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$25 Billion Mortgage Fraud Settlement Marks Turning Point for Industry

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On April 4, the $25 billion national mortgage servicing settlement, which was announced in February, was finalized by a judge in the U.S. District Court for the District of Columbia. The settlement with the nation's five largest mortgage servicers — Bank of America Corporation, JPMorgan Chase & Co., Wells Fargo & Company, Citigroup Inc., and Ally Financial Inc. (formerly GMAC) — was negotiated by 49 state attorneys general and the federal government. The complaint alleged that the servicers' misconduct "resulted in the issuance of improper mortgages, premature and unauthorized foreclosures, violation of service members' and other homeowners' rights and protections, the use of false and deceptive affidavits and other documents, and the waste and abuse of taxpayer funds."

The settlement of this major mortgage fraud case requires that servicers provide a minimum of $20 billion in benefits directly to borrowers through a series of national homeowner relief effort options, and pay $5 billion to the states and federal government ($4.25 billion to the states and $750 million to the federal government). Eligible borrowers who lost their homes to foreclosure from January 1, 2008 through December 31, 2011, and suffered servicing abuse may each qualify for an estimated $1,500 cash payment, and eligible homeowners whose homes are currently underwater may qualify for principal reduction.

While these payments will assist homeowners who have already fallen victim to servicers' mortgage fraud, perhaps the most important development to emerge from this settlement is the creation of new servicing standards that will take effect over the next two to six months.

The standards seek to improve consumer access to help and information by requiring servicers to provide a single point of contact for borrowers seeking information about their loans and adequate staff to handle calls. These servicing standards set procedures and timelines for reviewing loan modification applications and give homeowners the right to appeal denials. Finally, they will stop many past foreclosure abuses by requiring servicers to evaluate homeowners for other loan mitigation options before resorting to foreclosure, forbidding banks from foreclosing while the homeowner is being considered for a loan modification, requiring strict oversight of foreclosure processing, and prohibiting abuses such as robo-signing and improper mortgage documentation.

To ensure that the servicers comply with the terms of the settlement and prevent future mortgage fraud, a monitor has been appointed to work with non-compliant institutions to establish corrective plans, or to recommend penalties or to seek injunctive relief to enforce the settlement. The U.S. Department of Justice and state attorneys general can enforce through the court process compliance with the servicing standards and the banks' financial obligations. The settlement does not prohibit further relief for individuals, and borrowers and mortgage investors can pursue individual, institutional or class action cases without restriction.

We hope that this $25 billion settlement is enough to get the attention of servicers engaged in unscrupulous practices and to ensure that they change their operations moving forward. We also hope that now that this cloud over the industry is dissipating, it can proceed to provide and service mortgages in a way that is legal and ethical and that will aid in facilitating a housing recovery that is still only on the horizon.

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