

SENATE BANKING COMMITTEE ON FORECLOSURE FRAUD

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Dodd started by noting the increasing evidence that foreclosure fraud is a giant mess, both by referencing the Bank of America testimony that notes did not get sent to trusts during the securitization process, and by noting that the estimates for how much this may cost the bank have gone up, to \$134 billion.

Btw, it's not part of the hearing, but consider this stat:

Housing and aggregate demand have not recovered because nearly 15 million owners are estimated to owe about \$771 billion more on their homes than they are worth.

That basically means that roughly 15 million families have had a \$51,000 tax imposed on them, largely because of the bank-created inflated prices.

Thus far, FDIC head Sheila Bair has said that second lien-holders need to take a hit, and Fed Governor Dan Tarullo has said that banks will need to provide estimates for expected putback losses.

OCC Acting head John Walsh says they've got 100 Bank Examiners investigating foreclosure fraud.

John Walsh, in response to Dodd's question about why the regulators have been so delayed, said, "We were conducting horizontal exams in 2008, saw rise in complaints, there were clear deficiencies. We were pushing servicers." No. He hasn't explained why they haven't done anything about these deficiencies.

Tarullo: The attention was focused on pace of

modifications, not on the process itself.

Shelby to Tarullo: When did you first learn of the problems. Tarullo: When Ally came to us the day before the public announcement.

Shelby: Are we close to solving problem.

Tarullo: Related to relative balance of foreclosures to mods. Need integrated approach.

Shelby: They have standards.

Tarullo: No, the banks are required to have their own processes. Race to foreclose among owners, but be standardized.

Reed: Should 100% of loans be evaluated for mod.

Bair: We think a global settlement.

Bair explains that the servicers need to be out of modification business.

Tarullo: We've seen some degree of management failure, and from some banks, a substantial degree of management failure.

Bair makes the first mention of crime, discussing how, "Law enforcement ... potential for law enforcement actions" might bring about systemic risk. An hour and 15 minutes into the hearing, the first acknowledgment that this stuff is criminal.

Until we get overhand in housing market, there will be problems in the housing market, and thus with the rest of the market. WRT putback risk, it's a function of several things. Including default rate. We can model that based on macro assumptions. Second the legal issues. Those are harder to pull apart at this point. DeMarco can talk about GSE putbacks. When you get to private agreements, those vary enormously. You could have rep w/mortgages but w/o strong reps. We're going to try to get to it in capital assessments.

Bob Corker's worried about how this will affect property rights. But primarily in the way 2 liens have taken precedence over 1st liens.

Menendez now hitting on HAMP failure, particularly the use of just 2% of the funds. "Why can't we get that done by Treasury?"

DeMarco repeats that things are upside down now, w/1st lienholders taking losses while 2nd lienholders continue to get payment. There's some widespread concern about property rights here, but it only extends only to 2nd lienholders, not actual homeowners.

Merkley points out that Fannie and Freddie requests for putbacks exceed reserves. Asks Tarullo how big a problem this is. Though Tarullo refuses to say how big a problem, on scale of 1-10 it is, he says that for some "that number will be reasonably high."

Merkley: We think this dual track is a bigger problem than Treasury does. Two banks just told us that they're still engaged in dual track.

DeMarco (head of the GSEs) has basically just said, since I'm conserving these assets for the taxpayer, I've got to make sure we foreclose on the taxpayer in rapid fashion.