Joins five senators in letter urging the Administration to protect consumers

WASHINGTON, D.C. - Senator Tom Harkin (D-IA) joined five senators today in sending a letter to the Administration urging agencies to use their authority to address the burgeoning crisis in foreclosure processing. In recent weeks, there have been widespread news reports of improper and inaccurate review of foreclosure documents and disregard for required procedure, which has led to the suspension of an estimated 200,000 foreclosure proceedings nationwide. Last Friday, Senator Harkin sent a letter to Iowa's leading mortgage servicers supporting Attorney General Tom Miller's request that they stop processing foreclosures in Iowa until a systemic review of procedure can be conducted.

"The emerging details of the abusive and fraudulent practices of some mortgage servicers hurt not just American consumers trying to make ends meet, but also those buying foreclosed homes and the housing marketplace," **Harkin said.** "In the interest of American families, I encourage the Administration and regulators to use their authority to isolate the bad actors and stamp out these abuses, not just to restore balance to the marketplace, but to prevent widespread damage to the economy as a whole."

The full text of the letter the senators sent to the Administration follows.

October 14, 2010

The Honorable Timothy Geithner
Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

The Honorable Shaun Donovan
Secretary
United States Department of Housing and Urban Development

451 7th Street, S.W.
Washington, D.C. 20410

The Honorable Benjamin S. Bernanke
Chairman
Board of Governors of the Federal Reserve
Washington, D.C. 20551

The Honorable Jon Leibowitz
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Mr. John Walsh
Acting Comptroller of the Currency
Administrator of National Banks
Washington, D.C. 20219

Mr. Edward DeMarco
Acting Director
Federal Housing Finance Administration
1700 G Street, N.W., 4th Floor
Washington, D.C. 20552

Dear Secretary Geithner, Secretary Donovan, Chairman Bernanke, Chairman Leibowitz, Mr. Walsh, and Mr. DeMarco:

You are no doubt aware of the recently reported improprieties in the foreclosure processes employed by some of our nation's largest mortgage servicers. Unfortunately, these reports are consistent with complaints that we have heard from our constituents alleging behavior on the part of servicers and foreclosure law firms, popularly referred to as "foreclosure mills," that would constitute bad faith at best, outright abuse at worst. All of these practices raise serious questions about the integrity of mortgage servicers' loss mitigation and foreclosure processes, from their modification procedures to their foreclosure pleadings.

There have been attempts to dismiss the reported violations as minor technical paperwork errors, and to employ the defense that these were harmless errors because the homeowners were in foreclosure and would have lost their houses anyway. These are not technicalities, they are not isolated cases – it is likely that over 200,000 foreclosures have now been suspended – and these improprieties cast doubt on the foreclosures in question.

Rather than a few rogue employees disregarding company policy, the policies themselves were flawed, indicating that there is a systemic problem with the manner in which loss mitigation and foreclosure operations are being conducted by most, if not all, mortgage servicers. This pattern of behavior has undermined the integrity of the housing market, creating uncertainty for home sales and the availability of title insurance.

The systemic problems that are being uncovered in the current mortgage market are remarkably similar to the predatory practices employed during the subprime mortgage crisis. These difficulties stem from the fact that servicers lack the proper incentives to follow basic procedures required either by mortgage contracts, pooling and servicing agreements, or state and federal laws. Homeowners have no leverage in the modification process and federal agencies (including the Treasury Department) have yet to impose meaningful penalties. It is time for the government to restore some sanity and oversight to the housing market. Your agencies are in a unique position to address this problem because your agencies have various authorities over practices at bank and non-bank mortgage servicers.

First, you have the authority to require loss mitigation prior to foreclosure to eligible homeowners facing hardship, where consistent with investor interests, subject to penalty. Such a requirement would focus servicers’ efforts to assist homeowners. It would also establish clear repercussions for servicers who fail to participate in loss mitigation in good faith.

Second, your agencies have the ability to impose your own tailored moratoriums on foreclosures for certain identified lenders, pending assurances that such lender’s paperwork complies with state and federal requirements; proper ownership documentation is in order; and all contracts and loss mitigation requirements under those contracts have been followed. The banks are focusing solely on their affidavit processes, but a more comprehensive review is required. Failures to comply with all of these requirements should be penalized.

Finally, your agencies have the authority to review and reform the financial incentives for servicers and foreclosure mills. Mortgage servicers have been accused of imposing unfair fee arrangements in modification contracts and foreclosure pleadings, and foreclosure mills are paid on a per-case fee basis. These arrangements benefit the mortgage companies to the detriment of homeowners.

Congress has a role to play in addressing this crisis as well. But your agencies have tools at your disposal to address the substantial challenges facing homeowners in the mortgage market, and you are able to respond more nimbly than Congress to this emerging crisis. The ample record of homeowner abuse should compel you to act expeditiously in the best interest of homeowners and investors.

Thank you for considering our views. We await your response to the ongoing developments of the foreclosure crisis.

Sincerely,

Senator Tom Harkin
Senator Sherrod Brown
Senator Barbara Boxer
Senator Mark Begich
Senator Debbie Stabenow

Senator Jeff Merkeley

Cc: Mr. Timothy Massad, Chief Counsel, Office of Financial Stability, United States Department of the Treasury
Mr. David Stevens, Commissioner, Federal Housing Administration