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Office of the Comptroller of the Currency
U.S. Department of the Treasury

OCC BULLETIN 2011-29

Subject: Foreclosure Management
Date: June 30, 2011

To: Chief Executive Officers of All National Banks, Department and Division Heads, and All Examining Personnel

OCC 2011-29 was replaced by OCC 2014-2

As of May 17, 2012, this guidance applies to federal savings associations in addition to national banks.*

Purpose

The Office of the Comptroller of the Currency (OCC) is issuing guidance to communicate the OCC's expectations for the oversight and management of mortgage foreclosure activities by national banks. Further, the OCC is directing national banks that have not already done so, to conduct self-assessments of foreclosure management practices to ensure that their practices conform to the expectations outlined in this guidance. The self-assessments should include testing and file reviews and be appropriate in scope, considering the level and nature of the bank's mortgage servicing and foreclosure activity.

This guidance is focused on providing OCC expectations for national bank foreclosure management practices. It does not address detailed mortgage servicing requirements or broader issues related to working with troubled borrowers. The OCC and other federal bank regulatory and housing agencies are developing guidance to address the full range of mortgage servicing issues that have surfaced during the current housing crisis. The guidance on the broader mortgage servicing issues resulting from this effort will be released at a later date. For purposes of this guidance, bank managers should refer to the April 2011 *Interagency Review of Foreclosure Policies and Practices*.

Background

In the fourth quarter of 2010, the OCC, the Federal Reserve, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (agencies) conducted reviews of foreclosure processing at 14 federally regulated mortgage servicers. The reviews were designed to evaluate the adequacy of controls and governance over servicers' foreclosure processes and assess servicers' authority to foreclose. Examiners focused on foreclosure policies and procedures; quality control and audits; organizational structure and staffing; and oversight and monitoring of third-party law firms and other vendors. The agencies found critical weaknesses in servicers' foreclosure governance processes, foreclosure documentation preparation processes, and oversight and monitoring of third-party vendors, including foreclosure attorneys. The weaknesses resulted in unsafe and unsound practices and violations of applicable federal and state laws. Additional detail can be found in the April 2011 *Interagency Review of Foreclosure Policies and Practices*. The results raise concerns that similar weaknesses may exist in other servicing operations.

Foreclosure Management Standards

While the reviews at the 14 large mortgage servicers and subsequent supervisory responses address a large segment of the mortgage servicing market, the OCC wants to ensure that all mortgage servicers under its supervision adhere to appropriate foreclosure management standards. Thus, national banks engaged in mortgage servicing, whether for their own book or others, must ensure compliance with foreclosure laws, conduct foreclosure processing in a safe and sound manner, and establish responsible business practices that provide accountability and appropriate treatment of borrowers in the foreclosure process.

Foreclosure process governance

Management should ensure that foreclosure governance processes are sufficient to manage and control operational, compliance, legal, and reputation risk associated with foreclosure activities. Boards of directors should ensure that management has addressed these areas. Depending on the level of activity, this will generally require policies and procedures that provide effective guidance, control, and monitoring of all foreclosure-related activities, including appropriate vendor management and audit and quality-control standards. Management also should ensure sufficient staffing, organizational structure and training is in place to carry out foreclosure activities in a proper and legal manner.

Dual track processing

Borrowers are often confused when a servicer is working with them to modify their mortgage but continues with legal proceedings related to foreclosure. To reduce this confusion, management should suspend foreclosure proceedings for successfully performing trial period modifications where they have the legal ability to do so under servicing contracts.

Affidavit and notarization practices

Management must ensure that attestations in foreclosure-related affidavits are truthful, accurate, and adequately supported by file documentation, that affiants have sufficiently reviewed the documentation and have adequate knowledge to make the attestations, and that notary practices conform to state legal requirements.

Documentation practices

Management must ensure that all documents required supporting lawful foreclosure actions are maintained and have been properly endorsed or assigned. Further, management should ensure the maintenance of a clear audit trail reconciling foreclosure filings to servicer source systems of record. The accuracy of those records should be verified, including statements of total indebtedness and fees charged.

Legal Compliance

Management must ensure adherence to all laws and regulations related to mortgage foreclosures. In particular, management is reminded that certain borrowers are provided additional foreclosure protections through the Servicemembers Civil Relief Act and bankruptcy provisions.

Third-party vendor management

Management should properly structure, carefully conduct and prudently manage relationships with third-party vendors, including outside law firms assisting in the foreclosure process. Management should ensure that third-party vendors have the skills necessary to perform the assigned functions. Roles and responsibilities should be clearly defined and performance should be monitored. Refer to OCC Bulletin 2001-47, "Third-Party Relationships: Risk Management Principles," for additional guidance on expectations for managing third-party relationships.

Self-Assessment of Foreclosure Management Practices

National banks should conduct a self-assessment of foreclosure management practices no later than September 30, 2011. Banks that identify weaknesses in their foreclosure processes through the self-assessment should take immediate corrective action. Banks should determine if the weaknesses resulted in any financial harm to borrowers and provide remediation where appropriate. Examiners will review the self-assessments, corrective actions, and any determinations of financial harm and related remediation in the next quarterly review or examination of the bank.

Further Information

For more information, please contact: Kevin Russell, Director, Credit and Market Risk Division, (202) 649-6670.

Timothy W. Long
Senior Deputy Comptroller for Bank Supervision Policy
and Chief National Bank Examiner

* References in this guidance to national banks or banks generally should be read to include federal savings associations (FSA). If statutes, regulations, or other OCC guidance is referenced herein, please consult those sources to determine applicability to FSAs. If you have questions about how to apply this guidance, please contact your OCC supervisory office.