

**GAO**

Testimony

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Housing, and Urban Affairs, U.S. Senate

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## FORECLOSURE REVIEW

# Lessons Learned Could Enhance Continuing Reviews and Activities under Amended Consent Orders

Statement of Lawrance L. Evans, Jr., Director  
Financial Markets and Community Investment



**G A O**

Accountability \* Integrity \* Reliability

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Chairman Menendez, Ranking Member Moran, and Members of the Subcommittee:

I am pleased to be here today to discuss the Independent Foreclosure Review process. In April 2011, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Federal Reserve), and the Office of Thrift Supervision (OTS) issued consent orders against 14 mortgage servicers. These orders required the servicers to engage third-party consultants to review servicers' loan files to identify borrowers who had suffered financial harm due to errors, misrepresentations, or other deficiencies in foreclosure processing and recommend remediation for the harms these borrowers suffered.<sup>1</sup>

Roughly 4.3 million borrowers who were in some stage of foreclosure in 2009 and 2010 were eligible for the foreclosure review.<sup>2</sup> As of December 2012, consultants had more than 800,000 loans slated for review. In January 2013, the regulators announced agreements that led to amended consent orders with 11 of the 14 servicers to discontinue foreclosure reviews and replace the reviews with a compensation framework that does not rely on determinations of whether borrowers suffered financial

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<sup>1</sup>The 14 servicers that entered into consent orders with OCC, OTS, and/or Federal Reserve were Ally Financial, Inc.; Aurora Bank, FSB; Bank of America, N.A.; Citibank, N.A.; EverBank Financial Corp.; HSBC Bank USA, N.A.; JPMorgan Chase, N.A.; Metlife Bank, N.A.; OneWest Bank, FSB; PNC Bank, N.A.; Sovereign Bank; SunTrust Bank, Inc.; U.S. Bank, N.A.; and Wells Fargo Bank, N.A. and their affiliates or acquired loan servicing companies. The Federal Deposit Insurance Corporation (FDIC) was also a party to the Federal Reserve's order with Ally Financial (GMAC Mortgage). The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, §§ 311-313, 124 Stat. 1376, 1520-1523 (2010), eliminated OTS and transferred its regulatory responsibilities to OCC, FDIC, and the Federal Reserve. The transfer of these powers was completed on July 21, 2011, and OTS was officially dissolved 90 days later (Oct. 19, 2011).

<sup>2</sup>Borrowers were eligible to be included in the foreclosure review and have their loan files reviewed for errors if foreclosure actions took place on their primary residences between January 1, 2009 and December 31, 2010, by one of the participating servicers.

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harm.<sup>3</sup> The remaining 3 servicers, covering 450,000 borrowers (10 percent), are continuing with the foreclosure review work.<sup>4</sup>

My remarks today are based on our March 2013 report on the implementation of the foreclosure review and lessons learned that can be applied to the activities required by the amended consent orders and ongoing foreclosure reviews.<sup>5</sup> My statement addresses (1) challenges to the achievement of the goals of the foreclosure review, (2) the extent of transparency in the foreclosure review process, and (3) lessons that could be useful for the activities under the amended consent orders and continuing reviews. As noted in our report, we were in the process of reviewing other aspects of the foreclosure review when OCC and the Federal Reserve announced the agreements. Neither our report nor this statement assesses the regulators' rationale for accepting the agreements nor any trade-offs involved in the regulators' choice to amend the consent orders with the servicers.

In summary, we found the following:

- Regulators' ability to achieve the goals of the foreclosure review was affected by the complexity of the reviews, as well as by overly broad

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<sup>3</sup>OCC and the Federal Reserve announced on January 7, 2013, that they had reached agreements with 10 mortgage servicers. Those servicers are Aurora, Bank of America, Citibank, JPMorgan Chase, MetLife Bank, PNC, Sovereign, SunTrust, U.S. Bank, and Wells Fargo. On January 18, 2013, OCC and Federal Reserve announced that an agreement had been reached with HSBC. While not part of the original consent orders issued in April 2011, two additional institutions, Goldman Sachs (Litton Loan Servicing, LP) and Morgan Stanley (Saxon Mortgage Services, Inc.), also entered into consent orders with the Federal Reserve in 2012 that required a foreclosure review for deficient practices in mortgage loan servicing and foreclosure processing. The Federal Reserve announced on January 16, 2013, that it had reached agreements with these two servicers. Collectively, these 13 servicers are identified as the participating servicers in the agreements; however, Goldman Sachs and Morgan Stanley were outside the scope of our study because they were not part of the original 2011 consent orders.

<sup>4</sup>The servicers not participating in the agreements are Ally Financial (GMAC Mortgage), EverBank, and OneWest.

<sup>5</sup>GAO, *Foreclosure Review: Lessons Learned Could Enhance Continuing Reviews and Activities Under the Amended Consent Orders*, [GAO-13-277](#) (Washington, D.C.: Mar. 26, 2013). This report represents the second phase of our examination of the foreclosure review process. In a previous report, we reviewed servicers' outreach efforts to inform borrowers of the foreclosure review; see GAO, *Foreclosure Review: Opportunities Exist to Further Enhance Borrower Outreach Efforts*, [GAO-12-776](#) (Washington, D.C.: June 29, 2012).

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regulator-issued guidance and limited monitoring for the consistency and sufficiency of consultants' review activities. For example, regulators' statistical sampling approach did not include mechanisms to allow the regulators to monitor consultants' progress toward finding as many harmed borrowers as possible. Our prior work has identified practices, such as assessing progress toward goals and designing monitoring during the planning stage of a project, as effective management practices.<sup>6</sup> In addition, the Office of Management and Budget (OMB) has found that in planning data analysis activities, such as sampling, agencies should take necessary steps to ensure that they have collected the appropriate data from which to draw conclusions.<sup>7</sup> Without using objective measures to compare review methods or assess sampling among consultants, regulators' ability to monitor progress toward achievement of foreclosure review goals was hindered.

- Although regulators publicly released more information on the foreclosure review process than is typically disclosed in connection with a consent order, the absence of timely and useful communication to the general public and individual borrowers at certain stages of the process impacted transparency and public confidence. To promote transparency, OCC and the Federal Reserve released redacted engagement letters between servicers and consultants, among other documents. However, some stakeholders felt there were gaps in the publicly released information, including the lack of detailed information on how the reviews were to be carried out. In addition, although borrowers who requested reviews under the foreclosure review process received an acknowledgement letter, some borrowers did not receive updates on their request for almost a year after the program was launched.

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<sup>6</sup>See GAO, *Agency Performance Plans: Examples of Practices that Can Improve Usefulness to Decisionmakers*, [GAO/GGD/AIMD-99-69](#) (Washington, D.C.: Feb. 26, 1999) and *Executive Guide: Effectively Implementing the Government Performance and Results Act*, [GAO/GGD-96-118](#) (Washington, D.C.: June 1996). These reports identify and describe practices to improve the usefulness of agencies' annual performance plans and successfully implement results-oriented-management initiatives.

<sup>7</sup>OMB, *Standards and Guidelines for Statistical Surveys* (Washington, D.C.: September 2006). This document provides 20 standards that apply to work with the statistical purposes of describing, estimating, or analyzing the characteristics of groups, segments, activities, or geographic areas.

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- The foreclosure review experience revealed lessons related to planning, monitoring, and communication that could help inform regulators' implementation of the amended consent orders and the remaining foreclosure reviews. In our prior work, we found that assessing lessons learned from previous experiences, such as through discussions with key participants and stakeholders, and applying these lessons can help strengthen future activities.<sup>8</sup> Without assessing and applying relevant lessons learned, regulators might not address similar challenges in activities under the amended consent orders or in the continuing reviews. In particular, regulators announced the agreements that led to the amended consent orders without a clear communication strategy, including determining what information to provide to borrowers. GAO's internal control standards and our work related to best practices indicate that an effective communication strategy and timely reporting can enhance transparency and public confidence.<sup>9</sup> Absent a clear strategy to guide regular communications with individual borrowers and the general public, regulators face risks to transparency and public confidence similar to those experienced in the foreclosure review.

Based on our findings, we recommended that OCC and the Federal Reserve improve oversight of sampling and consistency in the continuing reviews; apply lessons in planning and monitoring, as appropriate, to the activities of the amended consent orders and continuing reviews; and implement a communication strategy to keep stakeholders informed. The regulators agreed to take steps to implement these recommendations.

For our March 2013 report, on which this testimony is based, we analyzed consultants' sampling plans; reviewed relevant documents from

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<sup>8</sup>GAO, *Federal Real Property Security: Interagency Security Committee Should Implement a Lessons-Learned Process*, [GAO-12-901](#) (Washington, D.C.: Sept. 10, 2012) and *NASA: Better Mechanisms Needed for Sharing Lessons-Learned*, [GAO-02-195](#) (Washington, D.C.: Jan. 30, 2002).

<sup>9</sup>See GAO, *Standards for Internal Controls*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999), *Troubled Asset Relief Program: One Year Later, Actions Are Needed to Address Remaining Transparency and Accountability Challenges*, [GAO-10-16](#) (Washington, D.C.: Oct. 8, 2009); *Troubled Asset Relief Program: Additional Actions Needed to Better Ensure Integrity, Accountability, and Transparency*, [GAO-09-161](#) (Washington, D.C.: Dec. 2, 2008); *Troubled Asset Relief Program: Status of Efforts to Address Transparency and Accountability Issues*, [GAO-09-539T](#) (Washington, D.C.: Mar. 31, 2009); and *Troubled Asset Relief Program: June 2009 Status of Efforts to Address Transparency and Accountability Issues*, [GAO-09-658](#) (Washington, D.C.: June 17, 2009).

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regulators, such as regulator-issued guidance to third-party consultants, law firms, and local examination teams, describing steps taken to foster consistency; reviewed regulators' communication materials; and interviewed five consultant teams, regulator staff, and consumer groups. We then compared this information and these parties' actions to criteria, such as the regulators' standard practices and policies, regulators' goals for the reviews, and our previous work. For those third-party consultants we did not interview, we obtained written information from them to address our objectives. We conducted the performance audit on which this statement is based from July 2012 through March 2013 in accordance with generally accepted government auditing standards.

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## Background

In September 2010, allegations surfaced that several servicers' documents accompanying judicial foreclosures may have been inappropriately signed or notarized.<sup>10</sup> In response to this and other servicing issues, federal banking regulators conducted a coordinated on-site review of 14 of the largest mortgage servicers to evaluate the adequacy of the controls over servicers' foreclosure processes and assess servicers' policies and procedures for compliance with applicable federal and state laws. On the basis of their findings, the regulators issued the April 2011 consent orders against these servicers that required the servicers to conduct the foreclosure review, among other things.<sup>11</sup> In January 2013, OCC and the Federal Reserve reached agreements with 11 of the 14 mortgage servicing companies subject to the April 2011 consent orders to discontinue the foreclosure reviews and to provide approximately \$3.4 billion in direct payments to eligible borrowers. These agreements were formalized in amended consent orders that the regulators released in late February 2013. As shown in table 1, with this change from the foreclosure review to an agreed-upon payment process, regulators and servicers shifted from identifying the types and extent of

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<sup>10</sup>This practice, which includes bank employees or contractors automatically signing foreclosure documents without verifying the details contained in the paperwork or the validity of the accompanying affidavits, became widely known as "robo-signing." Failure to review documents filed in connection with a judicial foreclosure may violate consumer protection and foreclosure laws, which vary by state and which establish certain procedures that mortgage servicers must follow when conducting foreclosures.

<sup>11</sup>The foreclosure review process had two components: a process for eligible borrowers to request a review of their particular circumstances (referred to as the borrower outreach process) and a review of categories of files (referred to as the look-back review).

harm borrowers may have experienced to instead focus on assigning all eligible borrowers into categories based on objective criteria. In addition, under the amended consent orders, the servicers also will provide approximately \$5.4 billion in foreclosure prevention assistance to borrowers, such as loan modifications. Consultants for the servicers that did not reach agreements with the regulators continue their foreclosure review activities.

**Table 1: Comparison of Borrower Payment Determinations between the Foreclosure Review and Amended Consent Orders**

	<b>Foreclosure review</b>	<b>Amended consent orders</b>
Purpose of payment	Remediate borrowers who suffered financial harm as a result of servicer errors, misrepresentations, or other deficiencies <sup>a</sup>	Provide cash payments to all eligible borrowers
Borrowers assessed	Sample of eligible borrowers plus all borrowers in certain categories, including borrowers who submitted a request-for-review <sup>b</sup>	All eligible borrowers
Categorization process	Consultant reviews loan files for errors and categorizes borrowers	Servicer reviews information in their systems and categorizes borrowers <sup>c</sup>
Categorization criteria	Type of financial harm resulting from identified servicer error	Borrower and loan characteristics
Payment categories	Borrowers may be eligible for payment in multiple categories of harm	Borrowers eligible for payment in one category

Source: GAO analysis of OCC and Federal Reserve information.

<sup>a</sup>In addition to direct payments, borrowers who suffered financial harm may receive other types of remediation, such as correction of credit reports or, when possible, rescission of the foreclosure.

<sup>b</sup>Regulators expressly allowed third-party consultants to use sampling. Regulator staff told us that if third-party consultants' initial analyses of sampled loans identified errors, consultants were expected to use this analysis as the basis for a second sampling phase.

<sup>c</sup>In most cases, servicers, with regulators' approval, engaged the third-party consultants to review borrowers' files in two categories (Servicemembers Civil Relief Act and foreclosed borrowers who were not in default) to determine whether borrowers experienced those specific types of harm.

## Complexities of the Foreclosure Review Process and Limitations in Regulators' Guidance and Monitoring May Have Hindered Achievement of Goals

Complexity of the file reviews, overly broad guidance, and limited monitoring for consistency may have impeded the ability of OCC and the Federal Reserve to achieve the goals of the foreclosure review. These goals were to ensure similar results for similarly situated borrowers, identify as many harmed borrowers as possible, and restore public confidence in the mortgage market. According to regulator staff and third-party consultants, coordinating the foreclosure review process was challenging because of the large number of actors and borrowers eligible for review, the size of the loan files, and the scope of the file reviews. In addition, each servicer had a unique process for recording and storing information on borrowers' loan files, which made defining review parameters and developing a uniform review structure that was appropriate for all consultants challenging.

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Regulators took a number of oversight steps to address the complexities and challenges, including issuing nearly identical sections of the consent orders outlining the purpose of the foreclosure reviews, providing third-party consultants with guidance to help frame the file review process, and implementing regular communication mechanisms among the key actors to help foster consistency in the reviews. However, broad guidance and limited monitoring for consistency reduced the potential usefulness of information being collected and increased risks of inconsistency. According to third-party consultants, regulators' guidance did not address certain aspects of the foreclosure review, and consultants had to use additional judgment and interpretation when applying certain guidance, increasing the risk of inconsistency among review results. Third-party consultants and their respective law firms we interviewed said that they each developed their own test questions based on analyses of state foreclosure laws, loan modification guidelines, and bank policies, among other references.<sup>12</sup> According to OCC staff, the state law references were fairly straightforward and they had confidence that the consultants and law firms would provide fairly consistent interpretations. However, according to third-party consultants and law firms we interviewed, compiling these references and using them to develop review questions was challenging and time consuming and, in some cases, required judgment or interpretation of the laws or guidelines.

Regulators took steps to monitor potential inconsistencies among the reviews, but these steps were limited and likely would have resulted in delays in providing remediation to borrowers. Our prior work has identified using intermediate activities or measures to assess progress toward intended results as an effective management practice to understand the extent to which activities are on track to reach stated goals.<sup>13</sup> We have found that such activities can help management target areas that need improvement and select appropriate methodologies to realize that improvement. OCC and Federal Reserve staff said they had planned to assess the extent of inconsistencies affecting the outcomes for borrowers across the reviews after the reviews and recommendations for remediation were completed. However, conducting such an assessment after the completion of the reviews could have resulted in consultants

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<sup>12</sup>To assess each of the review areas, consultants developed a series of test questions—generally yes or no questions—to identify potential errors.

<sup>13</sup>See [GAO/GGD/AIMD-99-69](#) and [GAO/GGD-96-118](#).

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needing to re-do file reviews, which would have led to delays in remediation.

Other guidance issued by regulators did not specify key sampling parameters for the file reviews, and regulators lacked objective monitoring measures, resulting in difficulty assessing the extent of borrower harm. For example, our analysis of the May 2011 guidance on sampling found that the guidance was ambiguous about a key sampling parameter that resulted in variations in sample sizes used by the consultants and led consultants to use different triggers to determine when to conduct additional analysis. This ambiguity could have produced inconsistent results for similarly situated borrowers. According to OCC staff, they recognized that some consultants had not fully implemented the sampling approach as expected, and OCC is taking steps to address these differences for one of the servicers continuing the foreclosure review. In addition, our analysis found that the May 2011 guidance did not include a discussion of regulators' expectations for reporting on sampling, and variations among the sampling plans would have limited the types of information that regulators could report.

Finally, the regulators' sampling approach did not include key oversight mechanisms to facilitate assessment of whether consultants' reviews were sufficient to realize the goal of identifying as many harmed borrowers as possible, except in those cases where there were few or no errors. The OMB standards for statistical surveys state that where sampling is used, it should include protocols to monitor activities and provide information on the quality of the analyzed data.<sup>14</sup> Good planning and objective data collection provide a basis for making sound conclusions. In the absence of objective measures to compare review methods among consultants or assess sampling, regulators did not have an early warning mechanism to help identify problem areas that may have hindered achievement of the foreclosure review goals.

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<sup>14</sup>OMB, *Standards and Guidelines for Statistical Surveys*, September 2006.

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## Limited Communication Hindered Transparency for Individual Borrowers and the General Public

OCC and the Federal Reserve acknowledged the importance of transparency in the foreclosure review process and publicly released more information than is typically disclosed in connection with a consent order.<sup>15</sup> For example, regulators released redacted engagement letters between servicers and third-party consultants and the remediation framework for consultants to use that provided examples of situations in which compensation or other remediation is required for financial injury due to servicer errors, misrepresentations, or other deficiencies. However, the absence of useful and timely communications at certain stages of the process—for the general public as well as individual borrowers—hindered transparency and public confidence in the processes and results.

Some stakeholders perceived gaps in key information about how the file reviews were being conducted. Regulators did not release any additional guidance documents, nor did they publicly disclose consultants' test questions. To increase the transparency and credibility of the foreclosure review, consumer groups recommended that regulators release such information. According to consumer groups, without such information, the public would have questions and doubts about how the reviews were being executed. OCC and the Federal Reserve staff said that they considered releasing additional guidance to the public, but both expressed concerns that releasing detailed information risked disclosure of confidential or proprietary information. Moreover, test questions developed by consultants were numerous and complex, and Federal Reserve staff stated that review processes were too dissimilar to provide a comprehensive summary.

Borrowers who requested reviews under the foreclosure review process initially received limited information about the status of their individual file review. Borrowers received a letter acknowledging their request was

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<sup>15</sup>By law, federal banking regulators must disclose any formal enforcement actions entered into under the Federal Deposit Insurance Act. See 12 U.S.C. §1818(u). On a case-by-case basis, banking regulators may consider the release of information beyond the mandatory disclosures. The Freedom of Information Act (FOIA), 5 U.S.C. § 552, generally provides that any person has a right of access to federal agency records, unless the records, or any portion thereof, are protected from disclosure by one of FOIA's nine exemptions. Records pertaining to the supervision of financial institutions are subject to one of FOIA's exemptions. 5 U.S.C. § 552(b)(8). Despite that exemption, regulators may exercise discretionary disclosure authority under 12 C.F.R. § 4.12(c) and 12 C.F.R. § 261.14(c) for OCC and the Federal Reserve, respectively, to release records concerning financial institution supervision.

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received, but some did not receive updates until almost a year after the outreach program was first launched, when they received a letter informing them of the continuing nature of the review. In letters to OCC and the Federal Reserve, consumer groups indicated that these borrowers were frustrated by the lack of information on their particular file review. Regulators indicated that additional status letters and information would be sent to borrowers with outstanding requests-for-review. However, regulators were still uncertain about specific information they would require servicers to share with both borrowers who would receive remediation and those who would not. Regulators have acknowledged the importance of transparency, but after announcing the agreements that led to the amended consent orders, they had not yet determined what information to convey beyond that which was included in their press releases and public websites and whether additional information would be provided to borrowers who submitted a request-for-review.

During the foreclosure review process, OCC released two interim reports that provided the public with information on the organization and conduct of the file review process and preliminary results, such as the number of requests-for-review received, for institutions it supervises. These reports, according to OCC, were intended to build transparency into the process. The Federal Reserve did not issue interim reports on the foreclosure review process for institutions it supervised. According to Federal Reserve staff, they did not do so because their public release of servicers' action plans provided sufficient information about how servicers were addressing the requirements of the consent orders and their public release of servicers' engagement letters provided sufficient information about how the foreclosure review would be conducted. Prior to the announcement of the agreements that led to the amended consent orders and ended the foreclosure review for most servicers, OCC staff told us they had planned to release a final report on the results of the foreclosure review, and Federal Reserve staff indicated they expect to publish additional relevant information related to the foreclosure review and the agreements. However, as of February 2013, regulators had not decided what information on the work conducted under the foreclosure review prior to the agreements will be made available.

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## The Foreclosure Review Experience Could Offer Lessons for the Amended Consent Order Activities and Continuing Reviews

The foreclosure review revealed three key lessons related to planning, monitoring, and communication that could help inform regulators' implementation of the amended consent orders and the continuing foreclosure reviews. These key lessons could help contribute to an effective process for distributing direct payments and other assistance as prescribed by the amended consent orders. Based on the foreclosure review experience, we found that (1) designing project features during the process's initial stages influences the efficiency of file reviews, (2) monitoring progress helps ensure achievement of goals, and (3) promoting transparency enhances public confidence.

Our prior work shows that assessing and using lessons learned from previous experiences can provide a powerful method of ensuring that beneficial information is factored into the planning and work processes of future activities.<sup>17</sup> Key practices of assessing lessons learned include collecting and analyzing information on prior activities and applying that information to future activities. Assessing lessons learned by using project critiques and discussions with key participants and stakeholders—such as local examination team staff, third-party consultants and law firms, and external groups—could identify the root causes of strengths and weaknesses of the foreclosure review that could apply to the amended consent order activities.

The foreclosure review experience suggests that a planning process to determine key project features, such as guidance and necessary data elements, for activities conducted under the amended consent orders could lessen the risk of changes to planned activities, future delays, or rework. Our work on designing evaluations, including financial audits, has found that systematic and comprehensive planning enhances the quality, credibility, and usefulness of the results and contributes to a more effective use of time and resources.<sup>18</sup> As regulators prepare to implement

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<sup>17</sup>See [GAO-12-901](#) and [GAO-02-195](#). In [GAO-02-195](#), we established a lessons-learned process based, in part, on research done by the Naval Research Laboratory at the Navy Center for Applied Research in Artificial Intelligence. In [GAO-12-901](#), we updated this work through a literature review and interviews with agencies.

<sup>18</sup>In assessing the foreclosure review process, we considered our prior work on program evaluations, government auditing standards, and financial auditing. See GAO, *Designing Evaluations: 2012 Revisions*, [GAO-12-208G](#) (Washington, D.C.: January 2012); *Government Auditing Standards: 2011 Revision*, [GAO-12-331G](#) (Washington, D.C.: December 2011); and GAO and President's Council on Integrity and Efficiency, *Financial Audit Manual: Volume 1*, [GAO-08-585G](#) (Washington, D.C.: July 2008).

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the amended consent orders, they risk having to make changes in the planned activities or publicly announced timelines if they miss opportunities to make key project planning decisions, including issuing clear guidance.

The foreclosure review experience also suggests that using mechanisms to monitor the amended consent order activities and the continuing foreclosure reviews may help ensure achievement of goals. The regulators' process for monitoring the activities of third-party consultants, servicers, and examination teams during the foreclosure review process could provide a useful model for monitoring activities under the amended consent orders. In addition, regulators' experience with the foreclosure review suggests that identifying comparative oversight mechanisms to centrally promote consistency and monitor activities under the amended consent orders could help achieve consistent results for borrowers. GAO's internal control standards state that agencies should take steps to comprehensively identify and analyze program operations to determine if risks exist to achieving goals—such as risks to the regulators' goal of providing similar results for similarly situated borrowers.<sup>19</sup> In our prior work, we found that using a horizontal review mechanism is an option to help mitigate risks of inconsistent results for activities conducted by multiple entities, such as multiple servicers.<sup>20</sup> Using mechanisms to centrally monitor the consistency of servicers' activities under the amended consent orders may lessen the risk of inconsistent results or delays in providing direct payments to borrowers. Similarly, monitoring potential inconsistencies for the servicers that are continuing the foreclosure reviews will provide regulators with information to assess whether there is a risk of those borrowers being treated inconsistently.

Finally, lessons from the foreclosure review activities conducted to date suggest that developing and implementing an effective communication strategy that includes public reporting goals could enhance the

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<sup>19</sup>See [GAO/AIMD-00-21.3.1](#).

<sup>20</sup>GAO, *Opportunities Exist to Apply Lessons Learned from the Capital Purchase Program to Similarly Designed Programs and to Improve the Repayment Process*, [GAO-11-47](#) (Washington, D.C.: Oct. 4, 2010). In our analysis of the U.S. Department of the Treasury's oversight of the Capital Purchase Program under the Troubled Asset Relief Program, we found that Treasury's practice of establishing centralized control mechanisms to help ensure consistency of activities conducted by multiple banking regulators helped lessen the likelihood of inconsistent results.

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transparency of the activities under the amended consent orders. GAO's internal control standards emphasize the importance of relevant, reliable, and timely communications both within an organization and with external stakeholders.<sup>21</sup> In addition, our work on the Troubled Asset Relief Program (TARP) has underscored the importance of a communication strategy to strengthen communication with external stakeholders and improve transparency and accountability.<sup>22</sup> Experiences with current government initiatives that are aimed at assisting struggling homeowners and involve institutions and mortgage-related issues similar to those of the foreclosure review highlight the benefits of regular performance reporting. Specifically, periodic reports on the performance of and participation in TARP programs and scheduled reports on servicers' compliance with requirements of the National Mortgage Settlement are intended to promote transparency and build public confidence.<sup>23</sup> Like TARP and the National Mortgage Settlement, the foreclosure review and the subsequent activities under the amended consent orders are part of the larger governmental response to the housing and mortgage crises. As a result, a communication strategy which incorporates plans for periodic public reporting may enhance transparency in the distribution of direct payments and other assistance and help restore confidence in mortgage markets.

Regulators announced the agreements that led to the amended consent orders without a clear communication strategy. As a result, what information will be provided to individual borrowers and the general public

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<sup>21</sup>See [GAO/AIMD-00-21.3.1](#).

<sup>22</sup>We have made a series of recommendations aimed at improving the transparency of TARP by ensuring that Treasury develops a comprehensive communication strategy. TARP, like the foreclosure review and subsequent activities under the amended consent orders, is one of many activities the federal government has put in place to respond to the financial crisis, including the crises in the housing and mortgage markets. As such, we believe that similar efforts to improve communication will enhance the transparency in the implementation of the amended consent orders and continuing foreclosure reviews. See [GAO-10-16](#), [GAO-09-161](#), [GAO-09-539T](#), and [GAO-09-658](#).

<sup>23</sup>The National Mortgage Settlement is the result of an agreement reached in February 2012 by the country's five largest mortgage servicers with the Departments of Justice, Treasury, and Housing and Urban Development and 49 state attorneys general. Under the terms of the settlement, Ally Financial (GMAC Mortgage), Bank of America, Citibank, JPMorgan Chase, and Wells Fargo will provide approximately \$25 billion in relief to distressed borrowers in states that signed on to the settlement as well as direct payments to participating states and the federal government. *United States v. Bank of America Corp.*, No. 1:12-CV-00361 (D.D.C. Apr. 4, 2012).

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about processes, progress, and results of activities under the amended consent orders is unclear. OCC and the Federal Reserve have provided some information on the amended consent orders, and planned to release additional information, such as details on payment categories that were publicly released in April 2013. However, we found that as of March 2013, regulators had not made key decisions on communicating directly with individual borrowers and the extent to which they would report on activities related to the amended consent orders and continuing foreclosure reviews. While the amended consent orders terminate the foreclosure review for most of the servicers, transparency of past and current efforts continues to be important to stakeholders, including Congress and consumer groups. In the absence of a clear communication strategy to direct external communications, including public reporting and direct communication with individual borrowers, regulators face risks to transparency and public confidence similar to those experienced in the foreclosure review process.

In our March 2013 report, we recommended that OCC and the Federal Reserve improve oversight of sampling and identify and apply lessons from the foreclosure review process, such as enhancing planning and monitoring activities, to better ensure that the goals of the foreclosure review and amended consent orders are realized. In addition, to better ensure transparency, we recommended that OCC and the Federal Reserve develop and implement a communication strategy to regularly inform borrowers and the public. In commenting on the report, OCC and the Federal Reserve both identified actions that they have taken or planned to take to implement the recommendations.

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Chairman Menendez, Ranking Member Moran, and Members of the Subcommittee, this concludes my prepared statement. I would be happy to answer any questions that you may have at this time.

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## Contact and Staff Acknowledgments

If you or your staff have any questions about this testimony, please contact Lawrence L. Evans, Jr. at (202) 512-8678 or [evansl@gao.gov](mailto:evansl@gao.gov). Contact points for our Offices of Public Affairs and Congressional Relations may be found on the last page of this statement. Other staff who made key contributions to this testimony include: John Karikari; Jill Naamane; Anna Maria Ortiz; Karen Tremba (Assistant Directors); Bethany M. Benitez; Charlene J. Lindsay; Patricia MacWilliams; Marc Molino; Robert Rieke; Jennifer Schwartz; Andrew Stavisky; Sonya Vartivarian; James Vitarello; and Monique Williams.

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