Thursday, February 17, 2011

OCC: "Foreclosure Irregularities"

In his testimony today to the Senate Committee on Banking, Housing, and Urban Affairs, Acting Comptroller of the Currency John Walsh discussed implementation of initiatives required by the Dodd-Frank Wall Street Reform and Consumer Protection Act before.

There are several areas of interest to the residential mortgage originations community. However, Mr. Walsh's statement about the "Foreclosure Processing Irregularities" merits attention.

The following is a brief outline of the Acting Comptroller's testimony on Dodd-Frank Initiatives.

DUE DILIGENCE REVIEW

Policies and Procedures

Examiners determined if the policies and procedures in place ensured adequate controls over the foreclosure process and that affidavits, assignments, and other legal documents were properly executed and notarized in accordance with applicable laws, regulations, and contractual requirements.

Organizational Structure and Staffing

Examiners reviewed the functional unit(s) responsible for foreclosure processes, including staffing levels, qualifications, and training programs.

Management of Third-Party Service Providers

Examiners reviewed the financial institutions' governance of key third parties used throughout the foreclosure process.

Quality Control and Internal Audits

Examiners assessed foreclosure quality control processes. Examiners also reviewed internal and external audit reports, including government-sponsored enterprise (GSE) and investor audits and reviews of foreclosure activities, and institutions' self-assessments to determine the adequacy of these compliance and risk management functions.

Compliance with Applicable Laws

Examiners checked compliance with applicable state and local requirements as well as internal controls intended to ensure compliance.

Loss Mitigation

Examiners determined if servicers were in direct communication with borrowers and whether loss mitigation actions, including loan modifications, were considered as alternatives to foreclosure.

Critical Documents

Examiners determined whether servicers had control over the critical documents in the foreclosure process, including appropriately endorsed notes, assigned mortgages, and safeguarding of original loan documentation.

Risk Management

Examiners determined whether institutions appropriately identified financial, reputation, and legal risks, and whether these risks were communicated to the board of directors and senior management.

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In general, the examinations found critical deficiencies and shortcomings in foreclosure governance processes, foreclosure document preparation processes, and oversight and monitoring of third party law firms and vendors.

These deficiencies have resulted in violations of state and local foreclosure laws, regulations, or rules and have had an adverse affect on the functioning of the mortgage markets and the U.S. economy as a whole.

By emphasizing timeliness and cost efficiency over quality and accuracy, examined institutions fostered an operational environment that is not consistent with conducting foreclosure processes in a safe and sound manner.

Despite these deficiencies, the examination of specific cases and a review of servicers' custodial activities found that **loans were**:

-seriously delinquent
-servicers maintained documentation of ownership
-servicers had perfected interest, thus legal standing to foreclose.

Case reviews evidenced that servicers were in contact with troubled borrowers and had considered loss mitigation alternatives, including loan modifications.

A small number of foreclosure sales should not have proceeded because of an intervening event or condition, such as the borrower:

(a) being covered by the Servicemembers Civil Relief Act;

(b) filing bankruptcy shortly before the foreclosure action; or

(c) being approved for a trial period modification.

While all servicers exhibited some deficiencies, the nature of the deficiencies and the severity of issues varied by servicer.

STANDARDS AND CORRECTIVE ACTIONS

Handling borrower payments, including applying payments to principal and interest and taxes and insurance before they are applied to fees, and avoiding payment allocation processes designed primarily to increase fee income.

Providing adequate borrower notices about their accounts and payment records, including a schedule of fees, periodic and annual statements, and notices of payment history, payoff amount, late payment, delinquency, and loss mitigation.

Responding promptly to borrower inquiries and complaints, and promptly resolving disputes.

Providing an avenue for escalation and appeal of unresolved disputes.

Effective incentives to work with troubled borrowers, including early outreach and counseling.

Making good faith efforts to engage in loss mitigation and foreclosure prevention for delinquent loans, including modifying loans to provide affordable and sustainable payments for eligible troubled borrowers.

Implementing procedures to ensure that documents provided by borrowers and third parties are maintained and tracked so that borrowers generally will not be required to resubmit the same documented information.

Providing an easily accessible single point of contact for borrower inquiries about loss mitigation and loan modifications.

Notifying borrowers of the reasons for denial of a loan modification, including information on the NPV calculation.

Implementing strong foreclosure governance processes that ensure compliance with all applicable legal standards and documentation requirements, and oversight and audit of third party vendors.

Not taking steps to foreclose on a property or conduct a foreclosure sale when the borrower is in a trial or permanent modification and is not in default on the modification agreement.

Ensuring appropriate levels of trained staff to meet current and projected workloads.

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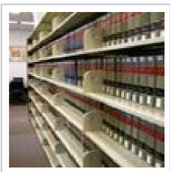

Testimony of John Walsh, Acting Comptroller of the Currency,
before the Committee on Banking, Housing and Urban Affairs, U. S. Senate
February 17, 2011

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Labels: Consumer Financial Protection Bureau, Dodd-Frank Act, Foreclosure, Mortgage Compliance, Mortgage Reform Act, OCC, Permanent Modifications, SCRA, Servicemembers Civil Relief Act, Trial Modifications

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