



# Citi Monitorship

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Ninth Report  
November 2018



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# I. INTRODUCTION

This is the ninth report of the Monitor pursuant to the July 11, 2014 agreement (the “Settlement Agreement”) among Citigroup, Inc. (“Citi”), the U.S. Department of Justice (“DOJ”), and the States of California, New York, Illinois, Delaware, and the Commonwealth of Massachusetts (collectively, the “Settling States”).

As the Monitor has explained in previous reports, as part of the Settlement Agreement, Citi committed to pay \$4.5 billion to the DOJ and the Settling States, acknowledged a statement of facts, and agreed to provide consumer relief valued at \$2.5 billion consistent with requirements set forth in Annex 2 of the Settlement Agreement. Under the Settlement Agreement, Thomas J. Perrelli serves as the independent Monitor (the “Monitor”) to determine Citi’s compliance with the consumer relief and corresponding requirements of Annex 2.

Annex 2 categorizes creditable relief into “Menu Items”— for example, Menu Item 1A allows Citi to claim dollar-for-dollar credit, subject to certain adjustments, for providing principal forgiveness to a borrower for a loan as to which Citi has a first-position lien. Each menu item has unique eligibility requirements.

As described in the Monitor’s First Report, Citi has explained that it provides relief, and the Monitor evaluates credit, under Annex 2 according to the following steps:

- ▶ Two of the Citi business units internally charged with performing consumer relief activities—CitiFinancial Servicing, LLC (“CFS”) and CitiMortgage, Inc. (“CMI”)— identify loans they believe are eligible to receive creditable relief under the Settlement Agreement, and they provide the actual relief and notice to borrowers.
- ▶ CFS and CMI then submit the relief to the Citi Internal Review Group (“IRG”), which tests and confirms the eligibility of the relief and determines the amount of credit earned. The IRG’s review is governed by agreed-upon testing procedures to ensure that the relief satisfies the requirements of Annex 2.
- ▶ The IRG then submits the relief to the Monitor, certifying as to the IRG’s review of the submitted relief and validation of the amount of credit earned.

- ▶ The Monitor’s team, in coordination with consultants, evaluates, credits, and reports on the relief.<sup>1</sup>

The Monitor retains final responsibility for ensuring that relief for which Citi receives credit satisfies the requirements of Annex 2 of the Settlement Agreement. During the course of the monitorship, as contemplated by the Settlement Agreement, the Monitor’s team has engaged in periodic review of previously credited relief to ensure that it “comport[ed] fully with the Settlement Agreement.”<sup>2</sup>

In late fall 2016, in the course of performing its diligence function, the Monitor’s team discovered inaccuracies in data provided by Citi regarding the position of Citi’s liens for certain loans that had received relief. Such inaccuracies could affect the relief credited in multiple ways, by: mis-categorizing the relief under an inappropriate menu item, affecting the amount of credit Citi should have earned for providing the relief, or rendering the relief ineligible for credit entirely. These inaccuracies related to relief (under Menu Items 1D, 1E, and 1H<sup>3</sup>) that had been submitted to the IRG, but not yet credited by the Monitor. And these inaccuracies also appeared to affect relief (under Menu Item 4A) that the Monitor had previously credited, some of which appeared to be ineligible as submitted (although possibly still eligible for crediting under another menu item).

The Monitor’s team performed diagnostic work to understand the scope and cause of this problem. As discussed at greater length below, the Monitor ultimately determined that the inaccuracies were substantial in scope, in terms of both the number of implicated transactions and the implicated credit valuation. The Monitor determined that the root of the problem was Citi’s use of a vendor as the source of lien position information with respect to loans that had been charged off and were not being actively serviced. As a general matter, when a borrower ceases to make payments on a home loan, at some point, the lender engages in a cost-benefit analysis to determine whether to foreclose on the home in an attempt to recoup some of the outstanding balance of the loan. However, initiating a foreclosure costs money. Thus, if the costs of foreclosure outweigh the benefits of foreclosing, the lender generally will not initiate foreclosure, but will charge off the loan and account it as a loss on its books. Unsurprisingly, it is not uncommon in the mortgage industry for a lender not to monitor or track the lien position of a charged-off loan, because it does not have the same incentives to protect its interests to foreclose as it does for actively serviced loans. In addition, lenders

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<sup>1</sup> Monitor’s First Report at 12. As described in the Monitor’s Eighth Report, BDO served as the Monitor’s primary consultant until October 2017, after which Control Risks Group, L.L.C. (“Control Risks”) assumed BDO’s responsibilities.

<sup>2</sup> Monitor’s First Report at 17.

<sup>3</sup> As discussed below in Parts II.A and III.C, Menu Item 1H does not require Citi to provide relief for a loan as to which Citi is in first—or even a secured—lien position. However, due to the enforceability concerns related to state statutes of limitation, federal bankruptcy law, and state statutory restrictions on the collection of unsecured mortgage debt, relief submitted under Menu Item 1H for loans where Citi was in a secured position are subject to more permissive state law restrictions than relief submitted under Menu Item 1H for loans where Citi was in an unsecured position. For ease of discussion, this report will refer to relief as being submitted under either Menu Item 1H Secured or Menu Item 1H Unsecured. In either form, every relief dollar under Menu Item 1H earns Citi \$0.40 in credit under the Settlement Agreement, subject to certain incentives and adjustments.

and mortgage servicers generally will not be in contact with the borrower once a loan has been charged off.

Citi has chosen to satisfy a substantial amount of its obligations under the Settlement Agreement by providing relief for charged-off loans, a decision that resulted in information gaps about these loans that needed to be filled in order for Citi to receive credit under the Agreement. To fill these information gaps, Citi selected a third-party vendor to determine the lien status of potential relief credits under the Settlement Agreement.

In this situation, however, Citi used the vendor not to confirm information in Citi's own records as to its lien status (*i.e.*, lien position and validity), but instead to identify the lien status for loans in the first instance. As Citi explained, it did so based on its understanding of the testing plans agreed to by the Monitor. Use of the vendor reports, however, resulted in conclusions about lien position that, in some circumstances, were contrary to information in Citi's internal records and inaccurate. Upon review of information in Citi's records, as well as publicly available information, the Monitor determined that the vendor information on lien position that Citi had obtained was unreliable.

The Monitor's team presented its findings to Citi and worked with Citi to identify a solution consistent with the Settlement Agreement's requirements, mindful that Citi's consumer relief obligations must be satisfied by December 31, 2018.<sup>4</sup>

This report describes the process of resolving this eligibility issue—from discovery, to diagnosis, to agreement, to resolution, to resubmission, to retesting, and finally to crediting. This process involved a significant amount of work by the Monitor's team, including consultants,<sup>5</sup> as well as the IRG, CMI, and CFS.

More specifically, in this report, the Monitor provides the following:

- ▶ A description of the efforts by the Monitor's team and Citi to analyze and resolve the eligibility problem with relief that Citi had submitted under Menu Item 1, and previously had received credit for under Menu Item 4A;
- ▶ A recalculation of the Menu Item 4A credit earned by Citi, to date, through CFS;
- ▶ A description of creditable relief under Menu Item 1E and an analysis of Citi's proposal to reclassify previously submitted Menu Item 1E relief under Menu Item 4A; and
- ▶ A description of creditable relief under Menu Item 1H and an assessment of the creditable relief Citi has provided under Menu Item 1H, to date.

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<sup>4</sup> Settlement Agreement, Annex 2, at 2 n.1.

<sup>5</sup> The Monitor's consultants have included Bates White, BDO, and, later, Control Risks.

As set forth in greater detail below, Citi has not yet completed validating and retesting the Menu Item 4A relief that was previously credited or the Menu Items 1E and 1H relief that was submitted through CFS. The Monitor will report on future submissions of such relief in a future report. Likewise, the Monitor will recalculate the Menu Item 4A credit Citi has earned—and calculate any creditable relief Citi has provided under various other menu items, including Menu Item 1D, through CMI—in a future report. As of now, however, the Monitor reports that Citi has earned \$1,885,501,983 credit for its relief activities, as set forth in Table 1.

**TABLE 1: RELIEF EARNED BY MENU ITEM TO DATE**

<b>Menu Item</b>	<b>Relief Earned</b>
Menu Item 1A	\$21,778,252 <sup>6</sup>
Menu Item 1G	\$31,172,235
Menu Item 1H Secured	\$36,586,150
Menu Item 1H Unsecured	\$274,000,933
Menu Item 2A	\$371,304,201
Menu Item 4A	\$275,955,575
Menu Item 4D	\$57,500,000
Menu Item 4E	\$34,500,000
Menu Item 4F	\$23,000,000
Menu Item 5	\$759,704,640
<b>Total To Date</b>	<b>\$1,885,501,986</b>

<sup>6</sup> As the Monitor will discuss in a subsequent report, Citi plans to withdraw this Menu Item 1A relief to address the Monitor's concerns that certain transactions were inconsistent with the principles of the Settlement Agreement. A majority of this relief will be resubmitted under revised testing procedures.

## II. ELIGIBILITY OF RELIEF

In this section, the Monitor describes the following:

- ▶ The initial enforceability issues that prevented the Monitor from crediting Citi's Menu Item 1 relief submission from Q3 and Q4 2015;
- ▶ The discovery of the eligibility issue implicating Citi's submission of relief under Menu Items 1D, 1E, and 1H, and Citi's receipt of credit under Menu Item 4A;
- ▶ The Monitor's conclusion as to the root cause of the eligibility issue;
- ▶ The resolution of the eligibility issue; and
- ▶ The re-certification and re-testing procedures that the parties agreed to prior to the resubmission of relief for crediting in this Report.

### A. Menu Item 1 Submissions and Initial Enforceability Issues

As described in prior reports, Citi generally has submitted relief for crediting on a quarterly basis. For the reporting period ending September 30, 2015 ("Q3 2015"), Citi submitted consumer relief under various provisions of Menu Item 1, including Menu Items 1E and 1H. The IRG reported the results of its review of this relief through a certification to the Monitor on November 19, 2015, and provided a re-certification at the Monitor's request on January 22, 2016. Citi then submitted a certification to the Monitor for the period ending December 31, 2015 ("Q4 2015") on March 2, 2016, and a revised certification on April 19, 2016, which also contained relief submitted under Menu Item 1.<sup>7</sup> Each certification indicated, as

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<sup>7</sup> The revisions to the certifications for Q3 and Q4 2015 related to the resolution of a variety of issues that are not relevant to the current report.

have previous certifications, that the IRG reviewed Citi's claimed credit and determined that it complied with the requirements of Annex 2.

Although the IRG reviewed the Menu Item 1 submissions according to agreed-upon testing procedures, the Monitor could not complete his review of the relief based on the IRG's certification. At that time, the Monitor's team and Citi were engaged in ongoing discussions as to whether the testing procedures adequately addressed the Monitor's conclusion that, consistent with the requirements and spirit of the Settlement Agreement, Citi could not receive credit for consumer relief relating to loans that were unenforceable by operation of federal or state law at the time of relief.<sup>8</sup> Discussions were largely related to Menu Item 1H, which allows Citi to receive \$0.40 credit for every dollar of either Principal Forgiveness or Extinguishment of either debt secured by a "Junior Lien" or "Unsecured Mortgage Debt."<sup>9</sup>

The Monitor's team identified three relevant bodies of law that implicate when liens become unenforceable, and thus when relief might no longer be creditable under certain menu items: (1) state statutes of limitation on a lender's right to foreclose or to recover on a promissory note,<sup>10</sup> (2) restrictions on the collection of unsecured debt under federal bankruptcy law,<sup>11</sup> and (3) other state law limitations on the collection of unsecured debt ("deficiency judgments," discussed below). These laws can implicate different sets of Menu Items in different ways, subject to state-by-state differences.

With respect to state statutes of limitation:

- ▶ A state statute of limitations that applies to foreclosure implicates Menu Items 1D, 1E, 1H Secured, and 4A alike. That is because whatever secured lien position Citi has, its lien against the property becomes unenforceable once the relevant state's foreclosure statute of limitations has expired. Thus, for example, if Citi seeks Menu Item 4A credit in a state with a twenty-year statute of limitations for foreclosure, and thirty years have passed since the event that triggered Citi's right to foreclose, the relief is uncreditable.<sup>12</sup>

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<sup>8</sup> See, e.g., Monitor's Fourth Report at 6–7 (describing that for loans where Citi has no right to enforce the debt and the borrower has no obligation to repay it, Citi should not receive credit for providing consumer relief).

<sup>9</sup> See Annex 2, at 7.

<sup>10</sup> As the Monitor previously has observed, state statutes of limitations in this area are varying and complex. In addition to great diversity in terms of the actual substantive limitations periods for actions to enforce mortgages and/or notes, there are differing trigger dates and tolling events that may affect the running of a statute of limitations. See Monitor's Fourth Report at 7 ("State law differs widely both on the length of the statute of limitations and the events that may trigger its running . . . . Testing for compliance, so that no time-barred debts are credited for consumer relief, is complex because (a) each state is different; (b) the individual factual circumstances of each borrower are critical to analyzing the statute of limitations; and (c) there remain unanswered questions regarding the application of state law to the facts.").

<sup>11</sup> See Monitor's Fourth Report at 8 ("Citi and the Monitor have agreed that Citi may not seek credit for unsecured loans discharged in bankruptcy. To reasonably ensure that Citi does not seek such credit, the Monitor and Citi have agreed on a testing regime that excludes these types of loans from the total population of creditable relief.").

<sup>12</sup> In general, the parties have used each loan's "paid to date" as a proxy for the triggering event for state statutes of limitation. This is a conservative, borrower-friendly proxy.

- ▶ In the majority of states, there is a separate statute of limitations for recovery on a promissory note, and it is generally (though not always) shorter than the statute of limitations for foreclosure. Where the statute of limitations to recover on a note is shorter than the statute of limitations to foreclose, in practice, Citi would never rely on the former when it could rely on the longer statute of limitations to foreclose; hence, in such states, the statute of limitations to recover on a promissory note implicates only Menu Item 1H Unsecured relief (because Citi has no secured interest that would allow it to rely on the longer statute of limitations to foreclose).

With respect to restrictions under federal bankruptcy law:

- ▶ Federal bankruptcy law protects a debtor from personal liability, but does not extinguish a secured creditor's rights against the debtor's property.<sup>13</sup> Thus, if a borrower has received a bankruptcy discharge, then any Menu Item 1H Unsecured relief provided to the borrower is not creditable in any state, because the borrower's debt to Citi would be otherwise unenforceable. In other words, Citi does not have the lawful ability to attempt to force the borrower to pay off that loan, and therefore should not receive credit for providing relief from the loan.
- ▶ Moreover, there are rare scenarios where federal bankruptcy law could render Citi's non-first position *secured* interest unenforceable (and accordingly could render relief under any menu item that requires Citi to hold a secured lien uncreditable). For example, if Citi holds both a first- and second-position lien against the same borrower and forecloses on the first, and the borrower then obtains bankruptcy relief, Citi's second lien is unenforceable in any state: it already has recovered against the property on its first lien, and the debt secured by the second lien has been discharged. Likewise, in the few states where the statute of limitations for recovery on a promissory note (e.g., six years) is longer than the statute of limitations for foreclosure (e.g., five years), Citi's rights against the borrower after year five are unenforceable against a borrower who obtains relief in bankruptcy.

Finally, with respect to deficiency judgments:

- ▶ Many states have adopted, in addition to statutes of limitations for foreclosures or recovery on promissory notes, different limitations periods for, other restrictions regarding, or outright prohibitions on, actions to recover the difference between the amount of a loan on which a borrower has defaulted and the amount recovered through foreclosure. Statutes addressing deficiency judg-

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<sup>13</sup> See, e.g., *Johnson v. Home State Bank*, 501 U.S. 78, 84 (1991).

ments and the collection of unsecured mortgage debt are relevant only to relief that Citi submitted under menu items that permit credit even where Citi's lien is unsecured (*i.e.*, only Menu Item 1H Unsecured).

The parties worked together to address the varied and complex legal and factual issues surrounding the Monitor's enforceability concerns, and ultimately reached agreement as to how to operationalize these limitations, including subjecting Menu Item 1H Secured and Menu Item 1H Unsecured relief to different enforceability pre-testing restrictions. These limitations are discussed at greater length in Part III.C and have been incorporated into the new Menu Item 1H test documents.

The Monitor's team and Citi were preparing for Citi to resubmit the affected Menu Item 1 relief for crediting, removing loans that fell outside of the agreed-upon statute of limitations, bankruptcy, and deficiency limitations, when the Monitor's team, in the course of its due diligence, discovered an additional eligibility problem as described below.

## B. The Discovery and Diagnosis of the Eligibility Problem

In the course of its ongoing due diligence, the Monitor's team and consultants reviewed total loan population files (*i.e.*, data and information for each loan submitted by Citi to the Monitor). In reviewing these files, the Monitor's team and consultants discovered a surprising number of addresses associated with relief submitted under menu items requiring Citi's lien to be in first position (*i.e.*, Menu Items 1E and 4A) or a secured position (*i.e.*, Menu Items 1D and 1H Secured) that had been foreclosed upon.<sup>14</sup> The existence of a foreclosure suggested either that Citi had sought relief while also foreclosing (which is not permitted) or that some other entity (like another lender or taxing authority) had done so and that Citi no longer actually held a first lien (as required by the Settlement

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<sup>14</sup> If a lender is in first lien position as to a property, it is highly unlikely for another lender, with a junior interest, to be able to foreclose on that property. And if an entity with a legal interest superior to a lender's first lien takes an action against the property, that event renders the first lien (and all other interests) unsecured. For example, in many jurisdictions, a borrower's failure to pay taxes gives the state or a local authority an interest in the borrower's property that is superior to a first-position lien. While the existence of such a tax lien does not disqualify Citi from seeking first-lien-position credit for providing relief (see Annex 2, at 2, n.5), an actual tax sale, like a foreclosure, would render Citi's interest unsecured.

## Agreement). Neither possibility would satisfy the requirements of the Settlement Agreement.<sup>15</sup>

As such, the Monitor's team began a review of several hundred Menu Item 1E and 4A loans from both business units. This review involved a detailed property record search, including a public records search, to assess the following:

- ▶ Whether the current title holder was the relief borrower;
- ▶ If not, when title transferred from the relief borrower, and whether the transfer was voluntary;
- ▶ Whether the home was currently in foreclosure or transfer proceedings;
- ▶ Whether a seller had filed for bankruptcy; and
- ▶ Whether there was any other information pertinent to the Settlement Agreement.

The primary records searched included county records, public Web sites, and tax assessor information. The goal of the review was to conduct a preliminary assessment of the Monitor's concerns about previously submitted loans and their eligibility under the Settlement Agreement.

From this initial review, the Monitor preliminarily concluded that there were a substantial number of inaccuracies in the lien position that Citi actually held, either because Citi had not originated the loan as a first lien and/or because the lien was no longer enforceable due to a foreclosure, a tax sale, or an assignment or release of Citi's interest (collectively referred to as "disqualifying events").

Either of these issues (origination in a junior lien position or a disqualifying event in the loan history prior to Citi's providing relief to the borrower) very likely would disqualify the relief loan from credit under Menu Items 1E and 4A (which require Citi to be in first lien position).<sup>16</sup> And, as to Menu Items 1D and 1H Secured, the Monitor found instances where Citi did not hold an enforceable lien at the time that Citi had offered the relief, which also would disqualify the relief loan from credit.

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<sup>15</sup> These searches by the Monitor's team and consultants also revealed that Citi had submitted a small number of what appeared to be duplicative first-lien-position relief associated with the same borrower name and address, but with different account numbers and unique Citi IDs—which also should not have been possible; Citi cannot be in first lien position for two loans associated with the same borrower and property. Citi quickly rectified these errors.

<sup>16</sup> The only exception would be where Citi originated a loan in a junior position, but Citi's interest "migrated" to first lien position, because the borrower satisfied all senior liens by paying back the underlying debt. The parties acknowledged, however, that these circumstances are likely very rare. Any loan experiencing a disqualifying event in its pre-relief history would be ineligible, irrespective of the lien position in which it was originated.

Table 2 below summarizes the lien position requirements and the possible reasons for disqualification discovered by the Monitor, by menu item.

**TABLE 2: LIEN POSITION REQUIREMENTS AND INELIGIBILITIES, BY MENU ITEM**

	<b>Lien Position Requirement</b>	<b>Lien Security Requirement</b>	<b>Ineligibilities</b>
<b>Menu Item 1D</b>	Second Position	Yes	Disqualifying Events
<b>Menu Item 1E</b>	First Position	Yes	Origination in Non-First Position; Disqualifying Events
<b>Menu Item 1H Secured</b>	Junior Position	Yes	Disqualifying Events
<b>Menu Item 1H Unsecured</b>	N/A	No	N/A
<b>Menu Item 4A</b>	First Position	Yes	Origination in Non-First Position; Disqualifying Events

The Monitor presented these concerns to Citi, while continuing to work to understand the scope and cause of these eligibility issues. Ultimately, Citi accepted the Monitor’s conclusions that he could not credit the Menu Item 1 relief absent further validation, and would need to revisit the already credited Menu Item 4A relief.

Thereafter, the Monitor’s team, with the support of its consultants, and Citi (the IRG and both business units), working both independently and collaboratively, began to analyze pathways forward, mindful of Citi’s obligation to satisfy its consumer relief obligations by year-end 2018.<sup>17</sup>

## C. The Root Cause of the Eligibility Problem

As an initial matter, the Monitor’s team reviewed a sample of loans under the implicated menu items (1D, 1E, 1H, and 4A) to determine why relief

<sup>17</sup> Throughout this period, the Monitor’s team and Citi also were working to credit transactions that were unlikely to be affected by the eligibility problem, including relief provided by Citi in different reporting periods under Menu Items 1A, 1G, 2A, and 5. See generally Monitor’s Sixth Report; Monitor’s Seventh Report; Monitor’s Eighth Report.

might have passed testing by the IRG according to agreed-upon procedures and yet turn out, upon further, more detailed review, to be ineligible for crediting.

As noted above, Citi is fulfilling a substantial portion of its relief obligations by extinguishing loans from both business units' charged-off books. Citi proposed to the Monitor that it would use a third-party vendor to validate Citi's lien position at the time of testing relief.<sup>18</sup> On this point, the Settlement Agreement offers some discretion. It states: "The Monitor shall provide Citi with flexibility on the evidencing requirements for non-CitiMortgage mortgage loans where the standard evidence is unavailable and Citi is able to provide alternative evidence that enables the Monitor to satisfactorily carry out his duties under this Annex."<sup>19</sup> With the Monitor's general acceptance, therefore, use of the third-party vendor was incorporated into the test documents by the IRG.

After extensive review of the eligibility issues described above, the Monitor's team concluded that the root cause of a substantial number of loans' passing the test plans while failing to satisfy the eligibility requirements of Annex 2 was the fact that the vendor's reports, and Citi's use thereof, were flawed. Citi has explained that it understood the testing plan to allow it to use the vendor to identify the lien position of its loans in the first instance, rather than to confirm information as part of the testing plan. Thus, rather than trace the history of each loan using both Citi's records and the public data that was the source for the third-party vendor reports, isolated data points from those reports were used to determine lien position and enforceability.

As the Monitor found, for an unacceptably high percentage of loans, those data points were either incorrect or not probative of the status of the loan, once other data was accounted for. In many cases, the data points were inconsistent with Citi's SOR, with other aspects of the very same vendor reports, or with the reports of the separate vendor retained by Citi to file releases of liens for relief submitted pursuant to Menu Items 1D, 1E, 1H, and 4A.<sup>20</sup>

Although Citi disagreed with the Monitor about the intent of the test plan that gave rise to the use of the vendor reports, it ultimately agreed that the inaccuracies needed to be addressed to ensure that relief was properly credited under the Settlement Agreement.

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<sup>18</sup> See Monitor's Third Report at 16, n.27 (relying on Citi's confirmation from outside vendor that all 636 mortgages submitted for Menu Item 4A relief were in first lien position).

<sup>19</sup> Annex 2, at 15.

<sup>20</sup> Annex 2 of the Settlement Agreement specifically requires Citi to release its liens in connection with Menu Item 4A. Citi opted to file lien releases in connection with relief under Menu Items 1D, 1E, and 1H, which, as noted in the First Report, provides an additional benefit to the homeowner by removing a legal obstacle to property transfer.

## D. Resolution of the Eligibility Problem for CFS Menu Item 4A and 1E Relief

Unfortunately, because these issues were discovered months after Citi had provided borrower relief, it presented difficulties for Citi to establish its lien position retroactively (*i.e.*, as of the date on which it had offered consumer relief). In order to continue to evaluate the eligibility issue and keep the review moving forward, the Monitor's team continued its own review and evaluation of relief submitted by CFS under Menu Items 4A and 1E. Specifically, over the course of several months, the Monitor's team used data provided by Citi in its submission files for each relief transaction to research publicly available land records online, including in some instances behind state and county paywalls, to assess the validity of Citi's liens at the time of relief offer. Meanwhile, the Monitor's team and Citi also discussed finding a new vendor to validate Citi's lien position for the implicated relief.

Ultimately, the Monitor and Citi agreed to a hybrid solution for relief provided by CFS that would draw on existing information and work product, yet fix the identified problems of ineligibility.

- ▶ As an initial screen, Citi agreed to review its CFS Menu Item 1E, 1H, and 4A relief transactions against its SOR, and to withdraw 1E and 4A relief for loans as to which Citi had not been in first lien position *when it originated the loan*.<sup>21</sup>
- ▶ As a second screen, Citi agreed to withdraw Menu Item 1E, 1H Secured, and 4A relief for loans for which its lien-release vendor had not been able to file a lien release.<sup>22</sup>

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<sup>21</sup> As noted, this screen would prevent Citi from submitting loans that Citi originated in a junior position, but where Citi's lien migrated to the first position. See *supra* note 15. The parties acknowledged, however, that these circumstances are sufficiently rare, particularly when balanced against the efficiencies of the process described above.

<sup>22</sup> The Monitor previously had credited Menu Item 4A relief—which expressly requires Citi to release all of its liens—by testing whether Citi had requested a lien release from a lien-release vendor, rather than testing for an actual as-filed lien release, because it can take months for a lien release actually to appear in county records. The Monitor made clear from the first Monitor's Report that he would conduct further research to ensure that lien releases actually were filed. See Monitor's First Report at 17.

- ▶ Because this second screen is imperfect (as a consequence of the fact that the lien-release vendor had not been retained to confirm eligibility or resolve ambiguities), an additional, independent validation was needed before relief satisfying the first two screens could be resubmitted under Menu Item 4A, 1E, or 1H Secured. To satisfy this additional, independent review, either the relevant land records had to be reviewed directly by the Monitor’s team (as had been done on a loan-by-loan basis during the diagnostic phase of this process) or Citi had to use a new customized vendor product, developed by the Monitor, Citi, and the vendor collaboratively, that would provide confirmation, following a rigorous and detailed process (that would, in appropriate cases, involve detailed review of paper land records in jurisdictions throughout the country), that Citi had a valid lien. Citi further agreed that any ambiguities in the land records would be resolved by the Monitor’s team.<sup>23</sup>
- ▶ Citi would then re-submit loans that failed any of these three screens for credit as 1H Unsecured relief (which receives \$.40 of credit per dollar instead of dollar-for-dollar credit) if the requirements for that menu item otherwise are satisfied. In the relatively rare circumstance where Citi was able to provide evidence that a loan previously submitted under Menu Item 1H for \$.40 credit was actually eligible for \$1 in credit (because the lien had been originated in first position and the lien remained on the property), Citi could seek an “upgrade” to the credit it had previously sought.

## E. Resolution of the Eligibility Problem for Menu Item 1H Relief

Citi may seek credit under Menu Item 1H for providing balance forgiveness for loans secured by a junior lien (“Menu Item 1H Secured”) and for loans that are now unsecured mortgage debt (“Menu Item 1H Unsecured”)—in either case, earning \$0.40 for each dollar of relief provided. This lower valuation in the Settlement Agreement reflects the government’s belief that this type of relief is less valuable to borrowers.

Based on its initial review, the Monitor’s team concluded that Citi’s 1H Secured relief likely suffered from the same eligibility problem as Citi’s 1E and 4A relief. The Monitor’s team and Citi thus reached a similar solution for resolving the eligibility problem for Citi’s Menu Item 1H submissions.

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<sup>23</sup> As the Monitor will discuss in a future report, the Monitor’s team and Citi agreed to largely similar steps to validate the CMI Menu Item 4A and 1H transactions that were implicated by the lien eligibility issue.

The differences between the requirements for Menu Item 1H Secured relief and Menu Item 1H Unsecured relief relate to enforceability under the bodies of law addressed in Part II.A, above—*i.e.*, statutes of limitation for foreclosure and recovery on a promissory note; bankruptcy protections against collection of unsecured, personal debt; and restrictions on deficiency judgment collection. More specifically, loans receiving relief under Menu Item 1H Unsecured must satisfy the generally stricter statutes of limitation to recover on a promissory note in each relevant state, must not have been discharged by the borrower in bankruptcy, and must satisfy any other state restrictions on recovery of deficiency judgments in each relevant state. In contrast, loans receiving relief under Menu Item 1H Secured must satisfy the longer of the two relevant statutes of limitation, can be discharged in bankruptcy only in certain rare scenarios, and are not subject to deficiency judgment restrictions.

To resolve the eligibility problem in its 1H Secured population, Citi agreed, as a pre-testing threshold, to screen that entire 1H population through the stricter Menu Item 1H Unsecured requirements to determine how much relief still likely would be creditable. Those that passed the stricter 1H Unsecured requirements would be submitted as 1H Unsecured, and those that failed could be resubmitted as 1H Secured if they satisfied the additional eligibility screens validating Citi's lien (and would then be subject to testing under 1H Secured procedures).

To accomplish this additional evaluation, the Monitor's team agreed, as discussed above, that either the Monitor team itself would need to validate Citi's liens on a loan-by-loan basis through review of land records or the new lien validity product discussed above would be used.

## F. Retesting and Re-Certification

As described in previous reports, over the course of the monitorship, the Monitor's team, its consultants, the Citi business units, and the IRG developed testing documents that set forth the elements that Citi is required to establish with respect to different types of consumer relief activities and the types of evidence that Citi is required to provide for each element as part of the IRG testing process. The testing documents also set forth general parameters for sampling, allowable error thresholds, and procedures for the IRG to follow when testing claimed credit, prior to submission under certification to the Monitor.<sup>24</sup>

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<sup>24</sup> See Monitor's First Report at 12.

As noted above, the IRG had tested all of the implicated relief provided by CFS under Menu Items 4A, 1E, and 1H, according to the testing documents prior to submission, and the IRG had certified to the Monitor that these loans had passed the agreed-upon testing procedures. The Monitor had not validated any of the Menu Item 1 relief. The Monitor recognized that because, effectively, the relief was going to be withdrawn (or in the case of Menu Item 4A, clawed back) and subjected to additional pre-testing eligibility segmentation, after which only certain transactions would be resubmitted, some amount of new testing would be necessary.

*First*, before any testing of the resubmitted loan population could commence, it was necessary to create new data elements, define new evidence, and lay out new testing steps for the IRG to ensure that Citi applied the eligibility screens identified above—*i.e.*, to ensure that only eligible loans would be resubmitted for credit. This required the parties to amend the testing documents that existed for Menu Item 4A, and, as noted below, create new testing documents for Menu Item 1.

*Second*, as explained in the Monitor's First Report, this relief previously had been tested using a sampling methodology. As a statistical matter, the withdrawal of the relief and resubmission of substantially reconfigured relief required, in the Monitor's view, the creation of new statistically valid samples and full retesting. This is because it was possible that, due to the substantial changes to the relief population, particular testing questions might be more prone to error for the new population than for the original population.

*Third*, while the relief previously had been submitted and tested on a quarterly basis, the parties agreed that such a formulaic quarterly breakdown for the resubmitted relief was unnecessary at this point. However, the Monitor would now require testing on a sub-menu item level (*i.e.*, unique testing for Menu Items 1D and 1H) according to the eligibility analyses the parties agreed upon. For each sub-Menu Item, revised testing documents were completed.

*Fourth*, as documented above, this Report sets forth both the global parameters that Citi and the Monitor's team agreed to for resolving the eligibility problem in the relief Citi submitted via CFS under Menu Items 4A, 1E, and 1H, and the new documents and procedures that the parties agreed to for testing the resubmitted relief. As a practical matter, whether performed by the Monitor's team or by a vendor, historical lien validation takes time. Thus, the parties agreed that Citi would resubmit, the IRG would test, and, as appropriate, the Monitor would credit and report on, validated eligible relief on a rolling basis. This Report addresses Citi's first resubmission of relief under the revised testing procedures adopted for Menu Items 4A and 1H. The IRG submitted the Menu Item 4A relief to the Monitor under a new certification on March 7, 2018, and submitted the Menu Item 1H relief to the Monitor under a new certification on May 7, 2018.

## III. Results of CFS's Consumer Relief Activities Under Menu Items 4A, 1E, and 1H

As noted, Citi previously submitted relief provided by CFS under Menu Item 4A (for the reporting periods Q4 2014, Q1 2015, and Q2 2015) and under Menu Items 1E and 1H (for the reporting periods Q3 and Q4 2015). The Monitor credited the Menu Item 4A relief in prior reports, but has not credited the Menu Item 1E and 1H relief. Following the identification and resolution of the eligibility problem discussed above, and the development of revised testing procedures, Citi resubmitted a substantial population of eligible CFS relief under Menu Item 4A and CFS and CMI relief under Menu Item 1H.<sup>25</sup> This portion of the Monitor's report describes the creditable relief activities for each menu item.

### A. Menu Item 4A

#### 1. Background

As the Monitor previously has described, under Menu Item 4A, Citi may receive dollar-for-dollar credit for transactions where Citi (1) foregoes its right to foreclose on a property; (2) forgives all principal associated with the property; and (3) releases all Citi-held liens associated with the property, one of which must be in first position at the time of relief.<sup>26</sup> Pursuant to the Settlement Agreement, Citi must "in good faith, endeavor to keep the credit earned for Menu Item 4A to under \$553 million credit."<sup>27</sup> As of the date of this report, Citi has stayed under this soft cap.

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<sup>25</sup> For reasons set forth below in Part III.B, Citi proposed that its previously submitted Menu Item 1E relief be resubmitted and credited as Menu Item 4A relief.

<sup>26</sup> Annex 2, at 11 & 2 n.5. As described herein, the Monitor has agreed that this condition is satisfied where Citi originated a lien in first position and held a valid lien at the offer date, as confirmed by independent validation as described herein.

<sup>27</sup> Annex 2, at 11 n.18.

## 2. Results

Over three reporting periods, prior to the identification of the eligibility issues discussed above, Citi had earned \$473,635,994 in Menu Item 4A relief (cumulative, including CMI relief).<sup>28</sup> Because of the issues described above in Part II.B and C, the Monitor now withdraws this credit.

As agreed to by the Monitor, Citi has segmented its prior Menu Item 4A relief by business unit. Prior to resubmitting any CFS Menu Item 4A relief for testing, Citi agreed to subject the relief to the three eligibility screens discussed in Part II.D, above.<sup>29</sup> Citi has done so for a substantial amount of relief—including relief that previously had been submitted under Menu Item 1E—and resubmitted the relief for credit on March 7, 2018.

A statistically significant sample of this relief was run through revised testing procedures that reflected the resolution to the eligibility issues discussed above. Specifically, for purposes of testing, Citi was required to demonstrate that it originated a lien against the borrower's property in first position, that it secured a lien release in connection with providing relief to the borrower, and that there was independent validation that Citi's lien remained enforceable at the time of relief. The Monitor required evidence for each such step. For this report, Citi has submitted only those CFS Menu Item 4A loans secured by first liens that the Monitor's team independently validated by reviewing land records; in the future, Citi will submit, and the Monitor will validate, CFS Menu Item 4A loans that are independently validated by a third-party vendor according to customized lien eligibility procedures discussed above.

Additionally, to address the Monitor's long-standing concern that Citi receive credit only for providing relief to loans where Citi's interest was legally enforceable at the time of relief, the resubmitted Menu Item 4A relief was tested to ensure that the relevant property state's statute of limitations for foreclosure had not run for tested relief transactions.

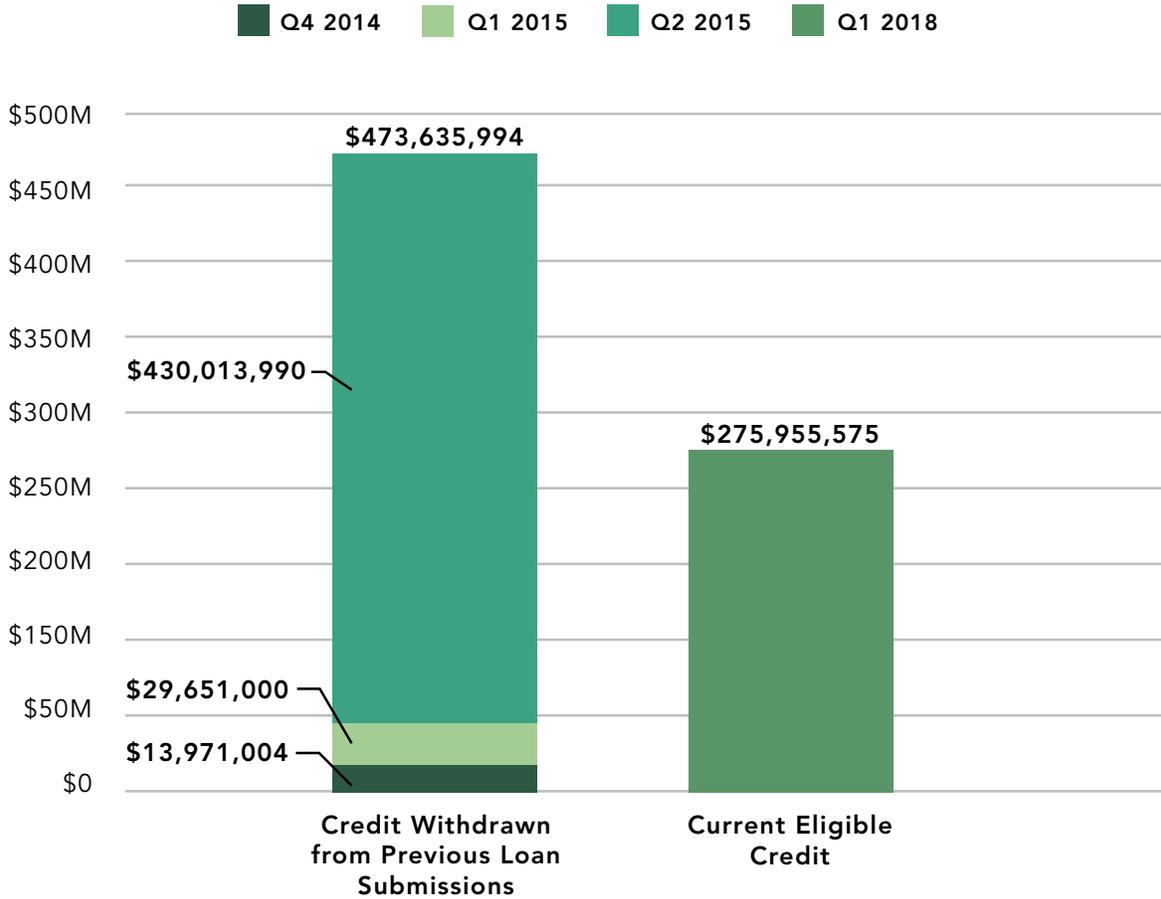
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<sup>28</sup> Monitor's Fourth Report at 17.

<sup>29</sup> As previously noted, the Monitor expects to report on relief implicated by the eligibility problem via CMI in a forthcoming report.

In this Report, the Monitor credits \$275,955,575 under the testing procedures described above. The credit withdrawn and earned is depicted in Chart 1:

**CHART 1: MENU ITEM 4A TOTAL CREDIT FROM PRIOR SUBMISSIONS AND CURRENT SUBMISSIONS**



Additional information about the Menu Item 4A relief credited in this Report is provided in Tables 3 and 4. The Monitor cautions, however, that it would be premature to draw any comparisons between the characteristics of the Menu Item 4A relief that has been withdrawn and the relief that is now being credited. As noted above, the relief that the Monitor is crediting in this report reflects those CFS loans that, among other things, were subject to liens that could be evaluated and validated by the Monitor’s team using publicly available land records (which are not available in every state). Thus, these loans are a geographically non-representative sample of the Menu Item 4A relief that Citi ultimately will receive. The Monitor expects to engage in a more robust comparison of the credit Citi originally earned under Menu Item 4A and the relief that Citi ultimately earns under Menu Item 4A in a future report.

TABLE 3: SUMMARY OF MENU ITEM 4A RELIEF

	Number of Loans	Total Forgiveness	Minimum	Maximum
Q1 2018	5,604	\$241,795,343	\$2,272	\$494,408

TABLE 4: SUMMARY OF MENU ITEM 4A CREDIT

<b>Total Number of 4A Loans Earning Credit</b>	5,604
<b>Base Credit Earned</b>	\$241,795,342.68
<b>Total Number of Loans Earning Early Incentive Credit</b>	5,301
<b>115% Early Incentive Credit (Relief offered before 10/1/2015)<sup>30</sup></b>	\$34,160,232.45
<b>Total Credit Earned<sup>31</sup></b>	\$275,955,575.13

## B. Menu Item 1E

The Monitor has not previously reported on Citi’s relief activities under Menu Item 1E. Prior to the discovery of the eligibility issue discussed above, Citi had sought hundreds of millions of dollars in credit for relief under this menu item, which offers Citi dollar-for-dollar credit for “Balance Forgiveness” of loans as to which Citi is in “First Lien” position.<sup>32</sup> Citi has since decided to reclassify any CFS-provided relief previously submitted

<sup>30</sup> Although this relief is being credited in 2018, the Monitor determined that so long as eligible relief was provided before October 1, 2015, the relief would qualify for early incentive credit.

<sup>31</sup> The five settling states (California, Delaware, Illinois, Massachusetts, and New York) received approximately \$32 million of the \$276 million of consumer relief credit.

<sup>32</sup> Annex 2, at 5. The transaction must reduce LTVs to equal to or less than 100%, and Citi is entitled to 115% credit for incremental LTV reductions below 100%.

under Menu Item 1E that satisfies the eligibility screens discussed above under Menu Item 4A. The Monitor agrees that this is acceptable, but the interplay between Menu Items 1E and 4A raises important questions for future settlement agreements that merit discussion.

Most significantly, as the Monitor has discussed, relief under Menu Item 4A is subject to a “good-faith” cap of \$553 million in credit—which appears to reflect the parties’ agreement that this relief should not crowd out other menu items that the parties deemed worthwhile. The text and structure of Annex 2 create an anomaly with respect to this good-faith cap—Menu Item 1E conceivably could be used in an identical manner to Menu Item 4A, and Menu Item 1E is not expressly subject to the good-faith cap.

Specifically, Menu Item 1E is silent as to whether it precludes, requires, or permits balance forgiveness that is equal to extinguishment. Other menu items address this issue more directly—e.g., Menu Item 1D provides credit for “Second Lien – Principal Forgiveness (including extinguishments).” Based on the structure and the text of this provision and Annex 2 as a whole, Menu Item 1E could be construed neither to require nor to prohibit Menu Item 1E extinguishments, (*i.e.*, to permit them). Indeed, if Menu Item 1E were construed to prohibit extinguishments, in practice Citi could have extinguished the same loans in any event, but sought credit for only the value of extinguishment down to \$0.01 of the balance (*i.e.*, for an account with a \$100,000 balance, Citi could have extinguished the whole balance but sought credit only for \$99,999.99). Menu Item 1E is also silent as to whether it is limited to only actively serviced loans.

Because Menu Item 1E, as drafted, appears to provide dollar-for-dollar credit for balance forgiveness to extinguishment for charged-off loans, Citi planned to treat it as coterminous with Menu Item 4A. Thus, for example, in the context of providing complete balance forgiveness under Menu Item 1E, Citi even obtained lien releases (as it is expressly required to do under Menu Item 4A, but not under Menu Item 1E), which, as noted, provides an additional benefit to the borrower.

In short, based on initial submissions under Menu Items 1E and 4A, Citi *would have* provided well over \$553 million in relief for extinguishments of charged-off loans—and could have done so without technically violating the good-faith cap, which does not apply to Menu Item 1E.<sup>33</sup> To the extent this was not an outcome that the DOJ or the settling states anticipated, it should be addressed in future settlement agreements.

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<sup>33</sup> With the elimination of ineligible loans and the reclassification of Menu Item 1E relief as Menu Item 4A relief, Citi’s total Menu Item 4A relief is still expected to be well under the \$553 million soft cap.

## C. Menu Item 1H

### 1. Background

Menu Item 1H offers Citi forty cents of credit for every dollar of “Principal Forgivenness/Extinguishment” for “Junior Liens (Liens less than 2nd Lien Position) and Outstanding Unsecured Mortgage Debt.”<sup>33</sup> Eligibility for Menu Item 1H relief is limited to borrowers with unpaid principal balance at or below \$208,500, with certain location-based exceptions. The Monitor has not previously reported on Citi’s relief activities under this menu item.

While this menu item groups together relief for loans secured by junior liens and relief for unsecured mortgage debt, the two types of relief present different enforceability issues. Secured debt, as with Menu Items 4A and 1E, raises the question of whether Citi provided the relief within the property state’s statute of limitation for foreclosure. If foreclosure was no longer a legally available option for Citi, the Monitor’s position was that Citi could not receive credit under menu items that required a secured interest in the property. These considerations also raised the question of whether Citi’s junior lien was rendered unenforceable because of a disqualifying event (such as a foreclosure by Citi or another lender with a senior lien or a tax conveyance), and whether the resulting unsecured mortgage debt had been rendered unenforceable due to a borrower’s receiving a discharge of personal liability in bankruptcy.

Practically, mortgage debt held by Citi generally becomes unsecured when Citi holds a junior lien, and a more senior lienholder (or the government in the case of tax liens) forecloses, and the proceeds of the foreclosure sale are not sufficient to pay off the junior Citi debt. Under these circumstances, the borrower is still personally liable for the debt, unless he or she receives relief by filing for bankruptcy. Thus, relief submitted under Menu Item 1H Unsecured must be tested to ensure that the relief borrower had not filed for bankruptcy, irrespective of whether Citi itself initiated the foreclosure.

Additionally, the collection of unsecured mortgage debt is barred or limited under the laws of certain states. Indeed, state laws differ widely in this regard. Some states bar collection of this debt completely; others allow collection only if certain conditions are satisfied, such as if the junior mortgage holder is joined in the foreclosure action or if the debt holder sues for relief within a certain amount of time; and still other states impose no restrictions on the collection of this debt at all.

When the Menu Item 1 Test Plan was originally developed, the Monitor inquired and Citi represented that there were no circumstances in which Citi would be submitting

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<sup>34</sup> Annex 2, at 7.

for credit relief of a deficiency balance, where Citi had foreclosed on the property, or had agreed to a deed-in-lieu or short sale—*i.e.*, a loan where Citi no longer legally had any right to try to collect. However, after Citi submitted loans for credit under Menu Item 1H for Q3 and Q4 2015, the Monitor’s team determined that Citi’s right to collect on some of the submitted loans was unclear. Citi therefore withdrew its request for credit for relief for loans that were potentially uncollectible under the relevant state law until a legal analysis could be completed.

During the summer of 2016, Citi and the Monitor worked together to reach a common understanding of state laws limiting the collection of unsecured debt and how those limitations operate. The Monitor ultimately agreed that, based on the documents provided by Citi and the interviews that the Monitor’s team conducted with Citi employees, certain confirmations, requirements, and restrictions would be sufficient to address the Monitor’s concerns regarding the enforceability of unsecured mortgage debt. The parties then developed a plan for Citi to resubmit only those loans that would still be enforceable as a matter of federal or state law—which in turn required Citi to segment Menu Item 1H Unsecured relief from Menu Item 1H Secured relief.

Prior to the implementation of this agreement, however, the Monitor’s team discovered the eligibility problem discussed in Part II, above. Relief that Citi had submitted under Menu Item 1H Secured, which does not face the same enforceability restrictions as Menu Item 1H Unsecured, triggered the same lien eligibility concerns as relief submitted under Menu Items 1E and 4A. Because Citi receives \$0.40 in credit for each dollar of relief provided under both Menu Items 1H Secured and Menu Items 1H Unsecured, Citi agreed initially to submit any Menu Item 1H relief that could satisfy the enforceability requirements for Menu Item 1H Unsecured under that Menu Item as well as the Menu Item 1H Secured relief that the Monitor’s team already had validated through lien eligibility testing. In future submissions, Citi will submit additional Menu Item 1H Unsecured and Secured relief; the Secured relief that will be credited only if Citi can provide evidence that it obtained a lien release in connection with the relief, and if the lien was independently validated by the Monitor’s team or with the customized vendor product described above.

## 2. Results

The parties revised the previously agreed-upon Menu Item 1H testing documents to ensure that all loans were tested for enforceability under the various bodies of law discussed above (*i.e.*, statutes of limitation on foreclosure and recovery on a promissory note, bankruptcy, and deficiency judgments) and that 1H Secured loans were tested for lien validation by the Monitor’s team.

Based on these parameters, Citi submitted a substantial population of Menu Item 1H relief on May 4, 2018. The Monitor now credits \$310,587,082.54 in Menu Item 1H relief.

A breakdown of the relief by business unit and by Sub-Menu Item (*i.e.*, Secured and Unsecured) is provided in Tables 5–10.

**TABLE 5: SUMMARY OF MENU ITEM 1H CREDITING BY SUB-MENU ITEM**

<b>Menu Item 1H Credit</b>	<b>Total DOJ Credit</b>
1H Secured Credit	\$36,586,149.72
1H Unsecured Credit	\$274,000,932.82
<b>Total Menu Item 1H Credit</b>	<b>\$310,587,082.54</b>

**TABLE 6: SUMMARY OF MENU ITEM 1H CREDITING BY SUB-MENU ITEM AND BUSINESS UNIT**

<b>Menu Item 1H Credit</b>	<b>CMI</b>	<b>CFS</b>	<b>Total</b>
1H Secured Credit	--	\$36,586,149.72	\$36,586,149.72
1H Unsecured Credit	\$69,569,558.85	\$204,431,373.97	\$274,000,932.82
<b>Total Menu Item 1H Credit</b>	<b>\$69,569,558.85</b>	<b>\$241,017,523.69</b>	<b>\$310,587,082.54</b>

TABLE 7: MENU ITEM 1H SECURED RELIEF

	Number of Loans	Total Forgiveness	Minimum	Maximum
Q1 2018	3,420	\$79,786,217	\$2,341	\$194,664

TABLE 8: MENU ITEM 1H SECURED CREDIT

Total Number of Loans Earning Credit	3,420
Base Credit Earned	\$31,914,473.33
Total Number of Loans Earning Early Incentive Credit	3,329
115% Early Incentive Credit (Relief offered before 10/1/2015)	\$4,671,676.39
Total Credit Earned	\$36,586,149.72

TABLE 9: MENU ITEM 1H UNSECURED RELIEF

	Number of Loans	Total Forgiveness	Minimum	Maximum
CFS	19,402	\$444,640,043	\$2,175	\$279,073
CMI	3,809	\$154,015,037	\$1,008	\$207,847
Total	23,211	\$598,655,080	---	---

TABLE 10: MENU ITEM 1H UNSECURED CREDIT

	CFS	CMI	Total
<b>Total Number of Loans Earning Credit</b>	19,402	3,809	<b>23,211</b>
<b>Base Credit Earned</b>	\$177,855,939.77	\$61,606,014.66	<b>\$239,461,954.43</b>
<b>Total Number of Loans Earning Early Incentive Credit</b>	19,322	3,244	<b>22,566</b>
<b>115% Early Incentive Credit (Relief offered before 10/1/2015)</b>	\$26,575,434.20	\$7,963,544.19	<b>\$34,538,978.39</b>
<b>Total Credit Earned</b>	\$204,431,373.97	\$69,569,558.85	<b>\$274,000,932.98</b>

Here too, the Monitor cautions that it would be premature to offer generalizable conclusions about the characteristics of Menu Item 1H relief. The population of loans receiving credit in this report are (1) those loans that satisfy the stricter enforceability requirements for Menu Item 1H Unsecured (which involves some geographical variability, given that states have different statutes of limitations for foreclosure and recovery on a promissory note); and (2) those loans with liens that the Monitor’s team was independently able to validate using publicly available land records (which also involves some geographical variability, as not all states make such records available). This credit thus is unlikely to be representative of the Menu Item 1H that Citi ultimately will earn by sub-menu item.