

Statement of
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Acting Comptroller of the Currency

before the

Subcommittee on Housing and Community Opportunity

of the

Committee on Financial Services

U.S. House of Representatives

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Chairwoman Waters, Ranking Member Capito, and members of the Subcommittee, 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 (OCC) to address them. The OCC supervises most of the nation's large banks, including eight of the largest mortgage servicers, so this is a matter of great concern to us.

Let me say clearly, 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.

As problem loans surged in recent years, the OCC's primary focus was on efforts to prevent avoidable foreclosures by increasing the volume and sustainability of loan modifications. The transparency and clarity provided by our mortgage metrics project helped in that effort by providing thorough, accurate data on the performance of mortgages and modifications. When we saw, for example, 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 delinquencies subsequent to modifications. While these efforts are helping some families avoid foreclosure, many 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 law.

Foreclosures are governed by state law, and the requirements vary considerably across jurisdictions. As a result, most nationwide servicers hire local firms familiar with those requirements, and 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 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 at Ally Bank, which is not supervised by the OCC, first came to light, we immediately directed the eight largest national bank servicers to review their operations and take necessary corrective action, while we prepared to launch on-site examinations at each of those major servicers. Those exams are well underway, and we have more than 100 national bank examiners assigned to this task.

In concert with other regulatory agencies, examiners are reviewing samples of individual borrower foreclosure files from judicial and non-judicial states that include both in-process and completed foreclosures. They will determine whether foreclosed borrowers were appropriately considered for alternative home retention actions such as a loan modification.

In addition, examiners are looking for evidence that financial information in affidavits is accurate and complies with state laws and that the fees charged are correct. They will determine whether the servicer has possession and control over critical loan documents needed to support a legal foreclosure proceeding, and are seeking evidence that affidavits and documents were independently and appropriately reviewed, and that proper signatures were obtained.

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, Inc., 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 have an array of enforcement actions and penalties that we will not hesitate to impose if warranted. These can include civil money penalties, removals from banking, and criminal referrals. We expect to complete our examinations by mid to late December. By the end of January, we hope to have our analysis of the exams completed to determine what additional supervisory or enforcement actions may be needed.

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