SPENCER BACHUS, AL, CHAIRMAN

United States House of Representatives
Committee on Financial Services
Washington, D.C. 20515

BARNEY FRANK, MA, RANKING MEMBER

March 30, 2011

Ms. Elizabeth Warren
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Dear Ms. Warren:

There is no dispute that documentation, internal controls and processing were seriously deficient at some of the nation's largest mortgage servicing firms, and that remedial steps to cure those deficiencies are necessary. But we continue to be concerned about the participation of political appointees at the Treasury Department in the regulatory enforcement process. The role of these appointees —including those affiliated with the Consumer Financial Protection Bureau (CFPB), an agency that does not yet have any regulatory or enforcement authority — raises questions about the process through which the terms of a possible settlement are being negotiated. When political appointees involve themselves in enforcement matters, they may pressure regulatory officials to take actions benefitting a particular political constituency or advancing a particular agenda at the expense of sound policy. As you have said, "We know what can happen when laws aren't fairly or consistently enforced because of political pressure, and it doesn't end well for American families, for honest businesses, or for the economy." We could not agree more.

On March 16, 2011, you appeared as a witness before the Subcommittee on Financial Institutions and Consumer Credit at a hearing titled "Oversight of the Consumer Financial Protection Bureau (CFPB)." At that hearing, several Members of the Subcommittee asked about the CFPB's involvement in ongoing settlement discussions between mortgage servicers and state and Federal authorities. You repeatedly declined to acknowledge that the CFPB, "a division of the Treasury," had participated in foreclosure settlement negotiations, responding only that the CFPB had provided "advice" and "expertise" to Federal and State officials involved in the negotiations.[1]

Since you testified, new information has come to light indicating that the CFPB has actually been deeply involved in the negotiations. This information comes from a document *(attached)* bearing the CFPB's name and entitled "Perspectives on Settlement Alternatives in Mortgage Servicing" ("the CFPB Settlement Presentation"). The CFPB Settlement Presentation is dated February 14, 2011, and marked "CONFIDENTIAL FOR AG MILLER," presumably a reference to Iowa Attorney General Tom Miller, who is coordinating the negotiations for the State Attorneys General.

At the March 16 hearing, when Chairman Bachus asked whether the CFPB had advised on the structure of the settlement, you said only that Secretary Geithner "asked for advice about the ongoing problems we have with mortgage servicers." But according to the CFPB Settlement Presentation, the CFPB did more than provide advice: it recommended

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[1] *See* Elizabeth Warren, Special Advisor to the Secretary of the Treasury for the Consumer Financial Protection Bureau, Testimony of March 16, 2011 before the House Financial Services, Financial Institutions and Consumer Credit Subcommittee.

the goals and provided a detailed framework for the structure of the settlement. The CFPB Settlement Presentation advances the idea that a "global" settlement is a vehicle for "broad reform" of mortgage servicing practices. In short, the recently disclosed documents suggest that rather than merely dispensing advice to those involved in negotiating the settlement, the CFPB was actually its primary architect.

Additionally, Page 2 of the CFPB Settlement Presentation offers suggestions for monetary penalties. It says that "rough estimates suggest that the largest servicers may have saved more than $20 billion through under-investment in proper servicing during the crisis. As a result, a notional penalty of roughly $5 billion would seem too low." Not coincidentally, it seems, it has been widely reported that the Department of Justice and state Attorneys General are now seeking at least $20 billion in such penalties. Yet, when Rep. Scott Garrett asked whether you had made recommendations regarding monetary penalties for mortgage servicers, you replied only that "the Secretary of the Treasury has asked us – for the consumer agencies – to give advice."

As further indication of the CFPB's extensive involvement in the settlement process, your calendar discloses dozens of individual meetings and calls with State Attorneys General, the Department of Justice and other federal regulators regarding "mortgage servicing" or "foreclosure settlement."[2] Iowa Attorney General Miller has himself confirmed that you have been a "very active participant" in talks about the servicing settlement.[3]

It is plain that the CFPB has done more than provide "advice" on the proposed servicing settlement. Accordingly, we respectfully request that you carefully review the attached transcript of your testimony at the March 16 hearing and advise the Subcommittee by April 1 if there are any aspects of that testimony relating to the CFPB's role in the mortgage servicer settlement negotiations that you wish to clarify or correct.

Thank you for your attention to this request.

Sincerely,

SPENCER BACHUS
Chairman

SHELLEY MOORE CAPITO
Chairman
Subcommittee on Financial Institutions
and Consumer Credit

Enclosure

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[2] *See* http://www.consumerfinance.gov/professorwarrens-calendar/

[3] Andrew Ross Sorkin, *Warren's Calendars Show Limited role in Talks on Foreclosure Settlement*, N.Y. Times, 3/25/11.