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ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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January 23, 2012

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

Dear Mr. Chairman:

At the outset of the 112th Congress, the Oversight Committee unanimously adopted an oversight plan that included a proposal I offered to “examine the foreclosure crisis including wrongful foreclosures and other abuses by mortgage servicing companies.” Although the Committee has taken some preliminary steps to examine these issues, to date it has failed to conduct a full, fair, or thorough investigation of the widespread abuses committed by mortgage servicing companies against American families, particularly military servicemembers.

In its first full year of investigations this Congress, the Committee held 118 hearings with 342 witnesses, but not a single bank executive was called to testify on the foreclosure crisis, despite multiple requests from me and other Committee Members. In addition, in 2011, the Committee issued more than 200 detailed document requests and subpoenas, but none sought documents relating to wrongful foreclosures or abusive lending practices. The only exception was a document request you and I sent jointly to Bank of America, but it has not produced a single responsive document, and the Committee has taken no action to compel production.

Rather than using its substantial investigative powers to protect American consumers from the abuses of banks, the Committee has focused instead on attacking the new agency created by Congress to protect these same consumers. Tomorrow, the Committee will hold its third hearing with officials from the Consumer Financial Protection Bureau (CFPB). In addition, the Committee has received hundreds of pages of documents in response to a detailed document request you sent in June 2011, as well as numerous questions for the record after Committee hearings, regarding allegations that CFPB acted outside its authority in providing advice during negotiations toward a possible settlement with mortgage servicing companies relating to foreclosure abuses.

Based on the witnesses the Committee has called and the documents it has requested so far this Congress, it appears that the Committee is more interested in protecting powerful banks than vulnerable American consumers. I do not believe these priorities reflect the best interests of the American public. Given the extent of the foreclosure crisis and the harm it has caused our constituents, I sincerely hope we can work together to reverse this trend in the coming year.

Bank Abuses Neglected

Recent mortgage lending practices and the resulting collapse of housing prices have cost American households \$7 trillion, and millions of households are in, or facing the possibility of, foreclosure.¹ One of the most troubling aspects of the crisis is the continued allegations of abusive and fraudulent practices by the nation's banks against homeowners.

In April 2011, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the then-Office of Thrift Supervision released an *Interagency Review of Foreclosure Policies and Practices*, which identified "critical weaknesses" in the foreclosure practices of 14 federally regulated mortgage servicers. The Review found that these weaknesses resulted in "unsafe and unsound practices and violations of applicable federal and state law and requirements."¹ The Review indicated the regulatory agencies found multiple examples of foreclosures that should not have proceeded, including illegal foreclosures against military homeowners in violation of the Servicemembers Civil Relief Act.² Thousands of affected servicemembers have been identified, and three major banks have been forced to pay unprecedented, multimillion dollar settlements related to the abuses.³

Since becoming Ranking Member, I have written to you multiple times highlighting the need to investigate abusive and improper conduct against homeowners. In December 2010, I requested that the first hearing convened by the Committee consider alleged flawed and fraudulent practices by the mortgage servicing industry.⁴

¹ 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).

² *Id.*

³ See *JPMorgan Mails \$2 Million to Military Families for Overcharges, Lost Homes*, Bloomberg (Jan. 18, 2011) (online at www.bloomberg.com/news/2011-01-18/jpmorgan-mails-2-million-to-military-families-for-overcharges-lost-homes.html); see also *JPMorgan Settles Military Mortgage Suits for \$56 Million*, Bloomberg (Apr. 21, 2011) (online at www.businessweek.com/news/2011-04-21/jpmorgan-settles-military-mortgage-suits-for-56-million.html); Department of Justice, *Justice Department Settles with Bank of America and Saxon Mortgage for Illegally Foreclosing on Servicemembers* (May 26, 2011) (online at www.justice.gov/opa/pr/2011/May/11-crt-683.html).

⁴ Letter from Representative Elijah E. Cummings to Ranking Member Darrell E. Issa (Dec. 21, 2010) (online at http://democrats.oversight.house.gov/index.php?option=com_content&task=view&id=5175&Itemid=49).

In January 2011, I asked that you invite the Executive Vice President and General Counsel of JPMorgan Chase to testify, which you refused.⁵

In February, the Committee adopted its oversight plan for the 112th Congress, which included a commitment I proposed to “examine the foreclosure crisis including wrongful foreclosures and other abuses by mortgage servicing companies.”⁶ At the time, you commended my efforts and stated, “I believe we now have a plan that can be unanimously adopted.”⁷

Later that month, I asked that you join me in requesting from the ten largest mortgage servicing companies key documents relating to alleged illegal foreclosures and inflated fees charged to homeowners.⁸ When you did not act, I sent letters to those companies myself.⁹

In May, I requested that you issue subpoenas to the six mortgage servicing companies that had refused to comply voluntarily with my February requests for documents.¹⁰ You did not issue the subpoenas.

In June, I sent you a letter providing additional information on mortgage servicer abuses and reiterating the need for subpoenas for documents relating to illegal foreclosures, inflated fees, and other abuses being committed against military servicemembers.¹¹ Again, you did not act.

⁵ Letter from Ranking Member Elijah E. Cummings to Chairman Darrell E. Issa (Jan. 24, 2011).

⁶ House Committee on Oversight and Government Reform, *Oversight Plan* (Feb. 10, 2011) (online at http://oversight.house.gov/images/stories/112th_Oversight_Plan_02092011.pdf).

⁷ House Committee on Oversight and Government Reform, *Business Meeting on Oversight Plan*, 112th Cong. (Feb. 10, 2011).

⁸ Letter from Ranking Member Elijah E. Cummings to Chairman Darrell E. Issa (Feb. 25, 2011) (online at http://democrats.oversight.house.gov/index.php?option=com_content&task=view&id=5229&Itemid=49).

⁹ Letters from Ranking Member Elijah E. Cummings to various mortgage servicing industry officials (Feb. 25, 2011) (online <http://democrats.oversight.house.gov/images/stories/Correspondence/Foreclosure%20Letters/Cummings%20to%20Mortgage%20Servicers%20%2811%20Letters%29.pdf>).

¹⁰ Letter from Ranking Member Elijah E. Cummings to Chairman Darrell E. Issa (May 24, 2011) (online at http://democrats.oversight.house.gov/index.php?option=com_content&task=view&id=5315&Itemid=49).

¹¹ Letter from Ranking Member Elijah E. Cummings to Chairman Darrell E. Issa (June 21, 2011) (online at http://democrats.oversight.house.gov/index.php?option=com_content&task=view&id=5350&Itemid=104).

During a hearing in July, after receiving no indication that you planned to move forward, I moved to subpoena mortgage servicing companies that allegedly initiated or completed illegal foreclosures and committed other abuses against military servicemembers. After suspending the hearing and consulting with staff, you agreed to join me in requesting documents relating to the abuses affecting U.S. servicemembers.¹²

To date, however, you have not sent these document requests. Instead, you sent letters requesting that mortgage servicing companies provide narrative descriptions of violations they have committed and the steps they have taken to address them.¹³ Although their responses were interesting and helpful, they did not include the production of any pre-existing documents that would be helpful to the Committee's investigation.

The Committee has not used its full investigative power to protect American consumers or to thoroughly examine the numerous allegations of wrongdoing by mortgage servicers. Among the 342 witnesses who were called to testify at our 118 Committee and subcommittee hearings in 2011, not a single bank executive was called to testify on the foreclosure crisis. Though you issued over 200 document requests and subpoenas in 2011, only one bank – Bank of America – was asked to produce documents about wrongful foreclosure or abusive lending practices. It still has not produced a single responsive document, and the Committee has taken no action to compel production.¹⁴

Bank Reform Efforts Scrutinized

Instead of investigating the widespread abuses committed by banks against American homeowners, the Committee has repeatedly attacked efforts to protect consumers from financial abuse.

¹² See Ranking Member Elijah E. Cummings, *Press Release: A Bipartisan Victory for Servicemembers; Issa Joins Cummings to Hold Banks Accountable for Foreclosure Abuses Against Active-Duty Military* (July 14, 2011) (online at http://democrats.oversight.house.gov/index.php?option=com_content&task=view&id=5378&Itemid=104).

¹³ See, e.g., Letter from Chairman Darrell Issa to Barbara J. Desoer, President, Bank of American Home Loans (July 25, 2011).

¹⁴ After Bank of America “chose not to provide direct responses to all of the questions” posed in a request for information you sent in July, we sent a joint request to Bank of America seeking the loan files of borrowers “in which BofA assessed foreclosures on servicemembers in violation of the SCRA from the time period of January 1, 2006, to the present,” including all communications between the Bank’s employees, as well as the servicemember relating to his or her mortgage. Bank of America responded by arguing that because the bank was the subject of “an ongoing Department of Justice analysis” and had “entered into a Consent Order with the Office of the Comptroller of the Currency that calls for a comprehensive, independent review of its foreclosures in 2009 and 2010,” Bank of America would “respectfully request that the Bank be allowed to supplement” information it provided earlier “when appropriate in light of the Department of Justice and OCC reviews.”

Tomorrow, the Committee will hold its third oversight hearing with leadership of the CFPB, a newly created federal agency charged with protecting ordinary American consumers from abusive, misleading, or confusing financial practices. During the first two hearings, the majority repeatedly questioned the character of Professor Elizabeth Warren, who was charged with standing up the Bureau, and criticized the Bureau's structure, funding, and regulatory authority, even though these were established by an act of Congress.¹⁵

In addition, on June 20, 2011, you sent a letter along with TARP, Financial Services, and Bailouts of Public and Private Programs Subcommittee Chairman McHenry, Financial Services Chairman Spencer Baucus, and three Financial Services Subcommittee Chairmen, Representatives Shelly Moore Capito, Scott Garrett, and Randy Neugebauer, to the Treasury Department. This letter included a wide-ranging request for the following documents:

All documents and communications between Elizabeth Warren or the CFPB and any State Attorney General, representative of any State Attorney General, and any federal agency or mortgage servicer, or any other potentially interested party, including plaintiffs' attorneys preparing class action lawsuits, referring or reacting to mortgage servicing, foreclosures, or a possible settlement involving State Attorneys General from September 2010- present, relating in whole or in part to mortgage servicing or foreclosures or a possible settlement involving State Attorneys General from September 2010-present.¹⁶

You also sent a letter to the Treasury Department on August 15, 2011, with a series of detailed and far-reaching questions for the record following the Committee's hearing with Professor Warren on July 14, 2011.¹⁷ In response, CFPB has now produced hundreds of pages of responsive documents to the Committee showing that CFPB was providing helpful advice to state and federal authorities and appropriately preparing to carry out its critical mission to oversee the mortgage servicing industry.¹⁸

¹⁵ House Committee on Oversight and Government Reform Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs, *Hearing on Who's Watching the Watchmen? Oversight of the Consumer Financial Protection Bureau* (May 24, 2011); House Committee on Oversight and Government Reform, *Hearing on Consumer Financial Protection Efforts: Answers Needed* (July 14, 2011).

¹⁶ Letter from Reps. Spencer Baucus, Darrell E. Issa, Shelly Moore Capito, Scott Garrett, Patrick McHenry, and Randy Neugebauer to Treasury Secretary Timothy Geithner (June 20, 2011).

¹⁷ Letter from Chairman Darrell E. Issa to Raj Date, Special Advisor to the Secretary of the Treasury, and Richard Cordray, Assistant Director of Enforcement, Consumer Financial Protection Bureau (Aug. 15, 2011).

¹⁸ Letter from Treasury Assistant Secretary for Legislative Affairs Kim N. Wallace to Chairman Darrell E. Issa (July 5, 2011); Letter from Lisa Konwinski, Assistant Director for Legislative Affairs, Consumer Financial Protection Bureau, to Rep. Darrell E. Issa (Dec. 30, 2011).

Now that the President's appointment of Richard Cordray to be Director of the CFPB has activated the full panoply of the Bureau's statutory authorities, Chairman McHenry's invitation for Mr. Cordray to testify at tomorrow's hearing appears to be motivated primarily by an effort to protect financial entities from the Bureau's "new powers to broadly regulate consumer financial products and services."¹⁹

The Committee has also leapt to investigate other highly improbable allegations that banks have been victims of abuse. On the basis of an anonymous tip and a press report, for example, you sent letters to five of the largest U.S. banks seeking documents about whether representatives of the Occupy Wall Street movement attempted to extort financial support from them.²⁰ The three banks that responded all refuted the allegations and stated clearly that they had not been subjected to any such abuses.²¹

Renewal of Minority Requests

The foreclosure crisis is affecting millions of Americans across the country, devastating communities, and impairing our nation's economic recovery. I am particularly alarmed by increasing reports that U.S. servicemembers and their families have been illegally evicted from their homes and charged millions of dollars in unwarranted fees. We cannot wait any longer to use the full authority of this Committee to investigate these actions.

In the context of a different investigation, you made a strong statement about the need for prompt action by the Committee. You stated: "oversight delayed is often oversight denied. I believe that path would be unacceptable to the American public."²² This same sense of urgency should apply even when the targets of the Committee's investigation are banks.

To fulfill the Committee's unanimously approved oversight agenda, and to adequately investigate abuses against our constituents, we must obtain responsive documents from mortgage

¹⁹ Letter from Chairman Patrick McHenry to Richard Cordray, Director, Consumer Financial Protection Bureau (Jan. 4, 2012).

²⁰ Letter from Chairman Darrell Issa to Stephen M. Cutler, JPMorgan Chase & Company (Nov. 18, 2011); Letter from Chairman Darrell Issa to Michel S. Helfer, Citigroup, Inc. (Nov. 21, 2011); Letter from Chairman Darrell Issa to Edward P. O'Keefe, Bank of America Corporation, (Nov. 21, 2011); Letter from Chairman Darrell Issa to Helen P. Pudlin, PNC Financial Services Group (Nov. 21, 2011); Letter from Chairman Darrell Issa to James M. Strother, Wells Fargo & Company (Nov. 21, 2011).

²¹ Letter from John Collingwood, Bank of America Corporation, to Chairman Darrell Issa (Dec. 5, 2011); Letter from Michael S. Helfer, Citigroup Inc., to Chairman Darrell Issa (Dec. 5, 2011); Letter from Vincent Randazzo, PNC Financial Services Group, to Chairman Darrell Issa (Dec. 5, 2011).

²² Letter from Chairman Darrell E. Issa to Ranking Member Elijah E. Cummings (June 17, 2011).

servicing companies, and we must call top executives from the nation's mortgage servicers to testify. For these reasons, I renew my requests that you:

- (1) Issue subpoenas to Bank of America, Wells Fargo & Company, U.S. Bank N.A., PHH Mortgage, Suntrust Banks, Inc., and MetLife, Inc., which all refused to comply voluntarily with my previous document requests.²³
- (2) Invite top executives of JPMorgan Chase, Bank of America, Wells Fargo, Citibank, US Bank, Ally Bank, HSBC, and MetLife, to testify at a public hearing about abusive mortgage servicing practices, including illegal foreclosures of servicemembers, illegal and inflated fees, and wrongful foreclosures.

With the start of the second session of the 112th Congress, I truly hope the Committee will take the side of the American people and begin work on these critical issues.

Sincerely,



Elijah E. Cummings
Ranking Member

²³ Letters from Representative Elijah E. Cummings to Bank of America Home Loans, Wells Fargo & Company, U.S. Bank N.A., PHH Mortgage, Suntrust Banks, Inc. and MetLife, Inc. (Feb. 25, 2011) (online at <http://democrats.oversight.house.gov/images/stories/Correspondence/Foreclosure%20Letters/Cummings%20to%20Mortgage%20Servicers%20%2811%20Letters%29.pdf>).