

**Congress of the United States**  
**Washington, DC 20515**

September 23, 2013

The Honorable Ben Bernanke  
Chairman  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue NW  
Washington, DC 20551

Dear Chairman Bernanke:

As you know, in April 2011, the Federal Reserve Board (Board) and the Office of the Comptroller of the Currency (OCC) entered into consent orders with 13 mortgage servicers. As part of those orders, the mortgage servicers were required to establish an Independent Foreclosure Review (IFR) process under which borrowers whose homes were in foreclosure in 2009 or 2010 could request reviews of their files if they believed they had been subjected to an illegal or improper practice. In February 2013, the Board amended those consent orders. The modified consent orders ended the IFR process and required the servicers to provide \$9.3 billion in "cash payments and other assistance."<sup>1</sup> We write to request additional information about the process by which the Board entered into the April 2011 consent orders and the February 2013 amendments, and to request additional information about the Board's standard process for bringing and resolving enforcement actions.

It is our understanding that by regulation, the Board has delegated to its staff the authority to enter into consent orders, including the authority to modify or terminate existing consent orders. Specifically, the Board's General Counsel, acting with the concurrence of the Board's Director of the Division of Banking Supervision and Regulation, has the authority to enter into a consent order "when the order has been consented to by the institution or individual subject to

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<sup>1</sup> Board of Governors of the 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)); Office of the Comptroller of the Currency, *OCC Takes Enforcement Action Against Eight Servicers for Unsafe and Unsound Foreclosure Practices* (Apr. 13, 2011) (online at [www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47.html](http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47.html)); Board of Governors of the Federal Reserve System and Office of the Comptroller of the Currency, *Amendments to Consent Order Memorialize \$9.3 Billion Foreclosure Agreement* (Feb. 28, 2013) (online at [www.federalreserve.gov/newsevents/press/enforcement/20130228a.htm](http://www.federalreserve.gov/newsevents/press/enforcement/20130228a.htm)).

the order.”<sup>2</sup> Additionally, the General Counsel, with the concurrence of the Director, may modify, terminate, or suspend such an order.<sup>3</sup>

Similarly, a Federal Reserve Bank, with the consent of the Board’s General Counsel and the Director, may enter into written agreements with supervised entities to correct safety and soundness concerns as well as violations of law, rule, or regulation.<sup>4</sup> Current regulations do not require the approval of the Board or that any type of notice be given to the Board before the General Counsel concludes this type of enforcement order.

In testimony before the House Committee on Financial Services in May 2012, Scott G. Alvarez, the Board’s General Counsel, stated that a “vast majority” of enforcement actions brought by the Board were “resolved by consent.”<sup>5</sup> Mr. Alvarez testified that over the past decade, only 11 out of the nearly 1,000 enforcement actions brought by the Board were not resolved by the consent of the institution or individual subject to the action.<sup>6</sup>

The Board’s regulations explain that it may review actions taken under this delegation of authority using one of three review mechanisms.<sup>7</sup> First, the Board “shall review” such action if any Board member on his or her “own initiative” raises the matter for consideration and at least one Board member votes in favor of review.<sup>8</sup> Second, the Board “shall review” an action taken under delegated authority if a person who claims to be “adversely affected” files a petition for review and at least one Board member votes in favor of such review.<sup>9</sup> Finally, any person delegated authority to act on behalf of the Board “may submit any matter to the Board for determination if the delegee considers it appropriate because of the importance or complexity of the matter.”<sup>10</sup>

Based on the information available to us, it is unclear whether the Board exercised any of these three review mechanisms when the April 2011 consent orders were amended to end the

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<sup>2</sup> 12 C.F.R. 265.6(e)(1).

<sup>3</sup> 12 C.F.R. 265.6(e)(2).

<sup>4</sup> 12 C.F.R. 265.11(a)(15).

<sup>5</sup> Board of Governors of the Federal Reserve, *Remarks as Prepared for Delivery by General Counsel Scott G. Alvarez at House Committee on Financial Services* (May 17, 2012) (online at [www.financialservices.house.gov/uploadedfiles/hhrg-112-ba00-wstate-salvarez-20120517.pdf](http://www.financialservices.house.gov/uploadedfiles/hhrg-112-ba00-wstate-salvarez-20120517.pdf)).

<sup>6</sup> *Id.*

<sup>7</sup> *See* 12 C.F.R. 265.3.

<sup>8</sup> 12 C.F.R. 265.3(a).

<sup>9</sup> *Id.*

<sup>10</sup> 12 C.F.R. 265.3(d).

IFR process. Federal Reserve Governor David K. Tarullo has stated that a “vote did not occur” by the Board to amend the April 2011 consent orders.<sup>11</sup> Instead, according to Governor Tarullo, “Board staff frequently consulted with Board members before exercising delegated authority to approve the amendments to the foreclosure consent orders.”<sup>12</sup>

It is unclear which staff member at the Federal Reserve made the decision to enter into the April 2011 consent orders or the subsequent amendments in February 2013. The April 2011 enforcement actions were memorialized by separate consent orders with each of the mortgage servicers.<sup>13</sup> A review of those orders shows that the Secretary of the Board executed the orders on behalf of the Board.<sup>14</sup> Similarly, the Secretary of the Board executed the amended consent orders.<sup>15</sup>

Earlier this year, Richard M. Ashton, the Board’s Deputy General Counsel, informed Ranking Member Cummings’ staff that he made the decision to enter into the April 2011 consent orders and the 2013 amendments as the delegee for the Board’s General Counsel.<sup>16</sup> Although Ranking Member Cummings’ staff requested a copy of the document memorializing the delegation of authority, the Board has not yet provided that document.

To help us understand the process by which consent orders are entered into by the Board, as well as the process by which the April 2011 consent orders with mortgage servicers were entered into and subsequently amended in February 2013, we request that you provide the following information and documentation:

1. Please confirm whether the Deputy General Counsel made the decision to enter into the April 2011 consent orders with 13 mortgage servicers and the February 28, 2013, amendments to those orders. Please provide the documentation delegating to the Deputy General Counsel the authority to enter into an enforcement action when the institution or individual subject to the order consents to it. If the Deputy General Counsel did not make the decision to enter into the April 2011 consent orders and/or did not make the decision to enter into the February 2013 amendments, please specify

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<sup>11</sup> Letter from Federal Reserve Governor David K. Tarullo to Senator Elizabeth Warren (June 11, 2013).

<sup>12</sup> *Id.*

<sup>13</sup> Board of Governors of the Federal Reserve System, *Amendments to Consent Orders Memorialize \$9.3 Billion Foreclosure Agreement* (Feb. 28, 2013) (online at [www.federalreserve.gov/newsevents/press/enforcement/20130228a.htm](http://www.federalreserve.gov/newsevents/press/enforcement/20130228a.htm)).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

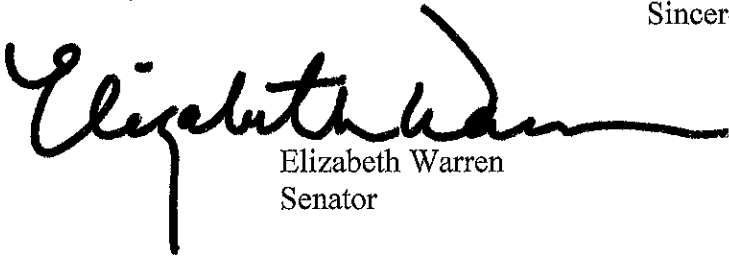
<sup>16</sup> Briefing by Richard M. Ashton, Deputy General Counsel, Board of Governors of the Federal Reserve System, to House Committee on Oversight and Government Reform Minority Staff (Mar. 13, 2013).

who made those decisions and, if they were made by anyone other than the General Counsel, please provide the documentation that authorized that individual(s) to enter into the April 2011 consent orders or the February 2013 amendments.

2. Please provide a citation to law or regulation or provide a Board document authorizing the Secretary of the Board to sign a consent order on behalf of a Board staff member who has been delegated authority to enter into such an agreement.
3. Please provide an explanation of the extent of the Board's involvement, if any, in the execution of the April 2011 consent orders and the February 2013 amendments, including a list of any briefings provided to Board members. Please also indicate whether the Board took any votes on either the April 2011 consent orders or the February 2013 amendments.
4. Please provide an explanation of the process, if any, by which a Board employee or a Federal Reserve Bank notifies the Board when taking delegated action to implement the Board's enforcement authority. Include a copy of any guidance or procedures issued by the Board explaining the type of notification required to be provided to the Board.
5. Please provide a copy of any guidance or procedures issued by the Board detailing what type of enforcement action constitutes a matter of such "importance" or "complexity" that it should be referred by a delegee to the Board for review. Please also indicate whether the April 2011 consent orders or the February 2013 amendments rose to the level of "importance" or "complexity" requiring them to be referred to the Board.
6. Please provide a list of all enforcement actions entered into under delegated authority that have been referred to the Board for review, including the date on which the matters were referred to the Board and the date on which the Board reviewed the matters. Please also specify whether the Board voted on the matters and the results of any votes. Please also identify whether each enforcement action was reviewed on the basis of (1) a request of a Board member, (2) a petition for review, or (3) the submission of a delegee.
7. Please provide a list of all Board enforcement actions taken since the Board delegated unilateral enforcement authority to the General Counsel and/or a Federal Reserve Bank, including the name of the delegee who made the decision to enter into the enforcement action, the name of the person who executed any order/agreement, an explanation of whether the matter was ever reviewed and or voted upon by the Board, and if so, the mechanism by which the matter was referred to the Board for review.

Please provide the requested information and documents by October 15, 2013. To the extent that no documents exist that are responsive to these requests, please provide a substantive explanation in response to the specific issues raised in this letter.

Sincerely,



Elizabeth Warren  
Senator



Elijah E. Cummings  
Member of Congress

cc: The Honorable Tim Johnson, Chairman, Senate Committee on Banking, Housing and Urban Affairs

The Honorable Mike Crapo, Ranking Member, Senate Committee on Banking, Housing and Urban Affairs

The Honorable Sherrod Brown, Chairman, Subcommittee on Financial Institutions and Consumer Protection

The Honorable Pat Toomey, Ranking Member, Subcommittee on Financial Institutions and Consumer Protection

The Honorable Robert Menendez, Member, Senate Committee on Banking, Housing and Urban Affairs

The Honorable Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform

The Honorable Jeb Hensarling, Chairman, House Committee on Financial Services

The Honorable Maxine Waters, Ranking Member, House Committee on Financial Services