

## VI. *The 2012 Mortgage Settlement with Large Banks*

### A. Introduction

Along with the President's broader plan to help millions of Americans refinance and save thousands of dollars a year, support the communities hardest-hit by the housing crisis, and help families avoid foreclosure and stay in their homes, [mortgage relief] is part of the President's overall strategy to support responsible homeowners and the housing recovery.<sup>1</sup>

On February 9, 2012, the Department of Justice, the Department of Housing and Urban Development, and forty-nine states agreed to a \$26 billion settlement ("the settlement") with the following large mortgage lenders: Bank of America, JP Morgan Chase, Citigroup, Wells Fargo, and Ally Financial (the now government-owned former GMAC).<sup>2</sup> This federal-state settlement is second largest ever, following the \$206 billion tobacco settlement.<sup>3</sup> Oklahoma alone dissented from the settlement, but the state's attorney general, Scott Pruitt, announced on the same day a unique settlement with the five banks involved.<sup>4</sup> The aggregate settlement provided for principal reductions for the most troubled loans, payments for homeowners who lost their homes through illegal foreclosures, refinance assistance, and new servicing regulations.<sup>5</sup>

The Department of Justice explained that the banks' "misconduct resulted in the issuance of improper mortgages,

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<sup>1</sup> Press Release, The White House, Fact Sheet: President Obama Announces New Steps to Provide Housing Relief to Veterans and Service Members and Help More Responsible Homeowners Refinance (Mar. 6, 2012) [hereinafter White House Fact Sheet], *available at* <http://www.whitehouse.gov/the-press-office/2012/03/06/fact-sheet-president-obama-announces-new-steps-provide-housing-relief-ve>.

<sup>2</sup> Chris Isodore & Jennifer Liberto, *Mortgage Deal Could Bring Billions in Relief*, CNN MONEY (Feb. 15, 2012, 03:17 PM), [http://money.cnn.com/2012/02/09/news/economy/mortgage\\_settlement/index.htm](http://money.cnn.com/2012/02/09/news/economy/mortgage_settlement/index.htm).

<sup>3</sup> *Id.*; NATIONAL MORTGAGE SETTLEMENT, <http://www.nationalmortgagesettlement.com/> (last visited Mar. 3, 2013).

<sup>4</sup> Nancy J. Moore, *Oklahoma's Separate Mortgage Pact Pegged To View That Other AGs Acted Inappropriately*, 98 BBR 326 (Feb. 14, 2012).

<sup>5</sup> *See generally* Isodore & Liberto, *supra* note 2.

premature and unauthorized foreclosures, violation of service members' and other homeowners' rights and protections, the use of false and deceptive affidavits and other documents, and the waste and abuse of taxpayer funds."<sup>6</sup> At the time of the settlement, 1.5 million homeowners were at least three months behind on their mortgage payments, and an additional 1.9 million homeowners were in foreclosure proceedings.<sup>7</sup> Moreover, approximately 11 million homeowners owed more on their mortgages than their homes were worth.<sup>8</sup> Home prices fell more than they did during the Great Depression—a staggering 39% drop from their peak in 2006.<sup>9</sup>

The settlement has been largely symbolic in its allocation of money, but it does not address the root cause of the imbalance of home mortgages and the purposes of curtailing the crisis while allowing people to stay in their homes. First, this article will explore why Oklahoma, Fannie Mae, and Freddie Mac refused to join the initial settlement.<sup>10</sup> Next, this article will determine how participants have spent the \$26 billion settlement.<sup>11</sup> Finally, this article considers the inherent policy judgment regarding which relief to offer homeowners who have seen their property values plummet. The federal government and forty-nine states decided that home ownership is a major part of the “American Dream,” and have protected that dream by offering principal reductions to homeowners with mortgages owned by the five largest servicers.<sup>12</sup> In a Woodrow Wilson Center poll from 2012, every demographic agreed by at least 80% that homeownership was still an integral part of fulfilling the

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<sup>6</sup> Complaint at 8–9, *United States v. Bank of America*, No. 1:12-cv-00361-RMC (D.D.C. Mar. 14, 2012), *available at* [https://d9klfgibkccuc.cloudfront.net/Complaint\\_Corrected\\_2012-03-14.pdf](https://d9klfgibkccuc.cloudfront.net/Complaint_Corrected_2012-03-14.pdf).

<sup>7</sup> *Isodore & Liberto*, *supra* note 2.

<sup>8</sup> *Id.*

<sup>9</sup> Nin-Hai Tseng, *The Housing Recovery that Wasn't*, CNN MONEY (Jan. 30, 2012, 05:00 AM), <http://finance.fortune.cnn.com/2012/01/30/housing-recovery/?iid=EL>.

<sup>10</sup> *See* discussion *infra* Part C.1.

<sup>11</sup> *See* discussion *infra* Part C.2.

<sup>12</sup> *See* Press Release, The White House, President Obama Speaks on Landmark Housing Settlement with Banks (Feb. 9, 2012) [hereinafter White House Press Release], *available at* <http://www.whitehouse.gov/photos-and-video/video/2012/02/09/president-obama-speaks-landmark-housing-settlement-banks#transcript>.

American Dream.<sup>13</sup> Fannie Mae and Freddie Mac, on the other hand, take a more negative view and argue that offering principal reductions, even to homeowners who may never regain positive equity in their homes, will encourage homeowners to engage in strategic defaults by not paying their mortgages in order to get free money from the government.<sup>14</sup> Instead, they encourage homeowners either to continue paying huge mortgage payments on homes that have lost more than half their value or to sell their homes in a short sale, offering a better value for Fannie Mae and Freddie Mac but leaving the homeowners with nothing.<sup>15</sup>

### **B. Substance of the Settlement**

The settlement primarily allocates \$17 billion for nearly one million people to help them pay off part of their mortgage principal.<sup>16</sup> This will help the millions of American homeowners who are “underwater” on their mortgage.<sup>17</sup> For example, as of late-2012, four in ten Floridian mortgages were larger than the home’s market value, where the median home lost half its value.<sup>18</sup> The settlement also earmarks \$3 billion to help as many as 750,000 homeowners to refinance their homes.<sup>19</sup> As with the principal reduction program, the goal of refinancing is to keep people in their homes.<sup>20</sup> The settlement also provides small, immediate payments of approximately \$2,000 to individuals who lost their homes to

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<sup>13</sup> Memorandum from The Terrance Grp. to the Woodrow Wilson Ctr. (May 21, 2012), *available at* [http://www.wilsoncenter.org/sites/default/files/keyfindingsfromsurvey\\_1.pdf](http://www.wilsoncenter.org/sites/default/files/keyfindingsfromsurvey_1.pdf).

<sup>14</sup> *See Review of Options Available for Underwater Borrowers and Principal Forgiveness*, FED. HOUSING & FIN. AGENCY 13, [http://www.fhfa.gov/webfiles/24108/PF\\_FHFApaper73112.pdf](http://www.fhfa.gov/webfiles/24108/PF_FHFApaper73112.pdf).

<sup>15</sup> *Id.* at 2 (“[T]hey are not responsible for the drop in house prices that has caused them to be underwater, but they are responsible for the contractual commitment to pay their mortgages.”).

<sup>16</sup> Isodore & Liberto, *supra* note 2.

<sup>17</sup> *Id.*; *see generally Review of Options Available for Underwater Borrowers and Principal Forgiveness*, *supra* note 14, at 2.

<sup>18</sup> Paul Owers, *South Florida Home Prices Rebounding*, S. FLA. SUN SENTINEL (Dec. 2, 2012), [http://articles.sun-sentinel.com/2012-12-02/business/fl-home-prices-from-bottom-broward-20121202\\_1\\_south-florida-home-prices-chip-rowand-double-digit-price-gains/2](http://articles.sun-sentinel.com/2012-12-02/business/fl-home-prices-from-bottom-broward-20121202_1_south-florida-home-prices-chip-rowand-double-digit-price-gains/2).

<sup>19</sup> Isodore & Liberto, *supra* note 2.

<sup>20</sup> White House Fact Sheet, *supra* note 1.

foreclosure.<sup>21</sup> Because of the volume of foreclosures, many banks systematically failed to follow basic procedural safeguards, particularly from 2008 to 2011.<sup>22</sup> Notably, the settlement provides aggrieved former homeowners the opportunity to sue the banks if they allege that they lost their homes because of these improper procedures.<sup>23</sup>

The \$17 billion earmarked for principal reductions could actually result in as much as \$34 billion in principal reduction.<sup>24</sup> The banks will not receive a dollar-for-dollar credit for relief they give homeowners, which is why the exact value of the settlement is currently unknown.<sup>25</sup> Banks receive more credit for the relief provided within the first year, as well as penalties if they do not contribute the required relief within three years.<sup>26</sup> Phillip L. Swagel, a professor at University of Maryland's School of Public Policy, explained that while the amount that banks have to forgive per the settlement's terms are "big numbers," he said it was not enough because homeowners are still underwater by \$700 billion.<sup>27</sup> While as much as \$34 billion will certainly assist some homeowners, there will be millions left without relief.<sup>28</sup>

Furthermore, states will have \$2.75 billion to use at their discretion to improve their housing sectors.<sup>29</sup> For example, Ohio used the money to tear down approximately 100,000 deserted properties around the state because they decrease property values and increase

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<sup>21</sup> Isodore & Liberto, *supra* note 2.

<sup>22</sup> *Id.*; *About the Settlement*, NAT'L MORTGAGE SETTLEMENT, <http://www.nationalmortgagesettlement.com/> (last visited Mar. 3, 2013).

<sup>23</sup> *About the Settlement*, *supra* note 22.

<sup>24</sup> Isodore & Liberto, *supra* note 2 ("At the same time, total principal reduction could go higher—to as much as \$34 billion -- since the agreement requires deeper principal reductions for the most troubled loans.").

<sup>25</sup> *Fact Sheet: Mortgage Servicing Settlement*, DEPT. OF HOUSING & URBAN DEV., <http://portal.hud.gov/hudportal/HUD?src=/mortgageservicingsettlement/fact-sheet> (last visited Mar. 3, 2012).

<sup>26</sup> *Id.* ("To encourage servicers to provide relief quickly, there are incentives for relief provided within the first 12 months - and additional cash payments required for any servicer that fails to meet its obligation within three years.").

<sup>27</sup> Richard Cowden, *Housing Policy Focus Shifts to Modest Steps As Feeble Market Shows Signs of Recovery*, 98 BBR 291 (Feb. 14, 2012).

<sup>28</sup> *Id.*

<sup>29</sup> Mike Ferullo et. al., *Administration, States Finish \$25 Billion Pact With Banks to Resolve Foreclosure Shortcuts*, 98 BBR 283 (Feb. 14, 2012).

the risk of vandalism.<sup>30</sup> Massachusetts used its payment of \$44.5 million to create the HomeCorps, which is an office within the Attorney General's office designed to assist people with avoiding foreclosure.<sup>31</sup> As of February 11, 2013, the HomeCorps settled more than 4,600 cases, helped negotiate loan modifications for more than 1,100 homeowners, and helped 427 homeowners avoid foreclosure.<sup>32</sup>

Although the immediate financial relief to aggrieved homeowners is important, equally important is the fact that the five banks must change their mortgage servicing practices, in the hopes that a similar crisis will not happen again.<sup>33</sup> In response to complaints from borrowers, the new standards require better communication, increased accuracy, and penalizations that are fair to borrowers.<sup>34</sup> Finally, instead of immediately foreclosing on overdue mortgages, the five banks must first consider them for the relief program.<sup>35</sup>

### C. Criticisms of the Settlement

#### 1. Refusal of Fannie Mae, Freddie Mac, and Oklahoma to Join the Settlement Due to Fears of Moral Hazard Inherent with Principal Reductions

The settlement is more symbolic than constructive because those responsible for half of residential mortgages, Fannie Mae and Freddie Mac, did not even participate.<sup>36</sup> Some state attorneys general criticized their absence, and demanded the right to pursue separate

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<sup>30</sup> *Id.*

<sup>31</sup> Press Release, Martha D. Coakley, Mass. Office of the Attorney Gen., One Year Later: Nat'l Mortg. Settlement Brings Millions of Dollars in Relief to Mass. Homeowners (Feb. 11, 2013), *available at* <http://www.mass.gov/ago/news-and-updates/press-releases/2013/2013-02-11-mortgage-foreclosure-assistance.html>.

<sup>32</sup> *Id.*

<sup>33</sup> See White House Press Release, *supra* note 12.

<sup>34</sup> Ferullo et. al., *supra* note 29.

<sup>35</sup> *Id.*

<sup>36</sup> See Julia Schmit, *Some Struggling Homeowners More Equal than Others*, USA TODAY (Mar. 19, 2012, 10:11 AM), <http://usatoday30.usatoday.com/money/economy/housing/story/2012-03-15/Mortgage-foreclosure-settlement/53615668/1>.

lawsuits.<sup>37</sup> Despite lawmakers' insistence that Fannie Mae and Freddie Mac offer similar principal reductions as the federal settlement,<sup>38</sup> their regulator, the Federal Housing Finance Agency (FHFA), released a report reaffirming their decision not to offer principal reductions because of the losses to taxpayers and the risk of moral hazard.<sup>39</sup> None of the homeowners holding mortgages controlled by these entities will have access to any of the relief found in the federal settlement.<sup>40</sup>

While a few states appeared as if they would not join in the days leading up to the settlement, Oklahoma was the only state to stand its ground.<sup>41</sup> Oklahoma's Attorney General Scott Pruitt issued a "scathing statement,"<sup>42</sup> questioning both the fairness of the settlement and whether it surpassed states' power.<sup>43</sup> Pruitt argued that the settlement amounted to a "restructuring of the mortgage

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<sup>37</sup> Press Release, Martha D. Coakley, Mass. Office of the Attorney Gen., Mass. Homeowners to Receive \$318 Million in Relief as Part of State-Fed. Agreement Over Unlawful Foreclosures and Loan Servicing (Feb. 9, 2012) [hereinafter \$318 Million Press Release], *available at* <http://www.mass.gov/ago/news-and-updates/press-releases/2012/ma-homeowners-to-receive-318m-in-relief.html>.

<sup>38</sup> Bonnie Kavoussi & Ben Hallman, *After Mortgage Settlement, Fannie Mae and Freddie Mac Face New Pressure on Principal Reduction*, HUFFINGTON POST (Feb. 13, 2012, 03:26 PM), [http://www.huffingtonpost.com/2012/02/13/mortgage-settlement-fannie-mae-freddie-mac-principal-reductions-fhfa\\_n\\_1268887.html](http://www.huffingtonpost.com/2012/02/13/mortgage-settlement-fannie-mae-freddie-mac-principal-reductions-fhfa_n_1268887.html) ("The attorneys general of New York, California and Massachusetts have all said in recent days that they are disappointed that Fannie Mae and Freddie Mac were not part of the settlement, and that they plan to continue pressuring the mortgage giants to write-down loans.").

<sup>39</sup> Press Release, Fed. Housing Fin. Agency, Statement by Edward J. DeMarco, Acting Director, Federal Housing Finance Agency, on the Use of Principal Forgiveness by Fannie Mae and Freddie Mac (July 31, 2012), *available at* <http://www.fhfa.gov/webfiles/24113/PFStatement73112.pdf>.

<sup>40</sup> *Id.*

<sup>41</sup> Ferullo et. al., *supra* note 29.

<sup>42</sup> *America's Housing Market: Home Wreckers*, ECONOMIST (Feb. 9, 2012, 11:13 PM), <http://www.economist.com/blogs/schumpeter/2012/02/americas-mortgage-settlement>.

<sup>43</sup> Press Release, Scott E. Pruitt, Okla. Office of the Attorney Gen., Attorney Gen. Scott Pruitt Announces Okla. Mortg. Settlement with Nat'l Servicers (Feb. 9, 2012) [hereinafter Pruitt Press Release], *available at* <http://www.oag.state.ok.us/oagweb.nsf/0/1364796CE86D19088625799F0060AF5C!OpenDocument>.

industry” that would unjustly enrich homeowners taking advantage of a windfall over those who upheld their contractual obligations.<sup>44</sup> He agreed with the FHFA that relief (principal reduction) created perverse incentives with the lure of cash.<sup>45</sup> By dissenting, Oklahoma received money in a separate settlement only for homeowners who can prove losses from unscrupulous banking practices, such as improper foreclosures, and not for homeowners who made unwise financial decisions.<sup>46</sup>

The Oklahoma settlement attracts philosophical allies who criticize the larger settlement for including all homeowners at the cost of homeowners who actually were victims of the banks’ illegal behavior.<sup>47</sup> For example, Massachusetts enacted a “Right-to-Cure” provision as a response to the risk of homeowner default.<sup>48</sup> The law requires creditors to make a “good faith effort to negotiate a commercially reasonable alternative to foreclosure.”<sup>49</sup> Homeowners and banks have 150 days to reach an agreement on a loan modification.<sup>50</sup> After analyzing the results of the “Right-to-Cure” law, a paper co-authored by an MIT scholar and economists at two Federal Reserve Banks found that some solvent homeowners exercised “strategic delinquency,” and refused to pay their mortgages.<sup>51</sup> The effects of this law are exactly the type of moral hazard Pruitt and the FHFA admonished.<sup>52</sup>

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Moore, *supra* note 4.

<sup>47</sup> See Pruitt Press Release, *supra* note 43.

<sup>48</sup> Kristopher Gerardi et al., *Do Borrower Rights Improve Borrower Outcomes? Evidence from the Foreclosure Process* 21 (Nat’l Bureau of Econ. Research, Working Paper No. 17666, Dec. 2011), available at <http://www.nber.org/papers/w17666.pdf> (“Right-to-cure laws temporarily stop the foreclosure clock and are aimed at helping borrowers self-cure or obtain modifications by providing them with more time during which to work with lenders and assemble required documentation.”).

<sup>49</sup> 209 MASS. CODE REGS. 56.01 (2012).

<sup>50</sup> *Id.* at 56.03.

<sup>51</sup> Gerardi et al., *supra* note 48, at 18 (“[T]he prospect of a longer rent-free period might induce more instances of ‘strategic delinquency,’ borrowers who decide to default despite being able to afford their mortgage payments and therefore choose ex ante not to cure.”).

<sup>52</sup> See Pruitt Press Release, *supra* note 43; \$318 Million Press Release, *supra* note 37.

For the very fears of the type of moral hazard that occurred in Massachusetts, Fannie Mae and Freddie Mac would not join the settlement.<sup>53</sup> In its policy paper denouncing principal forgiveness, the FHFA argued that other types of relief were more effective than loan forgiveness programs, and would not suffer from the same perverse incentives.<sup>54</sup> FHFA claims that, as a government agency, it would need to publicize the availability of a large-scale principal forgiveness program, which would push underwater borrowers to request a mortgage write-down, even if they could afford to make their current payments.<sup>55</sup> This concern has some merit, as an FHFA study found that “a meaningful number of borrowers” paid all of their bills except for their mortgages.<sup>56</sup>

Yet, the FHFA report does not account for the minimal degree of abuse that is inherent in any type of program that provides relief.<sup>57</sup> In fact, by FHFA’s own reporting, eight of ten risky mortgagees make their payments.<sup>58</sup> Thus, it is not clear whether the federal relief would necessarily lead to moral hazard; therefore, Freddie Mac and Fannie Mae’s abstention from the settlement appears to be based on speculative reasoning.<sup>59</sup>

## 2. Relief in the Form of Short Sales Rather than Loan Modifications

On November 19, 2012, the Office of Mortgage Settlement Oversight (“the Office”), the settlement participants’ designee to enforce the agreement, issued a report describing how thus far, despite what the settlement signers’ intended, the majority of

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<sup>53</sup> *Review of Options Available for Underwater Borrowers and Principal Forgiveness*, *supra* note 14, at 13.

<sup>54</sup> *Id.* at 15.

<sup>55</sup> *Id.* at 13.

<sup>56</sup> *See id.*

<sup>57</sup> *See* Felix Salmon, *Ed DeMarco’s Obstructionism*, REUTERS (Nov. 16, 2011), [http://blogs.reuters.com/felix-salmon/2011/11/16/ed-demarcos-obstructionism/?utm\\_medium=referral&utm\\_source=pulsenews](http://blogs.reuters.com/felix-salmon/2011/11/16/ed-demarcos-obstructionism/?utm_medium=referral&utm_source=pulsenews) (“Again, however, the argument here is a *relative* one.”).

<sup>58</sup> *Review of Options Available for Underwater Borrowers and Principal Forgiveness*, *supra* note 14, at 3.

<sup>59</sup> *See* Salmon, *supra* note 57.



homeowner relief has come via short sales.<sup>60</sup> In many situations, short sales can be ideal for both the bank and homeowner.<sup>61</sup> The bank fulfills its obligations as part of the settlement because the loss that it takes will count towards its share of the \$26 billion requirement.<sup>62</sup> Once the bank fulfills its duties outlined in the settlement, it will no longer have to assist homeowners with loan modifications or principal reductions.<sup>63</sup> These terms allow banks to focus on new homeowners, rather than current homeowners who may not pay their mortgage even after a loan modification.<sup>64</sup> Finally, banks profit more from short sales than foreclosure sales.<sup>65</sup>

The settlement's critics argue that the deal's structure allowed banks to unilaterally determine which type of assistance borrowers could receive.<sup>66</sup> Although short sales have mitigated many homeowners' financial problems, "a home is still lost, just in a different way."<sup>67</sup> The Office reports that \$13 billion of the debt that the banks wrote off through 113,500 short sales dwarfs the \$2.5 billion written off through the 22,000 principal-reduction loan modifications.<sup>68</sup> Moreover, in addition to not fulfilling the policy goals of the settlement, these figures show that there is still a long way to go in helping all of the homeowners who are behind on their mortgages.<sup>69</sup> While 309,385 homeowners received some type of relief because of this settlement, there are still approximately 11 million people who owe more on their mortgages than their homes

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<sup>60</sup>Editorial, *More Questions on Mortgage Relief*, N.Y. TIMES, Nov. 22, 2012, [http://www.nytimes.com/2012/11/23/opinion/more-questions-on-mortgage-relief.html?\\_r=0](http://www.nytimes.com/2012/11/23/opinion/more-questions-on-mortgage-relief.html?_r=0).

<sup>61</sup> See *id.*; Gerri Detweiler, *Getting a Mortgage After Foreclosure or Short Sale*, FORBES (June 8, 2011, 01:43 P.M.), <http://www.forbes.com/sites/moneywisewomen/2011/06/08/httpwww-talkcreditradio-com/>.

<sup>62</sup> Lily Leung, *Short Sales Standing Tall in Real Estate Market*, SAN DIEGO UNION-TRIBUNE, Feb. 2, 2013, <http://www.utsandiego.com/news/2013/feb/02/tp-short-sales-standing-tall-in-real-estate-market/>.

<sup>63</sup> *Id.*

<sup>64</sup> See Gerardi et al., *supra* note 48, at 31.

<sup>65</sup> See *More Questions on Mortgage Relief*, *supra* note 60.

<sup>66</sup> See Leung, *supra* note 62.

<sup>67</sup> See *id.*

<sup>68</sup> *Continued Progress: A Report from the Monitor of the National Mortgage Settlement*, OFFICE OF MORTGAGE SETTLEMENT OVERSIGHT 3 (Nov. 19, 2012), [https://www.mortgageoversight.com/wp-content/uploads/2012/11/Continued-Progress\\_11.19.12.pdf](https://www.mortgageoversight.com/wp-content/uploads/2012/11/Continued-Progress_11.19.12.pdf).

<sup>69</sup> See Cowden, *supra* note 27.

are worth (i.e., who are underwater on their mortgages).<sup>70</sup> As soon as the banks reach the settlement-specified amount of relief for homeowners, they need not provide any further assistance.<sup>71</sup> Thus, under this first-come, first-serve arrangement, millions of homeowners who do not receive assistance because the banks have reached the \$26 billion requirement will be left to the mercy of the banks' goodwill.<sup>72</sup> Without legal requirements to the contrary, the relief banks will most likely offer will be short sales—because banks are in the business of making money.<sup>73</sup> Many homeowners, however, simply want a fresh start even if means they forego the benefit of the settlement and lose their homes.<sup>74</sup>

#### D. Conclusion

In his press conference announcing the mortgage settlement, President Obama explained the importance of homeownership in fulfilling the American Dream.<sup>75</sup> In a separate press release, he reaffirmed that he hoped this settlement would “help families avoid foreclosure and stay in their homes.”<sup>76</sup> Yet, the settlement between five large banks and forty-nine states and the federal government represents just a small step toward bringing relief to the millions of homeowners who now owe far more on their homes than those homes are worth.<sup>77</sup> As a start, this settlement helps the homeowners who were the victims of illegal banking practices as well as those who simply paid far too much for their homes.<sup>78</sup> The decision to help the latter type of homeowner stems mainly from the American ideal of having a large number of homeowners.<sup>79</sup> The relief comes in the form of principal-reduction loan modifications, refinancing assistance, payments for illegal foreclosures, and money for states to

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<sup>70</sup> *Continued Progress: A Report from the Monitor of the National Mortgage Settlement*, *supra* note 68, at 3; Isodore & Liberto, *supra* note 2.

<sup>71</sup> Leung, *supra* note 62.

<sup>72</sup> *See id.*

<sup>73</sup> *See More Questions on Mortgage Relief*, *supra* note 60.

<sup>74</sup> *See* Leung, *supra* note 62.

<sup>75</sup> White House Press Release, *supra* note 12.

<sup>76</sup> White House Fact Sheet, *supra* note 1.

<sup>77</sup> *See* Cowden, *supra* note 27.

<sup>78</sup> *See* White House Press Release, *supra* note 12.

<sup>79</sup> *See How Homes Structure the American Dream*, NPR (June 3, 2012), <http://www.npr.org/2012/06/03/154234733/how-homes-structure-the-american-dream>.

use at their own discretion.<sup>80</sup> The dissenters from the settlement felt that it incited moral hazard where homeowners would benefit from a free ride.<sup>81</sup> Thus, the settlement excludes 50% of the American mortgages that Fannie Mae and Freddie Mac own.<sup>82</sup> Others argue that the relief so far has come mainly in the form of short sales, under which homeowners sell their homes for the market value despite owing far more than that amount on their mortgage.<sup>83</sup> While short sales can be helpful for both banks and homeowners, it defies the ideological reason for the settlement: keeping people in their homes.

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<sup>80</sup> Isodore & Liberto, *supra* note 2.

<sup>81</sup> Pruitt, *supra* note 43; *Review of Options Available for Underwater Borrowers and Principal Forgiveness*, *supra* note 14 at 13.

<sup>82</sup> Schmit, *supra* note 36.

<sup>83</sup> *More Questions on Mortgage Relief*, *supra* note 60.

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