



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

December 14, 2010

The Honorable Brad Miller
United States House of Representatives
Washington, DC 20515

Dear Representative Miller:

I am writing in response to your letter of November 18, 2010, to members of the Financial Stability Oversight Council (FSOC) regarding problems with foreclosure management and servicing processes. Your letter supports the Congressional Oversight Panel's recent call for a new round of stress tests to examine the potential liabilities these problems may pose for certain servicers. You urge that the FSOC consider, in light of those stress tests, requiring that some financial companies divest affiliates involved in servicing securitized mortgages. You also request that the FSOC examine a representative sample of collateral loan files of each major servicer to determine whether the files contain all the documents required by contract or law, and whether the documents satisfy contractual representations and warranties in the pooling and servicing agreement or other governing instrument.

As you know, the OCC and other agencies have a number of actions underway to investigate and address the problems that have surfaced at various mortgage servicers, and FSOC members have been briefed on these efforts. A key facet of this work is the onsite examinations that the OCC, Federal Reserve Board, Federal Deposit Insurance Corporation, and Office of Thrift Supervision have underway at fourteen financial institutions (eight national banks, four nationally chartered thrift institutions, and two state-member banks) and at two major non-bank mortgage service providers. As part of these examinations, examiners are reviewing samples of individual borrower foreclosure files from judicial and non-judicial states that include both in-process and completed foreclosures. In reviewing these files, examiners are checking for: a documented audit trail that demonstrates that data and information (e.g., amount of indebtedness and fees) in foreclosure affidavits and claims are accurate and comply with state laws; possession and control over the underlying, critical loan documents such as original note, mortgage, and deed of trust to support legal foreclosure proceedings; and evidence that the affidavit and documents were independently and appropriately reviewed, and that proper signatures were obtained.

In addition to determining corrective actions that may be needed at individual servicers, the findings from our examinations will provide a more comprehensive, factual basis for determining whether additional supervisory or regulatory action is needed to address potential systemic issues. We plan to have our analysis completed by the end of January and plan to brief FSOC members on our results.

Your letter also notes that some observers have stated that there is an inherent conflict of interest for servicers of securitized first mortgages to hold second liens on the same property, and that servicers have acted contrary to the interest of the owners of the first mortgage to avoid recognizing losses on the second liens. The OCC has addressed this potential conflict by directing that second lien holders must take steps necessary to understand any potential issues with the first lien and ensure that carrying values and loan loss reserve levels reflect all risk in the transaction – including any problems the borrower might be having on the first lien, even if the second lien is performing as agreed.

The volume of current and performing second liens held by national banks behind delinquent or modified first liens remains relatively small. The OCC analyzed second liens held by national banks and matched more than 60 percent of them (\$293 billion) to first-lien mortgages. Of these 5,000,000 matched second mortgages, about 6 percent, or 235,000, were current and performing but behind delinquent or modified first liens. The balance of those current and performing second liens behind delinquent or modified first mortgages totaled less than \$18 billion. As mentioned, the OCC has directed national banks that hold such performing second liens to properly reflect the associated credit impairment for those second liens through an increase in the allowance for loan losses, or in many cases, a charge-off of the loan where appropriate.

The OCC is focused on identifying and rectifying problems with the foreclosure processes used by the mortgage servicers we regulate so that the basic function and integrity of the foreclosure process is restored; the rights of all homeowners subject to the foreclosure process are protected; and the basic functioning of the U.S. mortgage market is stabilized. As we move forward, we will continue to collaborate closely with other federal regulatory agencies, and cooperate with related inquires and investigations.

Sincerely,



John Walsh
Acting Comptroller of the Currency