



STATE OF FLORIDA

**PAM BONDI
ATTORNEY GENERAL**

June 4, 2013

**Martin J. E. Arms, Esq.
Wachtell, Lipton, Rosen, &Katz
51 West 52nd Street
New York, NY 10019**

Dear Mr. Arms:

I am writing this letter in anticipation of the meeting between the Monitoring Committee, including Florida, and Bank of America representatives on Wednesday June 5 regarding issues of possible non-compliance with the Settlement Servicing Standards. The purpose of my letter is to outline some of my concerns so that you may consider them in advance of the meeting and come prepared to explain how Bank of America will promptly address them. It is my highest priority to ensure that homeowners qualified for relief under the Settlement receive it in a timely and efficient manner.

Since the National Settlement was announced last year, my Office has been working daily to track Servicer compliance. As part of that effort, my team of dedicated lawyers and analysts reviews and facilitates borrower complaints to our Bank of America compliance liaison to obtain appropriate and timely results wherever possible. It is deeply concerning to me, however, that it takes my staff's direct involvement to get results I would expect to be achieved under the settlement without any facilitation on our part.

Even more concerning are the troubling patterns that are emerging from our review of complaints, clearly pointing to possible larger systemic problems regarding Bank of America's implementation of the Settlement's Servicing Standards. These concerns are the reason for the meeting the Monitoring Committee has scheduled with you this week.

While we have received a variety of complaints, the two most significant and widespread categories involve: 1) Bank of America's use of so-called "litigation letters," which are clearly not contemplated by the Settlement and are blatantly contrary to its terms, and 2) Bank of America's apparent continuation of lengthy, inefficient, and

unsatisfactory loan modification/mitigation processes, which the Settlement's Servicing Standards were designed to eliminate.

1. **Litigation Letters.** Bank of America's regular use of a form letter advising my staff that the bank will not be responding to our request to facilitate particular borrower requests for loss mitigation while the borrowers are in foreclosure and referring us to litigation counsel clearly violates both the spirit and the terms of the Settlement. Specifically, this letter runs contrary to the requirement under the Settlement that management-level Bank of America employees provide substantive written responses to inquiries from Attorneys General related to complaints from borrowers seeking loss mitigation assistance. The use of the letter also suggests that Bank of America may be potentially violating the settlement in several other ways by:
 - a) failing to assign a single point of contact to the borrower "throughout the loss mitigation, loan modification and foreclosure processes....until such time as Servicer determines in good faith that all loss mitigation options have been exhausted";
 - b) failing to comply with the Settlement's dual tracking restrictions which prohibit borrowers from being referred to foreclosure while a completed loan modification application is pending;
 - c) failing to comply with certain timing requirements in cases where a borrower has been referred to foreclosure but makes a loan application within thirty days of referral and, during that time, contrary to the settlement, Bank of America moves for a judgment or an order of stay while the application or an appeal from a denial is pending; and
 - d) failing to oversee foreclosure counsel to ensure counsel have appropriate access to accurate and complete information from the bank's records necessary to perform their duties. If properly informed, counsel presumably would respond to the borrower's loss mitigation inquiries during the course of litigation.
2. **Lengthy Loan Modification Application Process.** We also continue to hear from borrowers about lengthy delays in the loan modification application process, sometimes lasting a year or more. Often, borrowers are repeatedly asked for previously supplied documentation. The lengthy application process appears to be symptomatic of a continuing failure by Bank of America to engage in effective customer service and regular communication with borrowers.

The Settlement provides for specific timeframes that Bank of America must adhere to reviewing loan modification applications. As you know, how these timeframes are applied has been the subject of ongoing discussions between the Servicers and the National Monitor well before New York raised the issue in a

recent letter to the Monitor. As of May 1, 2013, my office has referred 293 complaints to the Monitor for consideration as possible violations of the settlement. 114 of these relate to Bank of America loans. 267 of the 293 complaints deal with customer service issues, of which 112 concern Bank of America loans.

But it isn't the statistics that are as important as the people they represent. Let me give you some actual examples of the problems I've outlined--real Floridians, who, without the assistance of my office, most likely would not have seen successful resolution of their circumstances. Out of respect for their privacy, I have left their real names out of my description, but my office can easily give you further information should you wish to confirm the facts.

Ms. Smith (Litigation Letter Example). Ms. Smith is an 88-year old Miami resident who we met at a homeowner event in Miami in February. Ms. Smith had submitted an application for a HAMP loan modification in December 2012 but had not received any response and her loan was referred to foreclosure. We escalated her complaint to our liaison at Bank of America and received a form letter in response essentially stating "we're in litigation with Ms. Smith; please contact our foreclosure lawyer." While this response was hardly sufficient, we nevertheless followed up with litigation counsel who was neither helpful nor responsive. We then reported the lawyer's lack of response to our liaison, and Bank of America subsequently terminated that counsel and retained another lawyer who resolved the issue with Ms. Smith. Ms. Smith received and accepted a HAMP modification offer in May.

Ms. Jones (Example of Various Servicing Standard Issues). Ms. Jones's complaint was escalated to Bank of America's compliance liaison by my staff because resolution was stymied by a simple dispute over a zip code. Amazingly, Bank of America's loss mitigation representative refused to speak to the legal aid lawyer for Ms. Jones because she could not accurately identify what turned out to be an erroneous zip code listing in Bank of America's own records for the property. After my office's intervention, Bank of America finally corrected the error and Ms. Jones was able to submit a loan modification application in mid-May.

Mr. Doe (Example of Dual Tracking Issue). Mr. Doe complained to us about a pending foreclosure sale that was imminent while he was in a Bank of America approved trial plan. He was fearful that the presiding Judge would enter an order granting Bank of America a foreclosure sale. We escalated the matter to Bank of America, and in mid-May, the bank's liaison reported that Bank of America had

filed a motion to stop the foreclosure sale and it was granted. The sale was stayed on the day of sale.

Ms. Roe (Example of Various Servicing Standard Issues). Ms. Roe missed three mortgage payments while she was temporarily out of work and taking care of her mother. Once her income was restored, she contacted Bank of America to reinstate her loan. At the time, Ms. Roe owed just \$22,698.37 in principal and was ready to resume payments, but her loan modification application was denied without explanation and her loan was referred to foreclosure. Ms. Roe then sought to pay off her loan balance but was unable to accomplish this through the bank's litigation counsel. Her case eventually went to mediation. At the mediation, despite the fact that Ms. Roe had twice provided her bank statements to Bank of America, the bank's lawyer asserted that the bank did not have all of her statements. Astoundingly, Ms. Roe's bank accounts were with none other than Bank of America. The mediation concluded with the lawyer for Bank of America refusing to negotiate. When we escalated this complaint to the Bank of America liaison, once again we received the "file is in litigation/contact litigation counsel" reply, so we tried again. We finally received word just a few days ago that Bank of America is negotiating with Ms. Roe, and we expect satisfactory resolution.

Mr. Smith (Example of Dual Tracking Issue). Mr. Smith complained to us that while his loan modification application was pending, a foreclosure notice had been served on his 16-year-old daughter when he was not at home. His loan was also apparently in the process of being sold to another Servicer. After our intervention, the homeowner reported that he was offered a three-month trial modification which lowered his monthly payments by \$650 and qualified him for a future principal reduction if he is timely with his trial payments. According to the papers he received, foreclosure proceedings will be stayed during the trial period.

These are just a few of many unfortunate stories we are hearing from Bank of America borrowers around the state. But for the intervention of my office, it is likely these borrowers would have lost their homes to foreclosure, despite their concerted efforts to obtain a loan modification or otherwise mitigate their losses by obtaining relief for which they were qualified. The good news is, once my staff becomes involved, Bank of America appears to respond quickly and eventually gets it right. But, that is not the process envisioned by the Settlement. There surely are countless other homeowners similarly situated who are still waiting to be helped. These stories demonstrate that we have yet to realize the streamlined, responsive and efficient mitigation reviews contemplated by the National Settlement.

Fortunately, the Settlement provides stringent processes for assessing the Servicers' performance under the terms of the settlement as well as for remedying potential

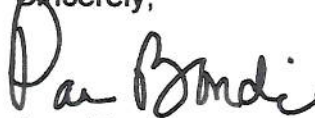
compliance issues. As you know, the Settlement establishes a National Monitor whose core responsibility is to determine whether the five Settling Servicers are in compliance. Using objective "metrics" with predetermined allowable thresholds for error that were established with each Servicer, the Monitor is currently analyzing the Servicer performance and will soon be releasing his findings in his first independent report.

If the Monitor finds that any potential violation exceeds established thresholds, the Settlement provides that the noncompliant Servicer has a right to cure, and the Monitor will determine whether the cure is timely and satisfactorily implemented. If the potential violation is deemed cured, then, under the settlement, no party has a right to sue thereafter based on the potential violation. If the violation is not timely or satisfactorily cured, then a party may file suit to seek specific non-monetary relief or civil penalties. In this regard, the Monitoring Committee plays a pivotal role, as the Settlement requires a party, prior to bringing an enforcement action, to notify the Monitoring Committee and the Monitoring Committee has 21 days to determine whether to bring an enforcement action. If the Committee declines to bring such an action, the Settlement requires that the complaining party wait an additional 21 days before commencing an action.

This process was established to encourage prompt compliance by a Servicer found in violation without the need for protracted litigation. The reasoning is simple: extended litigation against the Servicers will not yield the short-term relief so many struggling homeowners need *now* to stay in their homes or get back on their feet. Time is of the essence. That said, if the Monitor finds substantial non-compliance by Bank of America or any other Settling Servicer that is not timely cured, then litigation is likely the best option, and one I remain prepared to pursue.

In the meantime, to ensure a meaningful dialogue, I urge you and your colleagues to come to the meeting this week prepared to provide the Monitoring Committee with a detailed response to the concerns I've raised here as well as any others raised by the Monitor and my fellow Attorneys General. This process must be improved immediately. Each day we delay matters and its impact on every homeowner counts. I look forward to hearing more in the coming days regarding how our concerns will be promptly and completely addressed.

Sincerely,

A handwritten signature in black ink, appearing to read "Pam Bondi". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Pam Bondi
Attorney General

Cc: Secretary Donovan
Mr. Joe Smith