Statement Regarding Bank Regulators' Guidance on Alternative Data

FOR IMMEDIATE RELEASE: December 4, 2019

National Consumer Law Center contacts: Chi Chi Wu (cwu@nclc.org) or Jan Kruse (jkruse@nclc.org); (617) 542-8010

Boston – Yesterday, the Federal Reserve Board, Federal Deposit Insurance Corp., Office of the Comptroller of the Currency, Consumer Financial Protection Bureau, and National Credit Union Administration released an Interagency Statement on the Use of Alternative Data in Credit Underwriting.

Chi Chi Wu, staff attorney at the National Consumer Law Center, issued the following statement about the banking regulators' guidance:

"I am pleased to see that the bank regulators have taken a measured approach to alternative data, encouraging the use of the more promising forms, such as cash flow data, while cautioning about data that could present "greater consumer protection risks." While the regulators do not identify what types of data could present these greater risks, in our opinion social media and Big Data are examples.

With alternative data, our mantra is the "devil is in the details" and the Interagency Statement appears to follow such an approach. For example, the Interagency Statement notes the benefits of using alternative data as part of a "Second Look" approach, i.e., only for applicants who cannot access credit, something we've supported as well because it does not affect consumers who are already considered creditworthy.

"The bank regulators' focus on consumer protection laws, such as the Fair Credit Reporting Act, unfair and deceptive acts and practices statutes, and fair lending laws, is important, and we think the applicability of these laws should be stated in the strongest and clearest terms possible. Yet it is also important to encourage lenders to be open to the more promising forms of alternative data, such as cash flow, given how slow some of them have been to adopt even newer credit scoring models based on traditional credit reports so a nudge may be useful here.

"One issue that does need greater guidance is consumer control over alternative data, especially bank account transactions. The Interagency Statement notes that consumers can "expressly permission access to their cash flow data, which enhances transparency and consumers' control over the data." However, protections are necessary to ensure that such permission is not abused, i.e., that permission granted for credit underwriting is not later used for a purpose the consumer never intended, such as targeted marketing or debt collection."