

# Foreclosure Review Payouts Coming Under Congressional, Media Scrutiny

By: Jann Swanson | Thu, May 2 2013, 12:48 PM

Congressman Elijah E. Cummings recently **introduced a bill** that would create an independent monitor to oversee the distribution of **funds paid by mortgage services to borrowers** to compensate for illegal foreclosures and other abuses.

The bill, **HR 1706**, The Mortgage Settlement Monitoring Act of 2013, was crafted by Cummings, Ranking Member of the House Committee on Oversight and Government Reform, because of what he views as a lack of transparency and accountability on the part of federal regulators, banks and their servicing subsidiaries.

As background, in 2012 the Federal Reserve and the Office of Comptroller of the Currency (OCC) **ordered 14 banks to begin individual case-by-case reviews** (at the request of borrowers) of files relating to alleged servicing abuses. At issue were illegal foreclosures, modification problems, dual tracking of remediation and foreclosures, improper fees and other violations. Thousands of reviews were requested and the banks hired independent firms to conduct them.

After several months it became apparent that the reviews were taking an **inordinate amount of time** and costing huge amounts of money (the consultant firms were being paid as much as **\$250 per hour**). In February 2013 the regulators settled with 13 of the 14 banks for an aggregate of \$3.5 billion in cash to end the reviews. The money was to be allocated to 4.2 million borrowers whose homes were in any state of foreclosure in 2009 or 2010 and serviced by one of the 13 banks or their subsidiaries regardless of whether or not they had requested a review.

Last month the Fed and OCC released a payment schedule for benefits from 11 of the banks. Amounts to be paid were based on a formula which appeared to set a value based on inconvenience and financial loss and **ranged from \$300 to \$125,000 per borrower**. For example, where a servicer initiated a foreclosure against a borrower who was performing all requirements of a written trial-period modification plan and that foreclosure was rescinded the payment would be \$6,000; if completed, \$50,000.

Most of the **largest payments (\$125,000) are going to members of the military** who were foreclosed despite protections afforded them under federal law. Except for benefits designated for military personnel, amounts are halved if the borrower had not requested to be part of the original independent review. Information on benefit criteria, payment amounts, and the numbers of borrowers affected can be reviewed [here](#).

While there was some comment at the time, largely in politically oriented media, about the seemingly paltry amounts paid to many borrowers, especially those who lost their homes, **the announcement passed quietly**. Payments started to roll out on April 12 and to date \$1.6 million in checks have been cashed or deposited.

NBC and MSNBC aired a report on the payouts this morning and Cummings appeared on the latter to discuss it and his bill. **He blasted regulators**, particularly OCC, for accepting the settlement amount and for the methods used in determining the criteria for the payouts, the amounts of the individual payments, and for refusing to give Congress information on how these decisions were reached.

Cummings said he felt the settlement amount had been set by how much the banks were willing to pay. They alone established the categories for payment he said, and made the determination as to how borrowers fit into those categories.

Cummings has been **joined in his criticism** about the settlement by Senator Elizabeth Warren (D-MA), a member of the Senate Banking Committee and the two launched a joint investigation of the settlement in January. At that time they requested that the Fed and OCC provide documents relating to illegal actions by mortgage servicers during the Independent Foreclosure Review. Both agencies refused to provide these documents, arguing that they are the "trade secrets" of mortgage servicers.

Cummings' bill would create an Independent Monitor appointed by the President to review the compliance of all parties to the settlement, **both servicers and regulators**, and issue quarterly reports to Congress and the public. **These reports must include:**

- A description of the criteria and methodology used to determine eligibility for direct and indirect relief and a description of due process protections for recipients;
- Information on borrowers who receive relief by mortgage servicer including demographic information, the level of direct compensation for similarly situated borrowers, and the number and amounts of principal reduction loan modifications and other types of borrower assistance;
- Information on the credit given to mortgage servicers for direct and indirect compensation provided to borrowers; and
- A list of instances in which mortgage servicers or regulators fail to comply with the terms of the settlement, and a list of actions taken

by regulators to compel compliance.

"Mortgage servicers have now admitted that they broke the law by illegally foreclosing on American families and committing numerous other abuses, but **regulators refuse to provide even the most basic information** about the extent of the abuses that were uncovered," said Cummings. "Since federal regulators now plan to rely on these same banks to determine payouts and deliver settlement funds to borrowers, we need an Independent Monitor to bring transparency and accountability to this process."

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