Joint Federal-State Mortgage Servicing Settlement
EXECUTIVE SUMMARY

The settlement between the state attorneys general and the five leading bank mortgage servicers will result in approximately $25 billion dollars in monetary sanctions and relief. The settlement represents the largest joint federal-state financial settlement in history. The accord will enable hundreds of thousands of distressed homeowners to stay in their homes through enhanced loan modifications. It will also fund payments to victims of unfair foreclosure practices and provide support for housing counseling and state-level foreclosure prevention programs.

In addition to the monetary allocations, the settlement will require comprehensive reforms of mortgage loan servicing. The mandated standards will cover all aspects of mortgage servicing, from consumer response to foreclosure documentation. To ensure that the banks meet the new standards, the settlement will be recorded and enforceable as a court judgment. Compliance will be overseen by an independent monitor who will report to the attorneys general and the court.

The settlement follows ten months of intensive negotiations between the five banks and a coalition of state attorneys general and federal agencies, including the Departments of Justice, Treasury, and Housing and Urban Development. The investigation began in October 2010 following revelations of widespread use of "robo-signed" affidavits in foreclosure proceedings across the country. State attorneys general formed a working group to investigate the problem and to confront the banks about the allegations. The major mortgage servicing banks soon acknowledged that individuals had been signing thousands of foreclosure affidavits without reviewing the validity or accuracy of the sworn statements. Several national banks then agreed to stop their foreclosure filings and sales until corrective action could be taken.

While the robo-signing issue received the most attention, other servicer-related problems were identified, including deceptive practices in the offering of loan modifications (for example, telling consumers that a loan modification was imminent while simultaneously foreclosing). The performance failures resulted in more than just poor customer service. Unnecessary foreclosures occurred due to failure to process homeowners' requests for modified payment plans. And where foreclosures should have been concluded, shoddy documentation led to protracted delays. This misconduct threatened the integrity of the legal system and had a negative impact on communities and the overall housing market.

All 50 state attorneys general determined that the compliance and performance failures prevalent in mortgage servicing were a high priority law enforcement and consumer protection matter. A bipartisan Negotiating Committee, made up of eight attorneys general[1] led the settlement negotiations. The Committee had extensive discussions with a wide variety of stakeholders, including investor groups, state banking examiners, bankruptcy attorneys, consumer groups and legal aid attorneys. The assistance and cooperation of state banking regulators and the Conference of State Banking Supervisors was particularly helpful in developing expertise. The attorneys general also partnered with federal authorities in order to benefit from their expertise and investigations. A working relationship with federal agencies was particularly important because national banks assert that state officials have no authority to investigate their banking practices.

The negotiations focused on robo-signing and mortgage servicing misconduct. The resulting settlement addresses the primary goals of the attorneys general: to provide immediate relief to enable struggling homeowners to avoid foreclosure; to bring badly needed reform to the mortgage servicing industry; to ensure that foreclosures are lawfully conducted; and to penalize the banks for robo-signing misconduct. The settlement imposes monetary sanctions on the banks while providing immediate and continuing relief to homeowners. Full litigation of the states' claims would likely have taken years, at a time when the foreclosure crisis requires immediate relief for homeowners. And adjudication of state-based robo-signing claims may have led to civil penalties but could not have yielded the amount and scope of the relief obtained in this settlement.

The settlement was not intended to address issues related to mortgage loan securitization or the concerns of investors. The settlement does not release securitization claims, so private parties and government officials are free to pursue those claims. Nor does the settlement provide any immunity or release for criminal conduct.

SUMMARY OF KEY SETTLEMENT TERMS

I. Relief for Struggling Homeowners

The settlement requires the five banks to allocate a total of $17 billion[2] in assistance to borrowers who have the intent and ability to stay in their homes while making reasonable payments on their mortgage loans. At least 60 percent of the $17 billion must be allocated to reduce the principal balance of home loans for borrowers who are in default or at risk of default on their loan payments. Many homeowners, particularly in states like Florida, Arizona, Nevada and California, have negative equity in their homes and have no realistic ability of refinancing or selling their homes, or to build equity. Principal reductions will also yield lower payments and will give homeowners a fair opportunity to preserve their homes.

[1] The States represented on the Negotiating Committee are Iowa, Colorado, Connecticut, Florida, Illinois, North Carolina, Texas and Washington.
[2] The dollar amounts in this summary are based on a 50-state settlement.

In addition to principal reductions, the banks must allocate funds, approximately $5.2 billion, for other forms of homeowner assistance. These options include the facilitation of short sales which allow houses to be bought and sold when the mortgage balance exceeds the value of the property. Another program is unemployed payment forbearance, which will defer payments for homeowners who are between jobs. Other options for funding include relocation assistance for homeowners facing foreclosure, waiving of deficiency balances, and funding for remediation of blighted properties.

II. Refinancing of Underwater Homes

To assist homeowners who are not delinquent on their payments but cannot refinance to lower rates because of negative equity, the banks must offer refinance programs totaling at least $3 billion. The banks will be required to notify eligible homeowners of the availability of these programs. To be eligible, a borrower must be current on mortgage payments, have a loan to value ratio in excess of 100%, and must have a current interest rate in excess of 5.25%. The refinanced rate must reduce monthly payments by at least $100.

III. Mortgage Servicing Reforms

A major component of the settlement is the comprehensive reform of mortgage servicing practices. The new standards will prevent mortgage servicers from engaging in robo-signing and other improper foreclosure practices. The standards will require banks to offer loss mitigation alternatives to borrowers before pursuing foreclosure. They also increase the transparency of the loss mitigation process, impose timelines to respond to borrowers, and restrict the unfair practice of "dual tracking," where foreclosure is initiated despite the borrower's engagement in a loss mitigation process.

Specific new servicing standards include:

- Information in foreclosure affidavits must be personally reviewed and based on competent evidence.
- Holders of loans and their legal standing to foreclose must be documented and disclosed to borrowers.
- Borrowers must be sent a pre-foreclosure notice that will include a summary of loss mitigation options offered, an account summary, description of facts supporting lender's right to foreclose, and a notice that the borrower may request a copy of the loan note and the identity of the investor holding the loan.
- Borrowers must be thoroughly evaluated for all available loss mitigation options before foreclosure referral, and banks must act on loss mitigation applications before referring loans to foreclosure; i.e. "dual tracking" will be restricted.
- Denials of loss mitigation relief must be automatically reviewed, with a right to appeal for borrowers.

- Banks must implement procedures to ensure accuracy of accounts and default fees, including regular audits, detailed monthly billing statements and enhanced billing dispute rights for borrowers.
- Banks are required to adopt procedures to oversee foreclosure firms, trustees and other agents.
- Banks will have specific loss mitigation obligations, including customer outreach and communications, timelines to respond to loss mitigation applications, and e-portals for borrowers to keep informed of loan modification status.
- Banks are required to designate an employee as a continuing single point of contact to assist borrowers seeking loss mitigation assistance.
- Military personnel who are covered by the Servicemembers Civil Relief Act (SCRA) will have enhanced protections.
- Banks must maintain adequate trained staff to handle the demand for loss mitigation relief.
- Application and qualification information for proprietary loan modifications must be publicly available.
- Servicers are required to expedite and facilitate short sales of distressed properties.
- Restrictions are imposed on default fees, late fees, third-party fees, and force-placed insurance.

IV. Monitoring and Enforcement

The settlement with each bank will be incorporated into a Consent Judgment that will be submitted to a federal judge for approval. Compliance with the servicing standards and financial obligations of the banks can be ultimately enforced through court process. Civil penalties may be assessed for violations of the Consent Judgment.

The banks' performance of their obligations under the settlement will be overseen by an independent Monitor. The Monitor will employ a staff of professionals to review the banks' compliance. The Monitor will issue periodic reports to the attorneys general, including notices of any potential violations.

The banks will report on their compliance in the form of agreed-upon metrics and outcome measures. Included among the compliance metrics are testing for proper documentation of foreclosures, loss mitigation offers and proper evaluation of loan modification applications. There will also be testing to ensure that borrowers' account information is accurate and that any fees are properly assessed and are not excessive. If banks fail to remedy violations, they are subject to civil penalties of up to $5 million from the court.

V. Payments to Foreclosure Victims

Approximately $1.5 billion of the settlement funds will be allocated to compensation to borrowers who were foreclosed on after January 1, 2008 and through Dec. 31, 2011. These borrowers will be notified of their right to file a claim. Borrowers who were not properly offered loss mitigation or who were otherwise improperly foreclosed on will be eligible for a uniform payment, which will be approximately $1,500 per borrower depending on level of response. Borrowers who receive payments will not have to release any claims and will be free to seek additional relief in the courts. Borrowers may also be eligible for a separate restitution process administered by the federal banking regulators.

VI. Payments to the States

The remaining settlement funds, approximately $2.5 billion, will be paid to the participating states. The funds may be distributed by the attorneys general to foreclosure relief and housing programs, including housing counseling, legal assistance, foreclosure prevention hotlines, foreclosure mediation, and community blight remediation. A portion of the funds may also be designated as civil penalties for the banks robo-signing misconduct.

VII. Release of Claims

The proposed Release contains a broad release of the banks' conduct related to mortgage loan servicing, foreclosure preparation, and mortgage loan origination services. Claims based on these areas of past conduct by the banks cannot be brought by state attorneys general or banking regulators.

The Release applies only to the named bank parties. It does not extend to third parties who may have provided default or foreclosure services for the banks. Notably, claims against MERSCORP, Inc. or Mortgage Electronic Registration Systems, Inc. (MERS) are not released.

Securitization claims, including claims of state and local pension funds, and including investor claims related to the formation, marketing or offering of securities, are fully preserved. Other claims that are not released include violations of state fair lending laws, criminal law enforcement, claims of state agencies having independent regulatory jurisdiction, claims of county recorders for fees, and actions to quiet title to foreclosed properties. Of course, the Release does not affect the rights of any individuals or entities to pursue their own claims for relief.