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November 1, 2010

The Honorable Timothy F. Geithner
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Sheila Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

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 Mary Schapiro
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

The Honorable John G. Walsh
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219

The Honorable Gary Gensler
Chairman
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

The Honorable Ed DeMarco
Acting Director
Federal Housing Finance Agency
1700 G Street, NW
Washington, DC 20552

The Honorable Debbie Matz
Chairman
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Dear Secretary Geithner and members of the Financial Stability Oversight Council,

I'm writing concerning the foreclosure fraud crisis and the resulting potential need for a special capital buffer for large systemically significant institutions. I'm particularly worried about the title insurance market, and attempts to lay off title liability onto large banks without corresponding changes in capital requirements.

Recently, Bank of America struck a deal with Fidelity National Title Insurance to indemnify the title insurer should legal problems with foreclosures create unanticipated title liability. Title insurers are clearly worried that they may face higher legal and policy costs if foreclosures are reversed, or should legal ambiguity cloud titles they already have insured. Bank of America's deal with Fidelity may be necessary to help keep the housing market functioning. Since title insurers have in some cases just refused to insure this market, someone must pay for the liability these insurers have refused to incur.

The extent of this liability is unclear. On October 8, Bank of America CEO Brian Moynihan told the public and investors that, despite the self-imposed foreclosure moratorium, his bank had not "found any foreclosure problems." He said, explaining the foreclosure moratorium, that "[w]hat we're trying to do is clear the air and say we'll go back and check our work one more time." The bank's SEC Form 8-K reinforced these comments. Yet two weeks later, the Wall Street Journal just reported that Bank of America, in reviewing 102,000 cases of problematic foreclosures, found problems "in 10 to 25 out of the first several hundred foreclosures it examined."

Both banks and regulators are claiming that the problems are simply process-oriented document errors that aren't really causing harm to the public at large. I suspect that no one really knows the extent of the problem, or the potential liability. What we do know is that title insurers are demanding indemnification.

With that in mind, it would seem prudent to require additional capital buffers for systemically significant institutions until the extent of the foreclosure fraud crisis is understood, or until title insurers decide that they no longer need indemnification for increased risk. It may also be useful to conduct a new round of stress tests to determine the resilience of the financial system with respect to these serious problems.

Regards,

Alan Grayson

Alan Grayson
Member of Congress