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National Mortgage Servicing Standards Urgently Needed: Bank Agency Settlements Make No Meaningful Progress
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On April 13, the federal banking regulators announced that they had obtained consent orders from the country's largest mortgage servicers - the entities responsible for collecting mortgage payments, modifying mortgages, and taking other steps to foreclose or avoid foreclosure on millions of homes.[i] These consent orders do not provide the relief and reform needed by the country's homeowners, communities and investors. National servicing standards should be established to provide accountability in the market and to stop avoidable foreclosures.

The consent orders purport to hold the servicers accountable for past abuses by establishing guidelines for future conduct and for reviews of past practices..[ii] While each agency issued its own consent orders, they share these significant weaknesses:

- **The orders are vague**. The settlements do not provide detailed standards, even on urgently-needed matters such as loan modifications and core servicing abuses such as fees and force-placed insurance. The lack of detail will allow the servicers to control the independent review process and obscure many violations. In combination, the lack of detail and the unusual deference extended to the servicers undercuts the possibility of meaningful change going forward.
- **The timeframe is too narrow.** The reviews are time limited and focused only on 2009 and 2010. Many abuses occurred before and after this timeframe. Whether homeowners will receive any protection or redress for abuses committed by the servicers before or after this narrow timeframe is uncertain.
- **Dual track continues unimpeded.** One of the most pressing problems for distressed homeowners is that servicers operate a "dual track" system, pushing ahead with foreclosure even while the homeowner is going through the process to obtain a loan modification that would prevent foreclosure. The consent orders fail to address dual track. As a result, wrongful foreclosures will continue, costs to homeowners and investors will keep escalating, and servicers will face no pressure to expedite loan modification reviews.

- **The orders lack accountability and transparency.** The consent decrees require a future review process that will not be available to the public. Nor do they explicitly provide homeowners with the right to enforce them. Historically, the banking agencies have failed to protect homeowners. Without transparency, there cannot be accountability. Further, without an express right to enforce servicing rules, homeowners are left to rely on a secret, vague process to protect their rights and the likelihood that servicers will actually reform their existing abusive practices is diminished.
- **The Office of the Comptroller of the Currency's (OCC) consent orders, combined with the agency's preemption policy, threaten meaningful state action.** The OCC's history of seeking to interfere with state enforcement of consumer protection laws raises concern that the agency will use, or allow banks to use, the OCC settlements as a shield against the ongoing enforcement actions brought against these same servicers by the U.S. Department of Justice and state Attorneys General. The OCC has preempted all state laws unless their effect on national bank powers is "only incidental."[iii] This regulation allows national banks to ignore state laws regarding licensing, terms of credit, disclosure and advertising, solicitations, billing, and other topics. The OCC has recently reiterated its position on these matters in a proposed rule.[iv]

Millions of homeowners have been victimized by the fraudulent and abusive practices of mortgage servicers whose staff are trained for collection rather than loss mitigation, whose infrastructure cannot handle the volume and intensity of demand, and whose business records are a mess. The federal agency consent orders do not begin to adequately address these issues. The consent orders leave homeowners without redress or protection from past, current, or future servicer abuses. They do not provide the accountability and rigor required to right this foreclosure crisis.

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[i] This analysis was written by Alys Cohen, Staff Attorney, and Diane E. Thompson, Of Counsel.
[ii] *See, e.g.,* http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47.html.
[iii] 12 C.F.R. §§ 7.4007(c), 7.4008(e), 7.4009(c)(2).
[iv] *See, e.g.*, Office of the Comptroller of the Currency, Proposed Rulemaking, Docket ID OCC-2011-0006, 76 Fed. Reg. 30557 (May 26, 2011), *available at* http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-62a.pdf.