

Office of  
Mortgage Settlement  
Oversight

# *Compliance in Progress*

A Report from the Monitor of the National Mortgage Settlement



May 14, 2014

The following summary is an overview of my third set of compliance reports, which I have filed with the United States District Court for the District of Columbia as Monitor of the National Mortgage Settlement. It includes:

- An overview of the process through which my colleagues and I have reviewed the servicers' performance on the Settlement's servicing reforms
- An update on the servicers' corrective action plans from metric fails reported previously
- Summaries of each servicer's compliance for the third and fourth calendar quarters of 2013
- An analysis of complaints received from distressed borrowers and the professionals who represent them

This report includes information on the Settlement's original 29 metrics that were used to test the servicers' implementation of the servicing standards during the fifth and sixth testing periods, or the third and fourth quarters of 2013.

The servicers covered by this report for both the third and fourth calendar quarters of 2013 are Bank of America, Citi, Chase, Ocwen and Wells Fargo. Ocwen was tested only on the loans that it acquired from the ResCap Parties. These servicers did not fail any metrics during the most recent testing periods.

Because my colleagues and I now have testing results for all 29 metrics over four testing periods, or one calendar year, this summary report focuses on reviewing the servicers' compliance activities over time. Results over time include a presentation of which metrics servicers failed, how they fixed the problems and whether their performances improved once testing resumed.

This report also contains fourth-quarter compliance testing results for the loans Green Tree acquired from the ResCap Parties. Green Tree implemented the Settlement's servicing standards after such acquisition. Green Tree failed a total of eight metrics during this time period. These results show that Green Tree has much implementation work to do.

Results for the other five servicers demonstrate that servicing problems are being addressed quickly and effectively. Yet work still remains to ensure that the servicers treat their customers fairly. My team continues to test the servicers' performance in following the rules set forth by the Settlement. Additionally, testing has just begun on the four new metrics I issued in October, and I believe they will help in further holding the servicers accountable. I look forward to reporting on those results in my next compliance report later this year.

Sincerely,



Joseph A. Smith, Jr.

# 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. The servicers include four of the original parties – Bank of America, Chase, Citi and Wells Fargo. Essentially all of the servicing assets of the fifth original servicer party, ResCap, were sold to and divided between Ocwen and Green Tree pursuant to a February 5, 2013, bankruptcy court order. Accordingly, Ocwen and Green Tree are now subject to the NMS for the portions of their portfolios they acquired from ResCap.<sup>1</sup> These reports provide the results of my testing regarding compliance with the NMS servicing standards during the third and fourth calendar quarters of 2013, or test periods five and six. They are the third set of reports for the original four bank servicers, the second report for Ocwen and the first report assessing Green Tree. Copies of all the reports filed with the court are available on my website, [mortgageoversight.com](http://mortgageoversight.com).

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<sup>1</sup> The Court separately entered a consent judgment between Ocwen and government parties on February 26, 2014, as part of the NMS, thereby subjecting Ocwen's entire portfolio to the Settlement's requirements. Accordingly, in future quarters, I will test and report on Ocwen's performance as it relates to its entire portfolio, not just the part of its portfolio it acquired from the ResCap Parties.

# Oversight Process

As Monitor, I have continued to oversee the servicers' compliance with the servicing standards by working closely with a team of professional firms. BDO Consulting, a division of BDO USA, LLP (BDO), serves as my primary professional firm (PPF). My team also consists of five secondary professional firms (SPFs), each one assigned to a servicer. These firms continue to assist me in providing rigorous oversight of the servicers.

The work conducted to test the six servicers during test periods five and six involved 269 professionals, which includes my PPF, SPFs and other professionals who dedicated approximately 69,910 hours over a seven-month period. As shown in the following description, the oversight process is extensive.

To assess how well the servicers adhere to the 304 servicing standards, or rules, outlined in the NMS, the servicers were 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, comprising 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 under the NMS.

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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 identified during testing 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.

Throughout the two test periods covered in this report (July 1-September 30, 2013, and October 1-December 31, 2013), my professionals and I tested each of the six servicers on up to 29 metrics. See metric testing timeline for details on the metrics we used to test each servicer.

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# Bank of America Results

As I stated in my previous compliance reports, Bank of America N.A. (Bank of America) reported to the Monitoring Committee and me that it failed Metrics 6, 19 and 5. Bank of America implemented Corrective Action Plans (CAPs) to remedy the root causes of these fails. In test periods five and six, neither the IRG nor my professionals found evidence of a potential violation for any Metric tested. As further discussed in my compliance reports, Bank of America will resume testing for Metric 5 in test period eight (second calendar quarter of 2014).

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# Chase Results

As I stated in my previous compliance reports, J.P. Morgan Chase Bank N.A. (Chase) reported to the Monitoring Committee and me that it failed Metrics 29, 20 and 6. Chase implemented Corrective Action Plans (CAPs) to remedy the root causes of these fails. In test periods five and six, neither the IRG nor my professionals found evidence of a potential violation of any Metric tested.

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# Citi Results

As I stated in my previous compliance reports, CitiMortgage, Inc. (Citi) reported to the Monitoring Committee and me that it failed Metrics 19, 6 and 23. Citi implemented Corrective Action Plans (CAPs) to remedy the root causes of these fails. In test periods five and six, neither the IRG nor my professionals found evidence of a potential violation for any Metric tested.

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# Green Tree Results

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. Green Tree Servicing, LLC, (Green Tree) acquired approximately 18.5 percent of the servicing rights.

I negotiated an implementation schedule for Green Tree's compliance with the servicing standards, and testing began for all 29 Metrics on Green Tree's portion of the ResCap portfolio in test period six (fourth calendar quarter of 2013). Green Tree reported that it failed the following eight metrics in test period six:

- Metric 4 tests whether the servicer accurately stated amounts due from borrowers in proofs of claims filed in bankruptcy proceedings
- Metric 5 tests whether the servicer accurately stated amounts due from borrowers in affidavits filed in support for relief from stay in bankruptcy proceedings
- Metric 6 tests whether loans were delinquent at the time foreclosure was initiated and whether the servicer provided borrower with accurate information in a pre-foreclosure letter
- Metric 7 tests whether the servicer provided borrower with required notifications no later than 14 days prior to referral to foreclosure and whether required notification statements were accurate
- Metric 10 tests whether the servicer waived post-petition fees, charges or expenses when required by the Settlement
- Metric 12 tests whether the servicer has documented policies and procedures in place to oversee third party vendors
- Metric 18 tests whether the servicer responded to government submitted complaints and inquiries from borrowers within 10 business days and provided an update within 30 days
- Metric 19 tests whether the servicer notified the borrower of any missing documents in a loan modification application within five days of receipt

I am currently reviewing CAPs that Green Tree has proposed to address the root causes of these fails. I plan to report on these plans and Green Tree's progress in my next report.

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# Ocwen Results

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. Ocwen Loan Servicing, LLC, (Ocwen) acquired approximately 80 percent of the servicing rights.

As I stated in my last report, Ocwen fully implemented all of the servicing standards associated with the 29 Metrics for its portion of the ResCap portfolio. In test periods five and six, neither the IRG nor my professionals found any evidence of a potential violation for any Metric tested.

In February 2014, Ocwen entered into a new consent judgment with the Consumer Financial Protection Bureau (CFPB) and 49 states requiring Ocwen to comply with the NMS servicing standards for its entire loan portfolio. Ocwen has begun to implement NMS servicing standards, and I plan to report on Ocwen's compliance as it relates to its entire portfolio beginning in test period nine (third calendar quarter of 2014).

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# Wells Fargo Results

As I stated in my previous compliance reports, Wells Fargo reported to the Monitoring Committee and me that it failed Metric 19. Wells Fargo implemented a Corrective Action Plan (CAP) to remedy the root causes of this fail. In test periods five and six, neither the IRG nor my professionals found evidence of a potential violation for any Metric tested.

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# Consumer Complaints

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

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The NMS requires that each servicer submit to me Executive Office complaints, complaints that are filed with the servicers by the offices of government agencies or elected officials on behalf of their constituents. From July 1, 2013, to December 31, 2013, my professionals and I received and analyzed 55,081 Executive Office complaints from the servicers. In aggregate, my professionals and I have received and analyzed 160,233 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 July 1, 2013, and December 31, 2013, professionals had submitted 184 complaints. In total, my professionals and I have received and analyzed 1,334 complaints since May 2012.

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# Additional Metrics

As described in my last report, the servicers, Monitoring Committee and I agreed on four additional metrics in October 2013. These metrics were the results of information obtained from complaints data and from my meetings with attorneys general, counselors, other advocates and distressed borrowers around the country. Their input, along with my team's analysis of complaints, made it clear to me that additional testing measures were needed to address concerns related to the loan modification process, single points of contact and billing statement accuracy.

Compliance testing by the IRGs on two of the new metrics began on January 1, 2014. These metrics test to ensure that servicers:

- 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 began on April 1, 2014.<sup>2</sup> These metrics relate to the loan modification process and will:

- Test the servicers on how well they communicate missing documents for loan modification applications,
- 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 denials.

I will report to the Court and the public on the compliance results of these four new tests in my next compliance reports. Court filings for these additional metrics can be [downloaded here](#).

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<sup>2</sup> With Ocwen having entered into a new consent judgment in February 2014, all parties have agreed to permit Ocwen's IRG to begin compliance testing on the two other metrics that relate to the loan modification process as of July 1, 2014.

# Conclusion

The majority of my findings suggest that the Settlement is working to hold the servicers accountable to the servicing reforms they agreed to in the NMS. My testing results also show that there is still more work to be done, especially in the case of Green Tree. My team and I will continue to test the servicers on their compliance with the Settlement's servicing reforms, and we will continue working with Green Tree to institute rigorous CAPs.

My next compliance report will include testing results on the four additional metrics I created late last year. These metrics are designed to ensure that the servicers better treat their customers in areas that had not been adequately measured under the original metrics, including the loan modification process, single points of contact and billing statement accuracy. I look forward to sharing these results in the coming months.

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