Center for National Policy Review
William L. Taylor, Director

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Summary of Status of Settlement Negotiations in
National Urban League v. Comptroller of the Currency

1. Regulation B, issued by the FRB pursuant to the ECOA Amendments, requires home mortgage lenders to ask applicants for home purchase loans to note their race/national origin and sex on applications. Based on experience in other contexts, plaintiffs believe that self-identification by applicants alone will provide incomplete and inadequate data and will afford loan officers an opportunity to discourage applicants from supplying it. They urge that loan officers be required to note the desired information to the best of their ability in cases where applicants fail to do so. With the exception of the FHLBB, all defendants are unwilling to require this at present; they believe that self-identification will provide adequate data, and the FRB notes that the plaintiffs' request was recently considered and rejected in promulgating Regulation B. The FHLBB feels that, in prior data surveys, a statistically significant number of applicants declined to provide the desired information, and it feels "more inclined" to require loan officers to furnish it where applicants do not. The other three agencies indicated a willingness to reconsider the matter in the light of experience.

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Plaintiffs propose that the FHLBB proceed with race/sex data collection with loan officers supplying information where not provided by applicants, and that the other three defendants proceed on the basis of self-identification only. Further, that after a period of six to twelve months, the parties together review the experience obtained, with a view to determining whether the data being collected is adequate, and if not, what improvements might be made in the system, whether by requiring loan officers to supply it or by some other means. As indicated in Item 10, evidently the defendants are not willing to permit the plaintiffs to participate in this review.

2. The COC and FDIC are currently conducting a pilot program for the collection, collation and analysis of racial data at 300 banks. The COC will soon analyse the data from this program and decide whether to extend it to all National Banks or to abandon it. The FDIC is currently reviewing and revising the program and has advised its regulatees by letter of 1/27/77 that the program will be extended to all of them effective 3/23/77 (the effective date of the new Regulation B amendments). The FRB does not contemplate any collation or comparative analysis of race/sex data; rather it will instruct examiners to review files for discrimination violations in the course of their examinations in ways similar to the reviews conducted in other phases of bank examinations. While unwilling to discuss these procedures pending their approval by the Board, the staff emphasizes its belief that they will be "effective". The FHLBB is "inclined" to adopt a "pre-examination"

data analysis program to assist examiners, if this can be done at reasonable cost, but it has not worked out the details of such a program. All agencies agree that any system adopted should be reviewed after a year to determine its effectiveness and to consider modifications to improve it.

The plaintiffs are convinced that race/sex data must be collated and analysed in order to be useful in identifying problem institutions and problem areas, and in measuring progress in eliminating discrimination. They are willing, however, to see how the systems initiated by the defendants work over a period of a year; and they would then review the effectiveness of these systems with the defendants with a view to proposing such modifications as seemed desirable to improve their effectiveness. The defendants are willing to review their data collection and analysis programs after a year, but without the plaintiffs' participation (see Item 10).

3. All four agencies agree that examiners will look at data generated under the Home Mortgage Disclosure Act but point out that the data has very limited utility in detecting "redlining" or other discriminatory practices. The COC states that attorneys from the Civil Rights Division of Justice will accompany examiners on a few examinations this Spring to observe and comment on the Civil Rights component. Results of this program will be reported to the other three agencies. The FHLBB is conducting a study of the usefulness of HMDA data for the Proxmire Committee.

Plaintiffs indicated their satisfaction with this response.

4. All four agencies have recently instituted new examiner training programs covering all consumer legislation including ECOA and other fair lending statutes. All agree to the need for periodic review of training programs in light of experience, our comments and the comments of the Justice Department Civil Rights Division.

Plaintiffs indicated their satisfaction with this response.

5. The plaintiffs have urged that individuals with prior experience in non-discrimination enforcement be hired by each agency to review the examination and enforcement programs and activities of examiners and other agency personnel, until these programs and activities are perfected and become routine. None of the agencies is willing to hire civil rights specialists -- although the FHLBB indicated it might hire temporary consultants and the COC said it might develop an on-going liaison with the Justice Department's Civil Rights Division. The COC stated its intention to give special training to regular examiners; monitoring of their performance would be the responsibility of the agency division responsible for all consumer matters, which has no special civil rights personnel. The FDIC stated its willingness to appoint one or more civil rights specialists in its "Bank Customer Affairs" office, and furnished plaintiffs with a tentative job description which indicated that the incumbent would indeed have the responsibilities envisaged by the plaintiffs. The FRB and the FHLBB indicated that they would give special training to supervisory examiners in field offices to ensure that the civil

rights component of the examination process is working well.

Once again, the plaintiffs are prepared to see how these measures work for a reasonable period, subject to joint review after an appropriate time. Evidently, however, the defendants are unwilling to review the effectiveness of these measures jointly with the plaintiffs. (See Item 10).

6. The COC and FDIC have procedures for processing complaints and will furnish a copy to the plaintiffs; both are willing to add time limits. The FRB has adopted Regulation AA, which specifies only that complainants will receive within 15 days either a "substantive response" or an acknowledgement indicating when a substantive response will be forthcoming. No procedures or time limits are indicated for investigating or resolving complaints. The FHLBB indicates that it is willing to adopt appropriate procedures with time limits.

The plaintiffs have indicated their dissatisfaction with FRB's Regulation AA, and have undertaken to review and comment on the other agencies' procedures when received.

7 and 8. All agencies agree that they will apply the same procedures concerning special examinations, supervisory letters, cease and desist orders, etc. in cases of suspected or observed civil rights violations as in cases of other kinds of violations, and that they will so advise their regulatees, without, however referring to specific sanctions.

Plaintiffs have indicated their satisfaction with this response.

9. The three agencies (all but the FHLBB) which have not adopted interpretive guidelines defining unlawful discriminatory lending practices refuse to do so.

The plaintiffs intend to continue to press this matter under ECOA as well as Title VIII.

10. All four defendants have rejected any provision for reporting to plaintiffs and for joint consultation concerning development and implementation of the enforcement programs once a settlement is arrived at.

In plaintiffs' view, provision for periodic reporting to them and for appropriate review of the progress being made in developing and implementing the enforcement program contemplated by the settlement is essential. The items to be reported are subject to negotiation so as to minimize extra work on the part of the agencies, and all such requirements could be limited to a period of two or three years.

(No discussion of information desired by plaintiffs has been held, since defendants rejected any reporting requirement whatsoever).

11. The defendants have not indicated whether they will agree to attorneys fees or will oppose an application to the Court.

12. All four defendants oppose a consent decree. Plaintiffs have indicated a willingness to enter into a settlement agreement, following which the case would be placed on the Court's inactive

calendar for a period of time (perhaps two or three years) and would then be dismissed unless further proceedings had been initiated. Some of the defendants indicated an insistence on an immediate dismissal.