

July 27, 2011

John Stumpf, CEO  
Wells Fargo & Company  
420 Montgomery St.  
San Francisco, California 94104

Dear Mr. Stumpf:

In the wake of reports of significant, ongoing problems related to servicer foreclosure filings in the bankruptcy courts, we write to seek clarification of the policies and procedures in place at your institution or mortgage servicing subsidiary that affect mortgage foreclosures, and your practices and policies related to filing proofs of claim and motions for relief from stay in the bankruptcy courts.

America's housing foreclosure epidemic is reaching critical levels, and has shown few signs of abating. Reports indicate that the Nation's biggest banks and lenders now hold nearly a million homes, are in the process of foreclosing on another million, and may ultimately take possession of several million more in the coming years.<sup>1</sup> Under these conditions, it is more important than ever to ensure that mortgage lenders and servicers follow the law when foreclosing on the homes of hardworking Americans struggling to make ends meet.

Evidence has been mounting for some time that loan servicing institutions are unprepared to deal adequately with the complexity of the crisis in a fair and equitable manner that is consistent for all homeowners. Fraudulent and faulty documents filed in state and bankruptcy courts to facilitate foreclosures have triggered several investigations, including inquiries by Federal regulators and state attorneys general, but the problem remains widespread. Clifford J. White, III, director of the Executive Office for the United States Trustee (EOUST), recently stated publicly that an investigation by his office has revealed that the rate of obvious, facial errors in proofs of claim in the bankruptcy courts may be 10 times higher than previously disclosed.<sup>2</sup> This is a shocking and disappointing statistic, but consistent with what bankruptcy judges, attorneys, and homeowners have been experiencing for some time.

Foreclosure is devastating to families and individual Americans. We have heard countless stories from our constituents who want to do the right thing – taking on multiple jobs and seeking to do whatever is necessary to work with their lenders and servicers to continue making payments. Too often, these individuals have been met with unclear and contradictory responses regarding the steps they must take to remain in good standing with their mortgages. In some cases, these individuals struggle to even

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<sup>1</sup> Eric Dash, *As Lenders Hold Homes in Foreclosure, Sales are Hurt*, N.Y. TIMES, May 22, 2011.

<sup>2</sup> Gretchen Morgenson, *A Low Bid for Fixing A Big Mess*, N.Y. TIMES, May 14, 2011.

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have a conversation with lenders and servicers regarding their mortgages, are unable to get the terms of their agreements in writing, or discover in follow-up interactions that no record was kept of previous discussions. And to make matters worse, it is clear that these problems are continuing within the bankruptcy courts.

Our first inquiry relates to the policies and procedures in place at your institution relating to foreclosures and filing proofs of claim in the bankruptcy courts, and what steps you are taking to make sure that homeowners are treated fairly, consistently, and honestly. Our conversations with constituents, bankruptcy attorneys, and others on both sides of foreclosure proceedings have indicated that servicers and lenders often give inconsistent or contradictory explanations for how loan balances are calculated. The information collected by the EOUST supports this, as these inconsistencies have manifested in part in defective proofs of claim. One example discussed publicly in the context of the Trustee program's investigation involved a bank claiming that a borrower owed \$52,043, but when the borrower objected and asked for documentation, the amount was revised to \$3,156 – a mere fraction of the initial amount.<sup>3</sup>

No homeowner should be subject to a foreclosure that is based upon inaccurate balances, or faulty or fraudulent documentation. Of equal importance, the integrity of the bankruptcy system must be maintained through the proper and lawful conduct of all litigants. Defective or fraudulent filings, which have been far too common amidst the housing crisis, severely undermine the integrity of the Federal court system and greatly harm Americans navigating our Nation's current economic challenges.

Your prompt and thorough responses to the attached questions will assist the Judiciary Committee as we consider the appropriate steps forward. We look forward to your reply.

Sincerely,

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PATRICK LEAHY  
Chairman

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RICHARD BLUMENTHAL  
United States Senator

Enclosure

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

## **QUESTIONS REGARDING POLICIES AND PRACTICES AFFECTING MORTGAGE FORECLOSURES AND RELATING TO FILINGS IN THE BANKRUPTCY COURTS**

1. Please provide the policies that are currently in place at your mortgage servicing institution intended to ensure that a proof of claim filed in a bankruptcy case related to a mortgage loan is accurate and does not contain an incorrect amount due.
2. When a debtor or the United States trustee seeks supporting documentation or challenges a proof of claim, please provide your policies that dictate the manner in which you respond to such a motion.
3. Please provide the policies that are currently in place at your institution to ensure that when filing a proof of claim related to a mortgage, the lawful holder of the mortgage is filing the claim.
4. Please provide your policies that ensure that mortgage documents submitted as part of a bankruptcy proof of claim, including affidavits, are signed by individuals with personal knowledge of the information being certified as true.
5. What policies are in place at your institution to expedite the resolution of a debtor or trustee's challenge to a proof of claim or a motion for relief from the automatic stay?
6. Please itemize and describe, with detail and specificity, all of the fees, penalties, or other charges that your institution may assess, or has assessed on mortgagors, and the controlling policies underlying those charges. The response to this question should include, but is not limited to, payoff balances, default servicing fees, force placed insurance, drive-by inspection fees, broker price opinion fees, and any other fees or penalties that a homeowner may be subject to prior to default or in the foreclosure process.
  - a. For each category of payment identified in question 6, please describe what supporting documentation is provided with a proof of claim in a bankruptcy case that includes any fees or penalties incorporated within or in addition to the principal balance owed.
  - b. For each category of payment identified in question 6, please define each category and indicate any and all ways in which that category of payment is referenced in court filings.
7. Please provide any policies in place at your institution that serve to mitigate the fees and penalties referenced in question 5 that may be applied to a homeowner's mortgage balance.
8. When a debtor is compelled to challenge a proof of claim due to a deficiency, and does so successfully, what is your policy with respect to covering the debtor's associated legal costs in resolving the challenge?
9. If your institution, as party to a bankruptcy proceeding in which you have filed a proof of claim or other motion related to a debtor's home mortgage, has challenged the United States trustee or the bankruptcy court's authority pursuant to Bankruptcy Rule 2004, 11 U.S.C. § 307, or any other provision within the Bankruptcy Code or Rules in response to an action taken by the

United States trustee or the court to obtain documents or impose sanctions related to the claim, please identify every bankruptcy case in which such a challenge has occurred.

10. What policies do you have in place to ensure compliance with the Servicemembers Civil Relief Act (SCRA) (50 U.S.C. App. § 533) when conducting foreclosure actions? When filing a proof of claim or motion for relief from the automatic stay, what steps are taken to determine whether a debtor is covered by the SCRA?
11. What policies do you have in place to ensure that a homeowner in default or at risk of default has the ability to speak with an employee at your institution who is capable of providing meaningful, continuous assistance to the homeowner? What policies do you have in place to ensure that the homeowner knows the identity of the employee and how to contact the employee directly?
12. Please disclose any and all formal policies or procedures in place for ensuring that homeowners in trial loan modification programs are not incorrectly identified as noncompliant for submitting lower payments that nonetheless comply with those trial modification programs.