

U.S. Trustee Panel: Inside Perspective

CONCURRENT SESSION

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The National Mortgage Settlement and Bankruptcy



United States Trustee Program (USTP)
May 2012

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Settlement Overview

Global settlement among:

- The nation's five largest banks and their affiliates -- Bank of America, JP Morgan Chase, Citigroup (CitiMortgage), Ally Financial (GMAC Mortgage), and Wells Fargo;
- DOJ (including the USTP);
- Various federal agencies, including HUD, FTC and Consumer Financial Protection Bureau; and
- 49 states.

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Settlement Overview

This settlement is the largest joint federal and state civil settlement ever obtained.

- Reflects unprecedented cooperation among federal and state enforcement and regulatory agencies.
- A critical step in addressing the problems that have plagued the mortgage servicing industry.

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USTP Involvement

- The settlement is the culmination of several years of intensive investigation and litigation by USTP offices throughout the country.
- As part of the DOJ-led enforcement effort, the USTP stepped up its investigation of select servicers in certain jurisdictions across the country.

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USTP Involvement – cont'd

- In select jurisdictions, the USTP reviewed 100% of mortgage claims and contested motions for relief.
- Over an eight month period, the USTP reviewed 37,000 claims and motions.
- The USTP sought formal discovery from Banks regarding facially deficient bankruptcy filings.

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USTP Involvement – cont'd

- Responded to almost 300 challenges Banks raised to USTP discovery requests.
- Successfully defended over 30 appeals.
- Obtained discovery from Banks and conducted examinations in 175 cases, including discovery to determine the systemic nature of the problems.

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Settlement Announcement by the United States Attorney General

In his announcement of the settlement, Attorney General Holder singled out the work of the USTP, stating:

“The U.S. Trustees Program was one of the first federal agencies to investigate mortgage servicer abuse of homeowners in financial distress.”

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Settlement Announcement by the United States Attorney General – cont'd

“These efforts were advanced by several United States Attorneys They have worked tirelessly to seek justice for homeowners who were treated unfairly and taxpayers who footed the bill. And the information and evidence that these teams compiled – and the expertise they provided – was essential in reaching this historic settlement.”

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Settlement Overview

Among the claims resolved through the settlement are those relating to Bank:

- Deficiencies in bankruptcy practices resulting in inflated claims, overcharging or improper charging of default-related fees, misaccounting and misapplication of payments, documentation issues, and misrepresentations in bankruptcy filings;
- Deficiencies in foreclosure practices; and
- Deficiencies relating to use and supervision of attorneys and other vendors.

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Settlement Overview – cont'd

- Resolves claims against Banks based on their mortgage servicing practices that impact borrowers who are in default, including borrowers in bankruptcy.
- Generally relates to Banks' servicing conduct that occurred through February 8, 2012.

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Settlement Overview – cont'd

The settlement provides:

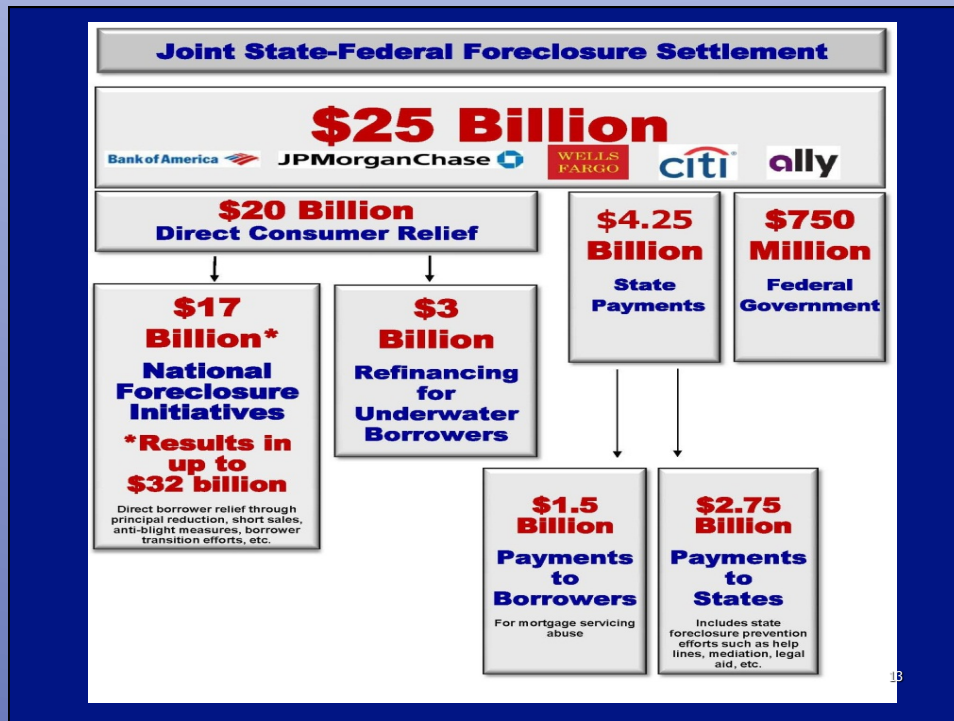
- Banks will pay \$25 billion in cash and financial assistance to homeowners;
- Banks must implement comprehensive mortgage servicing standards, including bankruptcy provisions;
- An enforcement mechanism, including an independent monitor to oversee Banks' compliance with servicing standards and consumer relief obligations; and
- A release of claims.

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Financial Relief

- \$5 billion in cash to state and federal governments.
- \$20 billion dedicated to various forms of financial relief for borrowers including principal reductions, refinancing, short sales, forbearance agreements, and anti-blight measures.
- Much of this relief is available to borrowers in bankruptcy.

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New Mortgage Servicing Standards

Banks agreed to comply with a new set of national servicing standards:

- Designed to prevent abusive servicing practices, including for borrowers in bankruptcy.
- Uniformity in servicing standards and transparency for borrowers.

Servicing Standards Highlights

- Heightened documentation standards to eliminate robo-signing and improve transparency.
- Require strict oversight of foreclosure processing, including of third-party vendors.
- Restrictions to ensure that borrowers will be given every opportunity to first modify their loans before facing foreclosure.

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Servicing Standards Highlights – cont'd

- Establish procedures and timelines for loan modification applications, including the right to appeal denials.
- Banks are required to have an appropriate number of well-trained staff members to promptly respond to the needs of distressed borrowers; and
- Borrowers will have the right to deal with a reliable, single point of contact when looking for alternatives to foreclosure.

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Servicing Standards for Borrowers in Bankruptcy

- Establish standards to ensure the accuracy of information in bankruptcy filings, including pre-filing review of proofs of claim (POC).
- Banks required to promptly correct inaccuracies in POCs and affidavits filed in support of motions for relief.
- Exceed requirements of FRBP by requiring *waiver* of “hidden fees.”
- Require accountability for third-party providers by requiring stringent oversight.

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Servicing Standards for Borrowers in Bankruptcy – cont'd

- Attach properly endorsed notes and assignments where required by law.
- Ensure accuracy of account information including promptly posting payments and properly designating between pre- and post-petition payments and charges.
- Treat accounts as current so long as borrowers in bankruptcy make payments required under the confirmed plan and any notices of payment change.

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Servicing Standards for Borrowers in Bankruptcy – cont'd

- Default-related fees and charges must be bona fide and reasonable.
- Special Point of Contact (SPOC) for borrowers looking for options to avoid foreclosure, including staff who are specially trained in bankruptcy issues.
- Special contact for chapter 13 trustees, and management level contact for United States Trustees.

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Servicing Standards for Borrowers in Bankruptcy - cont'd

- Banks should contact borrowers directly regarding financial assistance.
- Do not wait to be contacted – borrowers can contact the Banks to determine eligibility:
 - Ally/GMAC: 800-766-4622
 - Bank of America: 877-488-7814
 - Citi: 866-272-4749
 - JPMorgan Chase: 866-372-6901
 - Wells: 800-288-3212

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Enforcement

- Monitor will oversee Banks' compliance with the servicing standards and consumer financial relief obligations.
- Banks will report on their compliance in the form of agreed-upon metrics and outcome measures, which includes testing bankruptcy documents.
- Monitor can employ professionals and will issue periodic reports filed in court, including violations of agreement.

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Compliance Monitor

- Joseph Smith appointed the independent Monitor overseeing compliance.
- Monitor has established the Office of Mortgage Oversight in connection with his monitoring responsibilities.
- Resources and information regarding the Monitor can be found at:
www.mortgageoversight.com

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Monitoring Committee

- The settlement requires the appointment of a Monitoring Committee:
 - Comprised of state and federal representatives including a USTP Attorney who serves as the DOJ representative.
 - Can bring enforcement actions.
- Monitoring will be in place for 3.5 years.

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Enforcement Actions

- If Banks fail to remedy violations, they are subject to equitable relief and civil penalties of up to \$5 million.
- Banks also are subject to financial penalties for failing to timely complete consumer financial relief obligations.

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Federal Release

The release covers claims against Banks based on three broad categories of conduct:

- Covered Origination Conduct;
- Covered Servicing Conduct; and
- Covered Bankruptcy Conduct.

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Federal Release – cont'd

- Releases claims based on Covered Conduct that took place through February 8, 2012.
- Parties released – Banks, affiliated entities, directors, officers, and employees.

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Federal Release – cont'd

The release excludes:

- Criminal conduct;
- Third party claims;
- Covered Conduct after 2/8/2012; and
- Securitization claims.

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Covered Bankruptcy Conduct

Claims based on deficiencies in servicing loans for debtors including:

- Lack of accuracy and substantiation for POC, Motion for Relief from Stay (MRS), and other court filings;
- Errors in charging and timing of default service fees;
- Inadequacy of account statements and disclosures to debtors;

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Covered Bankruptcy Conduct – cont'd

- Escrow issues including errors with disclosures, advances, and double dipping; and
- Deficiencies in accounting for, approving and administering loan modifications for debtors.

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No Impact on Third Parties' Rights

- Settlement does not bind or prejudice the rights of any other party including debtors, trustees, and the courts.
- Borrowers in bankruptcy are not required to release claims to receive payment under settlement.

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No Impact on Banks' Existing Agreements and Obligations

- Banks' obligations under the settlement do not supersede existing obligations under applicable law or mortgage loan documents, servicing agreements, or investor guidelines (e.g. Fannie Mae).
- If an irreconcilable conflict arises, Banks will comply with the existing obligations.

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No Impact on Other Servicers

Settlement does not:

- Release claims against third parties, including other servicers; or
- Impact bankruptcy filings by other servicers or third parties.

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Post-Settlement

- Claims based on Banks' servicing conduct after February 8, 2012 are not released under the settlement.
- Banks' obligations under the Servicing Standards will be phased in over time. Banks and Monitor must agree to timeline for implementation of standards. All standards should be implemented by October 2012.

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What Settlement Means for Borrowers in Bankruptcy

- Accuracy of servicers' filings (POC, MRS, etc.) in bankruptcy cases;
- Accountability for inaccuracies by servicers; and
- Greater transparency regarding servicing of the loan in bankruptcy.

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What Settlement Means for Borrowers in Bankruptcy – cont'd

Borrowers in bankruptcy may participate in the programs offered under the settlement as well as other programs.

For example, borrowers may also be eligible for separate restitution administered by the federal banking regulators, including the Office of the Comptroller of the Currency.

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What Settlement Means for Borrowers in Bankruptcy – cont'd

- Banks must implement better dispute resolution processes.
- If a Bank files an inaccurate or misleading document in a future bankruptcy case, borrowers in bankruptcy can take advantage of these new procedures.
- If a misrepresentation or inaccuracy arises in a bankruptcy filing, make a complaint with the Bank.

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Trustees' Administration of Funds Debtors Receive Under the Settlement

- Eligible borrowers in bankruptcy may receive payments from Banks as part of the settlement.
- Trustees should consider all relevant circumstances when deciding whether to administer these funds.

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Trustees' Administration of Funds Debtors Receive Under the Settlement – cont'd

Factors to consider include:

- The amount of the payment;
- Non-debtor spouse's interest in the funds;
- The cost to administer including any litigation costs if disputes exist; and
- Extent to which the recovered funds will provide a meaningful distribution to creditors

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Resources for Borrowers in Bankruptcy

- For Frequently Asked Questions and information about relief available to borrowers in bankruptcy go to:

www.justice.gov/ust/eo/public_affairs/consumer_info/nms/index.htm

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For General Questions about the Settlement

- Summaries of the servicing standards and other information can be found at the following website:

www.nationalmortgagesettlement.com

- For additional resources for consumers go to:

www.mortgageoversight.com

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Questions?