

Office of  
**Mortgage Settlement**  
Oversight

# *Summary of Compliance*

**A Report from the Monitor of the National Mortgage Settlement**

June 19, 2013

The following report summarizes my first compliance reports as Monitor under the National Mortgage Settlement, which I have filed with the United States District Court for the District of Columbia. It includes:

- An overview of the process through which my colleagues and I have reviewed the servicers' work.
- Summaries of each servicer's results and scorecards regarding their compliance for the first and second test periods (the third and fourth calendar quarters of 2012), as well as initial disclosure from testing conducted during the third test period (the first calendar quarter of 2013).
- Information about consequences set forth in the Settlement for servicers after a potential violation is reported or discovered.
- An analysis of complaints received from consumers and during meetings with distressed borrowers and the professionals who represent them.
- A discussion of additional testing measures I am exploring.
- An update on my work to complete the consumer relief reports.

Because the servicing standards on which the metrics being tested are based were phased in during 2012, testing for the periods covered by my compliance reports did not include all the metrics established by the Settlement. All of the metrics have been tested, however, through the first calendar quarter of 2013 and will be covered by future reports to the Court and the public.

As more fully discussed in this summary report, there were three metric fails in 2012 and five metric fails in the first quarter of 2013, confirming much of what I have heard during the last year from state attorneys general, housing counselors, advocates and distressed borrowers. The Settlement requires that the servicers create and implement corrective action plans and institute remediation efforts, all of which my professionals and I are currently overseeing.

While it is still early in the compliance monitoring process, it is clear to me the Settlement has allowed us to uncover issues with the servicers' activities that need to be rectified. My job is to hold the servicers accountable to the commitments they made under the Settlement. I intend to continue to do just that.

I hope that the compliance reports just filed with the Court will inform the public and policymakers, and I look forward to engaging in a conversation about the findings outlined in the following pages.

Sincerely,



Joseph A. Smith, Jr. Monitor



## Introduction

**As required by the National Mortgage Settlement (Settlement or NMS), I have filed compliance reports with the United States District Court for the District of Columbia for each servicer that is a party to the Settlement. These reports provide the results of my findings regarding their compliance with the servicing standards established by the NMS. This document summarizes these reports, which cover the third and fourth calendar quarters of 2012, or test periods one and two. These reports are the first public step in a monitoring process that will continue for the next several years. Copies of the reports filed with the Court are available on my website: [www.mortgageoversight.com](http://www.mortgageoversight.com).**

I have long believed that the servicing standards are the most important and lasting component of the NMS. Improving the way servicers work with their customers is an important part of reforming home mortgage finance to better balance efficiency and fairness. While I hope these reports will contribute to the national conversation around the servicers' compliance with the Settlement, it is important to remember that they cover only the first two test periods. Subsequent reports will provide additional detail.

## Testing Process

To test compliance with the 304 servicing standards, I have worked closely with a team of professionals. Last year, I hired BDO Consulting, a division of BDO USA, LLP (BDO) to serve as my primary professional firm (PPF). I chose BDO due to its substantial financial services industry expertise, capacity and lack of meaningful conflicts with any of the servicers I am monitoring. To assist in the review of servicer performance, I retained five secondary professional firms (SPFs) and have assigned one to each servicer. These firms also strike an appropriate balance between capability and independence.

### *Who Monitors Whom?*

### *Metrics*

To assess how well the servicers adhere to the 304 servicing standards, or rules, outlined in the NMS, the servicers and the professionals in my employ and I use a series of 29 metrics, or tests. Each of the servicers and I negotiated a separate work plan that specifies how the tests are carried out and validated. The Monitoring Committee, comprised of representatives from 15 states, the United States Department of Housing and Urban Development, and the United States Department of Justice, reviewed these work plans and, after providing input, did not object to their adoption.

### *Metric Testing Timeline*

Each servicer has assigned a group of employees who are independent from the servicer's mortgage loan servicing operations to ensure the servicer's activities are compliant. This group of employees, called the Internal Review Group (IRG), uses the servicer's system of record to compile the full population of loans related to each metric and then tests a statistically valid sample to determine whether the servicer has passed the metric. The SPF assigned to the servicer then reviews the work papers of the IRG and retests a sub-sample of the IRG's test sample in a process overseen by the PPF and me.

Each servicer implemented the servicing standards according to a unique schedule. As a result, different servicers were ready for testing on different metrics at different times. During test periods one and two, servicers were not tested on all 29 metrics. Some metrics were tested for some servicers and not tested for others. If a metric was not tested by a servicer in test period one or two, it was tested for the first time in test period three (the first calendar quarter of 2013) and will be the subject of upcoming reports.

### *Testing a Metric*

If a servicer's IRG reports that it failed a metric, the NMS deems this a potential violation that the servicer can cure. The servicer must create and implement a corrective action plan (CAP) to address the root cause of the fail. I review and, once satisfied, approve the CAP. Additionally, the servicer compensates borrowers identified during the testing who were harmed by the potential violation. If the potential violation is widespread, remediation must cover all borrowers who were harmed dating back to the servicer's implementation of the relevant servicing standard or standards. The SPF, PPF, and I then regularly review and test the implementation of these remediation plans until the servicer asserts, and I confirm, that its remediation is complete.

Though the review process is summarized for purposes of this document, it is, in fact, extensive and exhaustive. The work conducted to test the five servicers during the first two periods involved 195 professionals including my PPF, SPFs, and other professionals who dedicated approximately 37,900 hours over a six-month period.

## Servicer Performance

### ***Bank of America, N.A.***

During the two test periods covered in this report (July 1-Sept. 30, 2012 and Oct. 1-Dec. 31, 2012), Bank of America, N.A. (Bank of America) was tested on a total of 12 metrics. These include metrics related to providing borrowers with a single point of contact, completing a foreclosure sale in error, assessing fees in error, affidavit integrity, complaint response timeliness, and accuracy of loan modification denials, among others (for more information, see Metric Testing Timeline).

Bank of America was not tested on 17 metrics during the first two test periods because of the timing of its servicing standards implementation that related to the metrics. Bank of America did not fail any of the 12 metrics tested during the first two test periods.

By the end of test period three, as is the case for all the servicers, Bank of America had been tested on all the metrics. Bank of America has recently disclosed to the Monitoring Committee and me that it failed Metrics 6 and 19 in the third test period. Metric 6 requires accurate information in a letter the servicers are required by the Settlement to send to borrowers before starting foreclosure, and Metric 19 measures whether the servicer is complying with the requirement to notify the borrower of any missing documents in the borrower's loan modification application within five days of receipt. Bank of America has begun work on proposed CAPs for these potential violations. I have not yet verified their findings or conducted my own testing, and will report on these matters in my next compliance report to the Court and the public.

### ***Bank of America scorecard***

### ***J.P. Morgan Chase Bank, N.A.***

My team and I tested J.P. Morgan Chase Bank, N.A. (Chase) on 11 metrics through the end of the first two test periods, including metrics related to affidavit integrity, providing borrowers with a single point of contact, complaint response timeliness, and force-placed insurance termination, among others (for more information, see Metric Testing Timeline).

During its IRG review, Chase disclosed to the Monitoring Committee and me a potential violation of Metric 29, which tests whether the servicer terminates force-placed insurance coverage within 15 days of receipt of evidence of existing coverage. Chase prepared, and I approved, a CAP. Chase has voluntarily remediated all affected borrowers under that plan for a period commencing in April 2012. Chase reported that it has provided remediation by refunding premiums to over 2,000 borrowers. This amounts to more remediation than the NMS requires for a widespread error.

Chase has completed its CAP and has resumed testing Metric 29. My PPF, SPF, and I will review such testing and Chase's remediation activities and provide our determination as to each of these activities in my next compliance report.

Additionally, Chase has disclosed to the Monitoring Committee and me that it failed Metric 20 during the third test period. Metric 20 measures whether the servicer follows the timelines for making a decision on a borrower's loan modification application and for notifying the customer of its denial decision. I am currently reviewing Chase's proposed Metric 20 CAP, including a review of the need for remediation. Information on these activities also will be publicly available in my next report.

### ***Chase scorecard***

### ***CitiMortgage, Inc.***

CitiMortgage, Inc. (Citi) was tested on 15 metrics through the end of the second test period. These include metrics related to incorrect denial of a loan modification, affidavit integrity, proof of claim, appropriateness of fees, work force management, providing borrowers with a single point of contact, compliance with the loan modification decision/notification timelines, and force-placed insurance notification and termination, among others (for more information, see Metric Testing Timeline).

Citi reported to the Monitoring Committee and me a potential violation of Metric 19 during test period two. Metric 19 tests whether the servicer is complying with the timeliness requirement to notify the borrower of any missing documents in the borrower's loan modification application. Citi is currently implementing a CAP and, because I determined the error to be widespread, is working with my professionals and me to ensure that any borrower harmed by this potential violation is appropriately compensated.

Citi has disclosed to the Monitoring Committee and me that it failed two additional metrics during the third test period. These include Metric 6, which requires accurate information in a letter the servicers are required by the Settlement to send to borrowers before starting foreclosure, and Metric 23, which measures the requirement to notify borrowers about missing documents within 30 days of a request for a short sale. Citi has submitted to me proposed CAPs for both metrics, and I am now reviewing them. In my next public report, after I have done the necessary work, I will provide additional information regarding my review of Citi's compliance activities and Citi's CAPs.

### ***Citi scorecard***

### ***ResCap Parties (formerly Ally/GMAC)***

The ResCap Parties (formerly Ally/GMAC) have been tested on 11 metrics through the end of the second test period. (See the Metrics Testing Timeline.) To date, neither the IRG nor my professionals have found evidence of a failed metric.

The ResCap Parties were subject to a Feb. 5, 2013 bankruptcy court order that split up and transferred their servicing rights and assets to Ocwen Financial Corporation (Ocwen), Green Tree Servicing (Green Tree), and Berkshire Hathaway Inc. (Berkshire). Ocwen acquired approximately 80 percent of the servicing rights and assets, Green Tree 18.5 percent, and Berkshire 1.5 percent. I have met with representatives from Ocwen on multiple occasions, and testing will continue on course. I will make publicly available the results of these reviews in my next reports. I have had exchanges with Green Tree and will negotiate an implementation schedule for its compliance with the servicing standards, which will dictate when testing resumes for its portion of the ResCap Parties' portfolio. Representatives from Berkshire and I have yet to determine how it will participate in the NMS.

### ***ResCap scorecard***

## **Wells Fargo & Company**

## *Wells Fargo scorecard*

Wells Fargo & Company (Wells Fargo) was tested on a total of 20 metrics through the end of the second test period (see the Metrics Testing Timeline).

In test period two, Wells Fargo reported to the Monitoring Committee and me a potential violation of Metric 19, which measures compliance with the requirement to notify the borrower of any missing documents in the borrower's loan modification application within five days. Wells Fargo is implementing a CAP, and I will report on Wells Fargo's performance on Metric 19 and other metrics in my next compliance reports to the Court.

## **Consequences of a Potential Violation**

## *What happens when they fail?*

As explained in the above summaries of each servicer's performance, failing a metric requires the servicer to develop a plan to correct its related practices. The CAP must address the root causes of the failure and must be approved by me. While a servicer is implementing a CAP, my PPF and the assigned SPF communicate with the servicer to monitor progress and identify any issues. Once the servicer asserts that it has integrated the measures outlined in the CAP, the PPF and assigned SPF review their work. A servicer's CAP is not complete until confirmed by me. If it is completed in the first month of a quarter, testing recommences that quarter. Otherwise, testing begins again the next quarter. In addition to the CAP, if the failure is determined to be widespread, the servicer must remediate, or compensate for, any material harm to its customers.

If the servicer fails the same metric again, within either of the first two quarters after completion of the CAP, the Monitoring Committee and I may take enforcement action through the United States District Court for the District of Columbia. This may include injunctive relief and civil penalties up to \$1 million or, in certain circumstances, \$5 million.

## Consumer Complaints

In addition to the testing activities described above, I have had regular meetings with state attorneys general, housing counselors, advocates, and distressed borrowers. As a result of these meetings I am certain that more work needs to be done to improve the way the servicers are treating their customers.

The NMS requires that each servicer submit to me Executive Office complaints, or complaints that are filed with the servicers by the offices of elected officials on behalf of their constituents. Between October 1, 2012 and March 31, 2013, my professionals and I had received and analyzed 59,586 Executive Office complaints from the five servicers. The most frequent Executive Office complaints are related to single points of contact, dual tracking, the loan modification process, and accuracy of customers' account information.

My colleagues and I also receive complaints directly from state attorneys general offices and have access to complaints submitted to the Consumer Financial Protection Bureau (CFPB). We compare these complaints to those I receive from the servicers to make sure my colleagues and I are benefiting from all relevant complaints.

Additionally, we review the complaints submitted through my website by professionals who work on borrowers' behalf, which provide an independent source of information to supplement the other sources. Between May 10, 2012 and May 10, 2013, professionals had submitted 797 complaints through my website. Their most frequent complaints include issues with the loan modification process, single points of contact, and dual tracking.

## *Executive Office Complaints*

## *Professionals' Complaints*

## Additional Testing

Based on what I have learned over the last year, I have concluded that while servicing practices have improved in some respects, there remain areas of concern. These areas include issues with the loan modification process, customer service, including the single point of contact, and billing and statement inaccuracies.

The NMS gives me, after consulting with the servicers and the Monitoring Committee, the authority to impose discretionary metrics, in addition to the 29 laid out in the Settlement. I am currently at work with the servicers and Monitoring Committee to use this authority to address concerns I have heard around the country and through my review of consumer complaints. I look forward to reporting our progress on this important work.

## Consumer Relief

The PPF is working diligently to confirm the crediting of consumer relief that the servicers have claimed through the end of 2012. It is my expectation that I will submit additional Monitor Reports on consumer relief to the United States District Court for the District of Columbia within the next six weeks.

Additionally, I secured the servicers' agreement to sit individually for an interview with my PPF and me. During these interviews, servicers respond to a series of questions about consumer relief requirements that are not part of the crediting process. These questions cover the servicers' obligations with regard to certain geographies, protected classes of borrowers, mandatory second lien extinguishments, and avoidance of double-counting of governmental incentive payments, among other matters. I intend to comment on these additional requirements in my upcoming Monitor Reports concerning consumer relief.

## Conclusion

**The Monitor Reports that I have just filed with the Court show that the Settlement is having the intended effect of uncovering problems with servicer performance. The potential violations revealed by this process are consistent with what I have been hearing from consumers, state attorneys general, advocates, and housing counselors around the country. CAPs, including remediation when required, have been implemented or are in process. If the CAPs are not successful, the Monitoring Committee and I will take additional action, as dictated by the Settlement.**

It is clear to me that the servicers have additional work to do both in their efforts to fully comply with the NMS and to regain their customers' trust. There continue to be issues with the loan modification process, single point of contact, and customer records. To that end, I am working on additional metrics to better address the issues that a year's experience has revealed. I will make those metrics publicly available as soon as they are finalized.

I continue to believe that the NMS is a valuable and effective contribution to an improved system of residential mortgage finance. The problems it addresses are large and complex; improvement will take time. This report and those that follow will inform policymakers and the public in a way that I hope will support confidence in this process and understanding of how the home mortgage finance system can, and should, evolve.