April 11, 2011

VIA EMAIL AND FACSIMILE (202-452-3819)

The Honorable Ben S. Bernanke
The Honorable Janet L. Yellen
The Honorable Elizabeth A. Duke
The Honorable Daniel K. Tarullo
The Honorable Sarah Bloom Raskin
Board of Governors of the Federal Reserve System
20TH Street and Constitution Avenue, NW
Washington, DC 20551

Re: Proposed Consent Orders Regarding Mortgage Servicing

Dear Chairman Bernanke, Vice-Chair Yellen, Governor Duke, Governor Tarullo and Governor Raskin:

The undersigned past and present members of the Consumer Advisory Council (CAC) of the Federal Reserve Board write regarding the proposed Consent Order to be signed with the mortgage servicers. We commend the Federal Reserve Board and the other federal regulatory agencies for your investigation of the mortgage servicers. The Findings are clearly significant, including fraudulently executed foreclosure filings, failure to properly service mortgages in default and foreclosure, and a lapse of oversight allowing abuses by third party providers hired to pursue actions against homeowners. The Findings certainly are in line with the breakdown in the system and the frustrations that we have seen on behalf of homeowners.

The draft of the Consent Order which circulated last week, however, does not prescribe real changes that are to be made by the servicers. The proposal leaves too much discretion to the servicers who have made former claims of improvement only to have continued to violate the law and breached covenants of good faith and fair dealing with homeowners. It is profoundly disappointing to have witnessed various servicing abuses, some of which your investigation has confirmed, only to see that the sanction proffered by the Consent Order is that servicers must develop a plan to comply with existing laws and contracts. We recommend that the final decrees include specific actions that the servicers must take regarding the application of payments and nonconforming payments, an affirmative duty to perform loss mitigation with enumerated guidelines and timelines, an end of dual tracking, maintenance of foreclosed properties, and working with non-profits to get REO property occupied, among other things. Such guidance would not only heighten the likelihood of improvement of their processes, but it would also promote uniformity and best practices across the industry.

In addition, no apparent remedy for homeowners is contemplated in the proposed Consent Order. Oversight is critically important, and we are pleased with the commitment of the federal regulatory agencies to be a real watchdog on the industry but oversight takes time, and study, and personnel, and it rarely provides direct relief to the individuals affected. Servicers have to be held liable and homeowners need to be given remedies to the extent the investigation has uncovered violations, and should the Action Plans be violated in individual cases in the future.

Most troubling is that there seems to be no provision for penalties to be levied against mortgage servicers which have violated the law. Penalties are critical for punishing illegal behavior, deterring future abuses, and remedying the problem at hand. Penalties could provide a significant source of funding for direct assistance to homeowners, as well.

It is well-known by now that homeowners fare much better in working with their servicers when they have professional assistance. We have networks in place across the country of non-profit housing counseling and legal services programs working hard to achieve results on behalf of homeowners, keeping people in their homes, every day. Each of us could provide you with stories of homeowners being denied assistance while working with a servicer on their own, and then achieving a loan modification after going to a non-profit for professional assistance. Unfortunately, as demand for these services has increased, funding has decreased as the nation experiences foreclosure fatigue and governments at all levels face severe budget cuts.

The housing crisis continues to be urgent. The essential role of direct services is one part of the solution that has never gotten the attention it should. The proposed orders are a long-term plan, execution of them will not be immediate and in the interim, more homeowners who should be staying in their homes will lose them to foreclosure. Significantly increasing direct services for homeowners is a step that can be taken at this moment, and one that without question, will lead to many more modifications in the near future.

We appreciate that the Federal Reserve Board is here acting in concert with its sister prudential regulatory agencies, and that compromises most likely have been made. Nevertheless, if the essential components of any comprehensive resolution to this scandal, identified above, cannot or will not be incorporated into the consent decrees, we urge the Federal Reserve Board to withdraw the orders.

We also urge the Federal Reserve Board and your partnering regulators to support the United States Department of Justice and the Attorneys General in their continuing investigation of the mortgage servicers. It is our hope that should a settlement be reached in their investigation, that it is complementary to your efforts and that all of the regulating agencies work together to jointly improve the system for American homeowners.

Thank you very much for all of the time and energy that you and members of the Federal Reserve Board's staff have put into investigating and addressing the vast problems in mortgage servicing. We hope it leads to good change for homeowners and for the housing market.

Sincerely,

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