June 21, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Today marks the six-month anniversary of my first letter to you requesting that the Committee investigate widespread and systemic abuses by mortgage servicing companies, including illegal foreclosures, inflated fees, and fraud against American homeowners. This is now my fourth letter to you on this subject.[1]

In my previous letter on May 24, 2011, I requested that you issue subpoenas to six mortgage servicing companies that are refusing to provide relevant documents to the Committee. My previous letters set forth in great detail the specific allegations of abuse committed by mortgage servicing companies and the specific steps I have taken to obtain the information voluntarily. I have also provided you with copies of the written correspondence from the mortgage servicing companies stating in clear terms that they will not provide the necessary information unless duly authorized subpoenas are issued.

Given this background, I was surprised when your spokesman stated that, although this is "an issue of clear bipartisan concern," you needed "additional information" to decide on "the

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[1] *See* Letter from Representative Elijah E. Cummings to Ranking Member Darrell E. Issa (Dec. 21, 2010) (online at http://democrats.oversight.house.gov/index.php?option=com_content&task=view&id=5175&Itemid=49); Letter from Ranking Member Elijah E. Cummings to Chairman Darrell E. Issa (Feb. 25, 2011) (online at http://democrats.oversight.house.gov/index.php?option=com_content&task=view&id=5229&Itemid=49); Letter from Ranking Member Elijah E. Cummings to Chairman Darrell E. Issa (May 24, 2011) (online at http://democrats.oversight.house.gov/index.php?option=com_content&task=view&id=5315&Itemid=49).

most appropriate next step."[2] You have been copied on every letter sent to the mortgage servicing companies and every letter they have sent back to the Committee. You have not hesitated—in other investigations—to issue subpoenas in a matter of days when your deadlines were missed, so it is unclear why a different standard applies to this investigation.

As you know, Members of our Committee voted unanimously on February 10, 2011, to adopt the Committee's oversight plan for this Congress pursuant to House Rule X, Clause 2(d). The oversight plan states explicitly that the Committee will "examine the foreclosure crisis including wrongful foreclosures and other abuses by mortgage servicing companies."[3] If mortgage servicing companies are allowed to disregard requests for documents that are integral to this investigation, the Committee's integrity will be called into question and, more importantly, abuses may continue.

Last week, in the context of a different investigation, you made a strong statement about the need for prompt action by the Committee. You stated: "[O]versight delayed is often oversight denied. I believe that path would be unacceptable to the American public."[4]

This same sense of urgency should apply even when the targets of the Committee's investigation are banks. The foreclosure crisis is affecting millions of Americans across the country, devastating communities, and impairing our nation's economic recovery. I am also particularly alarmed by increasing reports that U.S. servicemembers and their families have been illegally evicted from their homes and charged millions of dollars in unwarranted fees.[5] For all of these reasons, I am writing again to reiterate my request for subpoenas and to provide additional information that has come to light since my last letter to you on this subject.[6]

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[2] *U.S. House Democrat Wants Subpoenas of Six Mortgage Cos.,* Wall Street Journal (May 25, 2011) (online at http://online.wsj.com/article/BT-CO-20110525-703178.html).

[3] House Oversight and Government Reform Committee, *Oversight Plan*, 112th Cong. (Feb. 10, 2011) (online at http://oversight.house.gov/images/stories/112th_Oversight_Plan_02092011.pdf).

[4] Letter from Chairman Darrell E. Issa to Ranking Member Elijah E. Cummings (June 17, 2011).

[5] *See, e.g., Overcharges on Soldiers' Mortgages Investigated,* NBC News (Jan. 26, 2011); *JP Morgan Chase Settles Military Mortgage Case,* AP (Apr. 21, 2011); *DOJ: BofA, Morgan Stanley Units to Pay $22M to Settle Charges,* Wall Street Journal (May 26, 2011).

[6] Since my May 24, 2011, letter, Bank of America has indicated that it plans to provide some documents, the adequacy of which we can review and evaluate when they are produced.

New Data from SIGTARP

During our Committee's first hearing on January 26, 2011, Neil Barofsky, the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), testified that the performance of mortgage servicing companies has been "abysmal" and that "stories of servicer negligence and misconduct are legion."[7]

On February 25, 2011, I wrote to SIGTARP to request "a survey of the various complaints SIGTARP has received or is aware of relating to mortgage servicers" and "a categorization of the specific allegations of wrongdoing."[8] On May 31, 2011, SIGTARP officials responded by providing a breakdown of approximately 2,683 complaints they had received relating to the performance of mortgage servicing companies.[9]

According to SIGTARP, more than 27 percent of these complaints reported that mortgage servicing companies improperly foreclosed on homeowners who were enrolled in government modification programs. According to SIGTARP, these homeowners reported that "they were victims of premature default or foreclosure proceedings."[10]

In addition, more than 14 percent of these complaints reported that mortgage servicing companies improperly reported homeowners to credit bureaus, despite the fact that they were enrolled in government modification programs, "with the effect that their credit score decreased and their ability to secure credit was reduced."[11]

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[7] Testimony of Neil M. Barofsky, Special Inspector General for the Troubled Asset Relief Program, *Hearing on Bailouts and the Foreclosure Crisis: Report of the Special Inspector General for the Troubled Asset Relief Program,* House Committee on Oversight and Government Reform (Jan. 26, 2011) (online at http://oversight.house.gov/images/stories/Hearings/Opening_Statements/Testimony.Barofsky.SIGTARP.012611.pdf).

[8] Letter from Ranking Member Elijah E. Cummings to the Honorable Neil M. Barofsky, Special Inspector General for the Troubled Asset Relief Program (Feb. 23, 2011) (online at http://democrats.oversight.house.gov/images/stories/Correspondence/Foreclosure%20Letters/Cummings%20letter%20requesting%20SIGTARP%20report.pdf).

[9] Letter from Christy L. Romero, Acting Special Inspector General for the Troubled Asset Relief Program, to Ranking Member Elijah E. Cummings (May 31, 2011).

[10] *Id.*

[11] *Id.*

SIGTARP officials also reported that more than 46 percent of these complaints reported that mortgage servicing companies lost or misplaced homeowner documents, "resulting in multiple documentation submissions or rejection or disqualification" from government programs intended to help families modify their mortgage loans to avoid foreclosures.[12]

Based on its review of these complaints, SIGTARP officials also reported that, "[t]o the extent that the complaints raise issues within SIGTARP's jurisdiction, we have pursued criminal or civil investigations."[13]

Regulators' Findings of Improper Foreclosures and Other Abuses

On May 31, 2011, I wrote to the Office of the Comptroller of the Currency, the Federal Reserve, the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation to request additional information on their recent "interagency reviews" of widespread foreclosure abuses by 14 mortgage servicing companies.[14] Their public summary of these reviews, which was issued on April 13, 2011, made this finding:

> [T]he weaknesses at each servicer, individually or collectively, resulted in <u>unsafe and unsound practices and violations of applicable federal and state law and requirements</u>. 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.[15]

The summary also identified specific cases of improper foreclosures that violated federal law. It stated:

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[12] *Id.*

[13] *Id.*

[14] Letter from Ranking Member Elijah E. Cummings to Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Office of Thrift Supervision, and Federal Deposit Insurance Corporation (May 31, 2011) (online at http://democrats.oversight.house.gov/index.php?option=com_content&task=view&id=5321&Itemid=49).

[15] 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) (emphasis added).

> [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.[16]

To address these major systemic deficiencies, the regulating 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. More comprehensive reviews were necessary because the regulatory reviews covered a "relatively small number of files."[17] The regulating agencies directed the mortgage 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."[18] They also directed the mortgage servicing companies to submit for their approval "engagement letters" establishing the terms of the review and the methodologies to be used.[19] These engagement letters were due within 45 days of the date of the consent orders.[20]

Despite this deadline, none of the 14 mortgage servicing companies met this requirement. On June 10, 2011, the Comptroller of the Currency and the Office of Thrift Supervision wrote to me to confirm that "final engagement letters do not exist."[21] On June 13, 2011, the Office of the Comptroller of the Currency announced that it was extending the deadline for mortgage servicing companies to comply with this requirement.[22]

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[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *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).

[20] *Id.*

[21] Letter from Office of the Comptroller of the Currency and Office of Thrift Supervision to Ranking Member Elijah E. Cummings (June 10, 2011).

[22] Office of the Comptroller of the Currency, *Deadline Extended for Action Plans under Foreclosure Practices Consent Orders* (June 13, 2011).

Additional Information

In addition to the information above, there have been other troubling developments. On June 13, 2011, for example, it was reported that the Office of Inspector General for the Department of Housing and Urban Development filed a sworn declaration stating that its review of foreclosures was "significantly hindered by Bank of America's reluctance to allow us to interview employees or provide data and information in a timely manner." [23]

A week earlier, on June 9, 2011, the Department of the Treasury for the first time withheld servicer incentive payments from Bank of America, Wells Fargo, and J.P. Morgan Chase for errors in calculating borrower income—a key determinant of eligibility under the Making Home Affordable program.[24]

On May 26, 2011, the Government Accountability Office issued a survey of problems reported by housing counselors who work for a network of approximately 130 non-profit housing agencies that receive funding through the National Foreclosure Mitigation Counseling Program.[25] GAO reported that "over 78 percent of the counselors ranked 'servicer lost the borrower's documentation' as one of the three highest challenges," and that 53 percent of counselors accused mortgage servicing companies of "[s]traightforward miscalculations of annual income (e.g., confusing biweekly, semi-monthly, and weekly pay)."[26]

Conclusion

Like my home state of Maryland, your home state of California also appears to have been severely affected by the foreclosure crisis. By the end of 2010, California ranked fourth in the

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[23] *BofA Significantly Hindered Foreclosure Review of Its Loans, U.S. Says*, Bloomberg (June 13, 2011).

[24] Department of Treasury, *Making Home Affordable Program Performance Report* Through April 2011 (June 9, 2011) (online at www.treasury.gov/initiatives/financial-stability/results/MHA-Reports/Documents/April%202011%20MHA%20 Report%20FINAL.PDF).

[25] Government Accountability Office, *Troubled Asset Relief Program: Results of Housing Counselors Survey on Borrowers' Experiences with the Home Affordable Modification Program*, (May 26, 2011) (GAO-11-367R).

[26] *Id.*

number of mortgages that were 90 or more days delinquent or already in foreclosure.[27] A survey of California housing counselors conducted by the California Reinvestment Coalition (CRC) in 2010 found that more than 60 percent of counselors "had clients who suffered foreclosure while negotiating with their loan servicer," and nearly 80 percent reported that it is "very common for servicers to deny loan modifications because they claim not to have received all borrower documents."[28]

In February, you were asked by *San Diego Union-Tribune* how you planned to address the foreclosure crisis in San Diego County. In response, you said that the "best, long-term solution for relief of struggling homeowners is to find more and better jobs."[29]

We fully support measures to promote job creation, but we cannot ignore illegal and abusive acts by mortgage servicing companies—which are precisely the subject of my request for subpoenas. The best long-term solution that our Committee can offer in response to illegal acts committed by mortgage servicing companies is vigorous investigation, oversight, and reform. Inaction will tacitly reward abuse and signal tolerance for major corporate wrongdoing.

To fulfill the Committee's unanimously-approved oversight agenda, and to adequately investigate abuses against our constituents, we must obtain responsive documents from these mortgage servicing companies. For these reasons, I request again that you authorize and issue subpoenas to compel the production of the previously-requested documents. I appreciate your interest in these issues and look forward to working with you.

Sincerely,

Elijah E. Cummings
Ranking Member

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[27] Center for Responsible Lending, *Dreams Deferred: Impacts and Characteristics of the California Foreclosure Crisis* (August 2010).

[28] California Reinvestment Coalition, *Chasm Between Words and Deeds VI: HAMP is Not Working* (July 2010).

[29] *Rep. Issa: San Diegans Need Jobs, Not Foreclosure-Relief Program*, San Diego Union-Tribune (Feb. 3, 2011).