



Audit Report



OIG-13-049

SAFETY AND SOUNDNESS: Improvement Needed in OCC's Oversight of Foreclosure Related Consent Orders

September 9, 2013

Office of Inspector General

DEPARTMENT OF THE TREASURY

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Abbreviations and Acronyms

EIC	examiner in charge
FDIC	Federal Deposit Insurance Corporation
FRB	Board of Governors of the Federal Reserve System
GAO	Government Accountability Office
IFR	independent foreclosure review
MERS	Mortgage Electronic Registration Systems, Inc.
OCC	Office of the Comptroller of the Currency
OIG	Office of Inspector General
OTS	Office of Thrift Supervision

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*The Department of the Treasury
Office of Inspector General*

September 9, 2013

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Comptroller of the Currency

This report presents the results of our audit of the Office of the Comptroller of the Currency's (OCC) oversight of the foreclosure-related consent orders that OCC issued in April 2011, in conjunction with the Board of Governors of the Federal Reserve System (FRB) and the former Office of Thrift Supervision (OTS).¹ These consent orders were issued against 14 major mortgage servicers for unsafe and unsound practices in residential mortgage servicing and foreclosure processing. FRB later issued consent orders against 2 additional major mortgage servicers bringing the total of servicers subject to this set of consent orders to 16 (referred to in this report as the original consent orders). Among other things, the consent orders required the servicers to implement an independent foreclosure review (IFR) process using independent consultants to determine financial injury to affected borrowers.

Our audit objectives were to assess OCC's: (1) oversight of servicers' efforts to comply with consent orders; (2) determination of qualifications and independence of consultants hired by servicers in accordance with consent orders; (3) oversight of consultants' efforts to perform outreach, conduct file reviews, and review homeowner claims of financial harm; and (4) oversight of the single integrated claims process established by OCC, servicers, and the consultants.

¹ Effective July 21, 2011, in accordance with Public Law 111-203, the functions of OTS were transferred to FRB, the Federal Deposit Insurance Corporation (FDIC), and OCC. Consent orders issued by OTS prior to the transfer remained in effect and enforceable by OCC.

We conducted our fieldwork from January 2012 through August 2012. We interviewed OCC management and made inquiries of examiners-in-charge (EIC) at five servicers subject to the consent order. We reviewed engagement letters, OCC guidance, and monitoring reports used by OCC to track the progress of reviews. We also reviewed OCC documentation related to the independence monitoring process and interaction with stakeholders on the development of certain guidance. Appendix 1 contains a more detailed description of our audit objectives, scope, and methodology. It should be noted that concurrent with our review, the Government Accountability Office (GAO) was reviewing the IFR process. We coordinated with GAO and in this report, have synopsized its June 2012 and April 2013 reports on the subject.²

Subsequent to the completion of our fieldwork, OCC sought to end the IFR process because the reviews were taking longer than anticipated and delaying compensation to affected borrowers. In January 2013, OCC and FRB negotiated a change to the terms of the original consent orders with 13 of the 16 servicers. Those amended orders were issued in February 2013. Amended consent orders were issued for 10 of the 12 servicers under OCC supervision and 3 of the 4 servicers under FRB supervision. The new terms provided for an immediate cessation of the IFR process, required that servicers make direct cash payments to potentially harmed borrowers, and required servicers to initiate a range of foreclosure relief actions. Three servicers, two of which were supervised by the OCC, did not agree to change their consent orders and were planning to continue the IFR process to completion.³

Prior to this change in the terms, we found that OCC had developed a framework to monitor servicers' corrective action plans and oversee the IFR process. However, we noted certain areas where OCC oversight needed strengthening. Specifically, OCC had not performed comprehensive direct testing of individual

² GAO, *Foreclosure Review: Opportunities Exist to Further Enhance Borrower Outreach Efforts*, GAO-12-776 (June 29, 2012) and *Foreclosure Review: Lessons Learned Could Enhance Continuing Reviews and Activities under Amended Consent Orders*, GAO-13-277 (Mar. 26, 2013)

³ On August 23, 2013, OCC announced that one of these servicers agreed to change its consent order to also make direct cash payments to eligible mortgage borrowers and provide other foreclosure relief, which will effectively end the IFR process for this servicer.

IFRs to assess whether independent consultants were performing the reviews objectively, consistently, and in compliance with OCC guidance. In addition, improvements were needed in the documentation of various aspects of OCC oversight.

We are recommending that OCC (1) develop and implement examiner guidance defining the timing and scope of OCC's direct testing of individual foreclosure reviews at the two OCC-supervised servicers who are continuing the IFR process to ensure compliance and consistency⁴ and (2) improve documentation of OCC oversight activities. Because of the changes that took place when OCC and FRB ended the foreclosure review process, we decided to undertake, as a separate audit, an assessment of the events leading to and the decisions made to change the terms of the consent orders, to include how the new settlement amounts were derived, and OCC's monitoring of servicer compliance with the amended consent orders.

In a written response, which is included as appendix 2, OCC stated that (1) to assure consistency in oversight at servicers continuing the IFR process, testing is being conducted by one examination team whose work and findings are reported to headquarters and senior management; and (2) it recognizes the need for greater documentation and has taken several steps to improve the documentation of its oversight. We consider the actions taken by OCC to be responsive to our recommendations.

Background

OCC's primary mission is to charter, regulate, and supervise all national banks and federal savings associations. It also supervises the federal branches and agencies of foreign banks. OCC's goal in supervising banks and federal savings associations is to ensure that they operate in a safe and sound manner and in compliance with laws requiring fair treatment of their customers and fair access to credit and financial products.

⁴ As discussed in Footnote 3, one of the two servicers agreed to a change in its consent order that will end the IFR process for that servicer. Once the consent order is amended for that servicer, this recommendation will apply to the remaining OCC-supervised servicer continuing the IFR process.

During the recent economic crisis, the performance of mortgage loans deteriorated significantly leading to increased rates of foreclosure during the period 2008 through 2010. In the fall of 2010, reports of widespread irregularities such as robo-signing and potential violations of law in the documentation and processing of foreclosures prompted Congress to hold hearings on the matter.⁵ In response to these reports, OCC directed large national banks to review their foreclosure processes.

In 2010, OCC, working with FRB, FDIC, and the former OTS initiated a horizontal review⁶ of foreclosure practices at 14 major mortgage servicers. This review noted significant deficiencies and weaknesses in foreclosure processing. On April 13, 2011, the federal banking agencies announced that they had entered into formal enforcement actions (consent orders) with the mortgage servicers subject to review.⁷ Later, FRB took similar action against two other servicers under its supervision.⁸ This brought the total of mortgage servicers subject to the foreclosure consent orders to 16.

The consent orders required servicers to make extensive changes in mortgage servicing and foreclosure processes to correct the unsafe and unsound practices identified in the horizontal review. In addition, servicers were required to retain independent consultants to conduct a comprehensive review of their foreclosure activity in 2009 and 2010, to identify financial injury that resulted from deficient foreclosure practices, and to provide compensation or other remedy to borrowers for that injury. This process, which

⁵ U.S. Senate Committee on Banking, Housing, and Urban Affairs: Problems in Mortgage Servicing from Modification to Foreclosure, Part I, Nov. 16, 2010, and Part II, Dec. 10, 2010. U.S. House of Representatives Committee on Financial Services: Robo-Signing, Chain of Title, Loss Mitigation and Other Issues in Mortgage Servicing, Nov. 18, 2010.

⁶ The term horizontal review refers to a bank examination in which the regulator simultaneously performs the same examination procedures across a group of institutions.

⁷ OCC took action against eight national bank servicers: Bank of America, N.A.; Citibank, N.A.; HSBC Bank USA, N.A.; JPMorgan Chase Bank, N.A.; MetLife Bank, N.A.; PNC Bank, N.A.; U.S. Bank National Association and U.S. Bank National Association ND; and Wells Fargo Bank, N.A. OTS took action against four federal savings association servicers: Aurora Bank, FSB; EverBank and its thrift holding company, EverBank Financial Corp.; OneWest Bank, FSB and its holding company IMB HoldCo LLC; and, Sovereign Bank. FRB took action against the holding companies for the national banks mentioned above and two other financial institutions under their supervision: Ally Financial, Inc., and SunTrust Banks, Inc.

⁸ FRB took action against Goldman Sachs Group, Inc., on September 1, 2011, and Morgan Stanley on April 2, 2012.

became known as IFR, included a “request for review” portion where borrowers who believed they were financially harmed by servicers’ deficiencies could request a review of their foreclosure file. The review also required that the independent consultants perform a “look back review”—a review of a sampling of files from the servicers’ portfolios.

During 2011 and 2012, the independent consultants performed IFRs. OCC officials told us that, as of November 2012, the independent consultants received about \$2 billion in compensation from the servicers, but no borrower remediation for financial injury had been made. OCC officials concluded that the IFR process was taking longer than anticipated and delaying the compensation of affected borrowers. Working in conjunction with FRB, OCC began negotiating changes to the original consent orders with the servicers. In January 2013, new terms were agreed to by 13 of the 16 servicers subject to the original consent orders (10 supervised by OCC and 3 supervised by FRB) and amended orders were issued in February 2013.

The new terms provided for an immediate cessation of most IFR activity, required servicers to make direct cash payments of \$3.6 billion to potentially harmed borrowers, and required servicers to initiate a range of foreclosure prevention actions in an amount up to \$5.7 billion over the next 2 years. OCC officials told us that the totals for cash payments to potentially harmed borrowers and foreclosure prevention actions were negotiated amounts. Furthermore, they expected that the negotiated total cash payments to potentially harmed borrowers would exceed the amount of remediation payments anticipated under the IFR process.

Under the amended orders, servicers were required to categorize borrowers according to the most likely type of financial harm suffered as a result of foreclosure. The category in which the potentially harmed borrower was placed determined the amount of the cash payment to be made. OCC and FRB developed the categories and associated payment distribution plan. It should be noted that the categorization and payment distribution plan will be among the items we review during our upcoming audit, referred to above. Direct payments to potentially harmed borrowers began in April 2013.

Two of the three servicers that did not agree to the amended orders — EverBank and OneWest — are supervised by OCC. OCC officials told us that these two servicers did not agree to the change for a variety of reasons, including the belief that it was too costly. They also told us that these servicers were continuing to perform their assigned IFRs and OCC anticipated that these IFRs would be completed by calendar year-end 2013. On August 23, 2013, OCC announced that EverBank had agreed to amend its consent order to make direct cash payments and provide other foreclosure relief.

Audit Results

OCC's Efforts to Determine Servicer Compliance with Consent Orders

Prior to the change in terms of the consent orders, OCC developed an oversight framework intended to address the IFR process including processes that:

- evaluated and monitored consultants' independence;
- defined and monitored borrower outreach;
- defined and communicated required review parameters and guidance for identifying instances that require financial remediation; and
- monitored the independent consultant performance of the IFR.

In addition, OCC implemented an automated tracking system to monitor servicer progress against action plans. These action plans were provided by the servicers as a way to implement the corrective action required by the consent orders.

However, there were critical areas where OCC oversight needed to be strengthened.

- As of the completion of our fieldwork, in August 2012, OCC's testing of individual IFRs had been limited. OCC had not yet implemented a comprehensive process to select and test samples of IFRs in a manner that would provide

meaningful feedback on the process. The consistent performance, documentation, and reporting of this testing was and, for the servicer where the IFR process is continuing (OneWest) still is, necessary to ensure the independent consultants were performing IFRs objectively, consistently, and meeting OCC's expectations. This is especially important to compensate for the limitations that we noted in the process for evaluating independent consultants' independence and to mitigate the risk of inconsistency given the inherent complexity of the IFR process and variations in the independent consultants' review methodology.

- We noted instances where the documentation of OCC oversight was lacking. For example, there were no formal procedures defining the scope of OCC's ongoing monitoring of independent consultants' independence and examiner oversight of IFR population determinations was not always documented. Developing and implementing procedures for documenting critical oversight events is an important part of good internal control and helps assure that the functions are performed consistently and accurately. In addition, maintaining complete documentation of the oversight activities performed and their results provides for a basic tenet of government, transparency and accountability. The maintenance of such documentation is also in the best long-term interest of OCC, especially if its actions are later questioned, as they have been.

A more in-depth discussion of OCC oversight processes follows.

Evaluation and Monitoring of Consultants' Independence

OCC's process for evaluating the independence of the independent consultants was not documented in formal policies and procedures but was described by OCC officials as a two-tiered process consisting of an initial evaluation and ongoing monitoring.

- OCC communicated guiding principles related to determining the independence of prospective independent consultants. OCC also required each to provide summaries of current and past foreclosure-related work performed for the servicer they

proposed to review. These summaries were reviewed by OCC officials at the field level, forwarded to headquarters for further review and analysis and, if found consistent with the guiding principles, approved.

- After the independent consultant was engaged, the OCC EIC for the servicer was responsible for monitoring independence through ongoing discussion with the servicers and independent consultants. OCC officials told us that they took actions to address independence concerns raised during these discussions. We noted that the results of these discussions were not consistently documented.

The guiding principles that OCC used to evaluate independent consultants' independence were limited, focusing on prohibiting the independent consultant from working for a servicer at which it would be required to review foreclosure-related work that the consultant itself had performed. These principles did not impose a prohibition on all previous work with that servicer, even previous mortgage-related work. The guiding principles used to evaluate the independence of law firms engaged by independent consultants to support the independent review process also did not impose a prohibition on all previous work with that servicer, but it did bar the use of firms that had previously opined on certain foreclosure-related issues for any bank. Further, while these guiding principles were in writing, their formal approval by OCC management was not. We also noted that OCC did not have a documented standard by which it evaluated the independent consultants' qualifications to perform foreclosure reviews. OCC officials told us that only firms with sufficient expertise and resources to perform the reviews were considered.

We found that OCC's independence evaluation process relied heavily on the prospective independent consultant to accurately report work previously performed for the servicer. As a result, the risk that independence concerns could go unreported and undetected was increased. In fact, subsequent to its initial approval, OCC identified independence concerns related to the independent consultant for Aurora Bank, Allonhill. In this regard, Allonhill had not reported all prior work on its summary of work to

OTS.⁹ While this incident highlighted limitations in the initial evaluation process, OCC's subsequent identification of the concerns and prompt removal of Allonhill,¹⁰ indicated that the ongoing monitoring process, though not documented, worked in this instance.

According to OCC, the process of independence vetting was consistent with that previously used to evaluate the independence of consultants performing work in connection with consent orders. OCC contended that an absolute prohibition on prior work with the servicer was not practicable given the limited pool of consultants with the capacity and expertise required to perform foreclosure reviews. In addition, OCC officials identified the following controls that they believed mitigated independence concerns:

- OCC's requirement that each engagement letter include language by which the independent consultant asserts its independence and a pledge to uphold the integrity of the process;
- OCC's initial communication and reiteration of independence requirements to the independent consultants;
- The deterrent effect of damage to the independent consultant's reputation and prospects for future third party work with a servicer overseen by OCC should the independent consultant be found to have withheld information during the evaluation process; and,
- The regular discussion of independence issues between the EICs and independent consultants, along with the regular discussion of independence topics at weekly servicer and independent consultant meetings with OCC headquarters personnel.

We tested OCC's independence evaluation process, including those mitigating controls that OCC designed to reduce the level of independence risk. We found that the ongoing independence monitoring was not consistently documented and that OCC's planned testing of individual IFRs, which would have provided

⁹ Prior to its functions being transferred to FRB, FDIC, and OCC; OTS was the regulator for Aurora Bank. OCC became Aurora's regulator after the transfer and enforced the consent order.

¹⁰ OCC, News Release NR 2012-74, "OCC Statement - Cessation of Activities by Allonhill as an Independent Consultant Under the Independent Foreclosure Review" (May 11, 2012).

additional assurance of independent consultant objectivity, was not fully implemented when we completed our fieldwork. Given the limitations in the independence evaluation process, complete documentation of OCC's oversight and direct testing of independent consultant work products was even more critical, not only to assist in ensuring the successful execution of the review process, but most importantly to address stakeholder needs, in particular those borrowers who were harmed in the foreclosure process.

Borrower Outreach Efforts

For the independent consultants to identify borrowers harmed by foreclosure weaknesses at the servicers subject to the consent orders, OCC determined that, in addition to performing the look back review, an outreach effort was needed to solicit potentially affected borrowers to participate in the request for review process. OCC determined that outreach similar to that used for a class action lawsuit would be appropriate, and issued guidance to the independent consultants and servicers defining outreach requirements in July 2011. In this guidance, OCC required that, at a minimum, outreach consist of direct mailings, advertisements, and Internet/phone communications.

OCC also provided guidance to the independent consultants on the methodology for determining the population of loans subject to review under the consent orders and the sampling methodology for selecting loans from the population for the look back reviews. Independent consultants executed this guidance by (1) selecting approximately 160,000 borrowers for the look back review and (2) sending letters to more than 4.2 million potentially affected borrowers informing them of the request for review process. In addition, national and local print, radio, and television advertisements in English and Spanish (as well as in other languages on a more limited basis), and public service advertisements were run. A dedicated website and toll-free number were established. OCC solicited feedback from consumer outreach groups in developing the ads used in these campaigns. We noted that some of their suggestions were incorporated into the final advertisements.

OCC officials told us that they relied on each independent consultant to properly execute OCC's population and sampling guidance and did not directly validate the independent consultants' population calculations or application of the sampling methodology. OCC officials told us they gained comfort in the independent consultants' calculations through ongoing communication with the independent consultants. However, this communication was not always documented. For example, one EIC told us that OCC documentation related to the population determination would not necessarily capture all of the informal dialogue that occurred and another noted that no separate documentation verifying the population determination process was maintained.

The servicers engaged Rust Consulting, Inc. (Rust), to serve as the single integrated claims processor. OCC officials told us that while OCC did not have any direct contractual relationship with Rust, they determined that there were no critical issues that would warrant not accepting Rust in this capacity. As the single integrated claims processor, Rust's tasks included: (1) mailing outreach letters to approximately 4.2 million borrowers, (2) performing skip tracing to find updated addresses for borrowers in the population, (3) processing all incoming mail including all request for review submissions via mail or the website, (4) providing live call center support, and (5) tracking and reporting progress. Rust produced daily and weekly reports for OCC's review on the number of request for review forms received and the types of requests, the use of the website and the toll-free borrower assistance phone number, and the quality of assistance provided to borrowers via the phone number. Rust also gathered and reported information regarding the progress of the independent consultants' work, including the number of forms in process and determinations of financial injury. OCC officials told us they performed on-site reviews of Rust and monitored its work through weekly meetings but they did not formally document the results of these reviews and monitoring.

Our review of status reports generated by Rust found that the steps taken to update borrowers' addresses and re-process undeliverable mail resulted in a total undeliverable rate of 5.6 percent. These steps and the corresponding delivery rate were

consistent with outreach standards for class action lawsuits.¹¹ On August 2, 2012, OCC announced the extension of the deadline for request for review submissions to December 31, 2012. This was the third extension of the deadline. According to OCC, the extensions provided additional time to increase awareness of the IFR process and encouraged the broadest participation possible.

In June 2012, the Government Accountability Office (GAO) issued a report on its examination of the IFR outreach process, *Foreclosure Review: Opportunities Exist to Further Enhance Borrower Outreach Efforts*.¹² GAO concluded that while OCC and FRB had taken a number of steps to improve the servicers' outreach over time by improving the format of communication materials, incorporating feedback from consumer groups, and increasing outreach to particular populations, opportunities for further improvement remained. GAO recommended that the regulators: (1) enhance the readability of the request for review form, (2) include a range of potential remediation amounts or categories in communication materials and other outreach, and (3) require servicers to identify trends in borrowers who have and have not responded by characteristics that can assist with targeted outreach to underrepresented groups.

In its response to the report, OCC stated that it was in the process of addressing each of GAO's recommendations. Since then, OCC and FRB have developed a plain-language help sheet guide for borrowers completing the request for review form on the IFR website. In addition, OCC and FRB released their joint Financial Remediation Framework in June 2012¹³ and completed a market analysis to identify areas and ethnic groups with the greatest opportunity for increased awareness.

¹¹ Federal Justice Center, *Judges Class Action Notice and Claims Process Checklist and Plain Language Guide*, 2010. This checklist and guide supplements the Federal Justice Center's "Managing Class Action Litigation: A Pocket Guide for Judges" and provides guidance to judges on general notice and communication factors related to class action lawsuits. Since OCC chose to pattern outreach after a class action lawsuit, we used the notice plan section of the checklist as a guide when evaluating the outreach.

¹² GAO, GAO-12-776 (June 29, 2012)

¹³ OCC, News Release NR 2012-94, "Agencies Release Financial Remediation Guidance, Extend Deadline for Requesting a Free Independent Foreclosure Review to September 30, 2012" (June 21, 2012).

Independent Foreclosure File Reviews

From the start of the IFR process, OCC took steps to make the servicers and independent consultants aware of OCC's review requirements. The requirements were also reflected in engagement letters defining the scope of the independent consultants work. In addition, OCC reviewed and approved engagement letters that contained the independent consultants plan to implement this guidance. Our review of a sample of six engagement letters found that the parameters of the review agreed with the OCC guidance. We noted that each independent consultant implemented its own individual system and process to perform foreclosure reviews and assure quality control in accordance with the engagement letters.

OCC officials told us that a key component of their oversight process was their close communication with each independent consultant through the OCC examination staffs onsite at each servicer and through weekly status meetings held with examination staffs, independent consultants, servicers, and OCC headquarters officials. The OCC officials also told us that these meetings were used in an effort to ensure consistency of approach among independent consultants, monitor the status of reviews, identify areas where OCC guidance was required, and address independence issues. We were able to obtain testimonial evidence that these meetings were held and we reviewed agendas, servicer-prepared meeting summaries,¹⁴ and reports, such as those generated by Rust, to get an idea of the topics discussed.

On June 21, 2012, OCC released the Financial Remediation Framework. The Framework, developed by OCC and FRB in consultation with the servicers, the independent consultants, community groups, and consumer advocate groups, provided examples of situations indicating financial harm to the borrower. It also contained guidelines for remediating these situations using

¹⁴ Since OCC is to provide regulatory direction, and the fact that a key component of OCC's oversight was their close communication with each independent consultant through, among other things, weekly status meetings held between OCC, independent consultants, and servicers, we were surprised to learn that the servicers, not OCC, prepared the meeting summaries. We did note, however, that the meeting summaries were circulated to all the meeting participants, including OCC.

monetary compensation and other means.¹⁵ It was expected that the independent consultants would use the framework to recommend remediation for financial injury identified during the IFR.

OCC oversaw the development of a review process that was intended to result in an effective review of loans in the population, identification of instances of financial harm, and provide remediation to those harmed. However, the inherent complexity of the review process contributed to independent consultant's reviews taking much longer than anticipated. One OCC official commented to us that this was the most complex process that he had encountered in his 28 years as an examiner. He pointed to differences in independent consultant processes, variations in state law, and changes in law over the period that the foreclosures occurred as the primary drivers of this complexity. Another OCC official characterized the reviews as tedious, difficult, and time consuming.

OCC officials told us that, as of November 2012, approximately \$2 billion had been paid by servicers to the independent consultants for the reviews. However, as of December 31, 2012, reviews had been completed for only about 29 percent of the 293,000 look back files subject to review and less than 4 percent of the 408,000 request for review files. No remediation amounts had been calculated or remitted to harmed borrowers.

As noted previously, each independent consultant implemented its own systems and processes to perform the reviews. This, along with the complexity of the reviews, increased the risk that reviews and remediation decisions would not be made in a consistent manner. OCC officials told us that they had planned to review the results of the independent consultants' work. However, factors such as the limited number of completed IFRs, examination teams' focus on servicers' remediation strategies, and the change in consent order terms preempted the development and implementation of a comprehensive, consistently documented process for testing completed foreclosure reviews.

¹⁵ Depending on the circumstances of the harm suffered by the borrower, the Financial Remediation Framework may require servicers to take certain actions in addition to monetary compensation. These actions may include suspending or rescinding the foreclosure, remedying deficiency balances, modifying the loan, and correcting servicer records and/or credit reports.

Monitoring Servicer Corrective Action

As mentioned above, the consent orders required servicers to make extensive changes in mortgage servicing and foreclosure processes to correct the unsafe and unsound practices identified in the horizontal review. Among other things, the consent orders required servicers to assess risk in their loan servicing, loss mitigation and foreclosure operations, and develop plans to mitigate this risk. It also required servicers to develop action plans to improve governance and reporting over loss mitigation and foreclosure, improve oversight of outsourced foreclosure-related functions, and develop better control over Mortgage Electronic Registration Systems, Inc. (MERS)-related activity including mortgage assignment and endorsement.¹⁶

OCC developed and implemented an automated document management system to track servicer progress against plans the servicers' put in place to implement the corrective action required by the consent orders. According to OCC's Interim Report of the Foreclosure-Related Consent Orders dated June 2012, servicers' reported that they completed 93 percent of the individual requirements of their respective action plans. The report also stated that as the action plans were implemented, the servicers' internal oversight functions such as internal audit, compliance, and risk management would provide ongoing review and control, including testing and validation. Following implementation, OCC plans to review, test, and validate corrective actions as necessary to determine effectiveness and sustainability.

Because OCC's testing and validation of servicer corrective actions had not been completed as of the end of our fieldwork in August 2012, we are unable to include our assessment of this aspect of OCC's oversight in this report.

¹⁶ MERS is a private company created by the mortgage banking industry to streamline the mortgage process. MERS acts as the nominal mortgagee in the county for land records for the lender and servicer, and tracks transfers of mortgages in its proprietary information system with the goal of eliminating the need for assignment upon transfer of servicing. The practice of MERS acting in the capacity of mortgagee is widely accepted in the mortgage industry.

GAO Lessons Learned Review, Concluding Remarks, and Recommendations

In March 2013, GAO issued a report entitled *Foreclosure Review: Lessons Learned Could Enhance Continuing Reviews and Activities under Amended Consent Orders*.¹⁷ In it, GAO reported that the complexity of the reviews, overly broad guidance, and limited monitoring for consistency impeded the ability of OCC and FRB to achieve the goals of the foreclosure review.

GAO found that consultants designed their reviews to address the issues as they were identified in the consent orders and regulators issued guidance to third-party consultants to help frame the file review process and promote consistency. In addition to consistent consent orders and guidance, OCC and FRB staff implemented regular communication mechanisms to provide more consistency in the reviews. To that end, regulators held regular meetings with third-party consultants, servicers, examination team staff overseeing the consultants' work, and OCC headquarters and FRB staff to discuss challenges with the file review process. However, GAO pointed out that other efforts related to guidance and monitoring may have exacerbated the challenges and complexities inherent in the process. In addition, regulators' limited monitoring of the consistency of the consultants' sampling methodologies and review processes, increased risks that similarly situated borrowers would receive different results.

Similarly, our audit found that OCC did develop an oversight framework intended to address the material aspects of the IFR process. We also point out that OCC defined and communicated review parameters and guidance and set up a process to monitor the independent consultants. Nonetheless, we also found that there was an increased risk that reviews and remediation decisions would not be made in a consistent manner due to the complexity of the reviews and variations in independent consultants' systems and processes. We noted that OCC had not developed and implemented a comprehensive, consistently documented process to validate independent consultants' implementation of sampling

¹⁷ GAO, GAO-13-277 (Mar. 26, 2013)

guidance or for testing completed reviews to assess accuracy and consistency.

While our scope was focused on the design of the oversight process, GAO's testing went further, conducting site visits and in-person interviews with five consultant engagement teams. Based on that testing, GAO reported that inconsistencies in the application of regulator guidance, which we identified as an area of increased risk, had, in fact, occurred. The testing of the consultants also allowed GAO to identify areas where regulators were not specific enough to facilitate consistent outcomes.

Based upon their work, GAO made three recommendations:

- (1) To better ensure that the goals of the foreclosure review are realized for servicers that are not subject to amended consent orders, GAO recommended that the regulators, as appropriate, improve oversight of sampling methodologies and mechanisms to centrally monitor consistency, such as assessment of the implications of inconsistencies on remediation results for borrowers in the remaining foreclosure reviews.
- (2) To better ensure that the goals of the amended consent orders related to the distribution of direct payments and other assistance are realized, GAO recommended that the regulators identify and apply lessons from the foreclosure review process, such as enhancing planning and monitoring activities to achieve goals, as they develop and implement the activities under the amended consent orders.
- (3) To better ensure transparency and public confidence in the activities under the amended consent orders and results of the continuing foreclosure reviews, GAO recommended that the regulators develop and implement a communication strategy to regularly inform borrowers and the public about the processes, status, and results of the activities under the amended consent orders and continuing foreclosure reviews.

In its response to GAO's report, OCC stated that it will continue to use its sampling guidance, monitor continuing foreclosure reviews for consistency, and apply lessons learned from the IFR to activities necessitated by the amended consent orders.

We believe that, by taking action to address GAO's recommendations, OCC will go far to address the issues noted in our report. As part of this action, we recommend that the Comptroller of the Currency:

1. Develop and implement examiner guidance defining the timing and scope of OCC's direct testing of individual foreclosure reviews at the two servicers who are continuing the independent foreclosure review process.

Management Response

In its management response, OCC stated that testing has been ongoing. To assure consistency, oversight of the remaining reviews is being conducted by one examination team. Additionally, the team's work and findings are reported to headquarters and senior management. Adjustments to scope are made as necessary.

OIG Comment

The intent of our recommendation is for OCC to ensure the consistent performance, documentation, and reporting of testing at the two servicers continuing the IFR process. OCC's performance of testing by one examination team under the oversight of OCC headquarters personnel addresses this intent and is, therefore, responsive to our recommendation. As discussed in our report, on August 23, 2013, OCC announced that one of the two servicers, EverBank, agreed to a change in its consent order that will effectively end the IFR process for this servicer. Once the consent order is amended for EverBank, this recommendation will apply to the remaining OCC-supervised servicer, OneWest.

2. Take steps to improve the overall documentation of OCC oversight efforts, especially related to the servicers' execution of new consent order terms. For example, OCC should document OCC management approval of guidance issued and standards used; and more fully document the nature, extent, and results of actions OCC takes to assess servicer compliance with the consent orders.

Management Response

OCC recognizes the need for greater documentation and has taken several steps to improve the documentation of its oversight. Since entering into the amended consent orders, OCC has enhanced its centralized planning, and improved its monitoring and tracking of activities to ensure OCC goals are met in a timely and consistent manner. For example, OCC put into place an expanded foreclosure consent order project plan, and it created an examination plan that each resident team will use to test compliance with the consent orders. Goal-oriented results are reported to the Comptroller of the Currency and other OCC senior management weekly.

OIG Comment

OCC's actions are responsive to our recommendation.

* * * * *

We appreciate the courtesies and cooperation provided to our staff during the audit. If you wish to discuss the report, you may contact me at (202) 927-0384 or James Lisle, Audit Manager, at (202) 927-6345. Major contributors to this report are listed in Appendix 3.

Jeffrey Dye /s/
Director, Banking Audits

In April 2011, the Office of the Comptroller of the Currency (OCC) and the former Office of Thrift Supervision (OTS) issued consent orders against 12 major mortgage servicers for unsafe and unsound practices in residential mortgage servicing and foreclosure processing.¹⁸ Among other things, the consent orders required to servicers to implement an independent foreclosure review (IFR) process using independent consultants to determine financial injury to affected borrowers. The objectives of this audit were to assess OCC's:

- oversight of servicers' efforts to comply with consent orders.
- determination of qualifications and independence of consultants hired by servicers in accordance with consent orders.
- oversight of consultants' efforts to perform outreach, conduct file reviews, and review homeowner claims of financial harm.
- oversight of the single integrated claims process established by OCC, servicers, and the consultants.

To address these audit objectives, we had planned to follow a phased approach for this audit with the first phase focused on OCC's oversight of the design and monitoring of the independent foreclosure review process. A second phase would focus on OCC's review of samples of completed foreclosure reviews and a third phase would focus on OCC's supervision of servicer compliance with required changes in the consent orders in mortgage servicing and foreclosure processes. With the February 2013 issuance of the amended consent orders, which ended most independent foreclosure review (IFR) activity, we decided to issue this report, which is focused primarily on the design and monitoring of the IFR process. We are undertaking a separate audit to assess OCC's process for determining the amount of cash payments that servicers must make to borrowers under the amended consent orders and evaluating OCC oversight of the administration of these payments.

¹⁸ OCC issued consent orders against eight national bank servicers: Bank of America, N.A.; Citibank, N.A.; HSBC Bank USA, N.A.; JPMorgan Chase Bank, N.A.; MetLife Bank, N.A.; PNC Bank, N.A.; U.S. Bank National Association and U.S. Bank National Association ND; and Wells Fargo Bank, N.A. The former OTS issued consent orders against four federal savings association servicers: Aurora Bank, FSB; EverBank and its thrift holding company, EverBank Financial Corp.; OneWest Bank, FSB and its holding company IMB HoldCo LLC; and, Sovereign Bank. With the transfer of OTS federal savings association functions to OCC in July 2011 pursuant to Public Law 111-203, OCC now supervises the four federal savings association servicers, including enforcement of the consent orders.

To address the design and monitoring of the foreclosure review process required by the initial consent orders, we

- Reviewed the OCC- and OTS-issued consent orders, engagement letters between the independent consultants and the servicers, and OCC guidance regarding its expectations for engagement letter and the borrower outreach process.
- Reviewed the independence guiding principles and OCC, OTS, and the Board of Governors of the Federal Reserve System (FRB) foreclosure review guidance.¹⁹
- Reviewed the Financial Injury Remediation Framework and the documentation of the process that led to the final framework.
- Reviewed OCC's Interim Status Reports of the Foreclosure-Related Consent Orders, and monitoring reports produced by Rust Consulting, Inc., to track the progress of outreach and file reviews.
- Reviewed related Government Accountability Office (GAO) reports. These reports were *Foreclosure Review - Opportunities Exist to Further Enhance Borrower Outreach Efforts*, GAO-12-776 (June 29, 2012) and *Foreclosure Review: Lessons Learned Could Enhance Continuing Reviews and Activities under Amended Consent Orders*, GAO-13-277 (Mar. 26, 2013).
- Interviewed the OCC examiner in charge and team at Bank of America to gain perspective on OCC supervision of the IFR process for that bank. We administered questionnaires to examination teams at a sample of other servicers subject to the consent orders to gain similar perspective. The servicers sampled were JPMorgan Chase, Wells Fargo Bank, PNC Bank, and OneWest Bank.
- Interviewed OCC headquarters management, including the Ombudsman, Assistant Director of Enforcement and Compliance, Director of Enforcement, Mortgage Banking Lead Examiner, Deputy Comptroller of Large Bank Supervision, Deputy Chief Counsel, and Counsel for Enforcement and Compliance to gain an understanding of the

¹⁹ FRB issued consent orders against four financial institutions: Ally Financial, Inc.; SunTrust Banks, Inc.; Goldman Sachs Group, Inc.; and Morgan Stanley in addition to those they issued against the holding companies for national banks subject to OCC consent orders.

nature and extent of OCC oversight of the IFR process. Topics discussed included consultant independence, IFR performance and status reporting, plans for financial harm determination and remediation, and, amendment of the consent orders.

- Concurrent with our audit, GAO was reviewing the IFR process. We coordinated our fieldwork with GAO scheduling joint interviews and making joint documentation requests, when possible.

We performed our audit fieldwork from January 2012 through August 2012.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.



Office of the Comptroller of the Currency

Washington, DC 20219

August 14, 2013

Jeffrey Dye
Director, Banking Audits
Office of Inspector General
Department of the Treasury
Washington, DC 20220

Subject: Response to Draft Report

Dear Mr. Dye:

We have reviewed your draft report titled “Improvement Needed in OCC’s Oversight of Foreclosure Related Consent Orders.” The report presents the results of the Office of Inspector General’s (OIG) fieldwork conducted from January through August 2012 concerning the Office of the Comptroller of the Currency’s (OCC) oversight of consent orders issued in April 2011 to correct unsafe and unsound practices in residential mortgage servicing and foreclosure processing. One of the actions required by the orders was to conduct an independent review of foreclosure activity in 2009 and 2010. In January 2013, the OCC and the Federal Reserve reached agreement with 10 of the servicers to discontinue those reviews. Since then, all but two of the servicers required to conduct independent foreclosure reviews have reached agreement with the OCC and the Federal Reserve to end the reviews and provide \$3.8 billion in payments to more than 4.4 million eligible borrowers and \$5.7 billion in additional foreclosure prevention assistance. Through July 15, nearly 4.2 million checks, totaling \$3.54 billion, have been distributed.

Your report makes several observations. With respect to the original consent orders, you found that the OCC developed a framework to oversee the independent foreclosure review. You also state that actions by the OCC to address issues identified in a Government Accountability Office (GAO) report will go far to correct issues noted in your report, such as the risk of inconsistent application of regulator guidance. In addition, you make two recommendations.

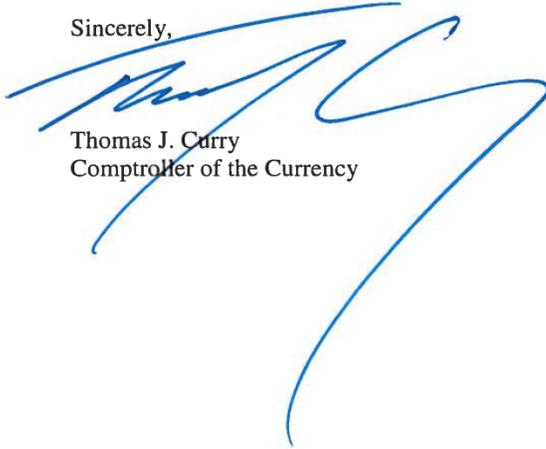
First, you recommend the OCC develop and implement examiner guidance defining the timing and scope of OCC’s testing of individual foreclosure reviews at the two servicers that are continuing the review process. Testing has been ongoing. To assure consistency, oversight of the remaining reviews is being conducted by one examination team. Additionally, the team’s work and findings are reported to headquarters and senior management. Adjustments to scope are made as necessary.

Appendix 2
Management Response

Second, you recommend the OCC take steps to improve the overall documentation of its oversight efforts, especially related to the servicers' execution of terms contained in the amendments to the 2011 consent orders. For example, the OCC should document management approval of guidance issued and standards used; and more fully document the nature, extent, and results of actions the OCC takes to assess servicer compliance with the consent orders. We recognize the need for greater documentation and have taken several steps to improve the documentation of our oversight. Since entering into the amended consent orders, the OCC has enhanced our centralized planning, and improved our monitoring and tracking of activities to ensure our goals are met in a timely and consistent manner. For example, we put into place an expanded foreclosure consent order project plan, and we created an examination plan that each resident team will use to test compliance with the consent orders. Goal-oriented results are reported to me and other OCC senior management weekly.

If you need additional information, please contact me or Morris Morgan, Deputy Comptroller, Large Bank Supervision, at 202-649-6210.

Sincerely,



Thomas J. Curry
Comptroller of the Currency

Appendix 3
Major Contributors To This Report

James Lisle, Audit Manager
Vicki Preston, Auditor in Charge
April Ellison, Auditor
Maria McLean, Auditor
Renee Whittington, Referencer

The Department of the Treasury

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Office of Strategic Planning and Performance Management
Office of the Deputy Chief Financial Officer, Risk and Control
Group

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