FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

June 7, 2011

Honorable Robert Menendez
United States Senate
Washington, D.C. 20510

Dear Senator Menendez:

Thank you for sharing your recommendations regarding mortgage servicer oversight and national servicing standards, as described in the Government Accountability Office (GAO) report, "Mortgage Foreclosures: Documentation Problems Reveal Need for Ongoing Regulatory Oversight." The Federal Deposit Insurance Corporation reviewed the GAO report and agrees with these recommendations.

The FDIC directly supervises a limited portion of the mortgage servicing industry, covering less than four percent of residential mortgages. Foreclosure documentation issues such as "robo-signing" came to light in 2010. We reviewed FDIC-supervised banks engaged in mortgage servicing and did not identify robo-signing or other deficiencies that would warrant formal enforcement actions. The FDIC continues to monitor these servicers as well as institutions servicing loans through FDIC securitizations or resolution programs.

The GAO report focuses on the findings of the interagency review of 14 of the largest mortgage servicers. Although the FDIC is not the primary federal regulator for these servicers, we actively participated in the reviews as back-up regulator to protect the interests of the Deposit Insurance Fund. The interagency review revealed significant deficiencies in numerous aspects of the servicers' foreclosure processing, resulting in Consent Orders against all 14 servicers. The Orders incorporate requirements that, if fully implemented, will help prevent a recurrence of the most significant problems with foreclosure processing. It is essential that the implementation of the Orders incorporate specific, measurable actions of these servicers to address the deficiencies identified in the interagency review.

The FDIC agrees that oversight of mortgage foreclosure activities has been limited and supports the GAO's recommendation that the federal banking agencies develop and coordinate plans to improve oversight, and establish clear goals, roles, and time lines for overseeing mortgage servicers under their jurisdiction. The FDIC will continue to work with the federal banking agencies to promote correction of servicing deficiencies and prevent the recurrence of such deficiencies.

It also is important to note that the horizontal review did not assess allegations of improper treatment of borrowers, including noncompliance with applicable requirements associated with loan modification programs and other loss mitigation obligations imposed by government programs or securitization agreements. In addition to requiring implementation of a single point of contact, proper staffing, and compliance with laws such as the Servicemembers Civil Relief Act, the Orders require the servicers to undertake a comprehensive third-party review of risk in servicing operations and to reimburse borrowers injured by servicer errors.

As the deposit insurer of most of the major servicers, we believe it is essential to fully and completely identify the extent of servicing errors so that needed remedial steps can be promptly undertaken and quantified. Given the pervasive breakdown in quality controls associated with most major servicers' operations, we believe the independent third-party review required by the Orders must cover 100 percent of foreclosures that involved a consumer complaint and 100 percent of those where a modification application was denied. Sampling may be appropriate for other categories of borrowers. Additionally, the work of the independent consultant should be validated through sampling by inter-agency teams of bank examiners.

As recommended by the GAO, we believe any national servicing standards that are created should better align economic incentives for loss mitigation. In developing the proposed rules to implement the securitization risk-retention requirements of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*, the FDIC successfully proposed the inclusion of loan servicing standards in the Qualified Residential Mortgage (QRM) requirements. The standards included as part of the QRM requirements address many of the most significant servicing issues associated with securitized loans.. By better aligning incentives, we believe the proposed standards will promote greater fairness to borrowers as well as safety and soundness by ensuring that appropriate loss mitigation activities, including loan modifications, are considered when borrowers are experiencing financial difficulties.

Thank you again for sharing your recommendations for stronger mortgage servicing and foreclosure oversight. If you have further question, please contact me at (b)(2) [redacted] or Paul Nash, Deputy for External Affairs, at (b)(2)

Sincerely,

[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

June 9, 2011

Honorable Robert Menendez
Chairman
Subcommittee on Housing, Transportation, and Community Development
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your May 20, 2011 letter regarding the need for national mortgage servicing standards. Your hearing on this critical issue was timely, and we appreciate you providing the results to us. The Federal Deposit Insurance Corporation shares your concerns regarding the lack of uniform mortgage standards for loan modifications and the foreclosure process when a loan modification is not feasible. For example, I have strongly advocated for a single point of contact, which will go a long way towards eliminating the conflicts and miscommunications between loan modifications and foreclosures, and will provide borrowers assurance that their application for modification is being considered in good faith. In addition, I also have publicly agreed that we must tackle the second lien issue head on. To better address the problem with existing mortgages, one option is to require servicers to take a meaningful write-down of any second lien if a first mortgage loan is modified or approved for a short sale.

As you may know, an interagency working group, including the FDIC, the U.S. Department of the Treasury, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Agency, Ginnie Mae, and the Department of Housing and Urban Development, is exploring opportunities to establish national mortgage servicing and foreclosure processing standards that would promote accountability and appropriateness in dealing with consumers and strengthen the U.S. housing market. The FDIC forwarded the recommendations in your correspondence to the agency members of this group not addressed in your incoming letter to ensure the recommendations are considered as part of the group's discussions.

As you may be aware, implementing some of your recommendations may require amendments to state laws, which are outside the FDIC's statutory authority. For example, the recommendation for "standardizing foreclosure timelines" would require changes in state statutes, which can differ significantly, particularly among states that engage in a judicial versus a non-judicial foreclosure process. However, you have provided us with several valuable insights and we look forward to the continued dialogue as we try to address these critical issues.

Again, thank you for your letter on this important topic. If you have any question, please
(b)(2) contact me at [redacted] or Paul Nash, Deputy for External Affairs, at [redacted] (b)(2)

Sincerely,

[redacted]

Sheila C. Bair