

Office of  
**Mortgage Settlement**  
Oversight

**Mortgage Settlement Oversight**

Smith, Jr.  
to the American Mortgage Conference  
C  
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gin, I believe that it is appropriate to acknowledge the painful anniversary of 9/11 and our  
markable resilience. God bless America.

it is a pleasure and honor to speak at the American Mortgage Conference. It is also daunting,  
aliber of the other speakers, but I will do what I can to contribute to the discussion here of  
both industry and public importance.

s to believe, I am nearing the half-way mark in my work as Monitor under the National  
Settlement. At this milestone, I would like to take this opportunity to take a look back to where  
assess where we are, and dust off the crystal ball about the future.

know where to start when you look back with regard to home mortgage finance. I think the  
place is the mid "oughts" – 2004 to 2006 – when, as many of you will remember, it was hard  
loan. Home ownership rates were on the rise, employment in the mortgage and real estate

industries was booming; to coin a phrase, life was good – or so we thought. The "oughts," of course,  
came to naught. The mortgage market, and with it the residential real estate market, crashed, bringing in  
train a financial crisis and a long and painful recovery.

People of good will differ to this day about the causes of the financial crisis. I don't think, however, that  
there is much disagreement that the home mortgage finance system was not capable of dealing with the  
dramatic increase in default rates, attendant foreclosures, and the need for loan modifications or other  
debt relief. Efforts by the largest mortgage servicers to manage their distressed assets were too little and  
too late and resulted in allegations of "robo-signing," dual tracking and **the filing of false claims with  
federal insurers of mortgages.**

The National Mortgage Settlement was a bi-partisan state/federal response to the alleged abuses in  
mortgage servicing. Effective early in April, 2012, it provided, among other things, for, approximately \$20  
billion in consumer relief. Perhaps more lasting, the Settlement also required the servicers who are  
parties to begin operating under 304 rules of conduct for dealing with customers with distressed loans. I  
have had the privilege of serving as Monitor under the Settlement since its inception.

So, where are we? I would argue we have made a good start on monitoring implementation of the  
settlement. From a standing start in April of last year, my colleagues and I formed a network of  
professional firms that are both independent of the banks and capable of doing the monitoring work

This is the one point that is not talked about nearly enough. The filing of False Claims, as detailed in the HUD/OIG Audit reports resulted in billions of dollars in improper profit for the banks. The scale of consumer "relief" must be put into proper context, acknowledging that this "relief" should be offset by the fraudulently obtained bank profits.



There are on-going violations of law with the formal modifications that are being put in place...any enforcement here?

required by the settlement. We set up and have carried out a testing protocol to confirm the banks' compliance, both with their consumer relief obligations and the servicing standards. We have publicly reported on the banks' consumer relief activities, and have made the first formal reports to the Court and the public regarding their compliance with the servicing standards.

According to their most recent consumer relief reports – available on my web site: [www.mortgageoversight.com](http://www.mortgageoversight.com) -- the banks have provided an aggregate of \$51 billion in consumer relief to borrowers around the country. My primary professional firm – BDO Consulting – and I have reviewed the banks' claims for credited relief under the settlement through the end of 2012 and intend to issue reports to the Court and a related report to the public this month. I hope and expect that we will issue reports on the satisfaction of all of the banks' consumer relief obligations by the end of this year or next year.

The consumer relief has been substantial and has meaning not only to the 642,000 families who have received it, but also the neighborhoods and communities that have become more stable as a result. The relief has come in a variety of forms, including more than \$10 billion in first lien principal forgiveness (completed or in process) for over 97,000 families and refinancing assistance to over 73,000 families with an aggregate estimated benefit of \$2.9 billion.

Our work is also progressing on monitoring compliance with the 304 servicing standards - or rules of conduct – contained in the settlement. As I noted previously, my retained professional firms and I have completed our first set of compliance reviews and reported our findings to the Court and public in June. These reports were thorough – involving nearly 38,000 hours of work by 195 professionals. Although dealing with only some of the 29 metrics – or compliance tests – contained in the settlement, the reports showed that three banks failed three metrics through the end of last year. In addition, three banks have failed four additional tests in the first quarter of 2013, for a total of seven failures. The banks have completed their internal reviews of performance under the settlement and are currently reviewing their work and preparing my Monitor Report to be due by year end.

Our firm has voluntarily disclosed that I mentioned revealed fails that include: (i) incorrect content in pre-foreclosure notices; (ii) incorrect content in pre-foreclosure notices; (iii) incorrect insurance after notice that the borrower was on other plans, including remediation of borrowers where the bank was not the servicer; (iv) these circumstances can lead to injunctive relief or permanent injunction. I will include disclosure of our continued testing and the corrective actions that are in process.

While I think the work my colleagues and I do under the enforcement provisions of the settlement is rigorous and effective, I have never thought that this work alone would be sufficient to ensure a better firsthand accounts from the marketplace. The ultimate test of success is whether our work is resulting in a better treatment of distressed borrowers. To see how the banks are performing from that perspective, I have traveled to nine states in the last year, including four of those hardest hit by the mortgage crisis, to hear from attorneys general, consumer counselors, advocates and lawyers who represent borrowers. In addition, the settlement authorizes my access to the home office complaints received by the banks. My colleagues have reviewed more than sixty thousand of these complaints. We have also received and reviewed almost 1,000 additional complaints from professionals who work with distressed borrowers through an online form on my web site. The feedback from these sources has made it clear to me that the mortgage servicing system still needs work. The largest number of complaints from these sources have

I would really like to know if anyone has been into foreclosure courtrooms to see how the banks continue to violate the terms of this agreement...they often have no choice. The NMS is completely disregarded in most courts, yet nothing is done to enforce its terms

It is regrettable that banks must manipulate the "public" foreclosure auctions, ensuring that they take back title to the properties so that can at least arguably claim they complied with loss mitigation efforts?

I want to know whether any of the monitoring involves going into foreclosure courtrooms to hear the allegations of abuse from actual homeowners. Or witnessing the abuse of bank attorneys by judges? This cuts both ways.

related to defects in the loan modification process, shortcomings of bank single points of contact for borrowers, and correctness of customer information. So, while there have been improvements in the way banks interact with their distressed borrowers, I am nowhere near ready to hang out the “Mission Accomplished” banner. The banks have a way to go yet.

So much for where we are: where are we heading? Let me discuss my destination of choice and how I will be measuring progress to that destination.

As I look forward to the day when I submit my final compliance report to the Court as Monitor of the National Mortgage Settlement, success will mean that the settlement generally, and the work my colleagues and I have done in monitoring it in particular, will have contributed to a discernible improvement in the way mortgage servicers treat distressed borrowers. By then I hope to hear from attorneys general, counselors and others representing distressed borrowers, that applications for relief are handled efficiently and fairly. I hope that the level of complaints regarding servicing will have gone down substantially and that the main cause of complaint will be denial, not delay. I have never thought the answer to a question about a loan modification should always be yes, but I do strongly believe it should always be timely. In my fondest dreams, there will be a measurable increase in public trust and confidence in the home mortgage finance system, and servicing in particular.

How can we achieve this improved state of affairs? Three steps in particular come to mind: (i) continue the work we are doing by robustly monitoring the settlement; (ii) apply what we have learned over the last year to augment and improve the settlement; and (iii) improve the infrastructure that deals with individual cases. Let me discuss these steps in order.

I have already spoken to the first step of rigorously monitoring the settlement. Over the course of the last year, the servicers have implemented the servicing standards and have begun testing compliance through the 29 metrics provided for in the settlement. I believe that the fails already disclosed show that this process has integrity and teeth. Further, I am beginning to hear, even from critics of the servicers and the settlement, that there has been some improvement in the field. It is my hope and expectation that continued monitoring and enforcement will result in continued improvement.

As I said earlier, my experience over the last year suggests more needs to be done. Based on my oversight of the banks’ compliance with the servicing standards to date, it is clear to me that the settlement has allowed us to uncover problems that need to be rectified. I have also come to the view that the existing 29 metrics that test compliance with the settlement, while valid and comprehensive measures of the banks’ performance, need to be supplemented to address what we have learned over the last year.

Informed by our testing and review of complaints data, my colleagues and I have negotiated four additional metrics to address the areas that need additional oversight or where they has not previously been any oversight – loan modification, single point of contact and customer records. Two of the metrics are in substantially final form; two more are currently in negotiation. Agreement on and implementation of these new metrics is crucial to addressing the gaps in better enforcing the settlement. All stakeholders in the settlement are working to finalize these metrics. This work needs to be finished soon and I look forward to sharing the new metrics with you when they are final.

A third step is not really in my power as monitor of the settlement, but is in the power of those in this room: improvement of the infrastructure to handle individual cases. I believe the settlement is making an important contribution to correcting serious problems in mortgage servicing; however, its contribution is structural. As monitor under the settlement, I cannot address individual cases, even where a breach of

servicing standards is alleged. Further, given that the metrics often contemplate threshold error rates, it is possible that a servicer that "passes" a relevant metric may still have harmed some borrowers. This state of affairs has resulted in an ongoing disconnect between what our enforcement activities are showing and what individuals may be experiencing. I had similar problems with consumer complaints when I was North Carolina Commissioner of Banks and expect state and federal regulators today have the same experience.

I believe most if not all stakeholders in home mortgage finance agree that modifying distressed or underwater loans of creditworthy borrowers is in their interest and the public interest. Failure to make such modifications when it is in the interest of both the borrower and the lender should be avoided whenever possible. The best, and perhaps only, way to do this is for the industry, non-profits and government to establish and nurture channels of communication and cooperation that build trust and confidence and assure that deserving borrowers get relief. The settlement, in its present form and as I believe it will be augmented, does not address this issue; continued and voluntary cooperation is the key to success. In my travels, I have seen numerous examples of this kind of cooperation; we need to support and increase it and emulate it.

Home ownership is an important political, social, and economic issue for our country. I believe that the parties to the settlement have done important work to heal the mortgage market and to justify public trust and confidence in it. My colleagues and I are mindful of the importance of implementing the settlement in a way that does justice to that great work. It is an honor and we take it seriously. That said, the health of the market requires that all stakeholders, whether in the settlement or not, up their game to help distressed borrowers and to "reboot" the industry to achieve a fair, efficient, and sustainable market place.

Thank you for your attention.

Banks have more than enough investment or secondary property inventory to deal with, we should never hear of elderly or sick people being thrown out of homes that have no commercial value...but it continues to occur.

The thought that real estate will "reboot" is optimistic, perhaps delusional, but certainly supported by what's being reported. The reality on the ground is not at all encouraging...and what's just around the corner will be devastating. In Pinellas County, only 1037 homes sold to third parties while 3753 revert to banks in 2012. That's not a healthy marketplace. The data reveals that glaring problems in the foreclosure process remain. <http://www.pinellasclerk.org/aspinclude2/ForeclosureSales.pdf>

And the data on new foreclosure filings and disposition of old cases is even more disturbing.

I attach to the left the official records on new foreclosure filings and dispositions in Florida....the problems revealed by this data cannot be overstated. They reveal dramatic breakdowns exist in the process..and it's getting worse...just wait until the 2014 escrow analysis begins...Biggert Waters anyone?

We could all agree that banks should plow throw investment, second home and abandoned properties first, and then go back to owner-occupied property....no need to foreclose on families while so much other inventory remains...but courts are forcing them to throw families into the street...this is a problem that could be corrected IMMEDIATELY...with advocacy from the NMS!

