

Settlement Clarification

The settlement announced on February 9, 2012 has costs far greater than \$25 Billion.

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In 2007 a coalition of 35 attorneys general and state banking examiners launched a cooperative effort, called the State Foreclosure Prevention Working Group. For years, I've been communicating with the staff of several State Attorneys' General. We've profiled what was wrong with the foreclosure process and supplied real world examples of bad policies and procedures. In addition I've supplied lenders with training regarding foreclosure "rescue," short sale, loan modification scams. I received my phone call, from the Attorney General's Office, sometime before midnight. The AG invited me to be part of "a big announcement" that would take place the following morning.

The next morning, after publically announcing "the settlement," a select few of us were given a personal two hour briefing concerning the details. Allow me to share some **insider's** information:

While \$25 Billion is the public figure, the cost to the five banks will be far greater, likely to hit \$45 Billion. Here is what will add to the costs banks have to pay:

- The banks are forced to completely rewrite their internal policies and procedures (added attorney costs).
- Once the policies and procedures are written, they will have to provide special training to anyone that interacts with the default/foreclosure process.
- Added disclosures and notifications are required.
- Banks will hire people to research ownership of notes and make sure they actually are the party that has the authority to foreclose.
- Banks will hire and train hundreds, if not thousands of people to handle the new foreclosure process and eliminate robo-signing.
- New office space, phones, desks, supplies.
- The banks will have to pay for a new "appeal process" if a borrower is denied a loan modification.
- If the borrower has a disagreement about a loan modification or the value stated by an AVM, the borrower can request a "full appraisal" which the bank will likely provide at no cost to the borrower.
- Then there are the fees banks paid to attorneys that represented them during the negotiations leading to "the settlement."
- Banks will have costs of hiring new attorneys and compliance officers, within each bank, that oversee implementation of the settlement terms.

- Additionally, banks will have to pay fees to a new special “chief auditor” who is tasked with making sure all five banks comply with the settlement.

Dual Track vs. Single Track

Currently banks utilize a “two track” system - a) following state laws for foreclosure and, b) offering loan modifications, both at the same time. This is why defaulting borrowers were offered a loan modification at the same time their homes were being sold at the foreclosure auction. The new system will consist of a single track: Default, proper notification to the borrower of their options, allowing the borrower sufficient time to work out a loan mitigation/modification, and finally, if the loan modification mitigation program fails, and only then, the default process will move to its conclusion - foreclosure. Changing a dual track system to a single track will add time to the foreclosure process and banking costs.

Benefits received versus cost.

Borrowers have unique problems and issues. Unique loans, down payments, investors and, borrowers all increased the complexity of the settlement and confounded past loan modification programs. In an effort to force lenders to assist as many borrowers as possible, a unique solution was devised - a menu of solutions. Not all modifications or assistance are the same or will cost banks equally.

Several different levels of loss mitigation will be offered to borrowers. The banks will receive credits for certain loss mitigation efforts, ranging from pennies on the dollar up to dollar-for-dollar credit. The more they help, greater the credit they receive.

For most modifications, the banks will receive less than 100 cents on the dollar credit in recognition of the losses already incurred by many borrowers. While borrowers will receive \$20 billion in direct assistance, the majority of loss mitigation efforts will earn less than dollar-for-dollar credit. Therefore, the banks will pay far more than \$20 billion in order to earn \$20 billion in credits. One economist (that was involved with the settlement) estimated that the \$20 billion received by consumers, will cost \$32 billion in actual dollars. *(I told you this was complex)*

Additional Settlements

Several of the banks have already agreed to separate “Settlements” (I call them penalties) that are in addition to the \$25 Billion. The additional settlements will be in the tens of Billions. Bank of America has previously agreed to the \$8.9 Billion dollar settlement, not covered in this February settlement. *(This is years from being over)*

What’s Not Covered

Only 20%

The \$25 Billion is only applicable to approximately 20% of all residential loans in the United States; Loans that are held by the five banks. Issues regarding the other 80% of the residential loans, held by Fannie Mae, Freddie Mac and smaller lenders, are not part of this figure. Additional settlement discussions are underway and more money will be involved. *(If 20% gets you \$25 billion, what is the other 80% worth?)*

MERS

Lawsuits regarding the “MERs question,” along with the non-payment of recording fees to local governments and criminal behavior, are not covered under this settlement.

Borrowers Liability

Borrowers who believe they were harmed may also seek an independent foreclosure review from the U.S. Office of the Comptroller of the Currency (OCC), regardless of whether they request the payment. Borrowers who accept a payment do not forfeit their right to pursue an individual action or class action case against a bank. Borrowers do not release any liability in exchange for a payment.

Bank Liability

The state and federal agencies agree to release the banks from servicing, foreclosure and origination liability claims **only**.

The settlement does not grant the banks immunity from criminal offenses or affect criminal prosecutions (several of which are underway).

Nothing in the settlement relates to the securitization of mortgage loans or SEC charges. This agreement does not prevent homeowners or investors from pursuing individual, institutional or class action civil cases against the banks.

A Complex Issue

Foreclosure problems and solutions are complex; there is no one size fits all. States have only so much money to spend and resources to dedicate to banking problems. While states are focused on the foreclosure issue, what other problems are slipping between the cracks? I personally know how hard the staff of the Attorneys' General have worked on this issue. \$25 Billion is a good number especially when you understand that the cost to the banks will likely exceed \$45 Billion. This is not the only settlement, many more are on the horizon and banks are paying a price.

Consider this

Many are complaining that this does not sufficiently penalize the banks. The best answer is "maybe."

Is it better to receive \$25+ Billion now or hope to obtain \$35 Billion and criminal convictions in 8-10 years?

Which will help the nation the most? I'm thinking money in the hand helps home owners now. And NOW is better than a promise based on a questionable trial outcome, sometime in the future.

For Additional Information

Each state will have additional information on the web site of the Attorney General.

Each of the lenders has set up special web pages that will help inform consumers.

The central location for all general information will be the web site:

nationalmortgagesettlement.com