

BACK-TO-BASICS:  
HOW THE CFPB'S NEW  
MORTGAGE SERVICING RULES  
LEVEL THE PLAYING FIELD  
FOR CONSUMERS IN NORTH  
CAROLINA

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REINVESTMENT  
PARTNERS

**R**einvestment Partners applauds the Consumer Financial Protection Bureau’s (“CFPB”) new mortgage servicing rules as well as the supervision powers contained therein.

The CFPB’s efforts to enforce, supervise, and write rules for mortgage servicing will add protections for consumers. Mortgage servicing remains an area where financial institutions often fail to serve consumers correctly. Reports from the National Mortgage Settlement (“NMS”), the CFPB Complaint Database, and the recent action by the CFPB against Ocwen Loan Servicing all demonstrate that many servicers fail to comply with existing rules. The results match with reports filed from the National Mortgage Settlement and from the North Carolina Attorney General’s office.

## Summary of Findings

- The CFPB’s Consumer Complaint System produces tangible benefits to consumers.
  - In 98.2 percent of the instances where a consumer disputed a decision, the servicer responded in a timely manner to the CFPB’s inquiry.
  - The evidence strongly suggests that when consumers file a complaint, their needs are addressed. Only 12.3 percent of complaints were closed without any kind of relief.
- Mortgage lending produces more consumer complaints than any other type of financial service in North Carolina.
  - Consumer complaints over their mortgage made up more than half (52.2 percent) of all complaints.
  - Credit cards (16 percent) and bank accounts (14.4 percent) were the next most common products to appear in the complaint database.
- The complaints span across all types of mortgage products, but the most common reasons for a complaint stems from attempts by borrowers to secure a loan modification, avoid foreclosure, or fight abusive collection practices (61 percent), followed by issues related to loan servicing (26 percent).
- Concerns remain; in particular, Reinvestment Partners believes that the protections provided for by the National Mortgage Settlement must be transferrable in the instances when mortgage servicing rights are sold to entities not currently covered by the NMS. In the last 24 months, billions of dollars in servicing rights have been sold to non-bank financial institutions.

The new rules cover all large mortgage servicers. To date, most regulatory interventions have only focused on the largest banks. Now the CFPB will protect loans serviced by banks and non-banks alike. Under the new rules, servicers are held accountable when they fail to communicate with borrowers. New information will be included in all statements. For borrowers seeking a loan modification, there are specific standards for processing and transmitting information.

This report examines complaints about mortgage products which have been filed by North Carolinian households. The Consumer Financial Protection Bureau receives and publishes data summarizing complaints made by American consumers about their experiences with a variety of financial products. The data is available to the public at [www.consumerfinance.gov](http://www.consumerfinance.gov). The scope of coverage matches with activities under the supervision, rule-making, and enforcement capacities of the Bureau.

In the appendix of this paper, Reinvestment Partners documents the difficulties experienced by three North Carolina borrowers. Two of those cases involved non-banks that will be subject to new guidelines as of Friday.

## The North Carolina Experience

Mortgage lending produces more consumer complaints that any other type of financial service in North Carolina. See below (*Table 1: Complaints made by North Carolina consumers to CFPB, sorted by type of product*)

PRODUCT	COMPLAINTS	PERCENTAGE OF ALL COMPLAINTS
Mortgage	2,519	52.2%
Credit card	771	16.0%
Bank account or service	694	14.4%
Credit reporting	386	8.0%
Debt collection	175	3.6%
Consumer loan	156	3.2%
Student loan	114	2.4%
Money transfers	11	0.2%
<i>Total</i>	<i>4,826</i>	<i>100.0%</i>

Consumer complaints over their mortgage made up more than half of all the complaints (2,519 of 4,826).

## Comparing Individual Servicers

Bank of America and Wells Fargo have generated almost half of all consumer complaints about mortgage products.

Bank of America and Wells Fargo account for the largest share of servicing contracts in the United States. According to Mortgage Daily, Wells Fargo is the leading servicer in the country as measured by portfolio size. Bank of America, JPMorgan Chase, Citigroup, and U.S. Bank fill out the top five. Non-bank servicers Ocwen and NationStar ranked sixth and seventh. The top ten were rounded out by ResCap, PHH and PNC. Table 2 reviews the numbers of complaints filed by North Carolina consumers with respect to the specific banks engaged in their servicing contracts.

*Table 2: Complaints Related to Mortgage Loans, Sorted by Servicer*

BANK	COMPLAINTS ABOUT MORTGAGES		RESOLUTION	
	Complaints	Percent of All complaints	Pct. untimely Response	Pct. Closed w/o relief
Bank of America	734	29.1%	4.0	15.5%
Wells Fargo	424	16.8%	0.47	15.1%
JPMorgan Chase	244	9.7%	0	10.7%
Ocwen	156	6.2%	0.6	8.3%
Citibank	135	5.4%	5.9	7.4%
SunTrust Bank	104	4.1%	0	15.4%
Green Tree	86	3.4%	1.2	9.3%
NationStar	82	3.3%	2.4	6.1%
HSBC	59	2.3%	1.7	13.6%
PNC Bank	59	2.3%	8.5	5.1%
Other Servicers	436	17.4%		10.1%
<i>All</i>	<i>2,519</i>	<i>100%</i>	<i>2.5</i>	<i>12.3%</i>

The findings suggest that consumers are well-served when they file a complaint to the CFPB. As the column on the far right of the preceding table indicates, only a small fraction of complaints are closed without some kind of relief. It is the strong exception when a complaint is not addressed within a short time when the CFPB is involved.

Loan modifications, collections, and foreclosure issues tended to be the most common reason for a complaint. In every loan type category, this was the most common source. They made up more than half of all complaint filings.

Table 3: Complaints by Type of Mortgage Loan Product and type of complaint source: North Carolina

Issue	Conventional		Guaranteed		Other Types of Mortgages			
	ARM	Fixed	FHA	VA	HELOC	Reverse	2nd	Other
Application, originator, mortgage broker	11	65	15	7	13	1	1	47
Credit decision / Underwriting	7	20	6	3	12			15
Loan modification, collection, foreclosure	118	395	141	34	29	9	11	796
Loan servicing, payments, escrow account	51	208	48	18	55	3	7	258
Other	1							26
Settlement process and costs	6	28	10	5	6			33
<i>Total</i>	<i>194</i>	<i>716</i>	<i>220</i>	<i>67</i>	<i>115</i>	<i>13</i>	<i>19</i>	<i>1175</i>

In general, large banks were more commonly more likely to be among those institutions where the largest share of complaints stemmed from loan modification procedures.

### Findings are Consistent with National Mortgage Settlement Monitor’s Compliance Testing

*Evidence Shows that Problems Persist Even after Regulatory Interventions*

During the summer of 2013, The Office of Mortgage Settlement Oversight released a report outlining the level of compliance by five banks. The NMS was secured by a collection of State Attorneys General in response to robo-signing and mortgage servicing misconduct. North Carolina Assistant Attorney General Phil Lehman writes:

*The negotiations focused on robo-signing and mortgage servicing misconduct. The resulting settlement addresses the primary goals of the attorneys general: to provide immediate relief to enable struggling homeowners to avoid foreclosure; to bring badly needed reform to the mortgage servicing industry; to ensure that foreclosures are lawfully conducted; and to penalize the banks for robo-signing misconduct. The settlement imposes monetary sanctions on the banks while providing immediate and continuing relief to homeowners. Full litigation of the states’ claims would likely have taken years, at a time when the foreclosure crisis requires immediate relief for homeowners. And adjudication of state-based robo-signing claims may have led to civil penalties but could not have yielded the amount and scope of the relief obtained in this settlement. (Executive Summary of Multistate/Federal Settlement of Foreclosure Modification Claims.)*

The results demonstrated that the banks continue to fail in meeting a number of expectations outlined in the settlement. This report documented results from a second round of examination. Even after initial warnings, resolution departments still maintained practices that did not meet the NMS rules.

- Bank of America erred in 8.4 percent of instances when it was tested for proper execution of a motion for relief from stay. The Monitor found errors in 17.76 percent of cases where B of A was examined for its procedures in initiating a pre-foreclosure.
- Similarly, JPMorgan Chase made errors 5.63 percent of the time when it was tested for its methods in initiating a pre-foreclosure. Chase made errors in the process of deciding and/or notifying consumers about the result of their loan modification requests in 19.31 percent of tested cases.
- Citigroup made errors on its pre-foreclosure filings in 7.40 percent of tested cases. In more than one in four tests, Citigroup's short sale department failed to comply properly with the correct procedures for document collection.

## **Regulation of non-banks**

The best practices laid out in the NMS are reflected in the CFPB rules: a single point of contact, accurate payoff amounts. The NMS reports show that their involvement is needed. The five parties to the settlement are still trying to get the basic things down.

But unlike the case with the NMS, the CFPB's rules will pertain to every large mortgage servicing companies. The NMS had oversight over five institutions which, although very large, made up only a portion of the servicing industry. Major players such as Ocwen, NationStar, and GreenTree were not within the reach of the NMS Monitor. The CFPB will have that reach. It will oversee non-banks including Ocwen, PHH, GreenTree, and NationStar. These are some of the leading servicing companies in the country. Ocwen and NationStar, for instance, currently have the 5<sup>th</sup> and 6<sup>th</sup> largest portfolios. Each services more than \$200 billion in mortgage loans. Moreover, their portfolios are growing because they have been buying servicing contracts from the major banks.

The large banks are moving away from servicing. Ocwen purchased \$90 billion in mortgage servicing rights from GMAC/Ally in March of 2013. In June 2013, Ocwen purchased a \$78 billion servicing portfolio from OneWest Bank. In February, Ocwen purchased all of the servicing assets of ResCap. Citigroup, Bank of America, and Wells Fargo have all announced plans to trim their servicing portfolios. This means that the banks covered under the NMS will increasingly own a smaller and smaller share of the servicing portfolios in the country. Were it not for the CFPB, it is likely that the ability to enforce consumer protections on servicers would diminish.

The CFPB and the state AG's recently filed a suit against Ocwen – a non-bank servicer – which the CFPB said “revealed years of systemic misconduct at every stage of the mortgage servicing process.” The CFPB charged Ocwen with engaging in unfair and deceptive practices, in violation of the federal Consumer Financial Protection Act and of relevant state laws. The CFPB said that Ocwen:

- Forced consumers to pay for improper fees and charges
- Delayed loss mitigation relief
- Improperly denied loss mitigation relief

The agreement will require Ocwen to provide \$2 billion in relief to underwater borrowers and \$125 million in refunds to borrowers whose mortgages were wrongfully foreclosed.

**Darryl and Doris Cross**  
**Durham, North Carolina**

FACTS OF THE CASE: Mr. Cross had to stop working because of an illness. He could not pay his mortgage. He applied for disability. He tried to live frugally, to the point where he had turned off some of the utilities. They had a first mortgage with JPMorgan Chase and a second with Green Tree. The latter relationships became the basis for her problems. When they could not pay, Green Tree foreclosed and evicted them from the home. Doris describes their experience:

“Chase never foreclosed. But Green Tree foreclosed (on the second mortgage) and padlocked the house in Feb. 2011. The day that the house was padlocked, the gentleman allowed Darryl to get some of his belongings out of the house and that time everything was in the house. Darryl did not have anywhere to live nor did he have possession of the property. Green Tree informed Darryl that there was nothing he could do. He could forget about the property. Every time he spoke with Chase, they informed that Green Tree could not foreclose as they were not the primary line holders and they had not informed them of such foreclosure. So from the time the house was foreclosed we honestly thought there was nothing we could do. In December 2012, Green Tree called Darryl’s cell phone and we started talking about the house. Green had informed us that they did do a full foreclosure, but resent it in March of the same year because they were not willing to have property fixed up. We informed them that no one had informed us of this until now. We were informed that the property was still ours and that we could go and cut other padlocks off and get our home back. We asked that they send us the documentation showing the foreclosure was resent. We had the realtor that they hired to put padlocks on to come in and take the padlocks off. The realtor came and took the front one off, but said the padlock on the back door was not theirs. When we had this done, we had a police officer come and witness what was happening. Upon entering, we found that the stove, refrigerator doors, hot water heater, ac handler, and furnace were gone. No one knew what had happened. “

*With the new CFPB rules, the result would have been different.* Green Tree was not governed by the National Mortgage Settlement. The CFPB will have authority to act against Green Tree.

**Aretha Hubbard**  
**Raleigh, North Carolina**

FACTS OF THE CASE: Chase Home Finance (now a part of JPMorgan Chase) brought a foreclosure action against Ms. Hubbard 2005 which resulted in the sale of her home and her subsequent eviction of her and her son in February of 2007. Chase waited until 2008 to set aside the sale, despite knowing that they did not possess adequate legal title to hold the property. Two years later, in 2010, Chase sought to reform the deed and, as part of that action, sought foreclosure. The court granted Chase’s request for reformation of the deed and authorized the foreclosure to proceed. Despite having this court order, Chase failed to foreclose at that time. Then in 2012, Chase decided to file an action for foreclosure in Wake County. The Clerk found the Court found that chase could not prove that they were the holder of the note but relied upon the 2010 court order to allow them to proceed with foreclosure. Ms. Hubbard appealed that decision and the matter is still in litigation.

*With the new CFPB rules, the result would have been different:* If the CFPB rules had been in place in 2008, Ms. Hubbard would have been protected from this treatment. She could have filed a complaint. Chase would have had to maintain a copy of Ms. Hubbard's loan servicing file. Chase would have been required to respond when Ms. Hubbard requested copies of her loan documents. She could have asked the CFPB to intervene on her behalf between Chase and FHA to make sure that the appropriate guidelines were followed. The rules would have made it clear that Chase would have had to engage in loss mitigation.

Historically, since its creation the CFPB has stepped in to assist borrowers and held servicers accountable for their actions. But now the new rules allow them to issue sanctions. The rules establish best practices for servicers. Under the National Mortgage Settlement, only a small set of servicers (5) were parties to that settlement. In the past, if a loan was not covered by the settlement, they have been able to delay. Under the strictest understanding of the settlement, only instances where a foreclosure was filed in a specific period of time were governed. The

At the current time, even though Ms. Hubbard remains the legal owner of the home. However, she has never been notified that she is allowed to re-enter her home.

**Calvin Mizzell**  
**Durham, North Carolina**

FACTS OF THE CASE: Mr. Calvin Mizzell was approved for a loan modification with Litton Loan Servicing in September 2011, despite the fact that the servicing rights had been transferred to Ocwen Loan Servicing, LLC in August 2011. Litton attempted to modify a loan even though they no longer had servicing rights to it. Ocwen loaded the new loan into their system. When they did that, they included the terms of the modification but neglected to show the loan as current. By its nature, a modification makes a loan current. Despite it being brought to their attention subsequently, Ocwen has refused to correct the accounting records. They have returned his payments and forced him home into foreclosure. To this day, they refuse to properly update his account. Ultimately, that filing was dismissed in court. They charged the loan off instead.

*With the new CFPB rules, the result would have been different:* Ocwen would have been held accountable for failing to communicate with Mr. Mizzell and for failing to properly record his payments. Under the NMS, best practices say that if they do not foreclose, then a servicer is required to release the lien. That has not been the case – until now – for servicers not included in the NMS. The new CFPB rules will make it clear that all servicers have to follow the same standards and not just the five parties in the NMS.

## Conclusion

*Reinvestment Partners applauds the new rules announced by the CFPB. The new rules will protect consumers from harmful practices in mortgage servicing.*

The CFPB's complaint databases shows evidences why it is important for the CFPB to pursue this work.

This action also means that servicers will not be able to evade regulatory scrutiny merely by seller mortgage-servicing rights to non-banks not covered by the National Mortgage Settlement. In recent years, billions of dollars in loans serviced by the 5 banks covered by the NMS have been sold to non-bank services like Ocwen and NationStar. With the CFPB's guidelines, consumers have certainty over the protections afforded to them.