MONITOR

of the 2017 Deutsche Bank Mortgage Settlement

FOURTH REPORT | JULY 2018

TABLE OF CONTENTS

INTRODUCTION

This is the fourth report of the independent Monitor appointed pursuant to the January 17, 2017, settlement agreement (the "Settlement Agreement") between Deutsche Bank AG and its current and former subsidiaries and affiliates (collectively, "Deutsche Bank" or the "Bank"), ACE Securities Corp., and the United States Department of Justice ("Department of Justice").[1]

The Bank has made substantial progress toward meeting its $4.1 billion obligation since the Monitor's last report: It increased its total credit earned under the Settlement Agreement from slightly less than $24 million to **$303,496,500** by submitting for credit 24,314 newly-originated loans to first-time low-to-moderate income homebuyers and borrowers in Hardest Hit Areas. It entered into a financing arrangement with an additional loan origination counterparty.[2] For the first time under the Settlement Agreement, it entered into financing arrangements with counterparties focused on loan modifications, such as first-lien principal forgiveness, forbearance, and forgiveness of forbearance.[3] It sponsored two consumer outreach programs that the Monitor observed were informative and well-attended. And on June 5, 2018, it submitted approximately 51,000 newly-originated loans for credit under Menu Item 2.B, which the Monitor will review and discuss in his next report.

It is noteworthy that the Bank was able to achieve such progress while undergoing significant publicly-reported structural changes, including the replacement of its chief executive officer. The Monitor credits this result, at least in part, to the Bank's early creation of the Consumer Relief Group ("CRG"), described in the first report as the core team of professionals within the Bank dedicated to the day-to-day

[1] The Settlement Agreement named Michael J. Bresnick as independent Monitor. Deutsche Bank also entered into a separate agreement with the Office of the Maryland Attorney General requiring the Bank to provide at least $80 million of consumer relief to Maryland residents. Michael J. Bresnick was appointed to serve as independent Monitor of Deutsche Bank pursuant to that agreement as well.

[2] Since publication of the Monitor's third report, the Bank has entered into a financing arrangement with a fifth counterparty – Home Point Financial Corporation ("Home Point") – to originate mortgages under Menu Item 2. Existing loan origination counterparties include: (1) Shellpoint Partners LLC, through its subsidiary New Penn Financial, LLC, and other affiliates (collectively, "Shellpoint"); (2) PennyMac Loan Services, LLC and PennyMac Mortgage Corporation (collectively, "PennyMac"); (3) AmeriHome Mortgage Company, LLC ("AmeriHome"); and (4) Freedom Mortgage Corporation ("Freedom"). The Monitor's second and third reports provide information about the Monitor's due diligence of these counterparties, as well as the November 29, 2017, definitive agreement for New Residential Investment Corp. (NYSE:NRZ) to acquire Shellpoint.

[3] The counterparties engaged thus far to provide relief under Menu Item 1 are (1) New Residential Investment Corp. and affiliates and (2) affiliates of MCM Capital LLC.

management of its consumer relief efforts, and the Consumer Relief Forum ("CRF"), a group of senior executives within the Bank that oversees the CRG's activities and ultimately reports to the Bank's Management Board. Despite any internal volatility that may have existed within the Bank, these teams remain intact and focused on satisfying the Bank's obligations under the Settlement Agreement.

MODIFICATIONS UNDER MENU ITEM 1

In prior reports, the Monitor discussed at length the Bank's origination efforts under Menu Item 2.B. The Bank now has entered into financing arrangements with counterparties that will enable it to facilitate various types of loan modifications under Menu Item 1.[4] A discussion of these arrangements is included in the Summary of Counterparty Due Diligence section, below.

Modifications are permanent changes to pre-existing loan agreements. Borrowers typically enter into modifications when they have experienced trouble making their monthly payments, are "underwater" (meaning they owe more than their properties are worth), or their loans carry interest rates that are substantially above-market.

A borrower's main point of contact during the modification process is with his or her loan servicer. Unsurprisingly, the general topic of loan servicing frequently invites stories of personal dissatisfaction from borrowers and complaints of regulatory misconduct by federal and state enforcement authorities. Since the modifications that qualify for relief pursuant to the Settlement Agreement are, in most cases, likely to be provided to borrowers experiencing financial hardship, the Monitor has worked closely with the Bank to ensure that relief is provided in a lawful and responsible manner. The Bank has been responsive to the Monitor's concerns.

Menu Item 1.A.

Menu Item 1.A. ("First Lien – Principal Forgiveness") allows the Bank to receive dollar-for-dollar credit if the Bank – here, through a counterparty – facilitates a reduction in the amount of principal a borrower owes under his or her mortgage, which must be in a first lien (or primary) position.

[4] The Settlement Agreement authorizes Deutsche Bank to earn credit by financing counterparties to modify loans in accordance with the Settlement Agreement's requirements. This provision of the Settlement Agreement is discussed in detail in the Monitor's first report, which can be found at https://deutschebankmortgagemonitor.com/wpcontent/uploads/2017/07/Deutsche-Bank-Monitor-Initial-Report-July-2017.pdf.

The following rules apply:

- **<u>Eligible Loans</u>:** Footnote 3 of Annex 2 instructs that the Bank's eligibility for credit under Menu Item 1.A. is limited to principal reductions of the following: "non-performing loans, loans in imminent default (as defined by HAMP), high LTV loans, loans with rates substantially above Freddie Mac's Primary Mortgage Market Survey (PMMS), and loans with troubled loan history." The footnote defines "high LTV loans" as "loans at or above 100% LTV," and "loans with troubled loan history" as "loans where the borrower has missed two or more payments during the term of the loan." For the other categories, the key terms are not defined in the Annex. Following discussions with the Bank, the Monitor has determined that he will apply the following definitions for these terms, which generally are consistent with industry practice, government programs, and other terms in the Annex:

    - "Non-performing loans" are loans that are 90 days or more past due.

    - "Loans in imminent default" are those in which borrowers are less than 60 days delinquent and claim a hardship, or the borrowers otherwise appear to meet the eligibility criteria for the Treasury Department's now-retired Home Affordable Modification Program ("HAMP"), which are enumerated in the Freddie Mac Single-Family Seller/Servicer Guide ("the Guide") Chapters 9204 and 9205.[5]

    - "Loans with rates substantially above Freddie Mac's Primary Mortgage Market Survey (PMMS)" are those that, at the time they are evaluated for a modification, have rates that are 25% or more above Freddie Mac's PMMS, which is a publication of representative interest rates for conventional mortgage products.[6]

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[5] Section 9205.7 of the Guide sets forth the detailed requirements for determining whether a borrower is in imminent risk of default. Typically, this determination involves an assessment of the borrower's cash reserves (liquid assets), and use of an automated process to analyze the borrower's data (including credit score, debt-to-income ratio, and property value). Hardships may include death of a borrower or household wage earner, long-term or permanent disability, and/or divorce or legal marital separation. *See* Guide, Section 9205.7 (Determining imminent default (03/02/16), *available at* http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/030916Guide.pdf.

[6] Current PMMS rates are publically available and can be found at http://www.freddiemac.com/pmms/data.html; historic rates are available at http://www.freddiemac.com/pmms/pmms_archives.html.

- o "Loans with troubled loan history" are those in which the borrower has missed two or more payments during the term of the loan, unless the only missed payments were the two payments occurring immediately before the date on which the borrower was evaluated for a modification (otherwise, this requirement could overlap substantially with the "loans in imminent default" category).

- **<u>Loan to Value Ratio ("LTV")</u>:** To receive credit for principal reduction, the Bank must show that the borrower's unpaid loan balance after the modification is an amount that is equal to or less than the value of the property (an LTV equal to 100% or lower).[7] For example, if a borrower owes $200,000 in principal on a loan for a property that is valued at $100,000, and the Bank's counterparty agrees to reduce the borrower's principal by $100,000 (thereby lowering the principal balance to $100,000, which is equal to the property's value, resulting in a 100% LTV), the Bank will receive $100,000 in consumer relief credit.

  To the extent the LTV is reduced to an amount below 100% LTV, the Bank may receive more than dollar-for-dollar credit. The Bank may seek 115% credit ($1.15 credit for every dollar forgiven) for amounts that bring the borrower's LTV to between 90% or more and less than 100%; 120% credit ($1.20 credit for every dollar forgiven) for amounts that bring the borrower's LTV to greater than 75% and less than 90%;[8] and 125% credit ($1.25 for every dollar forgiven) for the <u>entire</u> amount of principal forgiven if the counterparty reduces the borrower's LTV to 75% or below.

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[7] Although a possible reading of Menu Item 1.A. is that the Bank may receive credit only in circumstances where a pre-modification LTV exceeded 100% and then was reduced to 100% or lower, the Monitor has determined that the Bank may receive credit where a borrower's pre-modification LTV was below 100% and the counterparty provides principal reduction, thereby lowering the LTV even further. The Monitor believes that this is consistent with the Annex's consumer relief goals. In addition, footnote 3 identifies as specific categories eligible for relief situations other than "High LTV Loans" (defined as "loans at or above 100% LTV"), such as non-performing loans, loans in imminent default, loans with a troubled history, or loans with high interest rates. Consequently, the Monitor decided that the Bank may receive credit for reducing principal where a pre-modification loan is not underwater, provided that one of the other qualifications is satisfied (for example, the loan is non-performing).

[8] Menu Item 1.A. refers to modifications that reduce a borrower's LTV to "equal to or less than 75%," and modifications that reduce a borrower's LTV to "between 76% and 90%." The Settlement Agreement does not address modifications that reduce a borrower's LTV to between 75% and 76%; the Monitor, however, has interpreted the Agreement to mean that the Bank will receive 120% credit where a borrower's LTV is reduced to between 75.1% and 89.9%.

Applying these formulas to the scenario above:

- If the counterparty reduces the borrower's principal to $90,000 (bringing the LTV to 90%), the Bank will receive dollar-for-dollar credit for reducing the LTV to 100%, and then 115% credit for the additional $10,000 reduction that brought the LTV to 90% ($11,500), for a total credit of $111,500 ($100,000 plus $11,500).

- If the counterparty reduces the borrower's principal to $80,000 (bringing the LTV to 80%), the Bank will receive dollar-for-dollar credit for reducing the LTV to 100%, a 115% credit for the $10,000 reduction that brought the LTV to 90% ($11,500), and, finally, a 120% credit for the additional $10,000 reduction that brought the LTV to 80% ($12,000), for a total of $123,500 ($100,000 plus $11,500, plus $12,000).

- If the counterparty reduces the borrower's principal to $75,000 (bringing the LTV to 75%), the Bank will receive 125% credit ($1.25 for every dollar forgiven) for the <u>entire</u> amount of principal forgiven. Here, to bring the LTV to 75%, the counterparty forgave $125,000. Applying the 125% incentive, the Bank would receive $156,250 in credit.

In order to prove the LTV ratio, the Bank must provide evidence of the property's value three months prior to the modification. Footnote 4 of the Annex states that the valuation must be based on an acceptable method under the Making Home Affordable program ("MHA"), "subject to any applicable investor or contractual requirements." The Monitor has interpreted this phrase to mean that the valuation must satisfy standards either under the MHA program or as required by the counterparty in the ordinary course of business, whichever is more stringent.

There are several commonly-used methods to assess property values in the modification context: appraisals, broker price opinions ("BPOs"), and automated valuation models ("AVMs"), any of which may satisfy the evidentiary burden on the Bank, depending on the counterparty.

- An appraisal is performed by a licensed real estate appraiser, includes a full inspection of the interior and exterior of the property, and compares recently sold local, comparable properties.

- A BPO is a value provided by a real estate broker, in some instances based solely on visiting the exterior of the property, and includes a review of sales information from local, comparable properties.

- An AVM "is a computer-generated value that uses mathematical models that compare information" about the borrower's home (for example, the number of bedrooms and bathrooms and square footage) "with recent sales figures and other information about the housing market in" the borrower's region.[9]

- **GSE Limits:** Footnote 5 of the Annex instructs that modifications under Menu Item 1.A., B., and C. must be for loans with an unpaid principal balance (excluding accrued interest, fees, and advances for escrow and interest) "at or below the local GSE conforming loan limit cap in effect as of the date of such modification." The "GSE conforming loan limit cap" refers to the maximum loan amount for a loan that Fannie Mae and Freddie Mac will purchase. This information is publicly available.[10] For example, Fannie Mae's 2018 general loan limit cap for a single-unit property located in the contiguous United States is $453,100; Fannie Mae, however, applies a higher cap of $679,650 for single-unit properties located in "high-cost" areas. To prove that modifications submitted for credit meet this requirement, the Bank will identify the subject property's county using a publicly available U.S. Census Bureau tool,[11] and then cross-reference the county information against Fannie Mae's list of loan limits by county. Modifications with unpaid principal balances at or below those loan limits are eligible for consumer relief credit, while those that exceed the limits are ineligible under the Annex.

- **Three payments:** Footnote 1 of the Annex instructs that "[n]o credit will be provided for a modification if payments are required unless the borrower makes the first three scheduled payments under the modification (including trial period payments)." This provision is designed to test whether a modification, which typically causes a borrower to have a different monthly payment amount (and

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[9] Bureau of Consumer Financial Protection, Ask CFPB/ Mortgages (Feb. 22, 2017), a*vailable at* https://www.consumerfinance.gov/ask-cfpb/during-my-mortgage-loan-application-process-i-was-given-three-or-four-different-valuations-what-do-all-the-different-valuations-mean-en-1875/. Under the MHA, the permissible methods of valuation include: appraisals and BPOs; AVMs used by the Government Sponsored Enterprises ("GSEs"), i.e., Fannie Mae and Freddie Mac; or AVMs used by a servicer, provided that the servicer is subject to supervision by a Federal regulatory agency (all of the servicers to the Bank's counterparties are) and the regulator has reviewed the AVM and the AVM is determined to be reliable. *See* U.S. Dep't of Treasury, Home Affordable Modification Guidelines (March 9, 2009), *available at* https://www.treasury.gov/press-center/press-releases/Documents/modification_program_guidelines.pdf.

[10] *See* Fannie Mae, Loan Limits for Conventional Mortgages, *available at* https://www.fanniemae.com/singlefamily/loan-limits.

[11] American Fact Finder, *available at* https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t.

sometimes a higher monthly payment amount), is manageable for the borrower, or whether the borrower is unable to meet the new monthly payment amounts and likely to default on his or her modified mortgage obligations. Each of the three payments must be received timely, that is, before the next payment's due date, with one exception: The Monitor has allowed the Bank to apply an additional 15-day grace period to the first payment to allow for potential administrative delays that may occur in implementing the modification (for example, if the mortgage recently has been transferred to a new servicer there may be a delay in processing that first payment).

The reference to "trial period payments" means that if a lender or servicer requires a borrower to complete a trial period plan successfully in order to qualify for a permanent modification, the Bank may count those trial period payments toward satisfying the three payment requirement. As discussed below, however, in order to receive credit for a modification the Bank must demonstrate that it was permanent; thus, if a borrower must make more than three payments successfully to complete a trial period, the Bank will not receive credit unless it proves that the borrower has satisfied the trial period requirements and the servicer has recorded the modification as permanent.

- **Tax disclosure:** The Annex states: "Deutsche Bank shall not be responsible for any tax consequences to borrowers of the Consumer Relief described in this Annex, but Deutsche Bank is required to clearly disclose to borrowers the potential tax consequences of any relief offered or provided, and recommend that borrowers seek appropriate counsel as needed." Accordingly, in order to receive credit the Bank must provide documentation establishing that borrowers were notified of potential tax consequences and were advised to seek the advice of a tax professional.

- **Earned forgiveness:** Footnote 1 states: "With respect to earned forgiveness principal reduction modifications, credit can be immediate, provided the borrower makes the required payments (to include any trial payments) and the earned forgiveness period is a maximum of 3 years." A modification involves earned forgiveness when the Bank's counterparty agrees to forgive a certain amount of principal over the course of several years, rather than immediately. The Monitor has interpreted this requirement to mean the following:

    - If the reduction will be complete within three years, the Bank may receive credit for the entire amount of the reduction provided that the LTV will be reduced to 100% within the three year period and the borrower has made the requisite three payments.

    - If the earned forgiveness period extends beyond three years, but the LTV is reduced to 100% or lower within three years, the Bank may receive immediate credit for the amount that reduces the LTV to 100% or lower. The Bank then may receive additional credit for the reductions occurring after Year Three at the time they occur, provided the reductions occur before March 31, 2022.

- If the LTV is not reduced to 100% or lower by the end of Year Three, but it is reduced to 100% or lower by the end of the earned forgiveness period, the Bank may seek credit at the time the LTV is reduced to 100% or lower, provided that the reduction occurs before March 31, 2022.[12]

- The Bank may not seek credit if the earned forgiveness period is greater than three years and ends after March 31, 2022, and if LTV is not reduced to 100% or lower by Year Three or by March 31, 2022.

- **No waiver or release:** The Annex instructs that consumer relief "will not be conditioned on a waiver or release by a borrower, provided that waivers and releases shall be permitted in the case of a contested claim where the borrower would not otherwise have received as favorable terms or consideration." The Monitor has required the Bank's counterparty (or the counterparty's servicer) to execute a certification stating that any modification of the loans the Bank submits for credit "is not and will not be conditioned on the borrower waiving the right to take legal action against the lender, including through a jury trial and/or a class action, or releasing the lender from liability due to prior actions."

- **Permanence:** Although the Annex does not specifically address whether a modification must be permanent, the Monitor has requested that the Bank demonstrate that the lender or its servicer has entered into a permanent written modification agreement with the borrower, and that the modification is reflected in the servicer's system of record. If the borrower must complete a trial period before the modification is made permanent, the Bank must demonstrate that the counterparty has entered into a permanent modification with the borrower upon successful completion of the trial period. This is to ensure that the Bank does not receive credit for modifications that are temporary.

- **Prohibition of certain loan features:** The Annex does not prohibit certain loan features or terms in the modifications. Nevertheless, the Monitor has prohibited

[12] The Monitor has determined that (a) the Bank may receive 115% or 120% incremental credit for LTV reductions below 100%, if applicable, at the time the additional reduced threshold is reached; (b) to the extent that the LTV is reduced to 75% or less, a credit factor of 125% will be applied retroactively to all credit claimed; and (c) Early Incentive and Enhanced Early Incentive credit apply if the forgiveness is offered to a borrower or completed within the qualifying timeframes (September 1, 2018 and April 1, 2018 respectively).

the Bank from submitting loans that include the assessment of prepayment penalties, a negative amortization feature,[13] a balloon or lump-sum payment (except in the case of forbearances, as discussed below), or interest-only loan terms for the life of the loan. These features have been associated with predatory practices, which put borrowers at increased risk of default. The Monitor has required the Bank's counterparties (or its servicers) to execute a certification stating that any post-modified loan submitted for consumer relief credit does not include these loan features.

The Monitor has not, however, prohibited the Bank from seeking credit for modifications in which the loan's interest rate is higher than the pre-modification rate, or is adjustable over the life of the modification. The Monitor reasoned that there are instances in which a borrower may benefit from a modification even if the interest rate rises. For example, if a lender reduces principal, restructures the loan to extend the term from 15 years to 30 years, and re-amortizes the remaining balance, a borrower's monthly payment may be lowered and thus become more sustainable over the long-term, even with an increased interest rate. That borrower also may have gained equity in the house, allowing him or her to sell the property more easily. Similarly, although adjustable rate mortgages ("ARMs") have been criticized because a borrower's monthly payments may increase – perhaps substantially – when the interest rate periodically adjusts, some borrowers (especially those who do not intend to own their current home for the long-term) may benefit from a low initial interest rate. For example, an underwater borrower whose loan term has been modified to an LTV of 100% and from a fixed rate of 5% to a 10/1 ARM with an introductory rate of 4.5% may benefit substantially if he or she intends to sell the property within the first ten years following the modification.

In short, with the exception of eliminating a handful of specific loan terms, such as the ones discussed above, that have been associated with predatory practices,

[13] Negative amortization occurs when lenders allow borrowers to make a minimum payment that does not cover the full interest the borrower owes. The unpaid interest gets added to the amount borrowed. Consequently, the total amount the borrower owes increases. According to the Bureau of Consumer Financial Protection ("BCFP"):

> A negative amortization loan can be risky because you can end up owing more on your mortgage than your home is worth. That makes it harder to sell your house because the sales price won't be enough to pay what you owe. This can put you at risk of foreclosure if you run into trouble making your mortgage payments.

Bureau of Consumer Financial Protection, Ask CFPB: What is Negative Amortization? (Sept. 25, 2017), *available at* https://www.consumerfinance.gov/ask-cfpb/what-is-negative-amortization-en-103/.

the Monitor refrained from telling the Bank's counterparties and borrowers what type of modifications are most appropriate. Each borrower's situation is unique, and as long as the loan terms are not inherently predatory, and are conspicuous and clearly defined, the Monitor presumes that the borrower will make a decision that is in his or her best interest.

- **<u>Statute of limitations testing</u>:** The Monitor has required the Bank, through its counterparties, to perform a statute of limitations test on loans submitted for consumer relief credit under Menu Items 1A., B., and C. Statutes of limitations are state laws that limit the time within which a lender may bring an action to foreclose on a mortgage (and acquire the property that is the collateral for the loan) or a breach of contract action (to recover the amount due under the promissory note). Although the Annex does not specify that the Bank must perform a statute of limitations analysis in connection with these Menu Items,[14] the Annex prohibits the Bank from earning credit where relief has been provided in violation of law. While it is not necessarily unlawful for a servicer to attempt to collect payments on a loan that is beyond the statute of limitations, the Monitor was concerned that borrowers who agree to modify debts that are outside the applicable statute of limitations could inadvertently "reset" an expired or lapsed statute of limitations – effectively restarting the clock and allowing the servicer to pursue a foreclosure action in the event the borrower defaults on his or her loan after entering into the modification.

  Accordingly, the Bank and its counterparties have agreed to perform statute of limitations testing (approved by the Monitor) on all modifications submitted for credit and to certify that none of the submitted loans were beyond the statute of limitations for foreclosure on the date the borrower entered into a trial plan (where applicable) and on the date of the finalized modification, and that no portion of the balances of the loans submitted for credit would have been considered uncollectible through a breach of contract action or other action due to a statute of limitations defense.

- **<u>Bankruptcy testing</u>:** The Monitor has required the Bank to determine if a borrower who was offered a modification was in active bankruptcy at the time and, if so, to prove that specific requirements arising from the bankruptcy proceeding had been satisfied. At this time, the Bank has indicated that it does not intend to submit loans for credit where the borrowers are in active bankruptcy proceedings.

[14] In contrast, footnote 10 specifically prohibits the Bank from earning credit for modifications of second liens, junior liens, and outstanding unsecured mortgage debt, under Menu Items 1.E. and 1.F, when the debt has become "unenforceable by operation of state law." There is no corresponding footnote for Menu Items 1.A, B., or C.

- **<u>Occupancy</u>:** Although Menu Item 1 is silent as to whether a property needs to be occupied during the modification in order to qualify for credit, the Monitor has determined that the Bank should receive consumer relief credit only where it can demonstrate that the mortgaged property is occupied. The property, however, need not be occupied by the borrower, and may be occupied by a tenant. The Monitor sees the benefit in preserving the ability of tenants – who frequently are unaware of their landlords' financial difficulties, and who face the prospect of eviction should the landlord's property be foreclosed upon – to stay in their homes by facilitating a landlord's mortgage loan modification. The Bank will prove occupancy by providing a BPO, property inspection report, or similar assessment indicating that the property appears to be occupied or, at a minimum, that it does not appear to be abandoned (meaning the occupancy status may be unconfirmed, but the property appears to be maintained).

Menu Item 1.B.

Menu Item 1.B. ("Principal Forgiveness of Forbearance") allows the Bank to receive dollar-for-dollar credit if the Bank forgives first lien principal that previously had been forborne. A forbearance occurs when a servicer agrees to assist a borrower who is struggling with making his or her mortgage payment by taking a portion of the unpaid principal (the forborne principal amount) and allowing the borrower to repay the forborne principal at a later date (often at the end of the loan term); the forborne amount, which may be called a "balloon," does not accrue interest, although it must be repaid. Here, the Bank's counterparties may forgive all or part of a borrower's previously forborne principal, which benefits the borrower by relieving the borrower from having to repay the forborne principal when it becomes due. Just as with Menu Item 1.A. modifications, the Bank may seek consumer relief credit under Menu Item 1.B. only if the following requirements are met:

- The post-modification LTV must be at or below 100%;
- The borrower must make three timely payments after the modification;
- The unpaid principal balance must be at or below the applicable GSE conforming loan limit;
- The Bank must provide a tax disclosure;
- The modification must not be conditioned upon a waiver or release of rights;
- The forgiveness must be permanent;
- The post-modified loan must not have an interest-only feature, result in negative amortization, impose prepayment penalties, or create a balloon payment;
- The applicable statutes of limitation (as described on page 10, above) must not have lapsed;
- The Bank must determine if the borrower is in active bankruptcy; and
- The property must be occupied.

Under Menu Item 1.B., the Bank may receive incremental credit of 115% for reducing the LTV below 100%, as well as seek Early Incentive Credit of 115%.

Menu Item 1.C.

Menu Item 1.C. ("First Lien – Forbearance (Payment Forgiveness") allows the Bank to receive credit where the Bank's counterparty forbears a portion of a borrower's mortgage. Under the Annex, the Bank does not receive dollar-for-dollar credit for forbearances because, unlike principal forgiveness or forgiveness of previously forborne amounts, a forbearance does not have the effect of reducing a borrower's principal balance; it provides some benefit, however, because it defers payment of the forborne amount, and interest does not accrue on the forborne amount during the forbearance period, thereby reducing monthly payments during the forbearance period.

The amount of credit the Bank will receive under Menu Item 1.C. is determined by applying a formula: multiplying the loan's pre-modification interest rate by the forborne amount by ten years.[15] To mitigate the risk that borrowers will receive only short-term assistance by forbearing principal, the Monitor has required that, for loans submitted for consumer relief credit, the forborne amount cannot become due sooner than the earlier of 10 years or maturity (i.e., the end of the loan term).

For example, if the pre-modification interest rate is 4.5% and the counterparty forbears $10,000 of principal, the total credit amount would be determined by calculating .045 [interest rate] x $10,000 [forborne amount] x 10 [years] = $4,500. Thus, the Bank would receive $4,500 in consumer relief credit, plus an additional 115% if the relief qualified for Early Incentive Credit.

The Bank similarly may seek consumer relief credit under Menu Item 1.C. only if the following requirements are met:

- The borrower must make three timely payments after the modification;
- The unpaid principal balance must be at or below the applicable GSE conforming loan limit;
- The Bank must provide a tax disclosure;
- The forbearance must not be conditioned upon a waiver or release of rights;
- The forbearance must have been completed;
- The post-modified loan must not have an interest-only feature, result in negative amortization, or impose prepayment penalties;
- The applicable statutes of limitation (as described on page 10, above) must not have lapsed;

[15] Footnote 9 of the Annex states that ten years is the "average life" of a mortgage loan; an actual loan may last for more or less than ten years, but this does not affect the credit calculation.

- The Bank must determine if the borrower is in active bankruptcy; and
- The property must be occupied.

Additional Modification Plans and Considerations

In addition to developing the conditions outlined above, the Bank and the Monitor have discussed the Bank's request to seek credit for short sale transactions, as well as the Bank's effort to finance modifications for homeowners in Puerto Rico, who have experienced substantial distress in the wake of Hurricane Maria, which hit the island in September 2017. The Monitor will provide details about these developments in a future report.

SUMMARY OF COUNTERPARTY DUE DILIGENCE

As described in previous reports, the Monitor continues to perform due diligence to evaluate the Bank's arrangements with proposed counterparties and to inform his decision about whether to grant safe harbor consent to such arrangements.

Since the Monitor published his last report in March 2018, Deutsche Bank has entered into a financing arrangement with Home Point Financial Corporation ("Home Point") to originate loans pursuant to Menu Item 2, and financing arrangements with New Residential Investment Corp. ("NRZ") and its affiliates, including NRZ Mortgage Holdings LLC ("NRZ Mortgage"), and with affiliates of MCM Capital LLC, to provide relief to borrowers through loan modifications under Menu Item 1. In the following sections, the Monitor describes the diligence performed on each of these counterparties, with a particular focus on the modification counterparties, and their respective servicers, since these are the Bank's first arrangements with counterparties under Menu Item 1.

As with his diligence of prior counterparties, the Monitor's diligence process here was tailored for each arrangement's unique circumstances. It generally involved participating in the Bank's (or its outside legal counsel's) on-site diligence visit with each counterparty, engaging in follow-up visits and interviews, and reviewing key policies and procedures and other documentary material.

In all cases, the Monitor's diligence of the counterparties is limited to publicly available information or information made available by the counterparties through Deutsche Bank. The Monitor's diligence, therefore, does not constitute a complete review of all potential legal or regulatory compliance risks or issues. The Monitor's provision of safe harbor consent does not constitute an endorsement of any counterparty, or any other representation or statement regarding the counterparty, and such provision does not constitute a legal opinion and may not be relied upon as such.

Overview of the Monitor's Diligence of the Home Point Transaction

In June 2018, Deutsche Bank entered into a financing arrangement under Menu Item 2 with non-bank mortgage loan originator Home Point to (a) perform mortgage rate refinancings for consumers and (b) originate loans to creditworthy borrowers who are purchasing homes in Hardest Hit Areas, previously lost a primary residence to foreclosure or short sale, or are first-time, low-to-moderate-income ("LMI") homebuyers.

Established in 2014, Home Point is a multi-channel mortgage origination and servicing business headquartered in Ann Arbor, Michigan. Home Point began originating mortgages in 2015 with the acquisition of Maverick Funding Corp., and the company has continued to grow through the 2017 acquisition of Stonegate Mortgage Corporation, which was a publicly traded originator and servicer of mortgages. Home Point originates loans through multiple channels, including through retail offices,[16] a consumer direct call center,[17] wholesale,[18] and correspondent lenders.[19] Home Point offers mortgages and servicing in all 50 states, and is approved to participate in mortgage-related programs involving Fannie Mae, Freddie Mac, Ginnie Mae, the Federal Housing Administration ("FHA"), the U.S. Department of Veterans Affairs ("VA"), and the U.S. Department of Agriculture ("USDA").

Home Point is regulated and subject to oversight by federal and state regulatory authorities, including the BCFP and dozens of state regulatory agencies. As a seller to and servicer of loans sold to Freddie Mac and Fannie Mae (together, the "GSEs"), Home Point is subject to GSE requirements and audits. And, as a relatively new

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[16] Home Point has approximately 34 branches located in 15 states.

[17] The consumer direct channel primarily focuses on refinance transactions with new and existing customers.

[18] The wholesale channel involves Home Point's providing financing through brokers to originate loans pursuant to Home Point's requirements. The company has relationships with 1,400 brokers, and 200 non-delegated correspondent lenders. The company underwrites all loan files originated by these sources.

[19] A correspondent origination is one in which a mortgage loan is originated and funded by a lender in its own name and subsequently sold pursuant to an existing agreement to a second, typically larger, lender, which either holds the loan on its books, resells the loan in the secondary market, or packages the loan for sale in a security. Home Point has relationships with approximately 370 correspondent lenders. As noted above, approximately 200 correspondents are non-delegated, meaning that Home Point underwrites the loans the non-delegated correspondents originate; delegated correspondents underwrite the loans they originate based on lender and/or investor requirements.

entrant in the mortgage industry, Home Point has been subject to minimal regulatory enforcement actions or private litigation.

As it has with its other counterparties engaged in loan origination, the Bank entered into a Master Repurchase Agreement ("MRA") with Home Point.[20] The MRA limits "eligible loans" under the financing arrangement to those that are eligible for insurance by FHA, VA, or USDA, or purchase by the GSEs, in order to address the Annex's requirement that the borrowers be "creditworthy." The MRA also requires the Bank to provide an incentive payment to Home Point as encouragement to provide relief to the specific categories of borrowers identified in the Settlement Agreement.

As part of the due diligence process, the Monitor reviewed Home Point's compliance management system ("CMS") covering its mortgage origination and servicing activities,[21] including many of the company's compliance and operational policies and procedures. The Monitor determined that Home Point has implemented appropriate compliance and monitoring controls to mitigate the risk that its origination or servicing activities will result in practices harmful to consumers. In particular, the Monitor evaluated Home Point's underwriting standards and processes, as well as its oversight of its correspondent network, including quality control performed on loans acquired from correspondent lenders. Based on this review, it appears that the company has implemented a thorough review process for its correspondent channel, including diligence of potential correspondents, a multi-layered underwriting and compliance review of loans it purchases, and ongoing monitoring of correspondents.

Home Point's in-house servicing operations are new, having been implemented in connection with its 2017 acquisition of Stonegate Mortgage Corporation, a licensed servicer.[22] Nevertheless, the company appears to have appropriate servicing policies and procedures in place, and has demonstrated a commitment to augment its compliance team further by adding professionals that specialize in servicing compliance.

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[20] *See* Monitor's second report, *available at* https://deutschebankmortgagemonitor.com/wp-content/uploads/2017/11/Second-Monitor-Report-November-2017.pdf. In the mortgage context, repurchase transactions are a common mechanism used by mortgage originators to raise short-term capital. A repurchase agreement typically is viewed as having the same effect as a short-term, collateral-backed, interest-bearing loan. The buyer acts as a short-term lender, the seller acts as a short-term borrower, and the loans (or securities) purchased are the collateral.

[21] The purpose of this review was to give the Monitor reasonable assurance that Home Point has implemented servicing policies and procedures to protect borrowers after their loans have been originated.

[22] Home Point previously relied on a third party to service its mortgages.

The Monitor, therefore, has determined that Home Point has in place compliance and monitoring controls, including oversight of its correspondent lenders, to mitigate the risk that its origination platform will engage in practices harmful to consumers. Accordingly, the Monitor has provided his consent to the Bank's arrangement with Home Point, which will be subject to an ongoing compliance review process, described at length in earlier reports.

Overview of the Monitor's Diligence of the NRZ Transaction

In June 2018, the Bank entered into a financing arrangement under Menu Item 1 with NRZ and certain affiliates, including NRZ Mortgage. Pursuant to the agreement, the Bank will purchase interests owned by NRZ and its affiliates in certain controlled mortgage subsidiaries in exchange for NRZ's agreeing to modify loans in accordance with the Annex 2 requirements set forth above. For each modification that NRZ or its affiliates make to loans that are eligible for Consumer Relief under Menu Item 1 (and approved by the Monitor), the Bank will provide an incentive payment to NRZ.

NRZ and its affiliates use subservicers to service all of their mortgage loans. One of those subservicers, and the one preliminarily selected to service the loans that will be on the Bank's financing line, is Nationstar (known as Mr. Cooper).

Founded in 1994, Nationstar is a wholly-owned subsidiary of Nationstar Mortgage Holdings Inc., which is a publicly traded non-bank mortgage company. It currently is the largest non-depository mortgage servicer in the United States. (Nationstar also originates mortgages, though it will not be doing so in connection with the NRZ / Deutsche Bank arrangement). It is a highly regulated company that is subject to oversight by federal and state regulatory authorities, including the BCFP and dozens of state regulatory agencies.

Nationstar, however, has a somewhat blemished regulatory history (discussed further, below). Accordingly, during his due diligence, the Monitor evaluated how NRZ oversees Nationstar's servicing to ensure that it complies with relevant regulatory requirements. The Monitor reviewed NRZ's subservicer oversight and compliance program, which addresses its pre-acquisition loan-level due diligence, subservicer diligence, ongoing subservicer oversight, portfolio surveillance, and contractual rights and protections in agreements with subservicers, including Nationstar. The Monitor concluded that although NRZ oversees Nationstar's servicing, it does so only with respect to loans for which NRZ owns solely the servicing rights. NRZ does not engage in any additional regulatory compliance oversight of Nationstar's servicing of whole loans that NRZ owns, including the loans that are expected to be modified pursuant to its MRA with the Bank.

The Monitor, however, also examined how Nationstar monitors itself for regulatory compliance, with a focus on the company's policies and practices in various key servicing functions, such as collections, loss mitigation, and foreclosure. The Monitor ultimately concluded that Nationstar currently has sound operational controls and infrastructure to deal with the complex regulatory environment in which it operates. It also has made important personnel hires in its legal and compliance departments that will allow it to implement even more improvements to its Compliance Management System.

Nationstar's Regulatory Problems

As the Monitor noted in his third report, loan servicers are subject to a considerable amount of regulatory scrutiny. Since the servicers of mortgage loans often have ongoing relationships with borrowers – frequently lasting many years – they have the opportunity to affect borrowers' financial lives significantly, for better or worse. Servicers are responsible for processing routine loan payments, and often they are responsible for seeking to collect on late payments. They grant or deny modification requests based on investor guidelines, and they may make the decision whether to foreclose on a mortgage, or to work with the borrower to allow the borrower to exit homeownership through a short sale or deed in lieu of foreclosure. Because servicers' responsibilities are so varied, and so important, federal and state regulators examine servicers closely and may pursue enforcement actions when they believe a servicer has engaged in conduct that is unlawful.

Nationstar has been the subject of many such enforcement actions. The Monitor addressed these with Nationstar as part of his due diligence process, including the following, which Nationstar has included in its Securities and Exchange Commission filings:

- In May 2018, Nationstar reported that on April 24, 2018, the BCFP's Office of Enforcement advised Nationstar that it "is considering whether to recommend that the [BCFP] take enforcement action against [Nationstar], alleging violations of the Real Estate Settlement Procedures Act, the Consumer Financial Protection Act, and the Homeowners Protection Act, which stems from a 2014 examination."[23] Although the publicly available information about this investigation is limited, Nationstar discussed some additional details with the Monitor during his due diligence; the Monitor will report on developments if and when they are made public.

- In April 2018, Nationstar entered into a $5 million settlement with the New York Department of Financial Services ("DFS"), resolving issues arising from a servicing examination covering the period January 1, 2011, to March 31, 2014, and an originations examination covering the period March 1, 2012, to

[23] Nationstar Mortgage Holdings Inc., 10-Q, filed May 10, 2018.

March 31, 2014.[24] DFS alleged that, with respect to servicing, Nationstar had operated branch locations without authorization, failed to maintain a fee schedule on its website, failed to maintain certain documents in its files, failed to file required quarterly reports with DFS, and failed to file "multiple" 90-day foreclosure notices with DFS. It also cited Nationstar for failing to fund timely 900 originated mortgages. Nationstar confirmed in the settlement that it has made, and will continue to make, significant investments and changes to remedy these problems. The DFS order requires Nationstar to retain an independent consultant to assess the sufficiency of its remediation and compliance efforts.

- In January 2018, as the result of an investigation by the Office of the Massachusetts Attorney General, Nationstar executed a notice of discontinuance involving close to 700 Massachusetts residents who were provided "short-term, interest-only loan modifications" without consideration of the borrowers' ability to repay the mortgage debt under the modified terms; when the monthly payments increased, numerous borrowers defaulted, with some losing their homes to foreclosure.[25] Massachusetts law requires creditors to make good faith efforts to help borrowers with subprime mortgages avoid foreclosure. Nationstar agreed to "implement a loan modification program that will provide millions in borrower relief in the form of principal reductions, pay $500,000 in restitution to certain foreclosed-upon borrowers, and provide the loan modification review protections required by state law for borrowers who fall into default in the future."[26]

- In December 2017, the California Department of Business Oversight ("DBO") and Nationstar entered into a settlement arising from a regulatory examination of loan originations dating back to 2009.[27] DBO alleged that Nationstar had violated California laws prohibiting lenders from (1) charging

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[24] *See* DFS, Press Release, *DFS Fines Nationstar Mortgage LLC $5 million for Violations of New York Banking Law* (Apr. 11, 2018), *available at* https://www.dfs.ny.gov/about/press/pr1804111.htm.

[25] Massachusetts Attorney General, Press Release, *AG Healey Secures Millions in Relief for Massachusetts Residents Faced With Unfair Foreclosure and Loan Servicing Practices* (Jan. 30, 2018), *available at* https://www.mass.gov/news/ag-healey-secures-millions-in-relief-for-massachusetts-residents-faced-with-unfair-foreclosure.

[26] *Id.*

[27] *See* California Dept. Business Oversight, Press Release, DBO Announces $9.2 million Settlement with Nationstar-Mr. Cooper Mortgage (Dec. 4, 2017), *available at* http://www.dbo.ca.gov/Press/press_releases/2017/Press%20release%20-%20Nationstar-Mr.%20Cooper%20-%20FINAL%20-%2012-1-17.pdf.

interest on loans prior to the business day before loan proceeds are disbursed; (2) charging fees in excess of actual recording costs; and (3) accepting certain referral fees. DBO also alleged that Nationstar did not have adequate policies and procedures in place to address the investigation of consumer complaints about errors associated with a prior loan servicer. At the time of settlement, Nationstar already had provided $4 million to consumers, refunding *per diem* interest and recording fees, and it anticipated providing another $4.2 million in refunds. Nationstar also agreed to pay $4.8 million in penalties and $200,000 to cover DBO's costs of investigating the matter. Nationstar further agreed to retain an independent auditor to review its loan originations, and to pay an additional $250 penalty for each violation identified by an independent auditor.

- In March 2017, Nationstar settled with the BCFP over allegations that its mortgage data reporting between 2012 and 2014 was inaccurate, in violation of the Home Mortgage Disclosure Act ("HMDA").[28] Nationstar paid a $1.75 million penalty and agreed to develop and implement an effective compliance management system and correct previously reported data.

The Monitor carefully considered each of these serious regulatory matters and discussed them at length with Nationstar's senior executives. Many of these matters appear to be focused on activities that are several years old and that took place prior to Nationstar's recent, significant investment in its Compliance Management System. Moreover, Nationstar demonstrated to the Monitor that it is working diligently to remediate the findings by each of the regulatory agencies.

Consequently, despite Nationstar's spotty regulatory history, the Monitor ultimately provided his consent to the Bank's financing arrangement with NRZ for several reasons. First, although the Bank's counterparty – NRZ Mortgage – will not engage in meaningful compliance oversight of Nationstar's servicing of the loans the Bank submits for credit under the Settlement Agreement, Nationstar itself demonstrated that it is undertaking good faith efforts to improve its compliance processes. Second, Nationstar cooperated at length with the Monitor: It provided the Monitor with a significant amount of information and access to personnel; it worked closely with the Monitor to develop and implement a tailored process for identifying loans outside the

[28] *See* Bureau of Consumer Financial Protection, Press Release, *CFPB Takes Action against Nationstar Mortgage for Flawed Mortgage Loan Reporting* (Mar. 15, 2017), *available at* https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-nationstar-mortgage-flawed-mortgage-loan-reporting/. HMDA "requires many mortgage lenders to collect and report data about their mortgage lending to appropriate federal agencies and make it available to the public," and regulators "use the information to monitor whether financial institutions are serving housing needs in their communities" and to "help identify possibly discriminatory lending patterns." *Id.*

applicable statutes of limitations in connection with the MRA; and it acquiesced to the Monitor's demand to engage in enhanced oversight, including by agreeing to provide to the Monitor certain reports, on an ongoing basis, that address its remediation and compliance efforts following settlements with its regulators (including those described above). This responsiveness to the Monitor's requests and concerns, and willingness to subject itself to enhanced oversight by the Monitor, played a large part in the Monitor's decision.

Third, the Monitor expects to implement a servicing compliance protocol for all counterparties under Menu Item 1, whereby the Monitor will review sample modification transactions – including those performed by Nationstar – for compliance with key consumer protection laws.

Fourth, the effect of denying the Bank the ability to work with the nation's largest non-bank servicer of loans (and third-largest overall) would be to prohibit homeowners whose loans are owned by NRZ the opportunity to obtain much-needed relief pursuant to the Settlement Agreement simply because their loans are being serviced by Nationstar. In light of the other factors described above, such a result would run contrary to the spirit of the Settlement Agreement.

For these reasons, the Monitor agreed to provide his consent to the Bank's financing arrangement with NRZ.

Overview of the Monitor's Diligence of the MCM Transaction

On April 2, 2018, the Bank and affiliates of MCM Capital LLC ("MCM") executed an MRA and related documents whereby the Bank will provide financing to MCM's affiliates; in return, MCM, through its subservicer Shellpoint Mortgage Servicing ("SMS"), will modify mortgages in its portfolio pursuant to Menu Item 1. For each loan for which the Bank receives consumer relief credit, the Bank will provide to MCM an incentive payment.

The Monitor performed due diligence on MCM and SMS. Based in Bethesda, Maryland, MCM describes itself as "a leading residential whole loan mortgage investor, manager, advisor, and technology provider."[29] MCM specializes in acquiring pools of non-performing loans, with a goal of bringing the loans back into performance, including through loan modifications. Though MCM does not hold licenses to service mortgages, it engages frequently with its subservicers and takes a "hands-on" approach to managing its non-performing loan portfolios. MCM remains involved throughout the modification and resolution processes through day-to-day discussions, as well as by performing yearly, quarterly, and monthly sampling and statistical analyses to gauge servicing compliance and success.

[29] *See* http://www.mcmcap.com/.

SMS, as a mortgage loan servicer, is a highly regulated company and subject to oversight by federal and state regulatory authorities, including the BCFP and dozens of state regulatory agencies. Although the Monitor previously provided consent to the Bank to work directly with SMS under Menu Item 2, the Monitor performed additional diligence on SMS – particularly on its servicing business – in connection with the MCM transaction.

At the time of the Monitor's diligence, neither MCM nor SMS had been subject to a material enforcement action by a state or federal regulatory agency.[30] The Monitor reviewed materials provided by MCM, and servicing policies and procedures produced by SMS. While the Monitor's review was limited to the documents provided by SMS, it appears that SMS has an extensive set of servicing policies and procedures, and that SMS rigorously, consistently, and competently implements them to ensure that loans are serviced in compliance with law. The Monitor did not identify complaints or consumer litigation trends suggestive of any particular compliance issues with SMS's servicing.

The Monitor also participated in on-site meetings with MCM leadership in MCM's Bethesda office, as well as with SMS's leadership at SMS's office in Greenville, South Carolina. Both entities were generous with their time and information, including during several follow-up calls, and responsive to the Monitor's questions and concerns. Based on these discussions, it appears that MCM and SMS have developed a collaborative relationship geared toward modifying delinquent loans within a sound regulatory framework, and that they share the goal of driving positive outcomes for borrowers. The Monitor, therefore, provided his consent for the Bank's financing arrangement with MCM under Menu Item 1.

Update on Freedom Mortgage Corporation

The Monitor's third report described his due diligence of Freedom Mortgage, including its recent regulatory developments. In the course of that discussion, the Monitor recounted media reports from November 2017 disclosing that Freedom had paid a fine for allegedly violating a Ginnie Mae rule governing certain loan securitizations, which requires that loans made through the U.S. Department of Veterans Affairs ("VA") "streamline" refinance program be at least six months old before they are refinanced and pooled into a Ginnie Mae security.[31] In February 2018,

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[30] On February 13, 2018, SMS entered into a Consent Order with the Rhode Island Department of Banking. The Consent Order alleges that SMS engaged in loan servicing in Rhode Island without being properly licensed. SMS paid a $10,184 administrative assessment to resolve the matter. The Monitor does not consider this Consent Order to present material compliance concerns.

[31] *See* Lorraine Woellert*, As lenders targeted veterans with risky mortgages, VA failed to act*, Politico.com (Nov. 11, 2017), *available at* https://www.politico.com/story/2017/11/10/veterans-

additional reports stated that Freedom was one of nine lenders that received letters from Ginnie Mae warning that they were at risk of having their VA refinance loans excluded from Ginnie Mae's traditional mortgage-backed securities.[32] Ginnie Mae has explained that it wants to curb rapid refinancings because they result in early prepayment of pooled mortgages, which reduces investors' returns.[33]

The Monitor now has learned that as of June 1, 2018, Ginnie Mae restricted Freedom from including VA single-family guaranteed loans in certain – but not all – Ginnie Mae securities.[34] To the Monitor's knowledge, the VA has not barred Freedom from originating or refinancing VA loans, and Ginnie Mae has indicated that it may lift the restriction on Freedom in January 2019, provided that Freedom is able to demonstrate "to Ginnie Mae's satisfaction, that (a) prepayment speeds are substantially more in-line with those of equivalent multi-issuer cohorts, and (b) such improved performance is sustainable."

The Monitor's prior diligence revealed that Freedom (1) applies a "tangible benefit" test to ensure that veterans are benefitting from refinancings,[35] (2) has implemented

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risky-mortgages-va-244767; *see also* Christina Rexrode, *Mortgage Firms 'Churning' Refinance Loans to Veterans*, Wall Street Journal (Sept. 27, 2017).

[32] *See* Joe Light, *U.S. Threatens to Dump Lenders From Veterans Loan Program*, Bloomberg (Feb. 8, 2018), *available at* https://www.bloomberg.com/news/articles/2018-02-08/u-s-threatens-to-dump-lenders-from-veterans-mortgage-program; *see also* Ginnie Mae Press Release, *Ginnie Mae Notifies Select Market Participants to Take Corrective Action to Control 'Churning'* (Feb. 8, 2018), *available at* https://www.ginniemae.gov/newsroom/Pages/PressReleaseDispPage.aspx?ParamID=129. The reporting of Ginnie Mae's communications involved discussion of potential "churning" in the mortgage refinance industry – the practice of quickly refinancing loans, multiple times, potentially to the detriment of the veteran-borrower

[33] On December 7, 2017, Ginnie Mae issued an All Participant Memorandum directed at addressing "activities that result in unduly rapid prepayments to investors in Ginnie Mae mortgage-backed securities." Ginnie Mae, APM 17-06: Pooling Eligibility for Refinance Loans and Monitoring of Prepay Activity (Dec. 7, 2017), *available at* https://www.ginniemae.gov/issuers/program_guidelines/Pages/mbsguideapmslibdisppage.aspx?ParamID=82.

[34] *See* Ginnie Mae Press Release, *Ginnie Mae restricts three VA mortgage lenders from its main securities programs* (June 1, 2018), *available at* https://www.ginniemae.gov/newsroom/Pages/PressReleaseDispPage.aspx?ParamID=136.

[35] A tangible benefit test aims to ensure that a refinancing provides "a sufficient, countervailing net economic benefit to the homeowner." Ginnie Mae Feb. 8 Press Release, *supra*. "The idea with such a requirement would be to ensure that the benefit to the borrower is greater than any incremental costs associated with the refinancing terms." *Id.*

procedures and controls to adhere to a rule, in conformity with Ginnie Mae's revised program requirements, requiring at least six months to elapse before a borrower will be eligible for a VA refinance,[36] and (3) does not, under most circumstances, require VA borrowers to pay closing costs associated with refinancings, reducing a significant consumer protection concern.

The Monitor determined that, in light of Freedom's regulatory history, it would be prudent to supplement the "compliance review" process, described in the Monitor's second report and below, with an enhanced compliance review process specific to Freedom. Thus, the Monitor will review a larger sample of Freedom's mortgage loan files for compliance with key laws and regulations governing originations, as well as examining them for indicia of other potentially unlawful activity. Moreover, the Bank voluntarily has determined that it will not submit at this time any Freedom refinancings for consumer relief credit. Accordingly, the Monitor has not withdrawn his consent to the Bank's financing arrangement with Freedom under the safe harbor provision. The Monitor may revisit this determination, however, based on future developments.

COMPLIANCE REVIEW

The Monitor's compliance review procedure is separate from, but works in tandem with, the counterparty due diligence, described above. Whereas the due diligence process is forward-looking – ensuring, in large part, that a counterparty has in place the infrastructure necessary to conduct consumer relief-eligible transactions in a responsible manner – the compliance review is backward-looking – ensuring that the completed transactions resulting from the financing arrangements with the Bank did not violate the law.

To conduct the compliance review, the Monitor implemented protocols (a checklist of sorts) for reviewing samples of loans submitted by each of the Bank's counterparties for credit approval.[37] The documents within these loan files that are collected by the Bank from the counterparty for the Monitor's review include, among others, loan estimates, loan applications, closing disclosures, bank statements, tax information, and appraisals. The Monitor reviews these documents to identify indicia of the most

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[36] The Monitor's diligence further revealed the Freedom currently is evaluating additional steps to address potential concerns about churning.

[37] Because the Bank, to date, has sought only consumer credit pursuant to Menu Item 2.B., the compliance review procedures is limited to loan originations. When the Bank seeks consumer relief credit pursuant to other Menu Items, the Monitor will fashion additional procedures specifically tailored to the risks involved with those Menu Items, and will describe those procedures, as appropriate, in future reports.

common and harmful unlawful activities associated with originations.[38] If any such indicia are identified in a loan file, the Monitor and his team will conduct additional research to determine whether there might be unlawful activity.

The Monitor undertook the compliance review steps described here for the loans in this and all prior submissions. Based on that undertaking, the Monitor has not identified any relief that he reasonably has determined to be in violation of the law and, thus, the Bank is entitled to the Monitor's continued consent to its financial arrangement with the counterparties subjected to the compliance review.

ECOA / FAIR HOUSING

The Settlement Agreement prohibits the Bank from earning credit for consumer relief provided through any policy that violates the Fair Housing Act ("FHA") or the Equal Credit Opportunity Act ("ECOA"), notwithstanding any safe harbor that may have been granted to a given counterparty.

The requirement that the Monitor look at the consumer relief program as a whole through the lens of fair housing laws presents unique challenges. First, the consumer relief program imposes certain requirements and limitations on the Bank, thereby cabining its decision-making (i.e., only certain loans are eligible for credit). Second, as described here and elsewhere, the Bank generally does not have a residential mortgage lending operation of its own, thereby requiring it to rely on financing arrangements with counterparties. Third, it is not the Bank but the counterparties, or, as is often the case here, the institutions from which the counterparties purchase loans, that make the relevant decisions about whether to provide loans to borrowers and on what terms. The Monitor must contend with these challenges as he seeks to evaluate the relevant lending practices that led to the submission of consumer relief credit, as well as the effects of those practices on the Bank's consumer relief efforts.

Broadly speaking, the FHA and ECOA forbid discrimination in lending. The FHA governs "residential real estate-related transactions," and prohibits discrimination, in the making of such transactions, on the basis of "race, color, religion, sex, handicap, familial status, or national origin." 42 U.S.C. § 3605. ECOA, with a slightly different reach, governs any "credit transaction," and prohibits discrimination, with respect to any such transaction, on the basis of "race, color, religion, national origin, sex or marital status, or age." 15 U.S.C. § 1691.

The FHA and ECOA have been interpreted to forbid both disparate-treatment and disparate-impact in lending. The United States Supreme Court recently described what those concepts mean in holding that a disparate-impact theory is available

[38] To determine which activities he should target, the Monitor reviewed reports published by government regulators, enforcement agencies, and GSEs, among other things, identifying unlawful activity in the general mortgage marketplace. The Monitor also considered any specific investigations or enforcement actions directed at the Bank's counterparties.

under the FHA. "In contrast to a disparate-treatment case, where a plaintiff must establish that the defendant had a discriminatory intent or motive, a plaintiff bringing a disparate-impact claim challenges practices that have a disproportionately adverse effect on minorities and are otherwise unjustified by a legitimate rationale." <u>Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.</u>, --- U.S. ---. 135 S.Ct. 2507, 2513 (2015) (citing <u>Ricci v. DeStefano</u>, 557 U.S. 557, 577 (2009)) (internal quotation marks omitted). A policy that, on its face, discriminates against protected categories of people is unlawful under these statutes; a policy that is facially neutral but has the effect of discriminating against such people also may be unlawful depending on the circumstances. In the former case, it is the motivation of the decision-maker that is at issue; in the latter, it is the effect of the decision.[39]

Given the language of the Settlement Agreement and the reach of the FHA and ECOA, the Monitor executed a two-stage fair lending analysis. First, as part of the Monitor's due diligence of prospective counterparties, he conducted interviews and reviewed the counterparties' fair lending program, policies, and testing practices to ensure they are reasonably designed to prevent and detect violations of the FHA and ECOA.

Second, the Monitor evaluated whether any policy or practice has had an adverse impact on categories of people protected by the FHA or ECOA. To design an appropriate analytic framework, the Monitor looked for guidance in the standard practices of regulators who are charged with enforcing the FHA and ECOA. Such practices include statistical analyses of relevant lending decisions. These analyses, as a general matter, examine lending patterns to identify any statistically significant disparities that may suggest that categories of people are subject to differences in treatment.

Recognizing the need for expertise in statistical analyses, the Monitor hired BLDS LLC, a firm that specializes in applied statistics. Experts at BLDS have extensive experience analyzing statistical data for evidence of unfair lending practices, including on behalf of government regulators and financial institutions, alike.

The Monitor and BLDS worked together to fashion statistical models to analyze the consumer relief submitted by the Bank for credit under the Consumer Relief Annex.

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[39] The Monitor notes that although it is beyond dispute that a disparate-impact theory of discrimination is available under the FHA, according to the Supreme Court's decision in <u>Inclusive Communities</u>, some legal commentators have argued that the theory is not available under ECOA. The Monitor need not wade into this argument for at least two reasons: First, as far as the Monitor is aware, every court that has examined the issue after <u>Inclusive Communities</u> has opined that a disparate-impact theory is available under ECOA. Second, even if such a theory were not available under ECOA, the consumer relief – which, after all, comprises residential real-estate related transactions – still must comply with the FHA.

Fashioning those models could not be done in a vacuum; the models had to account for the specific context in which the Bank provides consumer relief. That context includes, but is not limited to, the following facts: (a) the Bank must rely on counterparties for the provision of consumer relief; (b) because the lending decisions here are made by the counterparties, neither the Bank nor, by extension, the Monitor has access to all of the relevant data about that decision-making; and (c) the Annex encourages the Bank to submit loans that are in certain geographic locations and to certain borrowers.

The statistical models that the Monitor and BLDS developed are based on a simple query – do the specific loans submitted for consumer relief credit differ in significant, relevant ways from similar loans provided in the mortgage market generally, when weighted by the types of loans, types of borrowers, and geographic areas in which the counterparties operate?[40] The models therefore compared the demographic characteristics of the loans submitted for consumer relief credit – e.g., the percentage of submitted loans made to African-American borrowers – to the demographic characteristics of the loans provided in the mortgage market – e.g., the percentage of loans made in the United States to African-American borrowers.[41] Those latter characteristics, which can be referred to as benchmarks, were refined somewhat to ensure that the comparison accounted for the market areas in which the counterparties operated, the mix of loans the Bank submitted, and, to a degree, the income of the borrowers obtaining the loans. Among other things, these refinements are intended to account for the possibility that the counterparties do not serve the entire United States mortgage market; that the loans submitted for credit are not evenly distributed across the United States; and that the loans submitted for credit are not evenly distributed among borrowers with different income levels. These refinements are intended to ensure that the loans submitted for credit and the respective benchmarks involve an "apples to apples" comparison.

It is important to recognize that the results of these types of statistical analyses are dependent on various factors, including the scope and accuracy of information available. Moreover, the finding of a statistical disparate-impact in treatment among some or many demographic groups does not automatically result in an FHA or ECOA violation. To establish such a violation, the disparate-impact must be caused by a specific policy or practice that has no legitimate reason or that is subject to a non-

[40] Because Deutsche Bank, to date, has sought only consumer credit relief pursuant to Menu Item 2, the models analyze only loan originations. If Deutsche Bank ultimately seeks consumer credit relief pursuant to other Menu Items, the Monitor and BLDS will fashion additional statistical models which will be described, as appropriate, in future reports.

[41] Data concerning the overall mortgage market comes from publicly available data collected pursuant to the Home Mortgage Disclosure Act, which requires lending institutions to report data about their lending practices.

discriminatory alternative. Moreover, the Monitor must consider the specific context of the consumer relief program and the unique challenges that are presented here (as noted above).[42]

Notwithstanding these limitations, the Monitor believes that the analysis described above is appropriate under the circumstances, consistent with the requirements of the Annex, and well-designed to identify any potentially unlawful activity for which the Bank may be denied the consumer relief credit it seeks.

Accordingly, the Monitor, with the assistance of BLDS, conducted a statistical analysis of the loans submitted for credit in the manner described above and has not identified any violations of the FHA or ECOA. The Monitor will continue to perform this statistical analysis for future loan originations submitted under Menu Item 2.B. and will include the results in his reports.

CONSUMER OUTREACH

The Settlement Agreement requires the Bank to hold or sponsor (e.g., provide financing for) three consumer outreach events each year in geographically dispersed locations. The Monitor has determined that for purposes of sponsoring consumer outreach events, each one-year period spans April 1 through March 31, with the first year spanning April 1, 2017 (the start date of crediting under Annex 2), through March 31, 2018. The Bank satisfied its consumer outreach requirement for the first year, partnering with the Homeownership Preservation Foundation ("HPF") to sponsor an event in Detroit, Michigan, on October 21, 2017, and with the National Housing Resource Center ("NHRC") to sponsor events in Chicago, Illinois, on November 11, 2017, and Tampa, Florida, on March 3, 2018.[43] The Bank also held its first event of the second year in Riverside, California, on June 23, 2018, for which it

[42] Since the Monitor has access only to loans originated by the counterparties and submitted to the Monitor by the Bank for credit, for example, the Monitor does not have access to loan information for loan applications that were denied by the counterparties. Further, the decision to provide loans to a borrower and on what terms often is not even made by the Bank's counterparties themselves, but by their correspondents.

[43] A discussion of the Detroit and Chicago events may be found in the Monitor's third report. While the Bank has significant flexibility in structuring these events, the Consumer Relief Annex sets forth certain minimum requirements that must be satisfied, including, for example, that the Bank conduct targeted borrower outreach in English and Spanish and participate in a presentation during the event informing attendees about the Bank's efforts and obligations under the Settlement Agreement. The Monitor has reviewed, and will continue to review, the proposed agendas for the consumer outreach events, as well as proposed participants, to ensure the events comply with the Settlement Agreement's requirements. In addition, members of the Monitor's team will continue to attend and observe the events.

partnered with NHRC. All of the events were held on Saturdays to encourage the greatest number of attendees.

Tampa Event

The Bank held the Tampa event at the Crown Plaza – Tampa Westshore, a hotel located outside of Tampa's city center. Numerous local housing organizations, lenders, and realtors participated in the event. Approximately 195 people signed in at the event, though the Bank and the Monitor estimate that the actual turnout was higher since many participants attended with additional friends or family, and it is possible that not all attendees paused to sign in at the registration table when they entered the venue. Members of the Monitor's team attended the event.

The Bank and NHRC – along with the participating organizations – actively marketed the event on social media. The media campaign reported that many of the vendors would be donating gift baskets (many of which included gift cards) to be raffled off during the day. This appears to have been a popular incentive, and attracted participants to the tables of local nonprofit housing agencies: participants could enter their names in the raffle only after visiting several of the housing organizations' tables.

Representatives from PennyMac, one of Deutsche Bank's counterparties, participated. Other participating lenders and servicers included Wells Fargo, Third Federal, Hancock Whitney, Raymond James Bank, BB&T, Regions, Synovus Bank, Center State Bank, Florida Community Bank, and Centennial Bank.

In addition, the Bank organized presentations – in English and Spanish – by local housing agencies throughout the day. Those presentations provided a broad overview to prospective homeowners about the home-buying process, as well as about down payment assistance that may be available to them through local non-profit housing organizations. Down payment assistance programs vary from state to state and city to city, but many offer certain homebuyers the opportunity to obtain grants or no-interest second mortgages to help cover their down payment at closing.

The goal of these programs, which often are used in tandem with FHA loans that require a low down payment (for example, 3 percent of the purchase price versus the more traditional 20 percent down payment), is to expand home ownership to individuals who might not otherwise have the opportunity to purchase their own homes. Eligibility typically is limited to borrowers whose family income falls below a certain amount that varies by region.[44] Eligibility also depends on the price of the property being purchased.

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[44] *See* Pinellas County Housing Finance Authority, Effective July 23, 2018—Subject to Change: First-time Homebuyer Home Key 1st Mortgage

The requirement to make a substantial cash down payment at closing often is cited as the most prevalent stumbling block to homeownership. Although prospective borrowers may have the financial ability to make monthly mortgage payments, many lower-income Americans struggle to save a large sum of money for a down payment, while also meeting their ordinary monthly expenses (including, for example, rent, auto payments, insurance, and food expenses).

The U.S. Department of Housing and Urban Development ("HUD") facilitates government down payment assistance programs. Specifically, on its website, HUD notes that while it "does not offer direct grants or loans to individuals, we do work through local governments and non-profit organizations to make financial assistance and counseling available."[45] HUD has explained: "The federal government does not give housing grants directly to individuals. The funds are given to states and certain municipalities, who in turn, distribute the funds to residents."[46] To be eligible to receive funding, a homebuyer must attend a HUD-approved Housing Counseling class, which is designed to help borrowers understand the risks and benefits of homeownership, as well as the rules around down payment assistance programs.

Fannie Mae and Freddie Mac both allow borrowers to fund their down payments with assistance provided by nonprofit organizations (although Freddie Mac has prohibited <u>lender</u>-provided down payment assistance unless the borrower contributes at least three percent of the purchase price from personal funds).[47] And the BCFP also has acknowledged the benefits that down payment assistance may provide.[48]

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https://www.pinellascounty.org/hfa/pdf/first_mortgage.pdf (income limit currently is approximately $70,000 for 1-2 person families and $82,000 for families with three or more family members).

[45] HUD, Resources for Individuals, *available at* https://www.hud.gov/program_offices/administration/grants/grantssrc.

[46] *Id.*

[47] *See* Fannie Mae, HomeReady® Mortgage, https://www.fanniemae.com/singlefamily/homeready (last accessed July 25, 2018); Fannie Mae, Selling Guide Announcement, SEL 2016 06 (July 26, 2016), *available at* https://www.fanniemae.com/content/announcement/sel1606.pdf; Freddie Mac, Industry Letter: Defining Responsible Lending with Changes to Lender Gift and Grant Requirements (July 6, 2017), *available at* http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/iltr070617.pdf.

[48] Bureau of Consumer Financial Protection, Special Loan Programs ("Many states, local governments, and nonprofits offer programs to make homeownership more affordable. … If you think you might qualify, explore programs in your area using this tool [downpaymentresource.com] or contact a local housing counselor to discuss your options."),

Because down payment assistance programs are recognized by various government agencies, and these programs have the potential to expand the prospect of homeownership, the Monitor believes the down payment assistance seminars the Bank has sponsored at the Consumer Outreach events have served a beneficial purpose.

Riverside Event

The Bank held the Riverside, California, consumer outreach event at the Riverside Convention Center, which is located in California's "Inland Empire" region, east of Los Angeles. NHRC organized and marketed the event. As with the other consumer outreach events, local housing organizations, lenders, and realtors participated. Approximately 151 consumers attended the event. Members of the Monitor's team observed a steady stream of visitors to the various lender and housing agency tables.

Representatives from PennyMac participated. Other participating lenders included Wells Fargo, Bank of America, JPMorgan Chase, Citibank, and U.S. Bank, as well as Self-Help Credit Union, People's Home Equity, Mountain West Financial, and Mortgage Solutions Financial. Participating housing counseling agencies included Neighborhood Partnership Housing Services ("NPHS"), Veterans Association of Real Estate Professionals ("VAREP"), and credit.org. Consumers had the opportunity to receive free credit reports; 64 attendees used this valuable service. All associated fees were paid by the Bank.

Once again, throughout the day, the Bank organized presentations – in English and Spanish – by local housing agencies about the home buying process. The Riverside event included a presentation about military veteran loan programs, as well as one about building good credit, which offered valuable information about the importance of credit scores in the mortgage process, what credit scores measure, and the factors that influence credit scores.

The most up-to-date schedule of events can be found on the Monitor's website (http://deutschebankmortgagemonitor.com). The Monitor will provide updates on future events in forthcoming reports.

THIRD SUBMISSION FOR CREDIT

As noted above, on February 27, 2018, the Bank's IRG submitted to the Monitor 24,314 loans originated by PennyMac, AmeriHome, and Shellpoint for consumer relief credit. The loans were to borrowers in Hardest Hit Areas (Menu Item 2.B.1.) and first-time LMI homebuyers (Menu Item 2.B.3), and were originated for properties

available at https://www.consumerfinance.gov/owning-a-home/loan-options/special-loan-programs/.

in 50 states and the District of Columbia. The Monitor has validated the credit that the Bank is claiming for those loans.

Approximately one-half of the loans in this submission (12,174) were submitted for credit pursuant to Menu Item 2.B.1 (Hardest Hit Areas), and the remaining loans (12,140) were submitted pursuant to Menu Item 2.B.3 (first-time LMI borrowers).

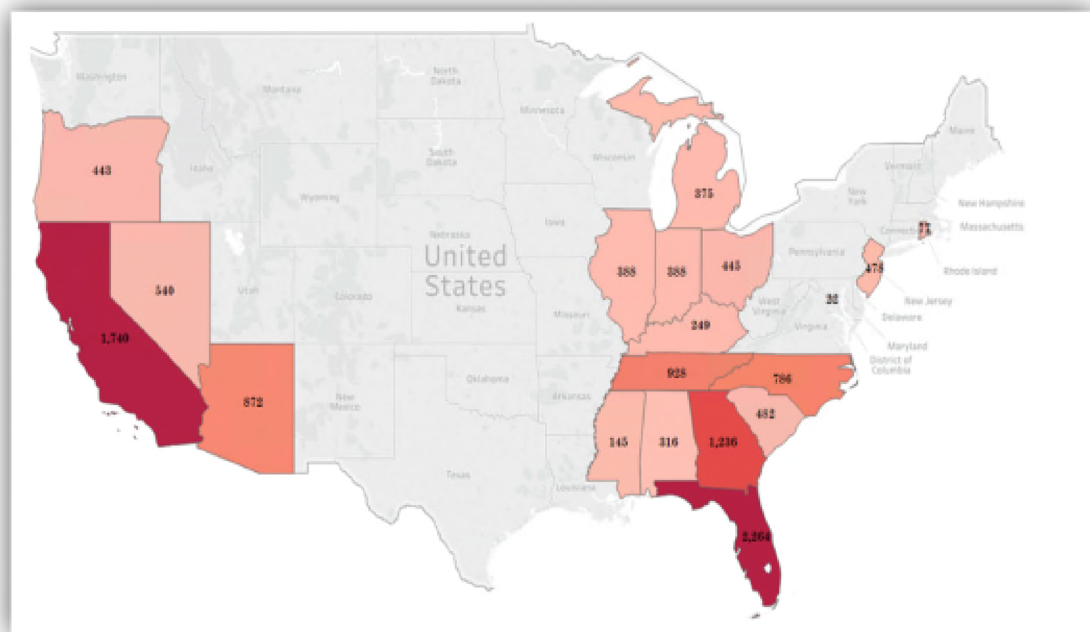
Each loan the Bank submitted under Menu Items 2.B.1 and 2.B.3 potentially qualify it for $10,000 of consumer relief credit. And because all of the submitted loans were closed before September 1, 2018, the Bank also claimed Early Incentive Credit for them, which would allow the Bank to receive a 15% bonus credit per loan, for a total of $11,500 per origination.

Pursuant to established and agreed-upon procedures and methodology, the Monitor, with the assistance of his consultant Control Risks, independently tested and confirmed the eligibility of the 24,314 loans submitted for consumer relief credit. Control Risks followed the testing process described in detail in the third report and has confirmed that the Bank correctly calculated the amount of credit it earned from each loan origination, and that, because all loans were originated before September 1, 2018, they were eligible for Early Incentive Credit. Accordingly, the Monitor validates the Bank's recent submission of 24,314 loans for consumer relief credit, and confirms that the Bank is entitled to receive additional credit in the amount of $279,611,000.

Characteristics of the 24,314 Loans

2.B.1. Loans

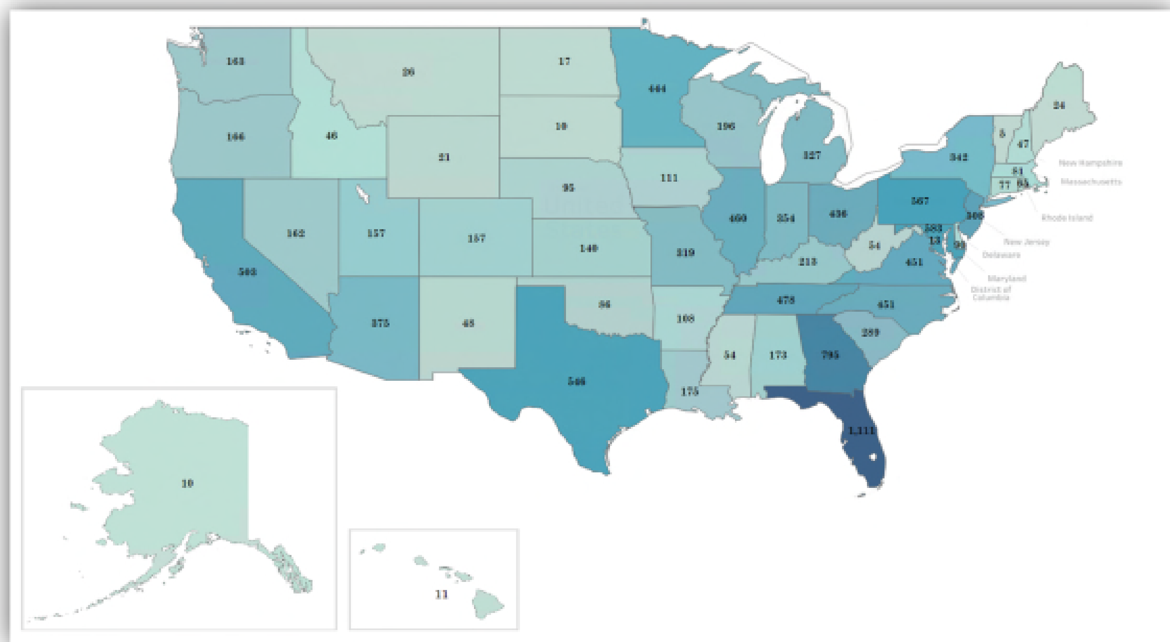
As explained above, approximately half of the 24,314 loans submitted for credit were made under Menu Item 2.B.1. (Hardest Hit Areas). These had an average loan amount of $247,022, and required an average monthly payment of $1,204. They were originated in 18 states and the District of Columbia, with 5,240 (43.04%) of the loans originated in California, Georgia, and Florida:



State	# Loans	% of Total 2.B.1 Loans
Florida	2,264	18.60%
California	1,740	14.29%
Georgia	1,236	10.15%
Tennessee	928	7.62%
Arizona	872	7.16%
North Carolina	786	6.46%
Nevada	540	4.44%
South Carolina	482	3.96%
New Jersey	478	3.93%
Ohio	445	3.66%
Oregon	443	3.63%
Illinois	388	3.19%
Indiana	388	3.19%
Michigan	375	3.08%
Alabama	316	2.59%
Kentucky	249	2.05%
Mississippi	145	1.19%
Rhode Island	77	0.63%
District of Columbia	22	0.18%
GRAND TOTAL	**12,174**	

2.B.3. Loans

The loans submitted for credit pursuant to Menu Item 2.B.3 (first-time LMI homebuyers) had an average loan amount – $167,313 – that was slightly lower than loans submitted for credit under 2.B.1. Similarly, the average monthly payment for loans submitted under 2.B.3. – $807 – was lower than for the 2.B.1. loans. This disparity makes sense, since loans submitted under Menu Item 2.B.3. are targeted more to specific borrowers in need, while it is contemplated that loans in Hardest Hit Areas, at least in part, will help revitalize communities. These loans were originated in 50 states and the District of Columbia, with 4,613 (38%) of the loans originated in Florida, Georgia, Maryland,[49] Pennsylvania, Texas, New Jersey, and California:



State	# Loans	% of Total 2.B.3 Loans
Florida	1,111	9.15%
Georgia	795	6.55%
Maryland	583	4.80%
Pennsylvania	567	4.67%
Texas	546	4.50%

[49] The 583 loans originated in Maryland result in additional credit to the Bank in the amount of $6,704,500 towards its obligation to provide $80 million in consumer relief to Maryland residents pursuant to its agreement with the Office of the Maryland Attorney General on June 1, 2017. The Bank's total credit to date under the Maryland agreement is **$6,934,500**.

State	# Loans	% of Total 2.B.3 Loans
New Jersey	508	4.18%
California	503	4.14%
Tennessee	478	3.94%
Illinois	460	3.79%
North Carolina	451	3.71%
Virginia	451	3.71%
Minnesota	444	3.66%
Ohio	436	3.59%
Arizona	375	3.09%
Indiana	354	2.92%
New York	342	2.82%
Michigan	327	2.69%
Missouri	319	2.63%
South Carolina	289	2.38%
Kentucky	213	1.75%
Wisconsin	196	1.61%
Louisiana	175	1.44%
Alabama	173	1.43%
Oregon	166	1.37%
Washington	163	1.34%
Nevada	162	1.33%
Colorado	157	1.29%
Utah	157	1.29%
Kansas	140	1.15%
Iowa	111	0.92%
Arkansas	108	0.89%
Nebraska	95	0.78%
Delaware	90	0.74%
Oklahoma	86	0.71%
Massachusetts	81	0.67%
Connecticut	77	0.64%
Rhode Island	65	0.54%
Mississippi	54	0.45%
West Virginia	54	0.45%
New Mexico	48	0.40%
New Hampshire	47	0.39%
Idaho	46	0.38%
Montana	26	0.21%
Maine	24	0.20%

State	# Loans	% of Total 2.B.3 Loans
Wyoming	21	0.17%
North Dakota	17	0.14%
District of Columbia	13	0.11%
Hawaii	11	0.09%
Alaska	10	0.08%
South Dakota	10	0.08%
Vermont	5	0.04%
GRAND TOTAL	12,140	

Additional Menu Item 2.B. Considerations

As the Bank has continued to submit loans for Consumer Relief credit, unique questions have arisen as to whether certain loans qualify for credit under the Annex.

For example, the Monitor previously interpreted the term "first-time homebuyer" to mean an individual who has not owned a primary residence during the three-year period prior to purchase of a home.[50] In the course of reviewing loans for Consumer Relief credit eligibility, the Bank brought to the Monitor's attention the following issues related to first-time homebuyers:

Mobile Homes

The Bank asked the Monitor to consider whether an individual who owned a mobile home within the three-year period should be deemed a first-time homebuyer. There is some inconsistency across federal and state guidance on this issue, and the answer frequently turns on whether the borrower's mobile home was "permanently affixed" to a foundation.[51] Because it would be difficult for the Bank to ascertain

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[50] *See* Monitor's second report at 12.

[51] *See, e.g.*, 24 CFR § 92.2, Definition of First-time homebuyer:

> An individual shall not be excluded from consideration as a first-time homebuyer on the basis that the individual owns or owned, as a principal residence during the three-year period, a dwelling unit whose structure is not permanently affixed to a permanent foundation in accordance with local or other applicable regulations or is not in compliance with State, local, or model building codes, or other applicable codes, and cannot be brought into

proof that a home was "permanently affixed" to a foundation, and because an overly-narrow approach to this issue risks excluding otherwise creditworthy borrowers from benefitting from the Bank's Consumer Relief efforts, the Monitor will allow the Bank to seek "first-time homebuyer" credit for financing loans to borrowers who lived in mobile homes prior to obtaining the loans submitted under Menu Item 2.B.3.

Inherited Homes

The Bank questioned whether a borrower who inherited a home within three years of the Consumer Relief transaction could be considered a first-time homebuyer. Prior IRS guidance excluded borrowers who inherited a home and used it as their principal residence from claiming first-time homebuyer tax credit.[52] The Monitor has adopted a similar rule and will allow the Bank to seek credit under Menu Item 2.B.3. only if a borrower who inherited a home did not use it as his or her primary residence.

Inconsistency on the Loan Application Regarding Prior Primary Residences

The Uniform Residential Loan Application ("URLA") requires borrowers to answer a series of questions called "Declarations." Declaration (m) asks whether a borrower has had an ownership interest in a home in the prior three years. Although a borrower who answers "no" to Declaration (m) typically would be considered a first-time homebuyer (since he or she has not owned a home within three years), the Bank alerted the Monitor to instances in which borrowers have answered "no" to Declaration (m) yet provided information elsewhere on the URLA (for example, on the Schedule of Real Estate Owned) suggesting that they have, in fact, owned a residence within the three-year period. When such an inconsistency arises, the Bank has determined that it will conduct a further review of the loan file in consultation with the Monitor to determine if an explanation exists that would allow the borrower to be considered a first-time homebuyer so that the Bank may seek credit under Menu Item 2.B.3.

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compliance with the codes for less than the cost of constructing a permanent structure.

[52] *See* IRS, *First Time Homebuyer Credit Questions and Answers: Basic Information* (Nov. 19, 2009), *available at* https://www.irs.gov/newsroom/first-time-homebuyer-credit-questions-and-answers-basic-information.

In addition, the Bank and the Monitor addressed what proof should be required for the Bank to seek credit under Menu Item 2.B.2., which covers borrowers "who lost a primary residence to foreclosure or short sale." (Emphasis added). Establishing that a prior residence lost to foreclosure or short sale was a borrower's primary one has been difficult. This is so because the URLA Declaration (c) asks "Have you had property foreclosed upon or given title or deed in lieu thereof in the last 7 years?," but does not require the property lost to have been primary residence. Moreover, the URLA Declaration (c) does not refer to short sales, but to "deed[s] in lieu." The difficulty in proving the elements of this Menu Item resulted in the Bank's decision not to submit such loans for Consumer Relief. In order to encourage such loans, therefore, the Monitor determined that the Bank could receive credit if a borrower answers URLA Declaration (c) in the affirmative *and* if the borrower lists no property on the URLA's Schedule of Real Estate Owned. Further, the Monitor concluded that a borrower's certification that he or she gave "title or deed in lieu" is a reasonable proxy for having lost a primary residence to short sale.

CONCLUSION

The Bank's consumer relief credit to date is as follows:

Menu Item	Current Submission	Credit Earned for Current Submission	Cumulative Submission	Cumulative Credit Earned
No. 1 Loan Modification, Forgiveness, and Forbearance	None	$0	None	$0
No. 2 Loan Originations	24,314	$279,611,000	26,391 loans	$303,496,500
No. 3 Community Reinvestment	None	$0	None	$0
No. 4 Financing for Affordable Rental Housing	None	$0	None	$0
Total Credit Earned $303,496,500				

The Monitor's next report is expected to be published in November 2018. If you have questions about this report, please contact the Monitor at:

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