Remarks by

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Before the

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Good afternoon, it's a pleasure to be here with you today. It is especially appropriate to be addressing an organization with a long connection to the housing sector. The financial crisis which was the central focus of bank supervision for the last several years began with poorly underwritten home mortgages. Under the Dodd-Frank Act, enacted to respond to the crisis, we have just issued rules for securitization of mortgages, including the Qualifying Residential Mortgage definition. We are now working to remedy the systematic breakdown that emerged last fall in foreclosure processing. We are working on comprehensive servicing standards to create a firm basis for the future of mortgage servicing. And with integration of OTS into the OCC, we will be supervising institutions that make nearly two-thirds of mortgages in America. So, you can see that housing issues are very much on our minds at the OCC.

All of the subjects I just mentioned would be huge issues for regulators to tackle in their own right, but we are working on all of them at once. The subject most in the news today is our response to the breakdown in foreclosure processing standards at the large servicing banks. I'm sure most of you have been reading about the progress of our enforcement actions over the past month – they've been described variously as being close to completion, near completion, imminent, any day – and now finally they have been issued. Along with the Federal Reserve and the Office of Thrift Supervision, we announced cease and desist orders against 14 large servicers and two service-providers that are intended to correct the deficiencies we found both in mortgage servicing and foreclosure processing.

These orders were based on the onsite reviews we conducted last year of servicers' foreclosure processing operations, as well as interviews with staff, validations of servicer self assessments, and a review of case files of mortgages at various stages of foreclosure. We found significant deficiencies that represent not only unsafe and unsound practices, but a breakdown in way customers are treated. This is a very serious problem that servicers are going to have to do substantial work and absorb substantial expense to fix.

There has been a great deal of noise and confusion surrounding our enforcement effort, and I'd like to explain what our orders are about, and how they and other regulatory actions are likely to reshape the mortgage servicing business.

First of all, the problems we found were extensive. Our reviews found significant weaknesses in foreclosure governance and document preparation: improper affidavits were submitted and documents were notarized improperly. Servicers devoted insufficient financial, staffing and managerial resources to foreclosure processing. Third party providers of foreclosure-related services, including outside law firms, were not adequately supervised, and, in a limited number of cases, servicers failed to ensure proper endorsement of promissory notes or mortgage documents.

As bad as the mortgage servicing breakdown was, it was not the cause of mortgage delinquencies that led to the surge in foreclosures. Rather, it was the unprecedented surge in foreclosures that exposed and exacerbated weaknesses that already existed in the process. Likewise, as we take steps to solve the processing problem and ensure that troubled borrowers receive the full protections available under federal and state laws, our actions are unlikely to fundamentally change the trajectory of the foreclosure problem.

What the reforms will do is to help restore integrity to the process. That's very important because widely reported foreclosure processing defects have not only harmed individual troubled borrowers but they have undermined confidence in the system. Given the state of the mortgage markets, taking these steps to restore confidence is a matter of urgency.

We began this work last fall when evidence of significant documentation problems came to light, by directing the servicing banks to conduct a self-assessment of their processes. We followed up very quickly with a large-scale interagency examination of the servicers intended to assess the extent of problems and to craft remedies. As part of these horizontal exams, we evaluated foreclosure operating procedures and controls, interviewed bank staff involved in the preparation of foreclosure documents, and reviewed approximately 2,800 borrower foreclosure cases in various stages of foreclosure.

We focused on all phases of the foreclosure process: policies and procedures; organizational structure and staffing; vendor management, including use of outside counsel and third-party service providers; quality control and audits; accuracy and appropriateness of foreclosure filings; and loan document control, endorsement, and assignment. Examiners also checked the fees assessed in connection with foreclosures against the organization's internal records.

If there is any reassurance here, and there is sadly very little, it is that borrowers subject to foreclosure in our sample were indeed seriously delinquent. That's not surprising since according to data collected through our quarterly Mortgage Metrics report, more than 94 percent of borrowers foreclosed in 2010 were six months or more past due. The cases evaluated in the sample also showed that servicers generally had the documents they needed to foreclose. Still, a small number of sales should not have been gone forward because the Servicemembers Civil Relief Act barred a lender from foreclosing on active duty service members, a bankruptcy had been filed, or they had been approved for a trial period modification.

The reviews didn't focus specifically on banks' loan modification process, but when reviewing individual foreclosure files, examiners did check for evidence that servicers were in contact with borrowers and had considered alternate loss mitigation efforts, including modifications. In general, we found that servicers had considered whether borrowers facing foreclosures might qualify for some alternative program, such as a modification.

But while the servicers got a couple of things right, what stood out was the pervasiveness of flaws and failings right across the process. Robo-signing may be the image that has lodged most firmly in our minds from news reports, but other deficiencies, beyond the mishandling of affidavits, were equally serious. That such routine business operations could be so badly mismanaged as to raise safety and soundness concerns was, quite frankly, astounding.

I should add that while the sample of foreclosures we examined was adequate to expose these flaws in the process and provide a basis for developing enforcement actions, it did not capture the full extent of harm to borrowers. It was judgmentally drawn to ensure it included certain types of foreclosures – actions in judicial and non-judicial states, for example – but it was only a sample. Our enforcement actions include a Foreclosure Review article that requires servicing banks to submit action plans that will look back at a larger base of foreclosures. For servicers with significant problems, it may be the case that each foreclosure over the past two years will have to be evaluated individually.

So with our exam findings in mind, let me offer some thoughts on how foreclosure processing should work and how we expect it work going forward. Homeowners have the right to expect transparency, accessibility, and fairness from the companies that service their mortgages, and never more than when a borrower is experiencing financial difficulty.

- Transparency is the most basic of these rights: homeowners deserve to know who is servicing their mortgage and what is happening with it throughout the process.
- Accessibility is equally important: distressed borrowers are entitled to a single point of contact familiar with their mortgage and empowered to make decisions to assist them. We've heard stories about borrowers who submitted paperwork for modifications on multiple occasions only to be told each time that the documents couldn't be found. We don't know how often that happened, but it should never happen and there should be a responsible person and sensible process to make sure it doesn't happen.
- Fairness is a third key element of effective servicing, and it is addressed in a number of ways in our enforcement orders: homeowners facing foreclosure deserve to know the criteria under which they would qualify for assistance, and they should not be faced with the confusion of dual tracking: negotiate a modification and still see the foreclosure process move forward. They should be able to have confidence that their mortgage is being handled in a manner that is fair and complies with all applicable laws. Anything less is unacceptable.

Our enforcement actions address the full range of deficiencies we found. They are intended to fix what is broken, identify and compensate borrowers who suffered financial harm, and ensure a fair and orderly mortgage servicing process going forward. I won't try to go through them in detail – there is certainly plenty of that in the many documents we issued yesterday – but I would like to briefly review their key requirements.

First, they require a comprehensive revision of the loan modification and foreclosure processes. They address the most frequently heard servicing complaints: eliminating dual tracking, once a modification has been approved, and establishing a single point of contact to ensure borrowers can contact a live person throughout the process.

The orders also require robust oversight and controls of third-party vendors, including outside legal counsel and vendors who provide default and foreclosure processing services. This title of the order requires servicing banks to maintain control over the third parties they employ, including lawyers, and they have to ensure that those who act on their behalf comply with all laws and regulations, both state and federal.

One of the most significant aspects of the orders, however, is the one I mentioned a few moments ago – the look-back provision. It requires a comprehensive, independent review of foreclosure actions and proceedings between January 1, 2009, and December 31, 2010, to identify borrowers that suffered financial harm as a result of foreclosure processing deficiencies and to provide them restitution. This is an open-ended obligation, with no dollar cap, and we will be supervising compliance very closely. The work will be done by an independent firm, pursuant to a plan approved by the OCC. Banks must actively look for borrowers who suffered financial harm, and also evaluate the cases of any borrower who asks for a review.

One final aspect of the look-back that bears mention is the role it will play in helping us evaluate the extent of the problem. As we gather additional information from continuing exam work and the look-back about the extent of harm from processing failures, this will inform our decision on Civil Money Penalties. Over the next several months, we'll have an opportunity to take a much more comprehensive look at the cases of individual borrowers who were foreclosed upon, and we'll be able to make much better judgments about what kinds of financial penalties are warranted.

Of course, the OCC is not the only agency involved. In addition to the bank regulatory agencies that we have been working with, a number of state and other federal agencies are pursuing program and legal violations in their areas of jurisdiction. On the federal level, the Department of Justice has coordinated a group of agencies seeking remedies, and the state Attorneys General are also seeking a settlement with the bank servicers for violations of state law. The question has been repeatedly asked why the bank regulators are taking action ahead of the state AGs and the other federal agencies.

The simple answer is that we all have our jobs to do and, while we fully supported the goal of reaching simultaneous conclusions to our various enforcement actions, having established the scope of problems in our area of jurisdiction, the bank regulators had to move forward. It is our mission to ensure both safety and soundness and fair treatment of consumers, and meeting those objective demanded action. To delay further could expose additional borrowers to harm, and leave the safety and soundness of the banks unaddressed. Our job as supervisors is to fix what is broken, and compensate those who are harmed, and that's what our enforcement actions will do.

There is nothing about our actions that is inherently in conflict with other agencies' pursuit of their responsibilities or enforcement actions. My hope is that our enforcement actions will establish a framework, and the actions that state law enforcement officials and the other federal agencies may take will be complementary to, and consistent with, what we are doing. This is a messy process, and it will take time to put things right. There may be misunderstandings and disagreements along the way. But I am confident that we will be in a better place when we are finished, and we will be able to use what we learned in our examinations of the large bank servicers to make additional improvements.

In fact, we've already begun. One of the lessons of the foreclosure crisis is that we need comprehensive servicing standards that apply to all servicers everywhere in the country. Our enforcement orders will set strong standards for the 14 large companies regulated by the banking agencies, but only in the foreclosure phase of the servicing process. In addition, if only the regulated part of the market is subject to strong standards, activity will migrate to the part that is less regulated.

With that in mind, the OCC and the Fed separately proposed comprehensive servicing standards that are now the subject of talks, not only among the bank regulatory agencies, but the Federal Housing Finance Agency and the Consumer Financial Protection Bureau. By bringing in additional agencies we have the opportunity to extend standards to the nonbank sector as well.

The standards we have proposed have been informed by what we found in the horizontal reviews. They will not only improve governance and oversight, but they will enhance staffing and the use of technology at servicers, and require improvements in training. They will also strengthen accountability and responsiveness in dealing with borrowers, ensure that troubled homeowners are offered a full range of economically justified loss mitigation options prior to the initiation of a foreclosure, and require improved communication with borrowers and the development of a complaint resolution process that is monitored and measured for quality assurance. This is something we can do in a prompt and straightforward way, and more important, it's something that will have very significant benefits for homeowners.

In closing, let me say again that it's important to maintain perspective as we move to fix the problems we've uncovered with foreclosure processing. The deficiencies we found were serious and totally unacceptable, and they will be dealt with in a serious and meaningful way. But they did not cause the foreclosure crisis, and no one should harbor the illusion that fixing these problems will stem the crisis. That, unfortunately, will take time.

We should continue to explore creative means to help struggling homeowners keep their homes, while also protecting the investor interests that make mortgages and homeownership possible. In this regard, I would note the scale of modifications taken by national bank and thrift servicers. Servicers that report data to the OCC and OTS last quarter initiated three times as many home retention actions, which include modifications, as foreclosures and other home forfeiture actions. During the past five quarters, servicers initiated nearly 2.7 million home retention actions, including about 1.1 million modifications.

I hope those numbers will continue to grow, and that meaningful modifications will continue to outpace foreclosures by an ever-growing margin. But when these attempts fail to provide sustainable, affordable alternatives to foreclosures, we must have a system that works – a system that complies with the law, and that provides transparency, accessibility, and fairness.

While we have much work ahead of us, our enforcement actions will lay the groundwork to do exactly that. Thank you.