

InfoBytes Special Alert: Federal and State Officials Announce Mortgage Servicing Settlement

February 9, 2011

This morning, U.S. Attorney General Eric Holder, HUD Secretary Shawn Donovan, Iowa Attorney General Tom Miller, and several other state and federal officials [jointly announced](#) an approximately \$25 billion agreement in principle between the federal government, 49 state attorneys general and the five largest mortgage servicers to settle various mortgage servicing and foreclosure related issues. Oklahoma Attorney General E. Scott Pruitt later [announced](#) an "independent mortgage settlement" between Oklahoma and the five servicers.

The national-level agreement - with Bank of America, JP Morgan Chase, Wells Fargo, Citigroup, and Ally Financial (the servicers) - was the culmination of several state and federal investigations and extended negotiations between the parties. The settlement's terms require a commitment of approximately \$20 billion in financial relief for homeowners. In addition, the servicers will pay \$5 billion in cash to the state and federal governments, including \$1.5 billion to establish a Borrower Payment Fund that will provide payments to qualifying borrowers whose homes were sold or foreclosed on between January 1, 2008 and December 31, 2011. The \$25 billion agreement includes more than \$766.5 million in monetary sanctions [assessed by the Federal Reserve Board](#). An additional \$394 million of [penalties from the Office of Comptroller of the Currency](#) are held in abeyance provided four of the servicers make payments and take other actions under the settlement with a value equal to at least the penalty amounts assessed for each servicer by the OCC.

In addition to the financial compensation offered in the settlement, the servicers will conduct future business under new servicing standards, which include (i) restrictions on the default management process known as "dual tracking", (ii) a requirement for the institutions to provide a single point of contact for borrowers, (iii) specific protections for military service members beyond those provided by the federal Servicemembers Civil Relief Act, (iv) obligations concerning disclosures and practices related to force-placed insurance, and (v) limitations on servicing fees. The standards also require the servicers to establish (i) updated foreclosure and bankruptcy documentation processes, (ii) enhanced servicer oversight of third party vendors, and (iii) adherence to a new set of loan modification timelines.

The terms of the agreement will be filed as a consent judgment in the U.S. District Court for the District of Columbia. Their fulfillment, over the three-year term of the settlement, will be overseen by an independent monitor, North Carolina Commissioner of Banks Joseph A. Smith. In order to ensure timely dissemination of the settlement's terms to those who may be eligible for financial relief, the parties have established a ["National Mortgage Settlement" web site](#), which provides ["Servicing Standards Highlights"](#) and outlines key aspects of the servicing settlement.

The materials provided by the federal and state officials in announcing the settlement agreement note that the agreement left numerous issues unresolved and does not preclude (i) criminal claims, (ii) securities claims and claims related to the use of an electronic mortgage registry, (iii) loan origination claims in connection with FHA-insured loans, except those covered specifically by this settlement, and (iv) borrower claims.

For additional information concerning some of the state-level recoveries and issues the state attorneys general have reserved for potential future action please see (for California) http://oag.ca.gov/news/press_release?id=2625, and (for New York) http://www.ag.ny.gov/media_center/2012/feb/feb09a_12.html.

[BuckleySandler LLP](#) advises clients regarding mortgage servicing issues and [recently conducted a webinar](#) on servicing developments, including a review of the OCC's April, 2011 Consent Orders and related servicing guidance. If you have any questions about the settlement or servicing issues in general please contact a member of our [Mortgage Servicing Team](#).

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