

**Written Testimony of Joseph A. Smith, Jr.**  
**Monitor of the National Mortgage Settlement**  
**Before the Senate Committee on Banking, Housing, and Urban Affairs**  
**Subcommittee on Housing, Transportation, and Community Development**  
**Washington, D.C.**  
**April 17, 2013**

**Introduction**

Thank you Chairman Menendez, Ranking Member Moran, and members of the Subcommittee for inviting me today to testify about implementation of the National Mortgage Settlement. It is a pleasure to be here with you to talk about this important issue.

As you know, on April 5, 2012, the National Mortgage Settlement went into effect when the United States District Court for the District of Columbia entered five separate consent judgments that settled claims of alleged improper mortgage servicing practices against five major mortgage servicing organizations: Bank of America, N.A., CitiMortgage, Inc., JP Morgan Chase Bank, N.A., Residential Capital LLC and affiliates (formerly GMAC) and Wells Fargo & Company and Wells Fargo Bank, N.A. Government parties to the settlement include the U.S. Department of Housing and Urban Development, the U.S. Department of Justice, Attorneys General from 49 states and the District of Columbia, various state financial services regulatory agencies and other releasing parties, including the Consumer Financial Protection Bureau and the U.S. Department of Treasury.

The settlement was an unprecedented and collaborative bipartisan effort by the states and the federal government to improve the way mortgage servicers work with distressed borrowers while also providing much needed relief to homeowners across the nation.

The settlement can be divided into three parts: direct payments to borrowers and states, consumer relief and servicing standards. While I have no oversight over the direct payments, as the monitor of the settlement, I am responsible for reviewing and certifying the discharge of the servicers' consumer relief obligations and overseeing their implementation of and compliance with the servicing standards.

### **Organizational Overview**

As monitor, I am subject to oversight by a Monitoring Committee that is comprised of representatives of the U.S. Department of Housing and Urban Development, the U.S. Department of Justice, and representatives of 15 states. My office operates under a budget I prepare annually in consultation with the Monitoring Committee and servicers and is paid for by the servicers out of their corporate funds. My budget for fiscal year beginning July 1, 2012 was so prepared and is in effect. At the end of this fiscal year, I will make publicly available a report with audited financial statements covering my operations.

To assist me in enforcing the settlement, I am authorized to employ a primary professional firm (PPF) agreed to by the servicers. In selecting the PPF, my goal was to find a firm that not only had the organizational capacity and subject matter expertise to do the work well, but also was independent of all five servicers. I conducted a thorough selection process during which I invited 46 firms to submit a proposal and reviewed 23 proposals. At the end of this process, I retained BDO Consulting. BDO has substantial financial services industry experience, yet has no meaningful conflict with any of the servicers.

As the PPF, BDO is responsible for ensuring quality control and making sure that the review of the servicers' implementation of and compliance with the servicing standards is done in a

consistent way. BDO is also responsible for reviewing and confirming the consumer relief that the servicers extend to borrowers under the terms of the settlement and has been performing that work to exacting standards over the last six months.

To assist in the review of servicer implementation of and compliance with the servicing standards, I also have retained five separate secondary professional firms (SPFs), including Baker Tilly Virchow Krause, LLP; BKD, LLP; Crowe Horwath LLP; Grant Thornton LLP; and McGladrey LLP. Each SPF is assigned to a specific servicer. As with BDO, each SPF is free of any relationship to its assigned servicer that would undermine public confidence in its work.

Each servicer also has an internal review group (IRG), or group of employees and/or independent contractors and consultants that is responsible for performing reviews of the servicer's compliance with the settlement and whose members are required to be separate and independent from the line of business being reviewed. My office and its associated professional firms have also reviewed the qualifications and resources of each IRG to ensure it has the capacity and independence to do a credible job.

In addition to the PPF and SPFs, the settlement authorizes me to retain attorneys and other professionals to help me carry out my duties. Accordingly, I have engaged the law firms of Poyner Spruill and Smith Moore Leatherwood; the forensic accounting firm of Parkside Associates; the accounting firm Cherry, Bekaert & Holland; and the communications firm Capstrat. As required by the settlement, each firm is independent of the servicers.

Though it was not required by the settlement, I have sponsored the creation of the Office of Mortgage Settlement Oversight (OMSO), a not-for-profit organization that provides administrative support for my work, including acceptance and payment of money and the

maintenance of books and records. OMSO enables me to carry out my duties transparently and independently with administrative oversight from an independent Board of Directors.

### **Consumer Relief**

Under the settlement, the servicers have agreed to provide specific dollar amounts of relief to distressed borrowers within a three-year period. This relief includes first and second lien modifications, short sale assistance, deficiency waivers, forbearance for unemployed borrowers, anti-blight activities, benefits for members of the armed services, and refinancing programs.

Within limits, the servicers have flexibility to apply these different kinds of relief as they see fit to meet their overall obligations. The settlement specifies that certain types of relief must make up a certain percentage of each servicer's commitment. For example, 60 percent of the total credited relief must come from first and second lien modifications; of that at least half must be modifications made on first liens.

Under the consumer relief terms of the settlement, the servicers are required to make quarterly reports to the states (with copies to the Monitoring Committee and to me) of relief during that quarter in each state and in the nation as a whole. They have done so, in November of last year and February of this, and the data they provided was the basis of my progress reports to the public issued in the same months.

The kinds of consumer relief for which a servicer can receive credit under the settlement are set out in detail in the consent judgments and the credit varies based on the relief given. For example, servicers can receive dollar for dollar credit for principal forgiveness on loans both owned and serviced by the servicer and as little as five cents on the dollar for certain forbearance

activities. For that reason, the gross dollar amounts of relief the servicers have delivered to homeowners far exceeds their total credited obligations under the settlement.

For each amount of relief it has provided to borrowers on or after March 1, 2012, a servicer will receive credit against the commitments it made when it entered the settlement. To encourage the servicers to make substantial progress in the first year of the settlement, it gives them an additional 25 percent credit for any credited first or second lien principal reductions or refinancing activities that take place within the 12 months after March 1, 2012. If a servicer's total commitment is not fully satisfied within three years, it will be required to pay a penalty of no less than 125 percent of its unmet commitment amount.

A servicer can choose to seek a determination by me of its satisfaction of its consumer relief obligations whenever it has asserted such satisfaction to its IRG, its IRG has confirmed such satisfaction and such confirmation is reported to me. In November 2012, the ResCap parties requested a satisfaction review. In February of this year, after a review of their performance, I issued a report confirming their satisfaction of their minimum consumer relief obligations and partial satisfaction of their mandatory solicitation requirements. My report was filed with the United States District Court for the District of Columbia and is available for review on my website. In February, each of the other four servicers requested a determination of partial satisfaction of their consumer relief obligations through December 31, 2012. A review of the assertions of completed consumer relief by the servicers and the confirmation of completion by their IRGs is in progress. I will publicly report my determination later this year after my review is done.

In their latest reports to the states, compiled in my most recent progress report, the servicers have reported that from March 1, 2012 to December 31, 2012, 554,389 borrowers benefited from some type of consumer relief totaling \$45.83 billion, which, on average, represents about \$82,668 per borrower. This figure includes both completed relief and active first lien trial modifications. The amounts reported are gross dollar figures rather than credited relief under the settlement and, except for amounts reported by the ResCap parties, have not been reviewed or scored by the PPF or by me.

Additional information with regard to consumer relief to date under the settlement is available in my most recent report, titled *Ongoing Implementation*.

### **Servicing Standards**

In addition to consumer relief, the settlement establishes 304 servicing standards, or rules of conduct, to which the servicers must adhere. These servicing standards are intended to redress the practices in mortgage servicing that led to the claims that resulted in the settlement. It is important to note that the servicing standards apply to all loans serviced by the servicers, regardless of the loan's owner. Each servicer has been responsible for implementation of and compliance with the standards since October 2, 2012.

There are servicing standards related to document integrity, the loan modification process, dual tracking, single points of contact, other customer service requirements, and other more general requirements.

Under the settlement, I am directed to measure servicer compliance with the servicing standards through 29 metrics – tests designed to determine whether one or more of the servicing standards are being followed. The servicers conduct these tests through their IRGs, who then report the

results to me. Assisted by my PPF and SPFs, I assess the work of the servicers and report my conclusions. If the IRGs or I find potential violations – noncompliance with the standards – the servicer has to implement a corrective action plan and remediate any identified potential violations. In the case of a widespread error, the servicer has to search for all potential violations since implementation of the servicing standard and remediate them. If it can't or won't correct the potential violations, injunctions or civil penalties can be sought through the United States District Court for the District of Columbia.

We have completed our first review of servicer compliance under the settlement – for the calendar quarter ended on September 30, 2012 – and have nearly completed our second quarterly review. When that review is complete, I will report to the Court and to the public on how the servicers have performed. I intend to deliver that report next month. This process will continue for the next two years.

## **Complaints**

To help me better understand the settlement's impact in the marketplace, my colleagues and I closely review consumer complaints we receive through my office as well as the complaints elected officials escalate to the servicers. As part of the settlement's terms, the servicers are required to provide me with access to all the complaints submitted to them by Members of Congress, Attorneys General and other governmental agencies. I also have met with Attorneys General, their staffs, lawyers who represent borrowers and housing counselors in hard hit states such as Florida, Nevada, California, Illinois and Arizona, and I look forward to doing as much more of this as is possible. Further, I have recently entered an information sharing relationship with the Consumer Financial Protection Bureau that has great promise.

Through the complaints and my meetings with Attorneys General staff, housing counselors and lawyers, I have learned about the issues that borrowers continue to experience. While I have heard about progress and success in obtaining consumer relief, problems with the servicing standards, including single points of contact, dual tracking and the loan modification process in general are still occurring all too often. These are the issues that guide my conversations with the servicers.

The settlement anticipated situations in which there would be issues surrounding servicing standards not tested by a metric and allowed me the opportunity to develop three discretionary metrics. As a result of what I have heard from consumers and professionals, I am now working with the servicers to establish my discretionary metrics. They are not yet completed, but they will address what I have learned in the last year.

## **Conclusion**

In closing, the settlement has been successful in what I believe is a worthwhile effort: focusing resources on a specific problem in a targeted, time-limited way that augments and supports the work of policy makers and governmental agencies. I applaud the bipartisan leaders who crafted this settlement to address serious issues with local and national implications. Properly implemented and enforced, the settlement has the potential to result in a substantial public benefit. I look forward to continuing my work toward that goal and welcome your questions.