

State Foreclosure Prevention Working Group

February 2, 2009

The Honorable John C. Dugan
Comptroller of the Currency
Office of the Comptroller of the Currency
250 E Street SW
Washington, DC 20219

The Honorable John M. Reich
Director
Office of Thrift Supervision
1700 G Street, NW
Fifth Floor
Washington, DC 20552

RE: OCC/OTS Mortgage Metrics Report on Redefault Rates

Dear Comptroller Dugan and Director Reich:

As you know, for over a year the State Foreclosure Prevention Working Group¹ has been collecting data from 13 major subprime servicers on their efforts to prevent unnecessary foreclosures. Our data has enabled us to provide the public with extensive and transparent information on the subprime servicing industry.² When we started collecting data in late 2007, we requested that national banks provide us with data on loss mitigation efforts; however, the OCC discouraged national banks from cooperating with our effort and instead initiated its own data collection process. While we would have preferred to work together, we have appreciated the OCC and OTS public reporting of data, as it has expanded the level of information available.

Unfortunately, we still find the level of public reporting by the OCC and OTS falls well-short of what is needed. The foreclosure crisis demands the transparent publication of extensive data so that researchers and policymakers can conduct their own analysis and draw their own conclusions on the integrity and meaning of the data.

¹ The State Foreclosure Prevention Working Group is composed of state attorneys general and state banking agencies, and is led by Iowa Attorney General Tom Miller.

² Copies of the three State Foreclosure Prevention Working Group reports can be found at <http://www.csbs.org/Content/NavigationMenu/Home/StForeclosureMain.htm>.

As a case in point, the OCC and OTS Mortgage Metrics Report (the “OCC/OTS Report”) indicated that 55% of loan modifications made by national banks and federal thrifts were 30+ delinquent at the six-month mark.³ Assessing this data at the OTS National Housing Forum, Comptroller Dugan reportedly remarked that “The results were surprising and not in a good way.” Similarly, OTS Director Reich indicated that these statistics caused him to “have concern about money for loan modifications.”

Our data analysis, review of reports from other research firms, and conversations with many subprime servicers raise important questions regarding this redefault statistic. For instance:

- The 13 reporting non-bank subprime servicers in our group reported a much lower redefault rate. Of the 401,027 loan modifications made between October 2007 and September 2008 (the same ending date as the OCC/OTS Report), only 25.8% (103,561 loans) were at any stage of delinquency. Even adjusting for differences in data reporting, this difference is substantial. Assuming the data is correct, it appears that national bank and federal thrift servicing operations are having much greater difficulty in developing sustainable loan modifications than are at least some non-bank servicers of subprime loans.
- We have spoken with several major subprime servicers subsequent to the release of your report. Most of them are indicating to us a redefault rate of loan modifications much lower than the OCC/OTS Report. In particular, subprime servicers that are pursuing aggressive loan modification strategies are demonstrating much lower redefault rates. For instance, Ocwen recently publicly announced that 21% of modified loans were 60+ delinquent after six months, compared to 37% in the latest OCC/OTS Report.⁴

We have attempted to better understand the methodology behind the calculation of the redefault rate; however, the OCC/OTS Reports do not provide the necessary information that would enable us or the public to understand how this statistic was developed. Furthermore, the OCC/OTS Report failed to provide any further analysis of these redefaults – in particular, whether the redefault rates varied based on the type of loan modification or whether the modification provided meaningful payment relief to the homeowner.

One reason for the redefault rate is, as Comptroller Dugan has recognized, that the modifications did not reduce monthly payments enough to be truly affordable. In fact, as we are sure you are aware, there is a growing body of research that suggests the majority of loan modifications in the past year have not led to meaningful payment relief to homeowners.

³ *OCC and OTS Mortgage Metrics Report*, Third Quarter 2008, Comptroller of Currency and Office of Thrift Supervision (Dec. 2008), p. 5.

⁴ See *Forestalling Foreclosure*, Kiviat, Barbara, Time Magazine (Jan 12, 2009), pp. 44-45.

- The Maryland Office of Financial Regulation has collected data on loan modifications from servicers, and its data reflects that over 60% of loan modifications in August and September 2008 resulted in the same or increased monthly payments by homeowners. The modification data for those servicers that were part of insured depositories reporting to the Office of Financial Regulation showed even higher levels of loans with equal or higher payment burdens after the modifications were complete.
- The Massachusetts Attorney General found that “virtually none” of the loan modifications it reviewed led to a reduction in the monthly payment.⁵
- Professor Alan White of Valparaiso University has published research indicating that only 35% of loan modifications result in a reduced monthly payment, while 45% result in an *increased* monthly payment.⁶

Based on this research, we should not be surprised to see a significant redefault rate for these types of loan modifications – homeowners struggling to afford their current mortgage are unlikely to be able to afford *higher* monthly payments. This type of loan modification simply kicks the can down the road, instead of providing a sustainable solution. This common sense notion is borne out by the research. A report by Credit Suisse in October 2008 indicated that loan modifications that reduce the principal balance and those that reduce interest rates have the best performance, while “traditional” modifications that increase payments have the highest level of redefault.⁷

We are concerned that either the institutions supervised by the OCC and OTS have thus far failed to offer homeowners sustainable loan modifications, in contravention to guidance issued by the federal banking agencies,⁸ or that the data collection has some other limitation not identifiable by your current report.

⁵*Testimony of Massachusetts Attorney General Martha Coakley*, U.S. House Financial Services Committee (Sept. 17, 2008), available at: http://www.mass.gov/Cago/docs/press/testimony_ag_sept17_loan_modification_hearing.pdf (“virtually none” of 144 loan modifications registered in Massachusetts led to reduction in monthly payment for homeowner).

⁶*Rewriting Contracts, Wholesale: Data on Voluntary Mortgage Modifications from 2007 and 2008 Remittance Reports*, White, Alan M., (Aug. 26, 2008), available at SSRN: <http://ssrn.com/abstract=1259538> (only 50% of 4,300 loan modifications reported reduced the monthly payment of the homeowner). Professor White recently updated and expanded his research and reached similar conclusions. *Deleveraging the American Homeowner: The Failure of 2008 Voluntary Mortgage Contract Modifications*, White, Alan M., (Jan. 12, 2008), available at SSRN: <http://ssrn.com/abstract=1325534>.

⁷*Subprime Loan Modifications Update*, Credit Suisse (Oct. 1, 2008).

⁸*See Interagency Statement on Meeting the Needs of Creditworthy Borrowers* (Nov. 12, 2008) (“Systematic efforts to address delinquent mortgages should seek to achieve modifications that result in mortgages that borrowers will be able to sustain over the remaining maturity of their loan”), available at: <http://www.occ.gov/ftp/release/2008-131.htm>.

As a result, we ask that you provide to the public a full and transparent report of loan modifications made by national banks and federal thrifts that would include, at a minimum, the following:

- A copy of the data instrument currently used by the OCC and OTS to collect data on loan modifications and an explanation of the analytics used to calculate the redefault rate in the OCC/OTS Report.
- The type of loan modifications made by national banks and federal thrifts and numbers of loan modifications (either as of September 30, 2008, or latest available data) that:
 - Reduced the interest rate of the loan
 - Extended the term of the loan
 - Deferred the principal balance of the loan
 - Reduced the principal balance of the loan
- The number of loan modifications (for the same time period above) that resulted in:
 - Higher monthly payment to the homeowner
 - Equivalent monthly payment to the homeowner
 - Lower monthly payment to the homeowner by up to 10%
 - Lower monthly payment to the homeowner by more than 10%
- The total number of loans that have been modified and then entered into default (for the same time period) where the loan modification had resulted in:
 - Higher monthly payment to the homeowner
 - Equivalent monthly payment to the homeowner
 - Lower monthly payment to the homeowner by up to 10%
 - Lower monthly payment to the homeowner by more than 10%

Accurate and informative data is critical to the policy process, and the OCC and OTS are uniquely positioned to assist given (1) the sizeable market share held by the servicers within your jurisdiction and (2) the access to loan level data that you possess as the regulators of these institutions. Without a more transparent and robust reporting, we are concerned that the statistics publicized by the OCC/OTS Report are misleading and likely to lead policymakers and the public to develop misperceptions about the effectiveness of loan modification programs. Over our 17 months of working with mortgage servicers, we have developed the firm view that we have done far too little to modify unaffordable loans, not too much. The failure to act sooner and more aggressively has perpetuated downward trends in real estate markets across the country, as the failure to prevent foreclosures has depressed property values and increased the likelihood of additional foreclosures.

Assuming the data in the OCC/OTS Report accurately reflects the redefault rates of loan modifications made by these institutions, we want to convey our deep concern about OCC and OTS efforts to encourage and monitor loan modification efforts. The data suggests that national banks and federal thrifts are relying on traditional loss mitigation techniques common for prime loans in appreciating markets, rather than applying the techniques and lessons learned by subprime servicing specialists on the need to more aggressively adjust payments and principal balances. This redefault rate is extremely troubling, as the national bank and federal thrifts service the vast majority of prime, Alt-A, and Option-ARM loans, all of which present immediate challenges in 2009.

The State Foreclosure Prevention Working Group renews our offer to work cooperatively with the OCC and OTS to develop a comprehensive report on the efforts of mortgage servicers to prevent foreclosures. We do not believe that regulatory turf battles should prevent us from developing a collaborative report on foreclosure prevention results that would provide increased transparency, consistency, and reliability. We are prepared to work with you to develop a cooperative agreement with the OCC and OTS to share data and information, along the lines of the model the state banking agencies and the OCC have implemented recently on other issues, such as consumer complaint reporting.

We look forward to hearing from you.

Sincerely,



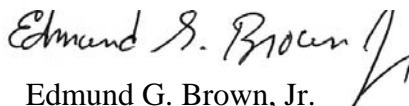
Tom Miller
Attorney General of Iowa



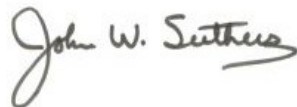
Mark Pearce
Deputy Commissioner of Banks
State of North Carolina



Terry Goddard
Attorney General of Arizona



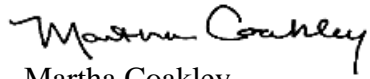
Edmund G. Brown, Jr.
Attorney General of California.



John W. Suthers
Attorney General of Colorado



Lisa Madigan
Attorney General of Illinois



Martha Coakley
Attorney General of Massachusetts



Mike Cox
Attorney General of Michigan



Catherine Cortez Masto
Attorney General of Nevada



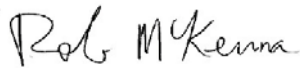
Roy Cooper
Attorney General of North Carolina



Richard Cordray
Attorney General of Ohio




Greg Abbott
Attorney General of Texas



Rob McKenna
Attorney General of Washington



Richard H. Neiman
Superintendent of Banks for the
State of New York



Sarah Bloom Raskin
Maryland Commissioner of
Financial Regulation