ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
MINORITY (202) 225-5051

http://oversight.house.gov

November 16, 2011

Mr. Edward DeMarco
Acting Director
Federal Housing Finance Agency
1700 G Street NW
Washington, D.C. 20551

Dear Acting Director DeMarco:

I am writing to request additional information about $150 million in fees that Fannie Mae and Freddie Mac charged mortgage servicing companies in 2010 for failing to conduct foreclosures quickly enough to meet federally imposed timelines. I am concerned that these penalties, at least some of which were ordered by the Federal Housing Finance Agency (FHFA), may have contributed to widespread abuses by mortgage servicing companies and law firms attempting to meet arbitrary deadlines to expedite foreclosures.

Evidence of Abuses Prior to 2010

On February 25, 2011, I launched a major investigation into abuses and illegal activities by mortgage servicing companies, including wrongful foreclosures, deficient recordkeeping, inflated fees, and fraud in lending. As part of this investigation, I wrote to the FHFA Inspector General requesting an investigation into "widespread allegations of abuse by private attorneys and law firms hired to process foreclosures as part of the 'Retained Attorney Network' established by Fannie Mae."[1]

On September 30, 2011, the Inspector General issued a report in response to my request concluding that "there were multiple indicators of foreclosure abuse risk prior to 2010 that could have led FHFA to identify and act earlier on the issue." According to the Inspector General, these warnings included "consumer complaints alleging improper foreclosures; contemporaneous

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[1] Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to the Honorable Steve A. Linick, Inspector General, Federal Housing Finance Agency (Feb. 25, 2011) (online at http://democrats.oversight.house.gov/images/stories/Correspondence/Foreclosure%20Letters/Cummings%20Letter%20to%20FHFA%20IG.pdf).

media reports about foreclosure abuses by Fannie Mae's law firms; and public court filings in Florida and elsewhere highlighting such abuses."[2]

In one instance, a review commissioned by Fannie Mae found that "foreclosure attorneys in Florida are routinely filing false pleadings and affidavits." Similarly, in June 2010, officials from FHFA's Office of Conservatorship Operations performed a two-day field visit to Florida, after which they noted:

> [S]ervicers, attorneys, and other supporting personnel were overloaded with the volume of foreclosures, the average timeline for foreclosures had increased from 150 to 400 days, documentation problems were evident, and law firms (referred to as "foreclosure mills") were not devoting the time necessary to their cases due to Fannie Mae's flat fee structure and volume-based processing model.[3]

Despite evidence of widespread problems among foreclosure law firms retained by Fannie Mae and Freddie Mac, the Inspector General's report concluded that FHFA "did not begin to act on foreclosure abuse issues involving Fannie Mae's RAN until mid-2010." The Inspector General recommended that FHFA review why it failed to heed these warnings sooner, implement comprehensive procedures to prevent these abuses in the future, and address "poor performance" by law firms that have contractual relationships with Fannie Mae and Freddie Mac. FHFA agreed with all of these recommendations.[4]

Penalties for Slow Foreclosures

In addition to finding that there were multiple indicators of foreclosure abuse prior to 2010, the Inspector General reported that during this same timeframe in 2010, FHFA "directed Fannie Mae to impose compensatory fees against the servicers for violating foreclosure timeline limits."[5]

In fact, FHFA General Counsel Alfred M. Pollard disclosed in a letter to me on November 1, 2011, that Fannie Mae and Freddie Mac assessed penalties totaling approximately $150 million in 2010. He wrote:

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[2] Federal Housing Finance Agency, Office of Inspector General, *FHFA's Oversight of Fannie Mae's Default-Related Legal Services* (AUD-2011-004) (Sept. 30, 2011) (online at www.fhfaoig.gov/Content/Files/AUD-2011-004.pdf).

[3] *Id.*

[4] *Id.*

[5] *Id.*

> To date, the top ten servicers account for the bulk of the fees due; the total amount for all servicers, after approving appeals and corrections, is approximately $150 million dollars for 2010.[6]

Mr. Pollard also described the methodology for calculating these penalties. He explained:

> Fees are assessed based on each Enterprise's specific allowable foreclosure timelines for individual states as published in their Seller/Servicer Guides. Each Enterprise assesses the servicers a per day fee—approximately $30 a day—for each day that the servicer exceeds the established timeline.[7]

The size and timing of these penalties raise serious questions about whether FHFA may be more interested in expediting foreclosures to clear its books than protecting the rights of homeowners.

Request for Information

On October 3, 2011, I wrote to you to inquire about the extent of penalties imposed against mortgage servicers that failed to meet federally imposed timelines to conduct foreclosures. Specifically, I requested that you "provide a list of all servicers that have been assessed compensatory fees, identify the total amount of fees assessed against each servicer, identify the reasons these fees were assessed, and identify whether the fees have been paid in full."[8]

Although the letter from Mr. Pollard disclosed that the total amount of these penalties for 2010 was $150 million, it did not provide the specific information I requested, including the amount of fees charged to each mortgage servicing company. For these reasons, I request that you provide the following information:

(1) a list of all servicers that have been assessed compensatory fees;

(2) the total amount of fees assessed against each servicer;

(3) the reasons these fees were assessed against each servicer;

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[6] Letter from Mr. Alfred M. Pollard, General Counsel, Federal Housing Finance Agency, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Nov. 1, 2011).

[7] *Id.*

[8] Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Acting Director Edward DeMarco, Federal Housing Finance Agency (Oct. 3, 2011).

(4) whether each servicer assessed compensatory fees has paid the assessed fees in full; and

(5) if a servicer has not yet paid the assessed fees in full, the expected date by which the fees will be paid in full.

I request that you provide this information by November 30, 2011. I also request that you provide the information requested above regarding compensatory fees assessed against mortgage servicers in 2011 when that information becomes available. Thank you for your consideration of this request.

Sincerely,

Elijah E. Cummings
Ranking Member

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