ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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January 18, 2012

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

Dear Chairman Issa:

We write today to request that you issue a subpoena to the Federal Housing Finance Agency (FHFA) compelling the production of all documents associated with its analyses of whether mortgage loan modifications with principal reductions should be offered by Fannie Mae and Freddie Mac. During a hearing before the Committee on November 16, 2011, the Acting Director of FHFA, Edward DeMarco, committed under oath to provide these materials to the Committee. Despite numerous written and oral follow-up requests, however, Mr. DeMarco has failed to provide them.

During the Committee's hearing in November, Rep. John Tierney asked Mr. DeMarco whether he had determined, as a matter of policy, that it was preferable to foreclose on properties rather than offer loan modifications that include principal reductions, even if foreclosures resulted in greater losses to FHFA and U.S. taxpayers than would be associated with principal reductions. In response to Rep. Tierney's question, Mr. DeMarco stated:

> We have been through the analytics of the underwater borrowers at Fannie and Freddie, and looked at the foreclosure alternative programs that are available, and we have concluded that the use of principal reduction within the context of a loan modification is not going to be the least-cost approach for the taxpayer.[1]

At the conclusion of his questioning, Rep. Tierney asked Mr. DeMarco to provide both the statutory authority for his claim that FHFA is prohibited from allowing principal reduction programs, as well as any analysis that FHFA conducted demonstrating that foreclosures always

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[1] House Committee on Oversight and Government Reform, *Hearing on Pay for Performance: Should Fannie and Freddie Executives be Receiving Millions in Bonuses?* (Nov. 16, 2011).

serve taxpayer interests when compared to principal reductions. Specifically, Rep. Tierney stated:

> What you're telling me flies in the face of all these people who have come up with a quite different idea. ... I'd like you to do two things for the Committee if you would. First, I want you to identify anywhere in the statute that specifically prohibits you from developing principal reduction programs. ... [S]econd, I'd like you to submit whatever analysis you have done that shows why reducing the principal on some mortgages is worse for the United States taxpayer than foreclosure.[2]

In response to Rep. Tierney's request, Mr. DeMarco committed under oath to provide these documents, stating: "We can provide that information as you suggested, Congressman."[3]

In order to follow-up on this request, all Democratic members of the Committee sent a letter to Mr. DeMarco on November 30, 2011, making clear what information he should provide to the Committee. The letter requested that he produce:

(1) "the statutory provision you believe prohibits the Federal Housing Finance Agency (FHFA) from allowing Fannie Mae and Freddie Mac to reduce mortgage principal in all cases"; and

(2) "the analysis you conducted, including the data you examined, demonstrating that principal reduction never serves the long-term interests of the taxpayer when compared to foreclosure."[4]

We requested that this information be provided by December 9, 2011, but Mr. DeMarco has failed to provide even a single document. Minority staff have made repeated inquiries to Mr. DeMarco's staff about the status of the document production, but they have failed to provide any indication of when he plans to comply.

While Mr. DeMarco has failed to provide supporting documents demonstrating why a principal reduction program is not in the best interest of taxpayers, economists are increasingly announcing their support for such a program. For example, over the past several months, officials with the Federal Reserve have made strong public statements supporting principal reduction. On January 4, Federal Reserve Chairman Bernanke issued a white paper to Congress that stated:

> Principal reduction has the potential to decrease the probability of default (and thus the deadweight costs of foreclosure) and to improve migration between labor markets.

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[2] *Id.*

[3] *Id.*

[4] Letter from Democratic Members of the Committee on Oversight and Government Reform to Mr. Edward DeMarco, Acting Director of the Federal Housing Finance Agency (Nov. 30, 2011).

> Principal reduction may reduce the incidence of default both by improving a household's financial position, and thus increasing its resilience to economic shocks, and by reducing the incentive to engage in "strategic" default (that is, to default solely based on the household's underwater position rather than on the affordability of the payments). [5]

On December 16, 2011, during a hearing before the Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs, the President of the New York Federal Reserve Bank, William Dudley, also called for implementation of a targeted principal reduction program to bolster the nation's economic recovery and serve the long-term interests of U.S. taxpayers. President Dudley explained:

> [w]e think that you can devise a program that, for home buyers that have mortgages that are under water, to incent them to continue to pay on those mortgages by giving them some program of principal reduction. Obviously the devil's in the details, so you have to have good program design. But we are confident that one can design a program, which would be net beneficial—net positive—to the taxpayer. [6]

The recent statements in support of principal reduction issued by Chairman Bernanke and President Dudley follow similar public statements issued by Neil Barofsky, former Special Inspector General for TARP; Alan Blinder, former Vice Chairman of the Federal Reserve; and Mark Zandi, Chief Economist, Moody's Analytics. [7]

Given Mr. DeMarco's failure to produce to the Committee the documents he committed under oath to provide and the call by Federal Reserve officials for the implementation of loan modification programs that include principal reduction to address the ongoing housing crisis, we believe we are left with no option but to compel Mr. DeMarco's compliance. For these reasons, we request that you issue a subpoena demanding these documents, or that you schedule a business meeting so Members may vote to authorize a subpoena in order to obtain these documents.

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[5] Federal Reserve Chairman Ben S. Bernanke, *The U.S. Housing Market: Current Conditions and Policy Considerations* (Jan. 4, 2012) (online at www.federalreserve.gov/publications/other-reports/files/housing-white-paper-20120104.pdf).

[6] House Committee on Oversight and Government Reform, Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs, *Hearing on What the Euro Crisis Means for Taxpayers and the U.S. Economy* (Dec. 16, 2011) (online at www.youtube.com/watch?v=Hw-9dhSmkJ4&feature=youtu.be).

[7] *See*, *Foreclosure Crisis Lessons Not Yet Learned*, Huffington Post (Oct. 5, 2011) (online at www.huffingtonpost.com/neil-barofsky/foreclosures-mortgage-crisis-_b_995922.html?page=3); *How to Clean Up the Housing Mess*, The Wall Street Journal (Oct. 20, 2011) (online at www.online.wsj.com/article/SB10001424052970204485304576640983793571772.html); and *To Shore Up the Recovery, Help Housing*, Moody's Analytics (May 25, 2011) (online at www.economy.com/mark-zandi/documents/To-Shore-Up-the-Recovery-Help-Housing.pdf).

If you have any questions, please contact Lucinda Lessley at (202) 225-5051. Thank you in advance for your attention to this matter.

Sincerely,

Elijah E. Cummings
Ranking Member

John F. Tierney
Member