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February 25, 2011

The Honorable Steve A. Linick
Inspector General
Federal Housing Finance Agency
1625 Eye Street, NW
Washington, DC 20006

Dear Mr. Inspector General:

I am writing to request that you initiate 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. I also request that you examine allegations of abusive behavior on the part of default management firms engaged by both mortgage servicers managing Fannie Mae-backed loans and attorneys and firms that are part of the Retained Attorney Network. Finally, I request that you examine efforts by Fannie Mae and the Federal Housing Finance Agency (FHFA) to investigate these allegations and implement corrective action.

Allegations of Abuse in the Retained Attorney Network

In August 2008, Fannie Mae created "a new mandatory network of retained attorneys to handle all foreclosure and bankruptcy matters" relating to Fannie Mae mortgage loans, whether held in portfolio or mortgage-backed securities. Fannie Mae required that only these retained attorneys represent Fannie Mae mortgage servicers, and it established the maximum allowable reimbursable fees for foreclosure-related work.[1] In December 2010, Fannie Mae Executive Vice President Terence Edwards announced that the Retained Attorney Network would be expanded from 31 to 50 states.[2]

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[1] Fannie Mae, *New Foreclosure and Bankruptcy Attorney Network and Attorney's Fees and Costs* (Announcement 08-19) (Aug. 6, 2008) (online at https://www.efanniemae.com /sf/guides/ssg/annltrs/pdf/2008/0819.pdf) (requiring also that "requests for approval of excess fees by Fannie Mae must be submitted via email").

[2] Testimony of Terence Edwards, Executive Vice President, Credit Portfolio Management, Fannie Mae, before the U.S. Senate Committee on Banking, Housing and Urban Affairs (Dec. 1, 2010) (online at www.fanniemae.com/media/pdf/Edwards_ SenateBankingCommittee_12-1-10.pdf).

Recent reports indicate that many of the private attorneys, law firms, and other entities participating in the Retained Attorney Network have been accused of practices that are fraught with flaws, errors, conflicts of interest, and fraud, and these allegations have prompted numerous state and federal investigations.

For example, on August 10, 2010, the Florida State Attorney General announced an investigation into unfair and deceptive practices by the Law Offices of David J. Stern, P.A., the Law Offices of Marshall C. Watson, P.A., and Shapiro & Fishman, L.L.P. The allegations against the firms include creating and filing with Florida courts improper documentation to speed foreclosures and establishing affiliated companies outside the United States to prepare false documents.[3] In announcing this investigation, the Attorney General stated:

> On numerous occasions, allegedly fabricated documents have been presented to the courts in foreclosure actions to obtain final judgments against homeowners. Thousands of final judgments of foreclosure against Florida homeowners may have been the result of allegedly improper actions of the law firms under investigation.[4]

Former employees of the Stern law firm also reportedly alleged that the firm engaged in "robo-signing," a practice in which employees signed hundreds of foreclosure affidavits each day, falsely swearing to have personal knowledge of the underlying documents. One employee testified that the firm's chief operating officer "signed as many as 1,000 foreclosure affidavits a day without reading a single word."[5] The employees also reported that the firm backdated and altered documents, and that it took steps to cover its misconduct by changing the dates on hundreds of documents.[6]

Last November, Fannie Mae issued a public notice stating that it had "terminated its relationship with the Law Offices of David J. Stern" and informing servicers that they "may not refer any future Fannie Mae matters to the Stern firm."[7]

Separately, the U.S. Trustee Program (USTP) of the Department of Justice is investigating another firm in the Retained Attorney Network, the firm of Steven J. Baum, P.C. of Amherst, New York, for filing foreclosure documents that appear to be false or misleading;

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[3] Attorney General of Florida, *Press Release: Florida Law Firms Subpoenaed Over Foreclosure Filing Practices* (Aug. 10, 2010) (online at www.myfloridalegal.com/newsrel.nsf/newsreleases/2BAC1AF2A61BBA398525777B0051BB30).

[4] *Id.*

[5] *The Rise and Fall of a Foreclosure King,* Associated Press (Feb. 6, 2011).

[6] *Questions Rising Over Fannie and Freddie's Oversight of Foreclosures,* New York Times (Oct. 19, 2010); *The Foreclosure Machine*, New York Times (Mar. 20, 2008).

[7] Fannie Mae, *Servicing Notice: Termination of Relationship with the Stern Law Firm* (Nov. 10, 2010) (online at www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/ntce111010.pdf).

attempting to foreclose on borrowers after rejecting their attempts to make on-time payments; and failing to prove ownership of mortgages as it seized homes. The firm has also been accused of illegally charging for foreclosure-settlement conferences, overcharging on foreclosure fees, and racketeering.[8]

Another firm in the Retained Attorney Network, McCalla Raymer, L.L.C., is a defendant in a federal lawsuit in which the plaintiffs allege that it engaged in fraud, racketeering, and the manufacture of fraudulent foreclosure documents. Reportedly, this firm established operations in Florida under the name Stone, McGehee & Silver and hired ten former Stern law firm employees.[9] The firm Stone, McGehee and Silver, LLC, dba McCalla Raymer currently appears as a "Designated Counsel/Trustee" in Florida for Freddie Mac.[10]

Lender Processing Services, Inc. (LPS), a $2.8 billion company headquartered in Jacksonville, Florida—and the largest provider of default loan services in the nation—is also under investigation by the Florida Attorney General for producing apparently forged or fabricated documents in foreclosure actions.[11] LPS is also a defendant in a federal suit alleging an illegal fee-sharing scheme. Filed in federal bankruptcy court in Mississippi, the suit alleges that LPS and another company, Prommis Solutions Holding Company, illegally required attorneys in their networks to turn over a portion of their fees for foreclosure services, and that another large law firm, Johnson & Freedman, L.L.C., joined in this scheme. The Chapter 13 Trustee for the Northern District of Mississippi, a unit of the Department of Justice, has joined as a plaintiff.[12]

A special investigation by *Reuters* last December reported that LPS and its affiliated companies also allegedly deployed low-skilled, non-lawyers to prepare foreclosure documents, created invalid mortgage assignments to facilitate foreclosures, and rewarded attorneys for speed rather than accuracy in filing court pleadings. *Reuters* reported:

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[8] *See* Federal Home Loan Mortgage Corp. v. Raia, SP 002253/10, District Court of Nassau County, New York (Hempstead); Campbell v. Baum, 10-cv-3800, U.S. District Court, Eastern District of New York (Brooklyn); Menashe v. Steven J. Baum P.C., 10-cv-5155, U.S. District Court, Eastern District of New York (Central Islip); and Baum v. Lask, 2010- 012048, New York Supreme Court, Erie County (Buffalo).

[9] *Novice Florida Lawyers Draw Suspicion in Foreclosure Mess,* Palm Beach Post (Jan. 13, 2011) (online at www.palmbeachpost.com/money/real-estate/novice-florida-lawyers-draw-suspicion-in-foreclosure-mess-1146402.html).

[10] Freddie Mac, *Guide Exhibit 79: Designated Counsel/Trustee* (Florida) (revised 2/8/11) (online at www.freddiemac.com/service/msp/exh79_fl.html).

[11] Office of the Attorney General of Florida, Case Number L10-3-1094 (online at http://myfloridalegal.com/__85256309005085AB.nsf/0/9B099A9DD32030BE8525771300426A68?Open&Highlight=0,lps).

[12] Thorne v. Prommis Solutions Holding Corp. et al., Second Amended Class Action Complaint, 10-01172 (BR N.D.M.S., Oct. 10, 2010).

> The law firms are on a stopwatch. [An LPS spokesman] confirmed that the LPS Desktop system automatically times how long each firm takes to complete a task. It assigns firms that turn out work the fastest a "green" rating; slower ones "yellow" and "red" for those that take the longest. Court records show that green ratings go to firms that jump on offered assignments from their LPS computer screens and almost instantly turn out ready-to-file court pleadings, often using teams of low-skilled clerical workers with little oversight from the lawyers.[13]

Although Fannie Mae terminated its relationship with the Stern law firm last November, it does not appear to have terminated its relationships with any of the other firms described above.[14]

Request for Investigation

These are serious allegations that may have affected thousands of homeowners. For these reasons, I request that your office initiate a comprehensive investigation into allegations of abuse by attorneys and law firms participating in the Retained Attorney Network, as well as servicers and default loan service providers alleged to have participated in these abuses.

It is my understanding that the mission of your office is to "promote the economy, efficiency, and effectiveness of the FHFA's programs; to assist FHFA in the performance of its mission; to prevent and detect fraud, waste, and abuse in FHFA's programs; and to seek sanctions and prosecutions against those who are responsible for such fraud, waste, and abuse."[15] In 2008, FHFA replaced the Office of Federal Housing Enterprise Oversight and became the regulator and conservator for Fannie Mae. As such, the agency's duties include overseeing the "prudential operations" of Fannie Mae and its contractors and ensuring that their activities and operations "are consistent with the public interest."[16]

With this background, I request that you address the following issues with respect to attorneys and law firms participating in the Retained Attorney Network program and with respect to other entities engaged by both mortgage servicers managing Fannie Mae-backed loans and attorneys and firms that are part of the Retained Attorney Network:

1. To what extent have homeowners lost their homes to improper, illegal, or otherwise invalid foreclosures as a result of the types of abuses described above?

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[13] *Id.*

[14] Fannie Mae, *Retained Attorney List* (effective February 10, 2011) (online at https://www.efanniemae.com/sf/technology/servinvreport/amn/pdf/retainedattorneylist.pdf).

[15] Website of the Federal Housing Finance Administration Office of Inspector General (accessed on Feb. 3, 2011) (online at www.fhfaoig.gov/).

[16] Section 1313(a)(1)(A)-(B), Housing and Economic Recovery Act of 2008 (P.L. 110-289).

2. To what extent have homeowners been charged improper, illegal, or otherwise invalid fees during the foreclosure process?

3. To what extent are attorneys, law firms, and other entities engaged in fee-splitting, kickbacks, or other similar schemes?

4. What is the total amount in "excess fees" that has been requested from Fannie Mae by attorneys and law firms? Of this amount, how much has been reimbursed, and how much has been determined to be inappropriate or unwarranted?

5. Have FHFA or Fannie Mae conducted investigations into allegations of abuse by attorneys, law firms, or other entities, and if so, what are the results? Were these allegations considered before the recent expansion of the Retained Attorney Network to all 50 states?

6. What specific information has been collected regarding allegations against the following firms and their affiliates?

   a. Law Offices of David J. Stern, P.A.
   b. Law Offices of Marshall C. Watson, P.A.
   c. Shapiro & Fishman, L.L.P.
   d. Steven J. Baum, P.C.
   e. McCalla Raymer, L.L.C.
   f. Johnson & Freedman, L.L.C.
   g. Prommis Solutions Holding Company
   h. Lender Processing Services, Inc. and LPS Default Solutions, L.L.C.

7. Have there been claims alleging that other attorneys or law firms participating in the Retained Attorney Network program or any default management firms managing the foreclosure of Fannie Mae-backed loans have engaged in similar conduct that violates the rights of borrowers or investors, federal or state foreclosure mitigation program guidelines, federal or state law, federal or state judicial requirements, state bar ethics requirements, or other regulations, rules, guidelines, or laws?

8. To what extent have the alleged abuses described above undermined loss and foreclosure mitigation efforts and outcomes? What responsibilities do loan servicers have in monitoring and overseeing the activities of attorneys and other third party companies? What are the levels of cure rate and loss mitigation activities among retained attorneys?

If you have any questions about this request, please have a member of your staff contact Lucinda Lessley of the committee staff at 202-225-4290.

Thank you for your consideration, and please feel free to contact me or my staff with any questions.

Sincerely,

Elijah E. Cummings
Ranking Member

cc: The Honorable Darrell E. Issa, Chairman