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TESTIMONY

OF

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COMPTROLLER OF THE CURRENCY

BEFORE THE

COMMITTEE ON FINANCIAL SERVICES

OF THE

U.S. HOUSE OF REPRESENTATIVES

March 20, 2009

Statement Required by 12 U.S.C. § 250:

The views expressed herein are those of the Office of the Comptroller of the Currency and do not necessarily represent those of the President.

INTRODUCTION

Chairman Frank, Ranking Member Bachus, and members of the Committee, I welcome this opportunity to appear before you today to discuss the OCC's supervisory and enforcement authorities. In your letter of invitation, the Committee expressed interest in actions we have taken against financial fraud and violations of consumer protection laws and regulations; any impediments that we face to effective enforcement of fraud and other financial consumer protection standards; coordination and cooperation among the agencies responsible for enforcing consumer protection standards and laws targeting financial fraud; and any gaps in the civil and criminal authorities of those agencies.

Recent unprecedented losses at financial firms, the mortgage crisis, and shocking examples of fraud and excess, including the arrests of high-profile private fund managers for alleged theft of client funds, have prompted the Committee's questions about the adequacy and use of enforcement powers by federal and state authorities. The Committee has expressed interest in how the Federal banking agencies ("FBAs") have used their existing enforcement authority. You have also asked whether federal and state financial regulatory agencies and law enforcement authorities have the tools and resources they need to aggressively pursue financial institutions and individuals that commit fraud, abuse their positions, and violate the law.

The OCC vigorously enforces laws and regulations applicable to national banks through our supervisory activities and informal and formal enforcement actions to protect the safety and soundness of national banks and national bank customers. As described below, the OCC and the other FBAs have a broad range of supervisory and enforcement tools that are used to supervise banks and protect consumers, investigate and halt fraudulent activities, and remove and prohibit those responsible from ever working in the banking industry again. Unlike the Department of

Justice ("DoJ") and the FBI, however, the FBAs are not criminal law enforcement agencies, and we do not have authority to investigate and prosecute crimes of fraud. Rather, the FBAs refer suspected criminal fraudulent acts to DoJ for prosecution.

The Committee's interest spans a potentially broad range of topics, involving different types of financial firms and different regulatory regimes. My testimony covers the OCC's activities and perspectives on enforcement in four key areas: 1) our approach to enforcement and how we use different types of enforcement actions; 2) how we have employed enforcement actions in problem bank situations to protect consumers and eliminate fraud; 3) how we coordinate with state and federal regulatory agencies and law enforcement agencies; and 4) the measures we have taken to address mortgage lending practices.

I. THE OCC'S ENFORCEMENT PHILOSOPHY, AUTHORITY, AND APPROACH

The OCC addresses operating deficiencies, violations of laws and regulations (including violations of consumer protection standards), and unsafe or unsound practices at national banks through the use of supervisory actions and civil enforcement powers and tools. National banks and their operating subsidiaries are subject to comprehensive, ongoing supervision that, when it works best, enables examiners to identify problems early and obtain early corrective action. Because of our regular, and in some cases, continuous, on-site presence at national banks, we have the power and ability to promptly halt unsafe or unsound practices or violations of law.

The heart of our enforcement policy[1] is to address problems or weaknesses before they develop into more serious issues that adversely affect the bank's financial condition or its

[1] OCC's Enforcement Action Policy describes the OCC's policy for taking appropriate enforcement action in response to violations of laws, rules, regulations, final agency orders and/or unsafe and unsound practices or conditions, and was publicly released as OCC Bulletin 2002-38.

responsibilities to its customers. Once problems or weaknesses are identified and communicated to the bank, management and the board of directors are expected to correct them promptly. Management's response to addressing problems is an important factor in determining if the OCC will take enforcement action, and if so, the severity of that action. Of course, in the unprecedented market and economic conditions we now face, problems appear and deteriorate far more quickly than in normal times, making them more challenging to address at an early stage.

Even so, our approach permits most bank problems to be resolved through the supervisory process, without having to resort to an enforcement action. Relevant supervisory actions include the issuance of comprehensive Reports of Examination, supervisory directives, and Matters Requiring Attention ("MRAS") tailored to the specific problems existing at the bank.

As an example, during the period from 2004 through 2007, the OCC issued 123 MRAs requiring corrective actions in connection with national banks' residential mortgage lending activities. By the end of 2008, the OCC had determined that satisfactory corrective action had been taken with respect to 109 (88.6%) of those MRAs, and they were closed.

When the normal supervisory process is insufficient or inappropriate to effect bank compliance with law and the correction of unsafe and unsound practices, Congress has provided the OCC with a broad range of potent enforcement tools. For less serious problems, the OCC begins at one end of this enforcement spectrum with informal enforcement actions. In ascending order of severity, informal actions take the form of a commitment letter, memorandum of understanding, or "Part 30 compliance plan." In situations where the bank's capital is impaired, the OCC may also require the bank to submit an acceptable Capital Restoration Plan, or establish

an Individual Minimum Capital Ratio ("IMCR") requiring the bank to achieve and maintain capital levels higher than regulatory minimums.

These informal actions frequently involve specific and detailed steps that the bank must take before the action is terminated. Informal enforcement actions deal with all aspects of bank operations, ranging from asset quality and credit administration to loan review, underwriting, and consumer compliance. Specific areas that affect a bank's safety and soundness that are often addressed through informal actions include articles relating to: loan documentation, credit underwriting, interest rate exposure, asset quality, earnings, management competence, internal controls and management information systems, audit systems, and employee training and staffing. Informal enforcement actions also often address issues relating to compliance with consumer protection laws in all areas of bank operations, such as disclosure of loan terms, protection of consumer financial information, and avoidance of inappropriate lending practices. In the OCC's experience, national banks usually go to great lengths to take the corrective steps necessary to achieve compliance with informal enforcement actions.

This is not universally true, however. In some circumstances, informal action will not be appropriate, such as when the bank has serious problems coupled with less than satisfactory management; there is uncertainty about the ability or willingness of management and the board of directors to take corrective measures; or the underlying problem is severe. In such cases, the OCC can and will take formal enforcement action, as our track record clearly demonstrates. (Unlike informal actions, formal actions are both public and directly enforceable.) Section 8 of the Federal Deposit Insurance Act ("FDI Act"), 12 U.S.C. 1818, gives the FBAs power to require correction of unsafe and unsound practices and compliance with any law, rule, or regulation applicable to banks, including consumer statutes such as the Truth in Lending Act, Fair Housing

Act, Equal Credit Opportunity Act, Real Estate Settlement Procedures Act, and the Federal Trade Commission Act ("FTC Act") – the principal Federal laws that provide protection for consumer credit applicants and borrowers. We also have authority to, and do, enforce applicable state consumer protection laws, such as laws prohibiting unfair and deceptive practices.

For example, in the safety and soundness context, the OCC will either negotiate a Formal Written Agreement or Cease and Desist Order ("C&D") with a bank or will file a Notice of Charges seeking issuance of a C&D order requiring the bank to take appropriate corrective actions. These may include raising capital, increasing liquidity, improving internal controls, divesting troubled assets, or restricting the payment of dividends or bonuses. Where a bank's capital is impaired, the OCC may also issue a Capital Directive or a Prompt Corrective Action ("PCA") Directive, when authorized by law. Similarly, in the consumer protection context, the OCC may issue a Written Agreement or a C&D requiring a national bank to cease engaging in activities that violate the law, and/or to provide restitution to affected consumers.

OCC may also impose civil money penalties on banks and bank-related individuals. In addition, we have the powerful tool of removing or prohibiting individuals from serving as directors, officers, or employees of federally insured depository institutions. OCC also refers cases to DoJ for criminal investigation and prosecution where criminal activity is suspected. Removal and prohibition ("R&P") authority is our most effective tool in dealing with suspected fraud, because an R&P Order is a lifetime ban on the individual working in the banking industry.

Because most bank supervisory issues are resolved informally, the number of public enforcement actions reported on the OCC's website reflects a minority of all types of corrective actions taken by the agency. The following chart reflects the large number of formal (and

informal) enforcement actions brought by the OCC against institutions and individuals during the past several years:

OCC Enforcement Actions

Type of Enforcement Action	**FY 2005**	**FY 2006**	**FY 2007**	**FY 2008**	**FY 2009 through February**
Cease and Desist Orders	23	14	8	21	13
Temporary Cease and Desist Orders	1	2	1	0	0
Bank Civil Money Penalties	11	12	14	10	3
Formal Agreements	27	27	20	54	28
Bank Individual Minimum Capital Ratio Letters	0	0	0	15	32
Memoranda of Understanding	14	16	9	17	15
Commitment Letters	5	7	1	9	6
Prompt Corrective Action Directives	0	0	0	1	0
Safety and Soundness Plans	1	3	1	4	3
Personal Cease and Desist Orders	21	21	29	16	2
Personal Civil Money Penalties	52	41	65	28	5
Suspension Orders	4	0	1	1	0
Removal/Prohibition Orders	24	42	37	32	9
Notifications of Prohibition, Following Conviction for Crimes of Dishonesty	410	232	108	211	70
Letters of Reprimand	15	41	8	13	9
Totals	**608**	**458**	**302**	**432**	**195**

The list of OCC enforcement actions in recent years illustrates the OCC's ability and willingness to take formal actions where warranted to require correction of unsafe or unsound banking practices, and to address unfair treatment of bank customers. As the above chart indicates, during the past 4+ years, the OCC has taken hundreds of enforcement actions against banks and bank insiders. These include hundreds of different types of actions to address a wide range of issues relating to unsafe or unsound practices or conditions, including capital adequacy, liquidity, asset quality, earnings, loan portfolio management, information technology, audit

procedures, internal controls, managerial competence, book and records adequacy, and many other issues. For example, a 2007 Order against a mid-sized bank restricted insider-related transactions with bank senior officers;[2] a 2007 Order against a community bank required it to address capital levels, interest rate risk policy, credit underwriting and external audit deficiencies, and to appoint two new independent directors;[3] and a 2007 Order against a community bank required it to prepare an acceptable strategic plan for the bank, to improve capital levels, to conduct a loan quality review, and to engage an external auditor to review specific accounts associated with questionable lending activity.[4] These cases are illustrative of a very large number of formal actions taken by the OCC during the past several years specifically to address the deteriorating financial condition at some banks; to remedy weaknesses to bank programs, operations and performance; require qualified management; and to ensure that bank management follows safe and sound banking practices.

The OCC has also taken a number of significant formal enforcement actions to protect consumer interests. For example, in 2008, the OCC took an enforcement action directing Wachovia Bank to pay restitution to all consumers harmed by its relationships with third party payment processors for telemarketers who engaged in marketing a range of questionable and worthless products and services, often targeting the elderly. As a result of the OCC's action, in December 2008, the bank issued restitution checks totaling over $150 million to over 740,000 consumers. Our action was based on our findings of unsafe or unsound practices, and unfair practices in violation of Section 5 of the FTC Act. The settlement also required the bank to

[2] *In the Matter of Commerce Bank, N.A., Philadelphia, Pa.,* OCC No. 2007-065 (June 28, 2007).
[3] *In the matter of The First National Bank of Stratton, Stratton, Colo.,* OCC No. 2007-033 (Apr. 25, 2007).
[4] *In the Matter of The First National Bank of Lindsay, Lindsay, Okla.,* OCC No. 2007-080 (June 19, 2007).

adopt policies and procedures to protect against similar harm, to make a $8.9 million contribution to consumer education, and to pay $10 million in penalties.[5]

The OCC was, in fact, the first FBA to bring an enforcement action based on unfair or deceptive practices within the meaning of the FTC Act. In a groundbreaking case involving Providian National Bank, the OCC asserted violation of Section 5 of the FTC Act as well as California state law – together with our general enforcement authority under the FDI Act – as a basis for issuing a C&D for affirmative remedies including customer restitution, against a national bank. Use of this authority led to a consent order requiring the bank to provide over $300 million to consumers in restitution for deceptive marketing of credit cards and ancillary products; to cease engaging in misleading and deceptive marketing practices; and to take appropriate measures to prevent such practices in the future.[6]

In 2005, the OCC, in joint enforcement actions with HUD, OTS and state insurance regulators, brought an action to enforce Section 4 of RESPA against Chicago Title Insurance Company for misrepresentations in its real estate settlement procedures. Chicago Title was ordered to change its real estate settlement procedures and pay a $5 million civil money penalty.[7]

And also in 2005, the OCC entered into a Formal Agreement requiring Laredo National Bank and its subsidiary, Homeowners Loan Corp., to establish a $14 million fund to reimburse various categories of consumers harmed through their dealings with the bank's mortgage lending subsidiary.[8]

In the area of mortgage fraud, the OCC has issued Orders requiring the payment of millions of dollars in restitution and civil fines as well as prohibition and C&Ds to prevent future

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[5] *In the Matter of Wachovia Bank, N.A.,Charlotte, N.C.,* OCC No. 2008-028 (Apr. 24, 2008). At the same time, the OCC also issued guidance to banks on the proper handling of payment processor relationships. Bulletin 2008-12.
[6] *In the Matter of Providian National Bank,* Tilton, N.H., OCC No. 2000-053 (June 28, 2000).
[7] *In the Matter of Chicago Title Insurance Company,* OCC No. 2005-12 (Feb. 24, 2005).
[8] *In the Matter of Laredo National Bank, Laredo, Tex.,* OCC No. 2005-142 (Nov. 3, 2005).

misconduct.[9] Additionally, the OCC has used its enforcement tools against individuals in banks who attempt to benefit from confidential customer data, such as those who steal from bank customers or take customer lists with them when they leave the employment of a bank.[10] Since 2002, the OCC has taken over 100 consumer-related enforcement actions.

II. ENFORCEMENT ACTIONS CONCERNING PROBLEM BANKS

"Problem banks" warrant special special supervisory attention. The OCC has used a combination of enforcement tools to address deteriorating financial conditions at problem banks. Our efforts, and the type and scope of the enforcement actions taken, are designed to remedy various unsafe and unsound practices and violations. The principal problems we encounter here include inadequate capital, illiquidity, inappropriate growth, inadequate loan underwriting, a lack of appropriate internal policies and controls, and ineffective management. The various corrective measures incorporated into our enforcement actions have included requiring the bank to raise additional capital, restrict borrowings, eliminate certain activities and even entire business lines, adopt appropriate underwriting standards and policies to govern lending activities, replace senior officers and members of the board of directors, limit the transfers of assets, and eliminate payments of bonuses or dividends.

As of February 17, 2009, there were 139 3-rated national banks, 35 4-rated national banks, and eight 5-rated national banks -- a total of 182 problem banks. Since February 2008, in only 12 months, there has been a 136 percent increase in the number of problem banks (77 in February 2008 to 182 in February 2009). However, 3-rated banks are not preordained to fall to a

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[9] *See, e.g., In the Matter of Tracie B. Hunter, LaSalle Bank Midwest N.A., Troy, Mich.,* OCC No. 2007-098 (Aug. 15, 2007), and related Orders.
[10] *See, e.g., In the Matter of Robert Stevenson,* OCC No. 2008-010 (Feb. 21, 2008).

4 or 5 rating. The supervisory goal, which is achieved for most problem banks, is rehabilitation and return to non-problem status. Deterioration from a 3-rating occurs when the volume and severity of problems increase to a critical level or where the bank, through its board and management, fails to take the appropriate corrective actions. In the present stressed economic conditions, it is not surprising that those stresses are affecting more banks or that some banks are deteriorating more quickly than in more normal times. And it follows that OCC enforcement activities are increasing with the number and severity of problem banks.

The OCC has taken more than 300 informal and formal enforcement actions against banks that, during the past 18 months, have been designated for special supervisory attention as problem banks:

Outstanding OCC Enforcement Actions Against Problem Banks,
September 19, 2007, through February 17, 2009

Type of Enforcement Action	**Number of Enforcement Actions**
Cease and Desist Orders	54
Bank Civil Money Penalties	8
Formal Agreements	131
Bank Individual Minimum Capital Ratio Letters	47
Memoranda of Understanding	50
Commitment Letters	23
Prompt Corrective Action Directives	1
Safety and Soundness Plans	11
Total	**325**

As shown in the above chart, we have used a variety of enforcement tools, including Formal Agreements, MOUs, IMCRs, and C&Ds. Each action has been crafted to deal with the specific problems existing at each bank. In some cases we have issued multiple enforcement actions to a single bank. Where a bank's problems have proved insurmountable, as when the

bank has been unable to attract additional capital from private investors, our enforcement actions are designed to prepare the bank for resolution through receivership.

In some problem bank cases, we have used PCA authority in addition to other enforcement tools. PCA categories and the restrictions associated with those categories, including the use of PCA Directives, are driven primarily by a bank's capital levels. Because depletion of capital usually occurs as a result of other deficiencies, capital is often a lagging indicator of problems. Consequently, the OCC generally places a problem bank under an enforcement action well in advance of a decline in capital that would trigger either the issuance of a Notice of Intent to Issue a PCA Directive, or a PCA Directive. In addition, enforcement actions often contain more restrictions and affirmative obligations than would be prescribed under the bank's PCA capital category.

PCA does not eliminate bank failures nor does it ensure such failures result in zero cost to the FDIC insurance fund. However, this doesn't mean that PCA is not working. The OCC has used its PCA authority to dismiss officers and directors from problem banks and to fill gaps between what is contained in the enforcement action and problems that may have developed subsequently. Most important, PCA ensures that problems at banks are addressed earlier, which can sometimes help them avoid failure, and which can also reduce the cost to the deposit insurance fund if failure does occur.

In a number of cases, problem bank enforcement actions have led to our commencing investigations concerning the conduct of bank officials that caused the bank's financial deterioration. The OCC has issued many formal enforcement orders against bank managers and directors who breached their fiduciary duties by failing to effect appropriate and necessary

actions to halt unsafe or unsound activities that resulted in significant risk of loss or actual loss to the bank.

III. OCC COORDINATION WITH OTHER REGULATORY AND LAW ENFORCEMENT AGENCIES

The FBAs regularly share supervisory information and undertake coordinated enforcement actions. As an example, when the OCC issues a remedial enforcement action against a national bank, the Federal Reserve Board will often take a complementary action with respect to the bank's holding company. Pursuant to an interagency sharing agreement, the FBAs regularly exchange documents and information concerning fraudulent activities, including suspicious activity reports that involve suspected illegal activities at multiple financial institutions, and notify each other of enforcement actions against banks and individuals.

We also coordinate extensively with other regulatory agencies and with law enforcement authorities. OCC has entered into similar information sharing agreements with most state banking agencies and all 50 state insurance departments, and we regularly share information with the SEC. We make enforcement referrals to all of these regulators, as well as to state licensing boards and state professional ethics and responsibility boards, with respect to misconduct by attorneys, accountants, real estate agents, appraisers, and other professionals. We also make enforcement referrals and cooperate in investigations conducted by several federal agencies, including, for example, FinCEN,[11] the Department of Labor, IRS, HUD, FEC, and the Federal Trade Commission, with whom OCC recently entered into an information-sharing agreement to

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[11] Pursuant to an interagency agreement, OCC provides information to FinCEN concerning all significant violations of the Bank Secrecy Act ("BSA") detected during our examinations. In addition, the two agencies coordinate enforcement efforts, and often take simultaneous actions against a bank to impose appropriate civil money penalties for BSA violations.

enhance the ability of both agencies to pursue activities of fraudulent payment processors and telemarketers.

When we find suspected criminal violations, including evidence of fraud, we refer such matters to the DoJ. We often coordinate with and assist the DoJ, the FBI, and the Secret Service in their investigations and prosecutions of fraud, as appropriate, by providing OCC examiners to serve as special agents to the grand jury and as expert banking witnesses for the prosecution at trial. As just one example, in addition to our own enforcement actions involving unsafe and unsound practices by senior officials at Hamilton Bank, N.A., Miami, Florida, we provided information to assist the SEC in its taking several of its own enforcement actions, and OCC examiners testified for the DoJ in the criminal trial that resulted in fraud convictions and a 30-year sentence against the former Chairman of the Board – one of the longest sentences ever imposed for a white-collar crime.

OCC is an original member of the National Interagency Bank Fraud Working Group ("BFWG"), which is chaired by DoJ, participates in BFWG subcommittees on Mortgage Fraud and Payment Processor Fraud, and belongs to the President's Corporate Fraud Task Force, all of which serve to coordinate the government's response to fraud in the financial services industry.

IV. OCC SUPERVISORY AND ENFORCEMENT ACTIVITIES REGARDING MORTGAGE LENDING PRACTICES

Abusive lending practices by mortgage lenders and brokers and the current foreclosure crisis understandably have raised questions about the role and effectiveness of bank regulators in anticipating and preventing mortgage lending abuses. This area represents a good example of how we apply our comprehensive approach to supervision and enforcement.

First, it is important to be clear about who did what. The OCC extensively regulates the mortgage business of national banks and their subsidiaries. As a result of the standards applied by the OCC, national banks were not significant originators of subprime loans. The vast bulk of such loans were originated by non-depository institution mortgage lenders and brokers that were subject to a significantly less rigorous system of oversight and examination. Non-depository institution mortgage providers originated the overwhelming preponderance of subprime and "Alt-A" mortgages during the crucial 2005-2007 period, and the loans they originated account for a disproportionate percentage of defaults and foreclosures nationwide, with glaring examples in the metropolitan areas hardest hit by the foreclosure crisis. It is these lenders and brokers that have been widely recognized as the overwhelming source of abusive subprime mortgages resulting in waves of foreclosures. Reflective of the practices used by those non-bank lenders, nearly one-half of the mortgages they originated in some major markets are in foreclosure. As the 2007 Report of the Majority Staff of the Joint Economic Committee recognized, "[s]ince brokers and mortgage companies are only weakly regulated, another outcome [of the increase in subprime lending] was a marked increase in abusive and predatory lending."[12]

The OCC has been aggressive in combating abusive lending practices and in preventing national banks from engaging in such activities. The OCC was the first FBA to issue comprehensive anti-predatory lending guidance and regulations. In 2000, we issued advisory letters on payday loans, title loans, and abusive lending practices designed to prevent national banks and their subsidiaries from engaging in lending practices that were unfair and deceptive. In 2002, we issued comprehensive guidance on unfair and deceptive practices, and separate guidance instructing our examiners to address risks associated with subprime mortgage products.

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[12] MAJORITY STAFF OF THE JOINT ECONOMIC COMMITTEE, 110TH CONG., REPORT AND RECOMMENDATIONS ON THE SUBPRIME LENDING CRISIS: THE ECONOMIC IMPACT ON WEALTH, PROPERTY VALUES AND TAX REVENUES, AND HOW WE GOT HERE 17 (OCTOBER 2007).

In 2003, we issued two advisory letters outlining our expectations for conducting mortgage lending free from predatory or abusive practices. Among other things, these advisory letters provided detailed recommendations for establishing policies and procedures to help ensure that national banks do not become involved in predatory practices in any of their mortgage lending activities, including in loans made through brokers.[13]

In 2004, the OCC issued a rule prohibiting national banks from making loans based on liquidation of a borrower's collateral rather than the borrower's ability to repay.[14] And in 2005 the agency issued "Guidelines Establishing Standards for Residential Mortgage Lending Practices,"[15] based on the anti-predatory lending principles of our 2003 supervisory guidance. These formal Guidelines may be enforced under provisions of the FDI Act.

In October 2006, the OCC and the other FBAs each issued final guidance on nontraditional mortgages, targeting "interest-only" mortgages, in which a borrower makes no principal payments for the first several years of the loan; and "payment option" adjustable-rate mortgages, in which a borrower has several payment options each month, including one with the potential for negative amortization, which results in a portion of the interest due being deferred and added back to a rising loan balance. In conjunction with this guidance, the FBAs also issued illustrations of the type of information that should be provided to consumers regarding these nontraditional mortgages, emphasizing the importance of providing the information in a concise manner and format.

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[13] OCC Advisory Letter 2003-2 (Guidelines for National Banks to Guard Against Predatory and Abusive Lending Practices), February 21, 2003; and OCC Advisory Letter 2003-3 (Avoiding Predatory and Abusive Lending Practices in Brokered and Purchased Loans), February 21, 2003.

[14] 12 C.F.R. 34.3. *See also* 12 C.F.R. 7.4008 (establishing similar limitations on other lending activities by national banks).

[15] 12 C.F.R. Part 30, Appendix C.

In April 2007, the FBAs jointly released a statement encouraging all financial institutions to work with borrowers who may be unable to meet contractual payment obligations on loans secured by their primary residences. The agencies encouraged financial institutions to consider prudent workout arrangements that increase the potential for financially stressed residential borrowers to keep their homes.

Further, in July 2007, the FBAs issued detailed guidance on subprime mortgage lending, developed to address underwriting and consumer protection issues and questions related to certain subprime mortgage products and lending practices. The agencies were particularly concerned with so called “2/28”, “3/27”, and similar ARMs that expose borrowers to significant payment shock once introductory interest rates expire. The statement sets forth the regulators’ expectations for sound lending practices and clear communications with borrowers. It also emphasizes that institutions should verify and document a borrower’s income, assets, and liabilities, and that reduced documentation should be accepted only if there are mitigating factors that clearly minimize the need for direct verification of repayment capacity. The statement provides regulators’ expectation that an institution should evaluate a borrower’s ability to repay a debt by its final maturity at its fully-indexed interest rate. It further provides that prepayment penalties should not extend beyond initial interest-rate reset periods, and that borrowers should have a reasonable period prior to the reset date to refinance their loans without penalty. As with the agencies’ guidelines on nontraditional mortgages, we provided illustrations of consumer disclosures related to subprime ARMs. Further, in May 2008, the OCC issued a Consumer Advisory warning homeowners how to avoid foreclosure “rescue” scams perpetrated by con

artists who take advantage of people who have fallen behind on their mortgages and face foreclosure.[16]

While these statements were issued as agency "guidance," compliance with their provisions is not optional for national banks. The OCC examines banks for compliance, including the numerous interagency statements and advisory letters issued concerning subprime and non-traditional mortgages. Such guidance helps define for the banking community what are considered to be safe and sound banking practices. Thus, deviation from agency guidance, depending on the scope and severity, will result in a range of supervisory and enforcement responses by the OCC.

As previously noted, the OCC has also taken many formal enforcement actions to combat mortgage fraud. Most recently, these included a prohibition Order and civil money penalty assessed against a bank vice president who facilitated the use of a straw borrower and false documents to obtain a mortgage;[17] a C&D against a bank loan officer and a bank manager who participated in a scheme to make false representations concerning the financial condition of loan applicants;[18] prohibition Orders, civil money penalty assessments and a requirement to pay $460,375 in restitution against a bank loan officer and a mortgage processor who submitted false applications on behalf of 64 low-income, first-time homebuyers to purchase homes from a property "flipper";[19] and, in conjunction with actions taken by DoJ and the Federal Housing Administration ("FHA"), various enforcement Orders, including a $6.25 million civil money penalty, against a bank, its mortgage subsidiary and ten former employees, for submitting loans to HUD for FHA insurance without proper review and certifications by appropriate

[16] "OCC Consumer Tips for Avoiding Foreclosure Rescue Scams," CA 2008-1, May 16, 2008.
[17] *In the Matter of David S. Eisenberg,* OCC No. 2008-128 (Oct. 20, 2008).
[18] *In the Matter of Gregory Bobb,* OCC No. 2009-009 (Feb. 4, 2009).
[19] *In the Matter of James Serratore,* OCC No. 2007-051 (Feb. 26, 2007).

underwriters.[20] OCC continues to be active on mortgage fraud issues, through our own enforcement processes and in conjunction with inter-agency efforts in this important area.

CONCLUSION

As a result of the financial crisis, national banks large and small are grappling with many different types of stresses and challenges. At the OCC, we will continue to use the broad range of supervisory and enforcement tools we have available to remedy problems and appropriately sanction abuses.

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[20] *In the Matter of ABN AMRO Mortgage Group, Inc., LaSalle Bank Midwest, N.A., Troy, Mich.,* OCC No. 2005-162 (Dec. 12, 2005).