**OFFICE OF MORTGAGE SETTLEMENT OVERSIGHT**
**BANKRUPTCY FILINGS REVIEW FOR WELLS FARGO BANK, 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 Wells Fargo Bank, N.A. ("Wells Fargo" 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 Servicers[2] 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 OMSO.

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 OMSO website at the following link: https://www.jasmithmonitoring.com/omso/reports/.

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[1] The Consent Judgment under the National Mortgage Settlement was entered with Wells Fargo & Company and Wells Fargo Bank, N.A., 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 Wells Fargo to improve its bankruptcy servicing practices subsequent to the $4^{th}$ 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 NPCs as follows:

POC:

- Missing, incomplete, or inaccurate information or data in the POC or Attachment A;
- Inconsistent information in the POC and supporting documentation;
- Missing, incomplete, or inaccurate attachments to POC; and
- Excessive or unreasonable loan default fees and charges in POC.

NPC:

- Untimely filing.

**BANKRUPTCY SERVICING IMPROVEMENTS AND ENHANCEMENTS**

Actions taken by Wells Fargo to address its POC processes include the following:

- Implementation of new processes and procedures for oversight of retained outside attorneys that prepare POCs and employees involved in POC reviews, including:
    - Increase in the number of staff dedicated to POC process oversight and review, including more detailed and customized functional job training;
    - Enhancement of a bankruptcy attorney manual detailing formal expectations and procedures for outside attorneys preparing POCs;
    - Implementation and enhancement of training sessions with attorneys as well as monthly performance scorecard reviews based on a sample of filed POCs;
    - Enhancement of procedures for conducting reviews for required loan documentation prior to referring a case to an outside attorney for POC preparation to ensure outside attorney has all required documents to attach to POC;
    - Implementation of 100% pre-filing quality control ("QC") review of all POCs for compliance with NMS and bankruptcy requirements before an attorney is authorized to file the POC with the court; and
    - Development and implementation of new post-filing quality assurance ("QA") review of a sample of POCs for compliance with NMS and bankruptcy requirements.

- Increase in employee training, assessment, QC, oversight and reporting for employees certified to review and sign affidavits and other sworn documents, including POCs.
- Enhancement of bankruptcy management procedures to track and monitor electronic case filing ("ECF") credentialing and internal certifications for document review and execution to ensure valid credentials and authority to execute bankruptcy documents for filing.
- Implementation and refinement of a policy to provide a full 12-month history with all escrow analyses attached to POCs that will include the most recent escrow statement and a history for the 12-month period preceding the most recent analysis.

Actions taken by Wells Fargo to address its NPC processes[3] include the following:

- Implementation of the same sworn document validation and certification process as that used for affidavits, other sworn documents and POCs.

[3] After sharing data with the Monitor, the USTP continued to identify untimely filed NPCs throughout the country by Wells Fargo and raised the issue, though the Monitor had not verified the USTP's more recent data. The USTP has informed OMSO that it is continuing to separately investigate the untimely filing of NPCs and is evaluating other NPC issues.

- Implementation of a new loan-level tracking tool that is updated and reconciled daily to maintain a record of loans with payment changes with detail of the changes.
- Emphasis on and implementation of a "no customer harm" philosophy to remediate any deficiencies in NPC filings and supported by specific remediation criteria, depending on whether the monthly payment increases or decreases, as well as the specific circumstances of the deficiency.

Actions taken by Wells Fargo to address its NPFC processes include the following:

- Wells Fargo will not assess or charge borrowers in bankruptcy for post-petition attorney fees (including plan review fees and costs for preparation and filing of a POC; effective August 2012), late fees (effective September 2012), telephone pay fees (effective November 2012) or property inspection fees (effective May 2013). Further, these fees and costs will not be loaded into debtors' accounts if a Chapter 13 bankruptcy case is dismissed or after the debtor receives a discharge.
- BPO fees incurred prior to a Chapter 13 filing date, but invoiced and assessed post-petition, are considered non-recoverable from the borrower and will not be assessed to a debtor's account.
- Post-petition BPO fees will not be charged to a borrower in bankruptcy unless Wells Fargo has obtained a Motion for Relief from Stay, and a BPO is required and allowable under applicable law for a subsequent foreclosure.
- For all borrowers (not limited to borrowers in bankruptcy), property inspection and BPO fees will not be assessed to customer accounts on a going-forward basis beginning September 2014.

**MONITOR REVIEW OF BANKRUPTCY SERVICING IMPROVEMENTS AND ENHANCEMENTS**

OMSO has reviewed information that shows Wells Fargo 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 control procedures and quality assurance ("QA") testing results (with QA completed independently of Wells Fargo's operations and lines of business) substantiating the implementation of the foregoing actions and process improvements and has reviewed these actions and improvements with Wells Fargo.

To substantiate the efficacy of the changes and improvements addressing the facial deficiencies, OMSO reviewed the results of Wells Fargo's internal bankruptcy-critical quality assurance reviews, which were based on a statistical sample of Chapter 13 POCs and NPFCs filed in each month of 2013 and 2014, and a sample of NPCs filed during the fifteen months ending March 31, 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 test attributes used in conducting reviews to determine whether those reviews are comprehensive. As a result of its efforts, OMSO has confirmed that Wells Fargo'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 Wells Fargo's compliance efforts with the bankruptcy-specific servicing requirements of the NMS are ongoing.