

Remarks By  
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Before  
The American Banker Regulatory Symposium  
Washington, D.C.  
September 19, 2011

Good afternoon. Thank you, Rob, for that kind introduction, and thank you for inviting me to participate in this important symposium. Many months ago, when I agreed that the OCC would participate in this program, I did so with confidence that a new Comptroller of the Currency would be nominated and confirmed, and I would never have to write a single word to say to this audience. But the process did not work quite as I anticipated and here I am.

I expected the role of acting Comptroller to be measured in months, but I have now started my second year – and a challenging and surprisingly controversial year it has been. It is an interesting experience to pass from anonymity to notoriety overnight.

For all the challenges of my now extended tenure, I do expect to turn over the OCC in good condition to the next Comptroller. The pending nominee, Tom Curry, is someone with whom I have had the pleasure of working on the board of the FDIC for the last year, and he brings long experience in bank supervision to the job. I wish I could assure him that the road ahead will be smooth and free of bumps, but of course that wouldn't be true. As an FDIC board member, he knows full well that we are continuing to work our way through the worst financial crisis of our lifetime, and a very stubborn economic downturn. And as Comptroller, he will be

dealing with these broad challenges as well as the unique set of issues as the chief prudential regulator of the nation's largest banks.

Among the issues that will be front and center for the new Comptroller are mortgage foreclosures and mortgage servicing. Although the OCC is not the only agency addressing these issues, we do have substantial responsibilities for them. Federally chartered servicers handle two-thirds of the nation's mortgage loans, and as you know, we are in the midst of implementing a set of enforcement actions that are among the most complex and most significant of any that the OCC has ever initiated. So, I'd like to spend my time today talking about foreclosures and servicing. I'll provide an update on where we are with respect to our enforcement actions, and I'll offer a glimpse of the future for the servicing business.

It's hard to overstate the importance of the foreclosure and servicing issues. They are a major drag on the struggling housing industry, and a well-functioning housing sector is vital to the health of local communities and our national economy. Recovery in the housing sector would move us a long way toward achieving a sustained economic recovery, but it's hard to imagine the housing sector recovering until we work through the mortgage modification process, address the large back-log of foreclosures, and restore a fair and functional foreclosure process in the housing market.

These are matters of particular concern to me as Comptroller because the mortgage business has always been a big part of the OCC's portfolio, and it has assumed even greater importance with the integration of the OTS's responsibilities for federal thrift supervision into the OCC. The thrift industry came into being to support home ownership, and while thrifts have gotten involved in many areas of consumer lending over time, mortgage lending remains their major focus.

The improper practices in foreclosure processing and mortgage servicing that have come to light have major safety and soundness implications for banks, in addition to their financial consequences for troubled homeowners and the economy. They have had a very damaging effect on the reputation of the institutions involved; in fact, on the reputation of the industry as a whole. Loss of a home through foreclosure is a financial and personal tragedy for a family; and, the widespread foreclosures taking place can create economic blight for a community. It is unfortunately true that significant numbers will face the loss of their homes in the current economic environment, but it must also be true that troubled borrowers can expect to be treated fairly and afforded every protection provided under the law. I am confident that our enforcement actions will do just that: ensure that at-risk borrowers get a fair chance to stay in their homes, while assuring that those who do find themselves in foreclosure receive appropriate protection and due process under the law.

I am proud of the excellent work done by our staff in these enforcement actions, but if confidence in the system is to be restored, it is also important that the full extent of the actions we are taking is well understood by the public. That has not been the case, in part, because this is a large and complex undertaking that can't all be completed at once.

When we announced the actions, I said they were intended to fix what was broken, compensate those who were harmed, and, where appropriate, assess penalties for abuses. We are doing just that. We have directed servicers to undertake major systems and processing improvements that will be quite expensive to implement. And servicers must provide restitution or other forms of remediation to borrowers who have suffered financial harm, with no limit on total cost.

All of this takes time, and the full effect, full cost, and full benefit of remediation will be known only at the end. Not knowing what all of this will ultimately cost means we haven't been able to announce a big dollar figure to capture the severity of our enforcement actions.

Engagement letters and action plans are the critical steps in resolving the foreclosure processing mess, but they lack the sex appeal of a big dollar settlement or the sound bite that summarizes the process in a word or two. Since it is not a story that lends itself to easy synopsis, I'd like to spend a few minutes highlighting its key elements.

First, the scope of the enforcement actions that we took in April is very broad and comprehensive, and I think that's been poorly understood. Looking at the details of the foreclosure review, the enforcement orders tackle a large number of problems that need to be fixed. While "robo-signing" has become a shorthand for the broken process, these orders go far beyond just fixing "robo-signing" of documents. They address the entire system of controls that must be in place to ensure that those practices don't occur in the first place.

The orders ensure accountability. They were signed by each member of the board of directors at each of the banks, and each servicer was directed to establish a compliance committee including at least three of its directors, each of whom is accountable to the OCC and the Fed for the oversight and implementation of the corrective actions required by our orders. The scope of compliance responsibilities that this committee is accountable for is extensive, and failure to deliver effective compliance can carry personal consequence for directors, as well as for the servicers.

The orders also raise the bar for the oversight and management of third-party service providers who process loss mitigation applications and foreclosures, and manage acquired properties, including law firms that provide services and counsel for all of these processes. You

can delegate and outsource the work, but you can't outsource the responsibility for ensuring the work is carried out in a safe and sound manner.

Because of the complexity of these processes and the amount of detail involved in every mortgage serviced by these large companies, our orders also require significant enhancement to the management information systems used by these companies. Of course, reliable MIS is a basic requirement for doing the business of banking. But the reality is that the rapid consolidation of the industry meant that very large firms often had multiple systems performing servicing and loss mitigation functions, and the integration and functionality of these systems did not always keep pace. That is a criticism, not an excuse, but it is a fair description of how things evolved that must now be fixed under our enforcement actions.

Improving accountability, third-party oversight, and information systems won't fix the problem unless the basic standard of mortgage servicing is reformed. Consequently, we targeted several aspects of these standards and practices that posed the greatest risk to the process. For example, we are requiring servicers to establish a single point of contact for borrowers and to establish procedures to end dual tracking: that is, to ensure foreclosure actions stop when a borrower is approved for a trial or permanent modification.

All of the steps I've described thus far are aimed at ensuring the process works going forward – the “fixing what's broken” piece. But for homeowners who ended up in foreclosure, the critical issue is whether they were financially harmed due to servicer deficiencies, errors or misrepresentation and, if they were, what kind of restitution should be provided. That is the most ambitious and complex aspect of our enforcement actions – the independent foreclosure review.

This independent review sets out to identify borrowers who suffered financial injury as a result of errors, misrepresentations, or other deficiencies in the foreclosure process. The scope of this review includes any mortgage serviced by these companies on a borrower's primary residence that was in *any stage* of foreclosure between January 1, 2009 and December 31, 2010. So we are looking not just at those foreclosures that resulted in foreclosures sales, but at foreclosures that were pending at any point in that period. They could have been cancelled or still pending, given how long foreclosures take today: nearly four and a half million mortgages are in that total pool, each with its own special facts and circumstances.

In our initial examination of this problem, we looked at a sample of 200 loans at each of the 14 institutions – enough to make a judgment about whether enforcement actions were justified, but not nearly enough to answer all questions. Foreclosure file reviews conducted by examiners were very labor intensive, and this phase of the process took about three months to complete. The banking agencies certainly don't have the examiner and legal resources to expand our file reviews to identify financial injury or harm in this huge potential population of foreclosures. So a basic requirement we placed on the servicers at the outset was to devise a comprehensive process that could provide an independent review of a large number of foreclosure cases, determine if there was any harm to the borrower, and provide restitution where appropriate.

We had begun defining an acceptable process even before we issued the enforcement orders in April: independent consultants and law firms to advise them would have to be hired to administer the review under our direction; a comprehensive complaint process for borrowers to submit claims was deemed a critical and necessary component of the foreclosure review; and sampling was greatly expanded to help catch foreclosure cases with potential for financial injury.

These elements are reflected in the engagement letters developed by the independent consultants and submitted by the servicers.

We have coordinated with the Department of Justice throughout this process, and as you know, we agreed to delay submission of the action plans by 30 days to allow time for additional coordination with the states. We continue to work with the Department of Justice and other federal and state regulators to harmonize new mortgage servicing standards. I continue to believe that we will be able to harmonize the mortgage servicing requirements in our orders with those of other regulators if and when they are reached. In fact, I think it is absolutely essential that we do so.

Since the submission of plans in July, we have been working with the servicers and independent consultants to refine the plans so that the reviews meet our high expectations. The independent foreclosure review was the most public and highly anticipated aspect of our orders, so it was especially important to get it right. For example, we set detailed expectations for the sampling process. The foreclosure population is being divided into targeted segments to identify foreclosure cases that have the highest potential for financial injury. In some cases, independent consultants will be reviewing hundreds of thousands of case files for just one servicer. Sampling can be an extremely useful tool for identifying errors in a large population, but it is only a starting point that may require more thorough investigation if issues are identified.

As we explored the best means of ensuring that injured homeowners had the opportunity to seek relief, it became clear that what was needed was a robust, transparent, and accessible complaint process that will give borrowers the opportunity to request an independent foreclosure review. I'm happy to say in the next several weeks you'll see the roll out of just such a process.

Homeowners who faced foreclosure of their primary residence will be able to request a review of their case if they believe they suffered financial injury as a result of errors, misrepresentations, or other deficiencies in the foreclosure process between January 1, 2009 and December 31, 2010. Affected borrowers in this timeframe will be contacted through direct mailings and other tracing techniques. The independent consultants will also launch a coordinated advertising campaign to help contact borrowers who cannot be reached through direct mailings or other means.

Rather than instituting 14 different servicer processes, which would surely be a source of confusion for homeowners, we insisted that all of the independent consultants use a single claims processing vendor that will provide common intake forms, a single Web site, and a common phone number for eligible individuals who want a review of their case. We expect this process to kick off in the next few weeks. Individuals seeking a review will be able to go to a Web site and either file a request for review online or ask for a form that can be filled out and submitted by mail. There will be a toll-free number for individuals who need assistance filing their request or who want to ask questions about the review.

I know that many who went through foreclosure in recent years emerged pretty jaded by the confusion and inefficiency of the experience, so I'd like to explain just what they can expect if they request review of a foreclosure on their primary residence during the review period. First, their case will be reviewed by an independent consultant to identify financial injury or harm under the terms of the OCC's enforcement orders. If the consultant identifies cases of financial harm, servicers will be required to develop a remediation plan and make appropriate restitution. Remediation plans are subject to OCC and Federal Reserve approval.



Everyone who asks for a review of their case will receive confirmation that the request has been received, and they may be asked for additional detail and information. While the reviews are independent, the servicer will provide relevant documentation related to the case and may be asked to clarify or confirm facts and disclose reasons for decisions made or actions taken during the process. At the conclusion of the review, which will take several months, a letter will be provided explaining the outcome, and providing information about restitution where appropriate.

The nature and severity of any financial injury will be case specific, so remedies could vary substantially. Remediation and restitution will not be approached as a one-size-fits-all proposition. It will depend on the facts of the individual case and that requires thorough and careful consideration, as well as a strong quality control process to ensure each institution is treating cases of financial harm in a consistent way.

The OCC expects independent consultants to employ a robust quality assurance process, and our examiners will review and assess this process on a continuing basis. If we find material issues, we will require prompt corrective action. To ensure consistency, we issued guidance on financial injury, and instructed the independent consultants to use it.

Our enforcement actions require independent consultants to develop a Foreclosure Review Report identifying financial injuries with recommendations for remediation. We will review these reports individually, and we also plan to conduct a horizontal review of the reports to ensure there are no material inconsistencies. These reports will be used by servicers to develop and submit the remediation plans required by our orders.

While I wish that there was a faster way to address the problems, provide relief, and restore the smooth functioning of the housing market, the fact is that this process will take some

time to complete. Then there are the other federal enforcement actions and negotiations with state AGs, private lawsuits over foreclosures and securitizations, and an extensive agenda of rulemaking in the mortgage area that will further cloud the industry's outlook for some time to come.

While it may seem hard to be optimistic in the near term, we are focused on putting the process right for the long term by establishing uniform national mortgage servicing standards that apply to all mortgages and protect all borrowers. We have already begun this effort, and are working with the Fed, the FDIC, the FHFA, and the CFPB on new and comprehensive standards. In fact, our enforcement actions have already set some of the standards that will be part of an eventual package, including the ban on dual tracking and the requirement for a single point of contact. So we are well on the way.

The challenges before us are substantial, but we have taken substantial steps to resolve them. The path to recovery will be longer than anyone would like, but we are clearing the path forward and finding ways to settle outstanding issues as quickly as possible so as to restore confidence in the system and respect the needs of all who have suffered in the process.

Thank you.