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“Robo-Signing, Chain of Title, Loss Mitigation and Other Issues in Mortgage Servicing”

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Subcommittee on Housing and Community Opportunity
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Chairwoman Waters, Ranking Member Capito and Members of the Subcommittee, thank you for the opportunity to testify before you today on behalf of the Department of Housing and Urban Development and the Federal Housing Administration regarding foreclosure processing concerns that have been raised about certain loan servicers – specifically, about what HUD is doing to enforce the law and to describe FHA’s four-month review of firms servicing FHA mortgages.

Madam Chairwoman, since taking office 21 months ago, helping families and our economy recover from the worst economic crisis in 80 years has been the Obama Administration’s top priority. As part of that effort, we have taken a comprehensive approach to addressing the housing crisis.

Since April 2009, more than 3.52 million families have received restructured mortgages with more affordable monthly payments. And while we still have a long way to go, we are seeing some positive signs – some indices suggest a stabilization of home prices after their 30 month slide, and foreclosure starts are actually down compared to this time last year.

With this Subcommittee’s help, we passed the Dodd-Frank Wall Street Reform bill, which addresses many of the systemic issues in the financial system that led to our recent struggles, and lays a solid foundation for building a healthier housing finance system. Dodd-Frank will also put an end to hidden fees, deceptive mortgages and other practices that tilted the table against ordinary people. And perhaps most important of all, it created a Consumer Financial Protection Bureau that will help protect consumers against precisely the kinds of negligence and abuse we’re now finding in the foreclosure processes of some servicers.

Administration Efforts Around Foreclosure Processing

Of course, as I mentioned, the job is far from over. Recent reports of faulty documentation and fraudulent affidavits in the foreclosure process remind us that we continue to pay a very steep price for nearly a decade of abuses and bad behavior

As Secretary Donovan has said, the notion that many of the very same institutions that helped cause this housing crisis may well be making it worse is not only frustrating – it’s shameful.

As such, the Administration is focused on three primary goals in addressing foreclosure issues.

First, we are holding lenders and servicers accountable. Mortgage servicers expect that homeowners will meet their mortgage obligations – and American homeowners should expect the same of the servicers. We take very seriously the charge that servicers must meet that expectation.

Second, we are helping struggling borrowers into sustainable housing situations through modification programs for borrowers who are facing financial hardship or have lost their jobs, refinancing programs for underwater homeowners, and incentives to promote alternatives to foreclosure such as short sales and deeds-in-lieu of foreclosure.

Third, we are working to resolve the significant uncertainty that this controversy has raised for borrowers and the housing market. With 1 out of every 4 homes sold in recent months a foreclosure sale—and with vacant and abandoned homes more than three times as destructive to neighboring property values as occupied homes at the beginning of the foreclosure process—those falling behind on their mortgage payments are not the only families at risk from this situation. Homeowners around the country who have watched their home values plummet over the last few years through no fault of their own are also put at risk.

To support the goals of accountability, stability, and clarity in the housing market, HUD is working with other federal agencies and regulators to fully investigate the issues that recent foreclosure revelations have raised, including working with the Financial Fraud Enforcement Task Force, the Office of the Comptroller of the Currency, the Federal Housing Finance Agency, and the Federal Reserve Bank. Indeed, Secretaries Donovan and Geithner were joined at HUD in October by representatives from 10 different federal and regulatory agencies where we discussed how we could best coordinate our investigations and jointly ensure that action is taken.

Following that meeting, we together sent a clear message:

Where any homeowner has been defrauded or denied the protections and rights owed them under law, those protections and rights should be enforced. And problematic practices should be fixed quickly so that these issues do not recur.

Madam Chairwoman, with the remainder of my testimony, I want to tell you in more detail how HUD and the FHA are responding to these challenges – specifically, the steps we took at FHA when we took office to protect responsible borrowers and the other ways HUD enforces the law to protect consumers.

FHA Loss Mitigation Protocols and Review

As you know, Madam Chairwoman, FHA requires the servicers it approves to actively engage struggling homeowners to prevent avoidable foreclosures. We do this to ensure that help is being provided before homeowners get into trouble, not just after the fact, by which time it's much less likely that families will be able to stay in their home.

FHA's Loss Mitigation Program

FHA's loss mitigation program, which has helped protect more than half a million borrowers during this crisis, includes numerous strategies to make sure that mortgagees take the right steps to minimize the risk

that a troubled borrower goes into foreclosure. Participation in the loss mitigation program is mandatory for FHA lenders. FHA lenders are required to:

- Consider all reasonable means to address delinquency at the earliest possible moment;
- Inform borrowers of available loss mitigation options and the availability of housing counseling within the second month of delinquency;
- Evaluate each delinquent loan no later than the 90th day of delinquency to determine which loss mitigation option is appropriate;
- Utilize loss mitigation whenever feasible to avoid foreclosure;
- Re-evaluate each loan monthly until reinstatement or foreclosure;
- Report loss mitigation actions through the single family default monitoring system (SFDMS);
- Retain a complete audit trail confirming compliance with all loss mitigation requirements.

Several comprehensive reinstatement options are available to promote retention of home ownership, with an additional two disposition options available to assist borrowers who are in default and need to transition to lower cost housing. FHA enforces its loss mitigation protocols by performing servicer compliance reviews. Where FHA finds that servicers have not complied with FHA's loss mitigation requirements, FHA seeks indemnifications against future insurance claim losses and/or may refer servicers to the Mortgagee Review Board for egregious violations.

With these rules, FHA has helped more than half a million homeowners during this crisis through some 760,000 loss mitigation actions – which has protected the taxpayer and FHA capital reserves by reducing the number of defaults in FHA's portfolio.

Monitoring and Servicer Performance

While much of the recent media attention has focused on affidavits and other steps near the end of the foreclosure process, at the FHA, we were focused well before the recent revelations on the mortgage servicing process as a whole.

At the time I took office at FHA, we found that significant reviews of servicer performance were not being done and had never been done, certainly not at the level of detail required. Thus, in November, 2009 we began implementing very specific monitoring around servicer performance – particularly whether servicers were helping to prevent foreclosures by helping responsible homeowners restructure their mortgages.

Specifically, we initiated more robust servicer loss mitigation comparison reporting, which spanned the vast majority of the FHA portfolio. This new, more detailed reporting system enabled FHA to provide peer group comparisons of servicers in their utilization of loss mitigation options available to borrowers, which allowed us to identify which tools servicers were using, how frequently and how consistently.

Initial findings showed significant variations in the performance of different servicers, triggering a more in-depth look at firms servicing FHA mortgages.

FHA's Four-Month Review Of Firms Servicing FHA-Insured Mortgages

In May, FHA launched an in-depth review of several of its largest servicers, looking in particular at whether their foreclosure prevention efforts fully comply with the FHA's rules and regulations.

FHA reviewed the operations of the five largest servicers of FHA-insured loans, whose aggregate portfolios account for over 70% of HUD's single family insured servicing portfolio, to monitor their compliance with FHA requirements.

The early returns suggest that some servicers may be falling short – that in varying degrees many of the servicers under review may not have met HUD's expectations in assisting borrowers through the loss mitigation process. Field analyst reviews suggest that some servicers may lack knowledge of the FHA loss mitigation process, the technology necessary to expedite loss mitigation processing requests, and a sufficient number of experienced staff necessary to clear loan modification request backlogs.

FHA is ensuring these servicers address the issues of concern identified through its reviews. This includes extensive consultation with servicers' senior management and assigned work groups, customized training and planning assistance, and ongoing evaluations of servicers' progress in correcting deficiencies and improving compliance.

Penalties and Claim Reimbursements Imposed by FHA on Servicers

Should it become clear that these early indications are in fact part of a much broader problem of unacceptable behavior on the part of certain servicers, our response will be very firm where it is appropriate. Servicers that are not meeting FHA's standards will face the full strength of our enforcement authority, including the levying of fines, sanctions, and if necessary, stripping institutions of their FHA approval. Prior to the start of FHA's current servicer review process, which began in May 2010, an evaluation of the practices of one servicer yielded over \$700,000 in administrative fees .

This is part of a broader commitment to lender enforcement. Indeed, since I began serving as Commissioner, FHA has suspended a number of well-known lenders, withdrawn approval for over 1,500 others and imposed over \$4.27 million in civil money penalties and administrative payments to non-compliant lenders.

In all of these actions, we are sending a very clear message: that if you don't operate ethically and transparently, we won't do business with you. And we will not hesitate to act.

It is worth noting that at FHA, the violations we have seen are not industry-wide. While the review I discussed above shows that certain companies do not appear to be following the rules, others are. Given the recent reports of more widespread problems in how servicers have been handling the foreclosure process, we have broadened our reviews to cover that process more comprehensively, in order to obtain a clearer picture of the extent of the problems.

Those who are breaking the law will be held accountable.

But Madam Chairwoman, I would also add that where problems have not been found, we should not be leaving families in limbo indefinitely. Getting to the bottom of these problems and providing struggling homeowners and homebuyers alike with the assistance and certainty they need is essential to economic recovery.

HUD's Broader Enforcement Role

The review at FHA represents only one part of the aggressive, comprehensive approach that FHA and HUD have taken to protect homeowners and borrowers in these difficult times and to help our housing market recover – including how we have responded to foreclosure processing revelations.

FHA's Enforcement Role

Perhaps the most significant way we protect consumers is through FHA enforcement on lenders in its portfolio. As this Subcommittee well knows, we are in the process of implementing the most sweeping reforms to FHA credit policy, risk management, lender enforcement, and consumer protections in the agency's history. And as I mentioned above, we have suspended and withdrawn approval for over 1,500 lenders.

We appreciate again the support the full Committee showed for giving FHA the authority to increase its premiums – and for supporting broader FHA Reform legislation that would provide additional tools to hold lenders accountable. And I urge Congress to enact the key enforcement elements of that legislation before the end of the year.

HUD's Process for Addressing Consumer Complaints

For FHA-insured borrowers, consumer complaints come into our National Servicing Center. Servicers are closely monitored on the number and type of customer complaints that are elevated to the National Servicing Center call center. Servicers with excessive complaints are required to implement a rapid response escalation process within their own organization to address borrowers needing immediate assistance. This process must include written procedures, turnaround time standards, and the documentation of quality control metrics.

Roles in Monitoring/Regulating the Current Problems

Typically our lender reviews are for compliance with loss mitigation and foreclosure requirements. Put simply, servicers of FHA-insured loans must comply with FHA's foreclosure guidelines. FHA requires that servicers only foreclose after all loss mitigation options have been considered. If a servicer determines that its only option is to foreclose, FHA regulates that process to ensure the servicer forecloses in a manner that is fair to all parties involved. FHA monitors servicers by reviewing a sample of their executed foreclosures and examining the procedures and processes they have in place to govern their foreclosure operations.

We are in the process of expanding our lender review to look into specific compliance with foreclosure process. In order to fully evaluate servicers' complete affidavit process, including detection of robo-signing, a foreclosure review questionnaire has been issued to large servicers of FHA-insured loans to obtain detailed information regarding their foreclosure processes generally, as well as their payment processing, document handling, and title clearance operations. On-site servicer inspections will then take place the first 2 weeks of December 2010 to follow up on information received via the questionnaires. HUD analysts will use the information provided in the questionnaires and reviews to investigate the means by which servicers track affidavits, security instruments and promissory notes, whether servicers

verify the validity of these documents and what controls they have in place to identify failures in the process.

RESPA and SAFE

HUD protects consumers through additional efforts as well. Through oversight of state compliance with the Secure and Fair Enforcement (SAFE) Mortgage Licensing Act, HUD is working with states to identify, track, and bar fraudulent loan officers and improve the quality of loan officers through licensing. The SAFE Act directs States to adopt minimum uniform standards for the licensing and registration of residential mortgage loan originators and to participate in a nationwide mortgage licensing system and registry database of residential mortgage loan originators. It sets forth a nationwide minimum standard for the licensing and registration of state-licensed mortgage loan originators.

Through the Real Estate Settlement and Procedures Act (RESPA), HUD enforces requirements on the front end to provide more disclosure in the process from lenders when purchasing a home.

RESPA Specialists investigate every complaint of loan servicer RESPA violations. Complaints are received from consumers by mail, phone calls and e-mail. Phone calls are assigned to Specialists on a rotating basis and must be answered within 2 business days of assignment. E-mails are also assigned to Specialists on a rotating basis and must be answered on the day of assignment. Case files are opened for each complaint received by mail and for each phone call and e-mail that cannot be immediately handled with a response to the complainant.

Enforcement Processes under Section 6 of RESPA

Section 6 of RESPA covers loan servicing and escrow account administration. After a Specialist is assigned a case, he or she will contact the complainant for additional information. In many cases, all the consumer needs is information on filing a complaint with the loan servicer. The consumer is given information on how to file a Qualified Written Request or QWR. Under RESPA, the loan servicer must acknowledge the complaint within 20 days and provide a response within 60 days. If the loan servicer fails to comply with the statute or the actions of the servicer has put the consumer's property in immediate jeopardy, the Specialist contacts the servicer to discuss the consumer's problems and complaints.

The Specialist acts as an intermediary between the consumer and the settlement service provider and shepherds the case until the matter is resolved. If necessary, a closing letter is sent to the consumer and the settlement service provider setting forth the terms of the resolution in order to insure that the resolution is carried out.

Section 6 of RESPA, in subsection (f), provides that an individual may seek damages and costs against anyone who fails to comply with any provision of the section. It also allows for a class action to redress violations. It does not specifically authorize an enforcement action by HUD or by any other federal or State government entity. However, section 16 of RESPA provides jurisdiction of the courts and a statute of limitations for any government action pursuant to the provisions of sections 6, 8, or 9 of RESPA. Generally, the RESPA Office relies upon negotiating with the target loan servicer to insure voluntary compliance with the requirements of section 6.

Enforcement Processes under Section 10 of RESPA

Section 10 of RESPA restricts the amount of money a loan servicer can require in an escrow account. The process for handling cases involving violations of Section 10 is more complex. After the file is opened and assigned, the Specialist contacts the complainant for additional information. If it is determined that the business practices of a settlement service provider should be investigated, the Specialist determines how the investigation should proceed. The Specialist can send an information and document request under the investigative authority given to the Secretary.

If it is determined that an on-site investigation of the target would yield more information, the case can be referred to the RESPA Office's investigation consultants who will conduct an investigation under the Specialist's directions.

If the violation is minor, no consumer has been harmed, and the violation is the result of the settlement service provider's failure to understand the constraints placed on his/her actions by RESPA, a warning letter may be sent to the target outlining the violation and asking for a signed affidavit stating that the business practice in question has ceased. The target is told that if the violation continues or occurs again, the RESPA Office will open up a full-scale investigation.

At any time, the Specialist may determine that the facts of a case, a high-profile target, or the hiring of legal counsel by the target warrants the case being referred to the Office of General Counsel (OGC). The assigned attorney will assist the Specialist in determining how to proceed with the case, and in handling settlement negotiations and drafting settlement documents. If the target has failed to respond to the information and document request, OGC will issue a subpoena.

In the case of failure of a lender or escrow servicer to submit an escrow statement to the borrower as required by section 10(c), the Secretary shall assess against that party a civil penalty of \$50 for each such failure. The total amount imposed on a lender or escrow servicer for all such failures during any 12-month period shall not exceed \$100,000. If the failure is the result of an intentional disregard of the requirement to submit a statement, then the penalty imposed shall be \$100 per failure, and the \$100,000 limitation shall not apply.

If the target is regulated by another state or federal agency, the specialist will contact that agency to discuss the possibility of a joint investigation. The RESPA Office has developed excellent working relationships with several agencies in conducting joint investigations.

Consumer Redress

Although the RESPA Office cannot take action on behalf of an individual consumer, if a Specialist discovers during the course of an investigation that consumers have been financially damaged by the business practices of the target, the Specialist will generally require as a part of any settlement, that restitution be made to the consumers in addition to any penalties agreed to in the settlement.

If OGC and the Specialist determine that a settlement cannot be reached with the target or if the violations warrant taking legal action, the case may be referred to the Justice Department for consideration and action.

For FY 2010 there were 40 cases resolved as Consumer Redress; the total Settlement Amount was more than \$392,000. This represents 23% of the Consumer Redress cases since the RESPA Office started keeping records in 2006.

According to the records of OGC, during the past 10 years, 841 enforcement cases have been pursued for violations of section 8 of RESPA. As a result of those cases, \$114 million has been returned to consumers in the form of restitution or to the Treasury as disgorgement of illegal profits.

Lastly, Madam Chairwoman, I would note that recent rule changes to RESPA that became effective in January 2010 significantly increased disclosure and transparency of fees and costs during purchase process. According to a survey by Ernst Publishing Company, these changes have resulted in disclosed prices being more accurate.

Restoring Trust in America's Mortgage Markets

And so, Madam Chairwoman, as you can see, this Administration is providing tools and enforcement mechanisms essential to protecting families and restoring trust in America's mortgage markets.

But government can't do the job alone.

Through this controversy and this crisis, the mortgage lenders and servicers have lost an enormous amount of trust from the American people. Whether it is reducing principal for underwater homeowners, adopting responsible underwriting practices that ensure fair access to credit or ensuring greater transparency and accountability in their own business practices, the industry needs to take steps to earn that trust back.

This Administration won't tolerate business as usual in the mortgage market – and the responsible actors in the industry shouldn't either.

President Obama has said that we won't stop every foreclosure – and he's right.

But by continuing to provide help to families—whether it's to stay in their homes, to ensure they can buy new homes, or to help them to transition to affordable rental housing—the sooner our neighborhoods will stabilize – and the sooner our economy will recover.

Identifying the full extent of the issues and fixing the problems that have been identified in mortgage servicing and foreclosure practices are an important piece of this overall effort. And that is why I am proud to join my colleagues today and thankful for this opportunity to testify before you today. Thank you.