

January 17, 2013

Hon. Thomas Curry
Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219

Hon. Sarah Bloom Raskin
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Via electronic mail
Signatory list updated February 7, 2013

Dear Comptroller Curry and Governor Raskin:

The undersigned organizations write to express our views about the distribution of funds and other matters related to the recently announced settlement that replaces the Independent Foreclosure Review (IFR) process.

Our organizations appreciate your concern about the length, expense, complexity and flaws in the IFR process and we share your desire to get money and other assistance more quickly to borrowers who were harmed by the actions of their mortgage servicers. However, we believe that the amount of compensation that will be available under the new settlement falls far short of what is needed, and makes it extremely difficult to craft a payment schedule that will offer adequate compensation to borrowers, let alone one that is fair.

You face several critical tasks as you finalize the details of the settlement. One is to design a structure for direct compensation, the "hard dollars," that is as equitable as possible. The importance of the compensation structure is heightened by the severe constraints imposed by the limited resources with which you are working. A second is to maximize the impact of the non-monetary compensation component of the settlement, the so-called "soft dollars." Third, it is crucial that you make every effort to ensure that the promised compensation, both hard and soft dollars, actually reaches the borrowers covered by the settlement. In this regard, there are important lessons from the process to date that should be applied to communication with borrowers about the new settlement. Fourth, and perhaps most important, it is

imperative to take all actions possible to prevent any avoidable foreclosures for those in-scope borrowers who are still in their homes. We seek to work with you to accomplish all of these goals, and offer the following recommendations.

Direct Compensation to Borrowers (hard dollars)

- **Equitable distribution of funds** – Steps must be taken to ensure a fair distribution of hard dollars to all borrower groups, including those in low- and moderate-income areas and communities of color. The foreclosure crisis has had a disproportionate impact on these communities, and this settlement must not exacerbate that disparity.
- **Treatment of borrowers denied loan modifications** – Homeowners who suffered foreclosure after their application for a loan modification was wrongly denied or never processed by their servicers should receive compensation commensurate with those who suffered foreclosure after other types of significant servicer errors. Many borrowers denied modifications were qualified for them, and would still be in their homes but for the servicers' errors.
- **Borrowers who filed requests for review** – There are multiple perspectives on whether borrowers who filed an RFR should be treated differently than other in-scope borrowers. A number of factors must be weighed in reaching a decision on this question. We recognize that these borrowers made an effort to request a file review and provide relevant supporting information. Government agencies, members of Congress and community organizations encouraged them to do so, and want the public to recognize the value of heeding such advice. At the same time, we are keenly aware that one result of the deep flaws in much of the outreach for the IFR is that many borrowers were never aware of the opportunity to file an RFR. Further, no borrowers were informed that filing an RFR would result in more favorable treatment. It is also important to bolster the public's confidence that their interests will be protected by the federal regulators as those agencies administer their supervisory and enforcement responsibilities. Our organizations, regardless of how we each balance these considerations, all oppose a compensation structure that gives RFR borrowers significantly higher compensation than other in-scope borrowers.

- **Fairness** – borrowers must not be subject to waivers of their legal rights as a condition for receiving any compensation under this settlement, nor should their bank accounts be subject to set-offs for deficiency judgments. Servicers should not be permitted to use information that borrowers submit in conjunction with the IFR to collect otherwise uncollectible deficiency judgments.

Non-monetary Compensation to Borrowers (soft dollars)

- **Emphasis on loan modifications and principal reduction** –The most valuable outcome for borrowers who have not yet lost their homes, or whose homes are still under control of the servicer and could be restored to them, would be to receive an affordable, sustainable loan modification, with principal reduction as a core component. Your guidance to the servicers should communicate clearly that loan modifications should be offered to qualified homeowners and that modifications in which principal is reduced are preferable. Loan modifications should take priority over other options that result in borrowers losing their homes. Principal reductions offered for credits under this process should be part of a modification waterfall that achieves sustainability. The approach in the National Mortgage Settlement is a good model.

We also strongly suggest that you follow the model of the National Mortgage Settlement in withholding credit for loan modifications that utilize interest rate reductions. Interest rate reductions are a standard component of the loan modification programs of all servicers. Settlement dollars should not be spent on activities the servicers would be doing anyway; rather, they should be used to push the servicers to go beyond their standard modification activities. If you are unable to withhold credit for rate reduction modifications, your guidance to servicers must strictly limit the use of such modifications.

- **Equitable distribution of principal reduction** – You must establish safeguards to ensure that principal reduction modifications are not distributed in a discriminatory fashion, but are allocated in proportion to the representation of various borrower groups in the overall in-scope population. This relief should be distributed among eligible borrowers so that the total net credits are provided equally to borrowers in each quintile (based on original loan balances), with borrowers in the lowest three quintiles receiving at least 60% of the total dollar amount of relief. The

geographic distribution of this relief should also ensure that borrowers residing in low- and moderate-income census tracts and predominantly minority census tracts receive total net credits in proportion to their numbers in the pool of eligible borrowers.

- **Calculation of credits** – Credits for principal reduction should accurately reflect the market value of the adjustments being made. For example, principal forgiveness for borrowers who are deeply underwater, while helpful to those borrowers, is unlikely ever to be collected and should receive very limited credit under the settlement, as happens under the National Mortgage Settlement. Interest rate reductions mandated by HAMP and routinely provided where modifications are offered should be given limited credit, if any. Similarly, deficiency judgments associated with short sales are worth pennies on the dollar and forgiveness of such deficiencies should receive minimal credit. Further, there should be a cap – no more than 10% of the total credit granted - on the amount of credit servicers can receive under the settlement for short sales and other home forfeiture outcomes.

Other Considerations

- **Oversight and Enforcement** – The settlement requires an independent monitor to oversee the compensation process and investigate and resolve borrower complaints. There is tremendous public suspicion and distrust about the IFR process and third-party oversight and enforcement is needed to achieve any public confidence in the fairness and credibility of the process as it moves forward. The monitor must have full access to the data and other necessary information as well as sufficient staff, tools and funding to carry out its functions effectively.
- **Transparency** – Many of our organizations are getting calls from confused borrowers who want to know whether they are eligible for compensation under the settlement, how and when decisions about compensation (both monetary and non-monetary) will be made, and when checks will be mailed. It is extremely important for your agencies to make these details available to the public, including the waterfall for principal reduction loan modifications and the basis for hard money payments and soft money credits.

- **Data Collection and Reporting** - There must be robust data collection and public reporting, for each servicer that is party to the settlement, on the compensation provided to borrowers. This must include geographic and demographic information about each servicer's overall pool of borrowers as well as those who receive each category of compensation. Such reporting is essential to enable the public to see that relief is actually going to those communities hardest hit by foreclosures. The fact that the servicers will have tremendous latitude in allocating benefits under the settlement, particularly the offers of principal reduction and other "soft dollar" benefits, makes this reporting even more important. There is widespread concern that the benefits of the National Mortgage Settlement are not being distributed equitably, and that borrowers in communities of color and low- and moderate-income communities are not getting a fair share of those benefits. You must guard against such a problem in this settlement. In addition, in your supervisory role, you should be looking not just at the servicers' actions under this settlement, but more broadly at their allocation of relief to troubled borrowers to ensure that they are operating in a fair and non-discriminatory fashion.
- **Outreach and Support for Counseling and Legal Services** – There are many lessons to be learned from the launch of the IFR process about how to conduct effective outreach to the public, and in particular, to borrowers in communities of color and those who are not proficient in English. One key lesson is the importance of bringing in community-based organizations and other experts at the beginning to help craft and deliver the message. Second, resources must be allocated to make the participation of these organizations possible. Third, housing counseling, legal services and other community-based organizations can provide borrowers with invaluable assistance to access the process, and just as importantly, to recover more fully from the harm they suffered as the result of shoddy servicing practices. These and other important lessons must be applied to the effort to inform borrowers about the process for implementing the settlement, so that all affected borrowers have a fair opportunity to receive the compensation to which they are due.
- **Disposition of requests for review** – Through the RFR process, nearly 500,000 borrowers raised complaints about the treatment they received from their servicers. These complaints deserve to be reviewed, investigated and resolved. Where the opportunity still exists to resolve complaints in a manner that enables borrowers to remain in their homes,

that opportunity must be seized. In addition, when there are differences between the level of compensation for which a borrower would be eligible based on the information in the RFR and that in the servicer's system of record, the RFR should determine the compensation awarded.

- **Capturing key lessons from the IFR process** – Some in the industry are touting this settlement as evidence that few borrowers were harmed by mortgage servicing abuses and that this enforcement effort was misguided and unwarranted. While, in our view, there were many flaws in the IFR, we believe that many important lessons could be drawn from the effort, with respect to the systems and practices employed by servicers, their impact on borrowers, and how best to approach such enforcement efforts in the future. The RFRs, the experience of the Independent Consultants, and the observations of the GAO are all useful sources of insight into the problems that have plagued the servicing industry. We urge you to capture these lessons and to do so in a way that addresses the borrower perspective and does not simply ratify the findings of a flawed review process. And we urge you to consult with consumer advocates as you develop the review. The conclusions of this analysis should be made available to the public.

Under separate cover, we have provided you with information about the tax implications for borrowers of cash payments and loan modifications that involve principal reduction. We urge you to work with the IRS to minimize the negative consequences for borrowers to whom these remedies are provided.

We would appreciate the opportunity to review the proposed methodology for distributing the hard dollars under the settlement, and to do so with adequate information about the impact of the methodology and on a schedule that permits sufficient time for you to consider our input fully before making final decisions about the payment structure.

Thank you for the opportunity to submit these recommendations about implementation of the IFR settlement. We hope they will guide your decision-making and help create a process that is as fair, equitable and open as possible. We request the opportunity to discuss them with you in more detail, and will follow up with your staffs to schedule a meeting.

Sincerely,

Alliance for a Just Society
Americans for Financial Reform
California Reinvestment Coalition
Campaign for a Fair Settlement
Center for Responsible Lending
Community Legal Services (Philadelphia, PA)
Connecticut Fair Housing Center
Consumer Action
Empowering & Strengthening Ohio's People (ESOP)
The Home Defenders League
Leadership Center for the Common Good
Leadership Conference on Civil and Human Rights
NAACP
National Association of Consumer Advocates
National Coalition for Asian Pacific American Community Development
National Consumer Law Center (on behalf of its low-income clients)
National Council of La Raza
National Fair Housing Alliance
National Housing Resource Center
National People's Action
National Urban League
Neighborhood Economic Development Advocacy Project
Philadelphia Unemployment Project
PICO National Network
Right to the City Alliance
U.S. PIRG

Cc: Paul Nash, Barry Wides (Office of the Comptroller of the Currency)
Sandra Braunstein, Suzanne Killian (Federal Reserve Board)