

**OFFICE OF MORTGAGE SETTLEMENT OVERSIGHT
BANKRUPTCY FILINGS REVIEW FOR BANK OF AMERICA, N.A.¹
August 31, 2015**

The following report summarizes the scope and outcomes of efforts by the Office of Mortgage Settlement Oversight (“OMSO”) and the Executive Office for United States Trustees of the United States Department of Justice (“USTP”) to monitor and confirm compliance by Bank of America, N.A. (“Bank of America” or “Servicer”) with various bankruptcy-related provisions of the National Mortgage Settlement (“NMS” or “Settlement”), including provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) and Official Bankruptcy Forms (“Bankruptcy Forms”) (collectively, “Bankruptcy Law”).

BACKGROUND

In 2013, I was notified by the USTP of a coordinated review effort it had initiated through multiple field offices to ascertain compliance by the Settling Servicers² with NMS bankruptcy-related servicing standards, including Bankruptcy Law provisions. The review focused on three specific Chapter 13 filings: the Proof of Claim (“POC”), the Notice of Payment Change (“NPC”), and the Notice of Post-Petition Mortgage Fees, Expenses and Charges (“NPFC”).

The USTP’s comprehensive review of the Settling Servicers included more than ten thousand filings from various jurisdictions around the country with filing dates predominantly during 2013. The USTP’s review documented a material number of facial deficiencies relating to bankruptcy-specific servicing standards and Bankruptcy Law in all three filing types by the Settling Servicers. The USTP deemed the nature and scope of these facial deficiencies as presenting a risk of harm to homeowners who had sought protection under the Bankruptcy Code. As a result, the USTP requested confirmation and further investigation of its findings by OEMSO.

The USTP’s review identified issues that were covered by the NMS standards but not covered by the quarterly NMS metrics testing detailed in Exhibit E of the Settling Servicers’ individual Consent Judgments. The NMS bankruptcy-specific metrics test the accuracy of: (1) data in POCs against the applicable servicing system of record, (2) the post-petition default amount as stated on a Motion for Relief from Stay against the applicable servicing system of record and (3) fee or expense waivers as of the date of dismissal or discharge of a debtor’s Chapter 13 bankruptcy case. Results of the NMS metrics compliance testing for each Settling Servicer can be found on the OEMSO website at the following link: <https://www.jasmithmonitoring.com/omso/reports/>.

¹ The Consent Judgment under the National Mortgage Settlement was entered with Bank of America Corporation, Bank of America, N.A., and BAC Home Loans Servicing, LP, although other parties are encompassed in the settlement.

² Settling Servicers included Bank of America Corporation, Bank of America, N.A., and BAC Home Loans Servicing, LP; Citigroup Inc., Citibank, N.A., and CitiMortgage Inc.; J.P. Morgan Chase & Company and J.P. Morgan Chase Bank, N.A.; and Wells Fargo & Company and Wells Fargo Bank, N.A.

After the USTP shared its results with me, I authorized BDO Consulting (“BDO”) to design and perform confirmatory testing of the USTP’s adverse findings. Using statistical sampling parameters similar to those used for metrics testing under the NMS, BDO selected and tested a statistically significant sample of filings drawn from POCs, NPCs and NPFCs alleged to be deficient in the USTP’s review. Most of the filings reviewed by BDO had been filed during 2013. All filings selected for testing were independently downloaded by BDO directly from the website of federal court filings maintained by the Administrative Office of the U.S. Courts called “PACER”, or Public Access to Court Electronic Records, based on case information provided in the USTP review. BDO’s testing, completed in 2014, confirmed the number and type of facial deficiencies found by the USTP. I notified the Servicers of these results of the USTP review and OMSO’s confirmatory testing.

As a result of the USTP’s review and BDO’s subsequent confirmation of the USTP’s adverse findings, the USTP, my team and I had numerous individual in-person and telephonic meetings with each Servicer to discuss these findings and ensure that appropriate enhancements, process improvements, corrective action or remediation, as applicable, had been completed or were in the process of completion to achieve compliant servicing practices in the context of Chapter 13 bankruptcy proceedings as required under both Bankruptcy Law and the NMS.

These discussions with each Servicer and the USTP led to a follow-up review by BDO, on behalf of OMSO, of each Servicer’s evidence that such specific enhancements, process improvements, corrective actions or remediation, as applicable, had been implemented or were in the process of being implemented. BDO’s review of each Servicer’s internal evidence concluded in late spring of 2015.

In numerous areas described below, the Servicer had taken steps to strengthen its bankruptcy-related servicing practices, including those that were the subject of the facial deficiencies identified in the USTP’s review, prior to the conclusion of OMSO’s confirmatory testing due to ongoing dialogue between each Servicer and the USTP. The Servicers cooperated with OMSO during and after the review process as OMSO sought to review internal documents evidencing enhanced procedures, processes, training and internal quality testing of Chapter 13 filings.

The following sections outline actions taken by Bank of America to improve its bankruptcy servicing practices subsequent to the 4th quarter of 2013, as communicated to OMSO during our confirmation of these improvements.

BANKRUPTCY FILING FACIAL DEFICIENCIES IDENTIFIED BY THE USTP AND CONFIRMED BY OMSO

The USTP categorized facial deficiencies found in its review of POCs and NPCs³ as follows:

POC:

- Missing, incomplete or inaccurate information or data in the POC or Attachment A;

³ Issues involving the NPFC had already been addressed by the USTP with Bank of America and are omitted herein.

- Missing, incomplete or inaccurate attachments to POC;
- Excessive, unreasonable or impermissible loan default fees and charges in POC; and
- Various loan calculation issues in the POC and attachments.

NPC:

- Untimely filing.

BANKRUPTCY SERVICING IMPROVEMENTS AND ENHANCEMENTS

Actions taken by Bank of America to address its POC processes include the following:

- Increased staffing, training, subject-matter expertise, oversight and Quality Assurance (“QA”) in the Bankruptcy line of business;
- Realignment of Bankruptcy personnel within the POC validation team, providing for a single point of contact to specific law firms to improve focus, communication and consistency;
- Creation of a Document Resolution team and development of procedures necessary to complete all processes in the document retrieval escalations queue, identifying and retrieving required but missing POC support documents and resolving gaps or defects identified in the POC documentation process;
- Implementation of 100% pre-referral QA testing of every POC referral package prior to transmission to outside counsel;
- Implementation of 100% pre-filing QA review of POC validation prior to approval for outside counsel to file with the court;
- Development of a refund process in conjunction with an augmented amended POC practice to ensure prompt filing of amended POCs and timely return of funds to Chapter 13 Trustees;
- Enhancement of attorney oversight and performance tracking with a more detailed assessment of POC errors and revisions, the results of which are factored into monthly scorecard reporting;
- Improvement of POC procedures to require manager-level invoice review and confirmation of any fees greater than \$2,500;
- Implementation of technology enhancements to improve workflow management and functionality to increase accuracy and efficiency in the POC function;
- In any POC filed after October 1, 2014, itemization of fees for inspections performed on or after April 1, 2013 will be listed by the actual date of the inspection rather than by the date the fees were assessed to the debtor’s account; and
- In any POC filed on or after July 1, 2015 in which an escrow statement is attached, Bank of America will attach a schedule reflecting all escrow disbursements made by the Bank, as servicer, during the 12-month period preceding the date of the escrow analysis attached to the original POC.

Actions taken by Bank of America to address its NPC processes⁴ include the following:

- Realignment of the organization of personnel responsible for NPCs by separating them from POC operations, adding more oversight, subject matter expertise and executive leadership;
- Enhancement of reporting transparency to identify risks, issues and trends in a more timely fashion;
- Implementation of new controls to resolve findings timely and strengthening of existing controls to track and manage Electronic Case Files (“ECF”) credentialing;
- Establishment of 100% pre-filing review and validation of NPCs of applicable servicing system data to ensure accuracy of information;
- Enhancement of procedures around completion of Servicemembers Civil Relief Act-related NPCs, mirroring pre-filing review and validation of NPCs;
- Implementation of a policy applicable to Motions for Relief from Stay and ongoing plan payments to waive the excess amount of payments due from borrowers when an NPC increasing the payment is not filed timely or understates the payment due;
- Streamlining of the data feed with third-party vendors for transfer of NPC data;
- Creation of NPC trigger process to ensure all loans requiring NPC are uploaded to the technology platform; and
- Enhancement of employee secure login onto vendor technology platform to align with ECF credentialing.

MONITOR REVIEW OF BANKRUPTCY SERVICING IMPROVEMENTS AND ENHANCEMENTS

OMSO has reviewed information that shows Bank of America has taken steps to implement the various actions and process improvements described above. OMSO has obtained and reviewed internal organizational and operations documentation, policies and procedures, quality assurance and quality control (“QC”) testing scripts and documents (with QC completed independently of Bank of America’s operations and lines of business) substantiating the implementation of the foregoing actions and process improvements and has reviewed these actions and improvements with Bank of America.

To substantiate the efficacy of the changes and improvements addressing the facial deficiencies, OMSO reviewed the results of Bank of America’s internal QC reviews testing timeliness and accuracy of filed POCs and NPCs. Those QC reviews were based on a statistical sample of Chapter 13 POCs filed December 2014 – February 2015 and NPCs filed October 2014 – February 2015. OMSO noted that the testing was conducted by compliance reviewers independent of the line of business being tested and gained an understanding of the QA and QC test scripts, as well as the test attributes used in conducting reviews to determine whether those reviews are comprehensive. As a result of its efforts, OMSO has confirmed that Bank of America’s improvements and enhancements to its bankruptcy servicing practices, as represented by the bank, address the facial deficiencies highlighted herein. OMSO has reasonable assurance that Bank of America’s compliance efforts with the bankruptcy-specific servicing requirements of the NMS are ongoing.

⁴ The United States Trustee and Bank of America have separately addressed remedies for a group of late NPCs, for the purpose of resolving litigation filed by the United States Trustee.