National Mortgage Settlement Analysis: Third Progress Report
by Marceline White

On Feb. 21, 2013, the Office of Mortgage Settlement Oversight released its third report describing the progress that the five big banks that are part of the national mortgage settlement have made to implement the settlement reached between Ally Bank, Bank of America, Citibank, JPMorgan Chase, and Wells Fargo and 49 state attorneys general in February 2012.

The agreement was initially hailed as a way to provide immediate assistance to 1 million people in danger of losing their homes to foreclosure. To date, the reality falls far short of the promise.

The new progress report shows that, nine months into the settlement, only 554,389 borrowers have received any relief. More troubling to fair housing advocates, however, is the fact that the bulk of the relief has come in the form of short sales rather than the principal reductions that are the best way to help families stay in their homes.[1]

The third report covers the period between March 1, 2012 through December 31, 2012 -- the entire period the settlement agreement has been in effect.[2]

Ally Bank has provided $200 billion in consumer relief nationally, satisfying the settlement's legal requirements.[3] The other four banks in the settlement still have considerable work to do to meet their obligations.

The monitor's report includes an update on the amount and type of relief consumers have received, the implementation of new servicing standards, and a review of complaints submitted by individuals and housing professionals across the nation.

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[1] Hallman, Ben, "Mortgage Settlement Report Finds Banks Reluctant to Reduce Principal, Despite Promises," Huffington Post, Feb. 21, 2013.

[2] "Ongoing Implementation: A Report from the Monitor of the National Mortgage Settlement," Office of Mortgage Settlement Oversight, Feb. 21, 2013, p. 2.

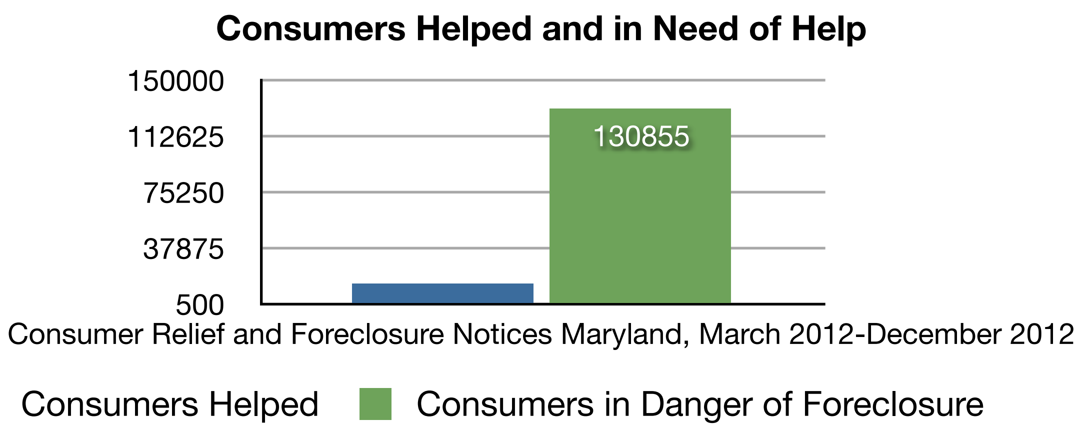
[3] "Ongoing Implementation: A Report from the Monitor of the National Mortgage Settlement," Office of Mortgage Settlement Oversight, Feb. 21, 2013, Appendix V. State Consumer Relief Information Maryland, Program to Date, p. 2.

Between March and December 2012, 14,217 Maryland families were helped by the settlement.[4] Relief averaged nearly $80,000 ($79,082) per family,[5] and Maryland families received a total of $1,124,315,627 in relief in the first nine months of the settlement.[6] However, because the settlement doesn't provide a dollar-for-dollar credit for each type of relief, the total credit the banks will receive for this consumer relief may be smaller.

For the fortunate families that have gotten help from the settlement, the gains are clear. However, given the enormity of the foreclosure crisis -- and the risky and reckless bank lending that precipitated it -- the large banks are emerging as the real winners in the settlement as the scale of the crisis continues to dwarf the relief the banks are offering.

In Maryland, for example, in the same nine months in which more than 14,000 families received some relief from the settlement, 130,855 families[7] (more than nine times as many as have won relief under the settlement) received notices that they may be facing foreclosure.

Chart 1[8]



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[4] "Ongoing Implementation: A Report from the Monitor of the National Mortgage Settlement," Office of Mortgage Settlement Oversight, Feb. 21, 2013 Appendix V. State Consumer Relief Information Maryland, Program to Date, p. 43.

[5] Ibid.

[6] Ibid.

[7] "Notice of Intent to Foreclose in Maryland: December 2012 Report," Department of Labor, Licensing, and Regulation, Maryland.

[8] "Ongoing Implementation: A Report from the Monitor of the National Mortgage Settlement," Office of Mortgage Settlement Oversight, Feb. 21, 2013, Appendix V. State Consumer Relief Information Maryland, Program to Date, p. 43.

In December 2012 alone, the number of notices of intent to foreclose (NOIs) Maryland families received increased by 135% to 10,524 – or almost as many as the number of homeowners the banks helped under the settlement in its first nine months.

The largest number of those NOIs went to Prince George's County (where homeowners received 2,434 notices or 23 percent of the state's total), followed by Baltimore City (1,476 notices or 14 percent). According to the Maryland Department of Labor, Licensing and Regulation's report on foreclosure activity, NOIs increased in all Maryland counties in December over the numbers from Dec. 2011, with significant growth in Talbot County (up 222.2 percent), Dorchester County (192.5 percent), Caroline County (168.6 percent), and Worcester County (154.9 percent).[9]

The Promise of the Settlement

Deatrice S. Besong's story has a happy ending. The Prince George's County woman re-negotiated her mortgage twice after a divorce dramatically reduced her income. However, when she tried to obtain a principal reduction, she couldn't convince the customer service representative that she was eligible for consumer relief through the settlement. A supporter of MCRC, Besong learned more about the settlement terms and how to file a complaint with the settlement monitor's office through the consumer advocates and contacted Bank of America staff again. Her persistence and knowledge paid off. Bank of America agreed to reduce her loan by $249,000, bringing her home mortgage down to its fair market value.[10]

Still Waiting for a Happy Ending:

Lynellen Feltman Gray of Westminster, MD got behind on her mortgage a few years ago after the death of a family member changed her life and cut her family's income significantly. She has been applying for a mortgage modification from Wells Fargo since June 2011. After a year-and-a-half of negotiations, she finally got a modification offer from the bank in November 2012. But the offer included appointment of an overseer for her property and other intrusions on her privacy that troubled her. When she didn't send paperwork back right away, the bank cancelled her modification application. She's still struggling to get the application reinstated and get an adequate modification offer from Wells Fargo. "I've got three boxes of paperwork from the last two years," she noted. "It's just a nightmare of paperwork and frustration."

Nationally, more than 168,000 people agreed to short sales in the first nine months of the mortgage settlement while about 71,000 people completed a principal reduction agreement or an agreement to forgive pre-settlement forbearances that will make their homes more affordable. More than 46 percent of the value of all consumer relief under the settlement has come through

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[9] Notice of Intent to Foreclose in Maryland: December 2012 Report," Department of Labor, Licensing, and Regulation, Maryland.

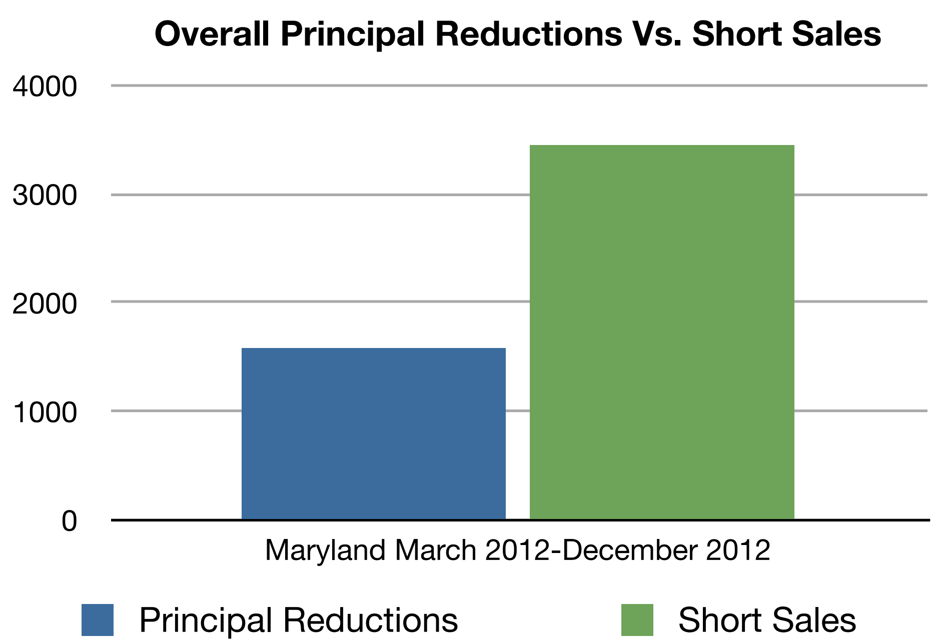
[10] Hopkins, Jamie Smith, Mortgage Settlement Gets Mixed Reviews," *Baltimore Sun*, Dec. 13, 2012.

principal reductions ($19.5 billion) while about 14 percent ($6 billion) has come through first-lien principal reductions.

Principal reduction agreements simply reset mortgages to reflect a home's fair, post-housing bubble market value. They are the best way to help families afford to stay in their homes. At the same time, with more than 14 million homeowners owing more on their homes than those homes are worth, many leading economists and policymakers have argued that large-scale principal reductions are one of the best ways best ways to revitalize the housing market and jumpstart the economy.[11]

Yet in Maryland, as across the country, short sales continue to comprise the bulk of relief consumers are receiving. **Banks have been more than twice as likely to provide short-sales to struggling Maryland families as to provide them affordable principal reductions to help them retain their homes.** Since the settlement was signed, the five big banks that are part of the settlement have provided 3,450 Marylanders with short sales relief, while providing principal reductions for 1,583 families.

Chart 2[12].



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[11] Schoen, John, FHFA Chief DeMarco loosens up a bit on principal reduction," NBC News http://www.nbcnews.com/business/economywatch/fhfa-chief-demarco-loosens-bit-principal-reduction-699931

[12] "Ongoing Implementation: A Report from the Monitor of the National Mortgage Settlement," Office of Mortgage Settlement Oversight, Feb. 21, 2013, Appendix V. State Consumer Relief Information Maryland, Program to Date, p. 43.

As of this report, an additional 5,000 Marylanders have been approved for or are midway through a principal reduction trial. These figures are not included in the data on principal reductions under the settlement as the report focuses on relief provided to date.

In terms of total value, short sales comprise about 36 percent of all consumer relief in Maryland, while principal reductions make up approximately 18 percent of relief under the settlement.

While short sales can help provide a dignified exit for some families that simply can't afford to stay in their homes, families still lose their homes and communities lose friends and neighbors.

The shortage of principal reductions is particularly disappointing, and troubling, because the settlement agreement requires that 60% of the value of the relief offered by each servicer must come in the form of first- and second-lien principal reductions. The settlement also offers banks an additional 25% credit for any principal reductions they complete in the agreement's first year. Nevertheless, mortgage servicers seem determined to drag their feet in providing this common-sense remedy to homeowners.

Table 1. Banks Principal Reductions vs. Short Sales, Maryland March 2012-December 2012

	Ally	Bank of America	Citi	Chase	Wells Fargo
Principal Reduction	61	791	102	436	193
Short Sales	79	2173	125	810	263

Source: "Ongoing Implementation: A Report from the Monitor of the National Mortgage Settlement" Office of Mortgage Settlement Oversight, Feb. 21, 2013, Appendix V. State Consumer Relief Information Maryland, Program to Date, p. 43.

Wells Fargo, Fannie Mae doing little to help homeowners in trouble

The banks that are part of the settlement own some of the mortgage loans they service but simply collect payments and manage the mortgages for other loans held by investors. It's much easier for banks to offer principal reductions and other meaningful relief on loans that they own and service than on ones they merely service, because the owner of the loan has veto power over any relief offered on loans the banks simply service. So it is surprising, and troubling that the owners of the state's largest portfolios of troubled loans have done little to offer relief to homeowners

Wells Fargo continues to hold the most loans in Maryland (20.8%) that are in danger of going into foreclosure.[13] Fannie Mae owns the second-largest number of loans (16.1%) in danger of foreclosure overall and the most loans that went into danger of foreclosure in December 2012.[14]

Yet Wells Fargo has to date provided very few principal reductions to working families in Maryland. In the first nine months of the mortgage settlement, only 193 homeowners have

[13] "Notice of Intent to Foreclose in Maryland: December 2012 Report," Department of Labor, Licensing, and Regulation, Maryland, p. 8.

[14] ibid

received a principal reduction loan modification from Wells Fargo, while 263 homeowners have qualified for a short sale.[15] In December 2012 alone, 475 mortgage loans that Wells Fargo owns went into in danger of going into foreclosure.[16] **In other words, more than twice as many Wells Fargo homeowners fell into danger of losing their homes in one month as Wells Fargo has offered affordable relief to in the past nine months of the settlement.**

At the same time, Maryland homeowners with loans owned by Fannie Mae and Freddie Mac, like homeowners with FHFA loans across the nation, are out of luck when it comes to receiving principal loan reductions on their loans.

Fannie Mae and Freddie Mac are overseen by the Federal Housing Finance Agency, an agency whose mission is to provide access to affordable housing for Americans. Fannie Mae and Freddie Mac own or control half of the mortgages in the country.[17] They own 114,109 home loans in Maryland on which families received notices that they were in danger of foreclosure between April 2008-December 2012 (36.4% of the total)[18] and 65.6 percent (6,407) of the home-loans in danger of going into foreclosure in Maryland in December 2012.

Yet FHFA Acting Agency Director Edward DeMarco continues to rule out principal reductions on FHFA loans. He is ideologically opposed principal reductions, arguing that some homeowners who can afford to stay in their homes would take advantage of a program that offered principal reductions on FHFA loans, at the expense of the taxpayers. His intransigent position is preventing thousands of homeowners from getting the help they need to stay in their homes.

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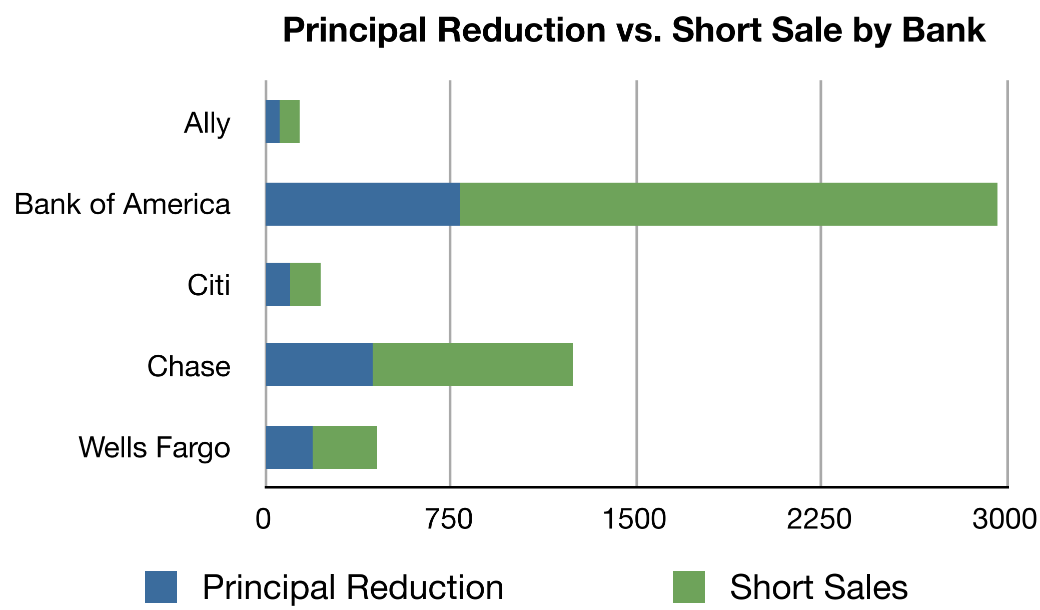
15 "Ongoing Implementation: A Report from the Monitor of the National Mortgage Settlement" Office of Mortgage Settlement Oversight," February 21, 2013, Appendix V. State Consumer Relief Information Maryland, Program to Date, p. 43.

16 Notice of Intent to Foreclose in Maryland December 2012 Report, Department of Labor, Licensing, and Regulation, Maryland. p. 10. 10.

17 Van Slyke, Tracey, "President Obama should remove Ed DeMarco from Post" The Hill, Jan. 14, 2013.

18 Notice of Intent to Foreclose in Maryland: December 2012 Report, Department of Labor, Licensing, and Regulation, Maryland, p. 9

Chart 3.[19]



Bank of America, Ally, Citi, and JP Morgan Chase all offered more short-sales than principal reduction loan modifications. However, there is great variation in the ratio of principal reductions to short sales each bank has offered.

Ally Bank, which had the smallest pool of Maryland borrowers among banks in the settlement, also had a relatively high ratio of principal reductions (61) to short sales (79). On the other hand, Bank of America has completed 2,173 short sales (2,173) while concluding only principal reductions with only 791 families (with Deatrice Besong being one of those lucky enough to win a principal reduction from the bank).[20]

Are hard-hit communities getting the relief they need?

Fair housing advocates remain concerned that principal-reduction loan modifications are not being distributed equitably. Many fear that low- and moderate-income communities may be overlooked as banks offer a few large principal reductions in wealthier neighborhoods to quickly meet their consumer relief targets under the settlement even as they fail to provide a greater number of smaller, principal reduction loans in economically distressed neighborhoods.

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[19] "Ongoing Implementation: A Report from the Monitor of the National Mortgage Settlement," Office of Mortgage Settlement Oversight, Feb. 21, 2013, Appendix V. State Consumer Relief Information Maryland, Program to Date, p. 43.

[20] Ongoing Implementation: A Report from the Monitor of the National Mortgage Settlement," Office of Mortgage Settlement Oversight, Feb. 21, 2013, Appendix V. State Consumer Relief Information Maryland, Program to Date, p. 43.

In Maryland, the overall principal reduction relief offered by the five banks averaged $129,563. There was considerable variation among the banks in average principal reductions offered, with Bank of America at the high end ($153,589) and Citi at the low end ($83,000).[21] However, the average principal reduction exceeds the prices of average home prices in Baltimore City ($99,400), Alleghany County ($84,700), as well as Dorchester ($107,500), Somerset ($90,800), and Wicomico ($123,400) counties.[22] The discrepancy between the large relief granted to some homeowners and the costs of homes in some counties underscores advocates' concerns that relief may not be reaching hard-hit low-income communities.

Those concerns are complicated by the lack of data and transparency in the settlement process. The terms of the settlement do not require banks to provide information about consumer relief by zipcode or county. Banks have not voluntarily provided this information.

Although consumer, poverty, housing and legal service advocates have urged National Settlement Monitor Joseph Smith to use his discretionary authority to require the banks to provide more detailed data about where relief is going, he has not done so to date.

In Maryland, advocates sent letters to Monitor Smith urging him to require this data from banks. Advocates have also appealed to Attorney General Douglas Gansler and Commissioner of Financial Regulation Mark Kaufman asking both to publicly press banks for greater disclosure.

Will homeowners who default be hit with deficiency judgments?

When a home mortgage is foreclosed on, the home will often sell for less than what the consumer owed on the mortgage. The difference between the sale price of the house and the outstanding balance on the mortgage is called a deficiency, and deficiency judgments can be sold to debt collectors who can pursue consumers for the outstanding balance years after they have lost their home.**Bank of America is the only bank in the settlement that is providing deficiency waivers to homeowners as part of its consumer relief efforts.**

Ten states have barred such deficiency judgments while another 21 states have limited these judgments and other states have partially limited such judgements. **Maryland is one of 15 states where collectors are free to go after consumers for deficiency judgments without limitation.**

Servicing Standards-Far To Go

The monitor's progress report noted continued problems and concerns around dual-tracking of foreclosures (a practice that is supposed to be banned under the settlement in which a foreclosure moves ahead even as a homeowner applies for a loan modification) as well as problems

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[21] Ibid.

[22] www.zillow.com

consumers have experienced in getting responses from the single points of contact the banks are required to set up to communicate clearly with each homeowner seeking a mortgage modification.

In Maryland, consumer and housing advocates also continue to lament the difficulty many homeowners are having in reaching their single points of contact and ongoing problems with dual-tracking, and note that many homeowners continue to have difficulty successfully negotiating the loan modification process.

Recommendations

To ensure that homeowners are getting the relief they're owed under the settlement and that relief is reaching the communities hardest hit by the foreclosure crisis, MCRC calls for:

- National Settlement Monitor Joseph Smith should use his authority to require banks to release data which details the consumer relief provided in each state by zipcode.
- All future settlements should mandate zipcode-level data in their original reporting requirements.
- Banks should increase their principal-reduction loan modifications. In Maryland, banks should aggressively scale-up principal reduction programs for qualified homeowners.
- President Obama should appoint a new FHFA director who supports principal-reduction loan modifications to replace Acting Director Edward DeMarco.
- State regulators should press the banks and the monitor for greater transparency and for zip-code level data on relief offered.
- Maryland should prohibit banks from collecting deficiency waivers.
- Maryland should make the servicing standards and homeowner's rights that are part of the national foreclosure settlement (set to expire in two years) part of state law through regulation or legislation.