

Office of  
**Mortgage Settlement**  
Oversight

# *Oversight Update*

**The National Mortgage Settlement Monitor's  
Second Compliance Report**

December 4, 2013

**This summary covers my second set of compliance reports as Monitor under the National Mortgage Settlement, which I have filed with the United States District Court for the District of Columbia, and provides an update on my recent activities. It includes:**

- An overview of the process through which my colleagues and I have reviewed the servicers' work and a discussion of potential violations, corrective action plans, and the consequences of continued noncompliance.
- Summaries of each servicer's results and scorecards outlining their compliance for the first and second calendar quarters of 2013.
- Information about the servicers' metric failures and the implementation of corrective action plans to address such failures.
- An analysis of complaints received from distressed borrowers and the professionals who represent them.
- A discussion of four new metrics to test servicer compliance with the Settlement and the timing of their implementation.
- An update on the timing of upcoming consumer relief reports.

This report includes information on the Settlement's original 29 metrics, all of which had been tested by the first and second quarters of 2013.

Among all the servicers, there were three metric fails in 2012, six metric fails in the first quarter of 2013, and one fail in the second quarter of 2013. The servicers have all implemented, and in some cases completed, corrective action plans to address these failures.

As a result of our testing activities, complaint analysis, and information provided from government and public sources, I have, with the participation of the Monitoring Committee, negotiated additional metrics to deal with consumer concerns related to the loan modification process, single points of contact and customer billing.

I believe that these developments – the uncovering of servicing problems that are being addressed by corrective action plans and the implementation of four new metrics – demonstrate that the Settlement continues to respond to problems in the marketplace and is improved by what we have learned.

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 (the Court) 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 the NMS established. This document summarizes these reports, which cover the first and second calendar quarters of 2013, or test periods three and four. This is the second set of such reports the NMS requires in a monitoring process that will continue for the next few years. Copies of the reports filed with the Court are available on my website **[mortgageoversight.com](http://mortgageoversight.com)**.

To perform my oversight responsibilities, I have worked closely with a team of professional firms. Last year, after a comprehensive selection process, 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.

To assess how well the servicers adhere to the 304 servicing standards, or rules, outlined in the NMS, the servicers are evaluated using a series of 29 metrics, or tests, enumerated in the Settlement. I negotiated a separate work plan with each of the servicers that specifies how these tests are carried out and validated. The Monitoring Committee, composed 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.

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

If the servicer fails 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 causes of the fail, which I review and, once satisfied, approve. After I have determined that the servicer has completed the CAP, testing recommences during the cure period, which is generally the next quarter, unless the CAP is completed in the first month of a quarter and I direct the servicer to resume testing in the current quarter.

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 Court. This may include injunctive relief and civil penalties up to \$1 million or, in certain circumstances, \$5 million.

In addition to correcting the potential violation, the servicer must remediate borrowers who were materially harmed. If I determine that the potential violation is widespread, the servicer must identify all borrowers who were harmed by the noncompliance and remediate such harm. The SPF, PPF, and I then review and test the implementation of these remediation efforts until the servicer asserts, and I confirm, that its remediation is complete.

The oversight process I have just described is extensive and exhaustive. The work conducted to test the five servicers during test periods three and four involved 270 professionals including my PPF, SPFs, and other professionals who dedicated approximately 97,000 hours over a seven-month period.

Throughout the two test periods covered in this report (Jan. 1 – March 31, 2013 and April 1 – June 30, 2013), my professionals and I tested each of the five servicers on up to 29 metrics. See Metric Testing Timeline for detail on the metrics we used to test each servicer.

# Bank of America

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## **METRICS TESTING**

As I noted in my first compliance report, during its IRG review, Bank of America, N.A. (Bank of America) reported to the Monitoring Committee and to me that it failed Metrics 6 and 19 in the third test period. Metric 6 tests whether loans were delinquent at the time foreclosure was initiated and whether the servicer provided the borrower with accurate information in a pre-foreclosure letter required by the Settlement. 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.

In the process of conducting their review, my professionals requested additional information regarding Metric 5. As a result, the IRG retested this metric and reported that Bank of America had also failed Metric 5 in test period three. After consultation with the IRG, Bank of America acknowledged the fail. This metric tests whether the servicer, in bankruptcy actions, states accurately the amounts the borrower owes in its motion for relief from stay.

## **CORRECTIVE ACTION PLAN**

As required by the NMS, Bank of America reported each of its failures to the Monitoring Committee and discussed with them its analysis of the reasons for such failures and its plans to address the causes.

### **Metric 6**

Bank of America prepared, and I have approved, a CAP for Metric 6, based on Bank of America's analysis that the potential violation was caused by a systems-related failure to correctly report one of eight pieces of information required in its pre-foreclosure notification letter to borrowers. The CAP accordingly includes actions to improve these systems.

My professional firms are in the process of reviewing the documentation Bank of America has provided and will perform confirmatory testing to verify that the Metric 6 CAP has been fully implemented. I did not deem this potential violation to be widespread, and Bank of America is in the process of remediating borrowers from the sample who were harmed as a result of this potential violation.

### **Metric 19**

Bank of America prepared, and I have approved, a CAP for its Metric 19 fail. Bank of America believes that the fail was the result of a process error relating to the handling of borrowers' initial submissions of loan modification applications and has developed a CAP to address this issue. Bank of America will streamline and shorten the five-day letter process in every case by eliminating the one business day "file hold" step in its review process.

My professional firms are in the process of reviewing the documentation Bank of America has provided and will perform confirmatory testing to verify that the Metric 19 CAP has been fully implemented. I did not deem this potential violation to be widespread, and Bank of America is in the process of remediating borrowers from the sample who were harmed as a result of this potential violation.

### **Metric 5**

Bank of America has also submitted its proposed CAP for Metric 5 to correct systems and process control errors that affect the accuracy of amounts due from borrowers reported in affidavits filed in support of motions for relief from stay in bankruptcy proceedings.

I am still in the process of reviewing this CAP and will report on it, as well as the status of the other two potential violations discussed above, in my next compliance report to the Court and the public.

# Chase

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### **METRICS TESTING**

As I stated in my first compliance report, J.P. Morgan Chase Bank, N.A. (Chase) reported a potential violation of Metric 29 in test period one. Metric 29 tests whether the bank terminates force-placed insurance coverage and refunds prorated premiums to affected borrowers within 15 days of receiving evidence of existing coverage.

During the third test period, Chase failed Metric 20, which measures whether the bank follows the appropriate timelines for making a decision on a borrower's loan modification application and for notifying the borrower of its denial decision. I determined that the error was not widespread.

In addition, Chase failed Metric 6 in test period four. Metric 6 tests whether loans were delinquent at the time foreclosure was initiated and whether the servicer provided the borrower with accurate information in a pre-foreclosure letter required by the Settlement. Again, I determined that this error was not widespread.

### **CORRECTIVE ACTION PLAN**

#### **Metric 29**

Chase prepared, and I approved, a CAP for Metric 29, which is discussed in my previous public report.

Chase voluntarily remediated all affected borrowers by refunding premiums to more than 2,000 borrowers under its CAP. These remediation efforts are more than the NMS would have required for a widespread error.

Chase completed its CAP and resumed testing Metric 29 in test period four. My PPF, SPF, and I confirmed the IRG's conclusion that Chase passed Metric 29 during the cure period. I determined that Chase's remediation activities were also satisfactorily completed.



### **Metric 20**

Chase has provided me with a CAP for its failure of Metric 20, which I have approved.

While I determined that the error was not widespread, I did instruct Chase to develop a method to examine borrower harm related to the loan-level exceptions identified in the third test period. Chase has submitted, and my professionals have reviewed, such analysis of borrower harm and concurred with Chase that ultimately no borrower harm has occurred. I determined that the Metric 20 CAP is complete, and the IRG's testing will resume as of test period six (fourth calendar quarter of 2013). I will report on this issue again in my next compliance report.

### **Metric 6**

Chase also has provided me with a CAP for its Metric 6 fail, which I have approved.

While I did not deem the error to be widespread, Chase has voluntarily elected to remediate all harmed borrowers in active foreclosure in certain affected loan populations. I determined that the Metric 6 CAP is complete, and the IRG's testing will resume as of test period six. I will report on that performance, as well as the status of remediation of borrower harm, in my next compliance report.



### **METRICS TESTING**

In my previous public report, I stated that CitiMortgage, Inc. (Citi) failed Metric 19 during test period two. Metric 19 tests 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.

Citi also failed Metric 6 and Metric 23 during test period three. Metric 6 tests whether loans were delinquent at the time foreclosure was initiated and whether the servicer provided the borrower with accurate information in a pre-foreclosure letter required by the Settlement. I did not deem this potential violation to be widespread. Metric 23 measures the servicer's compliance with the requirement to notify borrowers about missing documents within 30 days of a request for a short sale. I deemed the failure of Metric 23 to be widespread.

### **CORRECTIVE ACTION PLAN**

#### **Metric 19**

Citi submitted a CAP for Metric 19, which I deemed to have been satisfactorily completed. Testing of this metric resumed in test period four, and my professionals are in the process of confirming that Citi is now in compliance with Metric 19.

Because I determined the error was widespread, Citi also submitted a separate remediation plan to ensure that the bank provides appropriate relief to harmed borrowers. The IRG has completed testing the remediation plan and has found it to be satisfactorily completed, which my professionals are in the process of confirming. I will provide an update on Citi's cure period results and remediation in my next compliance report.

### **Metric 6**

Citi submitted a CAP for Metric 6, which I approved. My professionals and I are in the process of reviewing the CAP to determine if it has been completed. I expect that testing will resume for this metric as of test period five (third calendar quarter of 2013) and will provide an update in my next report.

### **Metric 23**

Citi submitted a CAP and a remediation plan for Metric 23. I have approved the CAP, and my professionals and I are presently reviewing evidence Citi provided to determine whether the CAP has been satisfactorily completed. I have also approved the remediation plan, subject to more information being added to ensure all potentially harmed borrowers have been identified and their harm remediated. Citi is in the process of executing its remediation plan. Once fully implemented, the IRG will test Citi's remediation efforts. Our preliminary findings lead us to believe that the IRG will be able to resume testing as of test period five (third calendar quarter of 2013). I will provide additional information related to progress on this metric in my next report.

## ResCap Parties

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The ResCap Parties (formerly Ally/GMAC) were subject to a February 5, 2013, bankruptcy court order that divided and transferred their servicing rights and assets to Ocwen Loan Servicing, LLC (Ocwen), Green Tree Servicing, LLC (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.

Ocwen has fully implemented all of the servicing standards associated with the 29 metrics and continued the testing of its portion of the ResCap portfolio following transfer without interruption, and Ocwen has been tested on all 29 metrics through the end of test periods three and four. To date, neither the IRG nor my professionals have found evidence of a failed metric.

I have negotiated an implementation schedule for Green Tree's compliance with the servicing standards, and testing will begin for all 29 metrics on Green Tree's portion of the ResCap portfolio in test period six (fourth calendar quarter of 2013). I will comment on its progress in my next set of compliance reports.

The ResCap Parties informed the Monitoring Committee on June 24, 2013, that because the percentage of loans acquired by Berkshire was so small (27,001 loans out of a total portfolio of 2,188,520), the ResCap Parties did not consider those loans to constitute "assets that together are material to the performance of the obligations of the ResCap Parties under the Consent Judgment," and therefore the ResCap Parties no longer considered those loans subject to the Settlement Consent Judgment. The Monitoring Committee did not object to the ResCap Parties' position, and, as a result, the loans purchased by Berkshire are no longer subject to the Settlement and will not be the subject of further testing or monitoring.

# Wells Fargo

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## **METRICS TESTING**

Wells Fargo & Company (Wells) failed Metric 19 in test period two. Metric 19 tests 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. In test periods three and four, neither Wells' IRG, nor my professionals found evidence of a potential violation of any metric tested.

## **CORRECTIVE ACTION PLAN**

### **Metric 19**

Wells provided me with a CAP for its Metric 19 failure, which I approved and determined to be complete. Testing resumed as of test period five (third calendar quarter of 2013). I will report on my review of Wells' performance regarding Metric 19 in my next compliance report.

## *Consumer Complaints*

In addition to testing compliance with the servicing standards described above, my colleagues and I receive information on servicer conduct in the marketplace through a variety of channels.

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 April 1, 2013 and September 30, 2013, my professionals and I received and analyzed 44,570 Executive Office complaints from the servicers. In aggregate, my professionals and I have received and analyzed 112,419 Executive Office complaints since October 2012.

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 apprised of all relevant complaints.

Additionally, we review the complaints submitted to my office by professionals who work on borrowers' behalf, which provide an independent source of information to supplement the other sources. Between May 10, 2013 and November 8, 2013, professionals had submitted 393 complaints. In total, my professionals and I have received and analyzed 1,190 complaints since May 2012.

The most frequent complaints are related to single points of contact, dual tracking, the loan modification process, and accuracy of customers' account information. I have worked with the Monitoring Committee and the servicers to create additional tests to address these issues.

## ***Additional Metrics***

As discussed in the prior section, I have heard from distressed borrowers and the professionals who represent them consistently over the last year that there continue to be servicing issues with the servicers that are parties to the Settlement. The Settlement anticipated that there may be a need for additional tests and, as such, allows me to create more.

I have met with attorneys general, counselors, other advocates, and distressed borrowers in 10 states over the past year. The information they have shared has been integral to shaping my determination that these additional testing measures are necessary. Time and time again, I have heard ongoing frustrations with the loan modification process, the single point of contact, and billing issues.

In addition to these meetings, I have received and analyzed complaints from professional advocates around the country and those received through the servicers' Executive Office process. This data reinforces what I have heard from the field.

The four new metrics I issued in October of this year address the loan modification process, single points of contact, and billing statement accuracy. They will better hold the servicers accountable to change their procedures and practices and treat their customers fairly in these areas. In particular, I have been extremely concerned to hear about ongoing dual tracking issues. One of the metrics that will be newly implemented in 2014 will address the so-called complete application issue that has led to many of these problems.

I am hopeful that the new metrics will have meaningful impact on how the servicers treat their customers and on the mortgage servicing industry as a whole. Compliance testing by the IRGs on two of the new metrics will begin on January 1, 2014, and I will report to the Court and the public on the results of those tests. These metrics test the servicers to ensure they:

- Provide customers contact information for new single points of contact and implement procedures that evaluate and remediate single point of contact performance, and
- Use accurate, detailed information in monthly billing statements to customers.

Compliance testing by the IRGs on two other metrics will begin on April 1, 2014. These metrics relate to the loan modification process and will:

- Test the servicers on how well they communicate missing documents,
- Ensure that loan modification applications are not prematurely denied and that foreclosure proceedings are delayed to allow appropriate time for distressed borrowers to provide additional documentation, and
- Confirm servicers properly communicate loan modification rejection.

I look forward to sharing compliance results regarding the new metrics in my future reports.

Court filings for these additional metrics can be **[downloaded here](#)**.

# Conclusion

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. The Monitor Reports that I have just filed with the Court show, however, that the Settlement is addressing shortcomings in the treatment of distressed borrowers.

CAPs, including remediation efforts 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. In addition, we have applied what we have learned to enhance our oversight of the servicers by creating four new metrics to address persistent issues in the marketplace.

My next reports to the Court and the public will cover consumer relief.

On October 16, 2013, I filed reports with the Court regarding the consumer relief activities of four of the servicers through December 31, 2012.

The servicers have all asserted that they have satisfied their consumer relief obligations. My colleagues and I are now working to verify those conclusions and plan to share our findings early next year.