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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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February 25, 2011

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

Dear Chairman Issa:

Thank you for your letter on February 17, 2011, agreeing to my request for the Committee to hold a hearing on the foreclosure crisis. I appreciate your recognition of the significant work I have undertaken on this issue and, in particular, your offer to focus on “examples where housing lenders have committed violations of law or contractual agreements.”¹ I agree that a field hearing in Baltimore on March 8, 2011, would provide the Committee with an excellent opportunity to obtain a closer look at the devastation the foreclosure crisis is causing not just for families and communities, but for the nation.

This letter responds to your request for my assistance in preparing for this hearing. It provides: (1) a proposal for a forum and witnesses, (2) a detailed description of allegations against mortgage servicing companies, and (3) additional steps we can take to fully investigate these issues.

Proposal for Forum and Witnesses

As you and I have discussed, the University of Maryland School of Law has graciously offered to host this hearing for the Committee. This is an ideal forum for this event, and I have asked my staff to work closely with your staff to make detailed arrangements. In addition, I am pleased to report that three outstanding Maryland public servants have agreed to testify, with your consent. They are:

- **The Honorable Martin O'Malley**
Governor of Maryland

¹ Letter from Rep. Darrell E. Issa, Chairman, to Rep. Elijah E. Cummings, Ranking Member, to House Committee on Oversight and Government Reform (Feb. 17, 2010)

- **The Honorable Stephanie Rawlings-Blake**
Mayor of Baltimore
- **Mark Kaufman**
Commissioner of Financial Regulation
Maryland Department of Labor, Licensing and Regulation

My staff have been working diligently over the past week to identify additional witnesses, including community leaders, homeowners, and others who have been affected by the foreclosure crisis. I have asked my staff to follow-up with your staff directly to discuss some of the additional individuals they have contacted.

Allegations of Abuse by Mortgage Servicing Companies

As you know, the first letter I sent to you in my capacity as Ranking Member was on December 21, 2010. In that letter, I requested that the Committee conduct a bipartisan investigation of “the widespread utilization of flawed and fraudulent practices ... throughout the mortgage service industry.”² These allegations are not limited to companies participating in government-related mortgage programs, but are prevalent across the country and affect millions of families.

Since my letter in December, concerns with the actions of mortgage servicing companies have grown dramatically. For example, at our Committee’s first hearing on January 26, 2011, the Special Inspector General for the Troubled Asset Relief Program testified that the performance of mortgage servicing companies has been “abysmal.”³ He also warned:

From the repeated loss of borrower paperwork, to blatant failure to follow program standards, to unnecessary delays that severely harm borrowers while benefiting servicers themselves, stories of servicer negligence and misconduct are legion.⁴

² Letter from Rep. Elijah E. Cummings, Ranking Member, to Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform (Dec. 21, 2010) (online at http://democrats.oversight.house.gov/images/stories/101221_Letter_from_Mr_Cummings_to_Mr_Issa_re_OGR_Hearing_on_Foreclosures.pdf).

³ Testimony of Neil M. Barofsky, Special Inspector General for the Troubled Asset Relief Program, *Hearing on Bailouts and the Foreclosure Crisis: Report of the Special Inspector General for the Troubled Asset Relief Program*, House Committee on Oversight and Government Reform (Jan. 26, 2011).

⁴ *Id.*

He described “daily accounts of errors and more serious misconduct,” and he testified that his hotline has “received more than 24,000 contacts,” many of which “are complaints from homeowners dealing with mortgage servicers.”⁵

Specific allegations against mortgage servicing companies include a wide range of serious abuses, such as the following:

- ***Wrongful Foreclosures.*** A growing number of homeowners report that mortgage servicing companies have executed improper home repossessions when homeowners owned their properties free of mortgages or were current on their mortgage payments, as well as taking payments from borrowers while still proceeding with home seizures.⁶
- ***“Robo-signing.”*** Employees at some of the nation’s largest financial institutions have admitted to using flawed and forged documents to execute foreclosures. On October 13, 2010, the Attorneys General of all fifty states announced a joint investigation into these abuses. Additionally, the Federal Reserve, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency are investigating “whether systematic weaknesses [in the industry] are leading to improper foreclosures.”⁷
- ***Deficient Recordkeeping.*** Recent court cases demonstrate that the system for keeping the legally required paperwork for proving property ownership collapsed as mortgages were packaged into securities and sold repeatedly from entity to entity. On January 7, 2011, the Supreme Judicial Court of Massachusetts voided two home seizures, concluding that banks failed to adequately prove that they owned mortgages when they foreclosed on them.⁸

⁵ Transcript, *Hearing on Bailouts and the Foreclosure Crisis: Report of the Special Inspector General for the Troubled Asset Relief Program*, House Committee on Oversight and Government Reform (Jan. 26, 2011).

⁶ “*Unfortunate Error*” by *Bank and a Home is Gone*, Associated Press (Dec. 8, 2010) (online at www.msnbc.msn.com/id/40571573/ns/business-us_business#); *Bank of America Apologized for Accidentally Repossessing Home*, ABC News (Mar. 11, 2010) (online at <http://abcnews.go.com/GMA/bank-america-apologized-accidentally-repossessing-home-taking-pet/story?id=10071658>); *Big Lenders May Be First to Settle Foreclosure Probe, Iowa Says*, Bloomberg (Jan. 06, 2011) (online at www.bloomberg.com/news/2011-01-03/state-foreclosure-settlements-to-start-with-biggest-banks-iowa-ag-says.html).

⁷ “*Robo-Signing*” and *Other Alleged Documentation Problems in Judicial and Nonjudicial Foreclosure Processes*, Congressional Research Service (Report No. R41491) (Nov. 15, 2010); *50 States Sign Mortgage Foreclosure Joint Statement*, National Association of State Attorneys General (Oct. 13, 2010) (online at www.naag.org/joint-statement-of-the-mortgage-foreclosure-multistate-group.php); *Ben Bernanke: Regulators Looking Into Foreclosure Mess*, The Huffington Post (Oct. 25, 2010) (online at www.huffingtonpost.com/2010/10/25/ben-bernanke-regulators-l_n_773301.html).

⁸ *Faulty Paperwork May Slow Millions of Foreclosures*, NPR (Jan. 18, 2011) (online at www.npr.org/2011/01/18/132930409/faulty-paperwork-may-slow-millions-of-foreclosures);

- ***Inflated Fees.*** The United States Trustee Program and the Federal Trade Commission are conducting a joint investigation into “complaints of chronic accounting irregularities by mortgage servicing companies.”⁹
- ***Deceptive Practices.*** On December 17, 2010, the Attorneys General of Arizona and Nevada filed suits against Bank of America, alleging that it falsely assured borrowers that their homes would not be foreclosed upon while requests for mortgage modifications were pending, falsely notified credit reporting agencies that homeowners were in default on their mortgages, and provided deceptive reasons for denying modifications.¹⁰
- ***Fraud in Lending.*** The Financial Fraud Enforcement Task Force is investigating fraud related to mortgage lending and mortgage modification. This investigation is being conducted under the leadership of the Justice Department, and working with the Treasury Department, the Securities and Exchange Commission, and the Department of Housing and Urban Development.¹¹
- ***Noncompliance with Federal Housing Policy.*** The Federal Housing Administration and the Department of Housing and Urban Development are separately reviewing servicer compliance with federal housing policies requiring mortgage companies to take steps to ensure that struggling borrowers can avoid foreclosure.¹²
- ***Improper Foreclosures and Fees Charged to Military Families.*** On January 17, 2011, JP Morgan Chase & Co. admitted to wrongfully foreclosing on the homes of military service members and improperly charging them millions of dollars.¹³ A week later, the

Massachusetts Ruling on Foreclosures Is a Warning to Banks, New York Times (Jan. 7, 2011) (online at www.nytimes.com/2011/01/08/business/08mortgage.html); *U.S. Bank National Association, Trustee vs. Antonio Ibanez*, Mass. Sup. Ct. Appeals, No. SJC.10694 (Jan. 7, 2011).

⁹ *USTP Actions Against Mortgage Fraud and Abuse Are Part of Financial Fraud Enforcement Task Force Sweep*, U.S. Department of Justice (online at www.justice.gov/ust/eo/public_affairs/articles/docs/2010/abi_201007.pdf).

¹⁰ Complaint, *Arizona v. Countrywide Financial Corporation et al.*, Cause No. CV 2010-033580, Maricopa County Superior Court, 2010; Complaint, *Nevada v. Bank of America Corporation et al.*, Case No.A-10-631557-B, Clark County District Court, 2010.

¹¹ *Financial Fraud Enforcement Task Force Announces Results of Broadest Mortgage Fraud Sweep in History*, U.S. Department of Justice (June 17, 2010) (online at www.justice.gov/opa/pr/2010/June/10-opa-708.html).

¹² *Task Force Probing Whether Banks Broke Federal Laws During Home Seizures*, Washington Post (Oct. 20, 2010) (online at www.washingtonpost.com/wp-dyn/content/article/2010/10/19/AR2010101904845.html).

¹³ *No. 2 Bank Overcharged Troops on Mortgages*, NBC News (Jan. 17, 2011) (online at http://today.msnbc.msn.com/id/41043127/ns/today-today_home_and_garden/) (quoting Julia

New York Times reported that Deutsche Bank illegally foreclosed on the home of Sergeant James Hurley while he was serving in Iraq, forcing his “wife, Brandie, and her two young children to move out and find shelter elsewhere.”¹⁴ Holly Petraeus, recently appointed to lead the division within the Consumer Financial Protection Bureau charged with protecting the interests of service members, wrote on February 1, 2011, to warn approximately two dozen mortgage servicers to comply with laws regarding service member mortgage lending.¹⁵

Similar problems have been identified in Maryland. Last September, for example, three of the nation’s largest mortgage lenders—Ally Financial, JPMorgan Chase, and Bank of America—announced that they were temporarily halting foreclosures in 23 states that require judicial action to complete foreclosure sales.¹⁶ Their actions were based on revelations that they may have approved thousands of foreclosures without verifying the underlying documents, misused notary stamps, submitted forged affidavits, and failed to comply with state laws.¹⁷

Because Maryland does not require court orders to complete foreclosures, I joined Governor O’Malley and several Members of Maryland’s congressional delegation in writing to urge our state’s highest court to similarly halt foreclosure proceedings.¹⁸ Maryland Chief Judge Robert M. Bell and the Maryland Standing Committee on Rules of Practices and Procedure ultimately concluded:

[E]vidence that has recently come to light, largely through admissions under oath by the affiants themselves, has shaken the confidence that the courts have traditionally given to those kinds of affidavits. In the Committee’s view, the use of bogus affidavits to support

Rowles, the wife of U.S. Marine Corps fighter pilot Jonathan Rowles, stating that she received as many as three calls a day from collection agencies, even though her family owed no money and had all the appropriate paperwork).

¹⁴ *A Reservist in a New War, Against Foreclosure*, *New York Times* (Jan. 26, 2011) (online at www.nytimes.com/2011/01/27/business/27foreclose.html).

¹⁵ See, e.g., Letter from Holly Petraeus, Office of Servicemember Affairs, Consumer Financial Protection Bureau Implementation Team, to Brian T. Moynihan, CEO, Bank of America (Feb. 1, 2011). See also *20,000 Military Members, Vets Faced Foreclosure in 2010*, *USA Today* (Feb. 4, 2011) (online at www.usatoday.com/news/military/2011-02-04-1Avetforeclosures04_ST_N.htm) (reporting that more than 20,000 active duty troops, veterans and reservists lost their homes in 2010 due to foreclosures).

¹⁶ *Bank of American Halts Foreclosures in 23 States*, *CBS News* (Oct. 2, 2010) (online at www.cbsnews.com/stories/2010/10/01/business/main6919520.shtml).

¹⁷ Ariana Eunjung Cha, *Bank of America Latest to Put Hold on Foreclosures Amid Paperwork Concerns*, *Washington Post* (Oct. 1, 2010) (online at www.washingtonpost.com/wp-dyn/content/article/2010/10/01/AR2010100106678.html).

¹⁸ Letter from the Honorable Martin O’Malley, Governor, *et al.* to the Honorable Robert M. Bell, Chief Judge (Oct. 9, 2010).

actions to foreclose liens on property, apart from the prejudice to homeowners, constitutes an assault on the integrity of the judicial process itself.¹⁹

Within days, the Maryland Court of Appeals adopted a set of emergency rule changes that enable the court to conduct detailed reviews of foreclosure files and authorize judges to require parties who file questionable documents to appear and prove the sufficiency and legitimacy of the documents.²⁰

Additional Steps

In light of the breadth, gravity, and pervasive nature of the allegations against mortgage servicing companies, I believe several additional steps are warranted beyond the field hearing in Baltimore. Since you have not yet agreed to these steps at this time, I plan to move forward myself today and hope you will support my ongoing efforts to investigate these issues in more detail.

One of the most critical steps we can take is to obtain key documents from mortgage servicing companies. The top ten mortgage servicing companies in the country are Bank of America, Wells Fargo & Co., JP Morgan Chase & Co., CitiMortgage, Inc., Ally Bank/Residential Capital, LLC, U.S. Bank Home Mortgage, SunTrust Bank, PHH Mortgage, PNC Mortgage/National City, and MetLife Home Loans.²¹ On February 16, my staff provided you with draft letters to these companies seeking documents relating to improper foreclosures and inflated fees. Since we have not yet received your response, I am sending these letters today under my signature alone, and I hope you will support my efforts to obtain these documents.

Another key step we can take is to investigate the claims of victims. When the Special Inspector General for the Troubled Asset Relief Program appeared before the Committee on January 26, 2011, he testified that thousands of homeowners have reported concerns about the abusive practices of mortgage servicing companies. On February 4, I proposed that we jointly request a comprehensive audit from Mr. Barofsky to survey the various complaints his office received, and my staff provided a draft for your review. Although you declined to join this request, I am sending it today and hope you will entertain further review when it is completed.

¹⁹ Proposed Rules Change, 166th Report, Standing Committee on Rules of Practice and Procedure (submitted Oct. 15, 2010).

²⁰ Rules Order, Court of Appeals of Maryland (Oct. 20, 2010).

²¹ *Residential Servicers Ranked by Total Volume in 2010 Q3*, Mortgagestats.com (online at http://mortgagestats.com/residential_servicing/).

Conclusion

Once again, thank you for your letter on February 17, 2011. My hope is that we can work together to prevent mortgage servicing companies from illegally foreclosing on families or inappropriately inflating fees they charge homeowners. I hope our work can contribute to constructive efforts to keep families in their homes for the benefit of homeowners and investors alike, which in turn would benefit the broader economy.

Sincerely,

A handwritten signature in blue ink that reads "Elijah E. Cummings". The signature is written in a cursive, flowing style with a large loop at the end of the last name.

Elijah E. Cummings
Ranking Member