

National Mortgage Settlement

Housing and Land Use Policy Program
University of Iowa Public Policy Center
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Overview

On February 9 of 2012, a bipartisan group of state attorneys general and federal officials announced a landmark \$25 billion national accord with the five largest loan servicers — Ally/GMAC, Bank of America, Citi, JPMorgan Chase, and Wells Fargo — over mortgage foreclosure fraud and unacceptable mortgage servicing practices.¹ The documents were officially filed in federal district court and made public on March 13, 2012. The settlement was approved on April 4, 2012.

The accord will enable distressed homeowners to stay in their homes through enhanced loan modifications. It also will provide 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 reform of mortgage loan servicing. 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.

Iowa's estimated share of the settlement is \$40 million, of which \$24 million will go to homeowners who lost their homes to foreclosure or are seeking loan modifications or refinancing.² The State will receive a direct payment of over \$15 million to support housing counseling, foreclosure prevention and other educational efforts. The Office of the Attorney General will oversee the implementation of the settlement in Iowa. In this paper we summarize the major elements of this complex settlement, and describe how it will impact homeowners and government programs in Iowa. We also provide links that offer more in-depth information on different aspects of the settlement.

¹ This draws extensively and directly on two publically available documents at <http://nationalmortgagesettlement.com>: 1) Philip A. Lehman, *Executive Summary of Multistate/Federal Settlement of Foreclosure Misconduct Claims* (2012) and; 2) *Fact Sheet: Mortgage Servicing Settlement* (2012).

² Details on Iowa's share of the settlement are available at the website of the Iowa Office of the Attorney General at <http://www.iowaattorneygeneral.gov/>.

BACKGROUND

The settlement followed 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. Revelations regarding “robo-signed” affidavits in foreclosure proceedings around the country triggered an investigation. The banks eventually acknowledged that employees had been signing thousands of foreclosure affidavits without reviewing the validity or accuracy of sworn statements. While the robo-signing issue received the most attention, other servicer-related problems were identified, including deceptive practices in the offering of loan modifications. Unnecessary foreclosures occurred due to failure to process homeowners’ requests for modified payment plans, which had a negative impact on communities and the overall housing market.

A bipartisan Negotiating Committee made up of eight attorneys general, including Iowa’s Tom Miller, 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 negotiations focused on robo-signing and mortgage servicing misconduct. The settlement: (1) provides immediate relief to enable struggling homeowners to avoid foreclosure; (2) brings reform to the mortgage servicing industry; (3) ensures that foreclosures are lawfully conducted, and; (4) penalizes the banks for robo-signing misconduct. The settlement was not intended to address issues related to mortgage loan securitization or the concerns of investors.

Major Elements of Settlement

Financial relief to homeowners

The settlement required the five banks to allocate a total of \$17 billion in assistance to borrowers with the intent and ability to stay in their homes while making reasonable payments on their mortgage loans. Significantly, at least 60% of the \$17 billion (i.e., \$10 billion) was 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 in the highest-foreclosure states (Nevada, Arizona, California and Florida) have negative equity in their homes, and no realistic ability to refinance or sell them. Principal reductions result in lower payments and give homeowners the opportunity to stay in their homes.

In addition to principal reductions, the banks were compelled to allocate approximately \$5.2 billion for other forms of homeowner assistance. These options include: facilitation of short sales, which allows houses to be bought and sold when the mortgage balance exceeds the value of the property; unemployed payment forbearance, which defers payments for homeowners who are between jobs; waiving of deficiency balances; relocation assistance for homeowners facing foreclosure; and, funding for remediation of blighted properties.

To assist homeowners who are not delinquent on their payments but cannot refinance to lower rates because their homes are “underwater” (worth less than the amount owed on the mortgage), the banks were obliged to offer refinancing programs totaling at least \$3 billion. To be eligible, a borrower must be current on mortgage payments, have a loan-to-value ratio in excess of 100%, and a current interest rate in excess of 5.25%. The refinanced rate must reduce monthly payments by at least \$100. To encourage servicers to act quickly, there are incentives for relief provided by February 2013, while any servicer that fails to meet its obligations within three years will be required to make additional cash payments.

Payments to State and Federal Governments

In addition to the \$20 billion of financial relief for homeowners, the servicers will make \$5 billion in cash payments to the states and federal government. Of this \$5 billion, a \$1.5 billion Borrower Payment Fund will be established to provide cash payments to borrowers whose homes were sold or taken in foreclosure between January 1, 2008, and December 31, 2011, and who meet other criteria. This program is distinct from, but complimentary to, the restitution program currently being administered by federal banking administrators to compensate those who suffered direct financial harm as a result of wrongful servicer conduct.

The remaining \$3.5 billion will go to state and federal governments to repay public funds lost as a result of servicer misconduct, and to fund housing counseling, legal aid, and other foreclosure-related programs identified by states attorneys general. Because of chronic budget shortfalls since the Recession of 2008-2009, a number of states are diverting the settlement funds away from housing and foreclosure prevention activities, despite the language contained in the settlement.

The exact uses of the funds are not yet known for all 50 states, because attorneys general, governors, legislators, and housing advocates continue to negotiate the final allocations. A study published by Enterprise Community Partners in May 2012 indicates that:

- 26 states are using substantially all of their funds for housing
- 9 states are using part of their funds for housing
- 6 states are not using their funds for housing.
- 9 states are completely open as to how their funds will be used³

New Servicing Standards

In addition to transferring \$25 billion from the five largest loan servicers to homeowners and state and federal governments, the settlement also undertakes a comprehensive reform of mortgage servicing practices. This far-reaching and

³ Amanda Sheldon Roberts, *\$2.5 Billion: Understanding how States are Spending their Share of the National Mortgage Settlement*, Enterprise Community Partners (2012), available at <http://www.enterprisecommunity.com/servlet/servlet.FileDownload?file=00P3000000CAEd8EAH>.

complex undertaking is briefly summarized here.⁴ Overall, the new standards prevent mortgage servicers from engaging in robo-signing and other improper foreclosure procedures. The standards require banks to offer loss-mitigation alternatives to borrowers before pursuing foreclosure. They also increase the transparency of the loss-mitigation process, impose time lines for responding to borrowers, and restrict the practice of “dual tracking,” where foreclosure is initiated despite the borrower’s engagement in a loss-mitigation process.

The new servicing standards⁵ are intended to:

Prevent robo-signing, improper documentation and lost paperwork.

- 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 includes a summary of loss-mitigation options, an account summary, description of the facts supporting the lender’s right to foreclose, and a notice that the borrower may request a copy of the loan note and the identify of the investor holding the loan.

Implement strict oversight of foreclosure processing, including third-party vendors.

- Banks are required to adopt procedures to oversee foreclosure firms, trustees and other agents.
- 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.

Make foreclosure a last resort and prevent banks from “dual tracking”.

- Borrowers must be thoroughly evaluated for all available loss-mitigation options before foreclosure referral
- Banks must act on loss-mitigation applications before referring loans to foreclosure, i.e., “dual tracking” is restricted.

Set procedures and timelines for reviewing loan modification guidelines, and give homeowners right to appeal denials.

- Banks will have specific loss mitigation obligations, including customer outreach and communications, time lines to respond to loss-mitigation applications, and e-portals for borrowers to keep informed of loan modification status.
- Application and qualification information for proprietary loan modifications must be publically available.

⁴ For a more detailed description of Servicing Standard Highlights, see <https://d9klfgibkcquc.cloudfront.net/Servicing%20Standards%20Highlights.pdf>, also available at <http://nationalmortgagesettlement.com>.

⁵ This section draws on, and integrates, summaries of the new servicing standards found at <http://nationalmortgagesettlement.com>: Lehman, *Executive Summary of Multistate/Federal Settlement of Foreclosure Misconduct Claims* (2012) and *Fact Sheet: Mortgage Servicing Settlement* (2012).

- Denials of loss-mitigation relief must be automatically reviewed, and borrowers have a right to appeal the decision.

Structure bank staffing to respond effectively to borrowers seeking loss mitigation.

- Banks are required to designate an employee as a continuing single point of contact to assist borrowers seeking loss-mitigation assistance.
- Banks must maintain adequate trained staff to handle the demand for loss-mitigation relief.

Provide enhanced protections to military personnel who are covered by the Service Members Civil Relief Act.

Impose new standards to ensure the accuracy of information provided in federal bankruptcy court, including pre-filing reviews of certain documents.

Require servicers to expedite and facilitate short sales of distressed properties.

Impose restrictions on default fees, late fees, third-party fees, and force-placed insurance.

Require servicers to take measures to deter community blight, including enhanced participation in local and state programs such as land banks, neighborhood stabilization, and nonprofit community redevelopment.

Monitoring and Enforcement

Joseph A. Smith serves as Monitor in overseeing compliance with the settlement and enforcing the consent judgment. Smith was North Carolina's banking commissioner from 2002 until he accepted the position of Settlement Monitor in early 2012. He oversees implementation of the extensive servicing standards required by the settlement, and can impose penalties of up to \$1 million per violation, or up to \$5 million for certain repeat violations. On August 29, 2012, Smith published the first progress report on the settlement, using data provided by the five servicers but not yet audited by his staff.⁶ The Monitor's office will publish regular public reports identifying any quarter in which a servicer falls short of the standards imposed in the settlement. The settlement was filed as a Consent Judgment in the United States District Court for the District of Columbia and will remain in effect for three and a half years.

Impact in Iowa

The National Mortgage Settlement will have a significant impact on Iowa's homeowners and state-funded efforts to prevent foreclosure. The state's estimated share of the settlement is just over \$40 million. Individual Iowans will receive an estimated \$25 million in payments as follows:

⁶ Office of Mortgage Settlement Oversight, "First Take: Progress Report from the Monitor of the National Mortgage Settlement". August 29, 2012. <https://www.mortgageoversight.com/wp-content/uploads/2012/08/ProgressReport08292012.pdf>

- \$5.9 million in benefits to borrowers who receive loan modifications and other relief
- \$7.4 million in direct payments to borrowers who lost their homes to foreclosure from 1/1/08 through 12/31/11 and encountered servicing abuse
- \$11.6 million in benefits to borrowers who are current on their loans, but owe more than their house is worth, and will refinance to lower rates⁷

The State of Iowa is receiving a total of just over \$17 million, which will support \$6 million in legislative appropriations (for the state infrastructure fund and community colleges), and \$10 million allocated through the Attorney General's office (for implementation of the settlement, Iowa Mediation Service and allied counseling agencies, Iowa Finance Authority, Iowa Legal Aid, Center for State Enforcement of Antitrust and Consumer Laws, research on effectiveness of Mortgage Foreclosure Prevent Efforts/Settlement, Elderly Victims Fund, and Consumer Education and Litigation Fund). In addition, the Division of Banking will receive \$1 million to support state financial regulation.⁸

Borrowers who have questions about their mortgage payments and want to know if they are eligible to benefit from the settlement, should consult the [Homeowner Relief Program Questions](#) posted on the Attorney General's website, then call their servicer, or contact Iowa Mortgage Help at 1-877-622-4866.

In Iowa, foreclosures have not taken as great a toll as in the highest-foreclosure states, but they remain a real problem for tens of thousands of households. According to RealtyTrac, a leading national private sector source of foreclosure data, in April 2012, Iowa was part of a cluster of midwestern states (including Minnesota, Missouri, Wisconsin, Illinois, Indiana, Michigan, and Ohio) that had medium to high foreclosure rates compared to the national average. Of this group, Illinois had the highest foreclosure rate, with 1 in 418 units, while Michigan (1 in 433), Ohio (1 in 543) and Wisconsin (1 in 596) also ranked in the top 10 states nationally.

In Iowa, 1 out of every 896 properties was in foreclosure for the month of April 2012 (a total of 1,492). While Iowa has a lower foreclosure rate than Nevada (1 in 300) or Florida (1 in 364), it has a much higher rate than its neighbors to the west: Nebraska (1 in 1,728), South Dakota (1 in 2,908) and North Dakota (a remarkably low 1 in 39,687). The RealtyTrac report from which these numbers were drawn concludes that foreclosure numbers are likely to rise later in 2012 because, as a

⁷ As noted in footnote 2 above, this information can be found at the website of the Iowa Office of the Attorney General at <http://www.iowaattorneygeneral.gov/>.

⁸ Iowa Attorney General's Office, "Joint State-Federal Mortgage Servicing Settlement: Allocation of Iowa's Share". July 11, 2012.

result of the national settlement, several barriers that have been holding back foreclosures have been removed.⁹

Conclusion

The National Mortgage Settlement represents the largest financial recovery obtained by attorneys general in the United States, apart from the 1998 Master Tobacco Settlement. It is designed to provide immediate relief to homeowners who have been through foreclosure, or who are in danger of foreclosure, while also reforming mortgage loan servicing, and supporting state-level foreclosure prevention efforts. The settlement Monitor will oversee a professional staff to determine whether the five banks are upholding their obligations under the settlement. At the same time, researchers around the country — including the Housing Policy Program at the University of Iowa — will be measuring the impact of different aspects of the settlement. We look forward to reporting back over the next several years on the results of this research.

⁹ The March 2012 data was provided directly to the University of Iowa Public Policy Center. The April 2012 data is available from RealtyTrac at <http://www.realtytrac.com/content/foreclosure-market-report/february-2012-us-foreclosure-market-report-7069>.