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March 7, 2013

Attorney General Eric H. Holder, Jr.
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Holder,

Recently a long-time professional in the mortgage industry approached my Portland, Oregon, district office about what he called "a systematic effort by some [within his industry] to double bill underwater homeowners for the servicing fees associated with their foreclosures." The picture he painted was extremely troubling. Not only is the thought of a bank making it harder for struggling homeowners to reinstate their loans appalling, under the False Claims Act, charging for fees already being paid by a government-backed entity such as Fannie Mae is illegal.

The ramifications of this case, however, seem to go well beyond a fraudulent fee structure. As my office has investigated the allegations brought to my attention, I have become convinced that the entities behind this scheme – one in particular – fostered an environment in which foreclosure was seen as an optimal outcome and shortcuts – such as "robo-signing" – were inevitable. Therefore, as your agency considers these findings, I urge you to view this as more than an isolated case of consumer abuse, but as a structural challenge. Left unaddressed, it will only engender newer and more inventive abuses in the future.

After the allegations were presented to me, my staff discussed them with a number of industry experts and government regulators, and my staff considers this person's claims to be credible. I am sharing this information with the hope that my office's findings will help inform your own investigation and subsequent actions to address these charges.

While a number of industry actors appear to have been complicit in the scheme to double-bill customers for default mortgage services, it seems that this practice would not have become so ingrained nor been as damaging had it not been for the actions of the mortgage- and default-processing firm, Lender Processing Services, Inc. (LPS).

I am not the first to raise concerns about LPS. The firm has been the target of multiple state and investor lawsuits and is currently the target of an ongoing independent audit being led by the Board of Governors for the Federal Reserve. But it is my understanding that despite the various claims against LPS, no one has yet been able to put together a complete picture of how LPS muscled its way into becoming the dominant force in the default mortgage servicing market. LPS currently controls more than 50 percent of default management in the U.S. and its proprietary mortgage servicing software is the industry standard. LPS also counts a majority of the nation's top banks among its clients and lists offices and subsidiaries in 19 different states, including my home state of Oregon.

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Despite the investigations, lawsuits and regulatory measures, many questions remain about LPS's practices thanks largely to their complexity and the tangled network of business arrangements LPS has negotiated with law firms and lenders. Put simply, LPS is not subjected to the same oversight as lenders and servicers, and the company has made it difficult to discern exactly what it is doing and with whom. So, please bear with me as I attempt to explain our understanding of LPS's activities.

1.) As you know, mortgage investors – such as Fannie Mae and Freddie Mac – contract banks and other entities to service their investments. In exchange for a portion of the interest homeowners pay on their mortgages, these "servicers" answer homeowner questions, collect payments and otherwise ensure that mortgage investors get paid for their investments. These servicing arrangements also hold servicers responsible for "default servicing" which includes preserving the underlying collateral, managing bankruptcy and foreclosures processes, liquidating assets once foreclosed, processing mortgage insurance claims and then reconciling the financial impact of the delinquent loan with the investor.

   Because servicing a mortgage in default is a lot more costly than servicing a current loan servicers have significant upside in helping homeowners remain current on their mortgages. Legal fees are not covered by the homeowner's interest payments and can therefore be passed along to reinstating investors and homeowners.

2.) It seems that LPS offered servicers a deal: LPS would provide complementary default servicing – including use of LPS's exclusive case management system and operational capacity in the form of outsourcing operations, etc. – to any servicer that contracted LPS to handle its foreclosure-related legal work. Because servicers are allowed to pass legal fees on to homeowners and investors, this meant that servicers who signed with LPS could, effectively, offload a portion of their servicing costs.

   How it works:

   a. **Homeowner:** In cases in which borrowers are trying to reinstate their mortgages, it seems that servicers tack these "legal fees" on to the homeowner's existing bill. We've been told that these fees are not delineated for borrowers, thus ensuring that they are unaware that they are being charged for a service that a portion of their interest payments already paid for. Instead these borrowers are simply told that they need to come up with more money to save their homes.

   b. **Investor**: In the case of loans that are not reinstated and instead fall into foreclosure, we're told that the investor receives a reimbursement request for these "legal fees." If these legal fees actually represent default servicing costs, then this would be the second time that the investor pays for these services.

   Under LPS's proposed arrangement, LPS get paid whether or not the homeowner is able to reinstate their mortgage and the servicer is able to marginally reduce its losses. In fact, not only does LPS have no financial incentive to help struggling homeowners, under this arrangement the more mortgages that fall into default – and the more LPS default products and services are consumed by the servicer – the more money LPS makes. And, as a bonus, by getting clients to adopt their exclusive "Desktop" CASE management software, LPS is able to lock in customers

by making it costly for them to take their business elsewhere (in terms of the costs associated with converting to a new servicing platform, training staff, etc.).

3.) LPS's argument that it is only charging servicers for legal services appears to be particularly suspect given that LPS is not a law firm. Rather, LPS subcontracts its legal services to a select group of law firms. These "network firms" reportedly all have agreed with LPS that, in exchange for a steady stream of foreclosure business from the nation's largest default processing firm, the law firm must pay for the default servicing that LPS offers servicers "free-of-charge."

4.) Controlling such a large share of the default servicing market has only empowered LPS to, at times, demand participation from law firms looking to gain access to its clients or generally "stay in favor" with the default giant. By carving off a significant percentage of the monies that should fund the legal work of law firms, LPS has made it difficult for firms to operate efficiently. Again, by devaluing the system's legal checks and balances and rewarding the quantity of work over its quality, I do not think it was surprising that robo-signing became a common practice.

Again, I am not the first person to raise concerns about LPS. In fact, the legal claims against LPS are becoming so prolific that the firm currently has more than $196 million set aside to defend itself against legal claims. But I feel strongly that unless we are able to get a clear picture of exactly what LPS is doing and the structural deficiencies that allowed it to play the role that it has, efforts to protect consumers in the mortgage market will result in little more than a game of regulatory "whack-a-mole."

To that end, I ask that you to respond to the following questions:

- Has this alleged fee structure among servicers, mortgage law firms and mortgage servicing firms been brought to your attention? If so, what efforts have you undertaken to investigate said fee structures and what have you found? If not, will your agency look into the services being provided by LPS - to ensure that profiteering at the expense of the distressed homeowner, is regulated?

- Are there currently structures in place intended to prevent or punish the type of double billing scheme that LPS is allegedly offering? If so, why didn't they work? If not, what can be done to prevent these kinds of schemes in the future? How can Congress be helpful? Is there a need to consider ways to increase billing transparency, such as a RESPA-like policy, so that customers can understand and even challenge the fees they are asked to pay?

- Fannie Mae appears to have recognized problems with LPS's fee structure and enacted policies in 2010 to prohibit, or cap, certain fees charged by law firms. Freddie Mac also preempted this problem by prohibiting referral fee charges as early as 2003. Should these standards be implemented industry wide?

- Is your agency aware of allegations that LPS is tying the pricing of its MSP and Desktop Platforms to clients' purchases of LPS title products and services as a way to maintain and gain market share? If not, will you look into such pricing and market manipulation practices to ensure appropriate competition within the title industry?

I look forward to hearing your thoughts on these matters as it is my hope that working together we can send a clear message that anyone looking to profit by undermining homeownership has no place in the U.S. housing industry. Please contact Peter Gartrell (peter_gartrell@energy.senate.gov) or Jonathan Dorst (jonathan_dorst@wyden.senate.gov) on my staff at (202) 224-5244 with any questions.

Thank you for your consideration on this matter.

Sincerely,

Ron Wyden
United States Senator

Cc: Secretary for Housing and Urban Development Shaun Donovan; Board of Governors of the Federal Reserve System Chairman Ben Bernanke; Consumer Financial Protection Bureau Director Richard Cordray; Federal Trade Commission Chairman Edith Ramirez; Federal Trade Commission Bureau of Consumer Protection Director David Vladeck; Federal Housing Finance Agency Acting Director Edward DeMarco