Update on The CFPB's Enforcement Case against Ocwen Financial Corporation

Ocwen Financial Corporation ("Ocwen") is one of the country's largest nonbank mortgage loan servicers, and it has had its hands full the last six months. On April 20, the Consumer Financial Protection Bureau ("CFPB") filed an enforcement action against Ocwen and its subsidiaries for violation of mortgage servicing rules. The CFPB's suit was filed in the U.S. District Court for the Southern District of Florida, naming Ocwen and two of its subsidiaries--Ocwen Mortgage Servicing, Inc. and Ocwen Loan Servicing, LLC--as defendants.[1] Close on the heels of the CFPB's suit, the Attorney General for Florida brought a similar action against Ocwen and its subsidiaries--filed the same day, in the same court, bearing the very next civil case number.[2] On top of all that, around the same time the CFPB filed suit on April 20, state mortgage regulators let loose a coordinated broadside against Ocwen:

> …22 state mortgage regulators…issued public regulatory orders or charges to subsidiaries of Ocwen...to address violations of state and federal laws, including the mishandling of consumer escrow accounts, unlicensed activity, and a deficient financial condition. The majority of the orders prohibit the acquisition of mortgage servicing rights and the origination of mortgage loans until the company is able to prove it can appropriately manage its existing mortgage escrow accounts. The orders are the culmination of several years of examinations and monitoring by multiple state regulatory agencies that revealed the company is mismanaging consumer mortgage escrow accounts.[3]

As a quick aside, orders from regulators prohibiting a mortgage servicer from acquiring mortgage servicing rights are a big deal because, for a mortgage servicer's business model to work, the servicer has to be able to continue to acquire new mortgage servicing rights while the existing mortgages it services mature or go into default. Without being able to "replenish" its pool of mortgage servicing rights, its source of revenue starts to dry up.

Since April 20, more state regulators have issued cease and desist orders against Ocwen and its subsidiaries and, on May 1, the Massachusetts attorney general sued Ocwen in Massachusetts state court for violation of mortgage servicing rules, asserting claims in the same vein as those asserted by the CFPB and the Florida A.G. in their April 20 actions (Massachusetts is one of the states that, prior to its May 1 suit, had already issued public regulatory orders relating to Ocwen, including prohibiting it from acquiring new mortgage servicing rights and originating new loans). Why did state regulators come out swinging? In a National Mortgage News article entitled "*Why regulators*

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[1] *CFPB v. Ocwen Financial Corporation et al*, U.S. District Court for the Southern District of Fla., Case No. 9:17-CV-80495

[2] *Office of the Attorney General et al v. Ocwen Financial Corporation et al*, U.S. District Court for the Southern District of Fla., Case No. 9:17-CV-80496

[3] Conference of State Bank Supervisors 4/20/17 Media Release - https://www.csbs.org/news/press-releases/pr2017/Pages/042017.aspx

waited years before hitting Ocwen again," the author, Kate Berry, quoted Melanie Hall, Commissioner of the Montana Division of Banking and Financial Institutions, as follows: "Regulators were working with the company [Ocwen] to allow them time to fix the issues…Eventually there comes a point in time when enough has happened and you have to move forward in a more formal fashion."[4]

So how did we get to this point? As for the CFPB's enforcement case filed in April, according to the CFPB (and the Florida AG), a principal culprit is Ocwen's servicing system of record. More on the system of record issue—and the CFPB's case specifically--shortly. First, for some case background on what led to the circumstances giving rise to the CFPB's enforcement action, we're going to look at the following: (1) the CFPB's mortgage servicing rules which are at issue in the CFPB's action; (2) the growth of nonbanks in the mortgage servicing market; and (3) Ocwen's growth specifically.

Mortgage servicing rules: When the Dodd–Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") was enacted in July 2010, one of its purposes was to centralize consumer financial protection—both rulemaking and enforcement--into one agency, the CFPB. To advance that objective in the area of consumer mortgages, Dodd-Frank transferred rulemaking authority under both the Real Estate Settlement Procedures Act ("RESPA") and the Truth in Lending Act ("TILA") to the CFPB. Previously, RESPA, implemented by Reg X, was administered by HUD, and TILA, implemented by Reg Z, was administered by the Federal Reserve Board. In a January 17, 2013 summary of its soon to be effective mortgage servicing rules, the CFPB provided the following statement (for context and justification for the new rules):

> The mortgage servicing industry was built to handle **large volumes of loans for which only limited service was required**. In the wake of the financial crisis, the number of distressed borrowers skyrocketed and **the servicing industry was unable to keep up**. As a result, an increased number of borrowers suffered substantial harm. The Dodd-Frank Act imposed new requirements on servicers and gave the Bureau the authority to both implement the new requirements and also to adopt additional rules to protect consumers. **The Bureau is exercising that authority to improve the information consumers receive from their servicers, enhance the protections available to consumers to address servicer errors, and to establish some baseline servicing requirements that will provide additional protections for consumers who have fallen behind on their mortgage payments** [emphasis added].[5]

The comprehensive set of new mortgage servicing rules which the CFPB came up with, titled *2013 Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z) Mortgage Servicing Final Rules* (people now simply refer to the rules as the "CFPB's Mortgage Servicing Rules" or the "Mortgage Servicing Rules"), went into effect January 10, 2014. And, as noted in the above statement, the focus was (1) "**improve the information consumers receive from their servicers," (2) "enhance the protections available to consumers to address servicer**

[4] Berry, Kate, "Why Regulators Waited Years before Hitting Ocwen Again," *National Mortgage News*, 5/17/17

[5] From the CFPB's "Summary of the final mortgage servicing rules," 1-17-13

errors," and (3) "establish some baseline servicing requirements" to "provide additional protections for consumers who have fallen behind on their mortgage payments."

As a quick aside--and I'll be stating the obvious to many--let's be clear on one point: The CFPB's new (at least new in 2014) mortgage servicing rules did not do away with or replace RESPA (Reg X) and TILA (Reg Z). Rather, the CFPB's new mortgage servicing rules modified and added to the rules under RESPA and TILA, and set forth the requirements, in a very comprehensive manner, for compliance with these rules.

The Reg X portion of the rules deals with how servicers are supposed to handle error resolution and information requests by borrowers, general servicing policies, procedures, and requirements, early intervention with delinquent borrowers, continuity of contact with delinquent borrowers, force-placed insurance, and loss mitigation. The Reg Z portion of the rules deals with interest rate adjustment notices for ARMs, prompt crediting of mortgage payments and responses to request for payoff amounts, and periodic statements. On August 4, 2016, the CFPB published some revisions to these rules, most of which take effect on October 19, 2017. These revisions for the most part deal with the loss mitigation process, how to deal with borrowers in bankruptcy, servicing transfers, clarification of when delinquency begins, and how to deal with successors in interest (when mortgage borrowers die).

Growth of nonbanks in the mortgage servicing market: Before we delve into the growth of nonbanks in the mortgage market, I should note that "nonbank" is a broad term and includes a variety of entities; however, in the mortgage servicing industry, "nonbank" refers to a mortgage servicer which is not a depository institution. For example, Ocwen as opposed to Wells Fargo (as an aside, nonbanks are mortgage originators as well as servicers). Nonbanks' share of mortgage servicing rights has grown dramatically in recent years. Prior to 2010 and the foreclosure crisis, the biggest servicers in the mortgage market were the big banks. Marshall Lux and Robert Greene, in their 2015 Harvard Kennedy School Mossavar-Rahmani Center for Business and Government working paper entitled "*What's Behind the Non-Bank Mortgage Boom?*" summarize this growth of nonbanks as follows:

> Since 2010, the role of non-banks…in the overall mortgage market has grown handedly. **In 2014**, non-banks accounted for over 40 percent of total originations in terms of dollar volume versus 12 percent in 2010. **Of the 40 largest servicers, 16 were non-banks, accounting for 20.5 percent of the total market and 28 percent of outstanding top-40 servicing balances, versus just 8 percent in 2010** [emphasis added].[6]

So how did these nonbanks accomplish such rapid growth in the mortgage market? According to a 2016 Federal Reserve Board of Governors report to Congress, nonbanks achieved significant scale in large part through their bulk purchases of mortgage servicing assets.

[6] Marshall Lux and Robert Greene, "*What's Behind the Non-Bank Mortgage Boom?*" (Harvard Kennedy School, Mossavar-Rahamni Center for Business and Government, M-RCBG Associate Working Paper Series / No. 42, June 2015)

> **Nonbanks…boosted their mortgage servicing market share through bulk purchases of MSAs. Many of these purchases were composed of portfolios related to nonperforming loans originally held by** banking **institutions, most notably in 2013, when nonbank servicers purchased from banks in bulk sales the MSAs corresponding to more than $500 billion in mortgages…By 2015, roughly one-third of MSAs were held by nonbanks, whereas before the financial crisis, the nonbank share was around 15 percent** [emphasis added].[7]

Ocwen's growth: As for Ocwen's growth, between 2010 and the present, encompassing the period described in the above HKS paper and FRB report, Ocwen--like other nonbanks operating in the mortgage servicing industry--experienced significant growth. The CFPB, in its complaint in the enforcement action, summarizes Ocwen's dramatic growth during this timeframe as follows:

> Between 2010 and the first quarter of 2014, Ocwen's residential servicing portfolio grew from 351,595 loans with an aggregate unpaid principal balance of approximately $50 billion to 2,861,918 loans with an aggregate unpaid principal balance of approximately $465 billion. Ocwen's largest acquisition during this time period was its 2013 purchase of Residential Capital, LLC's ("Residential Capital") servicing platform and its mortgage servicing rights to 1,740,000 loans with an aggregate unpaid principal balance of approximate $183.1 billion...[8]

In a National Mortgage News article entitled "*Why regulators waited years before hitting Ocwen again*," the author, Kate Berry, succinctly summarizes Ocwen's growth during this period. "The company grew rapidly **from 2010 to 2014**, with the number of **loans it serviced jumping sevenfold**, to 2.8 million, including its 2013 purchase of Residential Capital [emphasis added]."[9]

With respect to the Residential Capital purchase, to be clear, Ocwen didn't purchase Residential Capital ("ResCap") outright, rather it purchased ResCap's mortgage serving rights, and one can see from the numbers above that this transaction was the big factor contributing to Ocwen's sudden increase in size. ResCap, it may be remembered, was the one-time mortgage unit of Ally Financial (Ally Financial used to be known as GMAC Inc., the financial arm of General Motors Co.).[10] In any event, ResCap had previously filed for Chapter 11 bankruptcy protection in New York in May 2012, "unable to make payments on debt taken out to finance soured home mortgages."[11] For some time, prior to its Chapter 11 filing, ResCap had been a drag on Ally and "was considered a primary reason Ally failed the Federal Reserve's stress test of banks" earlier in 2012.[12]

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[7] Board of Governors Federal Reserve System Report to the Congress on the Effect of Capital Rules on Mortgage Servicing Assets – Evolution of the Mortgage Servicing Market since 1998

[8] CFPB v. Ocwen, Complaint, allegation # 25

[9] Berry, Kate, *National Mortgage News*, 5/17/17

[10] Ally Financial has been a public company since 2014, separate from General Motors Co. which sold its controlling interest in GMAC in 2006, and Ally Financial was and continues to be very big in auto lending

[11] "Residential Capital Seeks Chapter 11 Protection," Fox News U.S. / Associated Press, 5-14-12

[12] "Ally's Mortgage Unit, ResCap, Files for Bankruptcy," DealBook, The New York Times, 5-14-12

According to a *StreetInsider.com* article regarding Ocwen's ResCap asset acquisition, on February 15, 2013,

> Ocwen…completed the acquisition of certain Purchased Assets...pursuant to an asset purchase agreement…with ResCap" and related "Sellers" (each of which was an indirect subsidiary of Ally) "in connection with the Sellers' proposed asset sale pursuant to a plan under Chapter 11 of Title 11 of the United States Code…"
>
> Pursuant to the Asset Purchase Agreement, Ocwen purchased approximately $49.6 billion in "private label" mortgage servicing rights ("MSRs"), $19.2 billion in Freddie Mac MSRs, $38.5 billion in Ginnie Mae MSRs, $42.1 billion in master servicing MSRs, $25.9 billion in subservicing contracts…measured by unpaid principal balances as of December 31, 2012…In addition...Ocwen will subservice approximately $9 billion in "private label" MSRs previously serviced by the Sellers.[13]

So, while this transaction—Ocwen's purchase of MSRs from ResCap--was the biggest factor contributing to Ocwen's sudden increase in size, one can't lose sight of the fact that ResCap was sitting in Chapter 11 when the transaction was consummated. I mention this because, while one might argue that Ocwen got a relatively good deal on these MSRs (specifically because ResCap was in Chapter 11 and pressured to sell), one might also argue that ResCap was in Chapter 11 in part because ResCap was unable to make enough money from these MSRs to pay its--ResCap's--own debts.

The CFPB's enforcement case against Ocwen: As for the CFPB's enforcement case against Ocwen, the first paragraph of the Complaint provides the following summary:

> Among other things, Ocwen has improperly calculated loan balances, misapplied borrower payments, failed to correctly process escrow and insurance payments, and failed to properly investigate and make corrections in response to consumer complaints. Ocwen has compounded these failures by illegally foreclosing upon borrowers' loans and selling loan servicing rights to servicers without fully disclosing or correcting errors in borrowers' loan files.[14]

It's an opening litany one would expect in an enforcement action against a servicer based upon violations of mortgage servicing rules. However, what makes this case a little different is, in its Complaint, the CFPB puts special emphasis on Ocwen's system of record, alleging that Ocwen's servicing failures were in large part a direct result of Ocwen's system of record. A system of

[13] StreetInsider.com, 2-19-13

[14] Id.

record is the software utilized by servicers to "input and maintain loan and homeowner information."[15]

The CFPB, for context--and to set the stage for the CFPB's argument that Ocwen's alleged servicing problems were in large part tied directly to Ocwen's system of record--alleges the following in its Complaint:

> Fundamental functions of a mortgage servicer include processing and applying borrower payments, communicating accurate payment information to borrowers, managing escrow accounts, and maintaining accurate loan balance information.
>
> Servicers also respond to borrower inquiries, handle loss mitigation requests, and initiate foreclosure proceedings, among other functions.
>
> To perform these tasks, servicers input loan and borrower information into electronic databases, often referred to as systems of record. **Systems of record are essential to a servicer's ability to service loans in accordance with applicable legal requirements**. If the information the servicer inputs into the system of record is inaccurate, or the system itself has deficiencies that produce inaccurate information even when the servicer inputs correct information, a servicer can make critical errors that harm borrowers [emphasis added].
>
> **Ocwen has used and continues to use a proprietary system of record, REALServicing**, and its related sub-systems (collectively "REALServicing") [emphasis added].[16]

One important point from the CFPB's perspective noted above, which bears reiterating, is that Ocwen's system of record, REALServicing, is a proprietary system of record – Ocwen developed it itself. Ocwen cannot point to a vendor (many servicers use vendor provided systems of record).

In the "Factual Allegations" portion of the CFPB's complaint, the CFPB reels off the following alleged deficiencies on Ocwen's part:

> Ocwen has routinely failed to send borrowers timely and accurate periodic statements, failed to timely and accurately credit and apply borrower payments, and failed to correct billing and payment errors [portion of allegation].
>
> Ocwen has also failed to perform basic tasks associated with managing borrowers' escrow accounts [portion of allegation].

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[15] Complaint, *Office of the Attorney General, the State of Florida v. Ocwen Financial Corporation et al*, U.S. District Court for the Southern District of Fla., Case No. 9:17-CV-80496, http://myfloridalegal.com/webfiles.nsf/WF/JMAR-ALLN3V/$file/Complaint+Against+Ocwen.pdf

[16] CFPB v. Ocwen, Complaint (allegations #s 27 – 30)

> Ocwen has failed to make timely payments of borrowers' hazard insurance premiums and serviced loans based on inaccurate insurance data that has led to wrongful insurance premium charges.
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> Ocwen has also enrolled borrowers into add-on products without proof of their affirmative consent [portion of allegation].
>
> Between January 2014 and mid-2015, Ocwen failed to implement policies and procedures that were reasonably designed to meet the objective of Ocwen properly handling accounts for successors in interest to a deceased borrower…particularly when successors were applying for loss mitigation assistance [portion of allegation].
>
> Under Regulation X, servicers are required to have policies and procedures that are reasonably designed to ensure that Ocwen investigates, responds to, and, as appropriate, makes corrections in response to complaints by borrowers [portion of allegation].
>
> First, Ocwen has failed to implement policies and procedures that are reasonably designed to meet the consumer complaint handling objectives to respond, investigate, and, where appropriate, correct errors.
>
> Ocwen has long touted its ability to service and modify distressed loans, claiming, "helping homeowners is what we do." In fact, Ocwen has failed to accurately maintain foreclosure-related information necessary to ensure that it provides borrowers with required foreclosure protections. As a result of these and other failures, Ocwen has wrongfully initiated foreclosure proceedings and wrongfully conducted foreclosure sales.
>
> Since 2015, Ocwen has sold hundreds of thousands of its rights to service borrowers' loans, also referred to as mortgage servicing rights ("MSRs"), to new mortgage servicers. Ocwen has failed, however, to provide complete and accurate borrower loan information to the new servicers or to notify new servicers of errors that are likely to impact the accuracy and completeness of the transferred borrower records.[17]

Again, keep in mind that the big source of these alleged problems, according to the CFPB, is Ocwen's proprietary system of record, REALServicing. REALServicing's alleged flaws have, according to the CFPB, had a ripple effect throughout Ocwen's mortgage servicing operations, leading to the mortgage servicing deficiencies and violations of mortgage servicing rules alleged in its Complaint. Ocwen's former Head of Servicing Compliance testified that:

> [S]he was "absolutely" concerned that Ocwen could not service loans on REALServicing in compliance with applicable laws…She testified that she, other members of the Compliance Department, and the leaders of Service Operations,

[17] CFPB v. Ocwen, Complaint (allegations #s 74, 100, 129, 152, 156, 165, 167, 177, 202)

> Loss Mitigation, and other Ocwen business units "frequently" and "loudly" raised this concern. In determining the root cause of various issues, she explained, "The answer would almost always be REALServicing and the processes that we're using…[It was a] commonality across all of [the business unites]…Everything in servicing, every department in servicing."[18]

Ocwen's response: In response to the CFPB's complaint, Ocwen and its subsidiaries filed a Motion to Dismiss on June 23rd, raising three primary defenses:

1. The Complaint must be dismissed on constitutional grounds;

2. The CFPB is suing based on legal requirements that do not exist today; and

3. The CFPB is suing on claims that are subsumed with a past settlement with Ocwen (the National Mortgage Settlement).

As for the Constitutional argument, Ocwen bases this in part on the D.C. Circuit's decision (by a three-judge panel) in October of last year in the *PHH Corp. v. CFPB* case which found the CFPB's leadership structure (single director, removable only for cause) unconstitutional.[19] In the opening paragraphs of its Motion to Dismiss, Ocwen states the following:

> [T]he entire Complaint must be dismissed on constitutional grounds because the CFPB violates the system of checks and balances that protects Ocwen, and every citizen, from an unbridled government agency. The 2010 Consumer Financial Protection Act ("CFPA") that created the CFPB consolidated a massive amount of regulatory and enforcement power over virtually all of our nation's consumer financial services laws in the hands of a single person, the CFPB's Director, and then insulated that position from accountability to the only executive Article I recognizes, the President. This constitutional defect is exacerbated because the CFPB is insulated from any meaningful check by the second political branch of federal government, the Congress. Instead, the CFPB appropriates its own funds and faces no meaningful congressional oversight...[20]

However, the D.C. Circuit's decision in *PHH Corp. v. CFPB* was vacated in February and is now under review by the full panel of judges in the circuit. Pending a ruling by the full Court, the CFPB director can only be removed for cause (in short, a clear decision on this Constitutionality challenge raised by Ocwen and prior lendors/servicers remains elusive, because, no matter how the full Court rules, there will be an appeal to the U.S. Supreme Court).

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[18] CFPB v. Ocwen, Complaint (allegation # 51)

[19] *PHH Corp. et al v. Consumer Financial Protection Bureau*, case # 15-1177, in the U.S. Court of Appeals for the District of Columbia Circuit

[20] CFPB v. Ocwen, Defendant's Motion to Dismiss and Incorporated Memorandum of Law

As for Ocwen's second argument, that the CFPB is suing based on legal requirements that do not exist today, Ocwen states:

> [T]he CFPB is suing Ocwen for failure to live up to legal requirements that do not exist today and that the CFPB is attempting to create, and then impose, through this lawsuit. This sort of 'regulation through enforcement' is unfair and legally impermissible. Among other claims, the CFPB asserts that Ocwen acted "unfairly or "deceptively" by allegedly using inadequate loan servicing software (its REALServicing platform) and inaccurate loan servicing data. But the Bureau has no law, regulation, guidance, interpretation or instruction about enforceable standards or benchmarks that a servicer like Ocwen must meet in operating its technology. The CFPB also sues Ocwen for collecting on amounts without first independently substantiating them, even though the CFPB is simultaneously engaged in writing regulations that, only if enacted, may for the first time create such a duty. And the CFPB accuses Ocwen of improperly processing foreclosures while also working on loan modifications—so-called dual tracking—but takes the position that Ocwen is liable even as to borrowers who fall outside of the protections in the CFPB's detailed dual tracking regulation. Ocwen strives always to comply with the law, but it should not be sued for failing to comply with something that is not yet (and may never become) the law.[21]

The CFPB, in its Opposition to Ocwen's Motion to Dismiss (filed on July 20), argues that the CFPB can indeed commence an action without having first deemed a particular act or practice unfair via rulemaking.

> The CFPA authorizes the Bureau to bring unfairness actions in federal court. Subtitle E of the CFPA authorizes the Bureau to, among other things, commence a civil action or administrative proceeding against any person that violates Federal consumer financial law. Section 5531(a) of subtitle C provides that "the Bureau may take any action authorized under subtitle E to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice . . . ." Despite this clear statutory mandate, Defendants argue that the CFPA requires the Bureau to first "declare" an act or practice unfair through a rulemaking or administrative proceeding before commencing an action in federal court. Nothing in the text of the CFPA supports this argument. Section 1031(c), upon which Defendants rely, defines unfairness. And in decades of FTC actions and recent Bureau actions, no court has ever held that the FTC or Bureau is required to "declare" an act or practice unfair through a rulemaking or administrative adjudication before commencing an enforcement action. In fact, they have held the opposite: the Bureau need not engage in rulemaking or administrative adjudication before filing suit in federal court.[22]

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[21] CFPB v. Ocwen, Defendant's Motion to Dismiss

[22] CFPB v. Ocwen, Plaintiff's Opposition to Defendants' Motion to Dismiss (citing 12 U.S.C. §§ 5564(a), 5565(a); 12 U.S.C. § 5531(c); and D&D Mktg., 2016 WL 8849698, at * 7 (holding that the Bureau need not first engage in rulemaking before bringing unfairness and abusive claims))

As for Ocwen's third argument, that the CFPB is suing on claims that are subsumed with a past settlement with Ocwen, the settlement which Ocwen is referring to is the 2012 settlement reached by the U.S. Department of Justice, the attorneys general of 49 states and the District of Colmbia, and five of the largest mortgage servicers to address mortgage servicing and foreclosure abuses (commonly referred to as the National Mortgage Settlement). According to a statement from the Office of Mortgage Settlement Oversight website,

> The [National Mortgage Settlement] also established first-ever nationwide reforms to mortgage servicing. These standards require better communication with borrowers, a single point of contact, adequate staffing levels and training, and appropriate standards for executing documents in foreclosure cases. The servicers' performance in meeting the standards is tested by the Monitor through a series of metrics. The NMS created 29 original metrics, and the Monitor established four more in 2013 for a total of 33 metrics.
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> **In February 2014, Ocwen entered into a new consent judgment with the Consumer Financial Protection Bureau (CFPB) and 49 states requiring Ocwen to provide $2.1 billion in consumer relief and comply with the NMS servicing standards for its entire loan portfolio** [emphasis added].[23]

In Ocwen's argument that the CFPB is suing on claims subsumed by the NMS, Ocwen states:

> [A]longside these newly-minted claims, the CFPB overreaches in the other direction and sues on claims and legal rights that are subsumed within a past settlement agreement with Ocwen. In a 2014 Consent Judgment entered by the District Court for the District of Columbia (DC District Court), the CFPB and Ocwen agreed that on a forward-looking basis, the conduct that is now the subject of Counts I, III, IV, VII, VIII, XIII and part of Count X would be evaluated through an independent third party monitor and remedied only if the monitor found a material violation that Ocwen failed to cure (and even then, only if certain other conditions were met). Principles of res judicata and waiver prevent the CFPB from now attempting to double dip and sue Ocwen outside of these limitations. Ocwen is entitled to the benefit of the deal it stuck with the government, and these Counts must be dismissed as a result.[24]

The CFPB, in its Opposition to Ocwen's Motion to Dismiss, responds to this argument by contending that the NMS does not prevent the CFPB from asserting claims based on Ocwen's actions that arose subsequent to the NMS:

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[23] About the National Mortgage Settlement; https://www.jasmithmonitoring.com/omso/about-the-national-mortgage-settlement/

[24] CFPB v. Ocwen, Defendant's Motion to Dismiss

> The Consent Judgment did not release Defendants from liability for any counts in the Bureau's Complaint…By its express terms, the release is limited to conduct that occurred on or before December 18, 2013 ("Released Conduct"), not, as Defendants argue, to the conduct after that date that is the subject of the Bureau's complaint. Section B's use of "liability that has been or might have been asserted" confirms that the release does not cover future conduct….By the express terms, the Bureau "specifically" reserves its rights as to all conduct other than the Released Conduct.

Where things presently stand in the case: The next substantive step in the case, procedurally, is for the Court to rule on Ocwen's Motion to Dismiss. If the Court denies Ocwen's motion, Ocwen will then need to file an Answer addressing the allegations in the CFPB's Complaint (and raise affirmative defenses). The Scheduling Order, filed this past June, shows that the trial is set for July 22, 2019, dispositive motions are due March by March 15, 2019, and fact discovery is due by September 20, 2018. The case has been ordered to mediation and a mediator has been selected (but the parties have until 60 days prior to calendar call, July 19, 2019, to complete the mediation). So, pending a decision on Ocwen's Motion to Dismiss or settlement in the near future, while it may appear that, for the moment, things are not moving along at lightning speed, keep in mind that this case is not playing out in isolation. Remember, there are the pending cease and desist orders by state regulators against Ocwen. And the Florida A.G.s action in U.S. District Court. And the Massachusetts A.G.'s action in Massachusetts state court. With this much activity swirling around, one can expect that Ocwen's challenges from various quarters will be in the news again before year end, even if there's no settlement or decision on Ocwen's Motion to Dismiss in the CFPB's case by then. If anyone's still wondering what all of the hullabaloo is about, keep in mind that we're talking about the servicing of assets with an aggregate unpaid principle balance in the hundreds of billions of dollars. This is a big deal.