

United States Senate

WASHINGTON, DC 20510

January 19, 2012

The Honorable Thomas Perrelli
Associate Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue N.W.
Washington, D.C. 20530

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1500 Pennsylvania Avenue N.W.
(Attn: 1801 L St.)
Washington, D.C. 20220

The Honorable Shaun Donovan
Secretary
U.S. Department of Housing and Urban
Development
451 7th Street S.W.
Washington, D.C. 20410

The Honorable Tom Miller
Iowa Attorney General
1305 E. Walnut Street
Des Moines, IA 50319

Dear Associate Attorney General Perrelli, Secretary Donovan, Director Cordray, and Attorney General Miller:

As the senior Senator from Ohio and a member of the Senate Committee on Banking, Housing, and Urban Affairs, I am all too familiar with the struggles faced by distressed homeowners, resulting from a pattern of abuse by the largest bank servicers. My home state experienced 14 consecutive years of increasing foreclosures until 2010, when some of the nation's largest mortgage servicers instituted a foreclosure moratorium amid reports of widespread legal document forgery. This issue is at the heart of your 50-state mortgage and foreclosure fraud investigation. Accordingly, I write today to express my concern based upon recent reports outlining some of the proposed settlement terms.

It is reported that the proposed settlement will include a number of components to address the wrongdoings of Wall Street banks and their affiliated servicers, including a system of mortgage principal reduction based on a credit system. With more than one in five Ohioans owing more on their mortgage than their house is worth, and Ohioans nearly \$16 billion underwater on their mortgages, there is no question that principal reduction can and should be an element of any plan to aid homeowners.¹ Many of these people are underwater through no fault of their own. As New York Federal Reserve President Bill Dudley said recently, "[t]his isn't a moral hazard issue, this is just the bad luck associated with the timing of the purchase and an exceptionally weak jobs market."² A settlement must provide *meaningful*, widespread relief to Ohio homeowners. Unfortunately, the numbers reported in various media accounts fail to meet this test. The

¹ See Ohio Organizing Collaborative & New Bottom Line, *Ohio Underwater: How President Obama Administration Can Fix the Housing Crisis and Create Jobs* 4 (2011).

² William C. Dudley, President and Chief Executive Officer of the Federal Reserve Bank of New York, Remarks at the New Jersey Bankers Association Economic Forum, Iselin, New Jersey, Jan. 6, 2012.

settlement must also redress the injuries suffered by families that have already lost their homes. Any settlement that fails to achieve these two goals would be insufficient.

A settlement must also impose adequate penalties on servicers who broke the law. There are reports that the settlement could permit servicers to receive credit for writing down the value of mortgage-backed securities (MBS) owned by investors, without requiring servicers to reduce principal on the mortgages and second liens that they own.³ Ohio's public employee pension funds have significant investments in MBS, and therefore have significant interest in the terms of the settlement.⁴ The reported settlement terms would allow banks to write down the investments of many of my constituents, without sacrificing anything. And, depending upon the scope, any settlement could potentially preclude these funds from pursuing actions to recoup more than \$457 million in losses, allegedly due to credit ratings agencies improperly rating MBS.⁵ Such terms are unacceptable.

Teachers, first responders, law enforcement, and other pensioners and retirees should not be penalized for wrongdoing by Wall Street. An adequate loss-sharing arrangement would acknowledge the reality that there is no penalty for servicers writing down the value of assets that belong to someone else. There is also no penalty associated with servicers writing down a portion of their assets – in this case, their second lien holdings – that actually have no value. It is often in investors' best interest to reduce mortgage principal, but this settlement must penalize the servicers who broke the law.

As Governor Sarah Bloom Raskin of the Board of Governors of the Federal Reserve said recently, financial penalties “remind regulated institutions that noncompliance has real consequences; the law is not a scarecrow where the birds of prey can seek refuge and perch to plan their next attack.”⁶ It thwarts the objective of punishing servicer wrongdoing and deterring future robo-signing, predatory lending, consumer deception, and other violations by permitting wrongdoers to settle exclusively with “other people’s money.” State attorneys general tried this approach in a 2008 settlement with servicer Countrywide—it did not work.

Accordingly, mortgage servicers must not be able to settle these claims using investments held by state pension funds, retirement systems, and universities. The penalty for bank servicer misconduct must come from the bank's balance sheets, not other sources of mortgage capital. The proposed principal reduction program must focus on banks settling with their own money, rather than shifting their financial liability to Private Label Securities (PLS) trusts. And the net present value (NPV) model for calculating the value of a mortgage modification must be publicly disclosed, transparent, and based upon reasonable economic assumptions (*e.g.*, the correct discount rate), to ensure that principal is being reduced when it is financially appropriate.

³ See Shahien Nasiripour & Kara Scannell, *Mortgage Talks Point To Likely Investor Losses*, FINANCIAL TIMES, Jan. 6, 2012.

⁴ The Ohio Public Employees Retirement System holds \$765 million in MBS; the Ohio Police & Fire Pension Fund held \$626 million in MBS; State Teachers Retirement System of Ohio holds \$50 million in mortgage-backed securities (MBS); and the Ohio Public Employees Deferred Compensation Program holds \$39 million in MBS.

⁵ See *Ohio Police & Fire Pension Fund v. Standard & Poor's*, 09-CV-1054 (S.D. Ohio, 2009).

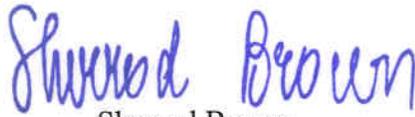
⁶ Governor Sarah Bloom Raskin, “Creating and Implementing an Enforcement Response to the Foreclosure Crisis” 8, Remarks at the Association of American Law Schools Annual Meeting, Washington, D.C., Jan. 7, 2012.

Mortgage servicers must be required to assist homeowners who have lost their homes illegally or are underwater through no fault of their own. But the remedies and penalties must be meaningful, and not come solely from the retirement savings of middle class workers—some of whom may have already lost their homes as result of the illegal practices that the settlement is meant to address.

This is a critical issue for Ohioans who have been victimized by widespread foreclosure fraud and will be affected by any settlement, both as homeowners and as investors in MBS portfolios managed by public pension and retirement systems. Your efforts to ensure a fair and transparent settlement will have lasting effects for a generation and establish a very important legal precedent.

Thank you for the opportunity to share my views on this important matter.

Respectfully,



Sherrod Brown
United States Senator

Cc: The Honorable Mike DeWine, Ohio Attorney General