Congress of the United States
Washington, DC 20515

February 11, 2014

The Honorable Janet Yellen
Chair
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Dear Chair Yellen:

Congratulations on your confirmation as Chair of the Board of Governors of the Federal Reserve System (Board). We are pleased to see you serve in this position and have high hopes for your tenure.

Although you will have many important obligations in the months and years ahead, we urge you to make it a top priority during your transition to revise the Board's rules governing the delegation of critical supervisory and enforcement responsibilities to Board staff.

You noted during your confirmation hearing that the Board's supervisory responsibilities are "just as important as monetary policy." We agree. However, the Board's current delegation rules and practices do not reflect that belief. While the Board votes on every important decision the Fed makes on monetary policy, the Board rarely votes on the Fed's important supervisory and enforcement policy decisions.

According to a letter we received last month from your predecessor, Chairman Ben S. Bernanke, in the last ten years, the Board has voted on only 11 of the Fed's nearly 1,000 formal enforcement actions.[1] That is a direct consequence of the Board's Rules Regarding Delegation of Authority.[2] These Rules give the Board's General Counsel – or the General Counsel's delegee – the authority to enter into consent orders on the Fed's behalf as long as the Director of the Board's Division of Banking Supervision and Regulation (BS&R) – or the Director's delegee – concurs. In turn, the General Counsel has delegated his authority to the Deputy General Counsel and the Director of BS&R has delegated his authority to "subordinate staff in the Division."[3] Thus, under the current application of the Rules, the Fed may enter into consent orders without ever receiving the formal approval of senior staff, let alone the Board.

Although Fed officials have indicated that there is informal consultation between those with delegated authority and certain Board members, the process appears to be ad hoc.

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[1] Letter from Federal Reserve Chairman Ben S. Bernanke to Senator Elizabeth Warren and Congressman Elijah E. Cummings (Dec. 16, 2013).

[2] *See* 12 C.F.R. § 265.

[3] Letter from Federal Reserve Chairman Ben S. Bernanke to Senator Elizabeth Warren and Congressman Elijah E. Cummings (Dec. 16, 2013).

According to Chairman Bernanke's letter, the "degree of consultation and notice involving Board members depends on the circumstances of each case," and there are "no written guidelines or procedures relating to this process."[4]

Indeed, we learned recently that the Board did not vote on one of the largest and most significant enforcement actions in the Fed's history. In February 2013, the Fed and the Office of the Comptroller of the Currency entered into amended consent orders with 13 mortgage servicers accused of illegal foreclosure practices. The amended orders directly affected more than 4 million families and required the servicers to provide $9.3 billion in "cash payments and other assistance."[5] The orders also ended the Fed's investigation into the extent of the mortgage servicers' illegal practices before the investigation was completed. Yet, according to Federal Reserve Governor Daniel K. Tarullo, the Board never voted on the amended orders.[6]

The Board's lack of direct involvement in the mortgage servicer enforcement action is particularly noteworthy given certain troubling aspects of the settlement. When it announced the amended orders, the Fed stated that the $9.3 billion settlement payment included $5.7 billion in "credits" the servicers could earn by extending loan modifications and forgiving deficiency judgments.[7] While loan modifications and the forgiveness of deficiency judgments are critically important, the Fed's initial public statement about the amended orders did not divulge that the servicers could earn credits that were far larger than the amount of relief they were providing homeowners. For example, a servicer that wrote down $15,000 of a $500,000 unpaid loan balance would get a credit for $500,000, not $15,000.[8] This method of calculating credits potentially reduces the settlement value by billions of dollars. The Board did not formally review or approve this methodology for assigning credit to servicers.

We respectfully request that the Fed revisit its existing delegation rules and require that the Board retain greater authority over the Fed's enforcement and supervisory activities in the future. We recommend that, at a minimum, a formal vote of the Board be required before the Fed can enter into consent orders that equal or exceed $1 million or that include a requirement that a bank officer be removed and/or new management installed.

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[4] *Id.*

[5] Board of Governors of the Federal Reserve System and Office of the Comptroller of the Currency, *Joint Press Release* (Feb. 28, 2013), *available at* www.federalreserve.gov/newsevents/press/enforcement/20130228a.htm.

[6] Letter from Federal Reserve Governor Daniel K. Tarullo to Senator Elizabeth Warren (June 11, 2013).

[7] Board of Governors of the Federal Reserve System and Office of the Comptroller of the Currency, *Joint Press Release* (Feb. 28, 2013), *available at* www.federalreserve.gov/newsevents/press/enforcement/20130228a.htm.

[8] Julie Schmit, *Foreclosure Settlement to Distribute $3.6 Billion*, USA Today (Feb. 28, 2013), *available at* http://www.usatoday.com/story/money/business/2013/02/28/foreclosure-settlement-banks/1954871/.

In addition, we recommend that:

- All members of the Board be notified through a formal process before staff members enter into a consent order under delegated authority;
- Each Governor be provided with the designated staffing capacity necessary to review and analyze pending enforcement actions; and
- All Board members receive a copy of all letters sent to the Board Chair or a Board Member by a Committee or Member of the United States Congress.

We have learned the hard way that the task of monetary policymaking is made significantly more difficult when prudential regulators fail to ensure the safety and soundness of all facets of the banking system. We believe that increasing the Board's direct role in overseeing enforcement and supervision would strengthen the Fed's efforts to reduce systemic risk in our financial system.

We wish you the best as you begin your chairmanship, we look forward to working with you, and we appreciate your prompt review of these critical matters.

Sincerely,

Elizabeth Warren
Senator

Elijah E. Cummings
Member of Congress

cc: The Honorable Daniel K. Tarullo, Governor, Board of Governors of the Federal Reserve System

The Honorable Sarah Bloom Raskin, Governor, Board of Governors of the Federal Reserve System

The Honorable Jeremy C. Stein, Governor, Board of Governors of the Federal Reserve System

The Honorable Jerome H. Powell, Governor, Board of Governors of the Federal Reserve System

The Honorable Tim Johnson, Chairman, Senate Committee on Banking, Housing and Urban Affairs

The Honorable Mike Crapo, Ranking Member, Senate Committee on Banking, Housing and Urban Affairs

The Honorable Sherrod Brown, Chairman, Subcommittee on Financial Institutions and Consumer Protection

The Honorable Pat Toomey, Ranking Member, Subcommittee on Financial Institutions and Consumer Protection

The Honorable Robert Menendez, Member, Senate Committee on Banking, Housing and Urban Affairs

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

The Honorable Jeb Hensarling, Chairman, House Committee on Financial Services

The Honorable Maxine Waters, Ranking Member, House Committee on Financial Services