



OFFICE OF INSPECTOR GENERAL

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
CONSUMER FINANCIAL PROTECTION BUREAU
WASHINGTON, DC 20551

September 30, 2015

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Ranking Member Waters:

I am writing in response to your March 20, 2015, letter requesting that the Office of Inspector General (OIG) for the Board of Governors of the Federal Reserve System (Board) and the Consumer Financial Protection Bureau (CFPB), as well as the OIG for the U.S. Department of the Treasury (Treasury), address five issues related to the in-scope borrower population of the Independent Foreclosure Review (IFR) and the subsequent payment agreement.

As we previously outlined in our letter to you dated June 23, 2015, our objectives for this evaluation were to respond to the issues raised in your letter. For jurisdictional reasons, we are not in a position to explain the facts and circumstances surrounding the incident at Citibank, N.A., given the Office of the Comptroller of the Currency's (OCC) responsibility for supervising the relevant Citibank entities for the purposes of the IFR and the payment agreement. We defer to the Treasury OIG to explain those circumstances, and we understand that the Treasury OIG is in the process of completing a review in response to your request that will explain the addition of 24,000 borrowers to Citibank's in-scope population for the purposes of the payment agreement.

To address the remaining issues included in your request, we reviewed every individual borrower complaint received by the Board related to the IFR and the payment agreement to assess the Board's approach to complaint resolution and to determine whether there were any apparent instances of borrowers who should have been added to the in-scope population. In this letter, we discuss our findings, describe the results of our prior and current work related to the Board's efforts to validate the in-scope population, and outline our understanding of the data gaps that existed at the servicers supervised by the Federal Reserve System and the efforts that have been made to address those gaps.

September 10, 2015, more than 3.8 million checks totaling over \$3.5 billion had been cashed or deposited by in-scope borrowers of those initial 13 servicers and GMAC.

Consumers had the opportunity to inquire about their RFR or payment agreement eligibility status or to question any aspect of the process by filing a complaint with the Board. The Board followed a specific process for the intake of all such consumer complaints. Generally, the process began when staff from Federal Reserve Consumer Help, within the Board's Division of Consumer and Community Affairs, logged complaints received from borrowers into the Complaint Analysis Evaluation System and Reports (CAESAR) database and sent e-mail notifications of the entries to the Board's Consumer Complaints mailbox. Upon receipt, Board staff coded all such complaints as *IFR* within the CAESAR database. The Board's Complaints Analysts used the consumer complaint information to create folders organized by consumers' last name and the appropriate month that each consumer filed the complaint. Each consumer complaint file included a transcript of the complaint submitted by the consumer, a corresponding closing letter to the consumer from Board staff, as well as any additional supporting documentation from either the consumer, the servicer, or Board staff.

Evaluation Results

Your request outlined five issues for our office to address. These issues and the results of our evaluation work are summarized below.

(1) The facts and circumstances underlying how an individual private citizen's complaint could lead to the in-scope population of borrowers at one servicer expanding by 24,000, or seven percent.

We defer to the Treasury OIG to explain the facts and circumstances related to the Citibank addition. For purposes of the IFR and the payment agreement, the Board did not supervise Citibank's efforts to comply with the relevant enforcement actions that created the IFR and the payment agreement obligations. The enforcement actions issued in 2011 by the OCC to Citibank, N.A., contained a foreclosure review provision that prompted the IFR and also applied to CitiMortgage, a subsidiary of Citibank, N.A. The Board issued a separate consent order, which did not contain the foreclosure review provision, to the bank holding company, Citigroup, Inc., and to a nonbank subsidiary of the holding company, CitiFinancial, Inc. As a result, the OCC supervised Citibank's progress to address the requirements of the foreclosure review by conducting the IFR and the payment agreement. The Board's oversight activities related to the IFR and the payment agreement applied to other mortgage servicers and not to Citibank.

Some of these additions included borrowers of OCC-supervised servicers because two banking organizations have Federal Reserve-supervised servicing operations in addition to separate servicing operations supervised by the OCC.

The sole large-scale addition to the in-scope population that was unrelated to data reliability issues supports our view that the Board added borrowers to the population when discretion was required. That addition involved a transfer of mortgage servicing rights for 8,855 loans to a financial institution that was not subject to the IFR process. In September 2012, a federal housing regulator contacted the Board to inquire about the treatment of mortgage servicing transfer transactions under the recently issued consent orders. This inquiry led the Board to request that all examination teams for Federal Reserve-supervised mortgage servicers describe how the independent consultants and mortgage servicers were approaching these transactions. Further, the inquiry requested information on any differences in treatment that resulted from the timing of the servicing transfers in relation to the execution of the enforcement actions containing the IFR requirement. Three of the Board's servicers had loans whose servicing rights were sold during the period covered by the consent order. In two of the instances of servicers with transferred servicing rights, all the loans were included in the in-scope population. The other servicer with transferred servicing rights failed to include these loans in the in-scope population. Once this discrepancy was discovered, the Board directed the servicer to include those 8,855 transferred loans in the in-scope population.

(3) Whether additional, heretofore unidentified borrowers ought to be deemed part of the in-scope population under the payment agreements.

Given the data reliability limitations associated with the IFR and the payment agreement and the manual processes necessary to arrive at the in-scope population, we are unable to confirm that all potential in-scope borrowers have been identified and have received a payment. As discussed previously, we did not identify any findings, in our prior work or in this evaluation, related to the in-scope population validation activities that warranted recommendations. As described above, we noted a consistent theme throughout the IFR and the payment agreement. When discretion was required, the Board directed servicers to add potentially affected borrowers to the in-scope population. We believe the Board opted to be more inclusive rather than risk excluding a potentially affected borrower. As noted below in the discussion on our review of the complaint data, this theme was also evident in the Board's approach to resolving consumer complaints. Our review noted that the Board proactively investigated several cases of complaints and asked servicers to add borrowers to the in-scope population even in situations where the relevant borrower raised issues unrelated to the IFR or had no awareness of the IFR or the payment agreement. Our assessment of the large- and small-scale additions to the in-scope population reflects that the Board's oversight activities resulted in borrowers being added to the in-scope population when discretion was required.

During our review, we were able to confirm the eligibility and payment status of 80 of 118 of the eligibility complaints (67.8 percent) by reviewing the closing letters the Board sent to the consumers (table 2). In these cases, the Board resolved the complaint by contacting either the mortgage servicer to confirm eligibility or the paying agent to confirm issuance of a payment. For the remaining 38 eligibility complaints (32.2 percent), eligibility and payment confirmation status had not been resolved by the time the Board's closing letters were sent. These complaints generally related to the submission of an RFR form, with consumers typically indicating that they never received an RFR form or that they submitted the form, but the complaint was not received by the Board before the RFR submission deadline.

Table 2: Segmentation of Eligibility Complaints

Nature of complaint	Number of complaints	Percentage of total eligibility complaints
Request for review inquiries	38	32.2
Inquiry about time frame of active foreclosure	28	23.7
Inquiry about loan type's eligibility	9	7.6
Inquiry for loans that were previously eligible for the IFR	8	6.8
Inquiry about active foreclosure loan status	7	5.9
Inquiry about owner occupancy loan status	7	5.9
Inquiry about loans related to mortgage servicing	5	4.2
Inquiry about time frame/mortgage servicing	5	4.2
Inquiry about payments that were not received	4	3.4
Inquiry for additional IFR information	4	3.4
Total loan type	3	2.5
Total number of complaints	118	^a100

Source: OIG IFR analysis on complaint data received by the Board from January 2011 through June 2015.

^aDoes not total to exactly 100 percent due to rounding.

In many instances, generally due to the timing of the complaint, the Board's responses to these RFR complaints did not clearly indicate whether borrowers had received or should expect to receive a payment.⁴ As a result, we were unable to conclude whether a payment had been received based solely on our review of the complaint files. We requested that Board officials contact the paying agent to confirm the payment status of the 38 RFR borrower complaints. We confirmed that 25 of the 38 borrowers qualified for a payment. Twenty-two of those 25

4. The Board's complaint response reflected the status of a mortgage servicer's participation in the IFR and the payment agreement at the time of the complaint. Full eligibility information was not available to borrowers until their respective servicers had joined the IFR. Almost 79 percent of the RFR complaints dealt with loans serviced by the mortgage servicer that joined the IFR payment agreement six months after the other servicers, in July 2013. Ninety percent of the complaints for this servicer were filed in 2013, and of the complaints filed in 2013, the vast majority (78 percent) were filed after the close of the RFR process in December 2012 but prior to the servicer joining the IFR payment agreement in July 2013.

borrowers cashed a payment agreement check, and in the other three instances, the paying agent sent the borrowers multiple checks that were not cashed. The Board had a reasonable basis for confirming that 6 of the 13 relevant borrowers were ineligible based on aspects of the eligibility criteria. While our review initially classified the remaining 7 complaints as having potential eligibility issues, further review and discussion with Board staff revealed that these complaints did not relate to eligibility.

The Board's Inclusive Approach to Eligibility Complaints

Our review found that the Board was inclusive in its approach to eligibility complaints. Even when reviewing a complaint that appeared to be unrelated to the IFR and the payment agreement, the Board demonstrated a willingness to ensure that borrowers who were unaware of their potential eligibility were included in the in-scope population. Our review identified seven instances in which the Board confirmed the eligibility status for borrowers even when the original complaint did not specifically relate to the IFR or the borrower was not aware of the IFR or the subsequent payment agreement. For example, one consumer requested assistance in correcting inaccurate information on his or her credit report, and the complaint processor eventually determined that the consumer qualified for a payment under the payment agreement. We confirmed the borrower's eligibility to receive a payment.

We also found another instance of the Board's inclusive approach during borrower disputes. In this case, a borrower requested additional information to be used in pursuing potential claims for unlawful foreclosure. Although the complaint did not inquire about eligibility for a payment, the Board provided individuals with information about the relevant loan. Another case noted that the borrower's mortgage servicer had recently performed a final re-review of all out-of-scope loans and used an inclusive approach to move 21 loans into scope. The borrower's loan was part of a larger group of loans associated with the servicer's Borrower Outreach Program. Although the loans were noted to be out of scope, these loans received further review from the servicer due to the program's voluntary RFR submission option. In these cases, the relevant mortgage servicer confirmed the eligibility status and ensured that the borrowers were added to the in-scope population.

The Board's Resolution of Eligibility Complaints Not Related to the RFR Form

The 80 eligibility complaints not related to the RFR form covered a range of topics. The complaint files of these inquiries provided confirmation of borrowers' eligibility and payment status. Twenty-eight of those 80 cases were inquiries about the time frame of the borrowers' foreclosure and whether the borrowers met the IFR eligibility criteria. The remaining 52 cases included situations in which there were issues with confirming the borrowers' eligibility. In such instances, the Board's course of action was to contact the mortgage servicer to confirm the eligibility of the loan. Another complaint related to active foreclosure status in which there was uncertainty as to whether the complainant's loan had been foreclosed on. Lastly, there were several owner occupancy-related complaints, and these complaints led the Board to confirm with the mortgage servicer whether the borrower was using the property in question as a primary

residence. In summary, in those cases in which the Board had the ability to confirm borrower eligibility, it was confirmed.

(5) What data gaps may have existed within servicers' systems that made it difficult to identify borrowers that were in some stage of the foreclosure process in 2009 and 2010, and whether such data gaps or system integration issues have been fixed on a forward-looking basis?

Observation 3: In Responding to Data Gaps and Systems Integration Issues, the Board Used an Inclusive Approach That Involved Adding Borrowers to the In-Scope Population When Discretion Was Required

We report in *Opportunities Exist to Enhance the Board's Oversight of Future Complex Enforcement Actions* that Board staff identified weak or missing data in two servicers' systems. These data reliability issues made it difficult to slot loans appropriately. Our report noted reliability challenges with (1) a servicer's system indicator for active bankruptcies and (2) an indicator related to the modification status of borrowers' mortgages. As outlined in our report, Board staff used an inclusive approach to respond to these challenges by moving borrowers to higher payment categories or refraining from excluding borrowers from higher categories—further evidence of affected borrowers receiving the benefit of the doubt when discretionary matters arose.

Data reliability issues existed throughout the IFR and the payment agreement. During this review, we found that Board staff used an inclusive approach to address those data challenges. This approach resulted in the addition of 298,874 loans to the in-scope population from August 2011 to December 2012. The largest single increase involved the addition of 280,000 borrowers, which occurred during the independent consultants' initial activities related to defining the in-scope population prior to beginning the file reviews under the IFR. After the relevant independent consultant discovered weaknesses in the servicer's first legal action flag, which typically denotes the initiation of the foreclosure process, some of these loans were found to have been active in the foreclosure process during the in-scope time period. Two different servicers added 643 and 4,231 borrowers, respectively, due to inconsistent data that denoted loan foreclosure status. Another servicer added 14,000 borrowers to the in-scope population due to weak data attributes related to active military and owner occupancy status. The inconclusive owner occupancy data attributes hampered the servicers' ability to associate owner occupancy status with active foreclosures, which directly affected the borrowers' IFR eligibility. Borrowers with active duty status living in a home used as their primary residence were eligible for the IFR, provided their foreclosure occurred during the designated time frame. In all cases of inconsistent owner occupancy information, the servicer added the loans in question to the in-scope population and used U.S. Department of Defense information to help confirm the servicemembers' eligibility for protection under the Servicemembers Civil Relief Act.

Observation 4: The Servicers' Action Plans in Response to the Enforcement Actions Addressed the Data Gaps and Systems Integration Issues

The consent orders issued to mortgage servicers in 2011 and 2012 contained provisions that required servicers and their holding companies to submit acceptable written plans to improve and enhance mortgage loan servicing and foreclosure processing management information system reporting, and to address deficiencies in the oversight of servicing operations, as applicable. Federal Reserve supervisory teams and staff members have been monitoring, and continue to closely monitor, the mortgage servicers' compliance with the action plan provisions of the consent orders.⁵ Currently, all Federal Reserve-supervised institutions remain subject to enforcement actions.

Scope and Methodology

The scope of our IFR mortgage servicing evaluation included a review of IFR complaints received by the Board from January 2011 through June 2015. The evaluation team examined the full population of IFR complaints received by the Board to assess the Board's approach to complaint resolution, as well as to identify any trends and to determine whether there were any apparent instances of borrowers who were inappropriately omitted from the in-scope population. Additionally, our scope involved describing our prior review of the Board's oversight of the validation of the in-scope borrower population. Given the data reliability limitations associated with the IFR and the payment agreement and the manual processes necessary to arrive at the in-scope population, we were unable to confirm that all potential in-scope borrowers have been identified and have received a payment.

To accomplish our objectives, the evaluation team interviewed Board staff members from the Division of Consumer and Community Affairs, the Division of Banking Supervision and Regulation, and the Legal Division who were involved with the IFR process. The evaluation team also conducted background research by reviewing the exit interview summaries for the independent consultants who were involved with the IFR. These summaries provided the evaluation team with context behind the additions to the in-scope population. In addition, we reviewed previous OIG reports related to the IFR or mortgage servicing processes, including OIG Report No. 2014-SR-B-015, *Opportunities Exist to Enhance the Board's Oversight of Future Complex Enforcement Actions*, September 30, 2014; and *Audit of the Board's Actions to Analyze Mortgage Foreclosure Processing Risks*, September 28, 2012.

After conducting background research, the evaluation team obtained a sample of 10 IFR complaints from 2015 to review. Each complaint file included the original complaint submitted by a borrower as well as a closing letter response from the Board. In some instances, we reviewed e-mail transmittals of Board correspondence with the mortgage servicers or individual Reserve Banks when the Board needed assistance in answering certain questions regarding a borrower's eligibility. In certain cases, the complaint files also included supporting

5. The action plans for Federal Reserve-supervised institutions are available at <http://www.federalreserve.gov/consumerinfo/independent-foreclosure-review-payment-agreement.htm>.

documentation submitted by the borrower. After reviewing the 10 complaints, the evaluation team determined that it would be feasible to review the full population of 467 complaints. For each complaint, we reviewed the transcript of the complaint submitted by the consumer, the closing letter sent by the Board to the consumer, as well as any additional supporting documentation from either the consumer, the servicer, or the Board. The team identified 38 complaints where the payment status of the borrower filing the complaints had not been confirmed at the time the Board responded to the complaints. The Board contacted the paying agent to validate the payment status for these complaints. Our assessment of the entire population of IFR and payment agreement–related complaints allowed the evaluation team to render conclusions on the reasonableness of the Board’s approach to complaint resolution. Please note that we did not attempt to validate or verify the facts and circumstances outlined in the complaint files.

We conducted our fieldwork from May 2015 through September 2015. We performed this evaluation in accordance with the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.

Closing

Thank you for your interest in the work of the OIG. If you should have any questions on this or any other matter, please contact me at 202-973-5000 or John Manibusan, Assistant Congressional and Media Liaison, at 202-973-5043.

Sincerely,



Mark Bialek
Inspector General