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# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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October 27, 2011

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 you issue so-called "friendly" subpoenas to federal banking regulators to obtain unredacted copies of "engagement letters" they have approved between mortgage servicing companies and independent firms hired to review past foreclosure abuses. If you decline to issue these subpoenas, I respectfully request that this issue be added to the Committee's business meeting currently scheduled for Thursday, November 3, 2011.

### **"Engagement Letters" Ordered After Regulators Identified Illegal Foreclosures**

Approximately six months ago, the Federal Reserve Board, the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) issued a joint report summarizing the results of "horizontal reviews" they conducted of the nation's 14 largest mortgage servicers. The summary stated:

The reviews found critical weaknesses in servicers' foreclosure governance practices, foreclosure document preparation processes, and oversight and monitoring of third-party vendors, including foreclosure attorneys. ... [T]he weaknesses at each servicer, individually or collectively, resulted in unsafe and unsound practices and violations of applicable federal and state law and requirements.<sup>1</sup>

The summary also described the widespread nature of these weaknesses:

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<sup>1</sup> Federal Reserve System, Office of the Comptroller of the Currency, and Office of Thrift Supervision, *Interagency Review of Foreclosure Policies and Practices* (Apr. 13, 2011) (online at [www.occ.treas.gov/news-issuances/news-releases/2011/nr-occ-2011-47a.pdf](http://www.occ.treas.gov/news-issuances/news-releases/2011/nr-occ-2011-47a.pdf)).

The results elevated the agencies' concern that widespread risks may be presented—to consumers, communities, various market participants and the overall mortgage market. The servicers included in this review represent more than two-thirds of the servicing market. Thus, the agencies consider problems cited within this report to have widespread consequences for the national housing market and borrowers.<sup>2</sup>

The summary also identified specific cases of improper foreclosures that violated federal law:

[E]xaminers did note cases in which foreclosures should not have proceeded due to an intervening event or condition, such as the borrower (a) was covered by the Servicemembers Civil Relief Act, (b) filed for bankruptcy shortly before the foreclosure action, or (c) qualified for or was paying in accordance with a trial modification.<sup>3</sup>

To address these widespread systemic deficiencies, the regulators entered into consent orders with the mortgage servicers that required them to take steps to correct the problems identified in the reviews. The mortgage servicers were required to retain independent firms to conduct a thorough review of foreclosure actions that were pending from January 1, 2009, through December 31, 2010, to identify borrowers that have been financially harmed by the banks' deficient practices. The regulators also directed the banks to submit for their approval "engagement letters" establishing the terms of the reviews to be conducted by the independent firms, including the specific review methodologies to be employed.<sup>4</sup>

### **Subpoenas Necessary to Obtain Engagement Letters**

On May 31, 2011, I wrote to the regulators to request copies of the engagement letters between the 14 mortgage servicing companies and the private consultants they were directed to hire.<sup>5</sup> I made this request based on concerns that the regulators permitted the mortgage servicing companies themselves—and their private consultants—to propose "the methodology for conducting the Foreclosure Review," the "selection of criteria for cases to be reviewed," and "any proposed sampling techniques."<sup>6</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Office of the Comptroller of the Currency, Office of Thrift Supervision, Federal Reserve Board, and Federal Deposit Insurance Corporation (May 31, 2011).

<sup>6</sup> *See, e.g.*, Federal Reserve System, *Press Release* (Apr. 13, 2011) (online at [www.federalreserve.gov/newsevents/press/enforcement/20110413a.htm](http://www.federalreserve.gov/newsevents/press/enforcement/20110413a.htm)).

On June 10, 2011, OCC and OTS responded to my request, stating that they “would not be able to produce the letters in the absence of legal compulsion” because “[p]roduction of the documents, unless legally compelled by the Chairman on behalf of the Committee, could result in a waiver of applicable privileges.”<sup>7</sup> I also received a response from the Federal Reserve on July 1, 2011, asserting that, in the absence of legal compulsion, they could not produce the engagement letters because they contain “confidential supervisory information that is protected by law from public disclosure.”<sup>8</sup>

As you know, during our first Committee business meeting on January 25, 2011, we adopted our Committee rules, which provide you with authority to issue subpoenas without a vote of the Committee. At that business meeting, you explained that so-called “friendly” subpoenas might be necessary in order to overcome legal barriers to disclosure. You explained:

[E]very chairman faces a subpoena now and then. Some of them are because individuals say I can’t speak unless you give me the immunity that a subpoena effectively gives me so that I can’t be sued for coming and speaking about matters that others may find somehow private or not to be disclosed.<sup>9</sup>

This is one of these cases. No agency has indicated a refusal to cooperate with this request. Instead, they have explained that they need subpoenas in order to legally produce the requested documents. In fact, you took this exact approach when you issued your first subpoena as Chairman on February 16, 2011, compelling Bank of America to produce internal bank records relating to Countrywide mortgages. As you explained:

They have been friendly subpoenas, meaning that the people like Bank of America and others said that we want to give you the documents, but we would like to have a subpoena so we can’t be sued by third parties, and that’s a situation like that.<sup>10</sup>

Our Committee voted unanimously on February 10, 2011, to adopt the Committee’s oversight plan for this Congress pursuant to House Rule X, Clause 2(d). The oversight plan states that the Committee will “examine the foreclosure crisis including wrongful foreclosures

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<sup>7</sup> Letter from Office of the Comptroller of the Currency and Office of Thrift Supervision to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (June 10, 2011).

<sup>8</sup> Letter from Federal Reserve System to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (July 1, 2011). *See also* Letter from the Federal Deposit Insurance Corporation to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (July 5, 2011) (stating that FDIC was not the “primary regulator for any of the mortgage servicers involved in the horizontal review”).

<sup>9</sup> House Oversight and Government Reform Committee, *Organizational Meeting*, 112th Cong. (Jan. 25, 2011).

<sup>10</sup> *Andrea Mitchell Reports*, MSNBC (Apr. 2, 2011).

and other abuses by mortgage servicing companies.”<sup>11</sup> It is incumbent on our Committee to ensure that appropriate oversight and remediation actions are taking place. We cannot fulfill our duty without reviewing the full, unredacted engagement letters concluded between mortgage servicing companies and the firms they engaged to review their foreclosure actions.

For these reasons, I request that you issue subpoenas for copies of all engagement letters entered into pursuant to the April 13, 2011, consent orders. If you decline to issue these subpoenas, I respectfully request that you include this issue on the agenda for the business meeting you have scheduled for Thursday, November 3, 2011.

Thank you for consideration of this request.

Sincerely,

A handwritten signature in blue ink that reads "Elijah E. Cummings". The signature is stylized and written in a cursive-like font.

Elijah E. Cummings  
Ranking Member

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<sup>11</sup> House Oversight and Government Reform Committee, *Oversight Plan*, 112th Cong. (Feb. 10, 2011) (online at [http://oversight.house.gov/images/stories/112th\\_Oversight\\_Plan\\_02092011.pdf](http://oversight.house.gov/images/stories/112th_Oversight_Plan_02092011.pdf)).