OFFICE OF INSPECTOR GENERAL
Federal Housing Finance Agency

400 7th Street, S.W., Washington DC 20024

February 25, 2013

To: Edward J. DeMarco, Acting Director

From: Steve A. Linick, Inspector General

Subject: Potential Need for FHFA to Act on an Expedited Basis to Determine Whether the Enterprises Might Benefit Financially From the Recent Settlement-in-Principle Between Federal Bank Regulators and Mortgage Servicers

Please find enclosed a staff memorandum concerning the recently announced settlement-in-principle between certain federal bank regulators and mortgage servicers.

The memorandum indicates that approximately $5.7 billion has been allocated towards borrower assistance such as loan modifications and forgiveness of deficiency judgments. The parties to the settlement are negotiating its final terms, and payments may be sent to affected borrowers starting in late March.

The settlement has the potential to result in financial recoveries for the Enterprises. This is primarily because it allows for the payment of funds to satisfy outstanding deficiency judgments, which may include judgments on mortgage loans owned or guaranteed by the Enterprises.

However, our interactions with members of your staff and representatives of Fannie Mae and Freddie Mac indicate that neither FHFA nor the Enterprises have inquired into the potential for financial recovery under the settlement. Accordingly, I recommend that a member of your staff consult with the federal regulators on an expedited basis to ascertain whether the Enterprises may recover under the settlement. Additionally, I would appreciate if someone from your staff could respond in writing as to the status of this request by March 11, 2013.

OFFICE OF INSPECTOR GENERAL
Federal Housing Finance Agency

400 7th Street, S.W., Washington DC 20024

February 25, 2013

To: Steve A. Linick, Inspector General

From: Richard Parker, Director, Office of Policy, Oversight, and Review

Subject: Potential Need for FHFA to Act on an Expedited Basis to Determine Whether the Enterprises Might Benefit Financially From the Recent Settlement-in-Principle Between Federal Bank Regulators and Mortgage Servicers

On January 7, 2013, the Office of the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System announced a settlement-in-principle between federal regulators and 10 mortgage servicers over deficiencies in the servicers' foreclosure practices. At the time, the settlement amount was described as a total of $8.5 billion for borrowers.[a] Since then, three additional servicers have signed onto the settlement bringing the potential total amount to $9.3 billion.

Under the announced terms of the revised settlement, $3.6 billion is allocated to pay eligible borrowers whose homes were in foreclosure in 2009 and 2010; and another $5.7 billion is allocated towards other forms of borrower assistance, such as loan modifications and forgiveness of deficiency judgments. The parties to the settlement are negotiating the final terms, and payments may be sent to affected borrowers starting in late March.[b]

The settlement has the potential to result in financial recoveries for the Enterprises. This is primarily because the settlement-in-principle allows for the payment of funds to satisfy outstanding deficiency judgments, which may include judgments on mortgage loans owned or guaranteed by the Enterprises.[c] Further, modification of Enterprise-owned or guaranteed loans could also benefit both borrowers and the Enterprises, for example, by preventing costly and disruptive foreclosures.

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[a] See Office of the Comptroller of the Currency, *Independent Foreclosure Review to Provide $3.3 Billion in Payments, $5.2 Billion in Mortgage Assistance* (January 7, 2013), online at http://occ.gov/news-issuances/news-releases/2013/nr-ia-2013-3.html.

[b] See Office of the Comptroller of the Currency, *Remarks by Thomas J. Curry, Comptroller of the Currency, Before the Women in Housing and Finance, Washington, DC* (February 13, 2013), online at http://www.occ.gov/news-issuances/speeches/2013/pub-speech-2013-28.pdf.

[c] As of 2011, the Enterprises were pursuing approximately 35,000 deficiencies with a combined value of $2.1 billion. See OIG, *FHFA's Oversight of Enterprises' Efforts to Recover Losses from Foreclosure Sales* (AUD-2013-001) (October 17, 2012), online at http://www.fhfaoig.gov/Content/Files/AUD-2013-001.pdf.

However, financial recoveries for the Enterprises on deficiency judgments or any other aspect of the settlement are uncertain at this time. Causes for this uncertainty include the facts that financial regulators, such as the OCC, have not made final decisions on settlement payments; the terms of the settlement have not been finalized and, ultimately, may explicitly or implicitly exclude the Enterprises; and recent scrutiny may cause delay of the settlement or modification of its final terms.

On January 16, 2013, members of the OIG met with the Agency's General Counsel and were informed that neither FHFA nor the Enterprises were parties to the underlying enforcement action or its settlement. Accordingly, the General Counsel's office did not monitor the settlement negotiations between the federal regulators and the servicers. On February 15, 2013, the OIG held meetings with the Enterprises. Based on the meetings, it appears that neither FHFA nor the Enterprises have inquired into the federal regulators' decision making, the terms of the settlement, or the potential for financial recovery under the settlement.

With respect to the settlement-in-principle, it may be appropriate for FHFA to take the following steps to determine whether the Enterprises may benefit financially from the final settlement:

- **Consult with the OCC and other financial regulators on an expedited basis.** As a first step, FHFA should obtain information on the terms of the settlement and its potential impact on the Enterprises. To the extent possible, FHFA should ensure that the financial interests of the Enterprises are considered and protected during settlement negotiations. Expedited action is necessary because the OCC and other regulators are reportedly in the process of making final settlement payment decisions now, with the process to be completed as early as late March.

- **Require the Enterprises to provide data to the OCC and other regulators as necessary.** If FHFA's discussions with the OCC indicate that financial recoveries for the Enterprises may be possible, the Agency should work closely with the Enterprises to ensure they provide data that may be required to the OCC and other regulators.

Federal Housing Finance Agency

MEMORANDUM

TO: Steve A. Linick, Inspector General

FROM: Jon D. Greenlee, Deputy Director, Division of Enterprise Regulation

SUBJECT: Potential Need for FHFA to Act on an Expedited Basis to Determine Whether the Enterprises Might Benefit Financially From the Recent Settlement-in-Principle Between Federal Bank Regulators and Mortgage Servicers

DATE: March 8, 2013

This memorandum responds to your February 25, 2013, memorandum to Acting Director Edward DeMarco concerning the OCC/Federal Reserve settlement with certain mortgage servicers. FHFA values the OIG's perspective on this matter and appreciates the opportunity to respond. In your memorandum, you outline the potential need for FHFA to act on an expedited basis to determine whether the Enterprises could possibly benefit financially from the recent settlement announced between the OCC and the Federal Reserve and the mortgage servicers they oversee and supervise.

As you are aware, FHFA has no supervisory jurisdiction over the subject mortgage servicers and was not involved in the independent foreclosure review that was recently terminated when the settlement in principle was reached. The OCC and Federal Reserve undertook the original review and the settlement discussions to provide compensation to borrowers who may have been affected by deficient foreclosure processes. FHFA's knowledge and understanding of the details of the independent foreclosure review and settlement negotiations was limited to that which is publicly available.

As you suggested, we have been in discussions with the OCC about this matter. Our discussions indicate that the settlement negotiations have been very involved and have taken several weeks to complete. The focus of those negotiations was on how best to efficiently remediate the consumer-related issues identified prior to and during the independent foreclosure review. The potential impact on Fannie or Freddie from deficiencies in the foreclosure process was not part of the scope of the original independent foreclosure review, nor part of the announced settlement. Further, FHFA also understands that after extensive negotiations, payments to consumers are scheduled to be made shortly.

As to your question about whether or not the Enterprises could benefit financially from the settlement, FHFA agrees that the potential for additional deficiency recoveries exists. However, FHFA does not believe that it is appropriate or feasible at this time to try and interject further complications to the OCC and Federal Reserve negotiations and potentially delay remediation of these issues. We will, however, discuss with Fannie and Freddie additional steps they may be able to undertake to ensure that, where possible, they receive the benefits of deficiency recoveries consistent with our prior responses to related OIG responses.

We do understand that Treasury OIG has been engaged with the OCC on an ongoing basis during the process and suggest that FHFA OIG could discuss concerns or issues with the process with them to ensure timely resolution.

Should you have any comments or questions, please feel free to contact me.

cc: Ed DeMarco, Acting Director
Rick Hornsby, Chief Operating Officer
Bruce Crandlemire, Senior Advisor for IG Operations
Richard Parker, Director, Policy Oversight & Review, IG