Comptroller's Handbook

Consumer Compliance

Protecting Tenants at Foreclosure Act

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Office of the Comptroller of the Currency

Contents

Introduction

The Office of the Comptroller of the Currency's (OCC) *Comptroller's Handbook* booklet, "Protecting Tenants at Foreclosure Act," is prepared for use by OCC examiners in connection with their examination and supervision of national banks,[1] federal savings associations, and federal branches and agencies of foreign banking organizations (collectively, banks). Each bank is different and may present specific issues. Accordingly, examiners should apply the information in this booklet consistent with each bank's individual circumstances.

The booklet provides background information and expanded examination procedures for the Protecting Tenants at Foreclosure Act of 2009 (PTFA). Examiners decide which of these procedures are necessary, if any, after completing the consumer compliance core assessment in the "Community Bank Supervision," "Federal Branches and Agencies Supervision," or "Large Bank Supervision" booklets of the *Comptroller's Handbook*.

Background

The PTFA[2] protects tenants from evictions resulting from foreclosure on the properties they occupy. The PTFA took effect on May 20, 2009, and was scheduled to expire on December 31, 2012. The Dodd–Frank Wall Street Reform and Consumer Protection Act extended the expiration date to December 31, 2014.[3] The Economic Growth, Regulatory Relief, and Consumer Protection Act (Economic Growth Act) repealed the PTFA's sunset date as of 30 days after the Economic Growth Act's enactment. As a result, the PTFA is in effect permanently as of June 23, 2018.[4]

[1] References to "national banks" throughout this booklet also generally apply to federal branches and agencies of foreign banking organizations unless otherwise specified. Refer to the "Federal Branches and Agencies Supervision" booklet of the *Comptroller's Handbook* for more information regarding applicability of laws, regulations, and guidance to federal branches and agencies. Certain federal savings associations may make an election to operate as a covered savings association (CSA). For more information, refer to OCC Bulletin 2019-31, "Covered Savings Associations Implementation: Covered Savings Associations," and 12 CFR 101, "Covered Savings Associations."

[2] Refer to the Helping Families Save Their Homes Act of 2009 (HELP Act), Pub. L. 111-22 (2009). Sections 701–704 of the HELP Act are referred to as the Protecting Tenants at Foreclosure Act of 2009. These sections were codified as 12 USC 5201 note, 12 USC 5220 note, and 42 USC 1437f note.

[3] Refer to Dodd–Frank Wall Street Reform and Consumer Protection Act, section 1484, Pub. L. 111-203 (2010). Section 1484 is titled "Protecting Tenants at Foreclosure Extension and Clarification" and was codified at 12 USC 5220 note.

[4] Refer to the Economic Growth Act, section 304, Pub. L. 115-174. Section 304 is titled "Restoration of the Protecting Tenants at Foreclosure Act of 2009" and was codified at 12 USC 5220 note.

The PTFA applies to any foreclosure on a federally related mortgage loan,[5] dwelling, or residential real property (collectively, PTFA-covered foreclosures).[6] The PTFA provides that any immediate successor in interest[7] in such a foreclosed property, including a bank that takes complete title to a house upon foreclosure, assumes the interest subject to the rights of any bona fide tenant and needs to comply with certain notice requirements.

The PTFA specifies the date of a "notice of foreclosure" as "the date on which complete title to a property is transferred to a successor entity or a person as a result of a court order, or pursuant to provisions in a mortgage, deed of trust, or security deed."[8]

The immediate successor in interest of a dwelling or residential real property must provide tenants with a notice to vacate at least 90 days before the effective date of such eviction notice.[9] The notice period starts when the tenant receives the notice to vacate. In some cases, state law may provide a longer notice period than 90 days.

The PTFA requires the landlord to permit bona fide tenants to stay in the residence until the end of their leases except when

- the property is sold after foreclosure to a purchaser who will occupy the property as a primary residence; or
- there is no lease or the lease is terminable at will under state law.

[5] Refer to 12 USC 5220 note. The PTFA states that "federally related mortgage loan" has the same meaning as in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 USC 2602(1)). That definition includes any loan secured by a lien on one- to four-family residential real property, including individual units of condominiums and cooperatives, that is, loans that are (1) made by any federally insured bank that is insured by a federal agency, (2) insured or guaranteed by a federal agency, (3) intended to be sold to certain government-sponsored entities, or (4) made by a creditor (as defined in 15 USC 1602(g)) that makes or invests in residential real estate loans aggregating to more than $1 million per year.

[6] PTFA-covered foreclosures also include section 8 housing (42 USC 1437f(o)(7)(C)) and mortgage loans insured by the Federal Housing Administration.

[7] Refer to 12 USC 5220 note. The PTFA does not define "immediate successor in interest." Generally, an immediate successor in interest includes a bank that takes title to real property upon foreclosure subject to the rights of any bona fide tenant. With respect to guidance only in connection with foreclosures on Federal Housing Administration loans, the U.S. Department of Housing and Urban Development (HUD) indicated that "generally, the successor in interest is the purchaser," which may be an entity or a person. Refer to "Protecting Tenants at Foreclosure Act: Guidance on Notification Responsibilities Under the Act With Respect to Occupied Conveyance," 75 Fed. Reg. 66385.

[8] Refer to 12 USC 5220 note. "Complete title" is a matter of state law. Thus, examiners should take care to understand the laws of the jurisdiction in which a foreclosure proceeding is taking place to determine when a bank will take complete title of the property. Some factors to consider include whether there are limitations or restrictions on a bank's ability to transfer or sell the foreclosed property for a set period of time after conclusion of foreclosure proceedings, whether the jurisdiction requires legal title to be recorded upon conclusion of a foreclosure proceeding to be complete, how judicial and nonjudicial foreclosure proceedings confer title, and the timing and legal effects of foreclosure redemption periods on legal title.

[9] Refer to 12 USC 5220 note.

Even when these exceptions apply, the PTFA requires that tenants receive 90 days' notice to vacate (or longer, based on state law) for either of the exceptions to be valid before they may be evicted.

A lease or tenancy is "bona fide" only if

- the mortgagor or a child, spouse, or parent of the mortgagor under the contract is not the tenant,
- lease or tenancy was the product of an arm's-length transaction, and
- lease or tenancy requires the receipt of rent that is not substantially less than fair market rent or the rent is reduced or subsidized due to a federal, state, or local subsidy.

Consideration of Other Laws and Regulations

A bank's PTFA activities could raise issues pertaining to other applicable laws or regulations, including provisions relating to other real estate owned (OREO), the Fair Housing Act (FHA), the Servicemembers Civil Relief Act (SCRA), and the Privacy of Consumer Financial Information Rule of the Gramm–Leach–Bliley Act.[10]

Authority to Hold Real Estate (National Bank Act [12 USC 29] and the Homeowners' Loan Act [12 USC 1464(c)])

When a bank forecloses on certain types of real estate not intended for use as bank premises, that real estate asset is generally transferred to OREO for accounting, credit, property management, marketing, and regulatory purposes. OREO is real estate (including leases) that is

- acquired through any means in full or partial satisfaction of a debt previously contracted, or
- a former banking facility including a property that was acquired for future expansion but for which banking use is no longer contemplated.

Banks have authority to hold and dispose of OREO and to provide property management services. Such functions are subject to limited holding periods, state and federal laws, and other restrictions, including those that protect tenants. Refer to the "Other Real Estate Owned" booklet of the *Comptroller's Handbook*.

Fair Housing Act (42 USC 3601 et seq., 24 CFR 100)

Antidiscrimination laws apply to the rental of housing and dwellings. Therefore, there are FHA considerations when a bank owns a property occupied by a tenant. The FHA prohibits discrimination in the sale or rental of housing, including refusing to negotiate, making

[10] To the extent that dwellings may be considered "personal property," other considerations may apply. Examples of dwellings that may be considered personal property include houseboats, mobile homes not secured by land, and cooperatives (depending on state law).

unavailable, or denying a dwelling, to any person because of race, color, religion, sex, familial status, or national origin.[11] The FHA also prohibits discrimination against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of the related services or facilities, because of race, color, religion, sex, familial status, or national origin.[12] The FHA provides for limited exemptions for certain single-family and owner-occupied, one- to four-family residential properties owned or rented by a single owner,[13] for religious organizations, or for private clubs.[14] Refer to the "Fair Lending" booklet of the *Comptroller's Handbook* for more information regarding the FHA and examination procedures.

Servicemembers Civil Relief Act (50 USC 3901 et seq.)

If the tenant is a servicemember as defined in the SCRA and is in military service on active duty, a landlord may not evict the servicemember without either a court order or a written notice of termination from the servicemember.[15] Refer to the "Servicemembers Civil Relief Act" booklet of the *Comptroller's Handbook* for an explanation of the requirements and protections available to servicemembers and dependents of servicemembers, and examination procedures.

Gramm–Leach–Bliley Act (15 USC 6801 et seq.) and Privacy of Consumer Financial Information Rule (12 CFR 1016.5)

A bona fide tenant that has a customer relationship with a bank may be a consumer entitled to receive periodic privacy notices. A customer relationship may be established when a consumer enters into a lease of personal property. Customers are entitled to initial and subsequent privacy notices.[16] Refer to the "Privacy of Consumer Financial Information" booklet of the *Comptroller's Handbook*.

Risks Associated With PTFA Activities

From a supervisory perspective, risk is the potential that events will have an adverse effect on a bank's current or projected financial condition[17] and resilience.[18] The OCC has defined

[11] Refer to 42 USC 3604(a).

[12] Refer to 42 USC 3604(b).

[13] Refer to 42 USC 3603(b).

[14] Refer to 42 USC 3607.

[15] Refer to 50 USC 3951(a), 3955(c)(1), and 3955(g).

[16] Refer to 12 CFR 1016.5 and 1016.9.

[17] Financial condition includes effects from diminished capital and liquidity. Capital in this context includes potential effects from losses, reduced earnings, and market value equity.

[18] Resilience recognizes the bank's ability to withstand periods of stress.

eight categories of risk for bank supervision purposes: credit, interest rate, liquidity, price, operational, compliance, strategic, and reputation. These categories are not mutually exclusive. Any product or service may expose the bank to multiple risks. Risks also may be interdependent and may be positively or negatively correlated. Examiners should be aware of and assess this interdependence. Examiners also should be alert to concentrations that can significantly elevate risk. Concentrations can accumulate within and across products, business lines, geographic areas, countries, and legal entities. Refer to the "Bank Supervision Process" booklet of the *Comptroller's Handbook* for an expanded discussion of banking risks and their definitions.

The primary risks associated with a bank's PTFA activities are compliance, operational, strategic, and reputation.

Compliance Risk

Compliance risk is the risk to a bank's current or projected financial condition and resilience arising from violations of laws or regulations, or from nonconformance with prescribed practices, internal bank policies and procedures, or ethical standards. This risk exposes a bank to potential fines, civil money penalties, payment of damages, and the voiding of contracts. Compliance risk can result in diminished reputation, harm to bank customers, limited business opportunities, and lessened expansion potential.

Compliance risk can increase when a bank acquires residential real estate with tenants because a number of consumer laws protect residential tenants. While the PTFA would apply once the bank becomes a landlord or seeks to evict tenants, the bank must comply with relevant laws and regulations, beginning with the foreclosure process and continuing through ultimate disposition of the property, including laws governing property preservation, the treatment of tenants, and fair housing requirements for nondiscriminatory treatment in these areas. A bank has legal responsibilities with regard to owning, operating, maintaining, marketing, and selling residential OREO, and may be held liable for damages to other parties.[19]

Operational Risk

Operational risk is the risk to current or projected financial condition and resilience arising from inadequate or failed internal processes or systems, human errors or misconduct, or adverse external events. Operational risk can increase when the bank's policies and processes are insufficient to manage higher volumes of OREO subject to the PTFA. Inadequate or failed processes for obtaining leases, confirming lease terms, identifying bona fide tenants, and tracking provision and receipt of notices to vacate can result in PTFA violations.

[19] These laws include landlord-tenant laws; landlord licensing or registration requirements; minimum leasing requirements; eviction protections under the PTFA; protections under the SCRA; reasonable accommodation and accessibility requirements for disabled tenants under the FHA and the Americans With Disabilities Act; antidiscrimination laws, including the FHA; and other standards associated with providing clean, sanitary, and safe properties.

Highly automated environments can increase operational risk exposure that can result in increased compliance or reputation risk to the extent that automated environments compound errors. Operational risk can also occur when a bank outsources operational functions (e.g., property management, account management, collections, payment processing, data input, and legal assistance) to third parties, particularly if the bank does not appropriately manage these third-party relationships.[20] Refer to the "Other Real Estate Owned" booklet of the *Comptroller's Handbook* for an expanded discussion of operational risks associated with managing OREO.

Strategic Risk

Strategic risk is the risk to current or projected financial condition and resilience arising from adverse business decisions, or poor implementation of business decisions, or lack of responsiveness to changes in the banking industry and operating environment.

Incomplete or inadequate consideration of the PTFA when implementing, expanding, or modifying PTFA-covered residential real estate can expose the bank to strategic risk. Effective management of PTFA-covered residential real estate typically begins with complete information about the properties, realistic assessments of the compliance and operational risks, and evaluation of management's expertise and practical operating capacity to manage foreclosed properties that are occupied. A sound compliance program for the PTFA includes management and staff with the knowledge and experience to identify, measure, monitor, and control the risks unique to foreclosure on residential real estate rentals. Failure to provide effective oversight can increase a bank's strategic risk profile, while also affecting interdependent risks such as credit and reputation.

Reputation Risk

Reputation risk is the risk to current or projected financial condition or resilience arising from negative public opinion. This risk may impair a bank's competitiveness by affecting its ability to establish new relationships or services or continue servicing existing relationships.

Inadequate policies and processes, operational breakdowns, or other weaknesses in a bank's PTFA compliance activities can harm the bank's reputation. Inappropriate delegation of activities to third parties without appropriate bank oversight, or wrongful acts by third parties acting on the bank's behalf, can increase a bank's reputation risk, particularly when customers are harmed. Effective systems and controls are important for managing reputation risk (e.g., oversight of problem loans involving tenants; identification of residential real estate properties subject to foreclosure; determination of tenant eligibility for PTFA, HUD, or SCRA protections; and communications with tenants as required under fair housing laws).

[20] Refer to OCC Bulletin 2013-29, "Third-Party Relationships: Risk Management Guidance;" OCC Bulletin 2017-21, "Third-Party Relationships: Frequently Asked Questions to Supplement OCC Bulletin 2013-29"; and OCC Bulletin 2017-7, "Third-Party Relationships: Supplemental Examination Procedures."

Risk Management

Each bank's board and management should identify, measure, monitor, and control risk by implementing an effective risk management system appropriate for the size and complexity of its operations. When examiners assess the effectiveness of a bank's risk management system, they consider the quantity and quality of risk management, including the bank's policies, processes, personnel, and control systems. Refer to the "Corporate and Risk Governance" booklet of the *Comptroller's Handbook* for an expanded discussion of a bank's overall risk management system. Refer to the "Compliance Management Systems" booklet of the *Comptroller's Handbook* for an expanded discussion relating to risk management regarding consumer protection-related laws and regulations.

There are many other factors that may affect risk exposure to the PTFA (e.g., previous violations, geographic areas, concentrations, quality of the bank's PTFA related policies and processes, and management of third-party relationships). Qualitative metrics are measurements of the value and performance of products, services, and processes (e.g., customer satisfaction, ratings, failure rate, mean time between failures, quality of service, quality control, and defect rates). In general, when metrics indicate inadequate or deteriorating performance, risk is increased. Further, the root cause of inadequate or deteriorating performance should factor into assessing the quality of risk management. Control systems, such as internal and external audits, quality control, and quality assurance, are key components of a bank's compliance risk management program. Effective monitoring and control systems contain robust audit and compliance monitoring programs that include transaction testing covering relevant products and account documentation (e.g., property descriptions, court orders, notices to vacate, leases subject to pre-existing rental subsidies, and communications with tenants).

When determining the quantity of compliance, operational, strategic, or reputation risks associated with the PTFA risk management program, examiners may consider the following:

- The volumes of foreclosed residential real property occupied by tenants.
- Trends, such as growth in residential foreclosures, particularly in properties that are tenant-occupied.
- The effect of external business factors on changes in foreclosure volumes (e.g., economic, industry, competitive, and market conditions).
- Whether a lease is subject to pre-existing rental subsidies that may restrict lease terminations.
- Whether tenants are eligible for protections of other consumer protection regulations (e.g., FHA, SCRA, privacy rules, and state and local laws).
- The nature and volume of complaints received from tenants of OREO properties owned or managed by the bank or its third parties.
- The effect of potential legislative, regulatory, accounting, and technological changes on managing PTFA-covered foreclosures.

When evaluating the quality of a bank's PTFA risk management program, examiners may consider the following:

- Whether relevant policies and procedures provide appropriate and effective guidance for compliance with the PTFA.
- Whether processes are effective for implementing policies and procedures and are adequately communicated to appropriate staff and applicable third parties.
- Whether bank and third-party personnel who perform activities involving PTFA compliance are qualified and competent, receive training, have clearly defined responsibilities, and are held accountable for their actions.
- Whether bank or third-party personnel respond to regulatory, accounting, industry, and technological changes that could affect the PTFA compliance program.
- Whether the bank's complaint resolution process considers complaints received from tenants of OREO properties owned or managed by the bank or its third parties.
- Whether deficiencies in the PTFA compliance program or violations of the PTFA are resolved satisfactorily.
- Whether the bank's control systems provide accurate and timely assessments of compliance with the PTFA.
- The extent and adequacy of testing and monitoring performed within frontline units, by independent risk management, and by internal audit.

Examination Procedures

This booklet contains objectives and expanded procedures for examining compliance with the PTFA. Examiners decide which of these objectives and procedures are relevant to the scope of the examination during examination planning, or after drawing preliminary conclusions during the compliance core assessment contained in the "Community Bank Supervision," "Federal Branches and Agencies Supervision," or "Large Bank Supervision" booklets of the *Comptroller's Handbook*.

Scope

These procedures are designed to help examiners tailor the PTFA examination to each bank and determine the scope of the examination. This determination should consider work performed by internal and external auditors, other independent risk control functions, and other examiners covering related areas. Examiners need to perform only those objectives and steps that are relevant to the scope of the examination as determined by the following objectives. Seldom will every objective or step of the expanded procedures be necessary.

Objective: To determine the scope of the PTFA examination and identify examination objectives and activities necessary to meet the needs of the supervisory strategy for the bank.

1. Determine whether the bank forecloses on dwellings or residential real property securing federally related mortgage loans. "Federally related mortgage" is defined at 12 USC 2602(1). Refer to appendix A, "Glossary," of this booklet.

    - If no, the statute's definition does not apply and no further review is necessary.
    - If yes, proceed with determining the scope of the PTFA examination.

2. Review the following sources of information, as applicable, and note any previously identified problems related to the PTFA that require follow-up.

    - Supervisory strategy.
    - Examination scope memorandum.
    - The OCC's supervisory information systems.
    - Previous reports of examination, supervisory letters, and work papers.
    - Consumer compliance-related supervisory information obtained from other regulatory agencies.
    - Internal and external audit reports and work papers.
    - Bank management's responses to previous reports of examination, supervisory letters, and audit reports.
    - Customer complaints and litigation. Examiners should review customer complaint data from the OCC's Customer Assistance Group, the bank, and the Consumer Financial Protection Bureau (when applicable). When possible, examiners should review and leverage complaint analysis already performed during the supervisory cycle to avoid duplication of effort.

- Whistleblower referrals received by the OCC or internally within the bank. Coordinate with the examiner-in-charge (EIC) as the EIC may already possess this information.
- Organizational charts and process flow charts.

3. Review policies, procedures, and reports that bank management uses to supervise compliance with the PTFA, including internal risk assessments.

4. In discussions with bank management, determine if there have been any significant changes (for example, in policies, processes, personnel, control systems, third-party relationships, products, services, delivery channels, volumes, markets, and geographies) since the previous PTFA examination or the bank's most recent audit(s), as applicable.

5. Based on an analysis of information obtained in the previous steps and input from the EIC, determine the scope and objectives of the PTFA examination.

6. Select from the following examination procedures the necessary steps to meet examination objectives and the supervisory strategy.

Quantity of Risk

Conclusion: The quantity of each associated risk is (low, moderate, or high).

Objective: To determine the quantity of compliance risk associated with the PTFA.

1. Assess the bank's level of exposure to the PTFA compliance requirements. Consider

   - the bank's history of compliance with the PTFA (e.g., violations and nonconformance with practices, policies and procedures, and ethical standards).
   - payments of fines, civil money penalties, and damages, and whether contracts have been voided.
   - the number and dollar amount of PTFA-covered foreclosures to which the bank is the immediate successor in interest and assumes the interest subject to the rights of any bona fide tenant.
   - the trend in the number and dollar amount of PTFA-covered foreclosures, which may have a negative effect on a bank's asset quality, earnings, liquidity, and resilience.
   - the volume and trend of complaints received from tenants of OREO properties owned or managed by the bank and related third parties.

Objective: To determine the quantity of operational risk associated with the PTFA.

1. Assess the bank's level of exposure to operational risk. Consider

   - the number and trend of tenants eligible for PTFA protections, including tenants in process of being notified to vacate and those paying rent to the bank.
   - the number and trend of leases with pre-existing rental subsidy agreements.

2. Assess the bank's policies, processes and internal controls related to processing higher volumes of OREO subject to the PTFA. Such processes include obtaining leases, confirming lease terms, identifying bona fide tenants, and tracking provision and receipt of notices to vacate.

3. Consider the amount and scalability of outsourcing for operational functions to third parties (e.g., property management, account management, communications, credit review and reporting, payment processing, collections, data input, and legal assistance).

4. Determine the effect of the following on operational risk as it relates to the acquisition, holding, and disposition of residential OREO occupied by tenants. Consider

   - the amount and trend of operational losses resulting from inadequate or failed internal processes or systems, the misconduct or errors of people, and adverse external events.
   - the volume and severity of operational, administrative, personnel, and accounting control errors.

- the volume and types of activities that are performed by third parties.
- the adequacy of systems to properly select, oversee and manage third-party relationships including communications with tenants.
- the bank's strategies with respect to acquiring, holding, and marketing residential OREO occupied by tenants.
- external factors including market conditions and any legislative, regulatory, or accounting changes that may affect PTFA-covered properties.

Objective: To determine the quantity of strategic risk associated with the PTFA.

1. Consider the effect on strategic planning if the bank has a substantial number of PTFA-covered foreclosed loans or loans in the foreclosure pipeline concentrated in one geographic area, market, or property type, or if a large number of borrowers share the same employer or industry income source.

2. Consider the effect of potential legislative, regulatory, accounting, and technological changes on strategic planning for managing PTFA-covered foreclosures.

Objective: To determine the quantity of reputation risk associated with the PTFA.

1. Assess the effect on public opinion of the bank's management of PTFA-covered foreclosures. Consider

    - the volume of complaints or other communications about the PTFA, as well as the resolution of those complaints or communications.
    - the volume and nature of litigation related to the PTFA.
    - the number of past and current violations of the PTFA.

Objective: Assess the bank's compliance with the PTFA by selecting and reviewing a sample of foreclosures subject to the PTFA in performing the following procedures. Refer to the "Sampling Methodologies" booklet of the *Comptroller's Handbook.*

1. Review the sample to determine if the tenant had a bona fide lease as defined by the PTFA. If so, review account documentation, a description of the property, the court order, and the notice to vacate including tracking of communications with the tenant (e.g., receipt of the notice to vacate).

2. Determine whether the bank provided a notice to vacate to be received by the tenant at least 90 days before the effective date of such notice (12 USC 5220 note).

3. Determine whether the bank confirmed that the tenant received the notice to vacate at least 90 days before the effective date of such notice (12 USC 5220 note). (**Note:** The date that the tenant receives the notice, not the date that the notice was delivered, determines the start of the 90-day notice period.)

4. Determine whether the bank assumed its interest subject to the existing lease between the previous owner and the bona fide tenant, and whether the lease is subject to the housing assistance payments contract between the previous owner and the public housing agency for the occupied unit. Any termination of the tenant's lease must be consistent with the requirements contained in 42 USC 1437f(o)(7).

    - If no, the housing assistance payments requirements do not apply and no further review for compliance with 42 USC 1437f(o)(7) is necessary.
    - If yes, and the bank terminated the lease, review a sample of foreclosures subject to housing assistance payment contracts to determine if termination of the tenant's lease is consistent with the requirements in 42 USC 1437f(o)(7).

5. Determine whether the bank assumed its interest, subject to a bona fide tenant's rights to occupy the premises until the end of the remaining term of the lease. Such a lease would not be terminated unless the lease is terminable at will under state law or the property is sold to a purchaser who will occupy the unit as a primary residence (12 USC 5220 note).

Quality of Risk Management

Conclusion: The quality of risk management is (strong, satisfactory, insufficient, or weak).

The conclusion on risk management considers all risks associated with the PTFA.

Policies

Policies are statements of actions adopted by a bank to pursue certain objectives. Policies guide decisions, often set standards (on risk limits, for example), and should be consistent with the bank's underlying mission, risk appetite, and core values. Policies should be reviewed periodically for effectiveness and approved by the board of directors or designated board committee.

Objective: To determine whether the bank has effective policies in place for compliance with the PTFA.

1. Evaluate the adequacy of the bank's policies regarding the PTFA. Consider whether policies

    - address regulatory requirements.
    - provide appropriate guidance for compliance with the PTFA.
    - include responsibilities for PTFA compliance.
    - include standards to maintain records of checks and actions taken to comply with the PTFA.

2. Assess the bank's policies related to compliance with the PTFA. Consider whether bank policies that govern marketing and sales strategies (including selling to investors), property maintenance, and other aspects of OREO management provide for equal treatment of geographies where the properties are located, without regard to racial or ethnic composition, and comply with the FHA.

Processes

Processes are the procedures, programs, and practices that impose order on a bank's pursuit of its objectives. Processes define how activities are carried out and help manage risk. Effective processes are consistent with the underlying policies and are governed by appropriate checks and balances (such as internal controls).

Objective: To determine whether the bank has processes in place to define how PTFA compliance activities are carried out.

1. Evaluate whether processes are effective, consistent with underlying policies, and effectively communicated to appropriate staff, such as the

- processes to identify loans that are federally related mortgages or other loans secured by dwellings or residential real property, which are occupied by tenants.
- processes to identify foreclosures on a federally related mortgage or other loans secured by dwellings or residential real property.
- criteria to identify bona fide lease agreements.
- processes to track payments under lease agreements.
- processes for eviction notice, service of notice, timing of service of notice, tracking tenant receipt of the 90-day eviction notice, correspondence, complaints, and court orders.

2. If the bank has third-party relationships that involve critical activities related to the PTFA (e.g., property management and legal activities affecting tenants), assess the adequacy of the bank's third-party risk management. Refer to OCC Bulletin 2013-29, OCC Bulletin 2017-21, and OCC Bulletin 2017-7.

3. Assess the bank's strategies related to foreclosures on residential real estate occupied by tenants, including management's responsiveness to real estate market conditions and trends. Consider management's evaluation of the effect of external business factors (e.g., economic, industry, and competitive) on strategic planning for PTFA-covered properties.

4. Assess the accuracy, timeliness, and completeness of management and board reports regarding PTFA compliance.

Personnel

Personnel are the bank staff and managers who execute or oversee processes. Personnel should be qualified and competent, have clearly defined responsibilities, and be held accountable for their actions. They should understand the bank's mission, risk appetite, core values, policies, and processes. Banks should design compensation programs to attract and retain personnel, align with strategy, and appropriately balance risk taking and reward.

Objective: To determine management's ability to supervise the bank's PTFA compliance.

1. Given the extent of the bank's exposure to the PTFA, assess the management structure and staffing, while considering the following:

   - Expertise and number of staff members.
   - Whether reporting lines encourage open communication and limit the chances of conflicts of interest.
   - Level of staff turnover.
   - Use of outsourcing arrangements.
   - Capability to address identified deficiencies.
   - Responsiveness to regulatory, accounting, industry, and technological changes.
   - Quality and independence of the audit and asset review functions.

- Management's expertise and practical operating capacity to hold, manage, and dispose of foreclosed residential properties that are occupied by tenants.

2. Determine the extent and adequacy of training received by individuals whose responsibilities include compliance with the PTFA. Review any training materials pertaining to the PTFA, and determine whether the training is appropriate and covers the various aspects of the provisions that apply to the bank's offerings and operations.

3. Evaluate management's knowledge of and compliance with state or local laws that govern its ownership of property and its obligations to tenants.

Control Systems

Control systems are the functions (such as internal and external audits and quality assurance) and information systems that bank managers use to measure performance, make decisions about risk, and assess the effectiveness of processes and personnel. Control functions should have clear reporting lines, sufficient resources, and appropriate access and authority. Management information systems should provide timely, accurate, and relevant feedback.

Objective: To determine whether the bank has systems in place to provide accurate and timely assessments of its compliance with the PTFA.

1. Evaluate the effectiveness of compliance monitoring and testing systems relative to the PTFA. Consider whether

    - the scope of reviews addresses all applicable provisions of the PTFA.
    - transaction testing is appropriate and includes samples covering all relevant product types and decision centers.
    - transaction testing also includes performing reviews of account documentation (e.g., a description of the property, court order, notice to vacate and receipt by the tenant, or other communications with the tenant).
    - the work performed is accurate.
    - significant deficiencies and their causes are included in reports to management or to the board of directors.
    - management has taken corrective actions to correct deficiencies.
    - reviews identify the root causes of violations or other deficiencies.

2. Obtain and review audit reports and work papers pertaining to the PTFA. Assess the adequacy of the audit, including scope and frequency. Consider whether

    - the scope of audits addresses all applicable provisions of the PTFA.
    - the extent of transaction testing is appropriate and includes samples covering all relevant product types and decision centers.
    - the work performed is accurate.
    - significant deficiencies and their causes are included in the audit reports.

- management has taken corrective actions to correct deficiencies.
- audits identify the root causes of violations or other deficiencies.
- audit evaluates the adequacy and effectiveness of the bank's PTFA policies and processes.
- audit reviews and validates management's actions to address previously identified deficiencies.

3. Determine whether the audit and testing functions are independent of business lines.

Conclusions

Conclusion: The aggregate level of compliance risk is
(low, moderate, or high).
The direction of compliance risk is
(increasing, stable, or decreasing).

Objective: To determine, document, and communicate overall findings and conclusions regarding the examination of compliance with the PTFA.

1. Determine preliminary examination findings and conclusions and discuss these with the EIC and other examination staff, as applicable. Provide preliminary conclusions regarding the following:

    - Quantity of compliance risk.
    - Quality of risk management.
    - Aggregate level and direction of associated compliance risk.
    - Potential effect on other associated risk areas (e.g., operational, strategic, and reputation).
    - Violations and other deficiencies.

2. Discuss examination findings with bank management, including violations, deficient practices, and conclusions about risks and risk management practices. If necessary, obtain commitments for corrective action.

3. Compose conclusion comments, highlighting any issues that should be included in the report of examination or supervisory letter. If necessary, compose matters requiring attention and violation write-ups.

4. Provide final examination findings and conclusions to the EIC or Compliance Team Lead.

5. Update the OCC's supervisory information systems and any applicable report of examination schedules or tables.

6. Document recommendations for the supervisory strategy (e.g., what the OCC should do in the future to effectively supervise compliance management systems for PTFA compliance in the bank, including time periods, staffing, and workdays required).

7. Update, organize, and reference work papers in accordance with OCC policy.

8. Appropriately dispose of or secure paper or electronic media that contain sensitive bank or customer information.

Appendix

Appendix A: Glossary

Bona fide lease or tenancy: A lease or tenancy is bona fide only if[21]

- the mortgagor or a child, spouse, or parent of the mortgagor under the contract is not the tenant;
- the lease or tenancy was the product of an arm's-length transaction; and
- the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent or the rent is reduced or subsidized due to a federal, state, or local subsidy.

Federally related mortgage loan: For purposes of the PTFA, "federally related mortgage loan" has the same meaning as in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 USC 2602(1)). That definition includes any loan secured by a lien on one- to four-family residential real property, including individual units of condominiums and cooperatives, that is (1) made by any federally insured bank that is insured by a federal agency, (2) insured or guaranteed by a federal agency, (3) intended to be sold to certain government-sponsored entities, or (4) made by a creditor (as defined in 15 USC 1602(g)) that makes or invests in residential real estate loans aggregating to more than $1 million per year.[22]

Immediate successor in interest: Although not formally defined, the PTFA generally assigns responsibility for complying with its provisions to a "successor entity or person" that takes "complete title" of a property subject to a "bona fide lease or tenancy." Refer to footnote 7 in this booklet.

Notice of foreclosure: The PTFA defines the date of a notice of foreclosure as "the date on which complete title to a property is transferred to a successor entity or a person as a result of a court order, or pursuant to provisions in a mortgage, deed of trust, or security deed."[23]

Notice to vacate: The immediate successor in interest of a dwelling or residential real property must provide tenants with a notice to vacate at least 90 days before the effective date of such notice.[24]

[21] Refer to 12 USC 5220 note.

[22] Ibid.

[23] Ibid.

[24] Ibid.

Other real estate owned: Real estate (including leases) that is[25]

- acquired through any means in full or partial satisfaction of a debt previously contracted, or
- a former banking facility, including a property that was acquired for future expansion but for which banking use is no longer contemplated.

Personal property: The PTFA does not apply to personal property, which is any property that is not real property under the law of the state where the property is located at the time it is offered or made available for lease. Examples are leases of equipment, furniture, appliances, vehicles, houseboats, mobile homes not secured by land, and cooperatives (depending on state law).[26]

PTFA-covered foreclosures: The PTFA applies to foreclosure on a federally related mortgage loan, dwelling, or residential real property.[27]

[25] Refer to 12 CFR 34.81.

[26] Refer to 12 CFR 1013.2(l).

[27] This definition includes properties secured by Federal Housing Administration-insured mortgages as well as units covered by HUD's Section 8 subsidy program.

References

Listed references apply to both national banks and federal savings associations unless otherwise specified.

Laws

12 USC 29, "Power to Hold Real Property" (national banks)
12 USC 1464(c), "Loans and Investments" (federal savings associations)
12 USC 2602(1), "Definitions"
12 USC 5201 note, "Emergency Economic Stabilization–Purposes"
12 USC 5220 note, "Emergency Economic Stabilization–Troubled Assets Relief Program Assistance to Homeowners"
15 USC 1602(g), "Creditor"
15 USC 6801 et seq., "Gramm–Leach–Bliley Act"
42 USC 1437f(o)(7), "Low-Income Housing–General Program of Assisted Housing–Low Income Housing Assistance"
42 USC 1437f note
42 USC 3601 et seq., "Fair Housing Act" (Title VIII of the Civil Rights Act of 1968)
50 USC 3901 et seq., "Servicemembers Civil Relief Act"
Public Law 111–22, "Helping Families Save Their Homes Act of 2009"
Public Law 111–203, section 1484, "Protecting Tenants at Foreclosure Extension and Clarification"
Public Law 115–174, section 304, "Restoration of the Protecting Tenants at Foreclosure Act of 2009"

Regulations

12 CFR 34.81, "Definitions"
12 CFR 101, "Covered Savings Associations" (covered savings associations)
12 CFR 1013.2(l), "Personal Property"
12 CFR 1016.5, "Annual Privacy Notice to Customers Required"
12 CFR 1016.9, "Delivering Privacy and Opt Out Notices"
24 CFR 100, "Discriminatory Conduct Under the Fair Housing Act"

Federal Register

75 Fed. Reg. 66385, "Protecting Tenants at Foreclosure Act: Additional Guidance on Notification Responsibilities Under the Act With Respect to Occupied Conveyance"

Comptroller's Handbook

"Bank Supervision Process"
"Community Bank Supervision"
"Compliance Management Systems"

“Corporate and Risk Governance”
“Fair Lending”
“Federal Branches and Agencies Supervision”
“Large Bank Supervision”
“Other Real Estate Owned”
“Privacy of Consumer Financial Information”
“Sampling Methodologies”
“Servicemembers Civil Relief Act”

Issuances

OCC Bulletin 2013-29, “Third-Party Relationships: Risk Management Guidance”
OCC Bulletin 2017-7, “Third-Party Relationships: Supplemental Examination Procedures”
OCC Bulletin 2017-21, “Third-Party Relationships: Frequently Asked Questions to Supplement OCC Bulletin 2013-29”
OCC Bulletin 2019-31, “Covered Savings Associations Implementation: Covered Savings Associations” (covered savings associations)