United States Government Accountability Office

Report to Congressional Requesters

April 2014

FORECLOSURE REVIEW

Regulators Could Strengthen Oversight and Improve Transparency of the Process

GAO-14-376

GAO Highlights

Highlights of GAO-14-376, a report to congressional requesters

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Regulators Could Strengthen Oversight and Improve Transparency of the Process

Why GAO Did This Study

In 2011 and 2012, OCC and the Federal Reserve signed consent orders with 16 mortgage servicers that required the servicers to hire consultants to review foreclosure files for errors and remediate harm to borrowers. 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. One servicer continued file review activities. GAO was asked to examine the amended consent order process. This report addresses (1) factors considered during cash payment negotiations between regulators and servicers and regulators' goals for the payments, (2) the objectives of foreclosure prevention actions and how well regulators designed and are overseeing those actions to achieve objectives, and (3) regulators' actions to share information from the file review and amended consent order processes and transparency of the processes. GAO analyzed regulators' negotiation documents, oversight memorandums, and information provided to borrowers and the public about the file review and amended consent orders. GAO also interviewed representatives of regulators, servicers, and consultants.

What GAO Recommends

OCC and the Federal Reserve should define testing activities to oversee foreclosure prevention principles and include information on processes in public documents. In their comment letters, the regulators agreed to consider the recommendations.

View GAO-14-376. For more information, contact Lawrance L. Evans, Jr. at (202) 512-8678 or evansl@gao.gov.

What GAO Found

To negotiate the $3.9 billion cash payment amount in servicers' amended consent orders, the Office of the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System (Federal Reserve) considered information from the incomplete foreclosure review, including factors such as projected costs for completing the file reviews and remediation amounts that would have been paid to borrowers. To evaluate the final cash payment amount, GAO tested regulators' major assumptions and found that the final negotiated amount generally fell within a reasonable range. Regulators generally met their goals for timeliness and amount of the cash payments. By December 2013, cash payments of between $300 and $125,000 had been distributed to most eligible borrowers.

Rather than defining specific objectives for the $6 billion in foreclosure prevention actions regulators negotiated with servicers, regulators identified broad principles, including that actions be meaningful and that borrowers be kept in their homes. To inform the design of the actions, regulators did not analyze available data, such as servicers' recent volume of foreclosure prevention actions, and did not analyze various approaches by which servicers' actions could be credited toward the total of $6 billion. Most servicers GAO spoke with said they anticipated they would be able to meet their obligation using their existing level of foreclosure prevention activity. In their oversight of the principles, OCC and the Federal Reserve are verifying servicers' foreclosure prevention policies, but are not testing policy implementation. Most Federal Reserve examination teams have not begun their verification activities and the extent to which these activities will incorporate additional evaluation or testing of servicers' implementation of the principles is unclear. Regulators' manuals and federal internal control standards note that policy verification includes targeted testing. Without specific procedures, regulators cannot assess implementation of the principles and may miss opportunities to protect borrowers.

Regulators are sharing findings from the file reviews and amended consent order activities among supervisory staff and plan to issue public reports on results, but they have not determined the content of those reports. The file reviews generally confirmed servicing weaknesses identified by regulators in 2010. Regulators are sharing information among examination teams that oversee servicers, and some regulator staff GAO spoke with are taking steps to address weaknesses identified. Regulators also have promoted transparency by releasing publicly information on the status of cash payments. However, these efforts provided limited information on the processes used, such as how decisions about borrower payments were made. Federal internal control standards and GAO's prior work (GAO-03-102 and GAO-03-669) highlight the importance of providing relevant information on the processes used to obtain results. According to regulators, borrowers could obtain information from other sources, such as the payment administrator, but information on how decisions were made is not available from these sources. In the absence of information on the processes, regulators face risks to public confidence in the mortgage market, the restoration of which was one of the goals of the file review process.

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Abbreviations

CFPB	Bureau of Consumer Financial Protection
FDIC	Federal Deposit Insurance Corporation
HAMP	Home Affordable Modification Program
OCC	Office of the Comptroller of the Currency
SCRA	Servicemembers Civil Relief Act

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April 29, 2014

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

The Honorable Robert Menendez
Chairman
Subcommittee on Housing, Transportation, and Community Development
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Luis V. Gutierrez
House of Representatives

In 2011 and 2012, the Office of the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System (Federal Reserve) required 16 mortgage servicers to undertake the Independent Foreclosure Review (foreclosure review).[1] Under the foreclosure review, servicers were to engage consultants to review servicers' loan files to identify borrowers who had suffered financial harm due to errors, misrepresentations, or other deficiencies in foreclosure processing in 2009 and 2010 and recommend remediation for the harms these borrowers suffered. In 2013, with these reviews still in progress, regulators announced amendments to existing consent orders with 15 mortgage servicers requiring these servicers to discontinue reviews of files for errors and instead provide cash payments to borrowers eligible for the foreclosure review and to take foreclosure prevention actions,

[1]The Office of Thrift Supervision was also party to four of the original consent orders. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. No. 111-203, §§ 311-313, 124 Stat. 1376, 1520-1523 (2010), eliminated the Office of Thrift Supervision and transferred its regulatory responsibilities to OCC, the Federal Deposit Insurance Corporation (FDIC), and the Federal Reserve. The transfer of these powers was completed on July 21, 2011, and the Office of Thrift Supervision was officially dissolved 90 days later (Oct. 19, 2011).

including loan modifications.[2] In total, the amended consent orders required the 15 servicers to provide $3.9 billion in cash payments to roughly 4.4 million borrowers and provide $6 billion in foreclosure prevention actions. One servicer elected to continue the file review process for a portion of the 192,000 borrowers in the eligible population, and OCC anticipates the servicer will provide remediation payments to harmed borrowers in 2014.[3]

This report represents the third and final phase of our reviews of the foreclosure review process that you requested. In earlier reports, we examined lessons learned from the file review process that could be applied to oversight and transparency of the amended consent orders and continuing reviews, as well as servicers' outreach efforts to inform borrowers about the file review process.[4] See appendix II for more information on these prior reports. This report addresses

1. the factors regulators considered in negotiating the servicer cash payment obligations under the amended consent orders and the extent to which regulators achieved their stated goals for the cash payments;

[2]The 15 servicers that amended existing consent orders with OCC and/or the Federal Reserve were: Ally Financial, Inc.; Aurora Bank, FSB; Bank of America, N.A.; Citibank, N.A.; EverBank Financial Corp.; Goldman Sachs; HSBC Bank, USA, N.A.; JPMorgan Chase, N.A.; MetLife Bank, N.A.; Morgan Stanley; PNC Bank, N.A.; Sovereign Bank; SunTrust Bank, Inc.; U.S. Bank, N.A.; and Wells Fargo Bank, N.A. Borrowers were eligible to be included in the foreclosure review and have their loan files reviewed for errors if foreclosure actions took place on their primary residences between January 1, 2009, and December 31, 2010, by one of the participating servicers.

[3]OneWest Bank, FSB, continued the file review process. As we describe later in the report, under the foreclosure review process not all eligible borrowers will necessarily have their files reviewed.

[4]See GAO, *Foreclosure Review: Opportunities Exist to Further Enhance Borrower Outreach Efforts,* GAO-12-776 (Washington, D.C.: June 29, 2012) and *Foreclosure Review: Lessons Learned Could Enhance Continuing Reviews and Activities Under the Amended Consent Orders*, GAO-13-277 (Washington, D.C.: Mar. 26, 2013). We also testified before the Senate Subcommittee on Housing, Transportation, and Community Development of the Committee on Banking, Housing, and Urban Affairs based on our March 2013 report, see GAO, *Foreclosure Review: Lessons Learned Could Enhance Continuing Reviews and Activities Under the Amended Consent Orders*, GAO-13-550T (Washington, D.C.: Apr. 17, 2013).

2. the objectives of the foreclosure prevention actions in the amended consent orders and how well regulators designed and oversaw the actions to achieve those objectives;
3. the extent to which regulators are sharing information from the file review and amended consent order processes; and
4. the extent to which regulators have promoted transparency of the amended consent orders and remaining review.

To address these objectives, we reviewed documents, conducted analyses, and held interviews with relevant stakeholders. Specifically, we reviewed the analyses regulators' used to inform the negotiations and the data consultants provided to regulators on incurred and remaining costs, progress of reviews, and error findings. We also reviewed the amended consent orders, conclusion and decision memorandums, press releases, and relevant public statements made by regulatory officials. We also analyzed the reasonableness of the final negotiated cash payment amount. In addition, we reviewed regulators' instructions to servicers for providing cash payments to borrowers, the results of this process, and information on check distribution. We also reviewed regulators' reporting requirements and instructions provided to examination teams for monitoring and oversight of the foreclosure prevention activities, including the principles. We compared these instructions to the types of information regulators generally provide in their supervisory manuals and the processes used for verification and validation of data outlined in the federal internal control standards.

In addition, we analyzed consultants' preliminary file review results and OCC's examination teams' conclusion memorandums from their oversight of the file reviews. We also reviewed information regulators communicated to the public and eligible borrowers. We compared regulators' activities to existing criteria, including their supervisory policies and procedures, federal internal control standards, Office of Management and Budget guidelines, and our prior work related to oversight activities and communicating results.[5] This methodology included confirming key observations of our analysis of the documents with staff with selected examination teams, servicers, and consultants. We selected the examination teams and servicers based on the size of the servicers' population of eligible borrowers for the foreclosure review and the identity of the servicers' regulators to ensure a range of perspectives. We also identified consultants to interview to supplement information gathered from consultants in our prior work. Finally, we conducted interviews with staff from OCC headquarters; the Federal Reserve Board; and the Bureau of Consumer Financial Protection (commonly known as the Consumer Financial Protection Bureau or CFPB); three experts in settlements (including staff from the National Mortgage Settlement); and consumer groups. We discuss our scope and methodology in greater detail in appendix I.

We conducted this performance audit from May 2013 to April 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and 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

Mortgage servicers are the entities that manage payment collections and other activities associated with home loans. Mortgage servicers can be

[5]OCC, *Bank Supervision Process: Comptroller's Handbook* (Washington, D.C.: May 2013) and *Policies and Procedures Manual: Bank Supervision Operations, Enforcement Action Policy* (Washington, D.C.: July 2001). See also, the Board of Governors of the Federal Reserve System, *Division of Banking Supervision and Regulation: Bank Holding Company Supervision Manual* (Washington, D.C.: July 2013) and *Division of Consumer and Community Affairs: Consumer Compliance Handbook* (Washington, D.C.) accessed February 2014. In addition, see GAO, *Internal Control Management and Evaluation Tool*, GAO-01-1008G (Washington, D.C.: Aug. 2001) and *Standards for Internal Control in the Federal Government,* GAO/AIMD-00-21.3.1 (Washington, D.C.: Nov. 1999). See also, GAO, *GAO Cost Estimating and Assessment Guide: Best Practices for Developing and Managing Capital Program Costs*, GAO-09-3SP (Washington, D.C.: Mar. 2, 2009); *Major Management Challenges and Program Risks: Department of Homeland Security,* GAO-03-102 (Washington, D.C.: Jan. 2003); and *Results-Oriented Cultures: Implementation Steps to Assist Mergers and Organizational Transformations*, GAO-03-669 (Washington, D.C.: July 2, 2003). Finally, see Office of Management and Budget, Circular No. A-94, *Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs*, October 29, 1992.

large mortgage finance companies, commercial banks, or nondepository institutions. Servicing duties can involve sending borrowers monthly account statements, answering customer-service inquiries, collecting monthly mortgage payments, and maintaining escrow accounts for property taxes and insurance. In the event that a borrower becomes delinquent on loan payments, servicers also initiate and conduct foreclosures. Errors, misrepresentations, and deficiencies in foreclosure processing can result in a number of harms to borrowers ranging from inappropriate fees to untimely or wrongful foreclosure.

Several federal regulators share responsibility for regulating the banking industry in relation to the origination and servicing of mortgage loans. 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, bank and thrift holding companies, and entities that may be owned by federally regulated depository institution holding companies but are not federally insured depository institutions.[7] The Federal Deposit Insurance Corporation (FDIC) oversees insured state-chartered banks that are not members of the Federal Reserve System and state-chartered savings associations.[8] Finally, CFPB has the authority to regulate mortgage servicers with

[6]12 U.S.C. §§ 481, 1813(q)(1).

[7]12 U.S.C. §§ 321, 325, 1813(q)(3), 1844(c)(2)(A)(i)-(ii), 1867.

[8]12 U.S.C. §§ 1813(q)(2), 1819(a). 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 from the Office of Thrift Supervision.

respect to federal consumer financial law.[9] In May 2012, CFBP entered into a memorandum of understanding with prudential regulators—specifically the Federal Reserve, FDIC, OCC, and the National Credit Union Administration—that governs their responsibilities to share information and coordinate supervisory activities so as to effectively and efficiently carry out their responsibilities, decrease the risk of conflicting supervisory directives, and increase the potential for alignment of related supervisory activities.

OCC and the Federal Reserve both use examination teams to provide day-to-day supervision of institutions they regulate that service mortgages. Under OCC, examination teams are assigned to each servicer and these teams are responsible for providing ongoing supervision, including identifying risks to the servicer's safety and soundness or consumer compliance activities, among other issues; developing and executing supervisory plans; recommending enforcement actions to management; and monitoring for compliance with existing enforcement actions. For large servicers, these examination teams are on-site throughout the year.[10] For mid-size servicers, the examination teams are often responsible for supervision of several institutions. Similarly, subject to its oversight and direction, the Federal Reserve Board assigns responsibility for ongoing supervision of servicers to the

[9]The Dodd-Frank Act, enacted on July 21, 2010, established CFPB as an independent bureau within the Federal Reserve System. "Federal consumer financial law" is a defined term in the Dodd-Frank Act, among other sources, that includes more than a dozen existing federal consumer protection laws, including the Truth in Lending Act, the Real Estate Settlement Procedures Act, 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 servicer is a nondepository institution, CFPB has both exclusive supervisory and enforcement authority (except with respect to the Federal Trade Commission) to oversee compliance with federal consumer financial law. Finally, CFPB has certain rulemaking authorities as set forth in applicable statutes with respect to mortgage servicers, including authority that transferred from other federal agencies.

[10]OCC designates each national bank as a large, mid-size, or community bank. The designation is based on the institution's asset size and whether other special factors affect its risk profile, such as the extent of asset management operations, international activities, or high-risk products and services. Large banks are the largest and most complex national banks and are designated by the Senior Deputy Comptroller for Large Bank Supervision. Mid-size banks may be designated as large banks at the discretion of the Deputy Comptroller for Midsize and Credit Card Banks.

responsible Federal Reserve Bank, which in turn assigns a central point of contact to each servicer.[11] The contact leads an examination team with responsibility for continually monitoring activities, conducting discovery examinations designed to improve understanding of a particular business activity or control process, and testing whether a control process is appropriately designed and achieving its objectives.

Original Consent Orders Required a Foreclosure Review

In September 2010, allegations surfaced that several servicers' documents in support of judicial foreclosure may have been inappropriately signed or notarized.[12] In response to this and other servicing issues, federal banking regulators—OCC, the Federal Reserve, the Office of Thrift Supervision, and FDIC—conducted a coordinated on-site review of 14 mortgage servicers to evaluate the adequacy of servicers' controls over foreclosure processes and to assess servicers' policies and procedures for compliance with applicable federal and state laws.[13] Through this coordinated review, regulators found critical weaknesses in servicers' foreclosure governance processes; foreclosure documentation preparation processes; and oversight and monitoring of third-party vendors, including foreclosure attorneys.[14] On the basis of their findings from the coordinated review, OCC, the Office of Thrift Supervision, and the Federal Reserve issued in April 2011 formal consent orders against 14 servicers under their supervision (see fig. 1).

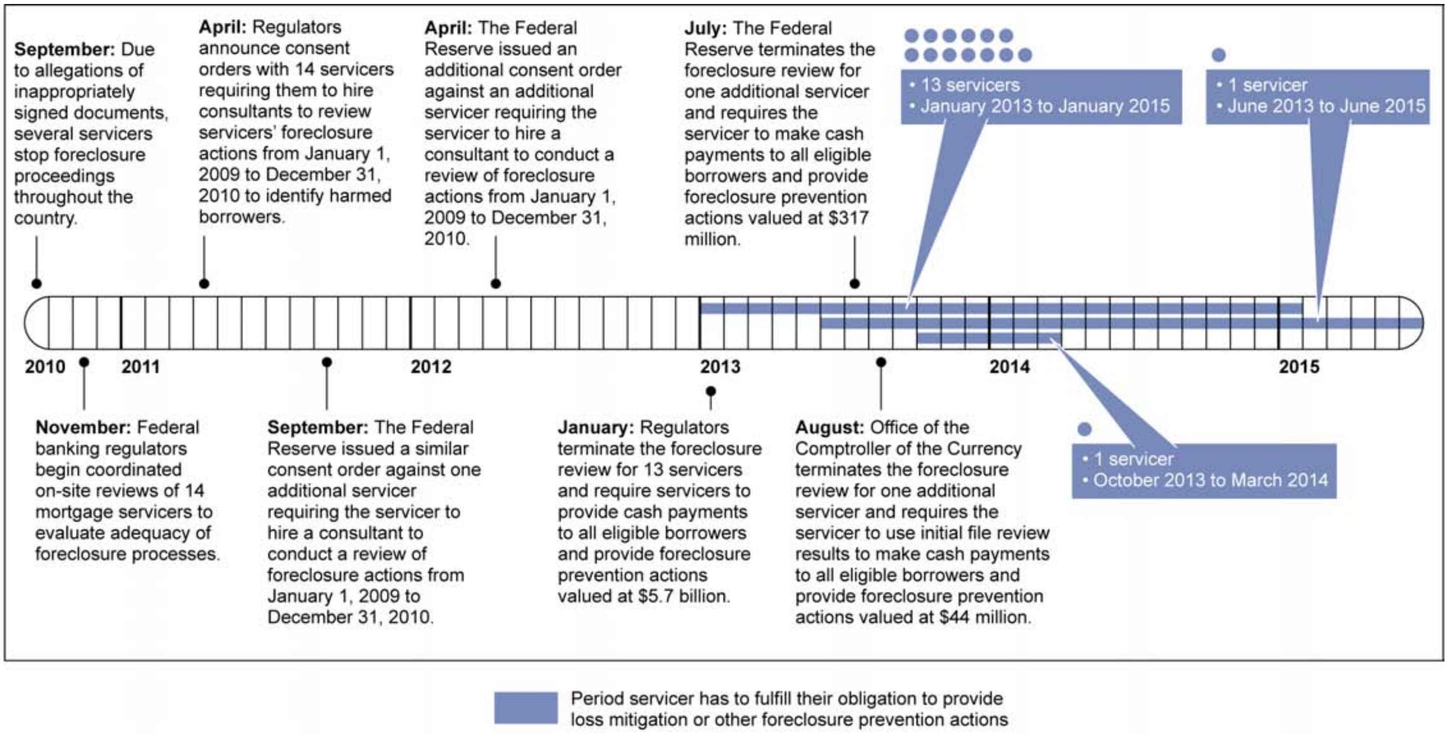
[11]The Reserve Bank responsible for supervision of a servicer is generally determined by the Reserve Bank in the district where the head office of the institution is located and where its overall strategic direction is established and overseen.

[12]This practice, which includes 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." In a judicial foreclosure a judge presides over the process in a court proceeding. Servicers initiate a formal foreclosure action by filing a lawsuit with a court and in some states may submit supporting documents, such as notarized sworn statements, or affidavits, as part of the lawsuit. Failure to review documents filed in support of a judicial foreclosure may violate consumer protection and foreclosure laws, which vary by state and which establish certain procedures that mortgage servicers must follow when conducting foreclosures.

[13]CFPB was established on July 21, 2011, and the first agency director was appointed in January 2012, after the coordinated reviews and issuance of the consent orders. Therefore, CFPB did not play a role in these reviews.

[14]See OCC, Federal Reserve, the Office of Thrift Supervision, *Interagency Review of Foreclosure Policies and Practices* (Washington, D.C.: Apr. 2011).

Figure 1: Timeline of Key Dates of Regulators' Actions Related to the Foreclosure Review and Amended Consent Orders



Source: GAO analysis of OCC and Federal Reserve documents.

Note: In the amended consent order announced in July 2013, the servicer has until June 2015 to meet its foreclosure prevention obligation, but the amended order states that the servicer would satisfy its obligation in July 2013. The amended consent order for the servicer that agreed to amend its order in August 2013 states that the servicer would meet its foreclosure prevention obligation by January 2014, but OCC staff stated that the servicer was provided an extension through March 2014.

Subsequently, the Federal Reserve issued similar consent orders against two additional servicers.[15] These consent orders were intended to ensure safe and sound mortgage-servicing and foreclosure-processing activities and help address weaknesses with mortgage servicing identified during the reviews. To comply with the consent orders, each of the 16 servicers is required to, among other things, enhance its vendor management, training programs and processes, and compliance with all applicable federal and state laws, rules, regulations, court orders, and servicing

[15]The Federal Reserve issued a formal consent order against Goldman Sachs (Litton Loan Servicing, LP) in September 2011 and Morgan Stanley (Saxon Mortgage Services, Inc.) in April 2012.

guidelines. In addition, as a result of the consent orders, the Federal Reserve issued civil money penalties against some of the servicers and provided that the penalty amounts could be remitted by federal payments made and borrower assistance provided under the National Mortgage Settlement or by providing funding to housing counseling organizations.[16] OCC also considered civil money penalties against the servicers it regulates, and for four servicers that were also party to the National Mortgage Settlement, OCC reached an agreement that civil money penalties would be assessed if the servicer did not satisfy the requirements of the formal consent orders or their respective obligations under the National Mortgage Settlement.

The consent orders also required each servicer to retain an independent consultant to review certain foreclosure actions on primary residences from January 1, 2009, to December 31, 2010, to identify borrowers who suffered financial injury as a result of errors, misrepresentations, or other deficiencies in foreclosure actions, and to recommend remediation for borrowers, as appropriate. In general, the consent orders identified seven areas for consultants to review:

1. whether the servicer had proper documentation of ownership of the loan;
2. whether the foreclosure was in accordance with applicable state and federal laws;
3. whether a foreclosure sale occurred while a loan modification was under consideration;
4. whether nonjudicial foreclosures followed the terms of the loan and state law requirements;[17]

[16]The Federal Reserve issued civil money penalties against MetLife, Inc. and the five servicers participating in the National Mortgage Settlement and their subsidiaries (Ally Financial (GMAC), Bank of America, Citi, JP Morgan Chase (EMC), and Wells Fargo) under the Federal Reserve's authority to sanction the servicers' parent holding companies. As we note later in the report, the National Mortgage Settlement was an agreement between several federal agencies, 49 state Attorneys General, and five servicers.

[17]A nonjudicial foreclosure process takes place outside the courtroom, and is typically conducted by the trustee named in the deed of trust. Trustees, and sometimes servicers, generally send a notice of default to the borrower and publish a notice of sale in area newspapers or legal publications.

5. whether fees charged to the borrower were permissible, reasonable, and customary;
6. whether loss-mitigation activities were handled in accordance with program requirements and policies; and
7. whether any errors, misrepresentations, or other deficiencies resulted in financial injury to the borrower.

To review these areas, consultants generally segmented their file review activities to test for each area of potential error separately. As a result, a borrower's loan file might have undergone multiple reviews for different potential errors before the results of each of the review segments were compiled and the file review was considered complete.

Loans were identified for review through a process by which eligible borrowers could request a review of their particular circumstances (referred to as the request-for-review process) and through a review of categories of files considered at high risk for errors (referred to as the look-back review). Regulators required servicers to establish an outreach process for eligible borrowers who believed they might have been harmed due to errors in the foreclosure process to request a review of their particular circumstances.[18] Consultants were expected to review all of the loans received through the request-for-review process. For the look-back review, regulators required consultants to review 100 percent of all files in three categories—borrowers in bankruptcy in which a completed foreclosure took place, loans potentially subject to the protections provided by the Servicemembers Civil Relief Act (SCRA), and agency-referred foreclosure cases—that were identified as at high risk for servicing or foreclosure-related errors during the regulators' 2010

[18]For 14 of the 16 servicers that were party to the foreclosure review process, a borrower who met the initial eligibility criteria—that is, the mortgage on his or her primary residence was in some stage of foreclosure at any point in 2009 or 2010—and who believed he or she had been financially injured as a result of problems during the foreclosure process, could submit a request-for-review by December 31, 2012. For two servicers—Goldman Sachs and Morgan Stanley—the request-for-review process had not begun at the point when the agreement to amend the consent orders was announced and those borrowers were not provided an opportunity to request reviews.

coordinated reviews.[19] Consultants for Federal Reserve-regulated servicers were also required to review 100 percent of files in two other categories determined to be high risk—borrowers with pending modification requests and borrowers current on a trial or permanent modification. In addition, as each servicer had a unique borrower population and servicing systems, consultants, with examination teams' input, were expected to identify various high-risk loan categories appropriate to their servicer—such as loans in certain states or loans associated with certain foreclosure law firms—that could be associated with a higher likelihood of servicing or foreclosure-related errors and review a sample of those loans.[20]

In 2013, the Foreclosure Review Was Replaced for Most Servicers with Cash Payments and Foreclosure Prevention Actions

Beginning in January 2013, OCC and the Federal Reserve announced that they had reached agreements with 15 of the 16 servicing companies to terminate the foreclosure reviews and replace the reviews with a payment agreement (as previously shown in fig. 1). Under these agreements, servicers agreed to provide compensation totaling approximately $10 billion, including $4 billion in cash payments to eligible borrowers and $6 billion in foreclosure prevention actions. These amounts were generally divided among the 15 participating servicers according to the number of borrowers who were eligible for the foreclosure review at the time the amended orders were negotiated such that the total per-servicer amount ranged from $16 million to $2.9 billion (see table 1). For the majority of servicers, the amended consent orders ended an approximately 20-month file review process. Although

[19]SCRA prohibits servicers from foreclosing on properties owned by eligible active duty members of the military without court orders and caps interest rates at 6 percent, among other things. Pub. L. No. 108-189, §§207, 303, 117 Stat. 2835, 2844, 2847 (2003) (codified at 50 U.S.C. app. §§ 527, 533). This provision applies to loans originated before the servicemembers' active military service. §207. For the foreclosure review, to assess compliance with SCRA provisions, consultants generally reviewed foreclosure dates and interest rates servicers charged to servicemembers. We have previously discussed borrowers' eligibility for SCRA protections, extent of violations by depository institutions, regulators' oversight of SCRA, and the military servicers' efforts to educate servicemembers on SCRA. See GAO, *Mortgage Foreclosures: Regulatory Oversight of Compliance with Servicemembers Civil Relief Act Has Been Limited,* GAO-12-700 (Washington, D.C.: July 17, 2012). Agency-referred foreclosure cases are cases referred to the servicer by state or federal agencies for information or follow-up.

[20]The regulator-issued sampling guidance also suggested that consultants conduct random sampling to verify that certain categories were low risk. For additional discussion of consultants' sampling activities, see GAO-13-277.

consultants were at various stages of completing the reviews when the work was discontinued, the amended consent orders underlined that regulators retained the right to obtain and access all material, records, or information generated by the servicer or the consultant in connection with the file review process. The amended consent orders did not affect the other aspects of the original consent orders—such as required improvements to borrower communication, operation of management information systems, and management of third-party vendors for foreclosure-related functions—and work to oversee servicer compliance with these other aspects continues.

Table 1: Payment Obligations for the Amended Consent Order, by Servicer

Servicer	Percentage of the eligible borrower population[a]	Cash payment amount (in millions of dollars)[b]	Foreclosure prevention action amount (in millions of dollars)	Total amount (in millions of dollars)
Ally (GMAC)	5.0%	$198	$317	$515
Aurora	2.4	93	149	242
Bank of America	27.9	1,100	1,800	2,900
Citibank	7.7	307	487	793
EverBank	0.7	37[c]	44	82
Goldman Sachs	2.8	135	195	330
HSBC	2.4	97	153	251
JPMorgan Chase	19.0	757	1,200	2,000
MetLife	0.9	39	48	87
Morgan Stanley	2.1	97	130	227
PNC	1.8	69	111	181
Sovereign	0.2	6	10	16
SunTrust	1.6	63	100	163
U.S. Bank	2.0	80	128	208
Wells Fargo	19.4	766	1,200	2,000
Total	**95.8%**	**$3,900**	**$6,000**	**$10,000**

Source: GAO analysis of OCC and Federal Reserve documents.

Note: Numbers are rounded.

[a]The eligible population also includes approximately 192,000 borrowers or 4.2 percent of the total eligible population serviced by OneWest.

[b]Regulators subsequently required four servicers to make additional payments into the cash payment fund. These additional payments totaled $13 million.

[c]The cash payment amount paid by EverBank was determined based on its file review results. The final amount was larger than the amount it would have paid based on its portion of the total eligible population.

According to regulatory staff and documents, the estimated time it would take for borrowers to receive remediation and mounting costs of completing the file reviews motivated the decision to amend the consent orders. As of December 2012, OCC staff estimated that remediation payments to borrowers would not start for many months and that completing the file review process could take, at a minimum, an additional 1 to 2 years, based on the number of files still to be reviewed and the extent of the work to be completed. The mounting costs of the file reviews also motivated the decision to terminate the file reviews for most servicers. As of August 2012, the collective costs for the consultants had reached $1.7 billion, according to OCC's decision memorandum. Based on the results of the reviews conducted by consultants through December 2012, regulators estimated that borrower remediation amounts would likely be small while the consultant costs to complete the reviews would be significant. As a result, OCC and Federal Reserve staff determined that completing the reviews to determine precisely which borrowers had compensable errors due to harm would have resulted in long delays in providing remediation payments to harmed borrowers.

With the adoption of the amended consent orders, regulators and servicers moved away from identifying the types and extent of harm an individual borrower may have experienced and focused instead on issuing payments to all eligible borrowers based on identifiable characteristics. To determine the cash payment amount to be provided to each borrower, the majority of participating servicers categorized borrowers according to specific criteria. Fourteen of the servicers that participated in the amended consent order process, covering approximately 95 percent of the population of 4.4 million borrowers that were eligible for the foreclosure review process under the original consent orders, adopted this approach (see table 2). To categorize borrowers, regulators provided each servicer with a cash payment framework that included 11 categories of potential harms—including violation of SCRA protections and foreclosure on borrowers in bankruptcy—and generally ordered the categories by severity of potential harm.[21] For each of the 11 categories in the cash payment framework, regulators identified specific borrower and loan characteristics that servicers then used to place all eligible borrowers into categories such that a borrower would be placed in the highest category for which he or she had the required characteristics. Regulators used the results of this categorization process as the basis for determining the payment amounts for each category. The payment amounts for all eligible borrowers for those 14 servicers ranged from several hundred dollars for a servicer that did not engage the borrower in a loan modification to $125,000, plus equity and interest, for a servicer that foreclosed on a borrower who was eligible for SCRA protection. One other servicer signed an amended consent order to terminate the file review process and provide cash payments to borrowers. In contrast to the other servicers that signed amended consent orders, this servicer had completed its initial file review activities and OCC used the preliminary file review results as the basis for determining payments to all eligible borrowers.[22]

[21]The specific categories, generally in order of severity of potential harm, are as follows: (1a) Servicer foreclosed on borrower eligible for SCRA protection, (1b) Servicer charged servicemember interest rates that exceeded SCRA §207 limits, (2) Servicer initiated or completed foreclosure on a borrower who was not in default, (3) Servicer initiated or completed foreclosure on a borrower who was protected by federal bankruptcy protections, (4) Servicer completed foreclosure on a borrower who was meeting all requirements of a documented forbearance plan, (5) Servicer failed to convert a borrower to a permanent loan modification after three successful payments under a written trial-period plan, (6) Servicer completed foreclosure on a borrower who was performing all requirements of a written trial-period plan, (7) Modification request approved, (8) Modification request denied, (9) Modification request received but no underwriting decision made, (10) Servicer did not engage with borrower in a loan modification or other loss mitigation action, (11) All other loans.

[22]According to OCC staff, the consultant had completed file reviews for all borrowers that submitted a request-for-review, the initial sample of loans identified through the look-back process, and some additional reviews resulting from the results of the initial sample. In addition to requiring cash payments and foreclosure prevention actions, OCC also required the servicer to solicit and evaluate loan modification requests for borrowers eligible through the foreclosure review process whose foreclosure had not been completed; establish a special complaint resolution process for borrowers complaining about errors on credit reports; and establish a new audit process at the point of modification, payoff, or reinstatement to validate any fees assessed and not yet collected on all borrowers eligible through the foreclosure review process.

Table 2: Participation in Selected Elements of the Original Consent Orders and Amended Consent Orders, by Servicer

Servicer	Conducted request-for-review process	Amended consent order requirements: Cash payments based on specific criteria	Amended consent order requirements: Cash payments based on file review results	Amended consent order requirements: Foreclosure prevention actions	Remediated harmed borrowers based on file review results
Ally (GMAC)	X	X		X	
Aurora	X	X		X	
Bank of America	X	X		X	
Citibank	X	X		X	
EverBank	X		X	X	
Goldman Sachs		X		X	
HSBC	X	X		X	
JPMorgan Chase	X	X		X	
MetLife	X	X		X	
Morgan Stanley		X		X	
OneWest	X				X
PNC	X	X		X	
Sovereign	X	X		X	
SunTrust	X	X		X	
U.S. Bank	X	X		X	
Wells Fargo	X	X		X	

Source: GAO analysis of OCC and Federal Reserve information.

Note: Borrowers received payments based on three different approaches. Specifically, 13 servicers determined borrower cash payment amounts based on servicer assignment of borrowers into categories using loan and borrower characteristics. Second, one servicer determined borrower cash payment amounts based on the results of file reviews conducted by its consultant as part of the file review process. Third, one servicer will provide cash payments to borrowers based on the final file review results for reviews completed by its consultant such that payments will be for identified errors, misrepresentations, or other deficiencies in foreclosure processing that resulted in financial harm.

The amended consent orders also required all 15 servicers to undertake a specified dollar amount of foreclosure prevention actions and submit those actions for credit based on criteria established by regulators. For 13 of the servicers, these actions are to occur between January 2013 and

January 2015.[23] The amended orders provided two methods for servicers to receive credit for foreclosure prevention actions. First, servicers could conduct loss-mitigation activities for individual borrowers, by providing loan modifications or short sales, among other actions.[24] Regulators also specified that the actions taken under this method could not be used to satisfy other similar requirements, such as the foreclosure prevention requirement of the National Mortgage Settlement (discussed later). Second, servicers could satisfy their obligation by making cash payments to approved housing counseling agencies, among other actions.

One servicer, OneWest Bank, did not elect to amend its consent order and terminate the file review process. The consultant for this servicer continues file review activities for a portion of the eligible population of 192,000 borrowers, as planned.[25] According to OCC, in 2014, the servicer will provide remediation to borrowers based on findings of actual harm.

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[23]The two servicers that signed amended consent orders after February 2013 are also taking steps to satisfy the foreclosure prevention requirement prior to January 2015. Specifically, the amended consent order for Ally Financial (GMAC) provided the servicer through June 2015 to meet its foreclosure prevention obligation, but also specified that, in July 2013, Ally Financial (GMAC) would deposit $32 million in cash into the cash payment fund that is used to provide cash payments to eligible borrowers. This is in addition to their initial $198 million deposit into the cash payment fund. According to the amended consent order, EverBank agreed to satisfy its foreclosure prevention requirement by making a payment to organizations that have a principal mission to provide affordable housing or other foreclosure prevention assistance or education. According to the amended consent order, these activities are to be completed within 90 days of the signing of the amended order, that is, January 2014, but according to OCC staff, EverBank was provided an extension to March 2014.

[24]A borrower may be offered a loan modification when the borrower can no longer afford the monthly payments on the original mortgage but can afford reduced payments. Loan modification involves making temporary or permanent changes to the terms of the existing loan agreement, either by capitalizing the past due amounts, reducing the interest rate, extending the loan term, reducing the total amount of the loan through principal forgiveness or forbearance, or a combination of these actions. In a short sale, the investor agrees to accept proceeds from the sale of the home to a third party even though the sale price is less than the sum of the principal, accrued interest, and other expenses owed. Short sales are often the first nonhome retention workout option considered, because the investors do not have to take ownership of the property.

[25]According to documents from OneWest Bank's consultant, approximately 28,500 loans were reviewed as part of the initial file review process (the extent of review for each loan varied depending on the sampling and the issues raised in the borrower's request for review). Based on the results and with OCC's approval, the consultant subsequently conducted additional testing of loans in categories with high error prevalence.

Other Mortgage Servicing Actions

In addition to the consent orders issued by OCC, the Office of Thrift Supervision, and the Federal Reserve, mortgage servicers have been subject to other actions designed to improve the provision of mortgage servicing by setting servicing standards. In February 2012, the Departments of Justice, Treasury, and Housing and Urban Development, along with 49 state Attorneys General, reached a settlement with the country's five largest mortgage servicers. Under the settlement, the servicers will provide approximately $25 billion in relief to distressed borrowers and the servicers agreed to a set of mortgage servicing standards.[26] This settlement, known as the National Mortgage Settlement, established nationwide servicing reforms for the participating servicers, including establishing a single point of contact for borrowers, standards for communication with borrowers, and expectations for fee amounts and the execution of foreclosure documentation. The settlement also established an independent monitor to oversee the servicers' execution of the agreement, including their adherence to the mortgage servicing standards. CFPB also established new mortgage servicing rules that took effect in January 2014.[27] Among other things, these rules established requirements for servicers' crediting of mortgage payments, resolution of borrower complaints, and actions servicers are required to take when borrowers are late in their mortgage payments.

In addition to the National Mortgage Settlement, other recent settlements have required servicers to provide foreclosure relief to borrowers as a component of the agreement. In November 2013, the Department of Justice along with state Attorneys General for four states announced a

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[26]*United States v. Bank of America Corp.*, No. 1:12-CV-00361 (D.D.C. Apr. 4, 2012). The settlement provides benefits to borrowers in the 49 signing states whose loans are owned by the settling banks—Ally Financial (GMAC), Bank of America, Citibank, JPMorgan Chase, and Wells Fargo—as well as to many of the borrowers whose loans they service. Borrowers from Oklahoma are not eligible for any of the relief directly to homeowners, because Oklahoma elected not to join the settlement.

[27]On January 17, 2013, CFPB released final rules to implement provisions of the Dodd-Frank Act related to mortgage servicing. Specifically, CFPB amended Regulation X, which implements the Real Estate Settlement Procedures Act, to address servicers' obligations to correct errors raised by borrowers; to provide certain information requested by borrowers, including loss mitigation options available to delinquent borrowers; and to provide borrowers with continuity of contact with appropriate servicer personnel. 12 C.F.R. pt. 1024. Regulation Z, which implements the Truth in Lending Act, was revised to require servicers to provide borrowers with enhanced information, including notices regarding interest rate adjustments and responses to requests for payoff amounts. 12 C.F.R. pt. 1026. The rules took effect January 10, 2014.

settlement with JPMorgan Chase to provide $4 billion in foreclosure relief, among other actions, to remediate harms allegedly resulting from unlawful conduct.[28] The settlement identified specific actions for which JPMorgan Chase would receive credit towards its obligation, including certain types of loan modification actions, lending to low- to moderate-income borrowers and borrowers in disaster areas, and activities to support antiblight programs. Similarly, in December 2013, CFPB and 49 state Attorneys General and the District of Columbia announced a settlement with Ocwen Financial Corporation to provide $2 billion in relief to homeowners at risk of foreclosure by reducing the principal on their loans. Both settlements also assign an independent monitor to oversee the execution of the settlements, and the settlement with Ocwen requires the servicer to comply with the standards for servicing loans established in the National Mortgage Settlement.

Negotiations Were Largely Based on Projected Costs and Remediation Amounts and the Goals for the Cash Payments Were Generally Met

Regulators considered factors such as projected costs and potential remediation amounts associated with the file reviews to negotiate the $3.9 billion total cash payment under the amended consent orders. However, because the reviews were incomplete, these data were limited. According to Federal Reserve staff, OCC led the data analysis to inform negotiations, and the Federal Reserve relied on aspects of this work. Despite the uncertainty regarding the remaining costs and actual financial harm experienced by borrowers, regulators did not test the major assumptions used to inform negotiations. According to our prior work, testing major assumptions provides decision makers a range of best- and worst-case scenarios to consider and provides information to assess whether an estimate is reasonable. We compared the final negotiated cash payment amount to estimates we obtained by varying the key assumptions used in regulators' analysis. Our analysis found that the final negotiated amount was generally within the range of different results based on alternative assumptions. Regulators established goals related to timeliness, the cash payment amounts, and the consistency of the treatment of borrowers and the distribution of payments. Regulators met their timeliness and amount goals and took steps to promote a consistent process, including providing guidance to examination teams and servicers.

[28]The four states are California, Delaware, Illinois, and Massachusetts.

Regulators Considered Projected Costs and Potential Remediation Amounts to Inform Negotiations

The cash payment agreement obligations under the amended consent orders were achieved through negotiations between regulators and participating servicers.[29] According to OCC, staff engaged with six servicers in November 2012 to discuss a cash payment agreement. As previously discussed, the estimated time it would take for borrowers to receive remediation and mounting costs of completing the reviews motivated the cash payment agreement under the amended consent orders. Following initial discussions with these six servicers, regulators engaged in similar discussions with an additional eight servicers subject to the foreclosure review requirement, according to regulatory staff.[30] The total negotiated cash payment amount for all 15 servicers that ultimately participated in amended consent orders was approximately $3.9 billion.[31] Generally, each servicer's share of the cash payment amount was determined based on its proportional share of the 4.4 million borrowers who were eligible for the foreclosure review.[32]

Regulators considered factors such as projected costs to complete file reviews and potential remediation amounts associated with the file reviews to inform negotiations with servicers. According to Federal Reserve staff, OCC led negotiations with servicers and the initial analysis of estimates that informed these negotiations. According to Federal Reserve staff, they participated in negotiations and relied on certain

[29]The amended consent orders established the total servicer obligations. Regulators did not finalize the cash payment amounts individual borrowers would receive for various categories until after the agreement was finalized.

[30]Fourteen of the 16 servicers subject to the foreclosure review participated in negotiations for the payment agreement. OCC stated that Goldman Sachs and Morgan Stanley were not included in negotiations. As noted earlier, regulators issued consent orders against most servicers in April 2011. However, the Federal Reserve issued consent orders against Goldman Sachs and Morgan Stanley in September 2011 and April 2012, respectively, and the process for submitting request-for-reviews had not yet begun when the agreement to amend the consent orders was announced. As such, Goldman Sachs and Morgan Stanley had separate payment factors used for their borrowers.

[31]In addition to the cash payment amount to be distributed to borrowers who were eligible for the foreclosure review, the amended consent orders required servicers to provide an additional $6 billion in foreclosure prevention actions. The foreclosure prevention actions were not limited to borrowers who were eligible for the foreclosure review. The foreclosure prevention action component of the amended consent orders is discussed later in this report.

[32]The cash payment amount paid by one servicer, EverBank, was determined based on its file review results. The final amount was larger than the amount it would have paid as a percentage of the total eligible population.

elements of OCC's analysis to inform the Federal Reserve's decisions regarding a payment agreement for the institutions they oversee. To inform negotiations with servicers, OCC developed two estimates of servicers' costs: an estimate of the projected cost to complete the reviews and an estimate for the potential remediation payout to borrowers. Specifically, OCC staff said they used the cost estimate as a means of estimating what servicers might be willing to pay and the potential remediation payout as an early attempt to estimate potential harm and understand how funds would be distributed among borrowers. The final amount of $3.9 billion was negotiated between regulators and servicers and was higher than the estimates regulators used to inform negotiations.

- *Projected cost to complete the reviews.* According to regulatory staff and documents, OCC and the Federal Reserve relied on cost projections from consultants which estimated that the remaining expected fees for consultants to complete the reviews would be at least $2 billion.[33] In November 2012, consultants reported cost projections based on time frames ranging from as short as 4 months for one servicer to as long as 13 months for other servicers—that is, 4 to 13 months beyond November 2012—to complete reviews.[34] Regulatory staff told us they also considered the amounts servicers had reserved to pay for potential remediation. Specifically, OCC included an estimate of the amount servicers had reserved to pay for potential remediation ($859 million), bringing the total estimated cost to complete the reviews had they not been terminated to approximately $2.9 billion ($2 billion to complete the reviews plus the $859 in remediation reserves).[35] According to regulatory staff and documents, the Federal Reserve relied on projected costs and

[33]This figure does not include projected costs for Goldman Sachs and Morgan Stanley as they did not participate in negotiations for the payment agreement.

[34]Consultants for two servicers did not estimate a completion date.

[35]According to OCC, some servicers set aside funds to cover the potential remediation payments to borrowers under the foreclosure review. These set-asides are referred to as remediation reserves. For servicers that established reserves, OCC collected information about the reserve amounts directly from servicers or their quarterly filings. For servicers that did not establish reserves, OCC used the other servicers' reserves as a proxy and scaled the amounts according to their proportion of the in-scope population.

remediation reserves provided by OCC to inform their decisions during negotiations.[36]

- *Potential remediation payout to borrowers.* Using the aggregate financial harm error rate—that is, the financial harm error rate for all completed files among all servicers—of 6.5 percent in December 2012, OCC estimated the potential remediation payout to borrowers from the reviews would be $1.2 billion, according to OCC documents.[37] In this analysis, regulators used amounts listed in the foreclosure review remediation framework and added an additional $1,000 per borrower for borrowers who submitted a request-for-review and were in the process of foreclosure. For borrowers who submitted a request-for-review and had a completed foreclosure, OCC added an additional $2,000 per borrower.[38] In addition, OCC staff told us they estimated the distribution of borrowers among the payment categories by extrapolating the results of one servicer's initial categorization to all servicers. Specifically, they used one servicer's preliminary distribution of borrowers to estimate the proportion of borrowers in each category. According to OCC staff and documents, they then applied these proportions to the borrower populations for other servicers and applied the 6.5 percent financial harm error rate to each category. According to OCC staff, they used the distribution of one servicer's population because it provided retail servicing nationwide. OCC staff stated that they analyzed the distribution of borrowers for two additional servicers and reached similar results. Federal Reserve staff told us they did not rely on OCC's financial harm error rate analysis to inform their decisions during negotiations; rather, as stated previously, they relied on cost projections and remediation reserves to inform their decisions during negotiations.

The data that were available to regulators to inform negotiations for the cash payment amount were limited. Because the reviews were incomplete in November 2012 when negotiations began, data were

[36]The OCC data the Federal Reserve used estimated servicers' remediation reserves at $875 million. OCC subsequently updated this estimate to $859 million after obtaining additional information from servicers.

[37]This figure does not include projected costs for Goldman Sachs and Morgan Stanley as they did not participate in negotiations for the payment agreement.

[38]For categories that did not have an assigned amount in the remediation framework, OCC assigned an amount.

limited due to uncertainty about the (1) costs associated with completing the reviews and (2) error rate for the entire population of 4.4 million borrowers eligible for review. First, given the incomplete state of the reviews in November 2012 when negotiations began, regulators had limited information about costs associated with completing the reviews. For example, cost projections available to regulators prior to the negotiations did not account for additional requests-for-review submitted in December 2012. The period for eligible borrowers to submit requests-for-review did not expire until December 31, 2012—after negotiations between regulators and servicers began. Between November 29, 2012, and December 27, 2012, the number of requests-for-review increased by more than 135,000 requests (44 percent). In addition, for most consultants, the cost projections did not account for the planned second phase of reviews, known as deeper dives, in which consultants would have conducted additional reviews based on errors identified in the first phase of reviews.[39] Among the servicers that participated in the payment agreements, all consultants we spoke with anticipated that they would conduct deeper dives. In its decision memorandum for the amended consent orders, OCC estimated an additional 1 to 2 years to complete the reviews. OCC staff stated based on the scope and complexity of the remaining reviews, they believed the reviews would have taken longer than consultants projected in November 2012.

Second, the incomplete nature of the reviews in December 2012 limited the extent to which regulators could estimate the financial harm error rate and potential remediation. The remediation reserves established by some servicers were based on reviews that had been conducted by consultants thus far. Similarly, the extent to which OCC could use the preliminary error rate of 6.5 percent for the completed reviews to reliably estimate the prevalence of harm in the population and potential remediation was limited. According to data provided to regulators, third-party consultants of servicers that had agreed to the payment agreement in January 2013 had completed final reviews for approximately 14 percent of the files slated for review, and none of the consultants had completed their sampled file reviews, making it difficult for OCC to reliably estimate the prevalence of harm or potential remediation payout for the entire 4.4 million borrowers

[39]By December 2012, none of the consultants had begun deeper dives.

eligible for the reviews.[40] In addition, reports provided to regulators by consultants of the servicers who agreed to the payment agreement in January 2013 showed variation in progress and financial harm error rates across servicers (see table 3).[41] For example, servicer "K" reported over 90 percent of the sampled file reviews complete for foreclosures in progress and foreclosures complete, with error rates of about 26.7 percent and 15.6 percent, respectively. In contrast, servicer "A" reported it had not completed any final reviews. Further, the segments and types of reviews that were completed varied among consultants. For example, one consultant told us they prioritized sampled files for review over requested file reviews, while another consultant told us they focused on completing requested reviews. Another consultant stated they prioritized requested reviews and pending foreclosures.

Table 3: Summary of Preliminary Completion and Error Rates for Servicers That Signed February 2013 Amended Consent Orders, by Servicer

	Foreclosure in progress				Foreclosure complete				Total	
	Sampled file reviews		Requested file reviews		Sampled file reviews		Requested file reviews			
Servicer	Final review complete	Financial error rate	Final review complete	Financial error rate	Final review complete	Financial error rate	Final review complete	Financial error rate	Final review compete	Financial error rate
A	0.0%	N/A	0.0%	N/A	0.0%	N/A	0.0%	N/A	0.0%	N/A
B	1.3	0.0%	1.9	0.0%	1.7	0.0%	1.5	0.0%	1.6	0.0%
C	1.3	2.7	0.4	5.3	1.7	15.5	0.3	3.6	0.9	8.9
D	11.4	11.5	4.3	0.0	21.7	22.7	1.2	0.0	6.0	8.9
E	20.0	0.0	0.2	0.0	19.5	0.0	0.4	0.0	4.2	0.0
F	30.9	10.1	0.6	0.0	36.2	2.6	4.5	18.2	25.9	6.3
G	33.6	19.3	3.7	0.5	38.3	24.6	7.3	0.8	9.6	11.4
H	42.0	2.0	0.1	0.0	55.5	0.9	0.3	0.0	27.1	1.2

[40]The April 2011 consent orders expressly allowed third-party consultants to use sampling techniques to select foreclosure files that would allow consultants to identify patterns in errors. The benefits of sampling include the ability to generalize results to the sampled populations.

[41]These servicers agreed in principle to the amended consent orders in January 2013, but the formal amended consent orders memorializing these agreements were announced in February 2013. The amended consent orders implementing the payment agreement required the consultants of the participating servicers to submit data on the progress of the file reviews as of December 31, 2012. These data, which the consultants submitted to regulators in the months following the payment agreement, are summarized in table 3.

	Foreclosure in progress				Foreclosure complete				Total	
	Sampled file reviews		Requested file reviews		Sampled file reviews		Requested file reviews			
Servicer	Final review complete	Financial error rate	Final review complete	Financial error rate	Final review complete	Financial error rate	Final review complete	Financial error rate	Final review compete	Financial error rate
I	46.7	0.2	0.9	18.2	14.6	1.1	1.2	26.2	22.3	0.6
J	52.0	0.5	4.3	0.0	65.9	4.6	7.9	5.2	26.1	3.3
K	98.1	26.7	27.5	32.1	99.2	15.6	33.4	17.8	57.3	23.9

Source: GAO analysis of OCC and Federal Reserve data from consultants.

Note: This table includes data on the following servicers that agreed in principle to the payment agreement in January 2013: Aurora, Bank of America, Citibank, HSBC, JPMorgan Chase, MetLife, PNC, Sovereign, SunTrust, US Bank, and Wells Fargo. Because the reviews were incomplete we obscured the identities of individual servicers. Goldman Sachs and Morgan Stanley also agreed to payment agreements in January 2013, but these servicers are not included in this table because the process for submitting requests-for-reviews for these servicers had not yet begun. Consent orders for most servicers were issued in April 2011. However, consent orders for Goldman Sachs and Morgan Stanley were issued in September 2011 and April 2012, respectively.

Although Regulators Conducted Limited Analysis, the Final Cash Payment Amount Generally Fell within a Reasonable Range

The final negotiated cash payment amount of $3.9 billion exceeded the two separate cost estimates of $2.9 billion and $1.2 billion that OCC generated to inform negotiations. However, OCC performed only limited analyses. For example, OCC did not vary key assumptions about costs and error rates used in its estimates, which would have been appropriate given the limitations of the available data. The Federal Reserve did not conduct any additional analyses to inform negotiations, but relied, in part, on data and analysis provided by OCC pertaining to projected costs and remediation reserves to inform its decisions regarding the payment agreement. As part of our review, we conducted a sensitivity analysis to test changes to major assumptions associated with the data regulators used to inform negotiations.[42] Specifically, we tested assumptions related

[42]Office of Management and Budget guidance states that sensitivity testing is a useful tool for examining the effects of changing assumptions on estimates. Analyzing the uncertainty associated with the incomplete information and testing the sensitivity of major assumptions are key elements of estimating costs and benefits. The guidance defines a sensitivity analysis as examining the effects of changing assumptions and ground rules on estimates. See Office of Management and Budget, Circular No. A-94, *Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs*, October 29, 1992. Further, GAO's Cost Estimating and Assessment Guide states that a sensitivity analysis provides a range of results that span a best and worst case spread and also helps identify factors that could cause an estimate to vary. See GAO, *Cost Estimating and Assessment Guide: Best Practices for Developing and Managing Capital Program Costs*, GAO-09-3SP (Washington, D.C.: Mar. 2009). Although regulators did not conduct a typical cost-benefit analysis, their analyses were intended to estimate the remaining costs of third-party consultants and the costs associated with remediating borrowers.

to projected costs, error rate, and borrower categorization. Further, to assess the reasonableness of the final negotiated amount, we used the results of our sensitivity analysis to compare the final negotiated cash payment amount to the amounts calculated when we varied key assumptions.[43] We found that the final negotiated amount of $3.9 billion was generally more than amounts suggested under various scenarios we analyzed.[44] (See app. I for more detail on this analysis.)

- *Projected costs.* In its analysis using consultants' reported projected costs, OCC estimated that the cost to complete the reviews would have been $2.9 billion. However, as we noted earlier, cost projections were limited and did not take into account the additional requests for review submitted by borrowers in December 2012 or the time associated with anticipated deeper dives. We calculated monthly costs using consultants' reports that were available from September 2012 through December 2012 and estimated the projected total cost to complete reviews under several alternative scenarios.[45] Our analysis showed that the total costs could have been either higher or lower than the estimates OCC used in its analysis, depending on how long the reviews would have taken if they had continued. For example, we estimated that if the reviews had taken an additional 13 months to complete (the longest projected time reported by consultants in November 2012), the cost would have been nearly $2.5 billion—about $460 million (23 percent), more than the regulators' estimate of $2 billion. Conversely, if the reviews had taken less time to complete than the consultants projected, regulators' analyses may have overestimated costs. We then added OCC's remediation reserve

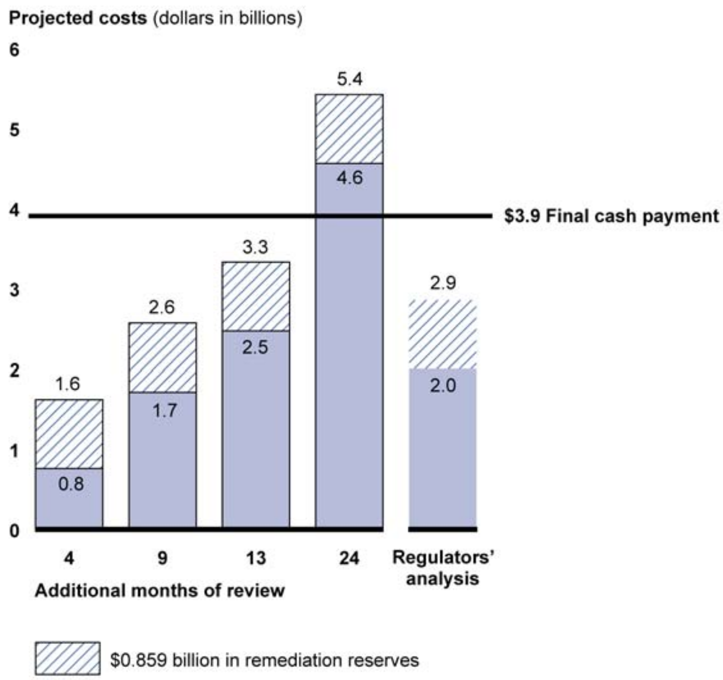
[43]GAO's Cost Estimating and Assessment Guide describes a reasonableness review as a type of independent cost estimate review that addresses only a program's high-value, high-risk, and high-interest elements to analyze whether the estimate is sufficient with regard to the validity of cost and schedule assumptions and cost estimate methodology rationale and whether it is complete. See GAO-09-3SP.

[44]Similar to OCC's analyses, our analyses are based on data from incomplete reviews and do not reflect the actual financial harm individual borrowers may have experienced.

[45]Servicers began reporting cost data in late August 2012. As such, we used cost estimates beginning in September 2012. Cost reports for September 2012 through December 2012 were not available for all servicers. As such, we used all available reports in that range. For 10 servicers, data were available for 2 months, for 2 servicers data were available for 3 months, and for 2 servicers, data were available for 4 months. Where data were available, we calculated average monthly costs. Where data were not available to calculate an average, we calculated the actual monthly cost for 1 month.

estimate of $859 million to our cost estimates. Including the remediation reserves, our estimate for projected costs based on 13 additional months of review was $3.3 billion (see fig. 2). Both our estimated amount at 13 months and OCC's estimation of $2.9 billion are less than the actual final negotiated amount of $3.9 billion. Because OCC stated the reviews could take up to an additional 2 years, we included an additional 24 months in our analyses, which resulted in an estimate of $4.6 billion. OCC staff stated that, based on the experience of the servicer that continued with the reviews and had a relatively small number of borrowers eligible for review, an additional 2 years or more to complete the reviews was a likely scenario for other servicers had they not participated in the amended consent orders.

Figure 2: GAO Analysis of Projected Costs to Complete Reviews for Various Time Frames Compared to the Office of the Comptroller of the Currency (OCC) Analysis

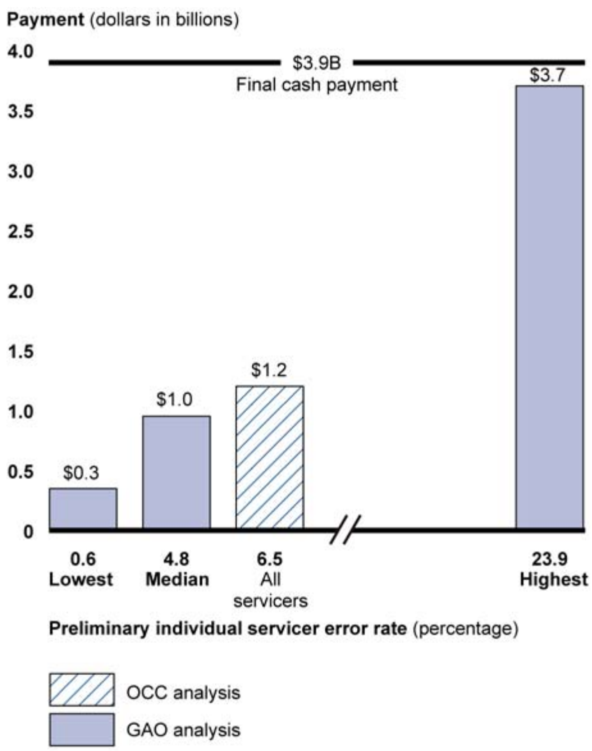


Source: GAO analysis and review of OCC and Federal Reserve data from consultants.

- *Financial harm error rate.* As an alternative measure, OCC estimated remediation payouts based on a preliminary financial harm error rate of 6.5 percent for file reviews completed as of December 2012 across all servicers. On the basis of that analysis, OCC estimated that remediation payouts from the file reviews could be $1.2 billion.

However, as discussed above, the progress and findings of errors and financial harm among servicers varied significantly. We analyzed the projected remediation payments using the lowest, median, and highest preliminary error rates for the 13 servicers that participated in the payment agreement in January 2013.[46] Our analysis generated a range of estimated remediation payouts between 71 percent below and almost 206 percent above the amount generated by OCC's analysis using the average error rate of 6.5 percent (see fig. 3). However, the final, negotiated cash payment of $3.9 billion was higher than the payment of $3.7 billion that we calculated at the highest reported servicer error rate.

Figure 3: GAO Analysis of Potential Remediation Payments at Various Error Rates Compared to the Office of the Comptroller of the Currency (OCC) Analysis

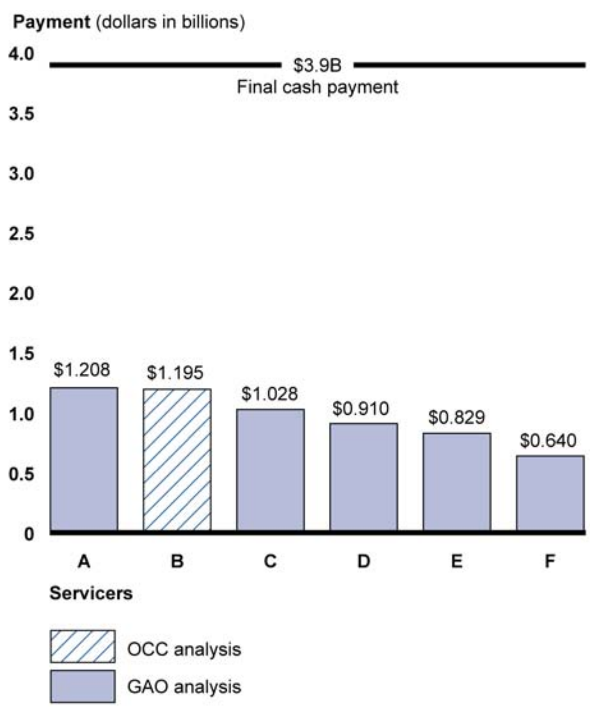


Sources: GAO analysis of OCC and Federal Reserve data from consultants.

[46]The amended consent orders implementing the payment agreement required the consultants of the participating servicers to submit data on the progress of the file reviews as of December 31, 2012. We used these data for our analysis.

- *Borrower categorization.* As stated previously, OCC estimated the distribution of borrowers among the payment categories in its error rate analysis by extrapolating the results of one servicer's initial borrower categorization to all servicers. OCC and the Federal Reserve told us that each servicer's borrower population was unique. As such, different servicers could have different borrower distributions among the payment categories. We analyzed the distribution of borrowers for the other five servicers involved in initial amended consent order negotiations based on preliminary data servicers provided to regulators. Our analysis showed that the final, negotiated cash payment of $3.9 billion was higher than the estimates that would have resulted from using any of the other five servicers' borrower distributions (see fig. 4).

Figure 4: GAO Analysis of Potential Remediation Using Initial Six Servicers' Distribution of Borrowers among Payment Categories Compared to the Office of the Comptroller of the Currency (OCC) Analysis



Sources: GAO analysis of OCC and Federal Reserve data from servicers.

Prior to agreeing on a final cash payment amount, both the Federal Reserve and OCC conducted additional analyses to corroborate that the negotiated cash payment amount was acceptable. For example, the Federal Reserve estimated payment amounts to borrowers by category under the tentative agreement to confirm that the negotiated amount would not result in trivial payments to borrowers. This analysis showed that a $3.8 billion total cash payment would provide payments to borrowers in each category ranging from several hundred dollars up to $125,000. Therefore, after considering these cost estimates as well as the timelines for project completion, the Federal Reserve determined that the negotiated amount was acceptable because it exceeded the combined expected fees and remediation reserve estimates of completing the reviews and would allow for nontrivial payment amounts to borrowers in each category. OCC staff stated they conducted similar, informal analyses of the tentative settlement agreement. Specifically, OCC staff stated they considered the error rate for proposed cash payment amounts during negotiation. For example, staff estimated that the actual error rate from completed reviews would have had to exceed nearly 26 percent before remediation payments under the reviews would exceed the negotiated cash payment amount. Therefore, according to this analysis, OCC determined that the negotiated amount was acceptable. Staff also stated they believed the negotiated amount would be more than sufficient to cover the total amount servicers would have paid to harmed borrowers under the foreclosure review.

Regulators stated that both the limited nature of the information available during the negotiation and the process for determining the amounts paid by servicers under the amended consent orders were not typical. According to Federal Reserve staff, in a typical process, they would conduct investigations to determine actual harm and perform analyses to determine compensation amounts. For example, for a recent enforcement order against a subprime mortgage lender, which involved a much smaller population of potentially harmed borrowers than the foreclosure review, the Federal Reserve required the servicer to analyze individual files to determine the specific amount of harm. OCC staff stated that because the negotiated payment agreement involved the discontinuation of the reviews required by the original consent orders, they did not have data that would otherwise typically have been available. Both OCC and Federal Reserve staff told us there are no prior enforcement actions that are comparable to the payment agreement under the amended consent orders. OCC staff stated that the amended consent orders are atypical in terms of the number of borrowers eligible for reviews (over 4 million), the number of projected file reviews (over 739,000), and the extensive nature of each review. In addition, regulators stated that, given the limited progress of the file reviews, they did not believe extensive analysis was possible. While regulators did have more analytical methods available to them, we recognize that they had limited data available.

Regulators Generally Met Their Goals for the Cash Payments

Generally, regulators set three goals for the process of categorizing and distributing cash payments to borrowers:[47]

1. provide compensation to a large number of borrowers before 2014,
2. provide cash payments to borrowers of between several hundred dollars and $125,000, and
3. reduce the possibility of inconsistent treatment of borrowers among servicers, when compared with the file review results.

Regulators took steps to meet their goal for the timeliness of distribution of cash payments to a large number of borrowers. As of December 2013, checks had been distributed to approximately 4 million borrowers covered by the 13 servicers that were part of the January 2013 amended consent order announcements. As shown in figure 5, California and Florida were the states with the largest number of checks issued as well as the largest total amount paid to borrowers.[48] Specifically, borrowers in California and Florida received about 32 percent of the total issued checks (1.3 million checks collectively worth approximately $1.2 billion). In addition, borrowers in seven states (Arizona, Georgia, Illinois, Michigan, Nevada, Ohio, and Texas) received checks worth a total of between $100 million and $200 million per state. Although the checks were sent to the mailing

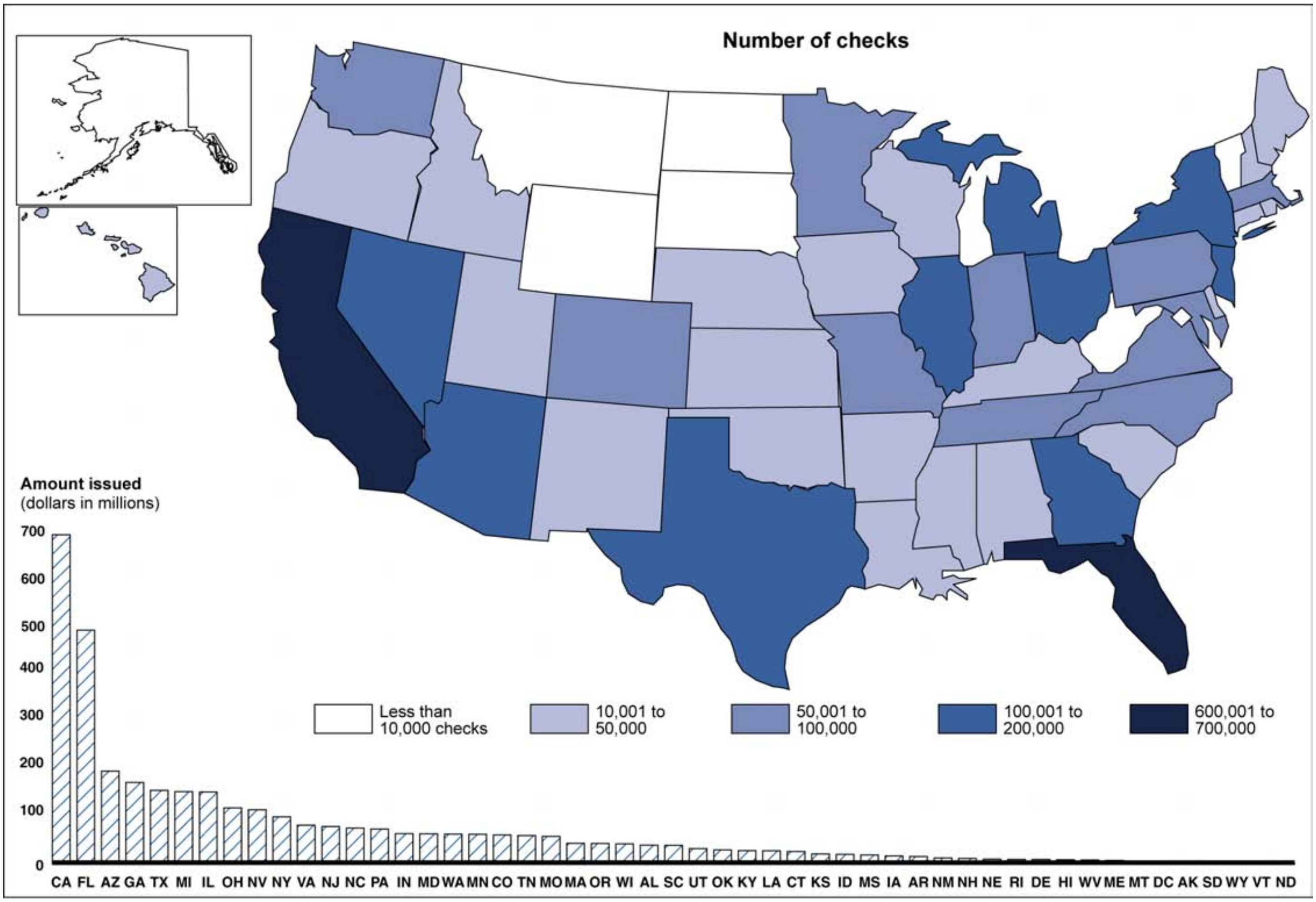
[47]As we noted earlier, in total, 15 servicers signed amended consent orders to terminate file reviews and provide cash payments to borrowers, among other actions. However, two of these servicers were required to complete their payment process over a different time period or use a different approach and are not part of this assessment. Specifically, in light of the progress of the file review process for 1 of the 15 servicers, the servicer was required to pay borrowers based on the initial file review results rather than the cash payment framework. Under this methodology, borrowers who received a file review where an error was identified were paid according to the remediation framework established for the file review, plus, for those borrowers whose remediation amount was less than $1,050, an additional amount to ensure they received a minimum payment of $1,050. The remaining 78 percent of borrowers who were not reviewed received a flat payment amount of $1,050. According to OCC staff, these payments will be sent to borrowers during the first half of 2014. In addition, 1 of the other servicers not covered by this assessment signed the amended consent order in July 2013, approximately 6 months after the orders were signed for the other 13 servicers. The cash payment categorization process was similar to what regulators oversaw for the other 13 servicers, but according to Federal Reserve staff the timeline and payment amounts varied. According to the Federal Reserve, the third-party administrator began distributing $230 million in checks to approximately 232,000 borrowers in January 2014.

[48]State-level data represent the mailing address of the recipient and not the address of the property eligible for the foreclosure review.

address of the borrower rather than the property address of the affected property, according to our analysis of Mortgage Bankers Association data, these states correspond to some of the states with the highest foreclosure inventories in 2009 and 2010.[49] In comparison, borrowers in five states and the District of Columbia received checks worth a total of less than $5 million per state (Alaska, District of Columbia, North Dakota, South Dakota, Vermont, and Wyoming).

[49]Mortgage Banker Association reports quarterly data on the performance of single-lien family residential mortgages in the National Delinquency Survey, which it estimates represented about 88 percent of the first-lien residential mortgage market during the fourth quarter of 2010. The foreclosure inventory measure represents all loans in the foreclosure process at the end of the reporting quarter.

Figure 5: Number and Dollar Value of Cash Payment Checks Issued, by State Where Check Was Sent, as of December 2013



Sources: GAO analysis of payment administrator data; Map Resources (map).

Note: As part of the amended consent orders, 13 servicers that agreed to amend their orders in January 2013 provided cash payments of between several hundred dollars and $125,000 to eligible borrowers from the foreclosure review. Checks were sent to the mailing address of the eligible borrower, rather than the address of the property eligible for foreclosure review.

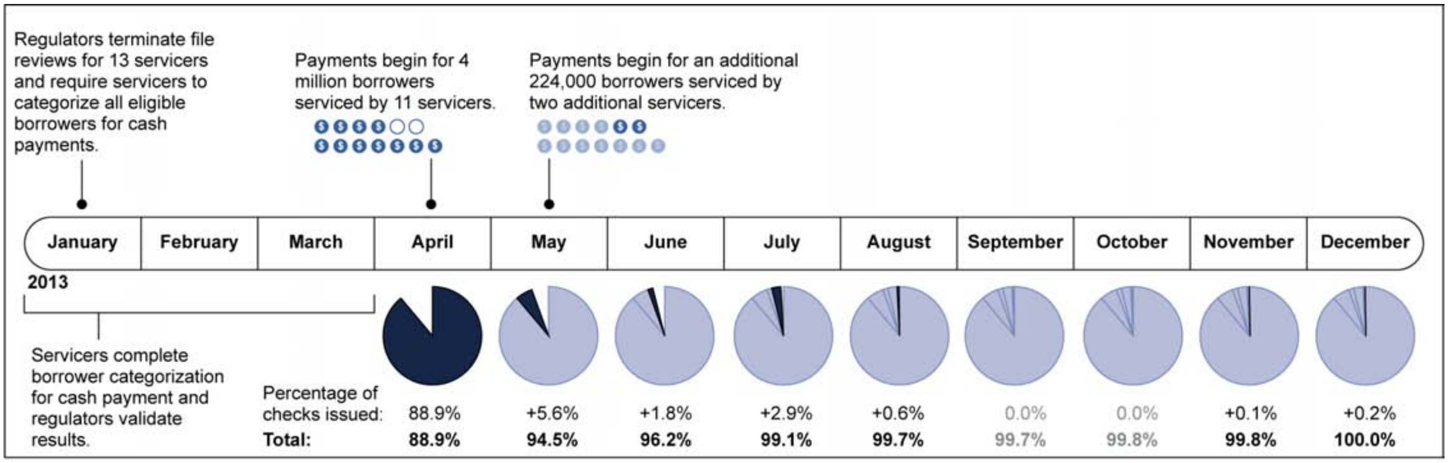
To facilitate meeting the goal of a timely borrower categorization process, regulators defined specific loan and borrower characteristics—such as extent of delinquency, forbearance or repayment plan start date, foreclosure sale date, or bankruptcy filing date—for each cash payment category in advance. They expected servicers to use these characteristics to categorize borrowers based on the data in servicers' computer systems—review of files by hand to make a judgment about a borrower's category was generally not permitted.[50] Regulators also expected servicers to conduct an internal review of their categorization results—for example, several servicers engaged their internal audit department, which are separate from the servicers' mortgage servicing operations, to conduct a preliminary validation of the results to identify problems or weaknesses with categorization activities. According to several examination staff that we spoke with, they met regularly with the staff responsible for internal reviews to discuss their approach and review their results. This step contributed to a more timely verification process by the examination teams as they were already familiar with the servicer's internal review procedures and results. Finally, regulators asked servicers to select one third-party payment administrator to facilitate issuance of checks. According to OCC staff, regulators worked closely with this payment administrator concurrently with the categorization process to define the work processes for check distribution to help facilitate a timely distribution of checks to borrowers once the categorization process was complete.

The cash payment categorization process was largely completed by April 2013 for the 13 servicers, and the payment administrator began issuing checks to each of the approximately 4.2 million eligible borrowers serviced by the 13 servicers that were part of the January 2013 amended consent order announcements. As figure 6 shows, the payment administrator issued approximately 89 percent of checks to borrowers in April 2013 with the majority of the remaining checks issued by July 2013. As of early January 2014, approximately 193 payments remained to be issued. The payment administrator had not issued these checks because of borrower-specific challenges, including problems with the borrower's taxpayer identification number or the need to issue multiple checks for the same loan. The payment administrator issued approximately 96,000 checks for amounts that were less than the borrower should have received. Supplementary checks worth about $45 million were issued to the affected borrowers in May 2013. As of the beginning of January 2014, approximately 81 percent of the issued checks had been cashed. According to OCC staff, to help promote check cashing, regulators instructed the payment administrator to conduct additional research on a

[50]As we discuss later in the report, servicers had the option of engaging the consultants who conducted the file reviews for the foreclosure review process to complete file reviews for borrowers in the two highest categories—SCRA-eligible borrowers and borrowers in foreclosure who were not in default.

borrower's address and re-issue checks to borrowers whose initial checks had expired and had not been cashed to try and increase the check-cashing rate.[51]

Figure 6: Timeline of Key Dates for the Cash Payment Categorization and Check Issuance Processes



Source: GAO analysis of payment administrator data.

Note: As of early January 2014, approximately 193 payments remained to be issued. Due to rounding, the percentage of checks issued is 100 percent.

Under the cash payment process, borrowers generally received cash payments of between $300 and $125,000, in line with regulators' goal of providing those amounts to borrowers.[52] In general, the amounts paid to borrowers in the same category varied depending on whether the borrower had submitted a request-for-review—those borrowers received a higher payment amount than other borrowers—and whether the foreclosure was in process, had been rescinded, or was complete as of

[51]As a fraud prevention measure recommended by the payment administrator, issued checks expired after 90 days.

[52]Borrowers in the two categories that received the highest payment amounts of up to $125,000 (servicer foreclosed on borrower eligible for SCRA protections or servicer initiated or completed foreclosure on borrower who was not in default) may have received additional payments that resulted in total cash payment amounts greater than $125,000 due to additional payments for lost equity and interest.

December 31, 2011.[53] In addition, those borrowers serviced by two servicers that signed the original consent orders after April 2011 and therefore had not participated in the request-for-review process were generally paid at the same level or at a higher level—24 percent to 30 percent more—than a borrower who did not submit a request-for-review.[54] As seen in figure 7, the largest number of borrowers (1.2 million borrowers, or 29 percent of the eligible population) were placed in the category for approved modification requests, which provided payments of between $300 and $500, depending on whether the borrower was considered to have submitted a request-for-review. About 1,200 borrowers were paid at the maximum rate of $125,000, including approximately 1,100 SCRA-eligible borrowers.[55] Approximately 11 percent (439,000 borrowers) were paid an additional amount designated for borrowers who had submitted requests-for-review.

[53]To determine payment amounts, regulators considered the loan's status (in process of foreclosure, foreclosure completed, rescinded foreclosure) as of December 31, 2011. A loan that had been in the process of foreclosure at any time during 2009 and 2010 but had not completed foreclosure or had been rescinded was considered to be in process to determine the payment amount.

[54]As we noted earlier, Goldman Sachs and Morgan Stanley signed the original consent orders in September 2011 and April 2012, respectively.

[55]Servicers had the option of retaining the third-party consultant hired to work on the foreclosure review to complete file reviews for borrowers in the SCRA and borrower not in default at the time of foreclosure categories and provide remediation to harmed borrowers. As we discuss later in the report, most servicers used this option. As a result, some borrowers were categorized into these two categories based on file review results. Other borrowers were categorized into these categories based on their loan and borrower characteristics. Borrowers whose files were reviewed where harm was not identified were recategorized in the next highest payment category based on their loan and borrower characteristics.

Figure 7: Percentage of Borrowers in Each Amended Consent Order Cash Payment Framework Category

Categories		Percentage of total
(1a)	Servicer foreclosed on borrower eligible for Servicemembers Civil Relief Act (SCRA) protection	<1 %
(1b)	Servicer charged servicemembers interest rates that exceed SCRA Section 527 limits	<1
(2)	Servicer initiated or completed foreclosure on borrower who was not in default	<1
(3)	Servicer initiated or completed foreclosure on borrower who was protected by federal bankruptcy law	1
(4)	Servicer completed foreclosure on borrower who was meeting all requirements of documented forbearance plan	<1
(5)	Servicer failed to convert borrower to permanent modification after three successful payments under a written trial-period plan	<1
(6)	Servicer completed foreclosure on borrower who was performing all requirements of the written trial-period plan	<1
(7)	Modification request approved	29
(8)	Modification request denied	23
(9)	Modification request received but no underwriting decision made	11
(10)	Servicer did not engage with borrower in a loan modification or other loss mitigation action	22
(11)	All other loans	15

Source: GAO analysis of OCC and Federal Reserve data.

Note: The order of the categories reflects regulators' determination of the potential severity of an error, if an error had occurred. The first or higher categories are generally associated with larger cash payment amounts than lower categories. SCRA Section 527 limits (§207) caps interest rates at 6 percent for properties owned by eligible active duty members of the military.

Although regulators met their cash payment amount goal, they recognized that some borrowers might have received more or less through the foreclosure review process. According to regulators, as part of their process to determine the cash payment amounts to be paid to borrowers in each category, they considered the amount that borrowers would have been paid for errors in that category under the file review process, among other considerations. Under the cash payment framework, borrowers in the highest paid categories—SCRA-eligible borrowers and borrowers foreclosed upon who were not in default—received the same amounts as they would have under the file review process. For the other categories, the final cash payment amounts were generally less than the amounts that would have been paid for an error in that category under the file review process for borrowers who did not submit a request-for-review.[56] According to regulators, they decided to pay higher amounts to borrowers who submitted requests-for-review—generally double the amounts paid to borrowers who did not submit requests-for-review—because they felt that those borrowers had an expectation of receiving a file review and should be compensated for that expectation.[57] According to regulators, in adopting the cash payment process, they recognized that some borrowers would fare better or worse that they might have under the file review process. For example, some borrowers who might not have received remediation under the file review process, either because a file review did not identify harm or the file was not reviewed, would receive a cash payment. However regulators said the converse was also true, that is, borrowers who through the file review could have been found to have been harmed and therefore eligible for remediation could potentially receive a lower amount through the cash payment process. OCC and Federal Reserve staff also stated that under the amended consent orders, borrowers were not required to waive or release any rights or claims against the servicer to receive a cash payment.

According to regulators, in recognition of challenges in achieving consistent results among servicers during the file review process, they took steps to promote a consistent approach to the cash payment categorization process—one of their goals—such that similarly situated borrowers would have similar results.[58] For example, regulators held weekly meetings with OCC and Federal Reserve examination team staff as well as with servicers to discuss the categorization process. In addition, they provided guidance to examination teams and servicers for

[56]For some payment categories, such as bankruptcy, the remediation amounts to be paid under the file reviews were not specified as the amounts were to be determined on a case-by-case basis.

[57]For example, in the “modification request denied” category, a borrower with a completed foreclosure would receive $3,000 if he or she had not submitted a request-for-review and double that amount ($6,000) if a request-for-review had been submitted. However, for two of the categories—modification request approved and all other loans—the difference was less than double so that borrowers who did not submit a request received $300 and borrowers who submitted a request were provided a cash payment of $500.

[58]As we have previously reported, the complexity of the file review process, overly broad guidance, and limited monitoring for consistency impeded regulators’ ability to ensure consistent results for borrowers through the file review process. See GAO-13-277 for discussion of the file review process and regulators’ oversight activities, including oversight related to consistency.

the categorization process, including examination teams' oversight activities. According to examination teams, the guidance provided was timely, and given the limited time to complete the categorization process, they generally worked closely with the servicer to ensure any resulting changes were incorporated. OCC headquarters staff also conducted on-site visits to each servicer and examination team to review the categorization process and activities. According to OCC staff, these on-site visits allowed for a comparison of servicers' categorization processes and the oversight processes used by the examination teams to help ensure these activities were done according to the guidance and as a result would be largely consistent. Similarly, the Federal Reserve examination teams and Federal Reserve Board staff met in person to discuss the categorization process and oversight activities as part of their efforts to promote consistent results. Finally, according to a few servicers we spoke with, to promote consistent results some servicers met early in the process, with regulators' input, to discuss the regulators' categorization guidance and mentored other servicers as they conducted their initial categorization activities to help ensure there was a shared interpretation of the guidance among servicers.

However, there were some differences in the categorization results for borrowers among servicers as a result of flexibilities in the categorization process, as well as limitations with some servicers' data systems. For example, servicers were given the option of retaining the third-party consultant hired to work on the foreclosure reviews to complete file reviews for borrowers who were categorized into the first two categories—SCRA-eligible borrowers and borrowers not in default at the time of foreclosure—rather than relying on the loan and borrower characteristics regulators' specified for those categories. Based on the file review results, servicers were required to provide remediation to borrowers whom the file reviews determined had been harmed and re-categorize the remaining borrowers into the next highest payment category for which they qualified according to other loan and borrower characteristics. Based on our review of regulators' documents, 12 of the 13 servicers used this option and directed consultants to complete file reviews for borrowers who were placed in some of these categories.[59]

[59]Specifically, we found that 11 of the 13 servicers used the consultant to conduct file reviews for borrowers in the SCRA categories. Six of the servicers engaged the consultant to conduct file reviews or verify the servicer's results for the other category, that is, borrowers not in default at the time of the foreclosure.

According to OCC staff and one servicer we spoke with, some consultants had already completed or were near completion of the file reviews for SCRA-eligible borrowers.

Similarly, missing or unreliable data in servicers' systems resulted in some servicers being unable to categorize borrowers according to the cash payment framework criteria and instead placing borrowers in the highest category for which they had data. According to our review of examination teams' conclusion memorandums and interviews with examination teams, at least 5 of the 13 servicers were unable to place some borrowers into the most appropriate category of the framework because servicers' systems did not have the data necessary to categorize borrowers according to the loan and borrower characteristics provided by regulators. For the majority of these servicers, the percentage of affected borrowers was relatively small. For example, in one case data limitations affected roughly 4 percent of borrowers at that servicer, whereas in another case, they impacted approximately 8 percent of that servicer's borrowers. However, for one servicer, data limitations were extensive enough that regulators required the servicer to stop the categorization process for approximately 74 percent of eligible borrowers and categorize those borrowers into higher categories than their characteristics might have indicated if data had been available in the servicer's system. According to regulators, they mitigated the impact of these limitations on individual borrowers by instructing servicers to place borrowers in the highest possible category from which they could not be excluded due to missing or unreliable data. Figure 8 illustrates an example of how the same borrower might have had different results depending on the servicer.

Figure 8: Treatment of Hypothetical Borrower for Three Different Servicers

Borrower characteristics	Servicer	Borrower receives	Servicer chose file review by third party	Payment category	Explanation
[x] Completed foreclosure [x] No request-for-review submitted [x] Eligible for Servicemember Civil Relief (SCRA) protection and no SCRA-related harm [x] No loan modification or loss mitigation engagement with servicer	A	$125,000	No	SCRA (by default)	All borrowers with right to SCRA protections categorized into the SCRA category.
	B	$300	Yes	Servicer did not engage with borrowers in a loan modification or other loss mitigation action (completed categorization)	Borrower run through all categories and placed according to their characteristics.
	C	$3,000	Yes	Modification request denied (stopped categorization)	Borrower placed into highest category for which the servicer had reliable data.

Sources: GAO analysis of OCC and Federal Reserve data; Art Explosion (images).

Note: These three servicers paid borrowers according to the same cash payment framework with the same potential cash payment amounts for each category.

Placing borrowers in higher categories when data were unavailable potentially had a distributional impact on other borrowers. Where there is a set sum of money, as in this case, making changes by placing more borrowers than anticipated in higher categories could result in either (1) lower payment amounts per borrowers in those categories or (2) lower-than-anticipated amounts for borrowers in lower categories. According to Federal Reserve staff the relatively small number of borrowers affected by these changes meant that the distributional impact was minimal.

Regulators Did Not Establish Specific Objectives for Foreclosure Prevention Actions, and Oversight Is Limited

Regulators did not establish specific objectives for the $6 billion obligation they negotiated with servicers to provide foreclosure prevention actions. However, they communicated the expectation that the actions be meaningful, and they set forth broad principles for servicers' entire portfolio of foreclosure prevention actions. To negotiate the amount and determine the design of the foreclosure prevention component of the amended orders, regulators did not follow their typical practices to inform supervisory actions, which include analysis of information. For example, analysis of the volume of servicers' recent foreclosure prevention actions might have helped regulators assess the sufficiency and feasibility of the required obligation, among other things. According to most servicers we spoke with, they would be able to meet the required volume of activities using their existing foreclosure prevention activities. Regulators did collect data to inform oversight of servicers' financial obligations, and OCC and the Federal Reserve are requiring examination teams to oversee servicers' policies and monitoring controls related to the principles. However, according to Federal Reserve staff, most of the Federal Reserve examination teams have not conducted their oversight activities related to the foreclosure prevention principles and regulators' guidance for oversight of the principles does not identify actions examination teams should take to evaluate or test implementation of these principles. According to regulators' supervisory guidance as well as federal internal control standards, establishing specific monitoring activities, including testing, is important to effective supervision. In the absence of such monitoring activities, regulators may not know if a key element of the amended consent orders is being realized.

Regulators Negotiated Foreclosure Prevention Obligations without the Benefit of Specific Objectives or Analysis

The $6 billion foreclosure prevention action obligation amount was negotiated by regulators and servicers and was not framed by specific objectives or informed by any data or analysis. According to OCC's and the Federal Reserve's supervisory manuals, enforcement actions, including consent orders, are used to address specific problems, concerns, violations of laws or agreements, and unsafe or unsound practices, among other things, that are identified through supervisory examinations.[60] Further, federal internal control standards highlight the importance of establishing clear objectives for activities undertaken by agencies as a means of ensuring that agency outcomes are achieved.[61] The foreclosure prevention component of the amended consent orders, however, was not intended to address specific problems, violations, or unsafe or unsound practices. According to the Federal Reserve, the $6 billion required foreclosure prevention actions represent additional remediation, above and beyond the $3.9 billion cash payment required of servicers in lieu of finishing the reviews. OCC staff stated that the foreclosure prevention component of the amended consent orders mirrored the requirement that servicers provide loss mitigation options to harmed borrowers under the file review process. Although regulators negotiated the foreclosure prevention action obligations in the amendment that terminated the foreclosure review for most servicers, the

[60]See OCC, *Bank Supervision Process: Comptroller's Handbook* (Washington, D.C.: May 2013) and *Policies and Procedures Manual: Bank Supervision Operations, Enforcement Action Policy* (Washington, D.C.: July 2001). Also, see Board of Governors of the Federal Reserve System, *Division of Banking Supervision and Regulation: Bank Holding Company Supervision Manual* (Washington, D.C.: July 2013).

[61]See GAO-01-1008G and GAO/AIMD-00-21.3.1.

foreclosure prevention obligations were not related to preliminary findings from the reviews. In addition, the actions were not specifically intended to assist only borrowers who were eligible for the reviews; servicers can count foreclosure prevention actions performed to assist any borrower in their portfolio toward their obligation under the amended consent order provided the action meets the criteria in the orders.[62] The amended consent orders, however, directed servicers to attempt to prioritize these borrowers for assistance to the extent practicable. Regulators stated that they included the foreclosure prevention component in the amended consent orders because the National Mortgage Settlement had a similar component.[63] Further, regulators stated that the foreclosure prevention component in the amended consent orders was intended to convey to servicers the importance of foreclosure prevention activities.

While regulators did not define specific objectives for the foreclosure prevention component, they communicated some expectations for the $6 billion obligation and established broad principles for servicers' foreclosure prevention actions in general. For example, in a speech, the Comptroller of the Currency noted that the foreclosure prevention obligations in the amended consent orders would result in meaningful relief to borrowers still struggling to keep their homes and could impact those families and their communities.[64] The Chairman of the Board of Governors of the Federal Reserve System, in testimony before Congress, noted that the foreclosure prevention obligations provided relief to borrowers rather than payments to consultants for the foreclosure review.[65] In addition, the amended consent orders state broad principles for servicers' ongoing foreclosure prevention and loss mitigation actions in general, including providing affordable, sustainable, and meaningful relief for qualified borrowers with a preference for activities designed to

[62]As we described previously, the amended consent orders identify specific activities, such as loan modifications and short sales, for which servicers can receive credit.

[63]Among other things, the National Mortgage Settlement required servicers to provide aid to homeowners needing loan modifications through principal reduction, refinancing, or other forms of relief.

[64]Thomas J. Curry, Comptroller of the Currency, remarks before Women in Housing and Finance (Washington, D.C.: Feb. 13, 2013).

[65]Ben S. Bernanke, Chairman of the Board of Governors of the Federal Reserve System, *Monetary Policy and the State of the Economy,* testimony before the House Committee on Financial Services, 113th Cong., 1st sess., February 27, 2013.

keep borrowers in their homes and ensuring that foreclosure prevention actions are nondiscriminatory such that actions to not disfavor a specific geography, low- or middle-income borrowers, or a protected class. According to regulators, these principles were to be applied to servicers' broad portfolio of foreclosure prevention activities (not just those undertaken as part of the $6 billion obligation under the amended consent orders).

Although regulators stated they considered other similar settlements, they did not collect or analyze relevant data to inform the amount or structure of the foreclosure prevention component of the amended consent orders. According to regulators' supervisory manuals, regulators typically analyze information to inform enforcement actions. Despite the absence of identified problems and specific objectives to guide the analysis, a variety of data were available to regulators that could potentially have informed negotiations. In addition, while it is typical for regulators and their supervised institutions to negotiate consent orders, regulators stated that the negotiations for the amended consent orders did not follow the typical enforcement action process. According to OCC staff, the decision to significantly amend the consent orders by replacing the foreclosure review with a cash payment agreement and a foreclosure prevention component was unprecedented. We recognize the atypical nature of the negotiations and regulators' desire to distribute timely payments to eligible borrowers. However, we believe some data collection and analysis would have been feasible and useful to inform the amount and structure of the foreclosure prevention component. Regulators, in particular OCC, had access to loan-level data about some servicers' foreclosure prevention actions through the data they collect from servicers for the quarterly OCC Mortgage Metrics reports and that servicers report to Treasury's Making Home Affordable program, which includes Treasury's Home Affordable Modification Program (HAMP), that they could have used to inform negotiations.[66] Other useful data were available from servicers. The following are examples of types of analyses that could be useful to inform such negotiations.

[66]OCC collects performance data on first-lien residential mortgages serviced by seven national banks and one federal savings association with the largest mortgage-servicing portfolios for the Mortgage Metrics reports. The mortgages serviced by these institutions compose 50 percent of all first-lien residential mortgages outstanding in the United States. Treasury's HAMP provides incentive payments to servicers to provide loan modifications that lower borrowers' monthly payments to affordable levels and help them avoid foreclosure.

- *Analysis of the value of various types of foreclosure actions undertaken by servicers.* Analysis of the value of various foreclosure actions undertaken by servicers may have provided information for regulators to consider in assessing the sufficiency of the negotiated amount to provide meaningful relief to borrowers. For example, data on servicers' recent volume of foreclosure prevention actions, measured by the unpaid principal balance of loans at the time these actions were taken, as well as an average or range of unpaid principal balances for various types of actions undertaken by servicers, may have provided a basis for gauging the number of borrowers who might be helped with various amounts of foreclosure prevention obligations under the amended consent orders. Our analysis of HAMP data shows that the average unpaid principal balance for loans that received a modification through HAMP was approximately $235,000. As such, in a hypothetical scenario in which a servicer was obligated to provide $100 million in foreclosure prevention actions and reached the obligation by providing only loan modifications, it could be estimated that 425 borrowers would be assisted by the obligation as measured by the unpaid principle balance of the loans.[67]

- *Analysis of the volume of servicers' typical foreclosure prevention actions.* Analysis of the volume of servicers' typical foreclosure prevention actions might have provided insight into the potential impact, if any, of the foreclosure prevention actions and informed the feasibility of the negotiated amounts—that is, the extent to which servicers could reach the required amounts within the 2-year period using their existing programs. Four of the seven servicers we interviewed that participated in amended consent orders indicated that they anticipated they would be able to meet the required volume of activity using their existing foreclosure prevention activities. Of these four servicers, two indicated they could achieve the required volume of foreclosure prevention actions within the first year, and one servicer indicated it would be easy to meet the requirement given that they regularly provide much larger amounts of foreclosure prevention assistance than their negotiated obligation. One servicer that we did not interview reported large volumes of activities using their existing programs and policies during the first 6 months of the eligible period. Specifically, between January and June 2013, the servicer reported

[67]The amended consent orders provide credit based on the unpaid principal balance of the loan.

short sale activities that were approximately 87 percent of the required obligation. During this same period, the servicer reported it had also undertaken loan modification activities that were valued at about 7 times more than their total required foreclosure prevention obligation.[68] In contrast, officials from one servicer we interviewed stated they opted to make payments to housing counseling agencies to fulfill the amended consent order requirement because they determined they would not be able to meet the obligation with their existing portfolio since the loans in the portfolio were not highly delinquent.

- *Analysis of alternative crediting approaches.* Analysis of the results of alternative crediting approaches may have provided insight into the sufficiency of the negotiated amount—that is, the extent to which the required obligations would reach an appropriate number of borrowers as determined by regulators. The amended consent orders provide credit based on the unpaid principal balance of the loan. On the basis of this methodology, a loan with an unpaid principal balance of approximately $235,000, for example, would result in a credit of approximately $235,000 toward the servicer's obligation, regardless of the action taken. However, alternative crediting structures exist. For example, the National Mortgage Settlement, which includes a similar foreclosure prevention component, uses an alternative approach that generally provides credit based on the amount of the principal forgiven or assistance provided. Using this methodology, for a loan modification with the same unpaid principal balance of approximately $235,000, where the principal forgiven was 29 percent of that balance (the average amount of principal forgiveness for first-lien HAMP loan modifications), a servicer would receive a credit towards their obligation of $68,855.[69] Thus, in a hypothetical scenario in which a servicer was required to provide $100 million in foreclosure prevention actions and met the obligation by using only principle forgiveness, our

[68]Although servicers have submitted reports of their activities in response to the required foreclosure prevention obligations, as required, according to regulators, they have not yet validated that the reported activities are creditable under the terms of the amended consent orders.

[69]The National Mortgage Settlement includes a variety of specific guidelines and ranges of credit amounts based on certain loan and activity characteristics that a servicer can undertake. As such, the actual amount of credit under the National Mortgage Settlement structure in this hypothetical scenario would be between about $34,428 and $68,855 in credit, depending on the loan-to-value ratio.

analysis estimated 425 borrowers would receive assistance under the amended consent orders compared to about 1,452 borrowers under the National Mortgage Settlement.[70]

Further, analysis of the mix of servicers' typical activities might have provided baseline information for regulators to consider in assessing whether creating incentives for certain actions by crediting them differently might be warranted to help achieve the stated expectation of keeping borrowers in their homes.[71] According to the amended consent orders, the methodology for determining credit for foreclosure prevention actions is the same for all actions, regardless of the type of action or characteristics of the loan. However, some actions are designed to keep borrowers in their homes (loan modifications, for example).[72] Alternatively, some actions are designed to help avoid

[70]In this hypothetical scenario, we calculated credit under the amended consent orders as follows: $100 million obligation ÷ $235,465 in average unpaid principal balance = 425 loans (borrowers). Similarly, we calculated credit under the National Mortgage Settlement as follows: $100 million obligation ÷ $68,855 in average principal forgiven = 1,452 loans (borrowers).

[71]In contrast to the amended consent orders, the National Mortgage Settlement provides varying amounts of credit depending on the type of action and certain loan characteristics. Under the National Mortgage Settlement approach, a loan modification, for example, would be credited at a higher ratio than a short sale. Regulators stated they considered the National Mortgage Settlement structure in defining the types of creditable activities under the amended consent orders and the methodology for determining how the activities would be credited towards each servicer's obligation. Foreclosure prevention actions for which servicers can receive credit under the amended consent orders are generally the same as the actions for which servicers can receive credit under the National Mortgage Settlement. However, OCC staff said they adopted a different crediting approach for the amended consent orders because it is more transparent than the approach used for the National Mortgage Settlement.

[72]Loan modification involves making temporary or permanent changes to the terms of the existing loan agreement. There are several ways to make these changes, including allowing the borrower to skip payments and adding the skipped payments to the amount of the loan (capitalizing arrearages), reducing the interest rate charged, extending the loan term, and reducing the total amount of the loan (forgiving principal).

foreclosure but borrowers lose their homes (e.g., short sales or deeds-in-lieu).[73]

- *Analysis of eligible borrowers still in their homes and in need of assistance.* Analysis of the number of borrowers eligible for the foreclosure review who were still in their homes and in need of assistance might have informed the relevance of the method for allocating of the negotiated amount. Regulators generally divided the $6 billion obligation among servicers based on their share of the 4.4 million borrowers eligible for the foreclosure review, with servicers responsible for amounts that ranged from about $10 million to $1.8 billion. In addition, in the amended consent orders, regulators directed servicers to prioritize these borrowers, even though the foreclosure prevention actions were not restricted to borrowers eligible for review. However, the number of borrowers who were eligible for the foreclosure review and might benefit from the foreclosure prevention action obligations is potentially limited. Specifically, according to information on regulators' websites covering 13 of the 15 servicers that participated in amended consent orders, 41 percent of the borrowers who were eligible for the foreclosure review had completed foreclosures as of December 31, 2011. Further, according to two servicers we interviewed, the number of borrowers who were eligible for the reviews and still able to receive foreclosure prevention actions was relatively small. For example, one servicer noted that approximately 50 percent of these borrowers were no longer being serviced by them. They added that of the remaining population, about 50 percent had already received at least one foreclosure prevention action.[74] As such, many of the borrowers who were eligible for the

[73]In a short sale, a house is sold through a real estate agent or other means rather than through foreclosure, even if the proceeds of the sale are less than what the owner still owes on the mortgage. Lenders may agree to accept the proceeds of a short sale and may waive any deficiency. Under a deed-in-lieu of foreclosure, the homeowner voluntarily conveys the interest in the home to the lender to satisfy a loan that is in default as an alternative to foreclosure proceedings. Lenders may opt to accept ownership of the property in place of the money owed on the mortgage and may waive any deficiency. Deeds-in-lieu will generally not be accepted by a mortgage holder if there are other liens on the property, as foreclosure may be necessary for the mortgage holder to gain clear title.

[74]In general, receiving a loan modification does not prevent a borrower from being considered for future modifications or other loss mitigation actions. However, to the extent a borrower was current in their payments under the modification action, additional actions may not be warranted.

foreclosure review because of a foreclosure action in 2009 and 2010 might not have been able to benefit from the foreclosure prevention actions required under the amended consent orders.

Evaluation and Testing of Servicers' Implementation of Foreclosure Prevention Principles Is Limited

To oversee the foreclosure prevention component of the amended consent orders, regulators are considering both servicers' actions to meet the monetary obligations and the foreclosure prevention principles included in the amended orders. Regulators collected data from servicers and regulators provided guidance to examination teams to facilitate oversight activities. OCC and the Federal Reserve established reporting requirements to collect information from servicers on the foreclosure prevention actions they were submitting for crediting to meet the monetary obligations specified in the amended consent orders. To meet those obligations, servicers could either provide foreclosure prevention actions to borrowers or make cash payments to borrower counseling or education or into the cash payment funds used to pay borrowers based on categorization results.[75] Eight of the servicers opted to meet their obligation by providing foreclosure prevention actions, and the remaining seven made cash payments.[76]

To facilitate verification of servicers' crediting requests for foreclosure prevention actions, regulators required servicers to submit periodic reports, which all of the servicers have done. Servicers were required to submit loan-level information, such as the loan number, foreclosure status, and unpaid principal balance before and after the action, on each loan the servicers submit for crediting towards their obligation. In addition,

[75]The cash payments to meet the foreclosure prevention obligation were in addition to the cash payments servicers were required to make to eligible borrowers under the borrower categorization process. These additional payments were credited to the servicer at $7 or $10 towards the financial obligation for each $1 cash commitment.

[76]The seven servicers that met their obligation through cash payments service approximately 14 percent of the eligible population from the foreclosure review. For the four servicers that met their obligation by providing funding to borrower counseling or education, they elected to make cash contributions to housing counseling agencies. According to the amended consent orders, regulators were to provide a no-objection to the agencies selected. According to OCC staff, this assistance was primarily made available to nationally recognized housing counseling agencies that provide assistance nationwide. One servicer noted that it provided part of its assistance to housing counseling agencies that had a presence in areas where the servicer had a concentration of borrowers. Federal Reserve staff noted that one of the servicers considered the foreclosure prevention principles in selecting the agencies to receive funds.

servicers were required to state if the borrower was part of the eligible population for the foreclosure review—to respond to the expectation in the amended consent orders that, to the extent practicable, servicers prioritize eligible borrowers from the foreclosure review. According to regulators, they are in the process of hiring a third-party to evaluate the servicers' reported data to validate that the reported actions meet the requirements of the amended consent orders and facilitate regulators' crediting approval decisions. Servicers have begun reporting on their foreclosure prevention actions, and according to OCC staff, early submissions from servicers meeting their obligation through provision of foreclosure prevention actions to borrowers suggest they will meet their foreclosure prevention requirements quickly. The actions submitted for crediting varied, with some servicers primarily submitting short sale activities for crediting and others reporting loans that received loan modification actions.

The reporting requirements also include information related to the principles established in the amended consent orders, although this information is not representative of servicers' complete portfolio of foreclosure prevention actions.[77] For example, servicers are required to report information on the types of assistance provided, which provides information on the extent to which the actions servicers are reporting for crediting are helping borrowers keep their homes—such as by providing a loan modification as compared to a short sale, in which a borrower would still lose his or her home. According to servicers we spoke with, the information they are reporting to regulators on their foreclosure prevention activities for crediting is not representative of their full portfolio of foreclosure prevention activities and would not provide information on how well their overall program is meeting the principles established for the assistance. For example, some servicers are submitting loans for crediting review that focus primarily on certain segments of their servicing population, such as only proprietary (in-house) loans. Another servicer had submitted all of its loss mitigation activities that may qualify for crediting according to the definitions in the amended consent orders, but

[77]As we noted earlier, the foreclosure prevention principles specify that servicers' foreclosure prevention activities should be designed to keep borrowers in their homes by providing affordable, sustainable, and meaningful relief to borrowers and be nondiscriminatory such that activities do not disfavor a specific geographic area, low- or middle-income borrowers, or a protected class. According to regulators, these principles are designed to apply to all of the servicers' foreclosure prevention actions, not just those for which they are seeking crediting under the amended consent orders.

this still does not represent all of their activities. Overall, the reporting requirements associated with the foreclosure prevention actions in the amended consent orders provide information to assess crediting but not to evaluate servicers' application of the foreclosure prevention principles to their broader portfolio of loans.

Regulators also issued guidance to examination teams for oversight of the foreclosure prevention principles. The guidance identifies procedures examination teams were expected to take to oversee a servicer's application of the foreclosure prevention principles to their broad portfolio of foreclosure prevention actions. Those procedures included steps related to each of the key elements in the principles. However, the guidance does not identify actions examination teams should take to evaluate or test servicers' application or implementation of the steps.[78] For example, the guidance requires examination teams to describe the policies and monitoring controls servicers have in place to help ensure that their foreclosure prevention activities are nondiscriminatory, but does not set an expectation that teams will evaluate how well servicers are applying those policies and controls to their mortgage servicing practices. Similarly, the guidance requires examination teams to identify the performance measures servicers use to assess the principle related to the sustainability of foreclosure prevention actions, but the guidance does not require examination teams to evaluate how well a servicer's programs are providing sustainable actions.[79] Finally, to assess whether servicers' foreclosure prevention actions are meaningful—one of the principles—examination teams are to collect data on the servicers' foreclosure prevention actions, including the extent to which those actions resulted in higher or lower monthly payments, but the guidance does not require

[78]The guidelines also require examination teams to collect information that is not directly applicable to oversight of the foreclosure prevention principles. Specifically, information on the quality of the servicer's portfolio and the servicer's foreclosure prevention programs, including delinquency trend data, the types of foreclosure prevention programs used by the servicer, the servicer's controls for transfer of servicing rights, and information on the cost of foreclosure prevention actions as compared to the cost of foreclosure. For two of these areas—delinquency trend data and transfer of servicing rights—examination teams are expected to evaluate a servicer's actions, but these two areas are not specific to the foreclosure prevention principles.

[79]The guidance identifies examples of such measures, including the number of modified loans less than 30 days delinquent or paid in full 6 and 12 months following modification compared to the total number of modified loans for the same period.

examination teams to evaluate the data to understand what it indicates about servicers' actions.

In contrast, other sections of the same guidance provided to examination teams for oversight of the other articles of the consent orders specify regulators' expectations that examination teams will evaluate and test certain policies, monitoring controls, and data. For example, OCC's guidance to oversee compliance—which is intended to assess whether servicers' mortgage practices comply with all applicable legal requirements and supervisory guidance—identifies specific areas where examination teams should test policies and controls as well as performance measures. For instance, examination teams are expected to evaluate the servicer's performance measures to determine the servicer's ability to complete timely foreclosure processing, to identify and evaluate controls for preventing improper charging of late fees, and to evaluate the servicer's staff model for certain criteria. Similarly, the Federal Reserve's guidance specifies testing procedures for most elements of the original consent orders, such as third-party management, servicer's compliance program, and risk management. For instance, to ensure that documents filed in foreclosure-related proceedings are appropriately executed and notarized—one of the requirements in the original consent orders—the guidance states that examination teams should review servicers' policies, procedures, and controls to ensure that the documents are handled appropriately and then test a sample of documents to verify that notarization occurred according to the applicable requirements.

According to regulators' supervisory manuals, effective supervision requires defining examination activities, including determining clear objectives and describing the specific procedures to evaluate and test that policies and procedures are implemented.[80] In addition, federal internal control standards require individuals responsible for reviewing management controls—such as servicers' policies and procedures for the foreclosure prevention principles—to assess whether the appropriate policies and procedures are in place, whether those policies and

[80]See OCC, *Bank Supervision Process: Comptroller's Handbook* (Washington, D.C.: May 2013) and Board of Governors of the Federal Reserve System, *Division of Banking Supervision and Regulation: Bank Holding Company Supervision Manual* (Washington, D.C.: July 2013).

procedures are sufficient to address the issue, and the extent to which the policies and procedures are operating effectively.[81]

Some examination teams are close to completing the oversight procedures related to the foreclosure prevention principles, but others have not begun, and the extent to which regulators plan to evaluate or test information collected is unclear. According to OCC staff, examination teams completed their initial oversight of these principles in December 2013, as part of their other consent order validation activities. OCC staff told us they are reviewing the results of each of the examination teams' procedures and may identify the need for additional activity. OCC staff stated they also plan to conduct an additional review of each servicer's foreclosure prevention actions, which will include consideration of the principles in the amended consent orders, but they do not have specific procedures to evaluate or test servicers' implementation of those principles. According to Federal Reserve staff, most Federal Reserve examination teams have not yet conducted their oversight activities related to the foreclosure prevention principles. Federal Reserve staff told us that examination teams generally are conducting these reviews during the second quarter of 2014 and that the Federal Reserve would consider conducting additional follow-up activities related to the principles. According to federal internal control standards, management control activities should provide reasonable assurance that actions are being taken to meet requirements, such as the requirements related to the foreclosure prevention principles.[82] As the Federal Reserve has generally not yet completed their oversight activities for the foreclosure prevention principles, the extent to which this oversight will incorporate additional evaluation or testing of servicer's implementation of the principles is unclear.

Without specific procedures for examination teams to use in testing or evaluating the application of the foreclosure prevention principles, OCC and the Federal Reserve may not be able to determine the extent to which servicers are incorporating the foreclosure prevention principles into their foreclosure prevention practices. In the absence of evaluation or testing of policies and controls related to the principles, examination teams may have difficulty determining whether servicers' policies and

[81]See GAO/AIMD-00-21.3.1.

[82]See GAO/AIMD-00-21.3.1.

procedures are effective—an assessment OCC examination teams are required to make—or assessing how well the principles guide servicer behavior. For example, although servicers may have policies that explicitly forbid disfavoring low- or moderate-income borrowers during foreclosure prevention actions, without reviewing data, such as a sample of transactions from various programs, it is difficult to determine whether the policy is functioning as intended. Without these procedures, regulators may miss opportunities to determine how well servicers' foreclosure prevention actions provide meaningful relief and help borrowers retain their homes.

Regulators Are Sharing Findings of Servicing Weaknesses Confirmed through File Reviews and Cash Payment Process

According to regulators we spoke with, the initial review of borrowers' 2009 and 2010 foreclosure-related files and cash payment categorization process confirmed past servicing weaknesses—such as documentation weaknesses that led to errors in foreclosure processing—that they suspected or discovered through the 2010 coordinated review that was done in advance of the original consent orders. Regulators have taken steps to share these findings across examination teams. Continued supervision of servicers and information sharing about the experiences and challenges encountered help ensure that these weaknesses are being corrected. Recent changes to regulators' requirements for mortgage servicing also help to address some of the issues.

File Review and Cash Payment Activities Confirmed Previously Identified Servicing Weaknesses

Although consultants generally did not complete the review of 2009 and 2010 foreclosure-related files through the file review process, consultants, servicers, and regulators were able to describe some of the servicing weaknesses they identified based on the work that was completed. According to OCC staff, these preliminary findings from consultants' review of 2009 and 2010 foreclosure-related files were consistent with issues discovered through the earlier coordinated review of foreclosure policies and practices conducted by examination teams in 2010 that led to the consent orders.[83] As we noted previously, the file reviews were retrospective assessments and were designed to identify and remediate the harms suffered by borrowers due to 2009 and 2010 servicing

[83]For more information on the results of the coordinated review see: Federal Reserve, OCC, the Office of Thrift Supervision, *Interagency Review of Foreclosure Policies and Practices* (Washington, D.C.: Apr. 2011).

practices.[84] To collect information on what was learned about servicers' practices from these file reviews, regulators asked consultants to complete an exit questionnaire and held exit interviews with each consultant to discuss the file review process and preliminary observations and findings. In addition, while consultants did not prepare final reports with their findings, regulators we spoke with said they had shared some preliminary findings with examination teams through weekly updates as the file reviews progressed. Examples of weaknesses identified during the coordinated review and confirmed during the review of files from the same period, included the following:

- *Failure to halt foreclosures during bankruptcy.* The report from the regulators' 2010 coordinated review noted that servicers' quality controls were not adequate to ensure that foreclosures were halted during bankruptcy proceedings. These concerns were validated during the subsequent review of 2009 and 2010 foreclosure files during which consultants found some instances of foreclosures taking place after borrowers had filed for bankruptcy.

- *Failure to halt foreclosures during loss mitigation procedures.* The report from the 2010 coordinated review also expressed concern that servicers' quality control processes did not ensure that foreclosures were stopped during loss mitigation procedures, such as loan modifications. During the subsequent file reviews, one consultant found that in some cases, a servicer had foreclosed on borrowers who were in the midst of applying for loan modifications. In addition, the file reviews identified some borrowers who were wrongfully denied loan modifications, did not receive loan modification decisions in a timely manner, or were not solicited for HAMP modifications in accordance with HAMP guidelines.[85]

- *Failure to apply SCRA protections.* The coordinated review report also noted that a lack of proper controls could have affected servicers' determinations of the applicability of SCRA protections. Some

[84]In addition to conducting file reviews to identify potentially harmed borrowers, the original consent orders required servicers to make changes to their mortgage servicing activities for which regulators are providing ongoing oversight and monitoring.

[85]HAMP guidelines provide a consolidated resource of programmatic guidance related to HAMP. For example, the guidelines include information on HAMP eligibility criteria, requirements for the solicitation of borrowers potentially eligible for HAMP, and a description of the circumstances under which a servicer could refer a loan to foreclosure.

consultants identified issues such as servicers failing to verify a person's military status prior to starting foreclosure proceedings and failing to consistently perform data checks to determine military status.[86]

- *Failure to maintain sufficient documentation of ownership.* Although the 2010 coordinated reviews found that servicers generally had sufficient documentation authority to foreclose, examiners noted instances where documentation in the foreclosure file may not have been sufficient to prove ownership of the mortgage note. Likewise, during the subsequent consent order file reviews, some consultants found cases of insufficient documentation to demonstrate ownership.

- *Weaknesses related to oversight of external vendors and documentation of borrower fees.* The coordinated file review report noted weaknesses in servicers' oversight of third-party vendors, and OCC staff stated that the subsequent file review found errors related to fees charged to borrowers, many of which occurred when servicers relied on external parties. Staff explained that servicers often did not have controls in place to ensure that services were performed as billed and that the fees charged to customers were reasonable and customary.

In addition, the process of categorizing borrowers for cash payments—which relied on servicers' data about those borrowers from 2009 and 2010—found issues that were consistent with weaknesses identified during the 2010 coordinated reviews, particularly in servicers' data systems. For example, one examination team noted that a servicer's data weaknesses related to servicemembers and others became more apparent during the cash payment categorization process. In addition, as noted earlier, at least 5 of the 13 servicers were unable to categorize some borrowers according to the framework criteria because of system limitations. Federal Reserve staff noted that problems with one servicer's data related to loan modifications led the servicer to place everyone in the highest category possible rather than rely on the system. Further, another examination team told us that while reviewing the categorization of borrowers for cash payments, the servicer's internal audit department found a high rate of borrowers incorrectly categorized in the loan

[86]For more information on provision of SCRA mortgage protections in general, see GAO, *Servicemembers Civil Relief Act: Information on Mortgage Protections and Related Education Efforts,* GAO-14-221 (Washington, D.C.: Jan. 28, 2014).

modification categories due to weaknesses in the quality of the servicer's data. The examination team explained that after reviewing the servicer's initial categorization, regulators determined that the servicer did not have sufficiently reliable system data to categorize borrowers in the lowest categories, and therefore those borrowers were categorized in a higher category.

OCC and the Federal Reserve Are Taking Steps to Leverage and Share Results to Inform Future Supervision

After terminating the reviews of 2009 and 2010 foreclosure-related files, regulators instructed examination teams to identify deficiencies and monitor servicers' actions to correct them. For example, OCC required examination teams to complete conclusion memorandums on deficiencies consultants identified. The conclusion memorandums were to include information on the deficiencies consultants identified in the servicer's policies, procedures, practices, data, systems, or reporting. The guidance for the memorandums also asks examination teams to discuss steps servicers took to correct these deficiencies. In one conclusion memorandum, the examination team noted that the servicer was in the process of addressing issues, such as technological impediments to efficient and accurate servicing and the accurate identification of borrowers eligible for SCRA protections and borrowers in bankruptcy, but that not all issues had yet been addressed. According to Federal Reserve staff, they are not planning to do a broad analysis of the results from the file reviews, but they have asked the examination teams to consider issues that emerged from them and whether additional corrective action is needed. OCC and Federal Reserve staff also told us that examination teams are continuing their oversight activities to determine whether servicers are addressing all aspects of the consent order, which includes the areas highlighted by the preliminary file reviews. OCC staff said that the examination work is intended to determine what issues have been addressed and what issues continue to exist.

Some examination teams told us that they are leveraging the results of the reviews and the cash payment categorization process by following up on some of the issues identified for the servicers they oversee in their future oversight. For example, one team said that it was following up on findings related to bankruptcy, fees, notices of loan modifications, and income calculations associated with loan modification applications. In particular, they noted that they have done subsequent testing related to borrowers in bankruptcy and will continue to assess the servicer's efforts in this area. Another team stated that in light of challenges with an aspect of the cash payment categorization process, they identified weaknesses with the servicer's staffing, project management, and problem resolution processes. To try to prevent repetition of these mistakes, the examination team required the servicer to identify and implement changes to their mortgage servicing practices.

However, some examination teams said that little additional information was learned from the file review or cash payment activities that they could leverage in future oversight. For example, one examination team noted that because few files had gone through complete reviews, they could not determine how widespread the problems found were. They said that because the file reviews were terminated before the reviews were completed, they did not have sufficient information to interpret the initial findings. Another examination team told us that no new information was learned from the file reviews and all of the issues raised during them were known issues. A third examination team told us that they would incorporate some aspects of the consultant's processes into their review process, but the reviews were not far enough along to draw conclusions about any additional substantive weaknesses with the servicer's practices. In addition, Federal Reserve staff noted that because the file reviews were terminated before many data points were collected, what could be learned from them is limited. Similarly, one examination team noted that while weaknesses were identified with the servicer's operations during both the file review and cash payment processes, they were specific to systems and activities from 2009 and 2010 that were no longer in place or operational. Additionally, OCC staff explained that because the files that were reviewed were from 2009 and 2010, the findings may no longer be applicable, particularly given changes in servicing operations since that time.

Because examination teams learned different information from their oversight of the file review and cash payment processes, sharing each others' experiences could be instructive for ongoing oversight of mortgage servicing. As we noted earlier, the completion rates for the file review process varied from no files with a completed review to 57 percent of the planned files reviewed. In addition, the areas that were reviewed varied among servicers. For example, several of the consultants reported completing at least initial reviews of the majority of files in the bankruptcy category. Another consultant stated that the only category of review completed was the SCRA category, and therefore, it only had findings related to the retention of SCRA data. A third consultant had completed its review of a majority of the initial files planned for review, and had found several different types of errors, including errors with fees charged, loan modification decisions, and documentation of ownership. Although, as regulators have noted, each servicer has unique operations and data systems, servicing standards and other requirements defined by regulators are generally broadly applied and insight from one servicer's approach to meet these standards—or problems meeting these standards—can be instructive for another examination team responsible for overseeing these same standards.

According to our analysis of examination teams' conclusion memorandums, some servicers encountered similar challenges in the cash payment process. In contrast to the file review process, the borrower categorization process was completed for 14 of the servicers and servicers had to place borrowers into the same categories. Several examination teams and a servicer noted that merging data from multiple servicing systems posed particular challenges for completing the borrower categorization process. Other examination teams we spoke with described challenges servicers encountered with their data systems to record information on bankruptcy and other foreclosure-related actions. Understanding what caused similar types of challenges and their prevalence among servicers may help regulators identify future areas for oversight activities.

According to regulators, they have taken steps to share information among examination teams about issues encountered during the file review and cash payment process and OCC planned to take additional steps. For example, regulators told us that during the file review and cash payment categorization process, OCC and Federal Reserve examination teams held weekly phone meetings. According to several examination teams we spoke with, during these meetings they would highlight challenges they were encountering, such as issues related to missing data in a servicer's systems. In addition, Federal Reserve staff stated that Federal Reserve examination teams met during the cash payment categorization process to share information on their approach to the activities and discuss approaches different teams were taking to address challenges. To further facilitate information sharing among examination teams, Federal Reserve staff told us that examination teams posted to a shared website their conclusion memorandums for the cash payment activities, which included information on the approach servicers used to categorize borrowers. According to OCC staff, they are also writing a consolidated conclusion memorandum that will summarize examination teams' findings from the foreclosure review process, including information on specific challenges identified at individual institutions that may be instructive for other examination teams.

According to regulators, examination teams also have offered to share information with CFPB about issues encountered during the file review process. Banking regulators and CFPB have entered into a Memorandum of Understanding, which states that CFPB and the regulators will endeavor to inform each other of issues that may impact the supervisory interests of the other agencies. According to regulators we spoke with, there has been limited sharing of findings from the foreclosure review process with CFPB. According to OCC staff, in some cases, they have shared information with CFPB about servicers' compliance with the original consent orders and, in other instances, they offered to provide CFPB information on the file review process, but CFPB had not requested follow-up information. Federal Reserve staff said two of its examination teams have provided information to CFPB on the Federal Reserve's monitoring activities related to the original consent orders, including the file reviews, and amended consent orders.

Recent Servicing Requirements May Address Identified Weaknesses

Recent servicing requirements, some of which apply to a broader group of mortgage servicers than those included in the file review process, may also address some of the weaknesses found during the 2010 coordinated review and confirmed during the review of foreclosure-related files from 2009 and 2010 and the borrower categorization process. Since the 2009 and 2010 period of the file reviews, regulators have issued several guidelines and standards related to mortgage servicing:

- *April 2011 Consent Orders.* In addition to the requirement to conduct file reviews of borrowers who were in foreclosure or had completed foreclosure any time in 2009 or 2010, the original consent orders issued by OCC and the Federal Reserve to 16 servicers also included other requirements, such as submitting a plan for improving the operation of servicers' management information systems for foreclosure and loss mitigation activities.[87] Regulators' examination teams will continue to monitor these requirements and ensure that the aspects of the consent orders that apply are met.

- *National Mortgage Settlement.* Five servicers are covered by the National Mortgage Settlement, which includes requirements such as preforeclosure notices to borrowers, procedures to ensure the

[87]As we have noted previously, two of the original consent orders were issued after April 2011, in September 2011 and April 2012.

accuracy of borrower accounts, and quarterly reviews of foreclosure documents.

- *CFPB Mortgage Servicing Rules.* These rules were issued in January 2013, became effective January 10, 2014, and apply to all servicers, with some exemptions for small servicers.[88] The rules cover several major topics that address many aspects of mortgage servicing, including specific requirements related to communication with delinquent borrowers and loss mitigation procedures.

- *OCC and Federal Reserve Imminent Foreclosure Standards.* In April 2013, OCC and the Federal Reserve issued checklists to the servicers they supervise to establish minimum standards for handling and prioritizing of borrower files that are subject to imminent foreclosure sales.[89] For example, both sets of standards require that once the date of foreclosure is established, the servicer must confirm that the loan's default status is accurate.

These requirements address issues identified during the file reviews and cash payment process. For example, to address issues related to borrowers being foreclosed upon while in the process of a loan modification application, OCC and Federal Reserve's *Minimum Standards for Prioritization and Handling of Borrower Files Subject to Imminent Foreclosure Sales* require servicers to take steps to verify a borrower's status once a foreclosure date has been established. Specifically, servicers must promptly (1) determine whether the borrower has requested consideration for, is being considered for, or is currently in an active loss mitigation program; and (2) determine whether the foreclosure activities should be postponed, suspended, or cancelled. As another example, to address issues related to communicating loan modification decisions to borrowers, CFPB's rules state that servicers must provide the borrower with a written decision, including an explanation of the

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[88]Servicers that qualify as small servicers are exempt from certain parts of the Mortgage Servicing Rules. CFBP defines small servicers as: (1) institutions, including any affiliates, that service 5,000 or fewer mortgage loans and are the creditor or assignee for all of them or (2) housing finance agencies.

[89]These standards are also included in an updated version of the comptroller's handbook on mortgage banking. The handbook also includes wholesale changes to the discussion of mortgage servicing to incorporate recent lessons learned and regulatory changes. See OCC, *Comptroller's Handbook*: *Mortgage Banking* (Washington, D.C., Feb. 2014).

reasons for denying the loan modification, on an application submitted within the required time frame.[90]

The guidelines also address issues related to servicers' data systems. For example, CFPB's rules require that servicers are able to compile a complete servicing file in 5 days or less. CFPB officials noted that this requirement was specifically included to address weaknesses in servicers' data systems that might still exist. In addition, as previously noted, the OCC and Federal Reserve consent orders required servicers to submit a plan for the operation of their management information systems. The plan needed to include a description of any changes to monitor compliance with legal requirements; ensure the accuracy of documentation of ownership, fees, and outstanding balances; and ensure that loss mitigation, foreclosure, and modification staff have sufficient and timely access to information.

Regulators Communicated the Status of Activities, but Information on Processes Has Been Limited

Regulators took steps to promote transparency through efforts to keep borrowers and the general public informed about the status and progress of amended consent order and continuing review activities and through posting information publicly on their websites. Regulators also plan to issue public final reports on the cash payment process and foreclosure prevention actions as well as the results of the one file review that continued. These actions, however, have included limited information on processes, such as specific information about the category in which borrowers were placed or how those determinations were made.

Regulators Promoted Transparency about the Status and Results of Cash Payments and Plan to Issue Public Reports

In our March 2013 report, we found that transparency on how files were reviewed under the foreclosure review was generally lacking and that borrowers and the general public received limited information about the progress of reviews.[91] We recommended that regulators develop and implement a communication strategy to regularly inform borrowers and

[90] 12. C.F.R. § 1024.41. For a complete loss mitigation application received more than 37 days before a foreclosure sale, the servicer is required to evaluate the borrower, within 30 days, for all loss mitigation options for which the borrower may be eligible in accordance with the investor's eligibility rules. 12 C.F.R. § 1024.41 (c)(1).

[91] See GAO-13-277.

the public about the processes, status, and results of the activities under the amended consent orders and continuing foreclosure reviews.

Since the announcement of the amended consent orders and our March 2013 report, regulators have taken steps to keep borrowers and the general public informed about the status of activities under the amended consent orders and continuing foreclosure reviews. For example, regulators directed that the payment administrator for 14 of the 15 servicers subject to amended consent orders send postcards to approximately 4.4 million borrowers informing them that they would receive a cash payment from their servicer.[92] In addition, regulators directed the administrator to send communications to borrowers subject to the continuing file review to inform them that their reviews were ongoing. OCC staff noted that they anticipated requiring a final communication to borrowers when the review is completed. Regulators also kept the general public informed about the status of activities. For example, regulators conducted two webinars to provide details on the amended consent order activities and published answers to frequently asked questions on their websites. Regulators also used mass media such as press releases and public service announcements to communicate the status of activities. In addition, regulators updated their websites with information on the number and amount of checks issued and cashed under the amended consent orders, and in May 2013, regulators reported this information by state. Finally, regulators also made the cash payment frameworks and borrower categorization results publicly available on their websites.[93] The frameworks list the payment categories and amounts and also include the overall results of the cash payment process by including the number of borrowers in each payment category.

[92]As of December 2013, borrowers serviced by EverBank had not received information on the amended consent orders. OCC staff stated that, depending on the timing of the check distribution, they were considering communications similar to those sent to borrowers for the other servicers that signed amended orders informing them about the amended consent orders and when they would receive a payment.

[93]The three frameworks and corresponding borrower categorization results (titled "Payment Agreement Details") covering 14 of the 15 servicers subject to the amended consent orders were made available on OCC's and the Federal Reserve's websites. See http://www.occ.gov/topics/consumer-protection/foreclosure-prevention/correcting-foreclosure-practices.html and http://www.federalreserve.gov/consumerinfo/independent-foreclosure-review.htm, accessed March 12, 2014.

Regulators plan to issue publicly final reports on the direct payment process and foreclosure prevention actions as well as information from the reviews that were terminated and the results of the review that continued. We noted the importance of public reporting to enhancing transparency in our March 2013 report. At that time, regulators planned to release reports on the foreclosure review and cash payment process, but the content of the reports had not been determined. Since our report, regulators have taken additional steps toward making reporting decisions. However, they are still considering the content and timing of these reports. Federal Reserve staff stated that they have worked with OCC to reach out to community groups to get their input on the information to include in public reports, and they are reviewing the types of information on foreclosure prevention actions reported for the National Mortgage Settlement and HAMP. Federal Reserve staff also stated that they anticipate the final report would include information on the terminated reviews. OCC staff said they are conducting examinations to assess the extent to which servicers addressed all aspects of the consent orders, including weaknesses highlighted by the preliminary file reviews, and they anticipate reporting on conclusions of the foreclosure reviews, including the reviews that were terminated. OCC staff stated they are waiting on the results of the continuing review and reports on servicers' foreclosure prevention actions before making final reporting decisions.

Additional Information on Cash Payment Processes May Enhance Transparency

Although regulators have taken steps to promote transparency, these actions included limited information on the data regulators considered in negotiating the cash payment obligations and the processes for determining cash payment amounts. Our March 2013 recommendation to implement a communication strategy included not only keeping borrowers informed about the status and results of amended consent order and continuing review activities, but it also included keeping borrowers and the public informed about processes to determine those results. In our March 2013 report, we found that more publicly disclosed information about processes could have increased transparency and thereby public confidence in the reviews, given that one of the goals regulators articulated for the foreclosure review was to restore public confidence in the mortgage market. Federal internal control standards state the importance of relevant, reliable, and timely communications within an organization as well as with external stakeholders.[94] In addition, our prior

[94] See GAO/AIMD-00-21.3.1.

work on organizational transformation suggests that policymakers and stakeholders demand transparency in the public sector, where stakeholders are concerned not only with what results are to be achieved, but also with which processes are to be used to achieve those results.[95]

Regulators released limited information on the process used to determine cash payment amounts. Regulators' joint press release announcing the payment agreement stated that the amounts of borrowers' payments depended on the type of possible servicer error, and regulators' websites and webinars provided information on the roles of regulators, servicers, and the payment administrator. However, regulators did not release publicly information on the criteria for borrower placement in each category, such as the specific loan and borrower characteristics associated with each category. In addition, information about the process for determining cash payment amounts for each category was not communicated to individual borrowers. Borrowers subject to the amended consent orders received postcards informing them they would receive a cash payment. The postcards, however, did not include information about the process by which their payment amounts would be determined. Moreover, the letter accompanying the cash payment does not include information about the category in which a borrower was placed. Consumer groups we interviewed maintained that borrowers should have been given information about the category into which they were placed and an explanation of how they were categorized.

Regulators said that borrowers could obtain additional information from other sources. Federal Reserve staff explained that the letter to borrowers does not include information on the borrower's cash payment category, but they said that a borrower may be able to figure out this information using the publicly issued cash payment framework, which includes cash

[95]See GAO, *Major Management Challenges and Program Risks: Department of Homeland Security,* GAO-03-102 (Washington, D.C.: Jan. 2003) and *Results-Oriented Cultures: Implementation Steps to Assist Mergers and Organizational Transformations*, GAO-03-669 (Washington, D.C.: July 2, 2003). Part of the methodology to develop these reports included convening a forum of public and private-sector leaders to discuss useful practices from major private and public-sector organizational mergers, acquisitions, and transformations that federal agencies could learn from when making changes, such as those in response to governance challenges. The participants of the forum identified key practices and lessons learned regarding mergers and transformations. We considered this example relevant to the foreclosure review because of the significant nature of the change from the foreclosure review to the activities under the amended consent orders for distributing direct payments and other assistance.

payment amounts for each category. Regulators also told us that borrowers could call the payment administrator with questions or complaints related to the cash payment process under the amended consent orders. However, according to the payment administrator's protocol, staff were instructed to provide general information on the cash payment process, but did not have specific information about the category in which borrowers were placed or how those determinations were made. Federal Reserve staff stated that borrowers who have complaints about their servicer could also write to their servicer's regulator directly, but consumer groups said that very few borrowers would file a formal complaint with the regulators because they never received an explanation of what category they were placed in and regulators did not establish an appeals process. Further, letters sent to borrowers stated that the payments were final and there was no appeals process. Regulators told us they did not establish an appeals process because borrowers did not waive their rights to take legal action by accepting the payment. Federal Reserve staff stated that although there was not a process for borrowers to appeal their payments, borrowers who are not satisfied with the payment amounts can pursue any legal claims they may have.

With additional information on processes, regulators have opportunities to enhance transparency and public confidence with the amended consent order activities. The majority of cash payments have been deposited. As such, regulators have missed key opportunities to provide information that would have enhanced transparency of the cash payment process for individual borrowers. Further, since borrowers cannot obtain further information by formally appealing the results of the direct payment process, the lack of information about the criteria for placement in the various categories may hinder public confidence in the process. The final reports that regulators plan to issue represent an important opportunity to provide additional information on processes to clarify for borrowers and the general public how payment decisions were made.

Conclusions

The amended consent order process—with the distribution of cash payments to 4.4 million borrowers and requirements that servicers provide $6 billion in foreclosure prevention actions—terminated the review of 2009 and 2010 foreclosure-related files for 15 servicers prior to completion. This process addressed some of the challenges identified by regulators with the file review process—for example, it provided cash payments to borrowers more quickly than might have occurred had the file reviews continued. In addition, through the foreclosure prevention component of the amended orders, regulators were able to convey their commitment to specific principles to guide loss mitigation actions—including that servicers' foreclosure prevention activities provide meaningful relief to borrowers and not disadvantage a specific group. While views varied on the usefulness of the file review process, regulators are taking steps to use what was learned to inform future supervisory activities.

While regulators used the amended consent orders to establish principles for foreclosure prevention activities, they did not require examination teams to evaluate or test servicers' activities related to these principles. In particular, they did not require evaluation or testing of servicers' policies, monitoring controls, and performance measures, to determine the extent to which servicers are implementing these principles to provide meaningful relief to borrowers. In contrast, other parts of the guidance provided to examination teams for oversight of the consent orders do require evaluation and testing, and the requirements in regulators' supervisory manuals and federal internal control standards also include such requirements. For OCC examination teams, which have completed reviews of servicers' activities related to the foreclosure prevention principles, additional planned supervisory activities, such as a review of servicers' foreclosure prevention actions, may help identify concerns with servicers' implementation of aspects of the foreclosure prevention principles. However, the specific procedures to conduct these additional planned activities have not been established. In comparison, for Federal Reserve examination teams that have not yet completed the reviews, there is an opportunity to implement a more robust oversight process that includes evaluation and testing, but the extent to which the Federal Reserve will take these steps is unclear. In the absence of specific expectations for evaluating and testing servicers' actions to meet the foreclosure prevention principles, regulators risk not having enough information to determine whether servicers are implementing the principles and protecting borrowers.

Finally, although regulators communicated information about the status and results of the cash payment component of the amended consent orders, they missed opportunities to communicate additional information to borrowers and the public about key amended consent order processes. One of the goals that motivated the original file review process was a desire to restore public confidence in the mortgage market. In addition, federal internal control standards and our prior work highlight the importance of providing relevant, reliable, and timely communications, including providing information about the processes used to realize results, to increase the transparency of activities to stakeholders—in this case, borrowers and the public. Without making information about the processes used to categorize borrowers available to the public, such as through forthcoming public reports, regulators may miss a final opportunity to address questions and concerns about the categorization process and increase confidence in the results.

Recommendations for Executive Action

We are making the following three recommendations:

1. To help ensure that foreclosure prevention principles are being incorporated into servicers' practices, we recommend that the Comptroller of the Currency direct examination teams to take additional steps to evaluate and test servicers' implementation of the foreclosure prevention principles.
2. To help ensure that foreclosure prevention principles are being incorporated into servicers' practices, we recommend that the Chairman of the Board of Governors of the Federal Reserve System ensure that the planned activities to oversee the foreclosure prevention principles include evaluation and testing of servicers' implementation of the principles.
3. To better ensure transparency and public confidence in the amended consent order processes and results, we recommend that the Comptroller of the Currency and the Chairman of the Board of Governors of the Federal Reserve System include in their forthcoming reports or other public documents information on the processes used to determine cash payment amounts, such as the criteria servicers use to place borrowers in various payment categories.

Agency Comments and Our Evaluation

We provided a draft of this report to OCC, the Federal Reserve, and CFPB for comment. We received written comments from OCC and the Federal Reserve; these are presented in appendixes III and IV. CFPB did not provide written comments. We also received technical comments from OCC, the Federal Reserve, and CFPB and incorporated these as appropriate. In their comments on this report, the Federal Reserve agreed with our recommendations and OCC did not explicitly agree or disagree. However, OCC and the Federal Reserve identified actions they will take or consider in relation to the recommendations.

For the two recommendations on assessing servicer implementation of foreclosure prevention principles, OCC stated that it included this requirement in its examination plans. OCC added that foreclosure prevention principles will be used as considerations when assessing the effectiveness of servicer actions. We continue to believe that identifying specific procedures for testing and evaluating servicers' application of the foreclosure prevention principles to their mortgage servicing practices will help regulators determine how effectively servicers' policies and procedures are protecting borrowers and providing meaningful relief. The Federal Reserve noted that examination teams plan to use testing during their servicer assessments. The Federal Reserve plans to conduct the assessments in 2014, as we noted in the report.

For the recommendation on improving the transparency of the consent order processes, OCC stated that it will consider including additional detail about the categorization of borrowers in its public reports. The Federal Reserve said it will consider the recommendation as it finalizes reporting and other communication strategies. Both regulators also noted that they had made information about the foreclosure review and amended consent order processes available on their public websites. As we discussed in our report, regulators have taken steps to communicate information about the status of activities and results of the amended consent orders, and communicating information on the processes for determining borrowers' cash payment amounts provides an additional opportunity for regulators to realize their goal of increasing public confidence in these processes.

We are sending copies of this report to interested congressional committees, the Board of Governors of the Federal Reserve System, the Consumer Financial Protection Bureau, and the Office of the Comptroller of the Currency. In addition, the report is available at no charge on the GAO website at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-8678 or evansl@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix V.

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Director, Financial Markets and Community Investment

Appendix I: Objectives, Scope, and Methodology

The objectives of this report were to assess: (1) the factors regulators considered in negotiating servicers' cash payment obligations under the amended consent orders and the extent to which regulators achieved their stated goals for the cash payments; (2) the objectives of the foreclosure prevention actions in the amended consent orders and how well regulators designed and oversaw the actions to achieve those objectives; (3) the extent to which regulators are sharing information from the file review and amended consent order processes; and (4) the extent to which regulators have promoted transparency of the amended consent orders and remaining review. The scope of our work covered the 16 servicers that were issued consent orders in 2011 and 2012 requiring they conduct file reviews.

To address the factors the Office of the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System (Federal Reserve) considered in negotiating servicers' cash payment obligations, we interviewed regulatory staff about the factors they considered and analyses they conducted to inform the negotiations. We also asked staff about the extent to which the factors and analyses differed from typical enforcement action negotiations. We reviewed the analyses regulators' used to inform the negotiations and other documentation on the decision to replace the foreclosure review with a cash payment agreement, such as OCC's decision memorandum. We also reviewed data consultants provided to regulators on incurred and remaining costs, progress of reviews, and findings of error. In addition, we conducted a sensitivity analysis to test the impact of changes to major assumptions and a reasonableness review of the final negotiated cash payment amount. According to Office of Management and Budget guidance, a sensitivity analysis examines the effects of changing assumptions and ground rules on estimates.[1] Further, our Cost Estimating and Assessment Guide states that a sensitivity analysis provides a range of results that span a best and worst case spread and also helps identify factors that could cause an estimate to vary.[2] To conduct our sensitivity analysis, we followed three key steps outlined in our Guide: (1) identify the key drivers and assumptions to test, (2)

[1]Office of Management and Budget, Circular No. A-94, *Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs*, October 29, 1992.

[2]See GAO, *GAO Cost Estimating and Assessment Guide: Best Practices for Developing and Managing Capital Program Costs*, GAO-09-3SP (Washington, D.C.: Mar. 2, 2009).

estimate the high and low uncertainty ranges for significant input variables, and (3) conduct this assessment independently for each input variable. We identified and tested major assumptions related to projected costs, error rates, and borrower categorizations. We also used the results of our analysis to test the reasonableness of the final negotiated cash payment amount. Our Cost Estimating and Assessment Guide describes a reasonableness review as a process to independently test whether estimates are reasonable with regard to the validity of major assumptions.

- *Projected costs.* To test assumptions related to the projected remaining costs to complete the reviews as reported by consultants, we calculated monthly costs for each consultant using consultants' cost reports that were available from September 2012 through December 2012.[3] We then selected the shortest, median, and longest projected additional months of review across servicers to calculate the projected costs under these scenarios (see table 4). We compared our calculated costs in these scenarios to regulators' cost analyses and the final negotiated cash payment amount.

[3]Servicers began reporting cost data in late August 2012. As such, we used cost estimates beginning in September 2012. Cost reports for September 2012 through December 2012 were not available for all servicers. As such, we used all available reports in that range. For 10 servicers, data were available for 2 months, for 2 servicers data were available for 3 months, and for 2 servicers data were available for 4 months. Where data were available, we calculated average monthly costs. Where data were not available to calculate an average, we calculated the actual monthly cost for 1 month.

Table 4: Analysis of Projected Costs

Cost scenarios	Projected file review completion costs (dollars in billions)	Total calculated payment including $859 million in remediation reserves (dollars in billions)
Cost for an additional 4 months of review (shortest projected time among servicers)	$0.8	$1.6
Cost for an additional 9 months of review (median projected time among servicers)	1.7	2.6
Regulators' estimate of remaining costs based on reports from consultants	2.0	2.9
Costs for an additional 13 months of review (longest projected time among servicers)	2.5	3.3
Final cash payment negotiated between regulators and servicers		**3.9**
Cost for an additional 24 months of review	4.6	5.4

Source: GAO analysis and review of OCC and Federal Reserve data from consultants.

- *Error rate.* To test assumptions related to the error rate, we reviewed error rates in status reports consultants provided to regulators for the 13 servicers that agreed to the payment agreement in the January 2013. The amended consent orders implementing the payment agreement required the consultants of the participating servicers to submit data on the progress of the file reviews as of December 31, 2012. We used these data, which the consultants submitted to regulators in the months following the payment agreement, to select the lowest, median, aggregate, and highest error rates reported by consultants and calculated the potential remediation payments under these scenarios (see table 5). We compared our calculated remediation payments under these scenarios to the payment calculated in regulators' analyses and the final negotiated cash payment amount.

Table 5: Analysis of Payments at Various Financial Harm Error Rates

Error rate scenarios	Financial harm error rate	Calculated payment (dollars in billions)	Percent difference between regulators' estimated payment at 6.5 percent rate
Lowest individual servicer preliminary error rate reported	0.6%	$0.3	-71.0%
Median individual servicer preliminary error rate reported	4.8	1.0	-20.4
Aggregate financial harm error rate reported for all servicers, December 2012 (used in OCC's analysis)	6.5	1.2	0.0
Highest individual servicer preliminary error rate	23.9	3.7	209.3
Final cash payment negotiated between regulators and servicers		3.9	

Source: GAO analysis and review of OCC and Federal Reserve data from consultants.

- *Borrower categorization.* To test assumptions related to the categorization of borrowers across the payment categories used in OCC's error rate analysis, we analyzed borrower distributions for the other five servicers involved in the initial amended consent order negotiations. We used categorizations servicers provided to the regulators during the negotiation process in December 2012. We then calculated the potential remediation, using the 6.5 percent financial harm error rate used in regulators' analysis, under each scenario (see table 6). We compared our calculated remediation payments under these scenarios to the payment calculated in regulators' analyses and the final negotiated cash payment amount.

Table 6: Analysis of Potential Remediation Using Initial Six Servicers' Distribution of Borrowers

Servicer	Calculated payment (dollars in billions)
Final cash payment negotiated between regulators and servicers	***$3.9***
A	1.208
B (used in regulators' analysis)	1.195
C	1.03
D	0.910
E	0.829
F	0.640

Source: GAO analysis of OCC and Federal Reserve data from servicers.

We verified the accuracy of regulators' analyses by performing some logic tests and recreating the tables and formulas they used for their calculations. To assess the reliability of data on the status and preliminary financial harm error rates we used in our analyses, we collected information from exam team staff for all servicers that participated in the amended consent order payment agreement. Because exam team staff were responsible for the day-to-day oversight of consultants' work, we collected information on the steps they took to determine whether the data were reasonably complete and accurate for the intended purposes. All exam team staff stated they conducted data reliability activities such as observing data entry procedures and controls, participating in or observing training for the systems used to generate status reports, conducting logic tests, or reviewing status reports. Exam team staff did not note any limitations related to the results of the final reviews completed by consultants as of December 2012 that would affect our use of these data. As such, we determined the data to be sufficiently reliable for the purposes of this report.

We were unable to assess the reliability of data on consultants' incurred costs or servicers' initial borrower categorization results used in our analyses. Because most consultants had terminated their work on the foreclosure review during our data collection, we had limited access to the underlying cost data reported by consultants to regulators, and regulatory staff told us they did not assess these data. In addition, the initial borrower categorizations performed by servicers during negotiations represented preliminary results that were intended to provide regulators with information about how the cash payment amount might be distributed. These data were described as preliminary by servicers, and neither servicers nor regulatory staff validated the accuracy of the information used during negotiations.[4] Given that limited information was available from the sources and users of these data, we were not able to assess their reliability. As such, we determined that the data related to consultants' costs and servicers' initial borrow categorizations are of undetermined reliability. However, because our use of these data is consistent with regulators' intended use to inform negotiations we determined that the risk of using data of undetermined reliability was low,

[4]Although the preliminary information used during negotiations was not validated, examination teams validated servicers' final categorization results that were used to make payments to borrowers.

and we concluded that the data were appropriate for our purposes in this report.

To determine the stated goals for the cash payments and assess the extent to which regulators took steps to ensure servicers achieved them, we reviewed the amended consent orders, OCC's and the Federal Reserve's decision memorandums, and statements made by regulators about the amended consent orders, including press releases and speeches or testimony. We then assessed achievement of these goals using data we collected and analyzed and information from interviews we conducted with regulators. Specifically, we reviewed regulators' instructions to servicers and examination teams for the categorization process and subsequent oversight activities and interviewed OCC headquarters and Federal Reserve Board staff about implementation of these activities and their oversight actions. In addition, we analyzed regulators' reports on the results of the servicers' categorization process, in particular information on the number of borrowers placed into each category by servicer and any subsequent changes to categorization results. We also reviewed examination teams' conclusion memorandums describing their oversight activities to verify and validate servicers' cash payment categorization activities, and 10 of the 11 examination teams we interviewed or received written responses from provided information about their specific approach. We also interviewed three consultants responsible for categorizing borrowers into some categories—for example, borrowers eligible for protections under the Servicemembers Civil Relief Act (SCRA), Pub. L. No. 108-189, 117 Stat. 2835 (2003) (codified at 50 U.S.C. app. §§ 501-597b)—about their methodology and regulators' oversight, and of the eight servicers we interviewed seven provided information about their process to categorize borrowers for cash payments and regulators' role in this process. To identify the examination teams and servicers to interview, we selected examination teams and servicers that were overseen by each regulator and also considered a range of sizes of eligible populations for the file reviews, including some of the largest servicers. To identify the consultants to interview, we considered those consultants that supplemented information gathered from consultants in prior work on the file review process.[5] Finally, we

[5]See GAO, *Foreclosure Review: Opportunities Exist to Further Enhance Borrower Outreach Efforts,* GAO-12-776 (Washington, D.C.: June 29, 2012) and *Foreclosure Review: Lessons Learned Could Enhance Continuing Reviews and Activities Under Amended Consent Orders,* GAO-13-277 (Washington, D.C.: Mar. 26, 2013).

assessed the reliability of these data by reviewing related documentation and interviewing payment administrator officials knowledgeable about the data. We determined that these data were sufficiently reliable for the purposes of this report.

To assess the objectives for the foreclosure prevention actions and how well regulators designed the actions to realize those objectives, we reviewed the amended consent orders to understand the parameters and requirements for foreclosure prevention actions, reviewed regulators' decision memorandums, and reviewed regulators' statements about the foreclosure prevention actions in press releases and speeches or testimony. We also interviewed regulators about their intentions for the actions and the analysis they conducted to support the negotiations of the design and amounts. We compared this process with regulators' typical processes for issuance of enforcement actions, as described in their supervisory manuals and in interviews with regulators' staff. We also interviewed three experts familiar with negotiations and the design of settlements, including staff from the National Mortgage Settlement, to understand elements typically considered in the design of settlements. We selected these experts based on their familiarity with similar mortgage servicing settlements or their recognized expertise in the field of settlements involving potential financial harm or where cash payments were to be made to victims. In addition, we interviewed staff from one regulatory agency, the Bureau of Consumer Financial Protection (commonly known as the Consumer Financial Protection Bureau, or CFPB), about their policies and procedures for negotiating enforcement actions, in particular related to mortgage servicing. Finally, we reviewed two settlements that included foreclosure prevention components—the National Mortgage Settlement and the separate California Agreement in the National Mortgage Settlement—to help identify various factors to consider in the design of foreclosure prevention actions in enforcement orders or settlements.

Further, to address how regulators oversaw achievement of the objectives of the foreclosure prevention component in the amended consent orders, we considered both regulators' activities to oversee servicers' financial obligations and actions to oversee the foreclosure prevention principles in the amended consent orders. To facilitate this process, we reviewed regulators' instructions to servicers for reporting on their foreclosure prevention obligations and servicers' reporting submissions for May, July, September, and December 2013. We also reviewed OCC's and the Federal Reserve's instructions to its examination teams for oversight of the foreclosure prevention principles. To further understand regulators' oversight of the financial obligations and foreclosure prevention principles, we interviewed OCC and Federal Reserve staff, including headquarters and Federal Reserve Board staff and staff from 10 of the 11 examination teams we interviewed—representing both OCC and the Federal Reserve and a mix of larger and smaller servicers (determined by the number of eligible borrowers from the foreclosure review)—about their oversight activities. We compared these instructions and their implementation with the supervisory expectations in regulators' supervisory manuals, the supervisory instructions for the other articles of the original consent orders, and federal internal control standards.[6] To supplement our understanding of the foreclosure prevention reporting and oversight activities, we interviewed representatives from six of the eight mortgage servicers we spoke with (representing servicers overseen by both OCC and the Federal Reserve of various sizes based on the size of the eligible population from the foreclosure review) about their activities to comply with the foreclosure prevention requirement and regulators' oversight activities. We also interviewed staff from the National Mortgage Settlement, which requires five mortgage services to provide foreclosure prevention actions, to understand their experience and approach.[7]

To assess the extent to which regulators are leveraging and sharing information from the file review process, we analyzed consultants' preliminary findings from the file review process, in particular information they reported to regulators in exit surveys and during exit interviews with regulators. We also reviewed OCC's examination teams' conclusion memorandums from their oversight of the file review process. We compared these with publicly available information on regulators' findings

[6]See OCC, *Bank Supervision Process: Comptroller's Handbook* (Washington, D.C.: May 2013) and *Policies and Procedures Manual: Bank Supervision Operations, Enforcement Action Policy* (Washington, D.C.: July 2001). In addition, the Board of Governors of the Federal Reserve System, *Division of Banking Supervision and Regulation: Bank Holding Company Supervision Manual* (Washington, D.C.: July 2013) and *Division of Consumer and Community Affairs: Consumer Compliance Handbook* (Washington, D.C.) accessed February 2014. See also GAO, *Standards for Internal Control in the Federal Government,* GAO/AIMD-00-21.3.1 (Washington, D.C.: Nov. 1999).

[7]*United States v. Bank of America Corp.*, No. 1:12-CV-00361 (D.D.C. Apr. 4, 2012). The Departments of Justice, Treasury, and Housing and Urban Development, along with 49 state Attorneys General, reached a settlement with the country's five largest mortgage servicers to provide approximately $25 billion in relief to distressed borrowers; the servicers also agreed to implement a set of mortgage servicing standards.

from the 2010 coordinated file review conducted by OCC, the Federal Reserve, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision to identify the extent to which the findings were similar.[8] We also interviewed staff from OCC headquarters and Federal Reserve Board and 10 of the 11 examination teams, and representatives from 8 mortgage servicers about what they learned about mortgage servicing from the preliminary file reviews and cash payment categorization processes and changes in mortgage servicing practices since the 2009 and 2010 period covered by the file review process.[9] In addition, we asked regulator staff, including the examination teams, about steps they had taken or were planning to take to share this information among examination teams or with other regulators, such as CFPB, or to use this information for future oversight. We also interviewed CFPB staff about information they had requested or received about the preliminary file review results. We compared regulators' plans to share and leverage information with federal internal control standards for recording and communicating information to help management and others conduct their responsibilities.[10]

To assess regulators' efforts to promote transparency of the amended consent orders and remaining review, we reviewed press releases and documents from regulators related to the amended consent orders and the remaining review. In particular, we reviewed what documents were available about the amended consent orders and the remaining review on the regulators' websites, such as frequently asked questions, webinars, press releases, and status updates related to check issuance, and analyzed the content of these materials. We also reviewed the payment administrator's telephone instructions to respond to questions about the

[8]The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, §§ 311-313, 124 Stat. 1376, 1520-1523 (2010), eliminated the Office of Thrift Supervision and transferred its regulatory responsibilities to OCC, the Federal Deposit Insurance Corporation, and the Federal Reserve. The transfer of these powers was completed on July 21, 2011, and the Office of Thrift Supervision was officially dissolved 90 days later (Oct. 19, 2011).

[9]As we noted earlier, we identified examination teams and servicer representatives to interview so as to have a mix of OCC and Federal Reserve examination teams and servicers overseen by the two regulators. We also considered the relative size of the servicers, based on the size of the eligible population for the foreclosure review, so as to have larger- and smaller-sized servicers.

[10]See GAO/AIMD-00-21.3.1.

amended consent order process. In addition, we reviewed examples of the postcards and letters sent to borrowers to communicate about the amended consent order payments and to provide cash payments. We also interviewed regulator staff about the steps they took to promote transparency and their plans for future reporting. We compared this documentation to federal internal control standards on communications and our work on organizational transformation to identify any similarities or differences.[11] Further, we considered our prior recommendation about lessons learned about transparency of the foreclosure review for the amended consent order process.[12] Finally, we also conducted interviews with representatives of consumer groups.

We conducted this performance audit from May 2013 through April 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and 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.

[11]See GAO, *Major Management Challenges and Program Risks: Department of Homeland Security,* GAO-03-102 (Washington, D.C.: Jan. 2003) and *Results-Oriented Cultures: Implementation Steps to Assist Mergers and Organizational Transformations*, GAO-03-669 (Washington, D.C.: July 2, 2003). Part of the methodology to develop these reports included convening a forum of public and private-sector leaders to discuss useful practices from major private and public-sector organizational mergers, acquisitions, and transformations that federal agencies could learn from when making changes, such as those in response to governance challenges. The participants of the forum identified key practices and lessons learned regarding mergers and transformations. We considered this example relevant to the foreclosure review because of the significant nature of the change from the foreclosure review to the activities under the amended consent orders for distributing direct payments and other assistance. In addition, see GAO/AIMD-00-21.3.1.

[12]See GAO-13-277.

Appendix II: Office of the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System (Federal Reserve) Actions in Response to GAO's Recommendations on the Independent Foreclosure Review

We have issued two prior reports on the foreclosure review process. In our first report on the outreach component of the foreclosure review, we found that the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System (Federal Reserve) and servicers had gradually improved the communication materials for borrowers, but that regulators could make further enhancements to the outreach efforts.[1] In our second report, we identified lessons learned from the file review process that could be used to enhance the activities under the amended consent orders and the continuing reviews.[2] Below we list the recommendations made in each report and the actions taken by regulators in response.

[1]See GAO, *Foreclosure Review: Opportunities Exist to Further Enhance Borrower Outreach Efforts*, GAO-12-776 (Washington, D.C.: June 29, 2012).

[2]See GAO, *Foreclosure Review: Lessons Learned Could Enhance Continuing Reviews and Activities Under the Amended Consent Orders*, GAO-13-277 (Washington, D.C.: Mar. 26, 2013). In April 2013, we used our March 2013 report as the basis for testimony before the Senate Subcommittee on Housing Transportation, and Community Development, Committee on Banking, Housing, and Urban Affairs. See GAO, *Foreclosure Review: Lessons Learned Could Enhance Continuing Reviews and Activities Under the Amended Consent Orders*, GAO-13-550T (Washington, D.C.: Apr. 17, 2013).

Table 7: OCC and Federal Reserve Actions in Response to GAO's Recommendations on the Independent Foreclosure Review

Foreclosure Review: Lessons Learned Could Enhance Continuing Reviews and Activities under Amended Consent Orders: GAO-13-277, March 26, 2013

Recommendation	Actions taken	Status
For servicers not subject to the amended consent orders, as appropriate, improve oversight of sampling methodologies and mechanisms to centrally monitor consistency, such as assessment of the implications of inconsistencies on remediation results for borrowers in the remaining foreclosure reviews.	Between January and August 2013, the Office of the Comptroller of the Currency (OCC) continued oversight of the sampling activities of the two servicers that continued file review activities and took steps to monitor consistency of the results. According to OCC, both consultants used sampling methodologies that were more robust than the one required by regulators and the initial sampling results provided sufficient information for consultants to propose additional reviews. To facilitate central monitoring of the consistency of the file review processes and results, the two remaining reviews were partially overseen by the same exam team. This team had specific responsibility for considering the consistency of file review results and processes and would conduct additional reviews where they found differences that might lead to inconsistent results. As a result of these steps, OCC validated the initial file review results for both servicers and approved one consultant using the results to conduct additional file reviews. For the other servicer, the results of the file reviews were used as the basis to amend the consent order and provide cash payments to all borrowers. In contrast to OCC, all of the servicers overseen by the Board of Governors of the Federal Reserve System (Federal Reserve) signed amended consent orders ending the file review process and instituting a process to provide cash payments to all borrowers.	OCC: Closed-Implemented Federal Reserve: Closed-Not Implemented
Identify and apply lessons from the foreclosure review process, such as enhancing planning and monitoring activities to achieve goals, as regulators develop and implement the activities under the amended consent orders.	According to OCC and Federal Reserve staff, they considered lessons learned from the file review process in both their planning and oversight of the amended consent order activities. For example, for the cash payment categorization process they issued up-front guidance to servicers and examination teams to facilitate consistent categorization and oversight of the process. In addition, regulators took steps to prepare for the distribution of checks to borrowers, including establishing performance measures and holding regular phone meetings to facilitate monitoring of check issuance activities. With regard to the foreclosure prevention component, regulators consulted with consumer groups to help identify the types of information to collect on servicers' activities, issued a reporting template for servicers to record information on the loans they were submitting for crediting, and are hiring a third-party to review the crediting process.	Closed-Implemented

Develop and implement a communication strategy to regularly inform borrowers and the public about the processes, status, and results of the activities under the amended consent orders and continuing foreclosure reviews.	Since the announcement of the amended consent orders and our March 2013 report, regulators have taken steps to keep borrowers and the general public informed about the status of activities under the amended consent orders and continuing foreclosure reviews. For example, regulators directed that the payment administrator for 14 of the 15 servicers subject to amended consent orders send postcards to approximately 4.4 million borrowers informing them that they would receive a cash payment from their servicer, and regulators regularly updated their websites with information on the number and amount of cash payment checks cashed under the amended consent orders. Regulators also directed the administrator to send communications to borrowers subject to the continuing file review to inform them that their reviews were ongoing. Regulators plan to issue publicly final reports on the direct payment process and foreclosure prevention actions as well as information from the reviews that were terminated and the results of the review that continued, but they have not yet determined the content and timing of these reports. However, regulators' actions to date have included limited information on processes. For example, regulators did not release publicly information on the criteria for borrower placement in each category, such as the specific loan and borrower characteristics associated with each category.	Open
Foreclosure Review: Opportunities Exist to Further Enhance Borrower Outreach Efforts: GAO-12-776, June 29, 2012		
Enhance the readability of the request-for-review form on the independent foreclosure review website so that it is more understandable for borrowers, such as by including a plain language guide to the questions.	In July 2012 a request-for-review help-sheet was added to the independent foreclosure review website that provides additional tips in plain language, explanation of key terms, and additional instructions to help borrowers fill out the request-for-review form.	Closed-Implemented
Require that servicers include a range of potential remediation amounts or categories in communication material and other outreach, such as direct mailings to borrowers, public service announcements, the independent foreclosure review website, regulators' websites, and officials' testimonies and speeches.	In June 2012, OCC and the Federal Reserve publicly released a framework of remediation amounts and categories. The regulators issued a joint press release announcing the release of the framework. The framework was posted on the independent foreclosure review website and regulators' websites. In November 2012, servicers included information on the ranges of potential payment amounts or categories in their additional outreach materials. This additional information clarified the potential benefit to borrowers of submitting a request-for-review.	Closed-Implemented

Require servicers to identify trends in borrowers who have and have not responded by factors such as Metropolitan Statistical Area, zip code, servicer, and borrower characteristics and report to the regulators on weaknesses found. If warranted, regulators should require that servicers, in consultation with their third-party consultants, conduct more targeted outreach to better reach underrepresented groups, such as considering more credible messengers to reach these groups. If such action cannot be taken prior to the deadline for requests for review, regulators should consider expanding the look-back review to better ensure coverage for underrepresented groups.	In summer 2012, OCC and the Federal Reserve advised servicers to structure their additional outreach activities so as to target communities based on audience characteristics, response data, and consumer research. To tailor this outreach, servicers analyzed data on borrowers who responded to the initial outreach activities compared to those who did not and conducted a market analysis to identify geographic areas and ethnic groups with the greatest opportunity to benefit from increased awareness about the opportunity to file a request-for-review. In addition, servicers identified effective messengers by using leaders of community groups, including faith-based groups and groups that represent minorities, to deliver targeted information about the foreclosure review process. These additional outreach activities began in November 2012.	Closed-Implemented

Source: GAO analysis of OCC and Federal Reserve information.

Appendix III: Comments from the Office of the Comptroller of the Currency

Office of the Comptroller of the Currency

Washington, DC 20219

April 14, 2014

Mr. Lawrance L. Evans, Jr.
Director, Financial Markets and Community Investment
United States Government Accountability Office
Washington, DC 20548

Dear Mr. Evans:

The Office of the Comptroller of the Currency (OCC), has received and reviewed your draft report titled "Foreclosure Review: Regulators Could Strengthen Oversight and Improve Transparency of the Process." Your report represents the third and final phase of your examination of the OCC's Independent Foreclosure Review (IFR) process. In 2013, the IFR was replaced for most servicers with cash payments and foreclosure prevention actions.

You found that: (1) negotiations were largely based on projected costs and remediation amounts and the goals for the cash payments were generally met; (2) regulators did not establish specific objectives for foreclosure prevention actions, and oversight is limited; (3) regulators are sharing findings of servicing weaknesses confirmed through file reviews and cash payment process; and (4) regulators communicated the status of activities, but information on processes has been limited.

You are making two recommendations to the OCC.

First, to help ensure that foreclosure prevention principles are being incorporated into servicers' practices, the OCC should direct examination teams to take steps to evaluate and test servicers' implementation of the foreclosure prevention principles.

We have included this in our examination plans for assessing compliance with the consent orders. The foreclosure prevention principles included in the amendment to the consent orders will be used as considerations when assessing the effectiveness of loss mitigation and foreclosure prevention actions.

Second, to better ensure transparency and public confidence in the amended consent order processes and results, the OCC should include in its forthcoming reports or other public documents information on the processes used to determine cash payment amounts, such as the criteria servicers used to place borrowers in various payment categories.

We appreciate the desire for greater transparency regarding the IFR and the subsequent payment agreements. As the OCC develops its public reports, we will consider including additional detail regarding the categorization of borrowers. Much of that information is already available on the OCC public Web site at http://www.occ.gov/independentforeclosurereview.

Thank you for the opportunity to comment on the draft report. If you need additional information, please contact Morris Morgan, Deputy Comptroller for Large Bank Supervision, at (202) 649-6789.

Sincerely,

Thomas J. Curry
Comptroller of the Currency

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Appendix IV: Comments from the Board of Governors of the Federal Reserve System

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D.C. 20551

DIVISION OF CONSUMER AND
COMMUNITY AFFAIRS

April 14, 2014

Mr. Lawrance L. Evans, Jr.
Director
Financial Markets and Community Investment
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Evans,

Thank you for the opportunity to review and comment on the draft report, "FORECLOSURE REVIEW: Regulators Could Strengthen Oversight and Improve Transparency of the Process," GAO-14-376 (the "draft report"). The draft report addresses various aspects of the transition from the Independent Foreclosure Review ("IFR") process that was undertaken by the Federal Reserve and the Office of the Comptroller of the Currency ("OCC") to the payment agreements that were announced beginning in January 2013.

Between April 2011 and April 2012 the Federal Reserve and the OCC issued enforcement actions (the "Consent Orders") against 16 mortgage loan servicers. To settle their obligations under the IFR, in 2013 the Federal Reserve and the OCC entered into agreements with all but one of the 16 mortgage servicing companies. The agreements require the participating servicers to provide more than $9.9 billion in cash payments and other assistance to help borrowers, including approximately $3.9 billion in direct cash payments to borrowers and approximately $6.0 billion in other foreclosure prevention assistance.

The Federal Reserve and the OCC entered into the payment agreement to provide monetary compensation, in a timelier manner than was experienced with the IFR, to millions of borrowers who were caught up in the foreclosure crisis. As of March 28, 2014, In-Scope Borrowers have cashed or deposited over 3.6 million checks totaling over $3.2 billion, which represents approximately 84 percent of the value of checks issued to In-Scope Borrowers.

We note that the GAO's report found that, "To evaluate the final cash payment amount, GAO tested regulators' major assumptions and found that the final negotiated amount generally fell within a reasonable range."[1] Borrowers whose mortgage loans were serviced by one of the participating servicers and who were involved in a foreclosure action on their primary residence between January 1, 2009, and December 31, 2010, were considered "In-Scope Borrowers" entitled to compensation under the payment agreement.

[1] Draft Report, unnumbered introductory page titled "GAO Highlights."

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The payment agreement imposed two principal requirements on the participating servicers. First, the servicers were required to promptly make cash payments to all In-Scope Borrowers under the IFR (the "Cash Payments"), regardless of whether the borrower suffered financial injury caused by the servicer's error. Second, the servicers were required to provide during the next two years loss mitigation or other foreclosure prevention assistance, such as loan modifications or forgiveness of deficiency judgments, to borrowers facing foreclosure (the "Foreclosure Prevention Assistance"). The borrowers could not be required to waive or release any rights or claims they might have against their servicer in order to receive a cash payment or foreclosure prevention assistance. The servicers' fulfillment of the Cash Payments and Foreclosure Prevention Assistance requirements replaced their obligation to complete the IFR under the Consent Orders. The payment agreement did not affect the servicers' continuing obligations under the Consent Orders to take corrective actions to address deficiencies in their mortgage servicing and foreclosure policies and procedures.

The draft report recommends two actions that the Federal Reserve should take to help ensure that the foreclosure prevention principles are being incorporated into servicers' practices and to better ensure transparency and public confidence in the amended consent order processes and results. The Federal Reserve agrees with the GAO's recommendations and was independently working toward the same outcomes that the GAO highlights. GAO's first recommendation is directed to the OCC. The second recommendation, which is directed to the Federal Reserve, is to ensure that the planned activities to oversee the foreclosure prevention principles include evaluation and testing of servicers' implementation of the principles. Consistent with this recommendation, the Federal Reserve's supervisory teams have already established a schedule for this year that includes testing to assess the servicers' processes for following the foreclosure prevention principles.

The third recommendation, directed at both the OCC and the Federal Reserve, is for the agencies to include in their forthcoming reports or other public documents information on the processes used to determine cash payment amounts, such as the criteria servicers used to place borrowers in various payment categories. The Federal Reserve and the OCC have committed to providing public reports that detail the implementation of the payment agreement. In addition, throughout the IFR process, the Federal Reserve has posted relevant information on its public website to regularly inform borrowers and the public about important aspects of the IFR process. We will take the GAO's recommendation into consideration as we finalize our reporting and other communication strategies.

We appreciate the GAO's professionalism during its reviews of the foreclosure review process and its consideration of our input in developing the final draft report.

Sincerely,

Tonda Price

Tonda Price
Acting Director

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Appendix V: GAO Contact and Staff Acknowledgements

GAO Contact

Lawrance L. Evans, Jr. (202) 512-8678 or evansl@gao.gov

Staff Acknowledgments

In addition to the contact named above, Jill Naamane (Assistant Director), Bethany M. Benitez, Maksim Glikman, DuEwa Kamara, John Karikari, Charlene J. Lindsay, Patricia MacWilliams, Marc Molino, Jennifer Schwartz, Andrew Stavisky, Winnie Tsen, and James Vitarello made key contributions to this report.

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