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Congressional Requesters

Financial Institutions: Penalty and Settlement Payments for Mortgage-Related Violations in Selected Cases

Over the last few years, federal agencies have collected billions of dollars in settlement payments and penalties from financial institutions for violations alleged to have been committed during the mortgage origination process, the servicing of mortgages, and in the packaging and sale of residential mortgage-backed securities (RMBS).¹ Depending on the nature and severity of the alleged violation, federal agencies—including the Department of Justice (DOJ); Department of Housing and Urban Development (HUD); Bureau of Consumer Financial Protection, also known as the Consumer Financial Protection Bureau (CFPB); Securities and Exchange Commission (SEC); and other agencies—may take various actions against financial institutions for the mortgage-related violations they commit. Specifically, these agencies can take enforcement actions, reach settlement agreements, and assess civil money penalties, among other actions.²

You asked us to review the collection and use of funds that federal agencies have collected from financial institutions for different types of violations. This is the second report in response to your request. In our first report issued in March 2016, we reviewed the amounts federal agencies collected from financial institutions for violations of Bank Secrecy Act, Foreign Corrupt Practices Act, and sanctions requirements.³ In this report, we review the collection and use of funds from financial institutions for mortgage-related violations. Specifically, this report describes (1) the process for collecting these funds and the purposes for which they are used

¹Mortgage origination violations are related to the loan origination, or underwriting, process. They occur when a borrower applies for a loan and a lender improperly processes or approves the borrower's application. These violations can include a lender not providing proper disclosures related to loans it originates, misrepresenting the terms and conditions of available loan products, failing to conduct sound compliance reviews of originated loans, failing to conduct proper due diligence regarding borrower information, not complying with required underwriting standards, and failing to provide required documentation to borrowers in a timely manner. In the federal context, origination claims involve the improper underwriting of loans ultimately insured or guaranteed by the federal government. Mortgage servicing violations can include violations or unsafe or unsound practices related to the foreclosure process, borrower repayment plans, application of payments, loss mitigation, or other unfair or deceptive practices by financial institutions in the servicing process, among other offenses. RMBS violations are related to the marketing and sale of securities backed by residential mortgages. The violations can include false assurances to investors of the quality of the mortgage-backed securities, the misrepresentation of the status of mortgages, and other similar violations of securities and common law. In this report, we refer to these violations collectively as "mortgage-related violations." As detailed in this report, mortgage-related violations can give rise to regulatory penalties or other civil liabilities.

²As used in this report, penalties include payments resulting from enforcement actions that require financial institutions to pay an amount agreed upon by the financial institution and the enforcing agency, or an amount set by a court or in an administrative proceeding in cases adjudicated through an administrative or judicial system.

³See GAO, *Financial Institutions: Fines, Penalties, and Forfeitures for Violations of Financial Crimes and Sanctions Requirements*, [GAO-16-297](#) (Washington, D.C.: Mar. 22, 2016).

and (2) the penalties and settlement amounts financial institutions have paid to the federal government for selected cases involving alleged mortgage-related violations.

To conduct this work, we selected a sample of cases where federal agencies either reached settlements with or assessed penalties against financial institutions in connection with alleged mortgage-related violations. We identified cases by reviewing enforcement actions and press releases on the websites of relevant federal agencies associated with the settlement agreements and penalties. These eight agencies were CFPB, DOJ, HUD, SEC, the Board of Governors of the Federal Reserve System (Federal Reserve), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC). We also contacted officials from the Department of the Treasury (Treasury) to confirm aspects of the selected cases. We reviewed court documents for cases we identified. We then selected a judgmental sample of cases based on (1) the type of alleged mortgage violation (mortgage origination, mortgage servicing, or RMBS); (2) the dollar amount of the assessed penalty or agreed-upon settlement (we selected cases with payments greater than \$10 million); (3) the year in which the case was finalized; (4) the financial institution that was the subject of the case; and (5) the federal agencies that reached the agreement with or assessed a penalty against the financial institution for the alleged mortgage-related violation.⁴ We selected nine cases that included each type of mortgage-related violation and allowed us to describe a variety of funds and eventual uses for these funds. We evaluated the reliability of the assessment data (used to select our cases) from the financial regulators (CFPB, Federal Reserve, FDIC, NCUA, OCC, and SEC), HUD, and DOJ. To do this, we reviewed prior GAO evaluations of these data, interviewed knowledgeable agency officials, and reviewed relevant documentation for the selected cases, such as agency enforcement orders for assessed civil money penalties and settlement agreements for cases where financial institutions agreed to settle claims by agencies. Based on these steps, we determined that the data were sufficiently reliable for our purposes.

To verify that the assessed amounts had been collected, we requested documentation from agencies confirming that these assessments had been collected. To describe how payments were collected, we reviewed our prior work on agency collections processes and obtained related agency documentation and interviewed officials from each agency.⁵ To describe how these collections were used, we obtained documentation on authorized or allowed expenditures from the accounts into which the payments were deposited. We also reviewed relevant agency Office of Inspector General audits and reports and our prior reports to determine if any substantive issues had been raised regarding agency collection processes.

We conducted this performance audit from March 2016 to November 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and

⁴We selected cases that were finalized from January 2012 through April 2016 as that time frame covered a large number of cases we identified that would be eligible for selection based on the remaining criteria. We selected cases from each type of mortgage-related violation and included cases in the mortgage servicing category related to the Independent Foreclosure Review process, which was a foreclosure file review requirement included in 2011 and 2012 consent orders overseen by OCC and the Federal Reserve. We also selected cases such that any financial institution was only selected once in our sample. In addition, we selected cases that generally had higher settlement agreement amounts or penalties and did not select any cases with settlement amounts or penalties less than \$10 million in order to better capture a larger share of total settlement agreement and penalty amounts.

⁵For prior GAO work related to agency collections processes, see [GAO-16-297](#). See also GAO, *Department of Justice: Alternative Sources of Funding Are a Key Source of Budgetary Resources and Could Be Better Managed*, [GAO-15-48](#) (Washington, D.C.: Feb. 19, 2015) and *Consumer Financial Protection Bureau: Opportunity Exists to Improve Transparency of Civil Penalty Fund Activities*, [GAO-14-551](#) (Washington, D.C.: June 26, 2014).

perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Federal Agencies' Role in Relation to Mortgage Activities

Several federal agencies have responsibility for regulating financial institutions in relation to the origination and servicing of mortgages, and for ensuring compliance with regulations governing mortgage-related transactions, which, for some agencies, includes the packaging and sales of RMBS.

OCC has authority to oversee nationally chartered banks and federal savings associations (including mortgage banking activities).⁶

The Federal Reserve oversees insured state-chartered banks that are members of the Federal Reserve System, and bank and thrift holding companies and their nonbank subsidiaries.⁷

FDIC oversees insured state-chartered banks that are not members of the Federal Reserve System and state-chartered savings associations and resolves all failed federally insured banks and thrifts.⁸

NCUA charters, regulates, and supervises federally chartered credit unions, insures savings in federal and most state-chartered credit unions, and may place insolvent credit unions in involuntary liquidation and appoint liquidation agents.⁹

CFPB has the authority to enforce federal consumer financial laws, including with respect to certain activities related to mortgage origination and mortgage servicing.¹⁰

⁶12 U.S.C. §§ 481 and 1813(q)(1). In July 2011, OCC assumed oversight responsibility for federal savings associations from the Office of Thrift Supervision. Concurrently, FDIC assumed oversight responsibility for state-chartered associations from the Office of Thrift Supervision, and the Federal Reserve assumed oversight responsibility of savings and loan holding companies and lenders owned by a savings and loan holding company (other than depository institutions) from the Office of Thrift Supervision. See 12 U.S.C. § 5412.

⁷12 U.S.C. §§ 248(a)(1), 321, 325, 1813(q)(3), 1844(c)(2)(A)(i)-(ii) and 1867.

⁸12 U.S.C. §§ 1813(q)(2), 1819(a), and 1822. FDIC is included in this report for its nonregulatory role as receiver for failed banks. Specifically, FDIC sought damages for civil claims arising out of mortgage-related losses incurred as a result of RMBS purchased by failed institutions for which FDIC acted as receiver.

⁹12 U.S.C. §§ 1766 and 1781. NCUA is included in this report for its nonregulatory role as conservator for failed credit unions. Specifically, NCUA sought damages for civil claims arising out of mortgage-related losses incurred as a result of RMBS purchased by failed credit unions for which NCUA acted as conservator.

¹⁰12 U.S.C. §§ 5514, 5563, and 5564. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), enacted on July 21, 2010, established CFPB as an independent bureau within the Federal Reserve System. See Pub. L. No. 111-203, tit. X, § 1011, 124 Stat. 1376, 1964 (2010). "Federal consumer financial law" is a defined term in the Dodd-Frank Act that includes more than a dozen federal consumer protection laws, such as the Truth in Lending Act, the Real Estate Settlement Procedures Act of 1974, and the Equal Credit Opportunity Act, as well as the provisions of title X of the act. 12 U.S.C. § 5481(12), (14). For insured depository institutions with more than \$10 billion in assets, which may have mortgage servicing operations, or their affiliates, CFPB has the exclusive supervisory authority and primary enforcement authority regarding federal consumer financial laws. Additionally, if a mortgage originator or servicer is a nondepository covered person, CFPB has supervisory authority over it as well as exclusive enforcement authority (except with respect to the Federal Trade Commission) to oversee compliance with

HUD's Federal Housing Administration (FHA) insures private lenders against losses from borrower defaults on mortgages that meet FHA criteria for properties with one to four housing units.

SEC oversees the securities industry—including mortgage-backed securities—and is responsible for administering federal securities laws and developing regulations for the industry.

DOJ may pursue investigations of financial institutions and individuals for both civil and criminal violations of various laws and regulations. DOJ may also be the government's "collector of last resort." After a federal department or agency exhausts all reasonable efforts short of litigation to persuade debtors to pay what they owe, the matter may be referred to DOJ to collect such civil debts. DOJ may file suit and obtain and enforce judgments in order to collect the civil debt.

Major Laws, Rules, and Regulations Governing Mortgage-Related Activities

Mortgage-related violations typically involve violations of certain laws or regulations governing financial transactions, including mortgage transactions. The selected cases we reviewed generally involved violations of the following laws and regulations:

Mortgage origination. The False Claims Act establishes, among other things, liability for people or entities that knowingly submit false claims for payment to the government or knowingly make a false record or statement material to a false claim.¹¹ The act authorizes the government to collect civil penalties for each false claim and to triple the amount of the government's damages. DOJ has invoked the False Claims Act on behalf of federal agencies in several civil actions taken against financial institutions related to mortgage origination.¹²

Mortgage servicing. CFPB's mortgage servicing rules, issued in 2013 and effective as of January 2014, implemented provisions of the Real Estate Settlement Procedures Act of 1974 and the Truth in Lending Act with respect to mortgage loans.¹³ The rules address servicers' obligations to correct errors raised by borrowers; to provide certain information requested by borrowers, including information about loss mitigation options (i.e., alternatives to foreclosure) available to delinquent borrowers; and to provide borrowers with continuity of contact with appropriate servicer personnel. They also require servicers to provide borrowers with enhanced information, including notices regarding interest rate adjustments and responses to requests for payoff amounts. CFPB and the federal banking regulators may also bring civil actions or enforcement proceedings against financial institutions for mortgage-related violations of a number of other laws and regulations, including the Consumer Financial Protection Act of 2010 (part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which established

federal consumer financial laws. CFPB also has certain rulemaking authorities as set forth in applicable statutes with respect to mortgage originators and servicers, including authority that transferred from other federal agencies.

¹¹31 U.S.C. § 3729(a).

¹²In addition, various other statutes, including the Truth in Lending Act and the Real Estate Settlement Procedures Act of 1974, govern practices at origination. CFPB issued new rules implementing these laws in 2013. See Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 6408 (Jan. 30, 2013) and Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 79730 (Dec. 31, 2013) (codified as amended at 12 C.F.R. pts. 1024 and 1026). The selected cases we reviewed did not include violations of those regulations.

¹³Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X), 78 Fed. Reg. 10696 (Feb. 14, 2013) (codified as amended at 12 C.F.R. pt. 1024); Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 10902 (Feb. 14, 2013) (codified as amended at 12 C.F.R. pt. 1026) (implementing Pub. L. No. 93-533, 88 Stat. 1724 and Pub. L. No. 90-321, tit. I, 82 Stat. 146 (1968), respectively).

CFPB and its authorities), the Fair Debt Collection Practices Act, and the Equal Credit Opportunity Act.

Residential Mortgage-Backed Securities. Multiple federal and state securities laws, including the Securities Act of 1933 and the Securities Exchange Act of 1934, govern the offering and sale of securities, including mortgage-backed securities.¹⁴

In addition, the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) enhanced enforcement authority for the financial regulators, among other things.¹⁵ The act increased the amount of civil money penalties that federal banking agencies—including FDIC, the Federal Reserve, OCC, and NCUA—could assess in response to various violations. The act authorizes DOJ to bring actions to recover civil penalties for financial institution-related violations of certain criminal statutes. It also allows FDIC and NCUA—in their capacities as receiver, conservator, or liquidating agent for failed institutions—to pursue civil damages.

Significant Mortgage-Related Actions Involving Multiple Financial Institutions

Federal and state agencies have sometimes taken action against groups of financial institutions, particularly in the area of mortgage servicing. For example, in 2011 and 2012, in response to findings of critical weaknesses in certain mortgage servicers' foreclosure processes, OCC and the Federal Reserve entered into consent orders with 16 mortgage servicers which required the servicers to hire independent consultants to review certain foreclosure files for errors (known as the Independent Foreclosure Review) and remediate financial harm to borrowers.¹⁶ In 2013, regulators amended the consent orders for all but one servicer, ending the file reviews and requiring servicers to provide \$3.9 billion in cash payments to about 4.4 million borrowers and \$6 billion in foreclosure prevention actions, such as loan modifications.¹⁷

In February 2012, DOJ, Treasury, HUD, state banking regulators, and 49 state attorneys general reached a settlement with the five largest U.S. mortgage servicers to address alleged violations of state and federal law, including findings that the servicers routinely signed foreclosure-related documents without a notary public and without knowing whether the facts

¹⁴Pub. L. No. 73-22, 48 Stat. 74 (codified as amended at 15 U.S.C. §§ 77a -77aa); Pub. L. No. 73-291, 48 Stat. 881 (codified as amended at 15 U.S.C. §§ 78a -78pp).

¹⁵Pub. L. No. 101-73, tit. IX, 103 Stat. 183, 446.

¹⁶Some of the weaknesses the regulators identified across the mortgage servicers included inadequate policies, procedures, and independent control infrastructure covering all aspects of the foreclosure process; inadequate organization and staffing of foreclosure units to address increased volumes of foreclosures; and failure of those who signed foreclosure affidavits to personally check the documents for accuracy.

¹⁷For prior GAO work on the Independent Foreclosure Review, see GAO, *Foreclosure Review: Lessons Learned Could Enhance Continuing Reviews and Activities under Amended Consent Orders*, [GAO-13-277](#) (Washington, D.C.: Mar. 26, 2013), and *Foreclosure Review: Regulators Could Strengthen Oversight and Improve Transparency of the Process*, [GAO-14-376](#) (Washington, D.C.: Apr. 29, 2014). In [GAO-13-277](#), we recommended that OCC and the Federal Reserve improve oversight of sampling and consistency in the continuing reviews; apply lessons in planning and monitoring from the foreclosure review, as appropriate, to the activities of the continuing reviews and amended consent orders; and implement a communication strategy to keep stakeholders informed. The agencies have addressed these recommendations as appropriate and one recommendation for the Federal Reserve no longer applied as circumstances underlying the recommendation changed. In [GAO-14-376](#), we recommended that OCC and the Federal Reserve define testing activities to oversee foreclosure prevention principles and include information on processes in public documents. Both agencies have implemented the transparency recommendation and OCC has implemented the recommendation on testing activities. We are still evaluating the Federal Reserve's actions in response to the recommendation on testing activities.

they contained were correct.¹⁸ This agreement—the National Mortgage Settlement—provided approximately \$25 billion in relief to distressed borrowers in states that signed onto the settlement and directed payments to participating states and the federal government.

Summary

The eight agencies we reviewed all had their own processes for collecting payments made by financial institutions as a result of civil money penalties or settlement agreements. We found that the funds collected in the nine selected cases we reviewed were deposited into various accounts, depending on the agencies involved, the laws governing where agencies may deposit funds, and the terms of the specific settlement agreements. Enclosure 1 provides more information on agency collection processes and related accounts.

In the nine cases we reviewed, financial institutions were required to pay a total of about \$24.8 billion generally in penalties, settlement amounts, and consumer relief (see table 1). Enclosures 2, 3, and 4 provide more information on the selected cases, including how funds were used.

Table 1: Summary of Selected Mortgage-Related Cases, February 2012 through April 2016

Financial institution	Month/year	Type(s) of alleged mortgage violation(s)	Agencies involved	Total assessed amount (dollars)
Bank of America	August 2014	Origination and marketing/sale of residential mortgage-backed securities (RMBS)	Department of Justice (DOJ), Federal Housing Administration (FHA), Federal Deposit Insurance Corporation (FDIC) as receiver, ^a Securities and Exchange Commission (SEC), Ginnie Mae, ^b and several states ^b	16,650,000,000
Goldman Sachs	April 2016	Marketing/Sale RMBS	DOJ, National Credit Union Administration (NCUA) Board as liquidating agent, ^c Federal Home Loan Banks, ^b and three states ^b	5,060,000,000

¹⁸See United States v. Bank of America Corp., No. 1:12-cv-00361 (D.D.C. Apr. 4, 2012) (order granting consent judgment). The practice of bank employees or contractors automatically signing foreclosure documents without verifying the details contained in the paperwork or the validity of the accompanying affidavits became widely known as “robo-signing.”

Wells Fargo Bank	April 2016	Origination	DOJ, FHA	1,200,000,000
Citibank	February 2013	Servicing/Foreclosure	Office of the Comptroller of the Currency (OCC)	793,492,866
GMAC Mortgage	July 2013	Servicing/Foreclosure	Board of Governors of the Federal Reserve System (Federal Reserve)	515,001,497
JPMorgan Chase & Co.	February 2012	Servicing/Foreclosure	Federal Reserve	275,000,000 ^d
Morgan Stanley	July 2014	Marketing/Sale RMBS	SEC	275,000,000
Green Tree Servicing	April 2015	Servicing/Foreclosure	Consumer Financial Protection Bureau, Federal Trade Commission ^b	63,000,000
U.S. Bank N.A.	February 2016	Servicing/Foreclosure	OCC	10,000,000
Total				24,841,494,363

Source: GAO analysis of agency documents. | GAO-17-11R

Note: These cases were selected in order to reflect each type of mortgage-related violation and we did not select cases involving the same financial institution more than once, so some financial institutions may have paid mortgage-related penalties or settlement amounts that are not captured by this table. The amounts reflect total penalties, settlement amounts, and consumer relief required in the selected settlement agreements or other court documents, including amounts related to federal or state entities that are not within the scope of our report, for the specific enforcement action taken against the financial institution during the time period listed.

^aAmounts were paid to FDIC as receiver for 26 failed financial institutions in settlement of civil claims.

^bGinnie Mae, Federal Home Loan Banks, the Federal Trade Commission, and relevant states in these cases were not within the scope of our report. The Federal Trade Commission did not receive any penalties or other monetary relief in the Green Tree Servicing case.

^cAmounts were paid to the NCUA Board as the liquidating agent for three failed corporate credit unions in settlement of civil claims.

^dThe \$275,000,000 reflects a civil money penalty assessed against JPMorgan Chase & Co. separately from, but in coordination with, the National Mortgage Settlement (also occurring in February 2012). Similar penalties were also assessed against other financial institutions. The National Mortgage Settlement required the five largest U.S. mortgage servicers (including JPMorgan Chase, N.A.) to provide collectively approximately \$25 billion in relief to distressed borrowers in states that signed onto the settlement and directed payments to states and the federal government.

Of the approximately \$24.8 billion assessed, the eight federal agencies we reviewed collected a total of about \$12.5 billion in payments for the nine selected cases (see table 2). An additional \$9.8 billion represents amounts financial institutions were to direct toward consumer relief through actions specified by the settlement agreements, and \$1.6 billion was to be paid to agencies or entities not within the scope of this review (of which \$1.2 billion was to be paid to state agencies).¹⁹

Table 2: Payments Collected in Selected Mortgage-Related Cases by Assessing Agency and Violation Type, February 2012 through April 2016

¹⁹The following accounts for the remaining approximately \$900 million of the \$24.8 billion shown assessed in table 1: (1) in accordance with a provision in the Federal Reserve's penalty assessment order, JPMorgan Chase & Co. did not have to pay the \$275 million in cash as an equivalent amount of borrower assistance had been provided pursuant to the National Mortgage Settlement; (2) as noted in table 2, FDIC officials stated that \$363,670,000 of the Bank of America Settlement was not mortgage related, and (3) as permitted by the consent order against it, GMAC Mortgage made a cash payment of \$31.7 million to fund higher cash payments to borrowers in lieu of providing \$316.9 million in consumer relief, resulting in a cash payment that was less than the total assessment amount listed in table 1 by about \$285 million. These cases are discussed in further detail in enclosures 3 and 4.

Agency	Mortgage origination (dollar amount)	Mortgage servicing (dollar amount)	Marketing/sale RMBS^a (dollar amount)
Consumer Financial Protection Bureau	NA	63,000,000	NA
Department of Justice	1,805,697,371	NA *	7,431,580,000
Federal Deposit Insurance Corporation ^b	NA	NA	636,400,000
Board of Governors of the Federal Reserve System ^c	NA	229,769,899	NA
Department of Housing and Urban Development's Federal Housing Administration	1,081,802,629	NA	NA
National Credit Union Administration Board	NA	NA	557,750,000
Office of the Comptroller of the Currency ^c	NA	316,574,179	NA
Securities and Exchange Commission	NA	NA	410,840,000

Source: GAO analysis of agency documents. | GAO-17-11R

Note: Amounts in this table reflect payments collected by agencies within the scope of our review for the nine cases we selected, including amounts that were ultimately transferred to accounts in the Treasury General Fund. The Department of Justice (DOJ) entry includes only amounts DOJ collected and retained in its Three Percent Fund, collected and deposited into accounts in the Treasury General Fund, and collected as a result of a Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) penalty in the selected cases that it deposited in a receipt account within the Treasury General Fund used to deposit FIRREA penalties. In cases where DOJ collected and disbursed funds to other agencies—for example, the Federal Deposit Insurance Corporation as receiver and the National Credit Union

Administration Board as liquidating agent—only the net amounts DOJ disbursed to these agencies after retaining its 3 percent collection offset are included in their total.

^aMarketing/sale RMBS refers to the marketing or selling of residential mortgage-backed securities (RMBS) products.

^bFDIC in its receivership capacity recovered a total of \$1,000,070,000 in its settlement with Bank of America. According to FDIC officials, of this total \$363,670,000 was paid in settlement of certain contract claims held by one receivership that were not mortgage related and \$636,400,000 was paid to resolve civil RMBS damage claims out of 26 separate receiverships.

^cThe Board of Governors of the Federal Reserve System and Office of the Comptroller of the Currency required the mortgage servicers subject to enforcement actions to contract with payment administrators to establish the qualified settlement funds to collect payments related to the Independent Foreclosure Review Payment Agreement. In those instances, the payment administrators collected the cash payments (discussed in more detail in enclosure 3).

The \$12.5 billion collected was largely used to support general government services, provide redress to affected harmed consumers (in the form of payments), aid in federal civil debt collection activities, or provide damages to failed credit unions and banks. Financial institutions were also required to provide approximately \$9.8 billion in consumer relief through foreclosure prevention activities (e.g., loan modifications) and lending to low- and moderate-income borrowers, among other actions.

Agency Comments

We provided a draft of this report to CFPB, DOJ, FDIC, the Federal Reserve, HUD, NCUA, OCC, SEC, and Treasury for review and comment. CFPB, DOJ, FDIC, Federal Reserve, HUD, and SEC provided technical comments on the draft, which we incorporated as appropriate. NCUA provided a written response, reproduced as enclosure 5, in which the agency agreed with our report.

We are sending copies of this report to CFPB, DOJ, FDIC, the Federal Reserve, HUD, NCUA, OCC, SEC, and Treasury and interested congressional committees and members. The report also is available at no charge on the GAO website at <http://www.gao.gov>. If you or your staffs have any questions about this report, please contact Lawrence Evans at (202) 512-8678 or evansl@gao.gov or Diana C. Maurer at (202) 512-9627 or maurerd@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report.

In addition to the contact name above, Allison Abrams (Assistant Director), Tarek Mahmassani (Analyst-in-Charge), Bethany Benitez, Chuck Fox, Thomas Hackney, Valerie Kasindi, Dawn Locke, Jeremy Manion, Joshua Miller, John Mingus, Lisa Reynolds, Jennifer Schwartz, and Jena Sinkfield made significant contributions to this report.

A handwritten signature in black ink that reads "Lawrence L. Evans, Jr." in a cursive script.

Lawrance Evans

Director

Financial Markets and Community Investment

A handwritten signature in black ink that reads "Diana Maurer" in a cursive script.

Diana C. Maurer

Director

Homeland Security and Justice

Enclosures – 5

List of Congressional Requesters

The Honorable Michael G. Fitzpatrick

Chairman

Task Force to Investigate Terrorism Financing

Committee on Financial Services

House of Representatives

The Honorable Stephen F. Lynch

Ranking Member

Task Force to Investigate Terrorism Financing

Committee on Financial Services

House of Representatives

The Honorable Robert Pittenger

Vice Chairman

Task Force to Investigate Terrorism Financing

Committee on Financial Services

House of Representatives

Attachment



FINANCIAL INSTITUTIONS AND MORTGAGE-RELATED VIOLATIONS

Agency Collection Processes and Usage of Collected Funds

Background

The discussion in this enclosure focuses on federal agencies' collection processes most relevant to our selected cases, including their processes for collecting civil money penalties or payments through settlement agreements. Depending on the agencies involved, the terms of the laws governing where agencies may deposit funds, and the terms of the parties' specific settlement agreements, the collected amounts are deposited in specific accounts that can be used only for established, eligible purposes.

Consumer Financial Protection Bureau

The Consumer Financial Protection Bureau (CFPB) collects assessed civil money penalties directly from financial institutions as a result of enforcement actions brought by CFPB. Financial institutions typically wire payments for civil money penalties to CFPB's Consumer Financial Civil Penalty Fund (Civil Penalty Fund), and CFPB maintains documentation on the receipt of the payment, the amount of the payment, and confirmation of the deposit in the Civil Penalty Fund. Once a penalty payment is deposited in the Civil Penalty Fund, it is pooled together with other penalties deposited in the fund. CFPB's Civil Penalty Fund is primarily used to compensate victims who have not received full compensation for their financial harm through redress paid by the defendants in their cases. When all eligible victims have received full compensation, or when payments to victims otherwise are not practicable, CFPB may use Civil Penalty Fund money for consumer education and financial literacy.²⁰

In addition to penalties, the bureau may also obtain direct consumer redress or disgorgements in enforcement actions that it brings against institutions for mortgage-related violations. In cases where CFPB administers redress payments to specified harmed consumers, financial institutions make redress payments by wire transfer into the Legal or Equitable Relief Fund at the Department of the Treasury (Treasury). CFPB then uses the amount that the institution wires to the Legal or Equitable Relief Fund to compensate specific harmed consumers for harm caused by the financial institution's violations. CFPB acts as fiduciary for any redress funds deposited in the Legal or Equitable Relief Fund.

Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System

As we have previously reported, the Office of the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System (Federal Reserve) both have processes in place for collecting civil money penalties, including ensuring the correct amounts have been paid by the financial institutions, maintaining documentation on the payments, and depositing the payments in the appropriate Treasury General Fund accounts.²¹

Upon execution of an enforcement action resulting in a civil money penalty, the Enforcement and Compliance Division within OCC sends a notification of penalties due to OCC's Office of Financial Management. When the Office of

²⁰12 U.S.C. § 5497(d)(2). For more information on the Civil Penalty Fund, see GAO, *Consumer Financial Protection Bureau: Opportunity Exists to Improve Transparency of Civil Penalty Fund Activities*, [GAO-14-551](#) (Washington, D.C.: June 26, 2014). In that report, we recommended that the CFPB director ensure that the Civil Penalty Fund's administrator document the specific factors considered in determining the amount of funding, if any, allocated to consumer education and financial literacy programs. CFPB agreed with our recommendation and addressed it by revising its fund administration procedures and developing a fund allocation checklist to help ensure documentation of factors considered for determining allocation of funds for consumer education and financial literacy purposes.

²¹We previously reported on these processes in GAO, *Financial Institutions: Fines, Penalties, and Forfeitures for Violations of Financial Crimes and Sanctions Requirements*, [GAO-16-297](#) (Washington, D.C.: Mar. 22, 2016).

Financial Management receives a payment for a civil money penalty from a financial institution or affiliated party, it compares the amount with these notifications. The Office of Financial Management records the amount received and sends a copy of the supporting documentation (for example, a wire transfer or check) to the Enforcement and Compliance Division. OCC holds the payment in a civil money penalty account—an account that belongs to and is managed by OCC—before it deposits the payment in a Treasury General Fund receipt account on a monthly basis.

The Federal Reserve directs financial institutions to wire their penalty payment to the Federal Reserve Bank of Richmond (FRBR)—the Reserve Bank responsible for providing financial services to the Treasury. The Federal Reserve then verifies that the payment has been made in the correct amount to FRBR, and when it is made, FRBR distributes the penalty amount received to a Treasury General Fund receipt account. According to officials, to keep track of what is collected and sent to the Treasury General Fund, FRBR retains statements that document both the collection and transfer of the penalty to a Treasury General Fund receipt account.

Once a penalty collection is deposited into a receipt account in the Treasury General Fund, only an appropriation by Congress can begin the process of spending these funds. Appropriations from Treasury General Fund accounts are amounts appropriated by law for the general support of federal government activities.²²

Under the Independent Foreclosure Review payment agreement, as documented in amended consent orders issued pursuant to cease-and-desist proceedings, financial institutions were required to make payments to qualified settlement funds overseen by the Federal Reserve and OCC.²³ The agencies required the servicers to contract with payment administrators under the direction and control of the federal regulators to receive and administer these funds.²⁴ As such, unlike in the case of a civil money penalty issued pursuant to the regulators' penalty authority, the Federal Reserve and OCC did not collect payments financial institutions made to qualified settlement funds as a result of the Independent Foreclosure Review payment agreement.²⁵ Rather, financial institutions paid these amounts directly into the qualified settlement funds pursuant to the cease-and-desist authority, and the payment administrators issued checks directly to potentially harmed borrowers. According to Federal Reserve and OCC officials, they are monitoring the payment administrators through reviews of reports, regular phone calls, and other methods.²⁶

Securities and Exchange Commission

As we have previously reported, the Securities and Exchange Commission (SEC) has procedures in place for collecting payments from financial institutions, including keeping records of each check, wire transfer, or online payment it receives, along with a record of the assessed amount against the financial

²²See [GAO-16-297](#) for more information.

²³See 12 U.S.C. § 1818(b).

²⁴One payment administrator manages three of the four qualified settlement funds, into which all but one of the mortgage servicers were required to make their payments. A second payment administrator manages the qualified settlement fund for a single mortgage servicer.

²⁵See 12 U.S.C. § 1818(i).

²⁶In June 2015, OCC announced that approximately \$280 million would remain unclaimed after considerable efforts to locate eligible borrowers. OCC decided to make these funds available to the remaining eligible borrowers and their heirs through their states' escheatment claims processes. Pursuant to a plan first announced in November 2015, in August 2016, the Federal Reserve announced that, as a result of uncashed payments, the qualified settlement fund's paying agent will be mailing payments totaling about \$80 million to nearly 650,000 eligible borrowers of Federal Reserve-supervised servicers who cashed or deposited their initial checks from the Independent Foreclosure Review Payment Agreement by the March 31, 2016, deadline.

institution, the remaining balance, and the reasons for the remaining balance.²⁷ The penalties SEC collects, along with any collected disgorgement (repayment of ill-gotten gains) and prejudgment interest, can be distributed to three different types of accounts: accounts within the Treasury General Fund; a Federal Account for Investor Restitution (Fair) Fund, which is a federal deposit account that SEC uses to hold funds until applicable amounts are returned to harmed investors; and the Investor Protection Fund, from which money is distributed to eligible whistleblowers.²⁸

Department of Justice

According to Department of Justice (DOJ) officials, once a settlement is reached or a judgment is issued, the appropriate DOJ component that litigated the case—such as the Civil Division or the U.S. Attorneys’ Offices—submits wiring instructions to the financial institution on how to pay the penalty or agreed-upon settlement amount. Financial institutions typically wire the payment to a DOJ holding account at Treasury.²⁹ Payments collected by DOJ that are not designated to go to another agency or a specific fund are typically deposited in the appropriate account in the Treasury General Fund. Payments designated to another federal agency from a DOJ case are generally first paid to DOJ’s holding account and then disbursed to other agencies. But DOJ officials explained that depending on how a settlement agreement is structured, a debtor may pay the other federal agency directly. Money from the holding account is disbursed according to the settlement agreement and the instructions entered into DOJ’s debt collection system by the litigating division. According to DOJ officials, DOJ maintains documentation on the expected and actual receivables for each case, the case number, information on the defendant, and a link to the court case. Additionally, DOJ retains 3 percent of most amounts paid resulting from civil debt collection litigation activities and deposits this amount in its Three Percent Fund.³⁰ DOJ uses the Three Percent Fund to defray costs associated with its debt collection activities, such as paying the costs of the Debt Collection Management Staff—who are responsible for the collection and routing of all civil collections made through DOJ—and financial litigation unit personnel and activities conducted by the litigating components.

²⁷See [GAO-16-297](#) and *Securities and Exchange Commission: Information on Fair Fund Collections and Distributions*, [GAO-10-448R](#) (Washington, D.C.: Apr. 22, 2010).

²⁸In addition, the Investor Protection Fund may be used to finance the operations of SEC’s Office of Inspector General. See 15 U.S.C. § 78u-6(g)(2)(B).

²⁹The holding account is a Treasury suspense account that holds the funds for all DOJ collections and disbursements.

³⁰The Three Percent Fund is a separate fund within DOJ’s Working Capital Fund. According to DOJ officials, civil debt litigation activities may include activities such as bringing civil cases to court or conducting administrative activities such as tracking unpaid debts and issuing notices for payments due. Civil debt does not include criminal fines and penalties or forfeiture of properties and assets. By statute, DOJ is authorized to retain up to 3 percent of civil debt collection recoveries, which is used to offset costs for DOJ to manage the collection and distribution of funds to federal agencies awarded the civil judgment as well as civil and criminal litigation activities conducted by the department. For more information, see [GAO, Department of Justice: Working Capital Fund Adheres to Some Key Operating Principles but Could Better Measure Performance and Communicate with Customers](#), [GAO-12-289](#) (Washington, D.C.: Jan. 20, 2012) and *Department of Justice: Alternative Sources of Funding Are a Key Source of Budgetary Resources and Could Be Better Managed*, [GAO-15-48](#) (Washington, D.C.: Feb. 19, 2015). In [GAO-12-289](#), we recommended that DOJ improve opportunities for two-way substantive communications with shared services customers, develop performance measures for the Working Capital Fund, and ensure that rate information and detailed billing information reach the appropriate customer staff. DOJ agreed with and implemented our recommendations. In [GAO-15-48](#), we recommended that DOJ develop a policy to regularly analyze unobligated balances and develop collection estimates related to the Three Percent Fund. While DOJ is working to improve how it analyzes unobligated funds needed for the next fiscal year, DOJ provided various reasons why it does not calculate revenue estimates. Our report recognized DOJ’s concerns. However, we continue to believe that DOJ could develop an estimated range of potential collections based on historical trends and current collection activities.

National Credit Union Administration

National Credit Union Administration (NCUA) officials we spoke with explained that they had not assessed any penalties against financial institutions for mortgage-related violations from January 2012 through April 2016. However, one selected case we reviewed included NCUA, whose Board litigated in its capacity as liquidating agent for three failed corporate credit unions. When the NCUA Board as liquidating agent received its share of the settlement amount (after DOJ took its 3 percent fee), the NCUA Board deposited the funds in the Temporary Corporate Credit Union Stabilization Fund, which is an NCUA-managed fund that was established to absorb the losses of the corporate credit unions during the credit crisis, recover such losses over time, and hold claims against the liquidated corporate credit unions for amounts paid on their behalf.

Department of Housing and Urban Development

According to officials, for cases involving the Department of Housing and Urban Development's (HUD) Federal Housing Administration (FHA) in which lenders have violated the False Claims Act, the payees make their payments by wire transfer to DOJ, as DOJ is the agency litigating the case against the financial institution. Once HUD receives a copy of the agreement, its Financial Operations Center or FHA's General Ledger Division establishes a receivable for the owed amount. DOJ then sends HUD its share of the settlement via a wire transfer. Amounts HUD receives for violations related to single-family programs (which represent the majority of cases with which HUD is involved) are deposited in HUD's Mutual Mortgage Insurance Fund (MMI Fund), which supports FHA's single-family mortgage insurance program.³¹ The fund's primary purpose is to pay lenders in cases where borrowers default on their loans and the lender makes a claim for mortgage insurance benefits.

Federal Deposit Insurance Corporation

Although the case we selected for this review that involved the Federal Deposit Insurance Corporation (FDIC) did not include any civil money penalties, as we have previously reported, FDIC also has procedures in place for assessing and collecting civil money penalties.³² When enforcement orders are executed, financial institutions send all related documentation (the stipulation for penalty payment, the order, and the check in the amount of the penalty payment) to FDIC's applicable regional office Legal Division staff, which in turn sends the documentation to Legal Division staff in Washington, D.C. If the payment is wired, FDIC compares the amount wired to the penalty amount to ensure that the full penalty is paid. If the payment is a check, FDIC officials make sure the amount matches the penalty, document receipt of the payment in an internal payment log, and then send the check to FDIC's Department of Finance. Once a quarter, FDIC sends penalty payments it receives to a Treasury General Fund receipt account.

FDIC has different processes for collecting amounts resulting from settlements in which FDIC litigated as part of its role as receiver for failed banks. In the case (involving Bank of America Corporation and certain subsidiaries and affiliates) selected for this review, DOJ received payment for FDIC's claims as receiver against the financial institutions or other parties and, after deducting 3 percent of the total amount, transferred the remainder to FDIC.³³ FDIC retained

³¹In this report, we discuss FHA's single-family mortgage insurance program because the selected cases we reviewed and describe include violations related to this program.

³²See [GAO-16-297](#).

³³According to FDIC officials, because FDIC has independent litigating authority, the Bank of America case does not reflect a typical process for FDIC, which usually receives payment directly from settling parties.

documentation on the amount received from DOJ for settlement of its claims. Amounts received on behalf of the receiverships from these cases are placed in an FDIC receivership account, along with other FDIC receivership funds, at the Federal Home Loan Bank of New York. FDIC officials also stated that each FDIC receivership that was part of the Bank of America settlement also maintained records of the amounts deposited on its behalf into the FDIC receivership account. FDIC receivership funds in that account are used to pay allowed claims, including claims related to the administrative expenses of the receivership, deposit liabilities of the failed institution, creditors, and shareholders of the failed institution.³⁴

For a summary of the funds and accounts and their eligible uses for payments collected by the federal agencies included in our review, see figure 1.

Figure 1: Accounts and Eligible Uses for Payments Collected by Federal Agencies in Selected Cases, February 2012 through April 2016

	(General government use)	(Debt collection litigation expenses)	(Payment of future insurance claims by the Federal Housing Administration)	(Reimbursement for litigation expenses or member institution losses)	(Recovery of damages for receivership accounts)	(Relief or redress for harmed consumers)		
	Treasury General Fund	Three Percent Fund	Mutual Mortgage Insurance Fund	Temporary Corporate Credit Union Stabilization Fund	Federal Home Loan Bank of New York Receivership Account	Civil Penalty Fund ^a	Legal or Equitable Relief Fund ^b	Qualified Settlement Funds (including Fair Funds) ^c
CFPB						●	●	
DOJ	●	●						
FDIC					●			
Federal Reserve								●
HUD			●					
NCUA				●				
OCC	●							●
SEC	●							●

Legend:

CFPB = Consumer Financial Protection Bureau
 DOJ = Department of Justice
 FDIC = Federal Deposit Insurance Corporation
 Federal Reserve = Board of Governors of the Federal Reserve System
 HUD = Department of Housing and Urban Development
 NCUA = National Credit Union Administration
 OCC = Office of the Comptroller of the Currency
 SEC = Securities and Exchange Commission

Source: GAO analysis of agency documentation. | GAO-17-11R

^aWhen all eligible victims have received full compensation, or when payments to victims otherwise are not practicable, CFPB may use Civil Penalty Fund money for consumer education and financial literacy programs. 12 U.S.C. § 5497(d)(2).

^bThe Legal and Equitable Relief Fund is based at the Department of the Treasury, but CFPB has fiduciary responsibility for the funds.

^cThe Federal Reserve and OCC did not collect payments financial institutions made to qualified settlement funds as a result of the Independent Foreclosure Review payment agreement. Rather, financial institutions paid these amounts directly into the qualified settlement fund.

³⁴When a federally insured depository institution fails, FDIC ordinarily is appointed receiver. In that capacity, it assumes responsibility for efficiently recovering the maximum amount possible from the disposition of the receivership's assets and the pursuit of the receivership's claims. See 12 U.S.C. § 1823(c)(4).



FINANCIAL INSTITUTIONS AND MORTGAGE-RELATED VIOLATIONS

Selected Mortgage Origination Violation CasesBackground

Mortgage origination violations are related to the loan origination process, including underwriting of the loan. They occur when a borrower applies for a loan and a lender improperly processes or approves the borrower's application. Origination generally includes all the steps from taking a loan application up to disbursement of funds to the borrower. Origination violations can include a lender not providing proper disclosures related to loans it originates and failing to conduct sound compliance reviews of originated loans. This enclosure describes the two mortgage origination violation cases selected for our review.

Bank Of America (2014)

In August 2014, the Department of Justice (DOJ) and the Department of Housing and Urban Development (HUD), in collaboration with other federal and state entities, finalized a settlement with Bank of America Corporation and certain subsidiaries and affiliates (Bank of America) related, in part, to its underwriting and origination of mortgage loans backed by HUD's Federal Housing Administration (FHA).³⁵ The agencies found that many of the loans that Bank of America made beginning in May 2009 did not meet FHA requirements. For example, in many cases, Bank of America failed to verify borrowers' income and establish income stability, incorrectly evaluated borrowers' previous mortgage or rental payment history, did not verify and document checking and savings account information, or under-reported borrower liabilities, among other instances of noncompliance with applicable rules and regulations. As such, when borrowers defaulted on some of these loans and Bank of America sought indemnification, FHA had to pay claims out of its Mutual Mortgage Insurance (MMI) Fund. Bank of America agreed to pay \$800 million to settle DOJ's claims brought on behalf of FHA.³⁶

In addition, Bank of America agreed to pay \$50 million to FHA to resolve allegations by another mortgage company that Bank of America had submitted claims to FHA for reimbursement of amounts it had already recovered from third-party correspondent lenders in violation of the False Claims Act.³⁷

DOJ collected the total \$850 million for the two components of the FHA settlement. Of that amount, it transferred \$8.5 million to the company that filed the action resulting in the \$50 million settlement. DOJ retained \$25.5 million—3 percent of the \$850 million—in its Three Percent Fund.³⁸ DOJ distributed another \$459.1 million to FHA, which deposited the money in its MMI Fund. Finally, DOJ transferred the remaining \$356.9 million to an account in the Treasury General Fund.³⁹

³⁵This settlement agreement also involved penalties and settlement amounts related to mortgage-backed securities violations. See enclosure 4 for more information.

³⁶The MMI Fund is a fund that supports FHA's single-family mortgage insurance program. The fund's primary purpose is to pay lenders in cases where borrowers default on their loans and the lender makes a claim for mortgage insurance benefits.

³⁷Of the \$50 million settlement amount, the mortgage company that filed the complaint, Mortgage Now, Inc., received \$8.5 million, or 17 percent of the total. In accordance with the *qui tam* provisions of the False Claims Act, a person or company that files suit for violations of the False Claims Act on behalf of the government is entitled to receive between 15 percent and 25 percent of the amount recovered by the government through the *qui tam* action. See 31 U.S.C. § 3730(d).

³⁸DOJ uses the Three Percent Fund to defray costs associated with its debt collection activities, such as paying the costs of the Debt Collection Management Staff—who are responsible for the collection and routing of all civil collections made through DOJ—and financial litigation unit personnel and activities conducted by the litigating components.

³⁹In addition, Bank of America agreed to pay a total of \$1 billion for violations of the False Claims Act that affected the Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac). This involved three lawsuits brought by whistleblowers; the whistleblowers received a total of \$160 million of the \$1 billion while DOJ deposited \$30 million into its Three Percent Fund and transferred the remaining \$810 million into accounts at the Treasury General Fund. Bank of America also agreed to pay \$200 million to Ginnie Mae for settlement of contractual claims. Bank of America paid the \$200 million to DOJ, which deposited \$6 million into its Three Percent Fund and transferred the remaining \$194 million to Ginnie Mae. According to the settlement

Bank of America also agreed to provide \$7 billion in consumer relief by August 31, 2018, through actions such as loan modifications, lending to low- and moderate-income borrowers, community reinvestment and neighborhood stabilization, and affordable rental housing.⁴⁰ Each type of relief is worth a particular amount of credit and the bank is required to earn minimum credits in certain categories, with credits earned at specified amounts on the dollar for different activities. The settlement agreement also required Bank of America to pay about \$490.2 million to an escrow account for the payment of consumer tax liability as a result of the required consumer relief. According to an August 2016 report of the independent monitor for the settlement, Bank of America had provided almost \$6.4 billion—about 90 percent of the required total—as of August 31, 2016. In addition, the bank had deposited the full \$490.2 million in tax relief funds into an escrow account.⁴¹

Wells Fargo (2016)

In April 2016, DOJ and HUD finalized a settlement with Wells Fargo Bank, N.A. (Wells Fargo), in which Wells Fargo admitted that, for almost 8 years, it had certified to HUD that certain loans it had originated were eligible for FHA mortgage insurance when in fact they were not. When some of these loans defaulted, FHA had to pay hundreds of millions of dollars in claims out of the MMI Fund, according to DOJ.⁴²

In addition, Wells Fargo admitted that—over a 9-year period—it had failed to report material issues with approximately 5,900 FHA loans it had underwritten and originated. Some of the borrowers of those loans defaulted, resulting in insurance claims paid out of the MMI Fund.

Wells Fargo agreed to pay \$1.2 billion to settle DOJ's claims brought on behalf of FHA. DOJ collected the entire \$1.2 billion settlement amount from the Wells Fargo case and retained \$36 million (3 percent of the total collection) and deposited this amount in its Three Percent Fund. DOJ distributed \$622.7 million to FHA, which deposited it into the MMI Fund. DOJ deposited the remaining amount—\$541.3 million—in an account in the Treasury General Fund.

agreement, Ginnie Mae was to deposit the payment into its financing account. Finally, Bank of America agreed to pay \$300 million to the state of California, \$45 million to the state of Delaware, \$200 million to the state of Illinois, \$23 million to the state of Kentucky, \$75 million to the state of Maryland, and \$300 million to the State of New York. Ginnie Mae and the states are outside of the scope of this review.

⁴⁰The consumer relief provisions are not solely related to the origination claims.

⁴¹The settlement agreement stated that any surplus tax relief amount (after an extension of the Mortgage Forgiveness Debt Relief Act of 2007 or its equivalent) would be paid to (1) NeighborWorks America, to provide housing counseling, neighborhood stabilization, foreclosure prevention or similar programs, and (2) state-based Interest on Lawyers' Trust Account organizations (or other state-wide bar association-affiliated intermediaries) that provide funds to legal aid organizations to be used for foreclosure prevention legal assistance and community redevelopment assistance. Because Congress extended the Mortgage Forgiveness Debt Relief Act and passed similar tax relief measures, the settlement monitor reported that it is distributing the tax relief funds as described in the settlement agreement. As of August 26, 2016, the monitor had distributed about \$487.3 million of the tax relief funds to NeighborWorks and Interest on Lawyers' Trust Account organizations. See the August 31, 2016, Report from the Monitor of the 2014 Bank of America Mortgage Settlement.

⁴²Department of Justice, Office of Public Affairs, *Wells Fargo Bank Agrees to Pay \$1.2 Billion for Improper Mortgage Lending Practices* (Apr. 8, 2016).

**FINANCIAL INSTITUTIONS AND MORTGAGE-RELATED VIOLATIONS**Selected Mortgage Servicing Violation CasesBackground

After a mortgage lender completes the loan origination process, the mortgage loan must be serviced until it is terminated by either being paid in full or through foreclosure. Mortgage servicing includes activities such as processing loan payments, responding to borrower inquiries, keeping track of principal and interest paid, managing escrow accounts, and initiating foreclosure proceedings. Mortgage servicing violations can include violations related to the foreclosure process, borrower repayment plans, or deceptive practices by financial institutions in the servicing process, among other offenses. In response to findings of critical weaknesses in certain mortgage servicers' foreclosure processes, OCC and the Federal Reserve and 16 mortgage servicers entered into consent orders that required the servicers to hire independent consultants to review certain foreclosure files (known as the Independent Foreclosure Review) for errors and remediate financial harm to borrowers. This enclosure describes the five mortgage servicing violation cases selected for our review, which include two cases related to the Independent Foreclosure Review.

View [GAO-17-11R](#). For more information, contact Lawrence Evans at (202) 512-8678 or evansl@gao.gov or Diana C. Maurer at 202-512-9627 or maurerd@gao.gov.

Independent Foreclosure Review—Citibank (2013)

In February 2013, the Office of the Comptroller of the Currency (OCC) amended an April 2011 consent order with Citibank N.A. (Citibank) that had been issued as part of the Independent Foreclosure Review. Under the amended order, Citibank consented to making a cash payment of about \$306.6 million to a qualified settlement fund designated for payments to affected borrowers. In addition, Citibank agreed to provide approximately \$486.9 million in loss mitigation or other foreclosure prevention actions—for example, loan or interest rate modifications, short sales or deeds-in-lieu-of foreclosure, or the provision of cash or other resource commitments to borrower counseling or education, among other actions.

In March 2013, Citibank paid the required amount of \$306.6 million into a qualified settlement fund, which was set up to hold proceeds from the Independent Foreclosure Review settlement agreement. In addition, Citibank fulfilled its obligation to provide \$486.9 million in loss mitigation or other foreclosure prevention activities, according to a report by the independent monitor that OCC contracted with to oversee Citibank's consumer relief activities.⁴³ In June 2015, OCC terminated the order against Citibank after determining that Citibank complied with the original and amended orders.

OCC did not directly receive the amount paid to the appropriate qualified settlement fund. Instead (as discussed previously in enclosure 1), Citibank made its payment directly to the qualified settlement fund.

Independent Foreclosure Review—GMAC Mortgage (2013)

In July 2013, the Board of Governors of the Federal Reserve System (Federal Reserve) amended an April 2011 consent order with Ally Financial, Inc and GMAC Mortgage, LLC (collectively "GMAC Mortgage") and Residential Capital, LLC. GMAC Mortgage and Residential Capital, LLC consented to collectively making a cash payment of about \$198.1 million to a qualified settlement fund designated for payments to affected borrowers. In addition, GMAC Mortgage was either to provide approximately \$316.9 million in loss mitigation or other foreclosure prevention actions or make an additional cash payment of \$31.7 million to the qualified settlement fund to fund higher cash payments to borrowers. According to the Federal Reserve, GMAC chose to satisfy its foreclosure prevention requirement using the cash payment option because it no longer owned a significant residential mortgaging portfolio for which to provide loss mitigation or foreclosure prevention services.

GMAC Mortgage paid a total of \$229.8 million to the qualified settlement fund, in two parts. In order to satisfy its requirement to make cash payments to affected borrowers, GMAC Mortgage paid a total of about \$198.1 million into the qualified settlement fund. In addition, as allowed in the amended consent order, GMAC Mortgage satisfied \$316.9 million foreclosure prevention assistance obligations through an additional \$31.7 million payment to the qualified settlement fund.⁴⁴ As

⁴³According to the independent monitor's May 2015 letter to OCC, Citibank had provided \$489,245,200 in foreclosure prevention activity.

⁴⁴In lieu of foreclosure prevention assistance, one bank subject to the Independent Foreclosure Review made payments to organizations that have a principle mission to provide affordable housing, foreclosure prevention assistance, or education. See [GAO-14-376](#).

of March 31, 2016, when checks that were part of the initial payment distribution expired, affected borrowers of GMAC Mortgage had cashed or deposited checks totaling approximately \$205 million, representing about 91 percent of the total amount of funds GMAC Mortgage was required to pay to affected borrowers.

The Federal Reserve did not directly receive any of the amounts paid to the appropriate qualified settlement fund. Instead (as discussed previously in Enclosure 1), GMAC Mortgage made its payments directly to the qualified settlement fund to be distributed to borrowers.

JPMorgan Chase & Co. (2012)

In February 2012, in coordination with the National Mortgage Settlement, the Federal Reserve assessed a civil money penalty of \$275 million against JPMorgan Chase & Co. (which owns JPMorgan Chase, N.A. and subsidiaries involved in mortgage servicing) for unsafe and unsound practices related to residential mortgage loan servicing and foreclosure activities.⁴⁵ The Federal Reserve agreed to remit (refrain from collecting in cash, or offset by other amounts paid) the penalty to the extent that JPMorgan Chase & Co. (1) provided borrower assistance or made federal payments as stipulated in the National Mortgage Settlement or (2) provided funding for nonprofit housing counseling organizations pursuant to a plan acceptable to the Federal Reserve Bank of New York.

According to a March 2014 report by the independent monitor of the National Mortgage Settlement, JPMorgan Chase, N.A. provided more than \$275 million in borrower assistance under the National Mortgage Settlement.⁴⁶ Under the terms of the Federal Reserve civil money penalty order, JPMorgan Chase & Co. was able to use the borrower assistance provided by JPMorgan Chase, N.A. under the National Mortgage Settlement to satisfy its civil money penalty of \$275 million.

U.S. Bank, N.A. (2016)

In February 2016, OCC terminated prior mortgage-servicing-related consent orders against U.S. Bank, N.A. and assessed a civil money penalty of \$10 million against the bank. OCC found that U.S. Bank violated an April 2011 consent order issued in relation to the Independent Foreclosure Review by failing to correct mortgage servicing deficiencies in a timely fashion. As noted previously, the Independent Foreclosure Review was initiated based on identified critical weaknesses in mortgage servicers' foreclosure processes. OCC had also issued amended consent orders against U.S. Bank in 2013 and 2015 but had not assessed any civil money penalties in connection with those orders.

U.S. Bank, N.A. paid the \$10 million civil money penalty to OCC, and the funds were deposited into a Treasury General Fund receipt account.

Green Tree Servicing (2015)

In April 2015, the Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC) settled a lawsuit alleging that Green Tree Servicing violated the Federal Trade Commission Act, the Consumer Financial Protection Act of 2010, the Real Estate Settlement Procedures Act of 1974, the Fair Credit Reporting Act, and the Fair Debt Collection Practices Act. According to a consent order entered into with Green Tree Servicing (a nonbank mortgage company), the company demanded payments before providing loss mitigation options and harassed and threatened overdue borrowers, among other things. CFPB also alleged that Green Tree Servicing used deceptive tactics to charge consumers a

⁴⁵The Federal Reserve also assessed civil money penalties against the other four financial institutions involved in the National Mortgage Settlement.

⁴⁶Monitor's Final Consumer Relief Report Regarding Defendant J.P. Morgan Chase Bank, N.A. (Mar. 18, 2014).

convenience fee for paying their mortgages by phone, when other, free methods were available. Pursuant to the settlement, the court ordered Green Tree Servicing to pay \$18 million in consumer redress for the violations relating to the convenience fees. In addition, CFPB and FTC alleged that Green Tree Servicing also violated various laws by delaying short sales and failing to honor loan modifications that were in process with new customers' previous mortgage servicers, among other violations. For these actions, the consent order required Green Tree Servicing to pay an additional \$30 million consumer redress payment. The order also imposed a \$15 million civil money penalty against Green Tree Servicing under the Consumer Financial Protection Act of 2010 for the previously mentioned violations.

Of the total \$63 million in monetary remedies ordered, Green Tree Servicing made a \$48 million redress payment, which CFPB deposited in the Legal or Equitable Relief Fund. In August 2016, CFPB officials estimated that Green Tree Servicing funds for consumer redress would be distributed in the fourth quarter of fiscal year 2016. Green Tree Servicing also paid the \$15 million civil money penalty for mortgage servicing violations, which CFPB deposited in the Civil Penalty Fund. According to CFPB officials, as CFPB did not identify any victims with uncompensated harm in the Green Tree Servicing case, no additional funds were allocated from the Civil Penalty Fund to the Green Tree Servicing victim classes. While CFPB allocated some of the Civil Penalty Fund monies to consumer education and financial literacy following its April 1, 2015, through September 30, 2015, allocation period, CFPB does not track the amounts it allocates for such programming by individual cases.

FINANCIAL INSTITUTIONS AND MORTGAGE-RELATED VIOLATIONS

Selected Residential Mortgage-Backed Securities Violation CasesBackground

Residential mortgage-backed securities (RMBS) violations are related to the marketing and sale of securities backed by mortgage loans. The violations can include false assurances to investors of the quality of the mortgage loans underlying the securities and the misrepresentation of the status of the loans, among other things. This enclosure describes the three mortgage-backed securities violations cases that we selected for our review.

Bank of America (2014)

As described in enclosure 2, the Department of Justice (DOJ) and other federal and state entities reached a settlement agreement with Bank of America in August 2014. Parts of the settlement agreement involved conduct by Bank of America and former and current subsidiaries Countrywide Financial Corp. and Merrill Lynch with regard to residential mortgage-backed securities (RMBS) that they structured, offered, and sold from 2005 to early 2008.

Bank of America agreed to pay a civil money penalty of \$5 billion under the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) in connection with the bank's RMBS activities specified in the settlement agreement. The bank's conduct included knowingly making false or fraudulent statements about the quality of the loans underlying the relevant RMBS, as well as knowingly making a false statement or report and/or overvaluing a security for the purpose of influencing the actions of investors. DOJ collected \$5 billion from Bank of America for the FIRREA penalty. After retaining \$150 million as its 3 percent offset and depositing it in the Three Percent Fund, DOJ transferred \$1.6 million to a whistleblower and the remaining amount—about \$4.85 billion—to a receipt account in the Treasury General Fund used to deposit FIRREA penalties, to be used for general government activities.⁴⁷

Bank of America agreed to pay an additional \$1.031 billion to settle civil claims brought by the Federal Deposit Insurance Corporation (FDIC) on behalf of 26 failed banks for which it was acting as receiver.⁴⁸ The settlement amount was primarily to resolve federal and state securities law claims based on misrepresentations in the offering documents for 155 RMBS the failed banks had purchased.⁴⁹ DOJ collected \$1.031 billion on behalf of FDIC—which was acting in its capacity as a receiver—and retained about \$30.9 million, which it deposited in the Three Percent Fund. DOJ transferred the remaining approximately \$1 billion to FDIC, which transferred the funds to its receivership account at the Federal Home Loan Bank of New York, where these funds were added to other FDIC receivership funds in that account. FDIC receivership funds in that account are used to pay allowed claims, including claims related to the administrative expenses of the receivership, deposit liabilities of the failed institution, creditors, and shareholders of the failed institution.

Bank of America also agreed to pay approximately \$245 million to the Securities and Exchange Commission (SEC) for violations of the Securities Act of 1933 and the Securities Exchange Act of 1934, and related rules. The amount consisted of \$109.2 million in disgorgement, \$6.6 million in prejudgment interest, and a

⁴⁷ DOJ uses the Three Percent Fund to defray costs associated with its debt collection activities. By statute, any person may file a declaration of a violation giving rise to an action or civil penalties under FIRREA affecting a depository institution insured by the Federal Deposit Insurance Corporation or any other agency or entity of the United States. 12 U.S.C. § 4201(a). The declarant (or whistleblower) may be entitled to 20 percent to 30 percent of any recovery up to the first \$1 million recovered, 10 percent to 20 percent of the next \$4 million recovered, and 5 percent to 10 percent of the next \$5 million recovered. 12 U.S.C. § 4205(d)(1)(a)(i).

⁴⁸ In this case, FDIC was acting in its capacity as a receiver for failed banks and not in a regulatory capacity.

⁴⁹ According to FDIC officials, of the approximately \$1 billion, about \$636 million was in settlement of RMBS claims related to 26 receiverships, and about \$364 million was related to settlement of contract claims related to a single receivership.

\$109.2 million civil money penalty in addition to a \$20 million civil money penalty to settle a related case. DOJ collected \$135.8 million from Bank of America on behalf of SEC and transferred the full amount to SEC.⁵⁰ SEC deposited \$115.8 million of this amount (the disgorgement and interest) in a Federal Account for Investor Restitution (Fair) Fund account, and deposited the \$20 million civil money penalty in the appropriate receipt account in the Treasury General Fund. The \$109.2 million civil money penalty was addressed via offset based upon other amounts paid to DOJ. According to SEC officials, as of August 2016, there had been no distribution of funds from the Fair Fund to harmed investors. SEC is in the process of selecting and recommending a distribution agent, who will develop a plan for the distribution, to the court.

Morgan Stanley (2014)

In July 2014, SEC issued a cease-and-desist order against Morgan Stanley for making misleading public disclosures regarding the number of delinquent loans in two subprime RMBS it offered in 2007. Specifically, SEC found that Morgan Stanley understated the number of current and historically delinquent loans in the offering documents for the two securities, thus violating provisions of the Securities Act of 1933.

The order required Morgan Stanley to pay a total of \$275 million to SEC, including disgorgement of \$160.6 million, prejudgment interest of approximately \$18 million, and a civil money penalty of \$96.4 million. SEC directly collected a total of \$275 million from Morgan Stanley and deposited this amount in a Fair Fund. According to SEC officials, a fund administrator was appointed in early 2016 and is in the process of developing a distribution plan for the \$275 million.

Goldman Sachs (2016)

In April 2016, DOJ, the National Credit Union Administration (NCUA) Board as liquidating agent, two Federal Home Loan Banks, and three states reached a settlement agreement with Goldman Sachs related to the investment bank's conduct in the packaging, securitization, marketing, sale, and issuance of RMBS between 2005 and 2007.⁵¹ For example, Goldman Sachs made false and misleading representations to prospective investors about the characteristics of the loans it securitized and the ways in which it would protect investors in its RMBS from harm.

DOJ assessed a civil money penalty of \$2.385 billion to resolve claims under FIRREA. The settlement agreement also required Goldman Sachs to make a \$575 million payment to NCUA to settle claims on behalf of three corporate credit unions for which the NCUA Board was acting as the liquidating agent. According to NCUA, the credit unions had failed due, in part, to losses incurred from their purchases of the relevant securities. In addition, Goldman Sachs agreed to provide \$1.8 billion in consumer relief by January 31, 2021, through actions such

⁵⁰Disgorgement is a repayment of ill-gotten gains that is imposed by the court or an agency on those found to have violated the law. According to DOJ officials, based on the understanding DOJ had with SEC for this particular case, and based on the particular circumstances pertaining to the recovery of funds, DOJ decided to disburse the full \$135.8 million to SEC. While DOJ may retain up to 3 percent of the amounts collected from federal recoveries, it has the discretion not to retain amounts from collections. Additionally, according to DOJ officials, any party to a recovery that is subject to the 3 percent offset may request that the entire offset, or a portion thereof, be waived on a specific case or a group of cases. Waiver requests are subject to review and examination on a case by case basis. For additional information on the Three Percent Fund, see [GAO-15-48](#).

⁵¹In this case, NCUA was acting in its capacity as a liquidating agent for three failed credit unions. The liquidated assets and liabilities of the credit unions included securities underlying the claims against Goldman Sachs. We are not addressing the aspects of this settlement related to the Federal Home Loan Banks and the states of California, Illinois, and New York. These entities are not within the scope of this review, and the amounts they were to receive represented about 6 percent of the total amount Goldman Sachs was to pay according to the terms of the settlement agreement. Specifically, Goldman Sachs was to pay the Federal Home Loan Banks of Chicago and Des Moines \$37.5 million each, and \$10 million to the state of California, \$25 million to the state of Illinois, and \$190 million to the state of New York.

as loan modifications, forgiveness, forbearance, and financing or donations to fund affordable rental and for-sale housing. Similar to the previous Bank of America case, Goldman Sachs will earn credits for its consumer relief actions and is required to earn minimum credits in certain categories, with credits earned at specified amounts on the dollar for different activities. The bank had to provide at least a minimum dollar amount of the \$1.8 billion total in each of the three states that were part of the settlement (California, Illinois, and New York), and to hold public outreach events on consumer relief alternatives. An independent monitor (appointed through the settlement agreement) was to determine the extent to which Goldman Sachs fulfilled its consumer relief obligations. As of August 2016, no updates had been issued on the status of the consumer relief.

DOJ collected the total \$2.385 billion from Goldman Sachs for the FIRREA penalty. After retaining about \$71.6 million as a 3 percent offset and depositing it in the Three Percent Fund, DOJ transferred the remaining approximately \$2.3 billion to the receipt account within the General Fund at Treasury used to deposit FIRREA penalties. DOJ also collected \$575 million from Goldman Sachs on behalf of NCUA. Of this amount, DOJ transferred approximately \$558 million to NCUA's Board and retained about \$17 million that it deposited in the Three Percent Fund. NCUA's Board deposited its funds in the Temporary Corporate Credit Union Stabilization Fund to pay the Fund's claims against the liquidated corporate credit unions arising from amounts paid on their behalf during the credit crisis.

Enclosure 5: Comments from the National Credit Union Administration



National Credit Union Administration

October 10, 2016

SENT BY E-MAIL

Lawrence Evans
Director, Financial Markets and Community Investment
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548
evansl@gao.gov

Dear Director Evans:

We have reviewed the GAO's study entitled "*Financial Institutions: Penalty and Settlement Payments for Mortgage-Related Violations in Select Cases*". The report outlines collection and application of funds resulting from fines and settlements from civil proceedings against mortgage related lenders and securities issuers. NCUA received proceeds on, behalf of the liquidation estates of three failed institutions, from a settlement with Goldman Sachs. The report is consistent with our discussions of the specific case.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "Mark Treichel".

Mark Treichel
Executive Director

1775 Duke Street - Alexandria, VA 22314-3428

Text of Comments from the National Credit Union Administration

October 10, 2016

Lawrence Evans

Director, Financial Markets and Community Investment

U.S. Government Accountability Office

441 G Street, NW Washington, DC 20548

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Thank you for the opportunity to comment.

Mark Treichel

Executive Director