OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

March 16, 2011

Tom Miller
Attorney General
Office of the Attorney General
Hoover State Office Building
1305 E. Walnut, 2nd Floor
Des Moines, Iowa 50319

Dear General Miller:

As you know, the Foreclosure Multistate Working Group has recently submitted a 27 page term sheet to five of the nation's largest mortgage servicers. This term sheet was presented as a draft agreement on behalf of Attorneys General and other state and federal agencies, and was intended to settle allegations related to improper foreclosures and loan servicing. We have concerns, however, that what started out as an effort to correct specific practices harmful to consumers has morphed into an attempt to establish an overarching regulatory scheme that fundamentally restructures the mortgage loan industry in the United States. We understand that Texas and Florida have raised some of these concerns with executive committee members.

Let us be clear, these mortgage servicers, and any other bad actors in the mortgage service industry, should be held accountable for any unlawful or deceptive practices they engaged in. Certain aspects of the term sheet such as those dealing with notary practice, verification of account information, and limitations on "dual-track" foreclosures, contain many changes in practice that are beneficial to consumers. Enforcement agencies and the entire industry should have a vigorous debate on these proposals.

Some aspects of the proposal, however, simply go too far. The term sheet overrides state law in at least two major areas. First, by adding new requirements, it essentially makes all states subject to the judicial foreclosure process, even those states that have made the policy decision to permit non-judicial foreclosures. Second, the term sheet states that a violation of the agreement constitutes an unfair and deceptive trade practice. Consumers could presumably sue under state deceptive trade practice law if there is a violation, thus creating a new cause of action. Policy considerations of this nature should be left to each individual state.

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Furthermore, terms that place greater loss mitigation burdens on mortgage servicers and force principal reductions are also unacceptable. As custodians of our states laws, we should all be concerned with any term sheet that practically mandates servicers to violate contracts with mortgage owners and abrogates the rights of second lien holders. These terms could have serious unintended consequences. Unfortunately, there are many mortgages for which it is clear a modification is not feasible. These homes are often vacant and depress home values. An efficient foreclosure process is needed to clear local markets of these homes, bolster the housing market, and facilitate the economic recovery.

The principal reduction terms also create questions of fundamental fairness and justice. There are millions of Americans currently underwater on their mortgages, yet they labor every day to meet contractual obligations. It could be argued that this term sheet, with its vague standards for principal reductions, encourages these homeowners to default and seek a reduction. Forcing lenders to reduce mortgage balances may take away all incentive for banks to lend money, ultimately denying the average person access to a home mortgage. In short, principal reduction would destroy an already devastated housing market, bring home loans to a halt, and put home ownership out of reach for millions of middle class Americans. As you know, principal "cram-down" legislation was considered and rejected by the U.S. Congress. We should not attempt to legislate this rejected policy through a settlement agreement.

Finally, it is clear that any settlement as comprehensive and broad as the one set forth in the term sheet will not be limited to the mortgage servicers that prompted this investigation. The term sheet attempts to set a standard for all mortgages going forward. For that reason, we are gravely concerned about the impact of this settlement on our local community banks. This settlement increases their regulatory burden when it is clear they were not engaged in the conduct giving rise to the investigation.

We have great appreciation for the considerable time and effort you and your staff have put into this endeavor, but urge you to reevaluate the term sheet with these concerns in mind so that we can reach an agreement with the offending institutions that addresses questionable practices.

Sincerely,

E. Scott Pruitt

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