



REMARKS OF

RICHARD H. NEIMAN  
SUPERINTENDENT OF BANKS FOR THE STATE OF NEW YORK

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#### A. Introduction

Good afternoon, thank you for the invitation to speak here today. This Summit has been convened at a pivotal time in the history of the mortgage servicing industry. I want to congratulate you all for your attendance and your contribution to the development of best practices. My hope is that we really do seize this time together to lay a foundation for the remaining work in regulatory reform that will take shape in the weeks and months ahead.

I am honored to be following Chairman Bair's remarks this morning and to be asked to be a keynote speaker. I see that as recognition of the continuing role of states in consumer protection, especially progressive states like New York that took an early lead in combating predatory lending, both through legislation and proactive enforcement. New York's new Governor Andrew Cuomo helped to lead this charge as Attorney General in cases addressing the abuses suffered by borrowers at the hands of unscrupulous lenders, as well those mistreated during the foreclosure process. Building on what we have learned from such cases and reforms in loan originations, I would like to share my perspective as a state banking supervisor from one of the first states to adopt comprehensive servicing regulations. There are three areas that I would like to set out:

- The need to bring order to the foreclosure process and restore public confidence;
- Examples of servicing standards at the state level that could serve as a national model; and,
- Challenges and priorities in moving from concept to implementation.

#### B. Foreclosure documentation irregularities

First we need to acknowledge where we are starting from- the mortgage market is in disarray once again, due to the continuing foreclosure documentation irregularities, with the possibility for illegal behavior. We would all like to get this behind us. But the potential ramifications are

so great that we cannot cut corners in restoring confidence to borrowers, investors, and markets. It is shortcuts in documentation that brought us to this new low point. Now we have to take a time out and get it right.

The problem is more than a paperwork issue. Real harm is being done to the integrity of the judicial system. Further, these issues call into question the integrity of the servicers' other decisions- whether to modify or to foreclose, and whether to modify through HAMP or through a proprietary program that may be less sustainable. Documentation issues may be only the tip of the iceberg. The uncertainty is creating a crisis of confidence in the foreclosure process, the modification process, and in the housing market more broadly.

In terms of immediate action, most state banking departments and all fifty state Attorneys General have jointly announced investigations of the servicing industry. Many states in our coalition, including New York, are also demanding that servicers suspend foreclosure actions until a thorough analysis of their practices has been completed.

In letters sent to more than 20 mortgage servicers registered to do business in New York State, the Department required that these companies conduct internal reviews of their foreclosure practices and suspend foreclosure actions until a thorough analysis has been completed. This includes a description of the process for verifying affidavits and any corrective actions being taken as a result of that review. We will not rest until we get to the bottom of these issues and wrongs are rectified.

The legal process takes time, however, and we must also address growing market concerns that could delay or even derail an already anemic housing recovery. The Treasury Department has its own responsibility to investigate the documentation scandal and verify HAMP program integrity. Therefore, Treasury should instruct their HAMP compliance agent, Freddie Mac, to send in SWAT teams and conduct real time reviews as well. Such target assessments would go a long way in quickly determining whether problems are isolated or systemic, procedural or substantive.

The same servicers who are submitting faulty or even fraudulent court documents are being entrusted with implementation of HAMP, a program that the government is endorsing and holding out to vulnerable families as a safe haven. It is very much Treasury's business to ascertain whether these documentation issues affect servicers' capacity to faithfully implement HAMP and receive taxpayer dollars. Whether the result is good news or bad news for servicers, at least the fog of market uncertainty would be lifted and the focus can turn to remediation.

### C. Examples of state servicing standards

As a longer-term solution, the documentation scandal highlights the urgency to create nationwide rules for this segment of the industry. The number of permanent modifications made under HAMP has been disappointing, to say the least, but HAMP did help to standardize loss mitigation and develop best practices such as the waterfall steps in the modification process and a more uniform net present value model. The goal now is to build on this provisionary and voluntary process, to create rules with staying power and real consequences for noncompliance.

The toughest such rules in the nation went into effect in New York late last year. Although these cover many of the day-to-day aspects of mortgage loan servicing such as how payments should be credited, what fees are permissible and the servicer's obligation for providing payoff statements and payment histories, the heart of the rules address the servicer's responsibilities with respect to loss mitigation. The rules are an attempt to address widespread complaints about servicer unresponsiveness, lost documents and failures to engage in appropriate loan modifications for borrowers who have the desire to stay in their homes and ability to make reduced monthly payments. We believe our rules are the most comprehensive in the country.

The new regulations are applicable to all servicers handling New York-based mortgages. Let me highlight six key provisions:

1. The rules establish a general "duty of fair dealing." Servicers must act in good faith with borrowers on loan transactions and provide them with clear, accurate communications on their accounts;
2. Servicers must pursue appropriate loss mitigation efforts with homeowners, such as loan modifications or short sales to avoid preventable foreclosures, and to make these decisions within specified timeframes;
3. Servicers must have adequate staffing, written procedures for handling consumer inquiries and complaints, and methods for making sure that homeowners are not required to submit multiple copies of required documents;
4. Servicers are also expected to avoid a foreclosure action if a homeowner is being considered for, or currently in, a trial or permanent modification;
5. Approvals must provide "clear and understandable written information explaining the material terms, costs and risks of the option offered"; and,
6. Denials must state with "specificity" the reasons for the denial, contact information for a person who can reconsider the denial and any other foreclosure prevention alternatives.

From the moment a mortgage is signed in New York State to the time it comes to its end, these loans must now be handled at every step of the process by individuals and companies that are accountable to the Banking Department and homeowners.

#### D. National servicing standards- challenges and priorities

While I believe the content of state servicing regulations such as these can form a template, there are other process challenges to consider in implementing national rules.

##### *1. Regulatory coordination*

First and foremost, regulators across jurisdictions need to be on the same page in developing these regulations. That is why my message as Superintendent has been to call for a renewed level of coordination at all levels- between states, among state and federal financial supervisors, and between federal agencies. I refer to this as a Cooperative Federalism, by which I mean an approach that retains what is best in our current state-federal regulatory framework. We can

achieve appropriate oversight and national minimum standards while making the highest use of the expertise and resources of each level of government.

With this kind of cooperation, we can ensure that there are no gaps, no opportunities for regulatory arbitrage, as well as ensure a level playing field across the industry. Servicing is a competitive business, and whether a servicer is associated with a national bank, a state bank, or is independent- there should be consistent outcomes. Consumers also deserve to have a common set of basic rights, regardless of the location of the property or the licensing authority, whether state or federal, of the entity servicing their loan.

I applaud the FDIC for being an early mover in highlighting these issues at the federal level. Now the challenge- and the opportunity- is to translate this into consensus from all regulators through clear business conduct rules. That is why I see servicing standards as an appropriate early focal point for the CFPB as well. Likewise, the Financial Stability Oversight Council or FSOC should play a coordinating role, including appropriate data collection on mortgage servicing and loss mitigation through the Office of Financial Research. I can't overstate the importance of data collection in any framework for effective supervision.

## *2. Data collection*

A consistent concern expressed by all stakeholders- including industry, government, community groups, academics, and other policy makers- is that complete information on existing mortgage loans is simply not currently available. The TARP Congressional Oversight Panel of which I'm a member held a housing hearing last month with the Treasury Department, and we hammered home our frustration as well. Once a new mortgage has been reported on HMDA, however, it drops off the radar screen.

There are other sources of performance data, but each has some drawback. The HOPE NOW data is from a survey. The OCC/OTS mortgage metrics report is missing data for a third of the market and is aggregated at a high level due to its confidential status as supervisory material. The State Foreclosure Prevention Working Group, composed of state attorneys general and state banking commissioners, also has valuable but partial performance data. In this instance, federal preemption continues to be a roadblock to fuller information access.

What this unfinished business shows at least is that diverse public and private interests have all recognized the need for complete performance data. There is a real consensus forming, and the next step is to move from these provisional approaches into a formal and consistent data reporting requirement. I am sympathetic to industry concerns that reporting data to scores of states and federal agencies could be overwhelming. That practical concern is another reason why performance data should be required to be reported at the federal level and in a standardized format as part of any comprehensive set of national minimum standards for servicers. We need a national mortgage performance reporting requirement for loan servicing, just as HMDA requires reporting on loan originations, with a unique identifier to track mortgages throughout the life of the loan.

## E. Conclusion

In short, financial and economic recovery depends upon smart regulation. The mortgage servicing industry has been largely unsupervised in the past, and the current foreclosure crisis and shown the importance of high standards in this area. Those of you who are here today from servicing companies are demonstrating your commitment to excellence in consumer protection and to excellence in the reputation of your industry. I believe that working together we can restore public confidence and ensure that the company that operates according to best practices will have the competitive advantage. Thank you for the opportunity to speak with you, and I look forward to continuing the conversation throughout the remainder of the session.