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ONE HUNDRED TWELFTH CONGRESS

# Congress of the United States

## House of Representatives

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May 31, 2011

Mr. John Walsh  
Acting Comptroller of the Currency  
Comptroller of the Currency  
Administrator of National Banks  
Washington, D.C. 20219

Mr. John E. Bowman  
Acting Director  
Office of Thrift Supervision  
Department of Treasury  
Washington, D.C. 20552

The Honorable Ben S. Bernanke  
Chairman  
Board of Governors of the Federal Reserve System  
Washington, D.C. 20551

The Honorable Sheila Bair  
Chairman  
Federal Deposit Insurance Corporation  
Washington, D.C. 20429

Dear Acting Comptroller Walsh, Chairman Bernanke, Acting Director Bowman, and Chairman Bair:

I am writing to request copies of “engagement letters” concluded between 14 mortgage servicing companies and the private consultants you directed them to hire to conduct reviews of their widespread foreclosure abuses. Pursuant to consent orders issued by your offices on April 13, 2011, today is the date by which your offices were supposed to have approved these engagement letters.

### Findings of “Critical Weaknesses” and “Widespread Risk”

On April 13, 2011, your agencies announced that you had completed an “Interagency Review” of widespread foreclosure abuses by 14 mortgage servicing companies. You issued a public summary of your review with the following conclusions:

The reviews found critical weaknesses in servicers’ foreclosure governance processes, foreclosure document preparation processes, and oversight and monitoring of third-party vendors, including foreclosure attorneys.<sup>1</sup>

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<sup>1</sup> Federal Reserve System, Office of the Comptroller of the Currency, and Office of Thrift Supervision, *Interagency Review of Foreclosure Policies and Practices* (Apr. 13, 2011) (online at [www.occ.treas.gov/news-issuances/news-releases/2011/nr-occ-2011-47a.pdf](http://www.occ.treas.gov/news-issuances/news-releases/2011/nr-occ-2011-47a.pdf)).

Your public summary also found:

[T]he weaknesses at each servicer, individually or collectively, resulted in unsafe and unsound practices and violations of applicable federal and state law and requirements. The results elevated the agencies' concern that widespread risks may be presented—to consumers, communities, various market participants, and the overall mortgage market. The servicers included in this review represent more than two-thirds of the servicing market. Thus, the agencies consider problems cited within this report to have widespread consequences for the national housing market and borrowers.<sup>2</sup>

Finally, your public summary stated:

[E]xaminers did note cases in which foreclosures should not have proceeded due to an intervening event or condition, such as the borrower (a) was covered by the Servicemembers Civil Relief Act, (b) filed for bankruptcy shortly before the foreclosure action, or (c) qualified for or was paying in accordance with a trial modification.<sup>3</sup>

#### **Order to Hire Private Consultants to Conduct Further Review**

To address these major systemic deficiencies, your agencies issued “consent orders” that required these 14 mortgage servicing companies to hire private consultants to conduct a more thorough review of the files of affected homeowners. Rather than conducting these reviews yourselves, you directed each mortgage servicing company to “retain an independent firm to conduct a review of residential foreclosure actions that were pending at any time from January 1, 2009, through December 31, 2010.”<sup>4</sup>

According to your agencies, these more comprehensive reviews were necessary because your Interagency Review covered a “relatively small number of files.”<sup>5</sup> These more thorough reviews by private consultants are supposed to “identify borrowers that have been financially harmed” and “provide remediation to these borrowers.”<sup>6</sup> Specifically, you directed the mortgage

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

servicing companies to “determine any financial injury to borrowers caused by errors, misrepresentations, or other deficiencies identified in the review, and to remediate, as appropriate, those deficiencies.”<sup>7</sup>

As part of this process, your agencies permitted the mortgage servicing companies and their private consultants to propose “the methodology for conducting the Foreclosure Review,” the “selection of criteria for cases to be reviewed,” and “any proposed sampling techniques.”<sup>8</sup>

In response to critics of your decision to allow the mortgage servicing companies to hire their own consultants to conduct these reviews, your agencies asserted that you would “ensure that the reviews are comprehensive and the results are reliable.”<sup>9</sup> As part of this oversight effort, you directed all 14 mortgage servicing companies to submit for your approval “engagement letters” establishing the terms of the review and the methodologies to be used.<sup>10</sup> These engagement letters were due within 45 days of the date of the consent orders.<sup>11</sup>

#### **Request for “Engagement Letters” with Private Consultants**

Today is the date these engagement letters are due. I request that you provide copies of all engagement letters by Friday, June 3, 2011. If any of the 14 mortgage servicing companies

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<sup>7</sup> *Id.*

<sup>8</sup> *See, e.g.*, Office of the Comptroller of the Currency, Consent Order in the Matter of Bank of America (Apr. 13, 2011) (online at [www.occ.treas.gov/news-issuances/news-releases/2011/nr-occ-2011-47b.pdf](http://www.occ.treas.gov/news-issuances/news-releases/2011/nr-occ-2011-47b.pdf)); Federal Reserve System, Press Release (Apr. 13, 2011) (online at [www.federalreserve.gov/newsevents/press/enforcement/20110413a.htm](http://www.federalreserve.gov/newsevents/press/enforcement/20110413a.htm)); Office of the Comptroller of the Currency, *OCC Takes Enforcement Action Against Eight Servicers for Unsafe and Unsound Foreclosure Practices* (Apr. 13, 2011) (online at [www.occ.treas.gov/news-issuances/news-releases/2011/nr-occ-2011-47.html](http://www.occ.treas.gov/news-issuances/news-releases/2011/nr-occ-2011-47.html)); Office of Thrift Supervision, *OTS Takes Action to Correct Foreclosure Deficiencies* (Apr. 13, 2011) (online at [www.ots.treas.gov/?p=PressReleases&ContentRecord\\_id=4fe2bb15-be56-5d95-6c9c-dfd680b1c6a3](http://www.ots.treas.gov/?p=PressReleases&ContentRecord_id=4fe2bb15-be56-5d95-6c9c-dfd680b1c6a3)).

<sup>9</sup> Federal Reserve System, Office of the Comptroller of the Currency, and Office of Thrift Supervision, *Interagency Review of Foreclosure Policies and Practices* (Apr. 13, 2011) (online at [www.occ.treas.gov/news-issuances/news-releases/2011/nr-occ-2011-47a.pdf](http://www.occ.treas.gov/news-issuances/news-releases/2011/nr-occ-2011-47a.pdf)).

<sup>10</sup> *See, e.g.*, Office of the Comptroller of the Currency, Consent Order in the Matter of Bank of America (Apr. 13, 2011) (online at <http://www.occ.treas.gov/news-issuances/news-releases/2011/nr-occ-2011-47b.pdf>).

<sup>11</sup> *Id.*

Mr. John Walsh, Hon. Ben S. Bernanke,  
Mr. John E. Bowman, Hon. Sheila Bair  
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has not concluded an engagement letter with a private consultant, please provide an explanation of the current status of the engagement letter.

When producing documents, please deliver copies to the Minority Staff in Room 2471 of the Rayburn House Office Building and the Majority Staff in Room 2157 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format. If you have any questions about this request, please contact Justin Kim at (202) 225-5051. I appreciate your cooperation with this matter.

Sincerely,



Elijah F. Cummings  
Ranking Member

cc: The Honorable Darrell E. Issa, Chairman  
Committee on Oversight and Government Reform