Statement of Anthony B. Sanders
Subcommittee on Housing and Community Opportunity
U.S. House of Representatives
November 18, 2010

Chairman Waters, Ranking Member Capito, Members of the Committee, thank you for the opportunity to testify before you today.

The U.S. mortgage market grew at a phenomenal pace from 1998 through 2009 with the GSEs (Fannie Mae, Freddie Mac) and Federal Home Loan Banks alone accounting for $5 trillion in debt to fund mortgage growth (see Figure 1). As we sit here today, there are over 42 million mortgages outstanding in the U.S. Of the over 42 million mortgages, approximately 60% were securitized (or assigned to another party).[1]

Loan assignments have occurred in the United States since before the Great Depression. Yet only recently have Congress and the Administration taken notice of loan assignments. What is particularly interesting is that despite the myriad of Federal housing agencies, pseudo-agencies and financial system regulators that have been in existence since the Great Depression, the Federal government has ignored the fundamental problem with loan assignment regarding the location of the title or other document defects pertaining to foreclosure.

Economic Harm to Borrowers

What is the economic harm to borrowers of alleged document defects pertaining to foreclosure? The answer is none. First, the loans are in default. Second, the average length of time to foreclosure and liquidation is over 17 months. If each borrower is living in the dwelling and not paying interest (say $1,000 per month), that translates to $17,000 in lost earnings to the lenders/investors.[2] Suppose that 3,000,000 borrowers are in the foreclosure process; that translates into a potential loss of $51 billion to lender/investors over and above the loss incurred by lenders/investors.[3] Thus, the $51-102 billion cost to lenders/investors is the cost of delaying foreclosure.[4] "Insofar as the foreclosure process often takes 17 months, lenders/investors are not receiving any payment for interest or principal and are incurring transaction costs. In the meantime, the borrowers are not making any payments on a house in which they are still living – effectively receiving over a year of housing rent-free."[5]

In the case of loan default, the lender has the right to take the asset and sell it in order to recoup the amount owed, if possible. Document defects pertaining to foreclosure, if material, can slow down the foreclosure process. Therefore, lenders/investors have the economic incentive to clear up any material document defects pertaining to foreclosure as soon as reasonably possible.

[1] As of 2009, 85.6% of mortgages were securitized (see Table 1).
[2] If we assume a $150,000 loan at 7% over 30 years, the payment would be approximately $1,000. If we double the loan amount to $300,000, the payment would rise to just under $2,000 per month.
[3] If the average loan size is $300,000, the loss to lenders/services rises to $102 billion.
[4] Additional costs facing lenders/investors beyond the point of loan default is the decline in the value of the collateral.
[5] Of course, not all borrowers that defaulted on their loans are still living in the same dwelling.

Robo-Signing and Economic Harm

Once again, the critical point is that borrowers have defaulted on their loans and the lenders/servicers are trying to foreclose on the dwelling to recoup the amount owed. The acid test for robo-signing, the allegation that some documents were not read, is whether the borrower was materially and adversely affected. Only if it can be shown that borrowers were inappropriately identified as having defaulted on their loan and subsequently foreclosed upon is there a material problem. Otherwise, the borrowers have not been harmed.

Creating Economic Harm through Moratoriums

Any proposed moratorium on foreclosures, whether at the Federal or State levels, represents a danger to the stability of the housing market. Government intervention in the housing market (such as HAMP and the tax credit) has failed to slow or merely delayed defaults. The housing market needs to heal and it can only do so if defaulted loans can be brought to market through foreclosure. Preventing foreclosures extends losses to lenders/investors and allows non-paying households to continue staying in the dwelling. In addition, there are sales of foreclosed properties that will be delayed if a moratorium is undertaken.

The Creation of MERS

MRES (Mortgage Electronic Registration Systems was created to deal with the flood of paperwork related to mortgage securitization. MERS focused on eliminating mortgage loan assignments by providing an electronic registry to track the many transfers that occur in the mortgage market. Even if MERS was a perfect solution to the registration of mortgages, since financial institutions and the GSEs are owners of MERS, it would seem reasonable to have assumed that each of the regulatory bodies for the thrifts, banks and GSEs would have thoroughly investigated the practices and procedures of MERS. If they had investigated MERS, they could have discovered potential problems with the MERS.

Where Were the Regulators?

If material document defects were pervasive in the economy, why weren't our regulatory agencies on top of the problem and seeking solutions? It is notable that the leading thrifts that securitized loans were Countrywide, Indymac and WAMU, all supervised by the Office of Thrift Supervision (OTS) which was the regulatory body for the thrift industry. As defaults and foreclosures mounted, the OTS should have been painfully aware that a problem with foreclosure could arise if the title and accurate supporting loan documentation could not be produced. It should be determined if the OTS was aware of the problem and considered it to be trivial, if they were aware of the problem and chose to do nothing or they were unaware of the potential problem.

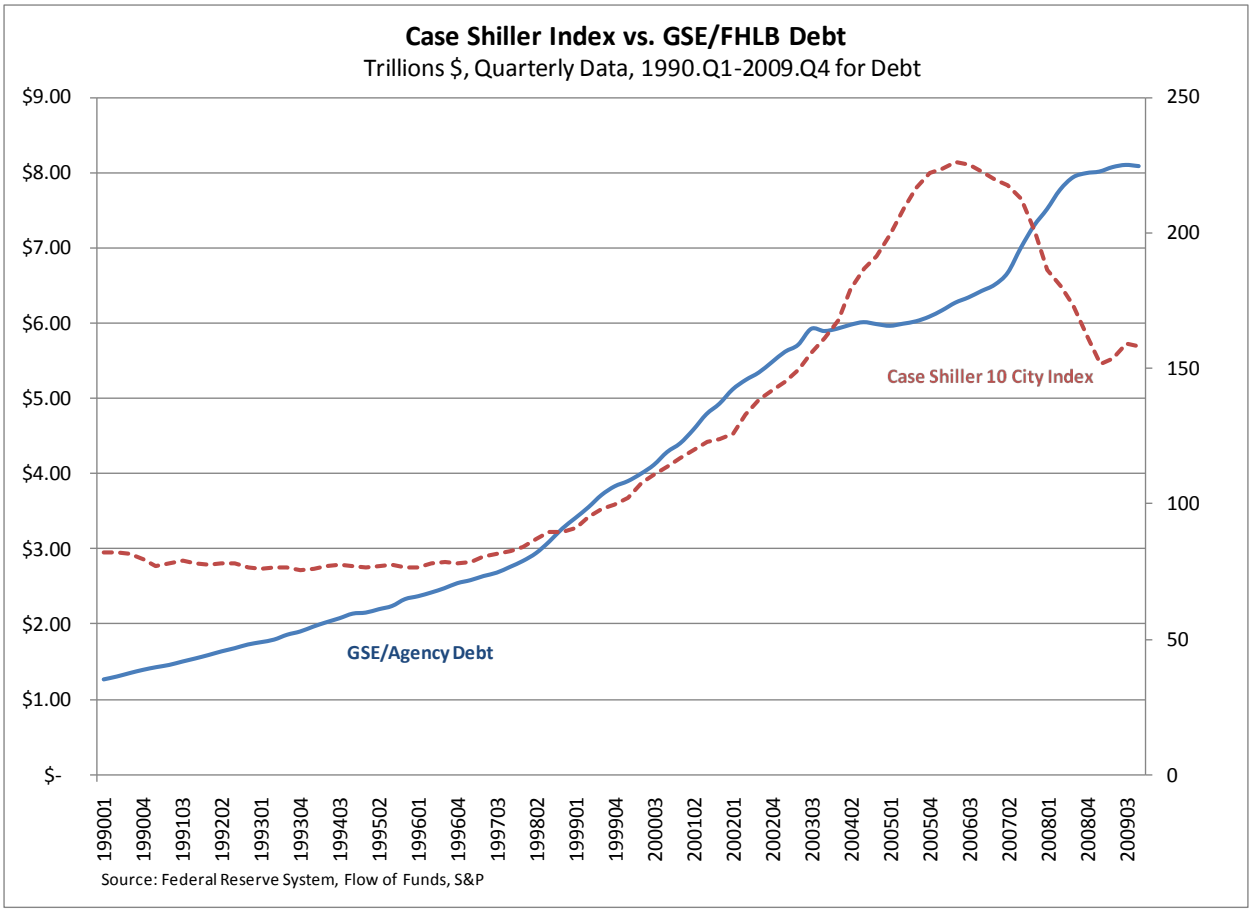
Of course, the same questions should be asked to the Federal Deposit Insurance Corporation (FDIC) that regulates the state-chartered banks, the Office of the Comptroller of the Currency that regulates the nationally-chartered banks and the Federal Reserve that regulates state-chartered member banks. And then there are state bank and thrift regulators. With so much regulatory power were the FDIC, OCC and Fed not investigating the potential foreclosure document issue and taking corrective action if it was material?

Proposed Solutions

1. All relevant loan documents should be immediately scanned and a digital file created. This file (which we call a "Securitization Packet") would travel with the loan when it is sold. This

digitized file should be kept at either the Federal Reserve or a private market enterprise (with regulatory oversight).

2. The regulatory bodies (whether it is the Federal Reserve, the FDIC or OCC) should develop requirements for the assignment of loans requiring notification of what entity has purchased the loan and the new servicer, if applicable. That is, the regulatory bodies can either set standards or work with the industry on setting standards.


Case Shiller Index vs. GSE/FHLB Debt
Trillions $, Quarterly Data, 1990.Q1-2009.Q4 for Debt
$9.00
$8.00
$7.00
$6.00
$5.00
$4.00
$3.00
$2.00
$1.00
$-
250
200
150
100
50
0
Case Shiller 10 City Index
GSE/Agency Debt
199001
199004
199103
199202
199301
199304
199403
199502
199601
199604
199703
199802
199901
199904
200003
200102
200201
200204
200303
200402
200501
200504
200603
200702
200801
200804
200903
Source: Federal Reserve System, Flow of Funds, S&P

Securitization Rates for Home Mortgages

(Dollars in Billions)

	Total	Conforming	Prime jumbo	Sub/Alt A	FHA/VA	Seconds
2001 Securitization rate	60.7%	72.3%	32.0%	45.8%	98.7%	13.5%
MBS issuance	$1,344.7	$914.9	$142.2	$98.4	$172.7	$15.5
Estimated originations	$2,215.0	$1,265.0	$445.0	$215.0	$175.0	$115.0
2002 Securitization rate	63.0%	74.5%	30.0%	66.0%	97.8%	15.0%
MBS issuance	$1,817.4	$1,270.4	$171.5	$176.1	$172.2	$24.8
Estimated originations	$2,885.0	$1,706.0	$571.0	$267.0	$176.0	$165.0
2003 Securitization rate	67.5%	77.7%	36.5%	68.1%	99.3%	9.3%
MBS issuance	$2,662.4	$1,912.4	$237.5	$269.1	$218.5	$20.4
Estimated originations	$3,945.0	$2,460.0	$650.0	$395.0	$220.0	$220.0
2004 Securitization rate	62.6%	73.7%	45.3%	72.9%	95.8%	13.8%
MBS issuance	$1,826.8	$892.3	$233.4	$521.1	$126.4	$49.1
Estimated originations	$2,920.0	$1,210.0	$515.0	$715.0	$132.0	$355.0
2005 Securitization rate	67.7%	80.5%	49.2%	79.3%	99.5%	16.6%
MBS issuance	$2,111.8	$879.1	$280.7	$797.4	$85.6	$60.7
Estimated originations	$3,120.0	$1,092.0	$570.0	$1,005.0	$86.0	$365.0
2006 Securitization rate	67.6%	82.5%	45.6%	81.4%	100.2%	17.3%
MBS issuance	$2,016.0	$816.9	$219.0	$814.3	$83.2	$74.2
Estimated originations	$2,980.0	$990.0	$480.0	$1,000.0	$83.0	$430.0
2007 Securitization rate	74.2%	91.4%	51.3%	92.8%	97.7%	9.3%
MBS issuance	$1,804.2	$1,062.0	$178.1	$432.5	$98.6	$32.9
Estimated originations	$2,430.0	$1,162.0	$347.0	$466.0	$101.0	$355.0
2008 Securitization rate	78.5%	97.8%	6.8%	2.9%	92.8%	0.0%
MBS issuance	$1,177.3	$899.8	$6.6	$1.9	$269.0	$0.0
Estimated originations	$1,500.0	$920.0	$97.0	$64.0	$290.0	$114.0
2009 Securitization rate	85.6%	93.4%	0.0%	0.0%	98.9%	0.0%
MBS issuance	$1,553.0	$1,106.8	$0.0	$0.0	$446.2	$0.0
Estimated originations	$1,815.0	$1,185.0	$92.0	$10.0	$451.0	$77.0

Notes: Total MBS excludes re-securitizations, scratch-and-dent MBS and deals backed by seasoned loans. Conforming includes conventional conforming mortgages and Fannie/Freddie MBS excluding pools with average loan age over 3 months. Seconds include home-equity lines of credit and closed-end seconds; some second mortgages are also securitized in subprime and other MBS products.

Source: Inside MBS & ABS