

For Release Upon Delivery  
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**TESTIMONY OF**  
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**DEPUTY COMPTROLLER FOR LARGE BANK SUPERVISION**  
**Before the**  
**COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM**  
**UNITED STATES HOUSE OF REPRESENTATIVES**  
**MARCH 19, 2012**

Statement Required by U.S.C § 250:

The views expressed herein are those of the Office of the Comptroller of the Currency and do not necessarily represent the views of the President.

Chairman Issa, Ranking Member Cummings, and members of the Committee, my name is Morris Morgan, and I am a Deputy Comptroller for Large Bank Supervision. I have been a National Bank Examiner for 26 years and am currently responsible for overseeing the activities of several of the large mortgage servicers in their compliance with the OCC's enforcement actions issued in April 2011. I appreciate the opportunity to appear before you this morning to provide information about the comprehensive enforcement actions that the OCC undertook when major problems came to light about the mortgage servicing and foreclosure processing activities at the country's largest mortgage servicers, and the status of follow-through on those enforcement actions.

Nearly a year ago, pursuant to formal Enforcement Orders ("Orders"), the OCC put in place a comprehensive program for major mortgage servicers to correct the deficient and unsafe and unsound practices documented in the Orders, and to identify borrowers who may have suffered financial harm as a result of those practices in order to provide them financial remediation.<sup>1</sup> These steps are well underway, and my testimony will describe their progress. More recently, in addition to the actions already begun as a result of the OCC's Orders, other important reforms have been initiated, which I also will describe in my testimony. In this regard, it is particularly important to stress that the remedies that we are requiring in our Orders do not impede, but instead, complement in important ways these other initiatives, particularly the

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<sup>1</sup> Eight national bank servicers were examined by the OCC: Bank of America, Citibank, HSBC, JPMorgan Chase, MetLife Bank, PNC, U.S. Bank, and Wells Fargo. The OTS also examined four federal savings association servicers and two holding companies: Aurora Bank, FSB; EverBank (and the thrift holding company, EverBank Financial Corp.); OneWest Bank, FSB (and its holding company IMB HoldCo LLC); and Sovereign Bank. On July 21, 2011, regulatory responsibility for federal savings associations transferred from the OTS to the OCC under the Dodd-Frank Wall Street Reform and Consumer Protection Act. Consent orders taken by the OTS prior to the transfer against federal savings associations remain in effect and enforceable by the OCC. Consent orders taken by the OTS against thrift holding companies remain in effect and enforceable by the Board of Governors of the Federal Reserve System.

actions certain servicers will be taking pursuant to the National Mortgage Settlement involving certain federal agencies and state Attorneys General filed on March 12, 2012.

My testimony this morning provides information organized around three main areas. First, I describe the Independent Foreclosure Review process required by our enforcement actions. Importantly, this undertaking has two parts: a file review to identify financially harmed borrowers, and a process by which borrowers who believe they suffered financial injury within the scope of our Orders may request an individualized review of their situation. My testimony provides updates on both components of this effort. Second, I describe other comprehensive actions underway required by our Orders to correct deficient and unsafe or unsound practices in mortgage servicing and foreclosure processing. These reforms apply to all the servicers that are subject to our Orders, not just the servicers that are parties to the National Mortgage Settlement. Third, I summarize other activities and initiatives stemming from the foreclosure crisis, including the National Mortgage Settlement, and how the OCC's Orders relate to those other initiatives.

## **I. Background**

Before addressing these three areas, it is useful to provide a brief background.

In the fall of 2010, following reports of irregularities in the foreclosure processes of several major mortgage servicers, the OCC directed the largest national bank servicers to conduct self-assessments to identify problems related to foreclosure processing. Concurrently, the OCC, the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation, and the Office of the Thrift Supervision (OTS) coordinated efforts to

conduct “horizontal” examinations of foreclosure processing at 14 large federally regulated mortgage servicers during fourth quarter 2010.<sup>2</sup>

The examinations evaluated controls and governance over bank foreclosure processes, including compliance with applicable federal and state law. Examiners evaluated bank self-assessments and remedial actions, assessed foreclosure operating procedures and controls, interviewed bank staff, and conducted an in-depth review of approximately 2,800 borrower foreclosure cases in various stages of foreclosure, spanning the 2009-2010 period. Examiners focused on foreclosure policies and procedures, organizational structure and staffing, third-party management, quality control and audits, accuracy and appropriateness of foreclosure filings, and loan document control, endorsement, and assignment. When reviewing individual foreclosure files, examiners checked for evidence that servicers were in contact with borrowers and had considered alternate loss mitigation efforts, including loan modifications. More than 100 examiners spent over four months conducting these exams, interviewing servicer and third-party employees, and observing servicer practices.

In general, the examinations found the loans in the sample were seriously delinquent. However, the examinations also found critical deficiencies in foreclosure governance processes, document preparation processes, and oversight and monitoring of third parties. These deficiencies constitute unsafe and unsound banking practices, which also resulted in violations of certain laws, regulations, or rules. All servicers exhibited similar deficiencies, although the number, nature, and severity of deficiencies varied by servicer.

The sample of foreclosures reviewed as part of the interagency examination provided a basis for enforcement action; however, it is important to recognize that, due to the limited

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<sup>2</sup> See “Interagency Review of Foreclosure Policies and Practices,” (<http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47a.pdf>), April 13, 2011.

number of files that were reviewed, this process could not have identified the universe of borrowers who might have been financially harmed by those deficiencies.

On April 13, 2011, the OCC, the FRB, and the OTS announced the issuance of formal Enforcement Orders against each of the 14 servicers subject to our respective jurisdictions, and two service providers reviewed as part of the examinations. Crucial components of these enforcement actions are processes to identify borrowers who suffered financial injury as a result of the practices identified in the Orders, and to provide financial remediation to them through an Independent Foreclosure Review (IFR) process.

## **II. Independent Foreclosure Review**

Importantly, the IFR has two components — a process by which borrowers who believe they suffered financial injury within the scope of our Orders may request an individualized review of their situation, and a file review (“look-back”) conducted by independent consultants, retained under the terms of the OCC’s Orders, to identify financially harmed borrowers.

Between these two processes – which will involve the review of more than a quarter million foreclosure cases and thousands of reviewers, we seek to maximize, to the extent feasible and within a reasonable time frame, the identification of borrowers who have suffered actual financial injury as a result of the deficiencies identified in our Orders and to provide financial remediation to them.

Request for review forms have now been mailed to all 4.3 million borrowers, and as of last week, 121,725 forms had been completed and returned for review. Among the requests received so far, 87 percent involve modification issues, 62 percent claim the recorded mortgage balance was not correct, 47 percent cite improper fees, and 47 percent refer to payment processing errors. (These percentages will exceed 100 percent because many requests cite

multiple issues). Also as of last week, 90,472 files are actively under review as a result of the “look-back” review process.

### ***Role of Independent Consultants***

The Orders require the servicers to retain independent consultants to conduct comprehensive independent reviews of foreclosure activities that took place in 2009 and 2010. The engagement process for independent consultants subject to the OCC’s Orders followed the same process the federal banking agencies generally utilize with respect to implementation of requirements to hire independent third parties to conduct reviews under §1818 enforcement orders. Under this process, the financial institution is required to propose engagement of an outside independent party, which is subject to agency non-objection, and the institution is required to pay directly for the third-party services. The banking agency oversees the engagement and examines the results. Under this process, consultants are motivated to perform their services independently, competently, and thoroughly; because, if they do not, they risk having their independence called into question, their resulting work-product rejected, and they risk not receiving future approval by the regulators to serve as an independent outside third-party with respect to other projects.

The scope of work by the independent consultants was set out in engagement letters between each servicer and its consultant. The OCC reviewed these letters and required changes to ensure compliance with the intent of our Orders and a level of consistency across the servicers. The OCC accepted the letters in late September, and made them publicly available on November 22, 2011.<sup>3</sup>

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<sup>3</sup> See <http://www.occ.gov/topics/consumer-protection/foreclosure-prevention/independent-review-foreclosure-letters.html>. Some proprietary and personal information was redacted from the engagement letters prior to their release. Examples of redacted information include: names, titles, and biographies; proprietary systems information;

Since the acceptance of the letters in September 2011, the independent consultants have refined and adjusted processes, procedures, and methods outlined in the letters in consultation with OCC staff. In many cases, some details of the processes being implemented differ from those described in the letters because of subsequent direction from the OCC. Most notably, the OCC required changes to ensure a uniform and coordinated claims process among the servicers.

The independent consultants retained by each servicer to conduct these reviews of national banks and federal savings associations are:

- Allonhill, LLC, for Aurora Bank;
- Clayton Services, LLC, for EverBank;
- Deloitte & Touche, LLP, for JPMorgan Chase;
- Ernst & Young, LLP, for HSBC and MetLife Bank;
- Navigant Consulting, Inc., for OneWest;
- PriceWaterhouseCoopers, LLC, for Citibank and US Bank;
- Promontory Financial Group, LLC, for Bank of America, PNC, and Wells Fargo Bank; and
- Treliant Risk Advisors, LLC, for Sovereign Bank.

The OCC required independence of the consultants and the law firms hired by the consultants. During the selection process, we rejected some proposed consultants and law firms to prevent conflicts of interest. We focused particularly on situations where consultants and law firms may have previously expressed positions on the issues on which they would be called upon to express independent judgment in the foreclosure review process. To formalize our

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references to specific bank policy; fees and costs associated with the engagement; and descriptions of past work performed by the independent consultants.

expectations for independence from the servicers, the OCC required engagement letters to contain specific language stipulating that consultants would take direction from the OCC and prohibiting servicers from overseeing, directing, or supervising any of the reviews. The OCC specifically required each consultant to:

- Comply with requirements of the Order and conduct each foreclosure review as independent from any review, study, or other work performed by the servicer or its contractors or agents with respect to the servicer's mortgage servicing portfolio or the servicers' compliance with other requirements of the consent order.
- Ensure its work under the foreclosure review would not be subject to direction, control, supervision, oversight, or influence by the servicer, its contractors, or agents.
- Require immediate notification to the OCC of any effort by the servicer, directly or indirectly, to exert any such direction, control, supervision, oversight, or influence over the independent consultant, its contractors, or agents.
- Agree that the independent consultant is solely responsible for the conduct and results of the foreclosure review, in accordance with the requirements of article VII of the order.
- Pursuant to the monitoring, oversight, and direction of the OCC: 1) promptly comply with all written comments, directions, and instructions of the OCC concerning the conduct of the review, and 2) promptly provide any documents, work papers, materials, or information requested by the OCC, regardless of any claim of privilege or confidentiality.
- Agree to provide regular progress reports, updates, and information concerning the conduct of the foreclosure review to the OCC, as directed.
- Conduct the review using only personnel employed or retained by the independent consultant to perform the work required and not to employ services provided by the servicer's employees, contractors, or agents unless the OCC provides written approval.
- Adhere to requirements with respect to communication with the servicer, which provide for the independent consultant to use documents, materials, or information provided by the servicer, and to communicate with the servicer, its contractors, or agents, to conduct the review. Within these limits, agree that servicers' employees may not influence or attempt to influence determinations of the consultant's findings or recommendations.
- Agree that legal advice needed in conducting the review shall be obtained from the outside law firm whose retention to advise the independent consultants has been approved by the OCC and not to obtain legal advice (or other professional services) in conducting the review from the servicers' inside counsel, or from outside counsel



retained by the servicer or its affiliates to provide legal advice concerning the Order, or matters contained in the Order.

- Require the servicer to agree that if the OCC determines that the consultant has not fully complied with the standards for independence, the OCC may direct the servicer to dismiss the consultant and retain a successor consultant.

These standards and oversight by the OCC are aimed at ensuring that the end result of the review – the findings and recommendations of the independent consultants – will be the product and opinion of those consultants, not of the servicers, their directors, their managers, or their attorneys.

### ***The Process for Borrowers to Request Reviews***

The request for review process provides the opportunity for borrowers to request an individualized review of their case if they believe they suffered financial injury as a result of errors, misrepresentations, or other deficiencies in foreclosure actions pertaining to their primary residence between January 1, 2009 and December 31, 2010. For any financial injury that the reviews identify, the Orders require financial remediation by the servicers, subject to regulator approval.

On November 1, 2011, outreach efforts began to inform “in-scope” borrowers of the process for requesting reviews. As described below, these efforts are multi-faceted, and we have continued to make adjustments to improve the scope and effectiveness of the borrower outreach efforts.

To be “in-scope” and eligible for review, a borrower’s loan must have been active in the foreclosure process between January 1, 2009 and December 31, 2010; the property must have been the primary residence; and the loan must have been serviced by one of the servicers below:

America's Servicing Company	Countrywide	National City Mortgage
Aurora Loan Services	EMC	PNC Mortgage
BAC Home Loans Servicing	Everbank/Everhome	Sovereign Bank
Bank of America	Financial Freedom	SunTrust Mortgage
Beneficial	GMAC Mortgage	U.S. Bank
Chase	HFC	Washington Mutual
Citibank	HSBC	Wells Fargo
CitiFinancial	IndyMac Mortgage Services	Wilshire Credit Corp.
CitiMortgage	Metlife Bank	

A loan is considered active in the foreclosure process if:

- The property was sold due to a foreclosure judgment.
- The loan was referred into the foreclosure process, in which case the borrower may have been notified in writing, but was removed from the process because payments were brought up-to-date or the borrower entered a payment plan or modification program.
- The loan was referred into the foreclosure process, but the home was sold or the borrower participated in a short sale or chose a deed-in-lieu-of-foreclosure action.
- The loan was referred into foreclosure and remains delinquent but a foreclosure sale has not taken place.

To inform borrowers of the coordinated request for review process, the OCC has required direct mail outreach, establishment of a Web site and a toll-free number, advertising, and other outreach.

Direct mail outreach began on November 1, 2011, through an integrated claims processor, which all servicers are using. Between November 1, 2011, and December 31, 2011, 4,341,357 letters were mailed to eligible borrowers with instructions on how to fill out and return that form to request an Independent Foreclosure Review. The form walks borrowers through examples of situations that would be likely examples of financial injury, but it also allows the

opportunity for borrowers to simply tell their story. The crucial objective is to get as much information as possible into the pipeline for an independent foreclosure review. Borrowers must return the form by July 31, 2012.

The direct mail effort includes use of address tracing methods to locate borrowers who lost their home to foreclosure. If an address is not current, the integrated claims processor will run the borrower data through a national change-of-address database to find a current address. Returned mail will be processed through a third-party consumer database using information from credit bureaus, public records and registrations, utilities, phone number databases, etc., to determine most likely current addresses. Mail will be processed three times in an attempt to determine the most likely address. As of last week, only 5.6 percent of mailings have been undeliverable.

A Web site—[www.IndependentForeclosureReview.com](http://www.IndependentForeclosureReview.com)—and toll-free phone number—1-888-952-9105—were also launched on November 1, 2011. Both provide information about the review process. Assistance is available from the toll-free number Monday through Friday from 8 a.m. to 10 p.m., and Saturday from 8 a.m. to 5 p.m. (Eastern time). As of last week, the Web site has been visited 395,327 times since its launch. During that same period, the toll-free number has received 177,195 calls, and 12,956 callers have requested forms to be sent to them. On March 2, 2012, the Web site was significantly enhanced to allow for the intake of request for review forms on-line, which should also facilitate the filing of requests for review.

The outreach effort also includes print and online advertising. The print advertising includes full-page advertisements in widely-read national publications (e.g., *Parade Magazine*, *People*, *TV Guide*) as well as publications targeted to minority and Spanish-speaking populations. The advertisements ran in January and February and appeared in more than 1,400

publications nationwide (the total includes all of the individual newspapers that carry *Parade* and *USA Weekend*) that cover a wide range of demographics, as well as Hispanic and African-American publications. The circulation covers all 50 states, with a higher concentration among states with geographic and demographic factors most affected by foreclosure, including California, Florida, Illinois, Michigan, and New York. Total impressions from the advertising to date are estimated at more than 341 million. We will continue to monitor participation and evaluate the need for additional advertising.

The online advertising includes purchasing keywords (e.g., “foreclosure review”) on major search engines (e.g., Google, Bing) to allow borrowers to find information about the review more easily. By purchasing keywords associated with the foreclosure review, these efforts will redirect significant numbers of borrowers to the Independent Foreclosure Review Web site.

In addition to the mailings, Web site, phone number, and advertising by the servicers, the OCC is conducting its own media outreach efforts that include e-mail, media outreach, and public service advertising (PSA). The announcement of the kickoff of the foreclosure reviews, the subsequent release of the interim report on November 22, 2011, and related testimony were distributed to more than 32,000 subscribers through our e-mail information service. This electronic distribution network is being used to share additional communications about these reviews with interested community and consumer organizations as well as others who subscribe to this service. In early January, the OCC released a series of public service advertisements that include both print and radio spots in English and Spanish. The print items were distributed to more than 10,000 local newspapers and publications. The 30-second radio items were distributed to more than 6,500 small radio stations throughout the country. Spanish items have

been distributed to more than 700 Spanish-language newspapers and 500 Spanish-language radio stations. The public service items highlight the toll-free number, the Web site, eligibility, and the deadline for action. Through March 7, 2012, the PSAs have run 515 times in print and on the radio in 29 states. The total potential readership and listening audience exceeds 51 million people.

### ***“Look-Back” Reviews***

In addition to the process whereby borrowers may request an individualized review of their assertion of financial harm, our Orders require the independent consultants to conduct “look-back” file reviews. This review supplements the request for review process to further identify deficiencies, errors, or misrepresentations that may have caused financial injury. In October, the independent consultants began selecting files for review, in accordance with plans contained in engagement letters submitted to, and accepted by, the OCC.

The Orders allow the consultants to use sampling and other tools to identify certain types of files for review. Guidance from the OCC described methods and controls to ensure that samples are representative of the in-scope mortgages. The engagement letters contain descriptions of the statistical basis for the sampling methods used as approved by the OCC.

Some segments require 100 percent review, including cases involving the Servicemembers Civil Relief Act (SCRA), certain bankruptcy cases facing foreclosure in 2009 and 2010, cases referred by state or federal agencies, and reviews requested through the request for review process described above. With respect to SCRA cases, we reached out to the Defense Manpower Data Center of the Department of Defense and the Department of Justice to explore how to effectively identify servicemembers whose cases should be reviewed as part of the 100 percent review. The result of that collaboration is that processes are being developed that will

enable the names of all identified in-scope borrowers for each servicer to be batched-checked against servicemember information relevant to the in-scope period. This is an invaluable step to ensure that all eligible servicemembers are included in the 100 percent file review.

Mortgages in the sampling population may be segmented based on characteristics that include geography, third-party attorney, types of borrower history in paying mortgages, prior customer complaints, and participation in modification programs, such as the federal Home Affordable Modification Program (HAMP). The segments and sizes of the samples selected for review were determined by the consultants, based on guidance from the OCC and in consultation with the servicers, but not determined or dictated by servicers.

In some cases, sampling may be appropriate at the outset, but initial results may lead to more in-depth review. These second-level reviews are subject to OCC oversight to ensure they are appropriately structured and implemented. The OCC expects the consultants to assess the results of the ongoing reviews continuously to identify potential “pockets” or systemic instances of financial harm and adapt the review plan accordingly. The tolerance for error is low—reliability, or confidence level, should not be less than 95 percent.

During the “look-back” reviews, the independent consultants must assess:

- Whether the foreclosing party had properly documented ownership or was otherwise a proper party to the action;
- Whether the foreclosure was in accordance with applicable state and federal law;
- Whether the foreclosure sale occurred when a loan modification or other loss mitigation request was under consideration, or when the loan was performing in accordance with a trial or permanent loan modification, or when the loan had not been in default for a sufficient period to authorize foreclosure;
- Whether, for any non-judicial foreclosure, the foreclosure sale and post-sale confirmations were in accordance with the mortgage loan and state law requirements;

- Whether a borrower's account was charged only fees or penalties permissible under the terms of the loan, applicable state and federal law, and were reasonable and customary;
- Whether the frequency of fees assessed was excessive under the terms of the loan or applicable state and federal law;
- Whether the requirements of HAMP and proprietary loss mitigation programs were followed; and
- Whether any errors, misrepresentations, or other deficiencies identified in the review resulted in financial injury to any borrower or mortgagee.

### *Input from Community and Housing Advocates*

The OCC has been working with a number of community and housing advocacy organizations to explain the IFR process, and we have undertaken an ongoing dialogue with a number of groups regarding their concerns about the scope and effectiveness of the outreach program. Beginning last November, the OCC began meeting and talking regularly with a cross-section of such advocacy organizations to get the benefit of their experiences, as well as their input on specific issues as we continued to implement the IFR.<sup>4</sup> Our discussions with these organizations have informed our decision-making in numerous areas, including marketing and outreach, additional resources for non-English speakers, the need for additional time for borrowers to request reviews, types of financial harm, remediation, and transparency.

Large elements of the media plan described earlier were suggested by representatives of these organizations, most notably revised ads that include Spanish-language placements in key markets, as well as other publications serving minority populations, the public service advertisement campaign, and the addition of Spanish-language Frequently Asked Questions on the Web site. We also worked with the FRB to provide training at a national conference and to

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<sup>4</sup> The OCC has been having discussions with a range of community groups which has included: the National Consumer Law Center, National Fair Housing Alliance, Center for Responsible Lending, National Association of Consumer Advocates, National Council of La Raza, National Asian American Coalition, Consumer Action, and several others.

produce two nationwide webinars to help educate housing counselors and increase awareness of this effort.

There are also multiple efforts currently underway to make outreach and information about the IFR available in languages other than English. The toll free call center has translation services available in over 240 languages, and the operators can also translate documents for borrowers over the phone. Spanish-language translations of the Frequently Asked Questions and a Spanish-language guide on how to complete the form are now available on the IndependentForeclosureReview.com Web site. The OCC will be monitoring the volume of calls coming into the RUST call center from borrowers who request translation services and will use this data to determine if other similar translations are necessary to serve other non-English speaking populations.

The IndependentForeclosureReview.com Web site has been significantly enhanced to allow borrowers to complete their request for review forms online, which should also facilitate the filing of requests for review. And finally, as representatives of these organizations urged, we extended our request for review deadline to July 31, 2012, to allow time for this expanded outreach to take hold.

The advocates also have emphasized the need for more resources to allow housing counselors to handle the additional effort of helping make borrowers aware of the opportunity to take advantage of the IFR and, where needed, to assist those borrowers during the process. The OCC is encouraging servicers to provide those resources. Recently, for example, a major national bank servicer has provided funding to 11 community organizations that will assist in reaching borrowers eligible for an independent review.



Our discussions are ongoing with these advocacy organizations. Their comments increased our awareness in numerous areas as we formulated the Remediation Framework (discussed in the next section), and they have informed several other pieces of the effort that we are still developing. We look forward to continuing that dialogue.

### ***Financial Injury and Remediation***

When independent consultants find errors, misrepresentations, or other deficiencies, their next step is to determine whether financial injury occurred. Financial injury is defined as monetary harm directly caused by a servicer error.

Examples of financial injury identified in joint OCC-Federal Reserve guidance that was provided to the independent consultants include, but are not limited to, the following:

1. The borrower was not in default pursuant to the terms of the note and mortgage at the time the servicer initiated the foreclosure action.
2. The servicer initiated foreclosure or conducted a foreclosure sale in advance of the time allowed for foreclosure under the terms of the note and mortgage or applicable state law.
3. The borrower submitted payment to the servicer sufficient to cure the default pursuant to the terms of the note and mortgage, but the servicer returned the payment in contravention of the terms of the note or mortgage, state or federal law, or the servicer's stated policy covering payments when in default.
4. The servicer misapplied borrower payments, did not timely credit borrower payments (including failure to properly account for funds in suspense), or did not correctly calculate the amount actually due from the borrower, in contravention of the terms of the note and mortgage, state or federal law, investor requirements, or the servicer's stated policy covering application of payments.
5. The borrower paid a fee or penalty that was impermissible.
6. A deficiency judgment was obtained against the borrower that included the assessment of a fee or penalty that was impermissible.
7. The servicer placed an escrow account on the mortgage, and the placement resulted in monies paid by the borrower into escrow in contravention of the terms of the note or mortgage, state or federal law, or the servicer's stated policy covering escrow accounts.

8. The servicer placed insurance on the mortgage, and the placement resulted in monies paid by the borrower toward insurance in contravention of the terms of the note or mortgage, state or federal law, or the servicer's stated policy covering placed insurance.
9. The servicer miscalculated the amount due on the mortgage and secured a judgment against the borrower for an amount greater than the borrower owed.
10. A borrower's remittance of funds to a third party acting on behalf of the servicer was not credited to the borrower's account.
11. The borrower was performing under the terms of an approved trial loan modification or an approved permanent loan modification, but the servicer proceeded to foreclosure in contravention of the terms of the modification offered by the servicer to the borrower.
12. A borrower was denied a modification in contravention of the terms of the governing modification program or the servicer's stated policy covering modifications.
13. There is evidence that the borrower provided or made efforts to provide complete documentation necessary to qualify for a modification within the period such documentation was required to be provided by the governing modification program, and the servicer denied the loan modification in contravention of the terms of the governing modification program or the servicer's stated policy covering modifications.
14. The servicer initiated foreclosure or completed a foreclosure sale without providing adequate notice as required under applicable state law.
15. The servicer foreclosed on or sold real property owned by an active military servicemember in violation of SCRA.
16. The servicer did not lower the interest rate on a mortgage loan entered into by a military servicemember, or by the servicemember and his or her spouse jointly, in accordance with the requirements of SCRA.
17. The servicer failed to honor a borrower's *bona fide* efforts to redeem a sale under applicable state law during the redemption period.
18. The borrower was protected by the automatic stay under the bankruptcy code, and a court had not granted a request for relief from the automatic stay or other appropriate exception under the bankruptcy code.
19. The borrower was making timely pre-petition arrearage payments required under an approved bankruptcy plan and was current with their post-petition payments.
20. The borrower purchased a payment protection plan; was or should have been receiving benefits under the plan; and those benefits were not applied pursuant to the contract.

21. The servicer was not the proper party, or authorized to act on behalf of the proper party, under the applicable state law to foreclose on the borrower's home, and this resulted in, or may result in, multiple foreclosure actions or proceedings.
22. The servicer failed to comply with applicable legal requirements, including those governing the form and content of affidavits, pleadings, or other foreclosure-related documents, where such failure directly contributed to: (a) the borrower paying fees, charges, or costs, or making other expenditures that otherwise would not have been paid or made; or (b) the initiation of a foreclosure action or proceeding against a borrower who otherwise would not have met the requirements for initiating such an action.

If the independent consultants determine that financial injury occurred as a result of errors, misrepresentations, or other deficiencies, they will develop recommendations for remediating that injury. In addition to providing guidance in the form of 22 scenarios where financial injury might be present, we are finalizing additional guidance in the form of a Financial Injury Remediation Framework (Framework) which clarifies expectations as to the amount and type of compensation recommended for certain categories of harm. We expect this Framework to be released later this month.

The objective of the Framework is to ensure that remediation recommendations are consistent across the 12 OCC-supervised servicers for similarly situated borrowers who suffered similar harms. The Framework sets "baseline" standards. In cases where the independent consultant or servicer proposes to offer remediation above what is set forth in the Framework for a particular borrower or groups of borrowers, the OCC would not object. The independent consultants also have flexibility to determine whether a different type or amount of compensation may be required to address the borrower's direct financial injury under a borrower's particular circumstances. The Framework also addresses additional examples of financial injury beyond the 22 listed above, including instances where servicer errors or delays in decisions about loan modifications under HAMP resulted in borrower financial injury or require other remediation. A key feature of the remediation provisions in our Orders is that there are no

caps or limits to the amount of compensation that will be paid out or remediation that will be implemented by the servicers.

The reviews are expected to take several additional months to complete. However, we expect some servicers to begin offering remediation on a rolling basis before the entire independent review is complete.

### **III. Other Actions Required by OCC Enforcement Orders**

In addition to the IFR, our Orders direct other work to correct unsafe and unsound practices in mortgage servicing and foreclosure processing. The OCC has directed each mortgage servicer to establish systems and processes to correct identified deficiencies and to begin implementing those new processes. The OCC has received detailed action plans from all mortgage servicers describing the corrective actions to be taken to correct deficiencies in mortgage servicing activities, oversight and management of third-party service providers, activities related to Mortgage Electronic Registration Systems (MERS), management information systems, risk assessment and management, and compliance oversight. Implementation of the plans is a multi-step process first requiring development of new or revised policies and operating procedures, addition and training of staff, and development or modification of existing work-streams and processing systems as applicable. As the action plans are being implemented, the servicer's internal control functions such as internal audit, compliance and risk management will provide ongoing oversight and control, including testing and validation. Following implementation, the OCC will review, test, and validate corrective actions as necessary to determine that they are effective and sustainable. The OCC is closely overseeing the work of the servicers in this regard, and the servicers are in various stages of

implementing their action plans in accordance with the complexity of the process changes required.

### ***Mortgage Servicing***

The consent orders require servicers to correct deficiencies in mortgage servicing. Plans submitted by the servicers included:

- Measures to ensure that staff members handling loss mitigation and loan modification requests routinely communicate and coordinate with staff members processing foreclosures on the borrowers' properties;
- Deadlines for responding to requests for loan modifications and other communications from borrowers, as well as deadlines for making final decisions on loan modification requests; deadlines must be at least as responsive as the timelines under HAMP;
- An easily accessible and reliable single point of contact established for each borrower throughout loan modification and foreclosure processes;
- A requirement for written communications to each borrower identifying the single point of contact and specifying how a borrower can communicate with the contact;
- A requirement that each single point of contact have access to data necessary to provide borrowers with timely, accurate, and complete information about the status of their loan modification requests and foreclosure cases;
- Measures to ensure that staff members are trained adequately about handling mortgage delinquencies, loss mitigation, and loan modifications;
- Procedures and controls to ensure that, before a foreclosure sale occurs, a final decision regarding a borrower's loan modification request (either on a trial or permanent basis) is communicated in writing to the borrower within a reasonable period and explains the reasons why the borrower did not qualify for the trial or permanent modification;
- Procedures and controls to ensure that, when a loan has been approved for modification on a trial or permanent basis, no foreclosure or further action preceding foreclosure occurs, unless the borrower defaults on the terms of the trial or permanent modification;
- Policies and procedures to enable borrowers to submit complaints about the loan modification process, denial of modification requests, the foreclosure process, or foreclosure activities that impede the pursuit of foreclosure prevention options, as well as a process for making borrowers aware of the complaint procedures;

- Procedures for promptly considering and resolving borrowers' complaints, including a process for timely communication of the resolutions;
- Policies and procedures to ensure that payments are credited promptly; that payments, including partial payments to the extent permissible under the terms of applicable legal instruments, are applied to scheduled principal, interest, and escrow before fees, and that any misapplication of borrowers' funds is corrected promptly;
- Policies and procedures to ensure that timely information about foreclosure prevention options is sent to borrowers in the event of delinquencies or defaults, including plain language notices about loan modifications and foreclosures;
- Policies and procedures to ensure that servicers properly maintain and track documents related to foreclosures and loan modifications, so that borrowers are not required to resubmit the same documents already provided, and that borrowers are notified promptly of the need for additional information; and
- Policies and procedures to consider loan modifications or other foreclosure prevention activities with respect to junior lien loans, and to factor the risks associated with such junior lien loans into loan loss reserving practices.

Each servicer has established policies and procedures for providing single points of contact to assist borrowers throughout the loan modification and foreclosure processes. Actions include the establishment of procedures for communicating information about the single points of contact to the borrowers including direct ways to reach these contacts; creation of training programs to instruct single points of contact about their responsibilities; establishment of specific organizational structures to perform these duties; and the creation of standard communication strategies for conveying information to and from borrowers. Servicers were also required to have initiated processes for establishing single points of contact and to develop supporting procedures by the end of last year. Implementation of those processes and procedures is now underway.

All servicers have implemented controls to prevent "dual-tracking" of loans to ensure no foreclosure or further legal action relating to foreclosure occurs when a borrower's loan has been approved for modification on a trial or permanent basis. Specific actions related to "dual-

tracking” vary from servicer to servicer but include review at designated points before the foreclosure sale, enhanced communication between loss mitigation and foreclosure processing staff, and development and use of matrices or checklists to ensure appropriate holds are placed on further foreclosure processing when appropriate.

The OCC also expects that servicers will revise action plans to comply with any higher standards that might be required of them by the government sponsored entities (GSEs), developing national servicing standards, or other negotiated settlements or contractual agreements, including those subject to the National Mortgage Settlement. However, it is important to recognize that contractual requirements and requirements imposed by other sources and third parties, including the servicing standards of the GSEs (Fannie Mae and Freddie Mac), FHA, or the requirements of the various private pooling and servicing agreements under which servicers operate, will affect how these requirements can be implemented in practice.

### ***Third-Party Management***

The Orders require servicers to improve oversight of third-party service providers that support mortgage servicing and foreclosure activities. The servicers submitted plans in July, and work is under way to establish processes for appropriate due diligence in evaluating the qualifications of potential third-party service providers before entering into new contractual arrangements. The plans also provide for regular reviews of third-party service providers and assessment of their performance based on qualitative standards for competence, completeness, and legal compliance rather than standards based solely on the volume of foreclosures processed or the speed of processing. Additionally, the plans provide for the secure custody and accuracy of records transferred to these third parties during the foreclosure process.

Specific actions vary from servicer to servicer. Examples of actions include:

- Assessing risks associated with third-party activities to determine specific levels of oversight and activities based on identified risks.
- Establishing new policies, or enhancing existing policies, for oversight of third parties.
- Enhancing due diligence in assessing the capabilities of potential third parties.
- Establishing oversight committees to monitor the practices and activities of third parties, to implement processes to assure the quality of their work, and, if necessary, to terminate underperforming or noncompliant third parties.
- Creating procedures to track complaints about third party activities and performance.
- Scheduling and conducting on-site audits and quality assurance processes of third parties.
- Including language in service contracts with third-parties setting specific work standards.
- Periodically assessing the performance of third-party service providers, including attorneys and law firms providing foreclosure counsel, and the discontinuation of servicing contracts and agreements when appropriate.
- Improving management information systems used by third parties to ensure accuracy of records contained in, and transmitted by, those systems.

### ***Management Information Systems***

The Orders require the servicers to improve management information systems that support mortgage servicing and foreclosure processing. Each servicer has submitted a plan for the operation of its management information systems for foreclosure and loss mitigation to ensure the timely delivery of complete and accurate information to permit effective decision making regarding foreclosure, loan modification, or loss mitigation. The plans include descriptions of systems used by servicers for foreclosure and loss mitigation purposes. They also include timetables for changes or upgrades necessary to monitor compliance with legal requirements, servicing guidelines of GSEs, and requirements of the Orders. Improvements to management information systems will ensure accuracy of records and provide staffs working on



foreclosures and loss mitigation efforts access to necessary and timely information provided by the borrowers.

Work is under way and includes:

- Consolidation of mortgage servicing platforms.
- Standardized and automated workflows to assist personnel with loan modification and foreclosure decisions and processing.
- Development of standardized reporting and improved quality controls.
- Implementation of case management software to provide better access to single points of contact interacting with borrowers.
- Periodic audits.
- Evaluation of requirements and documentation to ensure that management information systems meet the needs of stakeholders from mortgage servicing, loss mitigation, foreclosure processing, and MERS-related activities.
- Escalation and enhanced reporting to executives and boards of directors.

Enhancing management information systems is a continuous process. Substantive improvements have been made and will continue throughout the next year.

### ***Risk Assessment and Risk Management***

The Orders require the servicers to assess risks posed by their mortgage servicing operations and develop plans to manage those risks. Servicers have conducted their assessments and developed specific action plans to effectively mitigate or manage identified risks on an ongoing basis. Work on those plans is under way and includes:

- Conduct periodic third-party audits or self-evaluation of risks associated with mortgage servicing and foreclosure processing.
- Conduct periodic assessment of risks and develop action plans to reduce risks from specific functional areas, including loan modifications, disposition of bank-owned real estate, bankruptcy, and compliance with SCRA.
- Strengthen policy and internal guidance concerning foreclosure and loss mitigation.

- Identify specific individuals or groups accountable for compliance and operational risk associated with mortgage servicing and foreclosure practices.
- Integrate key processes to ensure consistency of policy and procedures related to foreclosure and loss mitigation activities.
- Establish additional training associated with foreclosure and loss mitigation risks.
- Develop and report key indicators to support monitoring and evaluating risk.
- Use compliance testing on a regular basis.

Implementation of risk management plans is expected to be in effect during the first quarter of 2012. Assessment and monitoring will be an ongoing servicer activity.

### ***Compliance Committees, Compliance Programs***

The Orders require a number of actions to ensure compliance with the Orders and with applicable laws and regulations. As a result, during the third quarter of 2011, the servicers set up compliance committees responsible for the development and implementation of compliance programs, action plans, policies and procedures, and strengthened operating processes to correct the deficiencies cited by the enforcement actions. At a minimum, each committee includes three members of the institution's boards of directors. The compliance committees are also responsible for reporting actions required by the Orders, and for taking corrective action for any ongoing or repeated non-compliance.

The Orders required comprehensive action plans to address compliance. Servicers submitted those plans in July, and work is under way to implement the plans. Plans addressed financial and personnel resources, organizational structure, and specific controls to ensure the affidavit, declarations, and notarization processes comply with applicable laws and regulations.

Actions vary by servicers and include:

- Changed management and leadership to ensure accountability and clarify responsibilities for mortgage servicing, foreclosure, and loss mitigation.

- Changed reporting structures to centralize oversight of mortgage servicing, foreclosure, and loss mitigation functions.
- Increased number of personnel responsible for conducting audits and dedicated to ensuring compliance, as well as for mortgage servicing, foreclosure, loss mitigation, and information technology supporting these functions.
- Implemented training programs for signers of sworn documents and notaries to emphasize the personal knowledge required and specific requirements of state law.
- Increased training requirements for customer assistance specialists, single points of contact, and compliance personnel.
- Brought previously outsourced preparation of sworn documents in-house.
- Created or revised templates for sworn documents to conform more closely with state and local laws in judicial and non-judicial foreclosure states.
- Implemented quality control processes to ensure proper completion of sworn documents, including, at some servicers, real-time monitoring by dedicated quality assurance staff.
- Established foreclosure referral checklists to verify loss mitigation efforts, bankruptcy status, and the borrower's status related to the SCRA.
- Established dedicated units to specialize in SCRA and to correct SCRA-related issues.
- Established testing of loan modification denials, sworn document completion, and regulatory compliance, as part of quality control initiatives to verify compliance with loan modification program requirements, GSE loan servicing guidelines, and federal laws including SCRA and bankruptcy.
- Established periodic evaluations by senior managers of policies, staffing, and functional performance related to mortgage servicing, foreclosure, and loss mitigation.

As work continues to improve compliance controls across the servicers, the OCC expects the servicers to complete the implementation of new processes, policies, and enhanced controls during the first part of 2012.

#### **IV. Other Activities and Initiatives Affecting Mortgage Servicing and Foreclosure Standards**

It is important to view the significant reforms and remediation resulting from our Orders in the context of other measures that have been or are in process to improve mortgage servicing standards and practices and enhance borrower protections.

Since late 2010, the OCC has been in regular communication with the U.S. Department of Justice (DOJ) and other federal agencies regarding our foreclosure-related enforcement actions and how federal and state actions pursuant to the National Mortgage Settlement relate to the types of activities covered by our Orders. For example, we adjusted certain timing requirements in the processes under our Orders at the request of DOJ, and we have continuously discussed how the detailed action plans submitted by servicers pursuant to the OCC's Orders will need to reflect any higher standards that may be required of those same mortgage servicers under that National Mortgage Settlement, particularly for mortgage servicing and foreclosure procedures. We will continue to collaborate with DOJ and other federal and state agencies to ensure that such standards are met, and that borrowers who have been harmed are appropriately and fairly remediated.

In addition to the National Mortgage Settlement standards discussed above, applicable to those four national bank servicers that participated in the settlement, it is also contemplated that, going forward, the standards of the servicers subject to the OCC's Orders will need to reflect any future uniform national mortgage servicing standards, as well as new requirements imposed by the GSEs, as applicable. The OCC also expects the servicers to comply with applicable dual track standards required under the Making Home Affordable program, as well as other applicable GSE and investor standards. The interplay of requirements from various sources can be quite

complicated, and it is important to recognize that contractual requirements with investors also may determine crucial servicer actions and timing in processing foreclosures.

Development of uniform national mortgage servicing standards is an initiative that can set an improved standard for practices of all mortgage servicers, regardless of whether they are depository institutions (or affiliates) subject to federal regulation. The OCC and other federal agencies are continuing work on this project. This effort is in early stages and is strongly supported by the OCC. There is much work still to be done but it is important not to lose sight of the fact that important new standards are already being applied to the largest federally-regulated servicers as a result of the OCC's and the FRB's Orders.

As noted above, standards set by the GSEs can have important influences on mortgage servicing and foreclosure practices and timing for a substantial portion of the mortgage market today. For example, last June, Fannie Mae and Freddie Mac announced an initiative to develop uniform policies for servicing delinquent loans that will enhance and streamline outreach to delinquent borrowers and establish performance-based monetary incentives for compliance. Under these guidelines, which largely took effect October 1, 2011, a foreclosure will not be permitted on a mortgage owned or guaranteed by Fannie Mae or Freddie Mac until the servicer has conducted a formal review of the borrower's eligibility under all available foreclosure alternatives, including loan modifications, short sales, and deeds in lieu of foreclosure. Servicers will be expected to continue to help these borrowers qualify for a foreclosure alternative. Given the significance of the GSEs to the mortgage market, these new standards will be a strong influence for changes nationwide.

The FHFA's recently released 2012 "Conservatorship Scorecard" also reflects initiatives that will affect market practices and expectations in connection with loans serviced on behalf of

Fannie Mae and Freddie Mac, if not more broadly. The “Scorecard” envisions, among other things, development of a model pooling and servicing agreement, uniform servicing data collection requirements that support enhanced loan level disclosures for mortgage-backed securities, and increased transparency of servicer requirements around foreclosure timelines. One of our challenges is to coordinate these initiatives with related rulemaking initiatives of the broader group of agencies concerning uniform mortgage servicing standards.

## **V. Conclusion**

The Orders issued by the OCC, the FRB, and the OTS last April were significant steps toward ensuring this country’s mortgage servicing industry operates in a safe and sound manner and borrowers are treated fairly. As a result of these actions, more than four million borrowers involved in the foreclosure process in 2009 and 2010 have the opportunity to receive free, independent reviews of their cases. Where wrongful financial injury is identified, our Orders require remediation. In addition to the Independent Foreclosure Review, other efforts required by our Orders are well under way to correct deficiencies in mortgage servicing and foreclosure processing that our examiners identified in their reviews during the fourth quarter of 2010. Much of the work to correct identified weaknesses in policies, operating procedures, control functions, and audit processes will be substantially complete in the first part of 2012; other initiatives will continue through the balance of 2012. On November 22, 2011, the OCC released its first interim report that described the status of these other efforts, and we expect to release another interim report in the near term. OCC examiners provide ongoing oversight to this process and will continue to monitor efforts to ensure compliance with our Orders.

I appreciate the opportunity to appear before the Committee today, and will be happy to respond to your questions.



Comptroller of the Currency  
Administrator of National Banks

US Department of the Treasury

## Biographies

### **Morris Morgan** **Deputy Comptroller Large Banks**

Morris Morgan is a Large Bank Deputy Comptroller at the Office of the Comptroller of the Currency (OCC).

As a Large Bank Deputy Comptroller, Mr. Morgan will lead the examination teams at a portfolio of large banks and thrifts, and will supervise the data analytics teams. He was appointed to this position in December 2011.

Mr. Morgan joined the OCC in 1985 and has since held a variety of positions in bank supervision, analysis, and policy. He served on the Bank of America examination team in general supervision duties before progressing to team leader roles covering capital markets, asset management, and commercial credit. Immediately prior to his appointment as Large Bank Deputy Comptroller, Mr. Morgan served as Examiner-in-Charge at PNC.

Mr. Morgan became a commissioned National Bank Examiner in 1989, and he earned the Chartered Financial Analyst designation in 1999. He holds a BBA in finance from Stephen F. Austin University in Nacogdoches, Texas.