

Congress of the United States
Washington, DC 20515

January 31, 2013

The Honorable Ben S. Bernanke
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

The Honorable Thomas J. Curry
Comptroller of the Currency
Administrator of National Banks
Washington, DC 20219

Dear Chairman Bernanke and Comptroller Curry:

We write today to request documents and information pertaining to the recent settlements announced between the Board of Governors of the Federal Reserve System (Federal Reserve), the Office of the Comptroller of the Currency (OCC), and mortgage servicers subject to consent orders issued by the Federal Reserve and the OCC in April 2011.

As you know, in April 2011, the Federal Reserve and the OCC issued consent agreements with 14 mortgage servicers regarding unsafe and unsound practices related to residential mortgage loan servicing and foreclosure processing. As part of those agreements, the mortgage servicers were required to establish an Independent Foreclosure Review process under which borrowers whose homes were in foreclosure in 2009 or 2010 could request reviews of their files if they believed they had been subjected to an illegal or improper practice.¹

On January 7, 2013, the Federal Reserve and the OCC announced that they had reached a new settlement with 10 of the 14 servicers subject to the 2011 consent orders. Under this settlement, the servicers agreed to provide a total of \$8.5 billion in “cash payments and other assistance” to borrowers, including \$3.3 billion in direct payments to borrowers who had homes in foreclosure in 2009 or 2010. According to the OCC and the Federal Reserve, under the terms

¹ Board of Governors of the Federal Reserve System, *Press Release* (Apr. 13, 2011) (online at 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.gov/news-issuances/news-releases/2011/nr-occ-2011-47.html).

of this new settlement, “the participating servicers would cease the Independent Foreclosure Review, which involved case-by-case reviews.”²

A page entitled “What You Need to Know: Independent Foreclosure Review” hosted on the website of the Federal Reserve indicates:

The OCC and the Federal Reserve accepted this agreement because it provides the greatest benefit to consumers subject to unsafe and unsound mortgage servicing and foreclosure practices during the relevant period in a more timely manner than would have occurred under the review process.³

In a similar statement on January 7, 2013, Mr. Curry indicated that although the agencies “learned a great deal from the reviews that have been conducted to date” under the Independent Foreclosure Review process, “it has become clear that carrying the process through to its conclusion would divert money away from the impacted homeowners and also needlessly delay the dispensation of compensation to affected borrowers.” Mr. Curry further stated that the terms of the new settlement “will get more money to more people more quickly, and it will speed recovery in the nation’s housing markets.”⁴

Specific details regarding the agreement between the Federal Reserve, the OCC, and mortgage servicers have not yet been released. However, based on briefings provided by staff of the Federal Reserve and the OCC, it appears that individual borrowers whose homes were in foreclosure in 2009 or 2010 will no longer be able to seek a review of their files to determine whether they were the victims of any illegal or abusive behavior on the part of their mortgage servicers. It also appears that borrowers whose homes were in foreclosure in 2009 or 2010 will not receive compensation based on any specific harm they suffered, but rather on the basis of determinations made by the Federal Reserve, the OCC, and mortgage servicers regarding the general characteristics of their loans and the level of remediation to which borrowers with such general loan characteristics should be entitled.

² Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency, *Independent Foreclosure Review to Provide \$3.3 Billion in Payments, \$5.2 Billion in Mortgage Assistance* (Jan. 7, 2013) (online at www.federalreserve.gov/newsevents/press/bcreg/20130107a.htm).

³ Board of Governors of the Federal Reserve System, *What You Need to Know: Independent Foreclosure Review* (accessed on Jan. 21, 2013) (online at www.federalreserve.gov/consumerinfo/independent-foreclosure-review.htm).

⁴ Office of the Comptroller of the Currency, *Statement from Comptroller of the Currency Thomas J. Curry on the IFR Settlement* (Jan. 7, 2013) (online at www.occ.gov/news-issuances/news-releases/2013/nr-occ-2013-4.html).

We share the desire of the OCC and the Federal Reserve to get more money to more people quickly, and we appreciate the information you have provided to congressional staff on this issue. However, we believe that public confidence in the settlement—the confidence necessary to speed recovery of the housing markets—will exist only if the OCC and the Federal Reserve provide additional transparency into the process used and information gathered during the Independent Foreclosure Review process. Public confidence in the banking system has been badly undermined by a widespread concern that large financial institutions are not held fully to account when they break the rules—and that consumers are not sufficiently compensated. It is critical that the OCC and the Federal Reserve disclose additional information about the scope of the harms found to establish confidence in the sufficiency and integrity of the settlement.

Specifically, we request that the Federal Reserve and the OCC provide the following documents:

1. The results of all performance reviews conducted by the Federal Reserve or the OCC over the Independent Foreclosure Review, including all documents reviewing the performance of each of the independent contractors engaged by mortgage servicers to conduct reviews of borrower files under the terms of the consent orders issued in April 2011, all documents detailing the nature of any instances of unsatisfactory performance found by the Federal Reserve or the OCC, all documents detailing any corrective actions ordered by the Federal Reserve or the OCC to be taken by any mortgage servicer subject to the April 2011 consent orders or by any independent contractor conducting borrower file reviews, and all documents describing the adequacy of any corrective action taken by any mortgage servicer subject to the April 2011 consent order or by any independent contractor engaged to review borrower files;
2. All documents and reports prepared by the mortgage servicers subject to the April 2011 consent orders or the independent contractors engaged by mortgage servicers to conduct reviews of borrower files under the terms of the consent orders issued in April 2011, describing, reviewing, or updating on the Independent Foreclosure Review process, and supplied to the OCC or the Federal Reserve; and,
3. All documents compiled by the Federal Reserve or the OCC indicating the total amount of settlement funds paid to each independent contractor engaged by the 14 mortgage servicers subject to the April 2011 consent orders and all documents compiled by the Federal Reserve or the OCC indicating itemizations of specific work performed by each contractor.

We also request that the Federal Reserve and the OCC provide the following specific information:

1. The total number of eligible borrowers who requested reviews of their foreclosure files by gender, race, zip code, and property value;


2. The total number of reviews of borrower files initiated by each of the independent contractors engaged by the 14 mortgage servicers subject to the April 2011 consent orders, including the number of reviews completed by January 7, 2013 by each independent contractor, the number of borrower files in which unsafe or unsound practices were found, the amount of remediation each borrower who experienced an unsafe or unsound practice was recommended to receive, and the amount of remediation paid out to borrowers as part of the Independent Foreclosure Review process; and
3. The average time each independent contractor engaged by the 14 mortgage servicers subject to the April 2011 consent orders required to complete a review of a borrower's file.

We would appreciate the documents and information requested as soon as possible but no later than February 22, 2013 so that sufficient transparency exists when it can have the most impact on building public confidence. We look forward to working together on this important matter and thank you for your consideration of this request.

Sincerely,



Elizabeth Warren
Senator



Elijah E. Cummings
Member of Congress