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# Congress of the United States

## House of Representatives

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STAFF DIRECTOR

October 3, 2011

Mr. Edward DeMarco  
Acting Director  
Federal Housing Finance Agency  
1700 G Street NW  
Washington, D.C. 20551

Dear Acting Director DeMarco:

On February 25, 2011, I launched a major investigation into abuses and illegal activities by mortgage servicing companies, including wrongful foreclosures, deficient recordkeeping, inflated fees, and fraud in lending.<sup>1</sup> As part of this investigation, I wrote to the Inspector General of the Federal Housing Finance Agency (FHFA) requesting an investigation into "widespread allegations of abuse by private attorneys and law firms hired to process foreclosures as part of the 'Retained Attorney Network' established by Fannie Mae."<sup>2</sup> As I detailed in my letter to the Inspector General, several law firms participating in this program have been accused of fabricating documents filed with courts during foreclosure actions, and serious questions have been raised about inadequate oversight by FHFA.

The FHFA Inspector General's office has provided me with a copy of a report it plans to issue tomorrow in response to my request. This report, entitled "FHFA's Oversight of Fannie Mae's Default-Related Legal Services," documents a prolonged failure by FHFA and Fannie Mae to adequately oversee the actions of the law firms in the Retained Attorney Network

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<sup>1</sup> Rep. Elijah E. Cummings, Ranking Member, House Committee on Oversight and Government Reform, *Press Release: Cummings Launches Major Investigation of Mortgage Servicer Abuses* (Feb. 25, 2011) (online at [http://democrats.oversight.house.gov/index.php?option=com\\_content&task=view&id=5229&Itemid=49](http://democrats.oversight.house.gov/index.php?option=com_content&task=view&id=5229&Itemid=49)).

<sup>2</sup> Letter from Rep. Elijah E. Cummings, Ranking Member, House Committee on Oversight and Government Reform, to the Honorable Steve A. Linick, Inspector General, Federal Housing Finance Agency (Feb. 25, 2011) (online at <http://democrats.oversight.house.gov/images/stories/Correspondence/Foreclosure%20Letters/Cummings%20Letter%20to%20FHFA%20IG.pdf>).

(RAN).<sup>3</sup> In addition to the absence of effective oversight, the report finds that some firms violated state laws governing the foreclosure process. As a result, it appears that an untold number of borrowers with loans owned or guaranteed by Fannie Mae may have suffered abuses that violated their legal rights.

The Inspector General's report finds that FHFA and Fannie Mae repeatedly failed "to act on foreclosure abuse issues involving Fannie Mae's RAN." The Inspector General's report documents multiple instances beginning as early as December 2003 in which Fannie Mae, FHFA, and its predecessor, the Office of Federal Housing Enterprise Oversight, were alerted by a number of sources to serious problems with the legal services provided by law firms in the program, but failed to take corrective action.

The Inspector General's report concludes that "FHFA did not begin to act on foreclosure abuse issues involving Fannie Mae's RAN until mid-2010" and that "there were multiple indicators of foreclosure abuse risk prior to 2010 that could have led FHFA to identify and act earlier on the issue." Among the most troubling findings in the Inspector General's report is the conclusion that FHFA and Fannie Mae continued to utilize the services of law firms they knew were engaging in abusive and illegal actions against homeowners. According to the Inspector General's report, at least one of these firms was kept on because the agency "determined that the cost of transferring its files from the firm to a replacement vendor would be substantial."

As a Member of Congress and an attorney, I find the systemic failures by FHFA and Fannie Mae to adequately oversee these foreclosure law firms to be a breach of the public trust and an assault on the integrity of our justice system. Today, I am requesting various documents in order to further investigate several conclusions in the Inspector General's report. I also request that FHFA take immediate and decisive action to remedy these failures and ensure that no additional borrowers suffer similar abuses. Finally, in light of the gravity of these oversight failures documented by the Inspector General, I request that you give serious consideration to terminating the existing Fannie Mae Retained Attorney Network program.

### **Request for Additional Documents and Information**

According to the Inspector General's report, Fannie Mae created the Retained Attorney Network in 1997 to "perform default-related legal services associated with foreclosure, bankruptcy, loss mitigation, eviction, and REO [Real Estate Owned] closings." The program was expanded in August 2008, and Fannie Mae "required that loan servicers refer foreclosures and bankruptcy cases only to attorneys included in the RAN" when cases arose in jurisdictions covered by the Retained Attorney Network. Currently, 191 firms participate in 45 states.

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<sup>3</sup> *FHFA's Oversight of Fannie Mae's Default-Related Legal Services*, Office of Inspector General, Federal Housing Finance Agency (Sept. 30, 2011) (Audit Report AUD-2011-004).

In order to further investigate the conclusions in the Inspector General's report, I request that you produce the following documents and information:

- (1) According to the Inspector General's report, after being alerted to possible foreclosure abuses in December 2003, Fannie Mae hired an outside firm to examine the allegations. The outside firm issued a report in May 2006 stating that "foreclosure attorneys in Florida are routinely filing false pleadings and affidavits," that the practice "could be occurring elsewhere," and that it "is axiomatic that the practice is improper and should be stopped." Please provide a copy of this report and all supporting documentation, including documents provided by Fannie Mae shareholders.
- (2) According to the Inspector General's report, in June 2010, FHFA staff conducted a field visit to Florida to observe foreclosure processes in the state. In June 2011, FHFA staff issued a report stating that "servicers, attorneys, and other supporting personnel were overloaded with the volume of foreclosures," that "documentation problems were evident," and that they "were not devoting the time necessary to their cases due to Fannie Mae's flat fee structure and volume-based processing model." Please provide a copy of this report and all supporting documentation.
- (3) According to the Inspector General's report, in 2010, Fannie Mae hired an outside firm to audit law firms in the Retained Attorney Network and, as of June 30, 2011, 49 audits had been completed. These audits "missed the opportunity to confirm and provide a better understanding of the allegations of foreclosure abuse," and they "did not lend themselves to identifying critical operational issues including risks associated with improper foreclosures." Please provide copies of these audit reports.
- (4) According to the Inspector General's report, in response to questionnaires sent by Fannie Mae in 2010 seeking information regarding compliance with foreclosure proceedings and state foreclosure laws, "[s]everal law firms ... disclosed foreclosure process issues." Please provide copies of all completed questionnaires received by Fannie Mae.
- (5) According to the Inspector General's report, Fannie Mae began assessing compensatory fees against mortgage servicers in 2010 for "breach of service obligations." Please provide a list of all servicers that have been assessed compensatory fees, identify the total amount of fees assessed against each servicer, identify the reasons these fees were assessed, and identify whether the fees have been paid in full. Please also explain how the level of compensatory fees is established for breach of service obligations.
- (6) According to the Inspector General's report, beginning in 2010, an undisclosed number of law firms in the program "have compensated Fannie Mae for errors." Please provide a list of all law firms that have compensated Fannie Mae for errors, describe each error for which compensation was provided, and identify the amount of compensation provided by each firm for each error. Please also indicate whether the amount of compensation provided by each firm fully covered the losses Fannie Mae suffered as a result of the law firm's improper actions.

- (7) According to the Inspector General's report, "FHFA does not have a formal process to address performance problems associated with law firms that have relationships—either directly through contract or through its loan servicers—with both of the Enterprises." Fannie Mae and Freddie Mac have notified each other when they terminate the services of law firms only on an "*ad hoc* basis." Even when Fannie Mae was notified that Freddie Mac terminated the services of a law firm, Fannie Mae continued to retain the firm. Please identify the steps FHFA will take to implement the Inspector General's recommendation to mitigate the risks associated with improper foreclosure practices.
- (8) According to the Inspector General's report, although "Freddie Mac terminated one law firm that processed over 43% of Fannie Mae's loan foreclosures in Florida, ... Fannie Mae decided to retain the law firm's services" because it "determined that the cost of transferring its files from the firm to a replacement vendor would be substantial." Please provide all documents relating to the costs of utilizing a replacement vendor in this case. In addition, please indicate the total number of borrowers who suffered illegal foreclosures, unwarranted fees, or other harm as the result of improper actions by all law firms in the RAN. If FHFA does not have such data at the present time, please explain in detail how you intend to obtain it. Please also indicate whether any borrowers who have been harmed have been compensated to date, and the nature of the compensation that has been or will be provided.
- (9) According to the Inspector General's report, "FHFA needs to develop procedures to identify and assess new or heightened risks, as it simultaneously addresses historic risks with which it is familiar. In the absence of such actions, FHFA has limited assurance that foreclosure abuses will be prevented and detected through its supervisory activities." Please identify the specific steps FHFA will take to ensure that no additional borrowers with loans owned or guaranteed by Fannie Mae are the victims of improper or illegal actions by firms in the program. Please also identify the date by which each step will be implemented.
- (10) According to the Inspector General's report, in November 2010, FHFA initiated a review of the program, which it completed in January 2011. This review found that "Fannie Mae had inadequate controls in place to prevent or detect foreclosure abuses such as false assignment affidavits" and that "Fannie Mae had not performed a formal cost-benefit analysis to determine if the RAN is cost effective." Despite these internal findings, FHFA failed to issue a final report regarding its review and "is still deliberating on the best course of action." Please provide a copy of this internal review.



Please provide these documents and information by October 21, 2011. When producing documents to the Committee, please deliver them to the Minority Staff in Room 2471 of the Rayburn House Office Building and the Majority Staff in Room 2157 of the Rayburn House Office Building. If you have any questions, please contact Lucinda Lessley or Davida Walsh at (202) 225-5051. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Elijah F. Cummings". The signature is stylized, with the first name "Elijah" and last name "Cummings" clearly legible, and the middle initial "F." in between. The ink is a vibrant blue.

Elijah F. Cummings  
Ranking Member

cc: The Honorable Darrell E. Issa, Chairman