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**STATEMENT REGARDING SETTLEMENT WITH BANKS TO SETTLE FORECLOSURE ABUSES
AND END FORECLOSURE REVIEWS**
NCLC, NACA, NFHA Outline Next Steps for New Settlement

WASHINGTON—The National Consumer Law Center, the National Association of Consumer Advocates and the National Fair Housing Alliance responded today to the OCC and Federal Reserve Board’s replacement of the Independent Foreclosure Review program with an \$8.5 billion agreement which includes a \$3.3 billion direct distribution to homeowners. “The Independent Foreclosure Reviews were deeply flawed, and any movement towards more compensation for homeowners is a step in the right direction,” said Alys Cohen, staff attorney for the National Consumer Law Center. “However, the capped pool of cash payments is wholly inadequate in light of the scale of the harm. If the reviews had been done right the first time, banks would have been on the hook to pay far more to homeowners, even though the planned scheme fell far short of full compensation. Regulatory failures to date also mandate the need for oversight by an independent monitor to ensure fairness and accountability. The inevitably narrow reach of this new program underlines yet again the importance of vigorous national mortgage servicing standards, including a mandate to make sustainable loan modifications to qualified homeowners facing hardship where consistent with investor interests.”

“The Independent Foreclosure Review was intended to compensate homeowners who suffered as a result of the mistakes their mortgage servicers made in the foreclosure process, added Ellen Taverna, legislative director for the National Association of Consumer Advocates. “It is vital that the regulators ensure that this process going forward be transparent and fair and finally put homeowners first with sufficient compensation.”

“Communities of color were particularly hard hit by abusive mortgage practices,” said Debby Goldberg, special project director at the National Fair Housing Alliance. “In order for the public to have any confidence in the fairness of this settlement, the OCC and the Federal Reserve must ensure that borrowers in these communities have equal access to the help it provides. The regulators must also report to the public on the demographic and geographic makeup of those to whom the settlement provides assistance.”

As [Cohen testified before a U.S. Senate Banking Subcommittee in December 2011](#), “The banking agencies have established a process that repeatedly favors banks over homeowners. That process cannot be permitted to continue.” Cohen also noted concern regarding the weakness of the mortgage consent orders which set the stage for an inadequate foreclosure review process. For the revised settlement to provide any meaningful benefit for homeowners and not just banks, transparency and accountability coupled with strong, effective, and independent oversight must be ensured in the implementation of the new settlement. The federal regulators and mortgage servicers should take several steps to increase public confidence in the new program as it goes forward and prevent recurrence of the serial missteps that have characterized the Independent Foreclosure Reviews, as follows.

Oversight: An independent ombudsman or monitor must be designated with full access to data and other necessary information and with the staff to administer the oversight and complaint function. The independent monitor must have the authority to resolve homeowners’ complaints, and the tools to do so, including sufficient funding. The regulators and servicers failed to protect homeowners during routine supervision and during the reviews; third-party oversight is needed.

Transparency: Robust data collection and public reporting, with data available by servicer, must be required, including demographic data regarding the total pool of borrowers and the remedies provided. The method for determining payments and waterfall for principal reduction modifications should be publicly available. Foreclosures have had a significant disparate racial impact; communities need to know that relief from foreclosures is being fairly administered to all.

Equitable compensation: Cash payouts must reach a population representative of the entire pool, including homeowners in predominantly low and moderate income census tracts and census tracts in communities of color. Homeowners who suffered foreclosure after a loan modification application was wrongly denied or never processed should receive compensation commensurate with those who suffered foreclosure after other servicer errors. Hard decisions will have to be made regarding equalizing compensation between homeowners who submitted complaints to the Independent Foreclosure Review and those homeowners who did not, whether for mistrust of the process, a failure of outreach, or other reasons. The outcome of those decisions must not penalize systematically underrepresented communities, nor should the reviews conducted to date receive any presumption of validity, given the widely-documented conflicts of interest and systematic failure.

Equitable principal reduction: Principal reductions must be provided in a manner that reaches a population representative of the entire pool, including homeowners in predominantly low and moderate income census tracts and census tracts in communities of color. Reductions must be done with loan modifications that benefit homeowners, communities, and investors. Credits must reflect the real dollar value of the reductions, and short sales should not count.

Fairness: Homeowners who receive any compensation must not be subject to legal waivers of their rights or bank account setoffs for deficiency judgments. Homeowners who submitted information in the Independent Foreclosure Review process should not have that information used against them to collect otherwise uncollectible deficiency judgments.

Sustainability: Homeowners still in their homes or for whom the servicer retains ownership of the property must be provided with affordable loan modifications where they qualify for one that provides more benefit to investors than foreclosure. Those loan modifications should include principal reductions, where appropriate.

Support: Funds should be used for housing counseling and legal services, so that advocates are able to assist homeowners eligible for compensation or principal reduction and for outreach to homeowners.

Link to NCLC testimony: http://www.nclc.org/images/pdf/foreclosure_mortgage/mortgage_servicing/testimony-occ-cohen.pdf

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NCLC: Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. Visit: www.nclc.org

NACA: The National Association of Consumer Advocates (NACA) is a nonprofit association of consumer advocates and attorney members who represent hundreds of thousands of consumers victimized by fraudulent, abusive and predatory business practices. As an organization fully committed to promoting justice for consumers, NACA's members and their clients are actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means.

NFHA: The National Fair Housing Alliance (www.nationalfairhousing.org). Founded in 1988, the National Fair Housing Alliance is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals from throughout the United States. Headquartered in Washington, D.C., the National Fair Housing Alliance, through comprehensive education, advocacy and enforcement programs, provides equal access to apartments, houses, mortgage loans and insurance policies for all residents in the nation.