

**Remarks by**  
**Thomas J. Curry**  
**Comptroller of the Currency**  
**Before the**  
**National Association of Attorneys General**  
**Washington, DC**  
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It's a pleasure to be here with you today, and particularly to be on this panel with Director Cordray. Together, we represent the nation's oldest federal agency and its newest. As you may know, the OCC is celebrating its 150<sup>th</sup> anniversary this year; in fact, later today, we will hold an event at the OCC commemorating the enactment of the National Currency Act, which was signed into law by President Lincoln 150 years ago this week. It's an honor for me to head the agency at this time, with so much accomplishment behind us and so much promise ahead. I certainly can't begin to forecast what will happen over the course of another century and a half, but it is my firm belief that the OCC will continue to evolve to meet the needs of changing markets and a changing population of financial consumers.

One of the things I've most enjoyed during my still short term of office is the opportunity to work with Rich and the Consumer Financial Protection Bureau as that agency continues the process of standing up. We have somewhat different missions, but in the end, we are both working toward similar objectives: a banking and financial services industry that is not only safe and sound, but open and fair to the American consumer and capable of supporting the kind of economic growth that creates jobs and helps families fulfill their dreams.

In fact, the similarities between our missions and objectives are even more pronounced than that. While the CFPB is classified as a consumer protection agency and the OCC is viewed as a safety and soundness agency, those jobs go hand in hand. Nothing is more important to a financial institution's viability than its reputation, and that reputation depends heavily upon how well it treats its customers. In fact, reputation is one of the key categories of risk that our examiners monitor. And while the overwhelming majority of the federal banks we supervise understand just how important reputation is, they deserve to know that none of their competitors, especially those that traditionally have operated with little regulation or supervision, can seek a competitive advantage by cutting corners. That's an area where I think the CFPB will perform an especially vital service to both consumers and lenders.

But neither of us can succeed in our missions if we don't work well together or communicate with each other. That requires an extensive amount of cooperation, and toward that end we have spent a good deal of time building a sound working relationship that will facilitate that cooperation. Rich and I talk frequently and meet on a regular basis, and our staffs meet regularly as well. All in all, I think it's a good start.

Much of what I've said would also apply to our relationship with the nation's Attorneys General. It's important that we maintain a good working relationship based on honest and open communication and cooperation on issues of common concern. It is true that we have different missions and different approaches toward meeting our missions, but in the end we have the same kind of common objective I cited with respect to the CFPB: we are all working toward a banking and financial services industry that treats the average person fairly and functions in a way that meets the needs of families, communities, and the national economy.

To achieve that, we have broad powers to act against institutions that engage in abusive acts or engage in unsafe and unsound practices. Where appropriate, we use those powers to compel financial institutions to change the way they conduct their business. As the chief legal officers for your respective states, your powers to address problems through civil suits or other actions are probably familiar to many people. However, I think our authority as a prudential bank supervisor is not always well understood.

In particular, people sometimes ask why enforcement actions are typically done through consent agreements. That's a reasonable question, and I'd like to spend a few minutes today answering it.

As a prudential supervisor, we examine banks regularly and seek to identify issues early when they can most easily be fixed. Most often the banks take the necessary corrective action, and those are the cases no one hears about since under law the supervisory process is confidential. But there are times when problems cannot be remedied through the supervisory process, and those are the cases that result in formal enforcement actions that sometimes make headlines. In those situations, we very often end up taking actions that are aimed in the first instance at fixing the problem and which, depending upon the circumstances, may also include financial penalties or compensation for individuals who suffered harm as a result of improper practices.

There's a reason why I cited remediation as the first goal of an enforcement order. First, unlike actions brought by an Attorney General's Office, our authority to take enforcement actions is an extension of, and in support of the supervisory process, and so the primary purpose of our actions is remediation – to ensure that federal banks and thrifts operate in a safe and sound manner, and in compliance with the law. Under our statutory enforcement scheme, the purpose

of our actions is not to punish banks or make examples of anyone. In that respect, we are very different from agencies like the Department of Justice, which is authorized under the law to bring actions for punitive purposes, including criminal actions, against institutions and individuals. By contrast, the OCC has no authority to investigate or prosecute criminal activity.

Second, if there is a lapse significant enough to warrant a public action, then the underlying problem is almost certainly one that must be addressed immediately. This is particularly true in cases involving financial harm to individuals, where we will move as quickly as possible to ensure those customers are compensated in a timely fashion. While we have authority to impose civil money penalties, those fines often come later, after a remedial document has been put in place. There are a number of reasons for this. One reason is that our enforcement statutes require us to consider additional factors and, in the case of larger “tier 2” penalties, meet a heightened legal standard. In order to do this, it is helpful to have more time to assess why the bank or thrift dropped the ball in the first place and how well it reacted once the particular concern was identified. Finally, in cases where other agencies are involved, we will normally coordinate our penalty actions with the other agencies so that all actions can be brought together.

Most often these actions are taken with the consent of the bank or thrift, and I think there is some confusion about what the term “consent” means in this context. I’ll start with what it doesn’t mean: it does not mean that we take an action only if the supervised bank agrees, nor does it mean that we are willing to compromise on the form or the substance of the action in order to achieve a negotiated settlement.

The OCC is no different than other agencies when it comes to resolving its enforcement cases by consent. The vast majority of actions brought by the Department of Justice, the

Securities and Exchange Commission, the Federal Trade Commission, and other federal agencies are resolved through negotiated settlements, in much the same way each of you resolve many of the actions you take.

There are good reasons for this. In most cases, entering into a settlement is a positive outcome for both the public and the agency. Litigated cases typically take a long time to resolve, and they can have an uncertain outcome. This is a particular problem in consumer cases, where victims could literally be waiting years to obtain relief, if ever. By contrast, when a case is settled, an enforceable order is immediately put in place that requires banks to take corrective and remedial action. Often the bank has to pay a significant monetary penalty as well. This supports our supervisory goals of getting problems fixed at the banks as timely and efficiently as possible, and ensuring that consumers are made whole.

But let me be very clear: while most of our enforcement actions are resolved by settlement, we are prepared to litigate those actions if the bank or thrift refuses to consent. Before initiating an action, we conduct a thorough review of the facts and an analysis of the law, and we do not initiate actions unless we believe they can be successfully litigated. Consequently, we stand prepared to litigate each and every enforcement action that we present to a bank or an individual before an administrative law judge, which is the venue for such actions. Banks and the defense bar are well aware of this and, frankly, we believe it is a big reason why so many of the respondents in our cases are unwilling to challenge our actions and instead consent to our orders.

There is a tendency among some to automatically dismiss any enforcement action we take against a large institution as insufficiently severe, but that criticism misses the mark on several points. First, the actions we bring require banks to adopt or change policies and

procedures, adjust systems and controls, and require other significant operational changes that are taken very seriously by the affected banks. In the case of cease and desist orders, which are the most severe remedial action we can take under our enforcement scheme, the individual directors sign the orders, committing themselves to ensuring that the terms of the order are effectively implemented and knowing that if they fail, they may be personally subject to additional action, including penalties. Where appropriate, we have also imposed fines commensurate with the nature of the infraction, and those fines have sometimes been very substantial. For example, not only was the recent \$500 million dollar penalty we assessed against HSBC the largest penalty the OCC has ever assessed, but it is by far the largest penalty that any federal banking agency has ever assessed, exceeding by a wide margin all of the bank's cost savings for its deficient BSA compliance program.

And as I noted a moment ago, we have no authority to prosecute criminal cases. However, we regularly make referrals directly to the Department of Justice, and we work closely with them as they develop cases. On occasion, we have found ourselves working on parallel tracks, investigating the same institution, and were able to provide support to Justice. While we don't disclose referrals, once they are made or once the Justice Department gets involved for any reason, it is solely up to Justice to decide whether to prosecute a financial institution. That isn't an easy call, and I think they've done a very good job in exercising appropriate judgments. I would add that, in my time as Comptroller, we've worked with Justice on a number of cases, and both my legal staff and I have been extremely impressed with the professionalism and collegiality of the department's lawyers.

Of course, that leaves open the question of whether more financial institutions should be brought into court more often. That is, should we be seeking even more severe penalties that are

less likely to result in consent orders and more likely to lead to actions before an administrative law judge? Or, should more actions be taken by the Department of Justice based on referrals from any of the bank regulatory agencies or the department's own investigative work?

I would simply say that, while such decisions should never be made lightly, no one should shrink from such action when necessary. Banks play a vital role in the economic well-being of families and communities both here and abroad, and they are essential to the health of our national economy. But as important as they are, they should not be considered immune from prosecution when circumstances warrant. No institution should be viewed as too big to prosecute.

Nor should individual employees be considered immune. The OCC has ample authority to take action against culpable individuals and a long history of doing so, including removal and prohibition actions and civil money penalties. In virtually every case where we take an action against an institution, we also conduct a parallel review for possible actions against responsible individuals, and we take such actions where they are warranted and legally supportable.

I believe the OCC has an excellent enforcement program that balances these considerations, and it has served us well in meeting our supervisory objectives, by ensuring the safety and soundness of our institutions, and ensuring that individuals harmed by deficient or abusive practices receive compensation. We stand ready to work with you and other federal and state regulatory and law enforcement agencies to help meet our common goals.

Thank you. I look forward to your questions.