FINES AND "RESOLVING THIS MESS"

Yves does a thorough smackdown on the departing Michael Barr's description of all the things the government is going to get to the bottom of the foreclosure fraud problem, noting that the foreclosure task force simply isn't investigating the problem in enough detail to understand, much less solve, the problem.

But I wanted to look just at Barr's language, both in his interview with Felix Salmon and in his presentation to the Financial Stability Oversight Council yesterday. Here are the five things he described as the key focus of the Foreclosure Working Group:

1. Determining the scope of problems
2. Holding the banks accountable for fixing these problems
3. Making sure individuals who have been harmed are given redress and that firms pay penalties where appropriate for their actions
4. Getting the mortgage servicing industry to do a better job for households in financial difficulty by providing alternatives to foreclosure
5. Acting in a coordinated and comprehensive way to hold the firms accountable, bring clarity and certainty, and help households

Note, already, the choice of language here. The working group will "hold the banks accountable … for fixing these problems." The firms will "pay penalties where appropriate for their actions."

Barr uses the language the federal government has been consistently using since the scope of this problem became widely clear, in which the government envisions "holding banks accountable" by forcing them to operate effectively going forward, while making right the crimes of the past. Nowhere, in his presentation to the FSOC at least, does Barr envision holding the people who committed fraud accountable. In fact, there's a lovely detail at 7:54 where Barr describes that the process is designed to assess whether affidavits and claims "are accurate." Now, the government learned sometime since May—six months ago now—that they are not. But they have not yet prosecuted anyone for fraud. Which leads me to believe that when Barr says "assess whether affidavits are accurate," he means, "assess whether they accurately reflect the state of the loan," and not whether "the claims made by robo-signers are in fact true."

And besides, how in hell could the government give those who have been harmed redress if the government is only reviewing a select subset of the loan files? Is the government going to provide everyone who believes they were screwed some legal aid to prove their claim?

Now compare what the soon-to-be-gone Barr told the FSOC in its kabuki public session with what he told Salmon.

> And keeping everything coordinated is the new Financial Fraud Enforcement Task Force which has been put together under the leadership of Justice's Tom Perrelli."Why are we investing these resources and including Tom Perelli in the discussions?" asked Barr. "We're holding the banks accountable to fix it." I asked him whether he thought that was even possible. "Their conduct suggests they can't," he said, adding

> that “they can be held accountable for not following the law. HUD can assess significant fines on them.”
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> Barr was clear about what he expected to happen in 2011. Specifically, he said, “if there are legal violations found, banks are responsible for fixing them and for addressing the problems.” And more generally, the government’s actions “will increase the chance that when foreclosures happen, they will happen according to established law.”

After listing all the investigating going on, Barr stresses they’re coordinating with DOJ’s Financial Fraud Task Force. Why are they including the FFTF (which, btw, seems to focus primarily on origination fraud)? As a way, Barr explains, “to hold the banks accountable to fix it”–echoing that same formula of holding banks accountable to fix problems, but not to be prosecuted for committing fraud. Now jump ahead to where Barr describes how they can be held accountable: “they can be held accountable for not following the law. HUD can assess significant fines on them.” Let me repeat, again, that HUD has been aware of the foreclosure problems since around May and has thus far levied no fines. More importantly, note how (at least in Salmon’s presentation) Barr jumped from having DOJ hold the banks accountable to HUD doing so? Either Barr doesn’t believe DOJ has the power or the will to hold banks accountable and he reverts to fines as the magical way the federal government will holds the banks accountable. And the outcome of all this? To “increase the chance that when foreclosures happen, they will happen according to established law.” Not, “to make sure we restore the integrity of the property system,” but to increase the overall odds but not guarantee that when a family is thrown out of its home, they were done so legally.

Barr doesn’t even envision ending foreclosure fraud! He just envisions making it much less likely, shifting the odds somewhat from the stacked odds the banksters currently enjoy.

But then there's this admission:

> "We're holding the banks accountable to fix it." I asked him whether he thought that was even possible. "Their conduct suggests they can't,"

The soon-to-be-departed Michael Barr, in describing a process designed to hold the banks accountable that will not conclude until months after he returns to UM, admits to believing that the banks won't be able to fix this problem.

So let's return, then, to the context of all this. Yesterday Michael Barr spent 15 minutes describing how FSOC will save the world and–at least in the public session–not only did no one ask any questions, but Barr didn't reveal what he revealed to Salmon: that he believes the banks can't fix this problem. Couple this, too, with Barr's offhand comment that he believes the significant putbacks would continue for several years (even though this seems not to be part of the foreclosure task force's purview).

> Separate and apart from these forcelosure and modification violations, servicers may face risk from failure to follow investor guidelines for originating loans during the height of the boom. Origination putbacks at relatively large scale have been occurring for some time, and will likely continue for several years.

And all this amounts to not only pretty compelling evidence that (as Salmon and Smith explain) the government's efforts to investigate this problem are not credible.

But also that Barr–who will be gone anyway in seven days–doesn't believe they will work.

Yet rather than discussing that–at least in public–the folks tasked with keeping our economy from crashing again just passively listened to a kabuki presentation pretending that something is being done, even if everyone knows it won’t be effective.