

Remarks to the Financial Crisis Inquiry Commission
September 21, 2010
J. Thomas Cardwell
Commissioner
Florida Office of Financial Regulation

Senator Graham, Chairman Angelides, members of the Commission: my name is Tom Cardwell and I am the Commissioner of the Office of Financial Regulation for the State of Florida a position in which I have served for one year. Prior to assuming this position I was a lawyer in private practice with Akerman Senterfitt a 500 attorney firm based in Florida where I served as Chairman & CEO and headed the Financial Institutions Practice Group.

Relative to this appearance I served on the Florida Supreme Court Mortgage Foreclosure Task Force which made recommendations to deal with the crisis in the courts regarding residential mortgage foreclosures.

The Office of Financial Regulation has jurisdiction over the state chartered banking industry, the securities industry, mortgage brokers, money transmitters, payday lenders, check cashers and automobile lenders among others. We have 453 employees and a budget of 43 million dollars with which to carry out our responsibilities for licensing, examination and enforcement in all of these areas.

The real estate mania or bubble that overtook much of the nation certainly manifested itself in Florida. As in almost every bubble there are opportunities for fraud and those who will avail themselves of that opportunity. The mortgage industry was no exception.

The events that led up to the mortgage foreclosure crisis in Florida revealed weaknesses in the statutory schemes and the regulatory execution of that scheme.

There have been significant improvements since that time.

Among the statutory weaknesses were that many persons engaged in originating loans were not required to be licensed, and for those who were required to be licensed background checks were required only at the time of initial licensing, not on the renewal of licenses.

On the regulatory side regulators were slow to implement federal criminal background checks and regulators were not as responsive to complaints as they could have been.

Florida has taken a number of steps to address these weaknesses.

As you may know, on July 30, 2008 the President signed the Secure and Fair Enforcement for Mortgage Licensing Act the acronym for which is the S.A.F.E. Act.

Florida is in compliance with the Act and in fact has gone beyond its requirements.

Florida now requires that all persons engaged in the mortgage origination process be licensed unless exempt. The principal exemption is for persons employed by regulated institutions, primarily banks.

This addresses the issue of unlicensed persons dealing with the public.

Next, each licensee will have to meet a strict new standard to include: (1) passing a detailed criminal and credit history background check, (2) demonstrating professional competency by successfully passing, rigorous national and state examinations and (3) having background checks repeated every year as a part of the licensing renewal process.

Further, the background checking process has been enhanced. One of the complaints about the mortgage origination business was that people of unsavory character were allowed to participate.

Under new Florida law all the participants are required to have yearly background checks for both criminal records and for credit histories.

The Florida background checks are more extensive than those required in the S.A.F.E. Act. We look not only at the national criminal history database but also dig deeper into the records of local courts.

Individuals with certain criminal histories are now barred from the mortgage industry. Florida's licensure requirements have been set higher than that required under the S.A.F.E. Act. For example, any crime of moral turpitude can be a bar, not just financially related crimes. In addition, Florida imposes these same background checks that S.A.F.E. imposes on individuals, on the officers and directors and on the businesses for whom they work.

I believe the changes in the law in Florida and nationally will make fundamental changes in the mortgage origination business. It will become much more professionalized and educated, allowing increased consumer confidence. There will be much stronger gate keeping with respect to those with criminal backgrounds.

These changes in law will, I believe, go a long way to addressing fraud in the origination process.

Regulation

On the regulatory side we have developed rules to implement the restrictions on those with criminal records from entering the business.

We have tightened our procedures to make sure that applications are processed timely and completely.

We have revamped the complaint process to make sure that they are promptly addressed.

We have developed and implemented a state-of-the-art software system for regulating mortgage brokers that helps us process our work promptly, efficiently, with less cost and with less chance that matters will fall through the cracks. It also allows us to integrate all the records related to licensing, examination and enforcement into one database. This system will give us a complete picture of an applicant's records far more easily than was previously the case.

Enforcement

Our agency does not have criminal prosecutorial authority, however when a complaint or examination leads to the discovery of fraud we partner with an agency that does.

We work with the U.S. Attorney, the Statewide Prosecutor, local district attorneys, and the Florida Attorney General among others. In particular we have had a long and productive relationship with the federal-state mortgage fraud strike force here in Dade County.

Because of our experience with the mortgage industry we are in a unique position to provide expert testimony, document analysis and witness interviewing in mortgage fraud prosecutions.

We are a major resource to and an integral part of many mortgage fraud prosecutions in Florida.

The Role of Regulation Going Forward

I would like to speak for a moment about the role of mortgage regulation in the future.

The financial crisis has framed the question to the regulatory community “What could we have done better?”

One of the challenges for all regulators, from the SEC to the FDIC to the Federal Reserve to the Florida OFR is to get ahead of the curve. How do regulators – as the hockey great, Wayne Gretzky so often did – skate to where the puck is going to be, not to where the puck is.

Seeing the future is not easy. When you are in the middle of events there is much less clarity than in retrospect.

Nevertheless the regulatory system needs to keep looking for where the puck is going to be.

For example we at OFR saw that when the mortgage origination business died and the foreclosure crisis began, some who had been engaged in originating the mortgages that were now failing were getting into the loan modification business.

We were seeing abusive activities. Families desperate to avoid foreclosure and stay in their homes were easy prey. Loan modification businesses were taking upfront fees then providing little or no services leaving vulnerable families broke and out on the streets.

Late last year we put together an internal task force to target and shutdown loan modification businesses taking up-front fees. We developed a comprehensive approach with several elements. One is to issue cease and desist orders to persons we find in violation of law. A second is to publicize our enforcement actions. A third is to work with other agencies such as those who have testified here today.

The resulting media coverage in both English and Spanish has been effective in raising public awareness of the risk of fraud and in deterring potential violators.

The term being used among regulators is “forward looking regulation” it is difficult to implement but I believe imperative. It is often resisted and unpopular because it will conflict with the status quo. But failing to look forward puts the regulator in the role of cleaning out the barn after the horses have gone.

Conclusion

There is no silver bullet that will stop mortgage fraud. Law enforcement has a role. Regulators have a role. Media has a role. Industry has a role. Consumers have a role.

But the most important factor is the economic conditions that make such fraud attractive and possible. A bubble is an incubator of fraud. The housing bubble created huge opportunities for fraud.

The amount of money poured into the housing market by banks and investors, the lax lending standards, greed, the lack of accountability, economic illiteracy all contributed to create a condition in which fraud flourished.

Regulation and law enforcement can and should play a role in controlling mortgage fraud, but they are not in and of themselves the answer. The most important step is to curb the conditions which allow such fraud to flourish.

I appreciate the opportunity to express my views and stand ready to respond to your questions.