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Making Chicken Salad: 9 Ways to Improve Housing Policy Around the Foreclosure Fraud Settlement

By: [David Dayen](#) Friday February 10, 2012 1:13 pm



I think I've made my position on the foreclosure fraud settlement pretty clear. Nevertheless, there's a time to stew and a time to figure out how to make this work as well as possible. I think there are some tangible steps that can be taken, if not to improve the deal, then to improve housing policy overall to the benefit of homeowners rather than bank balance sheets. Here's a probably incomplete list:

1) *Release the terms.* It's hard to fully commentate on the settlement without the settlement terms in hand. It's unconscionable that these haven't been released, and everyone with even a passing interest in housing policy should be up in arms. Once we get the terms, then we can better know where things need to be shored up. It's an absolute joke that we've gone 24 hours without settlement terms; we should not go a week.

2) *Follow the money to the states.* Wisconsin Governor Scott Walker has already announced that he will not put the hard money that states receive in the settlement to anything dealing with housing, but to plug his budget holes. I

imagine that will be the case in Republican states throughout the country, and indeed it will be a tempting target for any state with a budget shortfall.

This should generate massive outrage. The money is a one-time payment from banks specifically targeted for foreclosure mitigation programs. In particular it should go toward mandatory mediation, which has proven to be a low-cost winner for many states, and legal aid for foreclosure victims and people facing foreclosure, so they can continue their private rights of action with the banks that is allowable under the settlement. Nobody in Wisconsin should just sit back and allow Walker to steal money earmarked to help homeowners. That should become an issue in his recall election.

3) *Servicing standards at CFPB*. I view the [servicing standards](#) announced with the settlement as kind of irrelevant. The Consumer Financial Protection Bureau has the authority to make rules on nationwide servicing standards that will stick. The rules that will allegedly be adhered to in the settlement will only last three years. That's clearly not good enough. And there's substantial question as to whether the servicing business can even mechanically do some of the requirements. CFPB needs to engage in a comprehensive examination of servicing, including audits of servicer software to check for systemic errors, and they need to dismantle the business if it is shown to not work meaningfully. The standards at CFPB will far outlive this document, and that's where the focus needs to be.

4) *Help California choose*. Depending on whose numbers you believe, California either got 37.5% of the principal reduction under the deal, or much more, closer to 60%. But more important, they secured an independent, California-specific monitor to ensure compliance, with large penalties if the banks falter. They haven't yet named that monitor. I've been asked by staff in Kamala Harris' office for suggestions. Let's open the floor. How about Bill Black? If you can actually make the principal reduction real in California through enforcement, then at least one corner of this inadequate deal looks better.

5) *The task force*. Most every activist group has used the phrases "down payment," "drop in the bucket" and more to describe the settlement, and they've turned to the RMBS working group to get the real relief for homeowners and accountability for the banks. I'm dubious, but as [Matt Stoller writes](#) today in a superlative post:

The initial signs aren't hopeful; DOJ has assigned 55 people to the task force, including 10 FBI agents. During the S&L crisis, which was 40 times smaller than this one, roughly 1,000 FBI agents were involved in the investigation. To put it another way, given the \$5 trillion of home equity lost in the crisis, DOJ has assigned one person for every \$100 billion lost. It is as if Apple lost its entire cash horde of \$100 billion, and the government assigned just one person to find out what happened.

But there has been a good amount of private litigation and effort already, so though unlikely, it isn't absolutely hopeless that there could be some handcuffs. A good test case to see what happens next is to see who is chosen to head the task force on a staff level. Someone like former TARP Inspector General Neil Barofsky or Rep. Brad Miller of North Carolina would indicate some level of seriousness. A traditional Justice Department bureaucrat would indicate otherwise.

The staff director should be non-negotiable for the activist community. Moreover, they should hold [Eric Schneiderman](#) and the rest of the law enforcement leadership to their promises about a "down payment" (even [the President](#)). If the political dynamic has shifted against Wall Street, then scale Lanny Breuer and Robert Khuzami and prove it.

6) *Class action America*. Not only are private rights of action allowable, but so are private class action lawsuits. The American Foundation for Equal Rights has used a large bankroll to push forward marriage equality in the courts. An American Foundation for Homeowner's Rights could do the same over systematic erroneous document assignments. Find an appropriate venue, fundraise the hell out of it and get going. Resources were always the hurdle to private suits, which is why suits from investors have moved much further. But there are methods to find the resources.

7) *Up the chain*. Iowa AG Tom Miller is fond of telling everyone that criminal liability was not released in this settlement. In practical terms, AGs have no credibility to issue criminal charges, given that they just invested years in a settlement without pursuing anything on the criminal side. But that's not entirely true in two cases: Nevada and

Missouri. There, AGs Catherine Cortez Masto and Chris Koster have active criminal investigations that could theoretically continue to go up the chain, from the document processors to the servicers to the corporate parents, to find who authorized the persistent forgeries and document fraud. This won't be an easy road because of the settlement, but it's legally plausible.

8) *Fannie and Freddie*. Nearly two-thirds of the housing market sits outside the scope of this settlement. Homeowners who by accident have a mortgage guaranteed by Fannie Mae and Freddie Mac get none of the benefits. There are programs pushed by the Administration to rectify that. But so far, the overseer of the GSEs, Ed DeMarco, has been resistant. House Democrats are [pummeling DeMarco](#), especially after the revelation that Fannie Mae [stopped a plan](#) for principal reductions out of "philosophical" opposition. DeMarco could be replaced by the Administration. They've already shown the ability to make recess appointments when critical policies are on the line. They should not hesitate in this case to change leadership at FHFA if they want a full-spectrum policy on housing.

9) *Be real*. Don't let anyone tell you this settlement is OK. Not to toot my own horn, but people in absurdly high positions have told me that my work helped move the settlement in a better direction. Frankly, I don't want to take that credit. I don't want to be associated with this. If you accept this as a "positive first step" or whatever the PR is, you make yourself irrelevant for the next steps. And there are many necessary steps ahead. As [Abigail Field](#) writes, this is a call to action:

My slim hope for good bank and housing policy rests on you. If Team Obama is confronted with an informed and active electorate over the next several months—confronted with enough voters demanding good policy instead of easily disprovable talking points—I think it's possible to goad a-scared-we-won't-be-reelected Team Obama into actually doing good policy.

So what can you do? Participate with CredoAction, The New Bottom Line, The Other 98%, Occupy Our Homes or any other group pushing hard for good policy, refusing to provide political cover to a weak incumbent too ??? to do the right thing. Start your own group. But participate. Be a DOER. Call your members of Congress; call your Attorney General, your state representatives, your governor, President Obama. And in an era when the Supreme Court insists corporations have the right to speak at a volume calculated to drown out everyone else, insist on being heard.

Indeed.

 [35 Comments](#)

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35 Responses to "Making Chicken Salad: 9 Ways to Improve Housing Policy Around the Foreclosure Fraud Settlement"

[ubetchaiam](#) February 10th, 2012 at 1:35 pm

1

Since I live in CA and concur about Bill Black, how can I assist that recommendation?

 [Login to Reply](#)

[fatster](#) February 10th, 2012 at 1:48 pm

2


In response to [ubetchaiam @ 1](#)

At your service, ubetchaiam:

How to contact Kamala Harris, CA AG
Mail Attorney General's Office
California Department of Justice
Attn: Public Inquiry Unit
P.O. Box 944255
Sacramento, CA 94244-2550

email http://ag.ca.gov/contact/complaint_form.php?cmplt=PL

Voice: (916) 322-3360 or
(Toll-free in California)
(800) 952-5225
Fax: (916) 323-5341

 [Login to Reply](#)

[radjil](#) February 10th, 2012 at 1:51 pm

3

As monitor:

I wonder if Phil Angelides is available. Has the Financial Crisis Inquiry Commission finished its work?

 [Login to Reply](#)

[fatster](#) February 10th, 2012 at 1:54 pm

4

In response to [radjil @ 3](#)

At your service, too:

[Here's the report.](#)

 [Login to Reply](#)


[Fractal](#) February 10th, 2012 at 2:33 pm

5

Good evening (5:30 pm on right coast). I've only read through item 5, but I have this reaction to #4 off the top of my head.

4) Help California choose. Depending on whose numbers you believe, California either got 37.5% of the principal reduction under the deal, or much more, closer to 60%. But more important, they secured an independent, California-specific monitor to ensure compliance, with large penalties if the banks falter. They haven't yet named that monitor. I've been asked by staff in Kamala Harris' office for suggestions. Let's open the floor. How about Bill Black? If you can actually make the principal reduction real in California through enforcement, then at least one corner of this inadequate deal looks better.

Bill Black won't accept a "monitor" job like this unless he has commitments and assurances (probably even a contract) that provides resources on a scale similar to what he had when he was litigation director at the Federal Home Loan Bank Board (Bank Board). I was around then paying attention to the S&L crooks, so I should recall some minimal facts about the size of enforcement staff at the Bank Board, but I don't. For a state the size of CA, about to receive 38% or 60% of all monetary relief under the settlement, Bill Black wouldn't touch the job without a gang of investigators (say 100?), auditors (say 50?), engagement of one of the big four accounting firms, and probably two dozen experienced trial lawyers, at least half of whom have indicted and prosecuted criminals. Not because he will have criminal enforcement powers, but because he will be dealing with a massive criminal conspiracy using only civil tools, and therefore will need to know how to document & refer criminal charges.

 [Login to Reply](#)

[Fractal](#) February 10th, 2012 at 2:35 pm

[6](#)

Meanwhile, did anyone else get that donation window asking for support for the FDL News Service? Great idea.

 [Login to Reply](#)

[Fractal](#) February 10th, 2012 at 2:38 pm

[7](#)

Not to toot my own horn, but people in absurdly high positions have told me that my work helped move the settlement in a better direction. Frankly, I don't want to take that credit. I don't want to be associated with this.

Neither do we. So I think we got your back here at FDL.

Ahhh the blandishments of those in "absurdly high positions"

 [Login to Reply](#)

[allan](#) February 10th, 2012 at 2:40 pm

[8](#)

If you can stomach it:

[In an interview with public radio, NYS Attorney General Eric Schneiderman talks about the mortgage foreclosure settlement](#)

 [Login to Reply](#)

[Fractal](#) February 10th, 2012 at 2:47 pm

[9](#)

I wonder why Matt Stoller quoted approvingly from Damon Silver's analysis as a member of the Congressional Oversight Panel monitoring TARP, but didn't suggest Silver as a possible staff director for Schneiderman's new RMBS Working Group.

 [Login to Reply](#)

[BeachPopulist](#) February 10th, 2012 at 2:49 pm

[10](#)

Outstanding work again, David.

But I think all these suggestions are in vain. The whole idea of this settlement was to get it off the pages of the newspapers, out of the bank's hair, and solve an Obama 2012 fundraising problem.

Any idea that anybody except possibly Masto in NV is going to do anything is, I'm sad to say, probably delusional.

Obama set out to fuck us. He has succeeded in fucking us. And we're going to stay fucked.

 [Login to Reply](#)

[econobuzz](#) February 10th, 2012 at 2:49 pm

[11](#)

Abigail Field: My slim hope for good bank and housing policy rests on you.

I agree with the "slim" part. My ass is so sore I can't feel it anymore.

 [Login to Reply](#)

[econobuzz](#) February 10th, 2012 at 2:51 pm

[12](#)

If you accept this as a "positive first step" or whatever the PR is, you make yourself irrelevant for the next steps.

Preach it, brother.

 [Login to Reply](#)

[David Dayen](#) February 10th, 2012 at 2:51 pm

[13](#)

In response to [Fractal @ 9](#)

I think it's public that Silvers is already working with Schneiderman as outside counsel.

 [Login to Reply](#)

[tejanarusa](#) February 10th, 2012 at 2:51 pm

[14](#)

In response to [Fractal @ 7](#)

Even so, I often feel that such good work in places like fdl is going unseen by those who so desperately need to see it, I'm moderately glad to hear that it isn't totally ignored.

But if this is the result of "moved in a better direction," imagine how bad it was?

 [Login to Reply](#)

[masaccio](#) February 10th, 2012 at 3:00 pm

[15](#)

The American Banker confirms that not only is there no final written agreement, there is no written agreement in principle.

So much for competence among our AGs. How could you agree without seeing it in print?

 [Login to Reply](#)

[PhilPerspective](#) February 10th, 2012 at 3:01 pm

[16](#)

2) *Follow the money to the states.*

If the settlement allows shitstains like Walker to use the money to plug budget holes, then those drawing up the Settlement need to be fired and mocked for the rest of their lives.

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[BethinOR](#) February 10th, 2012 at 3:02 pm

[17](#)

In response to [tejanarusa @ 14](#)

If I understand correctly there are no solvent big banks. Any calamity, global or national, could bring it all down. And, of course, we have nothing with which to replace it.

Maybe that's just a liar's scare tactic, but if they're still doing business the same way they were, then it's also logical.

David is a gem. He brings sourced information and critical analysis coupled with experience from which we may draw nourishment for healthy debate. Thanks, David and Everybody!


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[eCAHNomics](#) February 10th, 2012 at 3:03 pm

[18](#)

In response to [radjil @ 3](#)

Yes it has and had no influence. Sez it all.

 [Login to Reply](#)

[econobuzz](#) February 10th, 2012 at 3:04 pm

[19](#)

In response to [masaccio @ 15](#)

Urban Dictionary

HUSTLE: to hurry, pressure, trick, push around a person into getting something you want from them. Like: money, a good deal on a product or job, a favor, job, even sex.

 [Login to Reply](#)

[eCAHNomics](#) February 10th, 2012 at 3:09 pm

[20](#)

In response to [radjil @ 3](#)

BTW, here's the [link to the report](#).

 [Login to Reply](#)

[fatster](#) February 10th, 2012 at 3:13 pm

[21](#)

In response to [eCAHNomics @ 20](#)

We really need to work on coordination, eCAHNomics. This is getting hilarious. (See @ 4.)

 [Login to Reply](#)

[BeachPopulist](#) February 10th, 2012 at 3:13 pm

[22](#)

In response to [eCAHNomics @ 20](#)

Hey, eCAHN, saw a post of yours the other day saying you had gotten rid of your teebee.

Howya' gonna watch the new season of Billy The Exterminator?! (Available for web streaming?)


 [Login to Reply](#)

[eCAHNomics](#) February 10th, 2012 at 3:17 pm

[23](#)

In response to [BeachPopulist @ 22](#)

Geez, I can't even eat supper and read and type at the same time. I missed yours entirely. Again. :-(

 [Login to Reply](#)

[eCAHNomics](#) February 10th, 2012 at 3:20 pm

[24](#)

In response to [BeachPopulist @ 22](#)

That program is a hoot. But not worth the price of a new TV, cable bill, etc.

Besides I killed 3 birds with one stone (metaphorically speaking; I love birds). The bookshelf that the TV was on had old NatGeos that I've wanted to get rid of for years. Now they are in boxes, waiting to see if I can find a donee or if not be taken to the dump.

 [Login to Reply](#)

[Fractal](#) February 10th, 2012 at 3:22 pm

[25](#)

In response to [allan @ 8](#)

At about 3:15 Schneiderman repeats his Mantra that robo signing is "post-bubble" conduct.

No, Eric. Robo signing has been going since the 1990s, since MERS was created. The ability to avoid actual recording was the impetus for MERS. Expediting transfers by avoiding recording by using MERS was the mechanism by which banks expedited creation & sale of RMBS. Robo signing was epidemic at all times, before, during and after the "bubble."

Robo signing was essential to creation of the bubble.

Robo signing *IS* the bubble.

 [Login to Reply](#)

[eCAHNomics](#) February 10th, 2012 at 3:23 pm

[26](#)

In response to [fatster @ 21](#)

My 23 was to you. I can't even find the correct reply button. Maybe I should just give up for the night.

 [Login to Reply](#)

[Fractal](#) February 10th, 2012 at 3:23 pm

[27](#)

In response to [David Dayen @ 13](#)

Awesome

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[bigbrother](#) February 10th, 2012 at 3:29 pm

[28](#)

How do the potential homeowners get the OK on a write down?


Some list must be published of the qualified properties. Where is that? How can you have a deal without the recipients?

 [Login to Reply](#)

[fatster](#) February 10th, 2012 at 3:29 pm

[29](#)In response to [eCAHNomics @ 26](#)

No prob at all, I'm ROFLMAO over this. You have a wonderful night--and never give up.

 [Login to Reply](#)[bigbrother](#) February 10th, 2012 at 3:38 pm[30](#)

Yves on Democracy Now today did a snappy explanation of the pitfalls and the obfuscation of criminal liability. I don't see how this will unwind the housing logjam. Rentals are getting scarce. New construction is at snail speed. The job numbers are faked as huge numbers leave the job search. The real numbers are the percent of participation and the wage growth. Obama is faking a recovery.

 [Login to Reply](#)[waynec](#) February 10th, 2012 at 4:13 pm[31](#)In response to [fatster @ 2](#)

Be aware, you have to go through 10 minutes of drivel to finally get to leave a recorded message. Just saying...

 [Login to Reply](#)[waynec](#) February 10th, 2012 at 4:28 pm[32](#)In response to [bigbrother @ 30](#)

" New construction is at snail speed."

It is MUCH cheaper to buy a house and fix it up to your standards than to build a new one.

 [Login to Reply](#)[acmerecords](#) February 10th, 2012 at 4:42 pm[33](#)

~

1. beach populist is right
2. Reanimate Pecora !

 [Login to Reply](#)[papau](#) February 10th, 2012 at 4:59 pm[34](#)In response to [BeachPopulist @ 10](#)

I basically agree that only Masto in NV might do anything, and that is not likely. As you note, getting this off the front page -- as an Obama win -- was job one, and that is now done so there will be little PR on this in the future. But I think Abigail Field's call to our not stopping keeping this active at FDL and as she says, at "CredoAction, The New Bottom Line, The Other 98%, Occupy Our Homes or any other group pushing hard for good policy", preaching to the choir to be sure, is still a good idea.

The Fannie and Freddie 2/3rds of the market exclusion from this deal on an appointee's whim is a disgrace -- I know Obama bends the knee to everyone associated with money, but this ridiculous -- Ed DeMarco at FHFA must go. That has to be job one for us at this point. If Obama does not do a recess appointment he is worse than I thought -- and I thought being lower was impossible.

The second item that is obvious and needed is to get the servicing standards written into regulations at the CFPB – and that should be possible before the election (after the election Obama puts in a Tim clone and regulation most likely dies).

The rest is a good attempt at a positive approach, but I agree likely to change little. Obama and the AG's do not want to jail real people, and Obama does not want to be accused of interfering with states rights so pressure to write into the agreement that it can't be used for budget shortfalls will fail. Compliance enforcement in CA I expect to be in fine shape – no new crimes will be committed. The DOJ task force will do a good documentation (see Financial Crisis Inquiry Commission report and result), and then recommend that MERS be made legal via a federal law. The class action risk reward is poor, and the left has so many open wounds from Obama the idea is just one of many on the list.

David really did move the goal posts – he/we should be proud of his efforts. I disagreed with the kill the settlement idea as I saw the who benefits from killing it (bad guys in my view) and who is hurt (homeowners in my view) differently, but I am very glad David was out there pushing his points.

 [Login to Reply](#)

[fatster](#) February 10th, 2012 at 6:00 pm

[35](#)

In response to [waynec @ 31](#)

I'm so old, I've become highly skilled at being put on hold.

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DAVID DAYEN ON TWITTER



David Dayen

ddayen

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ddayen @scubapoet I'm sure you have a T-shirt



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