

**Congress of the United States**  
**Washington, DC 20515**

November 18, 2010

Members of the Financial Stability Oversight Council  
c/o Secretary Geithner, Chairman of the FSOC  
1500 Pennsylvania Avenue NW  
Washington DC, 20220

Secretary Geithner and Members of the Council,

In light of the recent report from the Congressional Oversight Panel regarding mortgage irregularities, we are writing to support the panel's call for a new round of stress tests to examine stability issues arising from residential mortgages held in securitized pools. Stability issues that have not been included in previous stress tests include liabilities for breaches of representations and warranties in Pooling and Servicing Agreements, liabilities arising from systemic mortgage documentation irregularities, and conflict of interests for servicers affiliated with firms that hold significant portfolios of second liens. We urge the council to recommend that its members conduct specific, thorough reviews of the potential effects of these issues on the risk profiles of the institutions they regulate and also that the Federal Reserve incorporate these potential liabilities into the new round of stress tests it announced earlier this week. We urge that the Financial Stability Oversight Council consider, in light of those stress tests, requiring that some financial companies divest affiliates involved in servicing securitized mortgages.

First, we urge that the members of the Council examine a representative sample of collateral loan files of each major servicer to determine if the files contain all the documents required by contract or by law, including the note; mortgage, deed of trust or equivalent document; and all documents evidencing or constituting the necessary assignment, delivery and recording of those documents. The Council should determine if the documents satisfy contractual representations and warranties in the pooling and servicing agreement or other governing instrument for the mortgages in question, and if not, any potential liability that may result. The collateral loan files examined should be selected at random, not by the servicers.

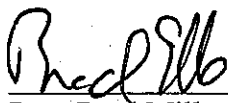
Questions about the documentation of securitized mortgages have received much recent attention. The financial institutions involved in securitization, including sponsors, trustees and servicers, have said publicly that any problems are isolated, technical in nature and easily cured. Others contend that the problems are pervasive, incapable of cure, and may ultimately require financial institutions involved in the securitization of residential mortgages to repurchase at face value hundreds of billions of dollars of mortgages, many of which are now non-performing. Many of the financial companies with potential liability to repurchase those mortgages are on any list of systemically significant firms.

Second, we urge the Council to examine the servicing of first mortgages by servicers that hold second liens or are affiliated with firms that hold second liens. The largest servicers hold almost half a trillion dollars in second liens, which are valued for accounting purposes at approximately 85 percent of face value. Those servicers, also systemically significant firms, assert that the second liens are performing, as are the first mortgages on the same property, and thus the second liens are accurately valued. The servicers contend that any interest the servicers may hold in second liens has not affected their servicing of securitized first mortgages. Others contend that there is an indefensible conflict of interest for servicers of securitized first mortgages to hold second liens on the same property, that servicers have acted contrary to the interest of the beneficial owners of first mortgages to avoid accounting losses on second liens, and that servicers face significant unrealized losses on those second liens.

An important purpose of the Dodd-Frank Act is to identify risks to the financial system as early as possible, so that regulators can take corrective action or minimize the disruption to the financial system that results from the insolvency of systemically significant financial companies. It is also a purpose of the Act to make risk to our nation's financial system transparent in order to restore the confidence of the American people in the financial system and in their government. It would serve those purposes to examine these issues and make the result of that examination public.

Finally, we urge that the Council consider using the authority under the Dodd-Frank Act to require that financial companies divest affiliates or other holdings involved in servicing securitized mortgages. There is no apparent advantage in having financial companies that securitized mortgages also act as trustees or servicers, and there is an obvious conflict of interest. The uncertainty about the extent of the risk to our nation's financial stability posed by the mortgage irregularities is largely the result of the control of critical information by financial companies at risk of insolvency from potential legal liability to mortgage investors and others. The control of critical information by financial companies with a possible motive to conceal systemic risks is incompatible with the intent of the Dodd-Frank Act, and is a grave threat to our nation's financial stability.

Thank you for your attention to this matter.



Rep. Brad Miller



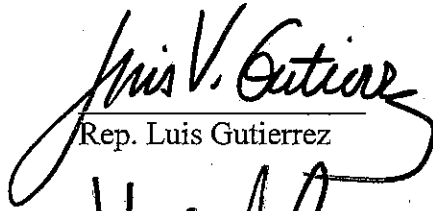
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