

# Independent Foreclosure Review Final Report

August 2019

Board of Governors of the Federal Reserve System

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## Executive Summary

In 2011 and 2012, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (“Federal Reserve”), and the Office of Thrift Supervision (OTS) issued formal enforcement actions against 16 mortgage servicing companies after examiners identified a pattern of misconduct and negligence related to deficient practices in residential mortgage loan servicing and foreclosure processing during reviews conducted from November 2010 to January 2011.<sup>1</sup>

Beginning in January 2013, 15 of the mortgage servicing companies subject to enforcement actions for deficient practices in mortgage loan servicing and foreclosure processing reached agreements with the OCC and the Federal Reserve to provide approximately \$3.9 billion in direct cash payments to 4.4 million eligible borrowers and approximately \$6.1 billion in other foreclosure prevention assistance, such as loan modifications and the forgiveness of deficiency judgments (the “Payment Agreement”).

In July 2014, the Federal Reserve published the *Independent Foreclosure Review* on the mortgage servicing enforcement actions, which includes interim data on the cash payments made and foreclosure prevention assistance provided under the Payment Agreement.<sup>2</sup> Now that the Payment Agreement has concluded, this report provides final data on the cash payments made and the foreclosure prevention assistance provided under the Payment Agreement.

When it issued the mortgage servicing enforcement actions, the Federal Reserve announced that it believed monetary penalties were appropriate for all organizations under the actions for their mortgage servicing deficiencies. As of January 2018, the Federal Reserve assessed penalties totaling approximately \$1.1 billion against all Federal Reserve-supervised organizations under mortgage servicing enforcement actions. These penalties were based on the same deficiencies that the servicers were required to correct under the 2011 and 2012 enforcement actions.

In January 2018 and August 2018, the Federal Reserve announced the termination of the mortgage-servicing-related enforcement actions issued in 2011 and 2012 for all but one of the organizations it supervises. The termination was based on evidence of sustainable improvements in the organizations’ oversight and mortgage servicing practices.

## Payment Agreement and Payment Redistribution

The Payment Agreement imposed two principal requirements on participating servicers. First, the servicers were required to promptly make cash payments to all borrowers whose mortgages they serviced and whose homes were in the foreclosure process during 2009 or 2010, regardless of whether the borrower had suffered financial injury caused by servicer error (the “cash payments”). Second, the servicers were required to provide loss mitigation or other foreclosure prevention assistance, such as loan modifications or forgiveness of deficiency judgments, to

<sup>1</sup> The banking organizations subject to the enforcement actions and the regulator for each banking organization’s servicing operations are displayed in table 1 of the appendix.

<sup>2</sup> Board of Governors of the Federal Reserve System, *Independent Foreclosure Review* (Washington: Board of Governors, 2014), <https://www.federalreserve.gov/publications/2014-independent-foreclosure-review-executive-summary.htm>.

### Box 1. Final Data on Cash Payments to Borrowers: Final Payment Status

#### Initial 13 participating servicers:

Number of checks issued: **4.2 million**

Number of checks deposited or cashed through the end of the initial payment distribution: **3.7 million**

Total amount of checks issued: **\$3.6 billion**

Total amount of checks deposited or cashed: **\$3.3 billion**

*Final data as of April 1, 2016*

#### GMAC Mortgage:

Number of checks issued: **232,000**

Number of checks deposited or cashed through the end of the initial payment distribution: **205,000**

Total amount of checks issued: **\$226 million**

Total amount of checks deposited or cashed: **\$205 million**

*Final data as of April 1, 2016*

#### Six servicers participating in redistribution of unclaimed funds:

Number of redistribution checks issued: **649,700**

Number of checks deposited or cashed: **474,000**

Total amount of checks issued: **\$80.7 million**

Total amount of checks deposited or cashed: **\$58.9 million**

*Final data as of January 20, 2017*

Note: Per footnote 4, the data do not include EverBank. GMAC Mortgage is listed separately because it entered into the Payment Agreement after the initial 13 participating servicers and established a separate borrower payment fund.

borrowers facing foreclosure (the “foreclosure prevention assistance”). Servicers were not permitted to ask borrowers to release any claims they may have had against their servicer in order to receive a cash payment or foreclosure prevention assistance.

The servicers’ fulfillment of the cash payments and foreclosure prevention assistance requirements replaced their obligations to complete independent foreclosure file reviews under the 2011 and 2012 enforcement actions.<sup>3</sup> However, the Payment Agreement did not affect the servicers’ continuing obligations under the enforcement actions to take corrective actions to address deficiencies in their mortgage servicing and foreclosure policies and procedures.

Rust Consulting, Inc. (“Rust”) was retained as paying agent to administer payments to borrowers on behalf of the participating servicers.<sup>4</sup> Beginning in April 2013, Rust mailed checks to eligible borrowers and, in most cases, made a minimum of two follow-up attempts to reach each eligible borrower. Rust has advised that the efforts undertaken to locate borrowers covered by the Payment Agreement have exceeded efforts in similar payment distributions. At the conclusion of the initial distribution of borrower payments, more than \$3.5 billion was distributed to eligible borrowers through approximately 3.9 million checks, representing a cash rate of nearly 91 percent of the total value of the funds made available to borrowers.

After all outstanding initial checks expired, at the direction of the Federal Reserve,

<sup>3</sup> Under the original enforcement actions, the servicers were required to retain independent consultants to conduct comprehensive reviews of foreclosure activity to identify whether eligible borrowers suffered financial injury because of servicer errors, misrepresentations, or other deficiencies. This independent review process was referred to as the “Independent Foreclosure Review.”

<sup>4</sup> EverBank, an OCC-regulated servicer, joined the Payment Agreement after the other servicers and established a separate borrower payment fund with a different paying agent. Therefore, data related to EverBank are not included in this report.

in August 2016, Rust redistributed the remaining Payment Agreement funds (primarily representing uncashed checks) to eligible borrowers of Federal Reserve-supervised servicers who had cashed their initial checks. This direction applied only to funds allocated to borrowers of the six mortgage servicers supervised by the Federal Reserve and was consistent with the Federal Reserve's intention to distribute the maximum amount of funds to borrowers potentially affected by deficient servicing and foreclosure practices. The redistribution of approximately \$80 million in remaining funds resulted in an additional amount of nearly \$59 million being cashed by borrowers of servicers supervised by the Federal Reserve.

At the conclusion of the redistribution, approximately 98 percent of the total value of funds made available to eligible borrowers of Federal Reserve-supervised servicers was distributed to those borrowers.

## Foreclosure Prevention Assistance

The Payment Agreement also required servicers to undertake well-structured loss-mitigation efforts focused on foreclosure prevention, with preference given to activities designed to keep

### Box 2. Final Data on Foreclosure Prevention Assistance

#### Six servicers supervised by Federal Reserve:

Three servicers (Goldman Sachs, HSBC, and JPMC) provided foreclosure prevention assistance with a total value of approximately **\$1.57 billion**

Three servicers (GMAC Mortgage, Morgan Stanley, and SunTrust) made cash payments in lieu of foreclosure prevention assistance, in the form of supplemental cash payments and/or payments for borrower counseling, totaling approximately **\$64.5 million**

*Final data as of January 13, 2016*

borrowers in their homes through affordable, sustainable, and meaningful home preservation actions. Servicers were allowed to receive credit toward their obligations by providing specific types of consumer relief activities. Subject to regulator nonobjection, servicers were also able to meet their foreclosure prevention assistance requirements by paying additional cash to be used to fund the cash payments or by providing funding for borrower counseling or education.

The foreclosure prevention assistance actions reported by the servicers included loan modifications, short sales, deeds-in-lieu of foreclosure, debt cancellation, and

lien extinguishment. In order to receive credit toward the servicer's total foreclosure prevention obligation, the actions submitted were required to be validated by the regulators.

## Payment Agreement Completion

The borrower payment process concluded at the end of 2016. By 2016, all Federal Reserve-supervised servicers had fulfilled their foreclosure prevention assistance obligations, and a third-party validation process had concluded that the foreclosure prevention assistance amounts met the requirements of the enforcement actions, as applicable.

In 2018, an audit of the final reconciliation of the payment funds was completed. Funds remaining that were provided by servicers supervised by the Federal Reserve as part of the Payment Agreement were remitted to the general fund of the U.S. Department of the Treasury. Federal Reserve staff is currently working with Rust to close the payment funds.

## Appendix

Table 1 provides a summary of the banking organizations subject to the enforcement actions (“Consent Orders”), the primary regulator of their servicing operations, and the timing of their entry into the Consent Orders and Consent Order amendments (which memorialized the Payment Agreement), as applicable. Two banking organizations, HSBC and JPMorgan Chase & Co. (JPMC), had mortgage servicing operations supervised by the Federal Reserve and separate servicing operations supervised by the OCC. Therefore, separate Consent Orders and amendments were issued by the Federal Reserve and the OCC against HSBC and JPMC.

**Table 1. Banking organizations subject to Consent Orders issued in 2011 and 2012**

Banking organization	Regulator of servicing operation	Consent Order date	Consent Order amendment date
<b>Aurora</b> —Aurora Bank FSB; Aurora Loan Services	OCC	4/13/2011	2/28/2013
<b>Bank of America</b> —Bank of America Corporation; Bank of America, N.A.; BAC Home Loans Servicing	OCC	4/13/2011	2/28/2013
<b>Citi</b> —Citigroup Inc.; Citibank, N.A.; Citi Financial Credit Co.; CitiMortgage	OCC	4/13/2011	2/28/2013
<b>EverBank</b> —EverBank/EverHome Mortgage Company	OCC	4/13/2011	10/16/2013
<b>GMAC Mortgage</b> —Ally Financial Inc.; Ally Bank; Residential Capital, LLC; GMAC Mortgage, LLC	Federal Reserve	4/13/2011	7/26/2013
<b>Goldman Sachs</b> —The Goldman Sachs Group, Inc.; Goldman Sachs Bank USA; Litton Loan Servicing LP	Federal Reserve	9/1/2011	2/28/2013
<b>HSBC</b> —HSBC North America Holdings, Inc.; HSBC Bank USA, N.A.; HSBC Finance Corporation	OCC and Federal Reserve	4/13/2011	2/28/2013
<b>JPMC</b> —JPMorgan Chase & Co.; EMC Mortgage Corporation	OCC and Federal Reserve	4/13/2011	2/28/2013
<b>MetLife</b> —MetLife, Inc.; MetLife Bank, National Association	OCC	4/13/2011	2/28/2013
<b>Morgan Stanley</b> —Morgan Stanley and Saxon Mortgage Services, Inc.	Federal Reserve	4/2/2012	2/28/2013
<b>OneWest</b> —OneWest Bank, FSB; IMB HoldCo	OCC	4/13/2011	None <sup>1</sup>
<b>PNC</b> —PNC Financial Services Group, Inc.; PNC Mortgage	OCC	4/13/2011	2/28/2013
<b>Sovereign</b> —Sovereign Bank (now Santander Bank)	OCC	4/13/2011	2/28/2013
<b>SunTrust</b> —SunTrust Banks, Inc.; SunTrust Bank; SunTrust Mortgage, Inc.	Federal Reserve	4/13/2011	2/28/2013
<b>U.S. Bank</b> —U.S. Bancorp; U.S. Bank National Association; U.S. Bank National Association ND	OCC	4/13/2011	2/28/2013
<b>Wells Fargo</b> —Wells Fargo & Company; Wells Fargo Bank, N.A.	OCC	4/13/2011	2/28/2013

OCC Office of the Comptroller of the Currency.

<sup>1</sup> OneWest did not enter into a Payment Agreement. It finished the independent foreclosure file review required by the original Consent Order against it.

