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House of Representatives

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April 24, 2014

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

Dear Mr. Chairman:

I am writing to request that the Committee hold a hearing on widespread foreclosure abuses and illegal activities engaged in by mortgage servicing companies. I request that the hearing also examine why the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency (OCC) appear to have prematurely ended the Independent Foreclosure Review (IFR) and entered into a major settlement agreement with most of the servicers just as the full extent of their harm was beginning to be revealed.

I want to thank you for the bipartisan and responsible manner in which you and your staff have conducted this investigation. As you know, this issue has been a top priority for me over the past four years, and it affects more than 4 million borrowers who had homes in foreclosure in 2009 and 2010.

The Committee unanimously agreed on February 10, 2011, to include in our oversight plan a commitment to “examine the foreclosure crisis including wrongful foreclosures and other abuses by mortgage servicing companies.”¹ In May 2013—after the Federal Reserve and the OCC entered into consent agreements with servicing companies—you and I sent bipartisan requests seeking documents about the settlement.² Our staffs then conducted *in camera* review

¹ House Committee on Oversight and Government Reform, *Oversight Plans for All House Committees with Accompanying Recommendations*, 112th Cong. (2011) (H. Rept. 112-48). See also House Committee on Oversight and Government Reform, *Oversight Plans for All House Committees*, 113th Cong. (2013) (H. Rept. 113-23) (agreeing to continue examining this issue in the 113th Congress).

² Letter from Chairman Darrell E. Issa and Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Chairman Ben S. Bernanke, Board of Governors of the Federal Reserve System (May 15, 2013); Letter from Chairman Darrell E. Issa and Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Thomas J. Curry, Comptroller of the Currency (May 22, 2013).

of these documents, and on March 4, 2014, we sent bipartisan follow-up requests seeking copies of a narrow subset of documents relevant to our investigation.³

Now that we have obtained copies of these documents, they confirm that some mortgage servicing companies engaged in widespread and systemic foreclosure abuses, including charging improper and excessive fees, failing to process loan modifications in accordance with federal guidelines, and violating automatic stays after borrowers filed for bankruptcy. The documents show that several independent consultants that were brought in to review the activities of servicers had identified very high error rates in several categories of review directly before the settlement that terminated the IFR. In addition, the documents show that independent consultants had conducted significant preparatory work assembling files and creating systems to conduct more comprehensive reviews, but these efforts were halted suddenly in January 2013.

It remains unclear why the regulators terminated the IFR prematurely, how regulators determined the compensation amounts servicers were required to pay under the settlement, and how regulators could claim that borrowers who were harmed by these servicers would benefit more from the settlement—including the amounts paid for each error category—than by allowing the IFR to be completed.

High Error Rates Identified by Independent Consultants

The documents obtained by the Committee show that independent consultants hired by mortgage servicing companies began to identify high error rates in several error categories as they started to review the activities of the servicers directly before the IFR was terminated. It appears from the documents that some of these error rates were not yet included in reports when the IFR was suddenly halted.

In April 2011, the Federal Reserve, OCC, and the then-Office of Thrift Supervision issued consent agreements with 14 servicers regarding improper and abusive practices in residential mortgage loan servicing and foreclosure processing.⁴ Two other servicers later entered into similar consent orders.⁵ The consent orders required the servicers to engage

³ Letter from Chairman Darrell E. Issa and Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Chair Janet L. Yellen, Board of Governors of the Federal Reserve System (Mar. 4, 2014); Letter from Chairman Darrell E. Issa and Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Thomas J. Curry, Comptroller of the Currency (Mar. 4, 2014).

⁴ 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).

⁵ Board of Governors of the Federal Reserve System, *Press Release* (Sept. 1, 2011) (online at www.federalreserve.gov/newsevents/press/enforcement/20110901b.htm); Board of

independent consultants “to conduct an independent review of certain residential foreclosure actions regarding individual borrowers with respect to the Bank’s mortgage servicing portfolio.”⁶

The purpose of the IFR was to determine whether foreclosures were conducted “in accordance with applicable state and federal law,” including “whether any errors, misrepresentations, or other deficiencies ... resulted in financial injury to the borrower or the mortgagee.”⁷ Under the IFR, independent consultants were supposed to review 100% of files with certain types of potential errors, and they were required to develop sampling methodologies to estimate the extent of errors in other categories. In addition, borrowers could request reviews of their foreclosures under a Request for Review process.⁸

As the IFR progressed, independent consultants began developing preliminary data on error rates for some categories of violations. For example, the Committee has now obtained documents from Promontory Financial Group, LLC, an independent consultant that was hired to review the foreclosure activities of Bank of America, PNC Bank, and Wells Fargo.

On May 3, 2013, Promontory submitted a document describing preliminary information on errors it had identified in Bank of America’s “loan mitigation” efforts, including “modification adherence to HAMP or proprietary guidelines.” Regarding the Loan Mitigation category, the independent consultant found:

Our preliminary error rate at closure of the review on a relatively low number of loans passed through senior review was 60%. This indicated systemic issues in the accuracy and timeliness of processing loan modifications that were not yet reflected in our IC Data Report.⁹

After examining improper fees charged by Bank of America, the independent consultant found:

Governors of the Federal Reserve System, *Press Release* (Apr. 3, 2012) (online at www.federalreserve.gov/newsevents/press/enforcement/20120403b.htm).

⁶ Office of the Comptroller of the Currency, *Consent Order, in the Matter of Bank of America, N.A.* (Apr. 13, 2011) (online at www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47b.pdf).

⁷ Office of the Comptroller of the Currency, *Consent Order, in the Matter of Bank of America, N.A.* (Apr. 13, 2011) (online at www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47b.pdf).

⁸ Office of the Comptroller of the Currency, *Independent Foreclosure Review Underway* (Nov. 1, 2011) (online at www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-133.html).

⁹ Promontory Financial Group, LLC, *Mortgage Foreclosure Consent Order—Article VII; Independent Consultant (IC) Interviews (Bank of America)* (May 3, 2013).

At the time of closure of the review our analysis of potential paid harm based on initial File Review Lookback fee testing through senior review was 19%. This indicated systemic issues in the charging of fees that were not yet reflected in our IC Data Report.¹⁰

In a draft document entitled “File Review Lookback Preliminary Observations Update – Bankruptcy,” the independent consultant wrote:

All 2,899 loans identified for Bankruptcy review have been subjected to initial testing. Senior review has been completed on approximately 57% of these loans and the preliminary exception rate of loans with potential financial harm is approximately 16% (465 of 2,899).¹¹

Regarding these bankruptcy-related errors, the independent consultant also noted: “Our error rate as provided in the IC Data Report provided a reasonable estimation of the Bankruptcy errors as we were substantially complete with these files.”¹²

The Committee also obtained documents from Promontory showing similar trends with respect to the foreclosure activities of PNC Bank. For example, in a document dated December 19, 2012, identified as a “Briefing before the Compliance Committee of the Board of PNC Bank, N.A.,” the independent consultant issued an “Update on the Foreclosure Look-back Review and Complaints Solicitation Process.” After reviewing a sample of 4,797 loans, the independent consultant found “borrower financial injury” in 21% of cases and “notable exception” errors in 24% of cases.¹³ The independent consultant also stated:

[R]eview has identified seven void foreclosure sales as a result of servicer error, misrepresentation or deficiency in the foreclosure process: Bank did not provide appropriate notice to borrower prior to foreclosure sale, Complaint filed on incorrect facts (no due process) and lack of standing to bring foreclosure actions.¹⁴

Lack of Sufficient Data When IFR Terminated

Although the documents described above indicated high error rates in several categories of foreclosure activities, other documents obtained by the Committee show that when the Federal Reserve and OCC terminated the IFR and agreed to the settlement in January 2013, the

¹⁰ *Id.*

¹¹ Promontory Financial Group, LLC, *Article VII Foreclosure Review File Review Lookback, Preliminary Observations Update—Bankruptcy* (draft dated Dec. 17, 2012).

¹² Promontory Financial Group, LLC, *Mortgage Foreclosure Consent Order - Article VII; Independent Consultant (IC) Interviews (Bank of America)* (May 3, 2013).

¹³ Promontory Financial Group, LLC, *Update on the Foreclosure Look-back Review and Complaints Solicitation Process* (briefing before the Compliance Committee of the Board, PNC Bank, N.A.) (Dec. 19, 2012).

¹⁴ *Id.*

independent consultants had just begun to finalize review procedures, assemble complete loan files, and produce detailed data on foreclosure abuses. With this complex and costly preparatory work completed, several independent consultants projected that they could finish their work in 2013, but the Federal Reserve and OCC ended the review in January 2013.

On January 7, 2013, the Federal Reserve and the OCC announced that they had reached an agreement with 10 of the 14 servicers subject to the 2011 consent orders.¹⁵ Under this settlement, the servicers agreed to provide \$8.5 billion in “cash payments and other assistance,” including \$3.3 billion in direct payments to borrowers who had homes in foreclosure in 2009 or 2010.¹⁶ Three additional mortgage servicers later agreed to similar settlement terms, which increased the amount of cash payments and assistance to \$9.3 billion and resulted in 13 amended consent orders being issued on February 28, 2013.¹⁷

Significantly, under the terms of this new agreement, “the participating servicers would cease the Independent Foreclosure Review, which involved case-by-case reviews.”¹⁸

Documents obtained by the Committee show that, when the IFR was terminated and the Federal Reserve and OCC announced the settlement in January 2013, independent consultants were just completing the preparatory work necessary to conduct in-depth reviews of borrower files and were ready to proceed through the review process. For example, the independent consultant for Bank of America stated:

The peak of the engagement was at the end of December 2012. At this time we had 22 Promontory employees and 1,055 contracted Promontory Consultants working on the IFR.¹⁹

¹⁵ 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).

¹⁶ *Id.*

¹⁷ Board of Governors of the Federal Reserve System and Office of the Comptroller of the Currency, *Amendments to Consent Orders Memorialize \$9.3 Billion Foreclosure Agreement* (Feb. 28, 2013) (online at www.federalreserve.gov/newsevents/press/enforcement/20130228a.htm).

¹⁸ 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).

¹⁹ Promontory Financial Group, LLC, *Mortgage Foreclosure Consent Order—Article VII; Independent Consultant (IC) Interviews (Bank of America)* (May 3, 2013).

This independent consultant estimated that since it had put in place the required systems and hired and trained essential personnel, the “projected time to complete the review was approximately nine and a half months.”²⁰

The independent consultant also described the significant challenges it faced obtaining information from Bank of America in usable formats:

Due to the high volume of loans experiencing foreclosure difficulty, the information relating to a borrower’s history with loan modification applications, bankruptcy filing status, service dates, etc., was often entered in as free-form text “notes” within the servicing system, and was not readily available for analytical manipulation at the time of population or segment identification.²¹

It noted further:

The diverse and complex nature of the Servicer’s mortgage servicing and documentation systems and platforms, coupled with the number of rules we were required to create for testing and short timeframe, precluded the creation of a highly automated file management system. Therefore, the majority of relevant borrower and servicing information had to be manually extracted from the Servicer’s various systems and platforms.²²

The independent consultant made clear that its work was not complete at the time of the settlement:

Promontory envisioned a two-stage review, where “deep dives” to identify harm would follow the development of statistically robust, validated methods to identify borrowers with actual harm. These statistical methods were in the process of development using the results from the stage-one review (Promontory’s initial work on the IFR lookback sample and our review of borrower outreach complaints) at the time that review process was terminated in early January 2013. No deep dives had been identified or conducted at the time the review was ended. ...

Because our data were not complete at the time of the closure of the review, however, the ICDR [Independent Consultant Data Report] does not form a sound basis for inference concerning the frequency of errors in the population within the scope of the April 13, 2011, Consent Orders.²³

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

The independent consultant described a similar situation with its review of the foreclosure activities of PNC Bank. It reported that “[a]s of December 7, 2012, Promontory’s initial sample review was completed,” but “[a]s a result of financial injury errors found in the initial sample, an expanded sample of loans was added to the review.”²⁴

The independent consultant estimated that only a few additional months would have been necessary to complete the review process, stating that it “projected the completion of the remaining expanded sample reviews by 6/30/13.”²⁵

Promontory also described similar challenges for its work examining the foreclosure activities of Wells Fargo:

Promontory encountered significant difficulty in obtaining complete files from Wells Fargo. These difficulties were most acute at the project’s commencement, but difficulties continued for the duration of the project. In general, these difficulties occurred for two reasons. First, performing a comprehensive file review required many different documents. These documents were located on different systems, housed in different locations and originated from different business lines (included mortgages originated by entities acquired by Wells Fargo) and various third party vendors such as law firms. Second, specific document requirements evolved during the review period as the regulators finalized guidance on certain review methodologies and as Promontory developed greater familiarity with Wells Fargo’s systems.²⁶

PriceWaterhouseCoopers LLP (PwC), which was hired as the independent consultant for Citibank N.A., GMAC Mortgage, SunTrust Mortgage, and U.S. Bank National Association, also noted the lack of complete loan files. PwC wrote:

Nearly as soon as the review began, PwC discovered that the files servicers had assembled were often incomplete or needed to be supplemented with additional information.²⁷

This independent consultant also anticipated completing its work within one year, writing:

²⁴ Promontory Financial Group, LLC, *Update on the Foreclosure Look-back Review and Complaints Solicitation Process* (briefing before the Compliance Committee of the Board, PNC Bank, N.A.) (Dec. 19, 2012).

²⁵ Promontory Financial Group, LLC, *Mortgage Foreclosure Consent Order—Article VII; Independent Consultant (IC) Interviews (PNC Bank, N.A.)* (undated).

²⁶ Promontory Financial Group, LLC, *Mortgage Foreclosure Consent Order—Article VII; Independent Consultant (IC) Interviews (Wells Fargo)* (May 3, 2013).

²⁷ PriceWaterhouseCoopers, LLP, *Mortgage Foreclosure Consent Order—Article VII; Independent Consultant (IC) Interviews (Citibank N.A., GMAC Mortgage, SunTrust Mortgage, and U.S. Bank National Association)* (Apr. 16, 2013).

Just prior to the January 2013 settlements, PwC projected completing the engagements in 2013 or, in the case of GMAC and due to constraints related to its bankruptcy, in early 2014.²⁸

Questions for Hearing

On January 7, 2013, Comptroller of the Currency Thomas J. Curry stated that “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.”²⁹ He also stated that the settlement “will get more money to more people more quickly, and it will speed recovery in the nation’s housing markets.”³⁰

Regulators repeatedly argued that ending the IFR was “in the interest of providing the greatest benefit to borrowers potentially affected by the practices ... addressed in the 2011 Consent Order in a more timely manner than would have occurred under the Independent Foreclosure Review.”³¹

In response to questioning by Senator Elizabeth Warren during a hearing on April 11, 2013, Richard Ashton, Deputy General Counsel of the Federal Reserve, testified that “the approach that was taken in the settlement agreement really is focused on trying to get cash to the borrowers as quickly as possible.”³²

The new documents obtained by the Committee raise three fundamental questions about these assertions that should be answered at a public hearing.

Why did the Federal Reserve and the OCC terminate the IFR prematurely before its objective had been achieved?

It is unclear why the regulators believed it was in the best interests of borrowers to end the IFR when high error rates were identified during preliminary reviews and more detailed reviews had been prepared to identify the full extent of harm. It is also unclear what caused regulators to conclude that even in instances in which the extensive preparatory work needed to

²⁸ *Id.*

²⁹ 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).

³⁰ *Id.*

³¹ Office of the Comptroller of the Currency, *Amendment to April 13, 2011 Consent Order, in the Matter of PNC Bank, N.A.* (Feb. 28, 2013) (online at www.occ.gov/static/enforcement-actions/ea2013-124.pdf).

³² Senate Committee on Banking, Housing and Urban Affairs, Subcommittee on Financial Institutions and Consumer Protection, *Hearing on Outsourcing Accountability? Examining the Role of Independent Consultants*, 113th Cong. (Apr. 11, 2013).

enable independent consultants to conduct in-depth loan file reviews had been completed, the IFR should be terminated before those reviews were actually conducted or before reviews requested by borrowers had begun.

How did the regulators arrive at the compensation amounts in the settlement?

The amended consent orders executed on February 28, 2013, required servicers to make cash payments into a Qualified Settlement Fund, from which payments were provided to borrowers. For example, Bank of America was required to pay \$1,127,453,261,³³ PNC Bank was required to pay \$69,433,224,³⁴ JP Morgan Chase Bank N.A. was required to pay \$753,250,131,³⁵ and Citibank, N.A. was required to pay \$306,574,179.³⁶ It is unclear what criteria were used to determine these settlement amounts. It is also unclear whether these settlement amounts were in any way related to the actual or estimated harm suffered by borrowers.

How did the regulators determine that the amounts mortgage servicers would pay—and the amounts borrowers would receive—would be more favorable under the settlement than if the IFR had been completed?

When the IFR was terminated, at least some independent consultants had not reviewed enough loan files to determine reliable error rates. In some cases, however, preliminary data had identified double-digit error rates. Nonetheless, the Federal Reserve and the OCC argued that terminating the IFR would provide the “greatest benefit” to borrowers in a more timely manner than if the IFR had continued.

It is unclear how the Federal Reserve and the OCC made this determination. It is also unclear how the regulators determined that the settlement amounts for each mortgage servicing company—and the payments ultimately provided to individual borrowers from these settlement amounts—would provide a greater benefit to borrowers than if the IFR had continued until the independent consultants could report reliable data on servicer error rates. It is also unclear how

³³ Office of the Comptroller of the Currency, *Amendment to April 13, 2011 Consent Order, in the Matter of Bank of America, N.A.* (Feb. 28, 2013) (online at www.occ.gov/static/enforcement-actions/ea2013-127.pdf).

³⁴ Office of the Comptroller of the Currency, *Amendment to April 13, 2011 Consent Order, in the Matter of PNC Bank, N.A.* (Feb. 28, 2013) (online at www.occ.gov/static/enforcement-actions/ea2013-124.pdf).

³⁵ Office of the Comptroller of the Currency, *Amendment to April 13, 2011 Consent Order, in the Matter of JP Morgan Chase Bank, N.A.* (Feb. 28, 2013) (online at www.occ.gov/static/enforcement-actions/ea2013-129.pdf).

³⁶ Office of the Comptroller of the Currency, *Amendment to April 13, 2011 Consent Order, in the Matter of Citibank, N.A.* (Feb. 28, 2013) (online at www.occ.gov/static/enforcement-actions/ea2013-131.pdf).

regulators used these findings to assess whether terminating the IFR before the full extent of borrower harm was known was in the best interests of borrowers.

Conclusion

More than 4 million borrowers who had homes in foreclosure in 2009 and 2010 were directly affected by the actions of these mortgage servicing companies and the decisions of these regulators. For the reasons set forth above, I believe the Committee should convene a hearing to examine these critical issues with representatives from the Federal Reserve, the OCC, mortgage servicers, and independent consultants. Thank you for your consideration of this request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Elijah E. Cummings", with a large, stylized flourish at the end.

Elijah E. Cummings
Ranking Member