



Department of Justice

TESTIMONY OF

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SECURITIES WORKING GROUP OF
THE FINANCIAL FRAUD ENFORCEMENT TASK FORCE
U.S. DEPARTMENT OF JUSTICE**

BEFORE THE

**SUBCOMMITTEE ON REGULATORY REFORM, COMMERCIAL AND
ANTITRUST LAW
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES**

FOR A HEARING CONCERNING

**OVERSIGHT OF THE JUSTICE DEPARTMENT'S MORTGAGE
LENDING SETTLEMENTS**

PRESENTED ON

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**Testimony of Geoffrey Graber
Deputy Associate Attorney General and
Director of the Residential Mortgage-Backed Securities Working Group of
The Financial Fraud Enforcement Task Force
Before the Subcommittee on Regulatory Reform, Commercial and Antitrust Law
Committee on the Judiciary
U.S. House of Representatives
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Chairman Marino, Vice Chairman Farenthold, and Members of the Subcommittee, thank you for inviting me here and for providing the Department of Justice the opportunity to appear at today's hearing to describe a series of settlements that have arisen out of the Department's efforts to address fraud in connection with the packaging and sale of Residential Mortgage-Backed Securities.

In late 2008, the financial system and the broader American economy underwent tremendous shock. There were many contributing factors to the financial crisis. High among them, though, was the interconnectedness between troubles in the housing market and the packaging and trading of a particular type of security known as "Residential Mortgage-Backed Securities," or "RMBS."

In the lead-up to the financial crisis, investments in RMBS yielded tremendous losses, of a magnitude that quickly infected the broader economy. This led to a classic vicious cycle: it has been widely noted that weaknesses in the housing market undermined the value of RMBS, and losses caused by RMBS contributed to the cratering of the housing market.

In November 2009, the Financial Fraud Enforcement Task Force was established in order to strengthen the efforts of the Department of Justice to pursue potential misconduct committed in connection with the financial crisis. And, in January 2012, the Department of Justice formed the Residential Mortgage-Backed Securities (RMBS) Working Group in the Task Force to investigate those responsible for misconduct contributing to the financial crisis through the pooling and sale of residential mortgage-backed securities.

The RMBS Working Group – which comprises several federal agencies, U.S. Attorneys, and state attorneys general – seeks to “hold accountable those who broke the law, speed assistance to homeowners, and help turn the page on an era of recklessness that hurt so many Americans.”¹

So this effort has focused on: achieving accountability from financial institutions that engaged in wrongdoing relating to residential mortgage-backed securities, and, to the extent possible, bringing some measure of relief to homeowners who suffered as a result of the financial crisis. These goals reflect the fact that misconduct in the RMBS market impacted the entire financial system and the American economy as a whole. For example, at least one federal district

¹ Remarks by the President in State of the Union Address, United States Capitol, January 24, 2012. Available at: <http://www.whitehouse.gov/the-press-office/2012/01/24/remarks-president-state-union-address>.

court has concluded “the court need not . . . be an expert in economics to take notice that it was the trading of toxic RMBS between financial institutions that nearly brought down the banking system in 2008.”

Cases arising out of the packaging and sale of RMBS are difficult to develop, involving highly complex transactions undertaken by some of the world’s most sophisticated financial actors. But, as a result of the efforts of our dedicated teams of attorneys, investigators and staff, the Department and its federal and state law enforcement partners have taken significant steps to address RMBS related misconduct.

To date, the efforts of the RMBS Working Group have secured resolutions valued at more than \$36.6 billion in penalties, compensation and consumer relief to investors, victims, and the American people. The Department has filed one lawsuit against Bank of America in connection with its RMBS activities, and has entered three settlements:

- In November 2013, the Department (along with state and federal partners) entered a \$13 billion resolution with J.P. Morgan Chase, which was, at the time, the largest settlement with a single entity in Department history.
- Thereafter, in July 2014, Working Group members entered a \$7 billion resolution with Citibank, which included a \$4 billion civil monetary penalty (a record at the time).
- Then, on August 21, 2014, the Department announced a \$16.65 billion resolution with Bank of America. This settlement constitutes the largest resolution with a single defendant in the Justice Department’s history, and included a record-breaking penalty of \$5 billion.

These settlements each embody the goals spelled out in the formation of the RMBS Working Group.

First, each settlement achieved accountability by requiring a significant (and in some cases record) monetary penalty, as well as a statement of facts acknowledging the evidence underlying the government’s allegations. These penalties will hopefully serve to deter future misconduct; and the statements of facts serve as an acknowledgement by the banks to their shareholders and the American public of the misconduct uncovered by the Department of Justice.

Second, each bank committed to provide many billions of dollars of consumer relief, of a type that is designed to enable many Americans to stay in their homes, and will enable many more to secure homeownership for the first time (the particular settling banks had origination and/or servicing operations that helped facilitate this type of relief).

These consumer relief provisions – in which the settling banks agreed to provide billions of dollars in relief for consumers in the housing market – provide an especially salient feature of these settlements. This type of relief likely could not have been ordered by a court, even if the government had prevailed at trial.

In general, the consumer relief component consists of a menu of different types of consumer relief – menus developed in consultation with the Department’s law enforcement partners, including federal regulatory agencies and states.

In each of these resolutions, the settling bank can fulfill its obligations to implement consumer relief by undertaking the consumer relief set forth on the menu. The banks agreed to meet certain consumer relief targets. For example, J.P. Morgan Chase agreed to secure \$4 billion in consumer relief credits. The agreements establish certain constraints on how the relief is to be provided (such as minimum or maximum commitments for certain types of relief). Beyond that, though, the banks have latitude to decide precisely how to satisfy their consumer relief obligations.

For example, the Bank of America settlement provides for a total of \$7 billion in consumer relief, including a minimum of \$2.15 billion in 1st lien forgiveness calibrated to help homeowners who face the risk of default and foreclosure: Reducing the unpaid principal allowance results in more manageable mortgage payments, greater equity in the home, and a reduced risk of default or foreclosure. Within this broad target, though, the bank has discretion to decide precisely how to provide such relief (*i.e.*, which mortgages should be selected for principal reduction) and whether it will go beyond its \$2.15 billion minimum first lien obligation in the course of meeting its total \$7 billion obligation.

As a second example, the various settlements all contemplate neighborhood reinvestment activities – a type of relief that includes the provision of certain kinds of foreclosure prevention assistance and other counseling activities. This is to be provided by certain categories of organizations, chosen by the bank, that will receive a directed donation to perform the types of activities specified in the agreements (such as foreclosure prevention assistance and other housing counseling activities). These include organizations that help veterans avoid foreclosure, organizations that deal with abandoned properties that can inhibit neighborhood recoveries, or organizations that help prospective home purchasers navigate the process of buying a home. With a single exception (donations to state-based Interest on Lawyer Trust Accounts organizations, which then distribute those funds to organizations of the IOLTA’s choosing for use in foreclosure prevention legal assistance and community redevelopment legal assistance), the banks choose which specific organizations receive these donations.

The settlement agreements also provide for varying levels of “credits” for certain types of consumer relief. With respect to some types of consumer relief, such as 2nd lien forgiveness, the banks generally receive less than one dollar of credit for each dollar of consumer relief provided. For other types of consumer relief, however, the banks can receive more than one dollar of credit for each dollar of consumer relief provided. This mechanism reflects a variety of factors, including the fact that certain types of consumer relief are more expensive for the banks to accomplish.

It is important to bear in mind, however, that the Department does not have control over how the banks choose to complete their consumer relief obligations within the parameters set forth in the settlement agreements. It is up to the banks to choose exactly how they fulfill their obligations.

In all of these settlements, the banks are required to report their consumer relief efforts to independent monitors, who are paid by the banks. The independent monitors are charged with verifying that the banks meet their consumer relief obligations. The monitors also publicly report their findings.

The RMBS Working Group has achieved a great deal in fighting financial fraud. These efforts have resulted in record civil penalties; factual statements in civil cases that show an unprecedented level of accountability from the financial institutions and transparency to the marketplace; and meaningful consumer relief for the American people.

We will continue to pursue RMBS cases, following the facts wherever they lead, and enforcing the law fairly but aggressively where we uncover evidence of unlawful conduct.

Thank you, once again, for the opportunity to appear before you today. At this time, Mr. Chairman, I would be happy to address any questions you or Members of the Subcommittee may have.