we find errors or deficiencies, we are directing banks to take immediate corrective action, and we will not hesitate to take an enforcement action or impose civil money penalties, removals from banking, and criminal referrals, if warranted. We expect to complete our examinations by mid to late December, and to determine by the end of January whether additional supervisory or enforcement actions are needed.

Thank you again for the opportunity to appear today. I will be happy to answer questions.