

# The National Mortgage Settlement



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# Multistate Settlement

- Investigation started in October 2010
- Investigation included 50 state attorneys general, state banking regulators, DOJ, HUD, Treasury
- Settlement start date: March 1, 2012
- Participating banks service approx. 60% of mortgage loans nationwide:
  - Bank of America
  - Citi
  - Chase
  - Wells Fargo
  - Ally (GMAC)
- Negotiations with additional servicers are ongoing

# The Multistate Settlement Does NOT Release:

- Individual borrower claims
- Class action claims
- Securitization claims
- Criminal claims
- Claims against MERS or other third parties
- Claims seeking injunctive or declaratory relief to clear a clouded title
- Fair lending claims
- Tax claims
- Claims of County Recorders

# Settlement Provisions

**1. Loss Mitigation Menu**

Servicers must work off \$17 billion in principal reduction and other forms of loss mitigation relief nationwide.

**2. Refinances (\$3 billion)**

**2. Borrower Payments (\$1.5 billion)**

Borrowers who lost their homes to foreclosure will receive payments with no requirement to prove financial harm and without having to release private claims.

**4. Payments to States**

**4. Oversight**

State attorneys general will have oversight of national banks.

**6. Servicing Standards**

The first nationwide reforms to servicing standards require single point of contact, adequate staffing levels and training, better communication with borrowers, and standards for executing documents in foreclosure cases, ending improper fees, and ending dual-track foreclosures for many loans.

# 1. Loss Mitigation Menu

- Servicers receive “credits” for modifying loans or performing other loss mitigation
  - \$17 billion Nationally
  - \$1.3 billion Nevada
- Includes FHA, VA, USDA loans
- Includes HAMP, to an extent
- Does not include Fannie Mae & Freddie Mac loans
- 85% of credits must go toward first liens on occupied properties

# 1. Loss Mitigation Menu

Relief Menu Includes:

- Principal Reduction (First & Second Lien)
- Facilitation of short sales
- Unemployment payment forbearance or forgiveness
- Relocation Assistance
- Deficiency Waivers
- Funding for remediation of blighted properties
- Servicemember short sale program

## 2. New Refinance Program

- Servicer-owned first liens
- NO: FHA, VA, manufactured home, Fannie Mae or Freddie Mac loans, borrowers in bankruptcy/foreclosure in last 24 mos.
- Borrower must be current (not late in last 12 mos.)
- LTV > 100%
- Originated before Jan. 1, 2009
- Not modified in last 24 months
- Pre-refi interest rate at least 5.25% (or PMMS plus 100 basis point, if greater)

### 3. Borrower Payments

- \$1.5 billion to approx. 750,000 borrowers nationwide
- Estimated payment: \$1,500 to \$2,000 (depending on borrower response rate)
- Qualifying borrowers will be notified by mail at a future date
- Criteria: Foreclosure sale between Jan. 1, 2008 and Dec. 31, 2011
- Borrowers will sign a form stating that they think servicer committed an error during foreclosure
- No release of borrower claims
- Separate from OCC's Foreclosure Review



## 4. Payments to States

- Nevada will receive \$57 million (National Multistate)
- Use of Funds:
  - Funds shall be directed to the Nevada Attorney General to be deposited into an account and used for the following purposes: avoiding preventable foreclosure, ameliorating the effects of the mortgage and foreclosure crisis in Nevada, enhance consumer protection and legal aid efforts, enhance consumer financial and housing counseling assistance including economic education and/or instruction on financial literacy for the benefit of Nevada residents, enhance law enforcement efforts to investigate, prosecute and prevent financial fraud or unfair or deceptive acts or practices at the sole discretion of the Attorney General.

## 5. Attorney General Oversight

- The settlement is monitored by:
  - Joseph A. Smith, Jr., North Carolina Commissioner of Banks since 2002
  - Monitoring committee made up of State AGs, DOJ, HUD
- Monitor has access to each servicer's:
  - business reports
  - work papers relating to the metrics
  - servicing complaints
- Monitor can interview servicer employees
- Monitoring committee or any state may enforce the settlement
- Nevada is a member of the monitoring committee

## 6. Servicing Standards

- Servicing standards intended to apply to loans secured by owner-occupied properties
- No restriction on loan ownership (unlike loss mitigation menu)
- Implementation of standards is on an ongoing basis
- CFPB is expected to issue servicing standard regulations before settlement sunset

# Servicing Standards:

## *Loss Mitigation: SPOC*

- Servicer must assign a single point of contact (SPOC) to most first-lien borrowers
- SPOC must:
  - have access to relevant records
  - be knowledgeable about borrower's situation
  - communicate with borrower
  - coordinate receipt of documentation
  - transfer to supervisor if requested
- Theoretically, SPOC would be servicer's representative at the settlement conference

# Servicing Standards:

## *Short Sale Timeline*

- ◆ Borrower sends short sale request to servicer
- ◆ Servicer acknowledges receipt within 10 business days
- ◆ Servicer sends missing items letter within 30 business days
- ◆ Servicer makes decision within 30 days of receiving complete application

# Servicing Standards:

## *Loan Modification Timeline (first liens)*

- ◆ Borrower sends modification application to servicer
- ◆ Servicer acknowledges receipt within 3 business days
- ◆ Servicer sends missing items letter within 5 business days
- ◆ Borrower has 30 days to send in missing items
- ◆ Servicer must make decision within 30 days of receiving complete application
- ◆ Servicer must send denial letter within 10 days of denial
- ◆ Borrower has 30 days to appeal denial in some cases
- ◆ Servicer generally can't proceed with sale until 15 days after appeal is denied or 14 days after modification offered as a result of appeal

# Servicing Standards:

## *Loan Modifications*

- Servicer must cease all collections efforts if:
  - Borrower is under review for a modification
  - Borrower is current on a trial modification
- Servicer must promptly send HAMP permanent modification upon borrower completion of trial
- Servicer must send fully executed modification to borrower within 45 days of receiving signed copy from borrower
- Servicer can't require borrower to waive/release claims in modification unless settling contested claims

# **Servicing Standards:**

## *Loan Modification Appeals*

- Some borrowers are entitled to appeal denial of modification
- Borrowers with right to appeal generally have 30 days to present evidence error in modification review
- No right to appeal if borrower applies for a modification within 37 days of a sheriff sale
- Borrower does not have 30 days to provide evidence of error if reason for denial was: ineligible mortgage, ineligible property, offer not accepted by borrower, loan previously modified
- Servicer must review borrower information and use “best efforts” to make a decision within 30 days



# Servicing Standards:

## *Dual Track*

- **Pre-foreclosure:**
  - **120 days or less delinquent:** servicer can't refer loan to foreclosure while reviewing a complete modification application
  - **Over 120 days delinquent:**
    - No stay of referral during review
    - If a trial modification is accepted by borrower, servicer can't proceed with foreclosure unless the borrower breaches the trial agreement (i.e. first payment not made or a later breach)
- **In foreclosure:** If servicer receives modification application within 30 days of referral to foreclosure, servicer can't move for judgment or order of sale
- **Sale:** If sale is delayed due to loss mitigation, servicer must notify borrower of new sale date

# Servicing Standards:

## *Dual Track*

- **Stay During Offer Period:** If modification is offered, servicer must not move for judgment or order of sale until earliest of:
  - 14 days after modification offered or
  - date borrower declines modification
- **Stay During Trial Modification:** If offered modification is accepted, servicer must not move for judgment or order of sale unless borrower breaches trial modification
- **Stay During Appeal:** If modification is denied and borrower appeals, servicer can't proceed with foreclosure until:
  - Expiration of 30 day appeal period or
  - Later of:
    - 15 days after denial of modification appeal
    - 14 days after modification offered pursuant to appeal
    - Breach of trial modification that was offered pursuant to appeal

# Servicing Standards:

## *Dual Track*

- **Stay During Loss Mitigation:** Servicer can't move for judgment or order of sale if:
  - Borrower is in compliance with trial modification, forbearance, or repayment plan or
  - Short sale or deed in lieu of foreclosure has been approved by all parties and proof of funds has been provided to servicer
- **No Stay Within 15 Days of Sale:** If a borrower applies for a modification within 15 days of a scheduled sale, servicer must:
  - Review the borrower or
  - Notify the borrower that it was unable to complete the review before the sale

# Servicing Standards:

## *Foreclosure*

- **Pre-referral letter** sent at least 14 days before referral to foreclosure must include:
  - Statement that borrower can receive payment history, note, investor name upon request (and, if foreclosure is filed: mortgage and assignments)
  - Plain language account summary with current loan status
  - Statement of basis for right to foreclose
  - Outline of loss mitigation efforts to that point
- **Post-referral letter** sent within five business days of referral, soliciting borrower to apply for loss mitigation

# Servicing Standards:

## *Foreclosure*

- Servicer must inform borrower of obligation to maintain property and pay taxes until sale
- Servicer must request that borrower inform servicer of borrower's intent to abandon property
- If servicer decides not to pursue foreclosure, must notify borrower of decision to release lien and must also notify local authorities of decision

# **Servicing Standards:** *Pleadings & Affidavits*

- In documents filed with the court, factual assertions must be accurate and complete
- Affidavits must be based on personal knowledge
- Affidavits must identify affiant, affiant's employer and affiant's title
- Servicer must replace faulty affidavits with new affidavits and provide written notice to borrower/counsel
  - In post-judgment, pre-sale cases, servicer just has to provide notice to borrower/counsel prior to proceeding with sale/eviction

# **Servicing Standards:** *Pleadings & Affidavits*

- If the original note is lost, servicer must comply with applicable law to establish ownership and right to enforce
- Mortgage assignments executed by/on behalf of servicer must:
  - Be executed with appropriate legal authority and
  - Accurately reflect the completed transaction
- Servicers must ensure that all information provided to third party vendors in connection with loan servicing activities is accurate

# **Servicing Standards:** *Collection of Costs/Fees*

- Servicer can't charge loan modification fees for proprietary modifications (first or second liens)
- Attorneys fees can only be for work performed
- Servicer can't collect a late fee while:
  - reviewing a complete modification application,
  - borrower is current on a trial modification, or
  - servicer is evaluating a short sale offer
- Property inspections are only allowed on HUD/GSE timelines unless specific circumstance support additional inspections



## **B of A Settlement:**

- Nevada will receive an additional \$30M
- Specific Solicitation of Nevada Borrowers for Principal Reduction
- Re-solicitation NHRP Population
- Nevada becoming a member on Monitoring Committee
- B of A will guaranty to undertake at least \$750M in loan modification and other assistance as part of the Multistate settlement specifically in Nevada
- Nevada will receive enhanced reporting above and beyond the multistate reporting;
- Enforceable in Nevada State Court

# Payments to Nevada

- Nevada will receive \$57M from the National Multistate Settlement and an additional \$30M from the Bank of America Settlement.
  - Funds shall be directed to the Nevada Attorney General to be deposited into an account and used for the following purposes:
    - avoiding preventable foreclosure,
    - ameliorating the effects of the mortgage and foreclosure crisis in Nevada,
    - enhance consumer protection and legal aid efforts,
    - enhance consumer financial and housing counseling assistance including economic education and/or instruction on financial literacy for the benefit of Nevada residents,
    - enhance law enforcement efforts to investigate, prosecute and prevent financial fraud or unfair or deceptive acts or practices at the sole discretion of the Attorney General.