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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

December 16, 2025

Joseph A. Smith Jr.
Independent Monitor
Office of Mortgage Settlement Oversight
301 Fayetteville St., Suite 1801
Raleigh, NC 27601

Dear Mr. Smith:

I write to ask if you kept records of mortgages that were extinguished under the 2012 National Mortgage Settlement (the “Settlement”) and if you would provide these records to my office. It appears that banks may have received credit for extinguishing mortgages under the terms of the Settlement and then turned around and sold those same loans to debt collectors. Recent reporting has brought to light that debt collectors are attempting to foreclose on thousands of Americans based on second “zombie” mortgages that many of these homeowners believed were cancelled.¹ As the appointed nationwide monitor of the Settlement, you were tasked with overseeing the defendants’ compliance with the obligations of the Settlement and may have information on this matter.²

In the lead up to the Great Recession and foreclosure crisis, lenders were incentivized to encourage borrowers to take out second mortgages.³ One common arrangement was for the lender to extend a second mortgage to cover a portion or all of the typical 20% downpayment, known as a piggyback loan.⁴ Second loans were increasingly common and nearly a quarter of

¹ NPR, “Why Zombie second mortgages are threatening thousands of Americans' homes,” Chris Arnold, May 23, 2024, <https://www.npr.org/2024/05/23/nx-s1-4973761/why-zombie-second-mortgages-are-threatening-thousands-of-americans-homes>.

² Joseph A. Smith, Jr. Monitoring, “About Smith Monitoring,” <https://mortgage-settlements-dept-nmsarchive.cloudapps.unc.edu/about-smith-monitoring/>; United States of America et al. v. Bank of America Corporation et al., 1:12-cv-00361-RMC (April 4, 2012), at p. 4 and E-3, http://www.nationalmortgagesettlement.com/files/Consent_Judgment_WellsFargo-4-11-12.pdf.

³ Financial Crisis Inquiry Commission, “The Financial Crisis Inquiry Report,” January 2011, pp. 109 - 110, <https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf>; Written Testimony of Illinois Attorney General Lisa Madigan, to the Financial Crisis Inquiry Commission, April 27, 2010, p. 3, https://fcic-static.law.stanford.edu/cdn_media/fcic-testimony/First%20Public%20Hearing/Lisa%20Madigan%20Follow%20Up.pdf.

⁴ Consumer Financial Protection Bureau, “What is a ‘piggyback’ second mortgage,” September 11, 2024, <https://www.consumerfinance.gov/ask-cfpb/what-is-a-piggyback-second-mortgage-en-1955/>; NPR, “Zombie 2nd mortgages are coming to life, threatening thousands of Americans’ homes,” Chris Arnold, Robert Smith, Jess Jiang, Sam Yellowhorse Kesler, Robert Benincasa, Nick McMillan, May 18, 2024, <https://www.npr.org/2024/05/10/1197959049/zombie-second-mortgages-homeowners-foreclosure>.

borrowers who purchased homes in 2006 used a piggyback loan.⁵ A few years later when the housing market cratered, foreclosure rates spiked rates, and mortgage servicers moved quickly to foreclose on millions of Americans.⁶

In 2010, it came to light that banks had rushed to “evict[] people with false or incomplete documentation,” and all 50 state attorneys general launched an investigation.⁷ The state and federal government established that mortgage servicers had committed a series of lending abuses, including “use of ‘robo-signed’ affidavits in foreclosure proceedings; deceptive practices in the offering of loan modifications; failures to offer non-foreclosure alternatives before foreclosing on borrowers with federally insured mortgages; and filing improper documentation in federal bankruptcy court.”⁸

The five largest servicers, Bank of America Corporation, JPMorgan Chase & Co., Wells Fargo & Company, Citigroup Inc. and Ally Financial Inc., reached a \$25 billion settlement with forty-nine of the state attorneys general and the federal government, known as the National Mortgage Settlement.⁹ The vast majority of the funds were earmarked for borrower’s relief,¹⁰ including extinguishing second mortgages. Servicers forgave over \$15 billion of second mortgages.¹¹ Servicers earned a set amount of “credit” for these extinguishments towards their settlement obligations,¹² and homeowners were supposed to be able to move forward with their lives without these second mortgages hanging over their heads.

However, recent reporting indicates that some of these second mortgages may have not been extinguished after all. There have been numerous cases of homeowners who had stopped receiving statements on their second mortgage, received tax documents saying their second mortgage was cancelled, or had the loans removed from their credit reports, and then learned that

⁵ Consumer Federation of America, “Piggyback Loans at the Trough: California Subprime Home Purchase and Refinance Lending in 2006,” Allen J. Fishbein, January 2008, p. 9, https://consumerfed.org/wp-content/uploads/2010/08/California_Subprime_2006.pdf.

⁶ Federal Reserve Bank of Chicago, “Have Borrowers Recovered from Foreclosures during the Great Recession?,” Sharada Dharmasankar and Bhash Mazumder, 2016, <https://www.chicagofed.org/publications/chicago-fed-letter/2016/370>; NBC News, “Robo-signing scandal may date back to late ‘90s” Pallavi Gogoi, September 1, 2011, <https://www.nbcnews.com/id/wbna44365184>.

⁷ New York Times, “States Negotiate \$26 Billion Agreement for Homeowners,” Nelson D. Schwartz and Shaila Dewan, February 8, 2012, <https://www.nytimes.com/2012/02/09/business/states-negotiate-25-billion-deal-for-homeowners.html>; ProPublica, “Biggest Banks Ensnared as Foreclosure Paperwork Problem Broadens,” Marian Wang, October 3, 2010, <https://www.propublica.org/article/biggest-banks-ensnared-as-foreclosure-paperwork-problem-broadens>.

⁸ U.S. Department of Justice, “Federal Government and State Attorneys General Reach \$25 Billion Agreement with Five Largest Mortgage Servicers to Address Mortgage Loan Servicing and Foreclosure Abuses,” February 9, 2012, <https://www.justice.gov/archives/opa/pr/federal-government-and-state-attorneys-general-reach-25-billion-agreement-five-largest>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Urban Institute, “National Mortgage Settlement: Lessons Learned,” Laurie Goodman and Maia Woluchem, April 15, 2014, p. 5-6, <https://www.urban.org/sites/default/files/publication/22526/413095-National-Mortgage-Settlement.PDF>.

¹² *Id.* Because extinguishments were credited at a discount, the gross value of defendant’s relief is greater than the credit defendants received under the terms of the Settlement.

the second mortgage was still active.¹³ Companies purchased millions of dollars of these second mortgages—and waited to collect until home prices rose.¹⁴ Now, Americans who thought they were doing everything right learned, in many cases many years later, that debt collectors seeking to exploit the increase in their home valuations were going to foreclose on their homes.¹⁵

Given how many second mortgages were extinguished as part of the National Mortgage Settlement, I am concerned that banks may have received credit for extinguishing second mortgages in the settlement, when in fact they sold those loans to debt collectors. I write to you, as a monitor of the National Mortgage Settlement and an individual tasked with ensuring the banks complied with their obligations, to request that you provide any data you maintained about the second mortgages that were extinguished under the terms of the settlement.

To the extent available, please provide the following information no later than January 7, 2026:

1. Any records related to the second mortgages that were extinguished under the terms of the National Mortgage Settlement, including, for each: the lender name, loan number, borrower name, loan amount and amounts extinguished, date of extinguishment, and any other relevant identifying information for each loan.
2. Any records related to the second mortgages that were extinguished under the terms of the other settlements you monitored, including, for each: the lender name, loan number, borrower name, loan amount and amounts extinguished, date of extinguishment, and any other relevant identifying information for each loan.
3. Any communications between yourself and defendants related to the extinguishment of second mortgages.

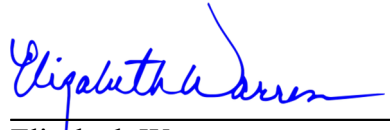
I thank you for your attention to this matter.

Sincerely,

¹³ Bloomberg, “No Cop on the Beat,” Coulter Jones, Noah Buhayar, and Eric Fan, October 30, 2025, <https://www.bloomberg.com/graphics/2025-zombie-home-mortgage-debt-collection-investigation/>; Bloomberg, “Pay up or Move Out,” Noah Buhayar, Coulter Jones, Eric Fan, Jeff Kao, and Jeremy Diamond, October 6, 2025, <https://www.bloomberg.com/graphics/2025-zombie-debt-collectors-mortgage-loans/>.

¹⁴ Bloomberg, “Pay up or Move Out,” Noah Buhayar, Coulter Jones, Eric Fan, Jeff Kao, and Jeremy Diamond, October 6, 2025, <https://www.bloomberg.com/graphics/2025-zombie-debt-collectors-mortgage-loans/>; NPR, “Zombie 2nd mortgages are coming to life, threatening thousands of Americans’ homes,” Chris Arnold, Robert Smith, Jess Jiang, Sam Yellowhorse Kesler, Robert Benincasa, and Nick McMillan, May 18, 2024, <https://www.npr.org/2024/05/10/1197959049/zombie-second-mortgages-homeowners-foreclosure>.

¹⁵ *Id.*



Elizabeth Warren
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