THE IMPLEMENTATION OF THE HOPE FOR HOMEOWNERS PROGRAM AND A REVIEW OF FORECLOSURE MITIGATION EFFORTS

HEARING

BEFORE THE

COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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Wednesday, September 17, 2008

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THE IMPLEMENTATION OF THE HOPE FOR HOMEOWNERS PROGRAM AND A REVIEW OF FORECLOSURE MITIGATION EFFORTS

Wednesday, September 17, 2008

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The committee met, pursuant to notice, at 10:06 a.m., in room 2128, Rayburn House Office Building, Hon. Barney Frank [chairman of the committee] presiding.

Members present: Representatives Frank, Waters, Maloney, Watt, Capuano, Baca, Lynch, Miller of North Carolina, Scott, Green, Cleaver, Ellison, Wilson, Perlmutter, Murphy, Foster, Carson, Speier; Bachus, Castle, Manzullo, Biggert, Shays, Capito, and Hensarling.

The CHAIRMAN. The hearing will come to order. I apologize for the delay. This is a hearing called pursuant to the legislation we adopted, in which we sought to provide a framework which would facilitate voluntary decisions by the holders of loans to modify them in a way that would reduce foreclosure. This is a hearing to get progress reports, and to listen to whether or not there are some glitches with it. I would say one of the issues that I continue to think important is whether or not we need to revisit next year or visit this servicers model. And one of the questions we keep asking—we get somewhat varied answers—is do the servicers who might be convinced that a certain modification would be in everybody's interest have the power to make it?

It is clearly not good public policy to have important decisions so split in terms of the power to make them that the decisions can't get made. And one of the things we will be looking at next year is whether we should be amending the law not to ban servicing or to require it, but simply to say that if you are, in fact, going to have a servicer, there must be a certain minimum amount of discretion the servicer has so that we don't get into this paralysis.

It is certainly good legal theory not to allow certain rights to be so split up that they cannot effectively be exercised. It is important also to stress that when we talk about trying to diminish foreclosures, it is not simply a matter of compassion for those whose homes will be foreclosed. Clearly, that is a factor. But we also acknowledge there are people who made unwise decisions to buy homes.

There are people who bought homes that they cannot sustain. And no one should think they are doing anybody any favors by keeping them in homes that they should not have borrowed for in the first place. There are some people who committed fraud, we hope not a very large number. And we have been encouraging, the gentlewoman from Illinois, Ms. Biggert and others, we want to give the Justice Department as much money as it can to prosecute them. But there are also a large number of people who made a mistake in part of not guessing that house prices were going to drop. They have a lot of company in that. And it is also the case that the level of foreclosures we have been seeing cause problems far beyond the individual.

I think the best way to look at the damage caused by foreclosure is as a series of concentric circles. At the center of the circle is the individual who loses his or her home, causing great stress to that individual and that individual's family. And as I said, we would like to alleviate that, and I think most people believe it is legitimate to try to alleviate it. But even if you don't have a lot of concern about them, the neighborhood in which the foreclosures happen suffers, particularly if, as is the case—foreclosures are not distributed randomly geographically. So you get a concentration in a neighborhood. You get that municipality hurt, because property that used to pay taxes now eats taxes when you have to send the police and you have to send the fire department and the water department to restore water power and the sanitation people because of garbage. And then the whole economy gets hurt.

It is clear that the subprime crisis and its reverberations have contributed to where we are, so there is a national interest in diminishing foreclosures over and above the concern for individuals. That is the perspective that we have taken here. We have, in this committee, understood that contract law being what it is, we can't order anybody to abrogate contracts. There was an effort to do that through bankruptcy that came out of another committee. I supported it, but it didn't have the votes.

We, therefore, set up what we thought was the best possible voluntary structure in which we gave people inducements to go forward. We do call on here what has been previously an underutilized public asset, the Federal Housing Administration. We gave them a greater role. We did it in a way that segregated any possible negative financial effects here from the FHA in general, but I think one of the problems recently was too little use of the FHA. Both in this regard and looking forward, we expect a big increase. One of the encouraging things—Secretary Preston was in to see us and showed us very proudly, and he was entitled to be proud of it—the chart that shows, I think, a quadrupling of FHA activity. That is something that we think is good. I cite that because we have been asked when we have talked about restricting some of the subprime mortgages that were made, "Well, are you going to keep people in those economic categories from getting homes?"

The answer is some we should yet, because they shouldn't have bought homes, but beyond that we are offering the FHA as a better alternative. And to the extent that people go to the FHA, and as we have been able to, collaboratively with the Administration, improve the ability of the FHA, we are better off.

Now let me make one comment, which may be one of the less useful things I say in practice, but I think it is fair to say. We have invited a number of people here, including, and we are glad to welcome—I don't imagine she would have chosen this as the circumstances in which to come—the new Governor of the Federal Reserve, Governor Elizabeth Duke, who has been a community banker. We welcome that perspective on the Federal Reserve, and Governor, we are glad to have you.

We have others who have been invited to talk, and this hearing is about what response we can expect from efforts by us and others to reduce the number of foreclosures. Clearly, there are other issues on people's minds as well. We will have a hearing tomorrow on auction rate securities. We will have a hearing next week on the Federal Government intervention on Fannie Mae and Freddie Mac. And we will also have a hearing that we have scheduled for next Wednesday as to whether or not there ought to be a systemic Federal mechanism for the kind of intervention that was done on an ad hoc basis yesterday. In fact, I will tell you that I am going to introduce a resolution to declare September 15th Free Market Day, because the national commitment to the free market lasted 1 day. It was Monday. On Sunday, Lehman Brothers was allowed to fail and everybody was for the free market, and we had a lot of celebration of it on Monday, and it died yesterday. But I think we ought to at least commemorate September 15th as that brief moment of glory for the let-it-go-belly-up faction.

But in any case, we do have two hearings next week where we will talk about some of the broader issues. In fairness to the witnesses, we asked for witnesses who were prepared to talk about this specific issue. Some of the witnesses will neither be prepared, or in some cases authorized, to speak for their institution on this. That does not apply to the Chairwoman for all seasons, so you can ask Sheila anything you want. She can handle it. But it would be better I think if we could focus on this question of foreclosure. There will be two further hearing opportunities to talk about the broader issues. The gentleman from Alabama.

Mr. BACHUS. Thank you, Chairman Frank, for holding this important hearing. This actually, I guess, started out as a hearing on the implementation of the HOPE for Homeowners Program, and ways to assist homeowners trying to avoid foreclosure. I think we all know the problems in the housing market continue to exert a powerful drag on our financial markets and the economy as a whole. And I think yesterday's events brought that home to us in a very strong way. The overall mortgage delinquency rate is at 10 percent, which is an historic high. It is the highest level in 29 years. And when we say, that includes both mortgages in delinquency and foreclosure.

Chairman Frank, you should be commended for using this committee's oversight authority to focus on foreclosure mitigation efforts, whether that is loan modification or avoiding unnecessary foreclosures, and the effect it is having on not only the individual homeowners, but the communities as a whole. And I know Chairman Bair, you have, in the past, stressed that this is not just a problem of the homeowners, it is a problem for the community. And I think we are all seeing that. While we don't always agree on leg-

islative solutions to the problem, I don't think there is any disagreement on this committee that it is very important for us all to promote sustainable loan modifications that keep Americans in their homes and help stabilize the housing market.

Until recently, the Federal Government's role in preventing avoidable foreclosures has been largely to facilitate private sector initiatives like HOPE NOW that rely on mortgage servicers, lenders, and housing counselors to identify and assist homeowners at risk of foreclosure. But with the government takeover of Fannie Mae and Freddie Mac, and the failure of IndyMac, the Federal Government now finds itself directly on the front lines responsible for administrating mortgage portfolios valued at hundreds of billions of dollars.

The government's success in managing these portfolios will determine the ultimate cost to the taxpayers from the GSE takeover, and to the banking industry from the IndyMac failure, as well as, and probably most importantly, the fate of hundreds of thousands of homeowners struggling to make payments on mortgages that are worth more now than the properties they secure. We are fortunate to have with us FDIC Chairman Bair, as Chairman Frank said, who will update us on the FDIC's efforts to carry out systematic loan modifications at IndyMac that help at-risk borrowers, while at the same time minimizing losses to the deposit insurance fund from the bank's failure. Let me close by saying all of us on the committee have heard from our constituents frustrated by the loan modification process that often takes too long and involves too much red tape.

Also, I am hearing on occasion from bankers who are saying that bank regulators and auditors are actually at times encouraging them to declare mortgages in default. And I think that is something that we ought to try to minimize, if possible, particularly if you have a bank that would not like to foreclose and a bank auditor is asking them to go ahead and declare that—or to go ahead and get that off their book. One of the goals of today's hearing should be to identify those obstacles that stand in the way of loan workouts that keep worthy borrowers in their homes and help stabilize communities struggling with record high foreclosures and housing inventories. Thank you, Mr. Chairman, for holding this hearing. And I thank all of our witnesses on all the panels for their participation.

The CHAIRMAN. We are going to try to limit opening statements if we can. Obviously, all things can be sent in. We have time for a couple more. I would hope we could limit it. But the gentlewoman from California has been, of course on our side, and I think in the whole Congress, one of the leading advocates for addressing this servicing issue in a much more systematic way. So the gentlewoman is now recognized.

Ms. WATERS. Thank you very much, Mr. Chairman. I certainly thank you for convening this hearing, an important follow-up to the committee's July 25th hearing. I am particularly interested in a couple of topics today. I have been clear from the beginning of this crisis that the mortgage servicing industry, unknown to much of the public and even to us in Congress prior to the current crisis, is underregulated, indeed almost unregulated. I have also felt

strongly that voluntary industry initiatives to speed up loan workouts, particularly loan modifications, have been insufficient to the scale and urgency of the present crisis, which has led me to introduce legislation, H.R. 5679, the Foreclosure Prevention and Sound Mortgage Servicing Act, that would impose a duty to engage in reasonable loss mitigation on mortgage servicers.

In light of recent events in the financial markets which make it clear that the economy is far from finished feeling the effects of the subprime mess and resulting foreclosure wave, this hearing takes on added importance. It is absolutely critical that we find out whether things are changing, and the prospects for further progress when the HOPE for Homeowners program comes into operation in the coming weeks and months.

There are a few things I am particularly interested in learning about today. First, I do look forward to Chairwoman Bair's testimony, because she has been a sensible and forceful voice throughout this crisis, and because the FDIC is now in the loss mitigation business as a result of the failure of IndyMac. I am interested to learn about the Agency's experience and any lessons that might be relevant to the rest of the industry. Second, I am interested in the experience of the regulators in trying to pin down reliable data on loan workouts and modifications. I am concerned that we have a near complete lack of transparency about what is going on with servicers now. In contrast to loan origination, where HMDA data gives us a pretty clear and comprehensive picture of what is going on with loan origination, we are reliant in this crisis on industry-provided data. And I would argue that at best, it is incomplete and somewhat opaque.

I hope the regulators' representatives today have been having better luck than we have in determining exactly what is going on around loss mitigation. I am troubled that the few analyses that drill further down than the inch-deep statistics provided by the HOPE NOW Alliance, such as Professor White's study that we will hear about today, suggests that long-term and affordable loan workout solutions for stressed borrowers remain in short supply even as the crisis intensifies.

On that score, I would note that auction sales in my home State of California now take place at the rate of 700 per day. Finally, I continue to be concerned that we have what is known as an agency problem here. While the industry repeatedly says that nobody wins in a foreclosure, there is some evidence that a mortgage servicer, ostensibly the agent of the investment trusts, may do better in terms of fees when it forecloses, or at least keeps the borrower in a state of prolonged delinquency, than it does in a sustainable loan workout, even where to do so would be in the best interests of the trust.

In particular, I am concerned that much of the servicers' compensation is tied to outstanding principal, which may present an obstacle to the kind of principal write-downs at the heart of the HOPE for Homeowners program. I certainly look forward to hearing more from the witnesses today about how mortgage servicers are compensated so that we can look carefully at whether the incentives for servicers are really set up the way they ought to be to get us out of this crisis. I would close, Mr. Chairman, by asking

unanimous consent to put the written statement of the East Los Angeles Community Corporation into the hearing record. I yield back the balance of my time.

The CHAIRMAN. Without objection, leave is granted to all members to insert items into the record.

The gentleman from Texas.

Mr. HENSARLING. Thank you, Mr. Chairman. And thank you for calling this important hearing. I certainly agree with you, Mr. Chairman, that there are a number of legitimate issues that deserve this committee review, and the servicing model. We need to examine what type of legal impediments that there may be to loan modifications. However, I fear that perhaps the hearing is too narrow in scope. Certainly any true mitigation efforts would also focus upon what we can do to preserve and grow the paycheck of the homeowner so he can afford his mortgage, and what is it that we can do as policymakers to unleash capital into the markets to add more liquidity.

I also still feel that for some members, we may be operating under a faulty premise that the unlucky folks who actually ended up with the mortgage somehow have an incentive to foreclose, when in actuality the incentives appear to be on the other side. I do note that at least the data that has come to me show that there have already been 2.1 million voluntary workouts. We have heard before that the average cost of foreclosure exceeds $50,000. And I have no idea who would want to be a seller of a home in this particular market.

So I would note that the incentives appear to be on the other side. Clearly, if people have a financial pulse, most lenders will want to work with them. I do hope that as we go through this hearing, we use it as a time to reexamine a whole host of Federal policies that seemingly are designed to turn everyone into a homeowner.

Everyone needs a home, but unfortunately, everyone may not be able to be a homeowner. Trying to help people stay in homes they could not afford when they bought them, and cannot afford today, I do not believe does them any good, does their neighborhood any good, and certainly doesn't do the economy any good.

In addition, I think it is time for us to reexamine just how long the poor beleaguered taxpayer can be expected to bear all the losses and bear all the risk: $30 billion to Bear Stearns; $85 billion to AIG; up to $300 billion for FHA, Fannie and Freddie; CBO scores at $25 billion; the consensus appears to be closer to $100 to $200 billion. As for Lehman Brothers, all I can say is that they must have the worst lobbyist in town since they are the only ones who appear to have lost out on bailout mania. I continue to be concerned now at the level of the reserves that I see in the FDIC. I look forward to hearing from Chairman Bair. I am concerned about the level of the Federal reserves now, and what taxpayer exposure may be.

In addition, I am somewhat loathe to let the Federal Government run our financial system, our auto makers, and who knows what is next, perhaps our airlines. Again, I think effective mitigation efforts would, number one, address the high rising energy costs that hampers people's ability to pay for their mortgage payments. True

mitigation efforts would ensure that our current tax relief doesn't expire and impose a $3,000 tax increase on the average American family. And certainly, it would recognize that it is time to bail out the taxpayer from the bailout business, and certainly create a reduction in the capital gains tax to unleash capital and liquidity into these markets.

And last but not least, provide some level of regulatory and legislative certainty so that those who do have capital know the environment in which they operate and that capital would come off the sidelines. Thank you, Mr. Chairman, again, for calling the hearing, and I yield back.

The CHAIRMAN. The gentleman from Texas.

Mr. GREEN. Thank you, Mr. Chairman. And I thank you for being at the forefront of the movement to try to bring some sensibility back to a situation that has clearly gotten out of control. You have always been there as a voice of reason, and thank you for holding this hearing. I also thank the Chairwoman for being here. Mr. Chairman, we have moved from the originate and hold model with reference to loans in a portfolio to an originate and distribute model. The originate and hold model had certain benefits and certain liabilities as well, as is the case with the originate and distribute model. With originate and hold, the banker or lender knew the borrower, and when there was a time of crisis the holders of the loan in the portfolio, the originator, could make decisions on the spot. Literally, there was a great deal of latitude and opportunity to make decisions. In the originate and distribute model, the loans go into the secondary market by way of investors, and because they are in a secondary market we bring in this entity known as the servicer. The servicer does not have the same amount of leverage and latitude it seems in the distribute model as was the case in the hold model. There are people who are unknown to the servicer, investors who have bought into various tranches, and they have various amounts of security by virtue of the level of the tranche that they find themselves in.

This model is what we really do have to examine. I agree with the chairman 1,000 percent that we have to look at this model. I agree with Chairwoman Waters. We have to do something to make sure that this model can be flexible enough to deal with the kinds of adversities that we find ourselves confronting currently. The model is rigid. It does not allow the flexibility, which is why we find so many loans instead of being restructured, they are simply having schedules changed. People are not having the opportunity to get loans that they can afford as much as they are to get a schedule that will eventually become a means by which they may lose the home that they have. I thank you for the time, Mr. Chairman, and I yield back.

The CHAIRMAN. The gentlewoman from New York.

Mrs. MALONEY. Thank you, Mr. Chairman, and I welcome Chairwoman Bair, and thank her for her really extraordinary leadership through these troubled times. I particularly want to welcome the newest member of the Federal Reserve, Betsy Duke. Betsy is the only female on the Board, so we are thrilled in that respect. Also, Betsy was my father's banker for decades, and for decades I have heard about her leadership and hard work and really innovative

ideas to promote safety and soundness and expand economic opportunities in Virginia. We are thrilled to accept her. And I have to say I represent a number of commercial bankers, and they are absolutely delighted that someone with on-line experiences is a member of the Board.

Today is a very troubling time. I went to hear Barney Frank speak this weekend at an economic conference at Princeton, and we began the conference with four major investment banks in my district, and by Monday, only two were left standing. So this is really a challenging time. I want to mention that what I am hearing from my constituents is that even if they have the money to buy a home that is distressed, they can't buy it because 10 days go by, sometimes a month, sometimes 2 or 3 months.

As Chairman Bernanke has said, if we don't get this housing crisis under control, we are not going to handle our economic crisis. So we need to speed up this process. And I hope your testimony will lead us in that direction today, Chairwoman Bair. I would like to put my opening statement in the record in the interests of time. Thank you.

The CHAIRMAN. Are there any further statements? The gentleman from California had a brief statement, and then we are going to have to go vote. Let me just apologize to the witnesses. I wish we didn't have to go vote. But to be honest, if I could get some wishes granted, that wouldn't be the first one. None of them are going to be granted, so we are going to have to ask you to stick with us. The gentleman from California will be the last statement. And then we will go vote, and we will be back with you as soon as we can.

Mr. BACA. Thank you very much, Mr. Chairman. The economic crisis has gone from bad to worst, and this affects our country from the largest investment bank to the first-time homebuyers. While the government may respond by bailing out Bear Stearns, Fannie Mae, and Freddie Mac, it has failed to rescue the average homeowners caught in this crisis. About 7,500 homeowners are foreclosed on each day, and 2 million homeowners are expected to lose their homes by the end of the year. The HOPE for Homeowners program that Congress created allows the FHA to insure up to $300 million in refinanced loans. I support the package. We are having a hearing today to discuss the impact of the program preventing foreclosures. However, the turn of events in our market from bad to worse requires much bigger response in moving forward.

HOPE for Homeowners will help an estimated 400,000-some people stay in their homes, which is the American dream, but what about the 1.6 million people who are expected to foreclose this year? Hopefully, we will address that as well. What we going to do for them? Last year, I introduced a bill that would create a Federal entity, the Family Foreclosure Rescue Corporation, that would serve as a lender of the last resort to finance loans on the brink of foreclosure. This is not a new idea. It was actually a Federal response similar to the Homeowners Loan Corporation created during the Great Depression. If the Federal Government can bail out private firms, then why can't it do more to help the average homeowners? And we have to help out the average homeowners, not just

big corporations and others. I think our witnesses will agree that while HOPE for Homeowners is a good start, we need a much bigger response to keep homeowners in their homes. I look forward to working with the committee in creating the best possible solution. Thank you very much, Mr. Chairman, for allowing me to say a few words. I yield back the balance of my time.

The CHAIRMAN. That completes the opening statements. We will get back as soon as we can. I appreciate the forbearance. We will get back to forbearance in the other sense.

[Recess]

The CHAIRMAN. The hearing will resume.

Madam Chairwoman, please proceed.

STATEMENT OF THE HONORABLE SHEILA C. BAIR, CHAIRMAN, FEDERAL DEPOSIT INSURANCE CORPORATION

Ms. BAIR. Chairman Frank, Ranking Member Bachus, and members of the committee, I appreciate the opportunity to testify on ways to reduce foreclosures and help stabilize the housing market.

The persistent and rising trend of foreclosures imposes enormous costs on homeowners, lenders, and entire communities. Foreclosures can result in vacant homes that invite crime and create an appearance of distress, diminishing the value of nearby properties. Minimizing foreclosures could help put a floor on home prices and ease this distress. This, in turn, could help stabilize global financial markets and the U.S. economy.

The FDIC has worked for the past 18 months with mortgage lenders, loan securitizers, servicers, consumer groups, other regulators, and Members of Congress to identify and correct barriers to solving current market problems. To be sure, there is no single solution or silver bullet that will bring an end to the market turmoil. Rather, a multiprong effort emphasizing different solutions for the different segments of the market is required.

One approach, for which Congress should receive great credit, is the HOPE for Homeowners Act. The HOPE for Homeowners program will help many people avoid unnecessary foreclosure. The FDIC and the other Federal oversight board members are committed to fully implementing the program by the October 1st deadline.

The new program incorporates many important principles. It converts troubled mortgages into loans that should be sustainable over the long term and convertible into securities. It also requires lenders and investors to accept significant discounts, and it prevents borrowers from being unfairly enriched if home prices appreciate. Other oversight board members will give you more details on our progress when you hear from them shortly.

I would just note that as part of the HOPE program launch, we will be rolling out a national campaign to quickly make homeowners aware of the new program and how they can sign up.

As you know, the FDIC inherited a significant number of distressed loans with the recent IndyMac failure. Our plan is to offer homeowners loan modifications whenever feasible. We are also actively reviewing IndyMac's portfolios to identify homeowners who might qualify for the HOPE program when it becomes operational.

Because of the large number of troubled loans, we are systematically identifying loans in the IndyMac portfolio that are eligible for modification. We have also suspended most foreclosure actions for mortgages owned by IndyMac. This lets us evaluate the portfolio and identify the best ways to maximize values for the institution. When it improves the value of the loan, we will be offering loan modifications to eligible borrowers.

To date, over 7,400 modification offers have been sent to borrowers since we announced the program in late August. In the first 2 weeks of the program, over 1,200 homeowners have accepted the offers, and that is well before the 30-day deadline they have to respond.

This streamlined modification program will achieve the greatest recovery possible from problem loans. This is in keeping with our statutory mandate to minimize the impact on the Deposit Insurance Fund and to improve the return to uninsured depositors and creditors of the failed institution. But, at the same time, we are helping troubled borrowers stay in their homes.

Let me underscore that this program is strictly for homeowners who are in trouble—no speculators allowed. We are documenting income to determine whether modified payments are truly affordable, and we are using a combination of interest rate reductions, extended amortization, and forbearance to arrive at an affordable payment. No fees are being charged and unpaid late charges are being waived.

This program makes sense from an economic standpoint for IndyMac as well as for borrowers. A performing loan is worth far more than a nonperforming loan. Recent FDIC sales of nonperforming single-family home loans have come in at about 32 percent above value. That compares with 87 percent of book value for sales of performing loans.

My hope is that the program for IndyMac Federal Bank will be a catalyst for others across the country to modify loans more rapidly and systematically. I am pleased to announce that yesterday Jim Lockhart advised me that Fannie Mae and Freddie Mac will be participating in our loan modification effort at IndyMac. This will help us qualify several thousand more borrowers.

I look forward to working with Congress on this and other programs that stabilize housing markets and bolster the economy.

Thank you very much. I would be happy to take your questions.

[The prepared statement of Chairman Bair can be found on page 72 of the appendix.]

Mr. WATT. [presiding] Thank you, Chairman Bair.

As you all can imagine, there are a number of different things going on, so the chairman apologizes to you for having to step out on your testimony.

We will now recognize members for 5-minute questioning in order, and I will recognize myself for 5 minutes.

This bill implements this new program effective October 1st. I am interested in knowing about the transition to October 1st. We kind of went out of our way to make sure that FHASecure, I guess, stayed in place for a period of time during this interim.

Has that been sufficient to kind of bridge this gap, or are people just waiting around, waiting for the new program to go into effect?

Is that one of the reasons that there is this feeling that not enough is happening. Or have you been able to assess that?

Ms. BAIR. I think the next panel may be able to speak about that more broadly, particularly Mr. Montgomery.

With regard to our IndyMac experience, no, I have not been advised that we are seeing that kind of dynamic. We wanted to move quickly. We will only have control of this institution for 3 or 4 months—obviously, we need to sell it and move it back to the private sector. So we wanted to seize the opportunity to restructure as many loans as possible.

We are doing that right now, primarily through loan modifications. We are qualifying some for FHASecure, but for the most part, we are doing loan modifications. As I said, once October 1st rolls around, to the extent we can also qualify borrowers for HOPE for Homeowners, we will do so. But I am unaware that any borrowers have indicated to us that they want to wait for this new program. I think the response pretty much has been very positive to the modification efforts we are making currently.

Mr. WATT. Can I take that to mean that lenders and servicers have as much flexibility now, before the new program comes into effect October 1st, as they will then if they go ahead and get on with it?

Ms. BAIR. I think it will be an important additional tool as of October 1st. There may be some borrowers for whom HOPE for Homeowners refinancing will be a better product than the restructured loan.

We need to do a net present value analysis for each loan. That is part of our fiduciary obligation, to value the modified loan against what the foreclosure value would be. Generally, that is going to be in favor of modification because foreclosure values are so low right now.

But, again, having this additional tool of a write-down and a refinancing can give us another option to try to qualify borrowers for a long-term, sustainable mortgage if they currently have an unaffordable one.

Mr. WATT. The other thing I am hearing a lot is that there is just no credit out there. Nobody is making new loans. They are slowing down.

Can you just talk about that, why that is, or whether that is in fact the case? Are people overstating that?

Ms. BAIR. Well, I don't know if that is the case. Certainly, credit standards have tightened. Frankly, they needed to. We obviously had a serious deterioration in underwriting standards that helped get us into the problems that we are facing now.

But I think for loans that are underwritten at the fully indexed rate, where you document income, comply with the subprime guidance, and the nontraditional mortgage guidance, that is the old-fashioned, traditional kind of lending that is long term and sustainable for borrowers, and I think that is out there.

The community banks in particular have had to try to step up to the plate and provide more refinancing for those in these unaffordable loans. They sometimes hold those in portfolio; more typically, they sell them off to the GSEs. I think having Fannie and

Freddie now under government conservatorship will help stabilize that secondary market source of funding.

We are certainly telling our banks we want them to lend. We want responsibly underwritten loans, we want loans made to people that they can afford to repay. But we want them to lend. It is important that they do not overreact, that they keep lending to support vital economic activity, including homeownership.

Mr. WATT. Let me get one final question in because my time is about to expire—what you may or may not have information on. It is kind of outside your jurisdiction, I guess. Are we seeing a significant spike in credit card debt as a result of what is happening on the other side of the market? Or if you don't have that information, is there somebody on one of the panels who might?

Ms. BAIR. There has been some uptick, yes, and I don't have the precise numbers. They were part of our quarterly banking profile. I will be happy to give you the precise numbers after the hearing.

Mr. WATT. Thank you very much. My time has expired.

The gentleman from Alabama, the ranking member, is recognized for 5 minutes.

Mr. BACHUS. Thank you.

Chairman Bair—or Chairwoman, whichever you prefer—helping people avoid avoidable foreclosure is wonderful, and I commend you for trying to intercede and prevent them if they are avoidable. I think Mr. Hensarling mentioned that some are unavoidable. They just don't have the income to support the loan. If you put them in another loan, you just incur greater cost.

How do you verify? How is the FDIC—in these loans, how are they verifying the income?

Ms. BAIR. We are verifying income through tax returns, pay stubs, bank deposit receipts, the traditional methods that banks use. We think it is important, just as it is when the loan is originated, to verify income when a loan is modified. A lot of the loans we have with this portfolio were stated income, so we need to take extra special care.

But, yes, again, as we have learned, nobody is doing anyone any favors if you give them the mortgage and they just don't have the income to support the payment. So we want to make sure it is an affordable payment. If their income is so low that they simply can't afford the house, we will need to work with that situation. We are finding a fairly good number that we are able to qualify and keep in their homes.

Mr. BACHUS. IndyMac reportedly had a lot of "liar loans." What do you find in there?

Ms. BAIR. Well, it varies. There was a lot of stated income, and so that is one of the things that is taking us time, frankly, to go through and redocument income.

We are using a 38 percent debt-to-income ratio metric to systematically modify these loans. There is a subcategory of borrowers who can't make the payment, even with the reduced 38 percent DTI, so we have a special workout facility that tries to work with these borrowers to see if we can get them to an affordable payment.

The foreclosure value puts the bottom on how far down you can modify the loan and modify the payment. Again, it is just a simple mathematical comparison.

Again, with the foreclosure values as low as they are, and the administrative costs of going to foreclosure, you can modify a loan fairly significantly and still be maximizing value for the institution.

Mr. BACHUS. I mentioned in my opening statement that I am hearing from time to time from bankers that the bank examiners are saying to them you need to get this loan off the books when the bankers say they would give people more time. This might not even be a mortgage; it may be a situation where it is a loan and they say, "You ought to take care of that."

Can you comment on that? I know that is a tough spot to be in.

Ms. BAIR. Right.

I think we are certainly encouraging loss mitigation efforts, but again, where there is a realistic prospect with a workout arrangement that the loan can continue to perform, or re-perform, at some point the loss needs to be recognized. But at least with regard to the housing markets, with restructuring these mortgages, again, with home prices continuing to go down and such severe losses in the foreclosure market, in terms of your loss mitigation, restructuring the loan is frequently going to be the best choice for you to maximize value.

That is what we are encouraging our examiners to do. We put multiple financial institutional letters out to both the institutions, as well as examiner guidance, including loss mitigation efforts. At some point—I mean, some of these houses are abandoned, some are investor loans, some are speculators. Obviously, those need to go to foreclosure and those losses need to be realized very quickly. But where they are owner-occupied, with a family motivated to stay there with some income to support a reasonable payment, we very vigorously support and suggest loss mitigation efforts.

Again, we think that helps borrowers, but it also mitigates losses for banks.

Mr. BACHUS. If a banker is saying, I'd rather give these people more time; I know them, I know their history; they are in trouble, but I think they will come out of it: I almost feel the examiners should give bankers the benefit of the doubt. It is their loan.

Ms. BAIR. There is certainly some personal judgment, and certainly if it is a longstanding customer relationship, a customer who has been reliable in the past.

It is a difficult balancing act for our examiners. At times, though—it is hard sometimes for people to accept reality that maybe the loan just isn't going to perform. So it is a balance that the examiners have to weigh. But we certainly encourage realistic loss mitigation first.

Mr. BACHUS. Are you hearing from some of the bankers the same thing I am hearing?

Ms. BAIR. Actually, I am not, Congressman. I have not. As you know, we have four different bank regulators. I have not personally heard that from the banks, no.

Mr. BACHUS. I would just encourage you, if anything, to urge the examiners to give the bankers, as it is their loan, it is their business, their opinion great weight.

Ms. BAIR. Point taken.

The CHAIRMAN. I apologize for my delay.

I will now recognize the gentlewoman from California who, as I said, has been the Member of the Congress most active in this issue of services.

I just want to say that the results that we are going to see from servicers in terms of this legislation are going to have a lot to do with this committee's agenda next year, because there is legislation Ms. Waters introduced that would, to a considerable degree, change the law. Whether or not the support is there for that is going to be determined, in substantial part, by what the returns are this year.

The gentlewoman from California.

Ms. WATERS. Thank you very much, Mr. Chairman.

I thank you, Chairwoman Bair, for being here today. We are all pleased about the fact that you have achieved significant average monthly payment reductions across IndyMac loan modifications. We don't think that this reflects the standard industry practice.

What do you think and what can we do to encourage it? Since long-term affordability is a key to stabilizing these distressed buyers, what recommendations do you have to help us to get others to do what you are doing?

Ms. BAIR. It is a good question.

I think there are a number of servicers that are trying very hard to restructure loans in a way that is long term, is sustainable. As you mentioned in your opening remarks, there are cross currents of economic interests at play here. Now that we have a servicing portfolio, we can feel their pain a little more, as well.

I think, again, investors continue to provide some pushback. I think, depending on where they are in the risk profile of the securitization trust, they may or may not view it as in their interest to modify the loan. These pooling and servicing agreements typically do not provide economic incentives for loss mitigation activity.

I think, to Chairman Frank's point, going forward, if and when the securitization market comes back—and I hope that it does, because I think it plays a very important role, creating more flexibilities and incentives for servicers to do loan workouts—some type of independent marketing capability, I think, would be very, very wise to look at.

Another skewed economic incentive is that a number of these pooling and servicing agreements require servicers to advance a certain amount of principal, interest, taxes, and insurance when a loan becomes delinquent. This puts a liquidity strain, a cash flow strain, on the servicer, and frequently the fastest way to recoup that is to go to foreclosure quickly because they repay it off the top when a loan does go to foreclosure.

So this is not a criticism of anybody, just a description of how, in some of these PSAs, the economic incentives work. What would ordinarily be stepping back and looking at what maximizes economic value—is a modified mortgage worth more than a foreclosed home—doesn't yield the economic result because of the different incentives that currently are reflected in the securitization structure.

I do think the servicing industry is making efforts. I think the HOPE NOW Alliance has been good. I think Secretary Paulson's initiatives have been good. I know he is going to be meeting with servicers again, I believe today. And I think developing systematic protocols—hopefully, we, as a government agency, especially now that Freddie and Fannie are going to be working with us on this loan modification effort, if we can provide a model that we can get other investors to acquiesce in here, perhaps that provides some cover, if you will, to private servicers to do more of the long-term, sustainable loan modifications.

Ms. WATERS. I appreciate that. While I want you to know that we appreciate what you are doing, I don't want you to feel like you have to come in here and kind of help protect all these servicers now.

Ms. BAIR. Oh, no.

Ms. WATERS. As a matter of fact, I don't think the HOPE NOW Alliance is doing what you are doing. They had an opportunity to be out front of everybody because they organized this voluntary organization, the President did, early on. But I still don't feel that they are getting the numbers.

As we go forward with this bill, I think you probably can be helpful to us, based on what you have learned. As you said, you have inherited this servicing operation, and so I am going to look forward to talking with you some more.

I have one more thing I want to ask you: Can you talk a little bit more about your 38 percent debt-to-income ratio standard for judging the affordability of potential loan workouts? Specifically, how did you arrive at that standard? We have heard some differences once used by effective loss mitigation programs in FHA, VA, and USDA, for example.

Also, can you address the issue of what debt and monthly household expenses you took into account in calculating the DTI for a given bar?

Ms. BAIR. We were using a front-end DTI ratio. It includes principal, interest, taxes, and insurance. Using that 38 percent DTI ratio, our average payment reduction is about $400 a month. A 38 percent DTI is typically what many State laws use as an affordability standard.

I believe also the next panel will talk about this, but it is the upper range of what HOPE for Homeowners will be using in terms of their qualifying DTI. If the borrower cannot make a 38 percent DTI, which, for most of these loans, will lower the payment significantly—an average of $400 a month—we do have a separate workout unit that will work with them on an individual basis to try to get at a payment that is affordable.

Lower- and middle-income folks may tend to have a higher percentage of income devoted to their mortgage payment. Again, the lower the DTI, the more severe a write-down on the loan we have to take, which, again, when we have to compare that to the foreclosure value, can lead to more loans being disqualified.

So it was a balancing act, but I think it is working pretty successfully. Again, for those who can't make the 38 percent DTI, we still work with them to see if we can come up with a more customized solution.

The CHAIRMAN. The gentleman from Texas, Mr. Hensarling.

Mr. HENSARLING. Thank you, Mr. Chairman.

The CHAIRMAN. I'm sorry. I forgot Mr. Shays was here. The gentleman from Connecticut is next.

Mr. SHAYS. Thank you.

The CHAIRMAN. I go by a list, and I looked up and didn't see him. So it is my fault. I get you guys confused.

Mr. SHAYS. One thing you never do is yield Mr. Frank time and ask him a question.

The bottom line to this is that our system is caving in, and yet I still think the fundamentals of our country and our economy are strong. I am particularly interested in how we determine whether someone is a risk or not.

I had a young lady, who is on welfare, who ended up with her sister, buying a home. Her sister left, and she was stuck for 2 months not able to pay the mortgage. And then for the next 2 years she paid every month, but never caught up on those 2 months. She never understood, candidly, that she was always being viewed as being behind.

When interest rates went down, I was able to drop my interest rate from 6.5 to 4.5 percent, and she was stuck at like 7 or 8 percent. So the irony is, she needed to drop her interest rate more than I did. She would have been able to pay, and she still held on to her house, paying this exorbitant amount, but she never was able to take advantage of the lower interest rates.

So what I am asking is, should we be reappraising how we determine someone's ability to pay or not? If they paid for 2 years straight, but were behind and never caught up, should that be held against them, since they showed that they were paying? That is the kind of question I am wrestling with.

Ms. BAIR. I think it is a good question. It is unfortunate that with financial education as well—

Mr. SHAYS. Had I known about it, we would have done something to help her.

Ms. BAIR. These types of things happen. We had a conference a few months ago on responsible mortgage lending to low- and moderate-income families, and one of the suggestions—and we had a lot of great suggestions; we just issued a financial institution letter to our institutions so they could look at this menu of ideas—was to give borrowers a credit so if they were regular over a certain period of time, and had an income disruption for a couple of months, they could basically build up a credit that would allow them to defer those payments for a couple of months without adverse consequences to their credit report.

So I think that is the kind of innovative thinking we need to encourage mortgage lenders and our FDIC-insured institutions to do.

I would also say in terms of our own modification efforts that we are pretty much giving everybody a prime rate, the highest rate they can pay. Our modification starts basically at the 30-year fixed prime rate, the Freddie Mac prime rate. If we can't get them to an affordable payment, we will lower it from there. As part of loss mitigation efforts, we are being neutral in terms of what your credit score or whatever is.

I think this is an example of trying to systemize this, to speed it up and recognize that trying to individually re-underwrite every single loan and go back to past credit histories ultimately may not be productive in terms of getting these loans restructured so they are affordable.

Mr. SHAYS. The brand of the rating agencies is pretty pathetic right now. I am not quite sure; is there the danger that the rating agencies will go almost too far the other way to build back credibility, and if so, is there anything you can do about that?

Ms. BAIR. Well, we don't regulate rating agencies. We do not. We do not endorse any particular rating agency.

Mr. SHAYS. Who regulates them?

Ms. BAIR. The FTC, primarily from a consumer standpoint, from an unfair and deceptive acts and practices standpoint. We do not regulate them. They are not banks.

Mr. SHAYS. But you have to pay attention to their ultimate conclusions?

Ms. BAIR. Well, what we do pay attention to is how banks use them on underwriting loans. We can address it from that perspective.

Again, we encourage banks to use reliable underwriting criteria, but to be flexible in terms of the types of past payment histories that can be considered. I think some of the rating agencies are, hopefully, going along that line, for instance, taking regular rent payments into account if someone has never owned a home before so they can't establish regular mortgage payments. Have they made regular rent payments? Have they made regular utility bill payments? Have they made regular telephone bill payments?

Lots of those types of factors can just as well show responsibility as a potential borrower, even though someone may not have an extensive credit file.

Mr. SHAYS. Now you are dealing with this issue nationwide?

Ms. BAIR. Yes.

Mr. SHAYS. Where do you find you have the most difficult problems and where do you have the least, what parts of the country?

Ms. BAIR. I think the coastal areas of Florida, southern California, Nevada, parts of the industrial Midwest, those are certainly—well, with the exception of the industrial Midwest, which has been having some stress for some time—the previous boom markets that are now the bust markets—where we are seeing the most accelerating home prices decline.

There is definitely a correlation between mortgage credit distress and declining home prices.

Mr. SHAYS. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from Massachusetts.

Mr. LYNCH. Thank you, Mr. Chairman. I want to thank the witnesses as well, not only this panel, but the ones to come.

A couple of questions: I noticed that, Madam Chairwoman, in your memo you assert that you are committed to have the HOPE NOW program, in your role, operational by October 1st. I also know that Mr. Montgomery, in his memo, states he is committed to having this program up and running by October 1st.

We are not that far away right now in terms of time. Am I to believe this may not happen by October 1st?

Ms. BAIR. I think Mr. Montgomery, on the second panel, will be better qualified to answer that question in detail. But, yes, I understand—we have all worked very hard to make it operational.

Mr. LYNCH. I am not critical. You have been asked to do a lot in a very short period of time, especially starting August 1st, not the best month to get things done around here. But I am just curious about our ability to meet that deadline.

I also notice that when we first pushed out this program, the Alliance thought there was a universe of folks out there who might be helped. This was a while ago, back in July. A lot has happened since then. While there has been an aggressive effort on the part of a lot of lenders—not all, but a lot of lenders—we have also had a lot of people washed into the foreclosure picture. A lot of people have gone into foreclosure. And also I notice that in some circumstances, the terms have tightened in terms of the number of people we can help.

Where are we now as opposed to where we were back in July with that universe of people? We were talking about 1.5 million people back in July.

Ms. BAIR. Right.

Mr. LYNCH. Given the new people coming into the program in terms of eligibility and our limitation on what you have to do to qualify, where are we now?

Ms. BAIR. Well, I think we have some good academic research on that. Our economists estimate there were 1.5 million foreclosures last year, and already 1.2 in the first 6 months of this year, so that is a lot of foreclosures. Yes, it is unfortunate, and it saddens me.

I think some of that was probably investor-owned and perhaps not owner-occupied property. But I know a lot were families losing their homes. That saddens me. We can't do anything about that now. All I can do is keep persevering forward to help the folks still on the line.

And we have a lot of subprime out there resetting, and then we have these option ARMs entering their reset phase. So there are still a lot of mortgages out there that are going to need to be restructured and families who can still be helped.

Again, I think, having multiple tools—the refinancing option is a nice one. I think with the safeguards built into the HOPE for Homeowners program, you mitigate risk to the government, and it is a nice tool to have in addition to the loan modification where you are actually not refinancing the loan, just restructuring the current loan. But having that additional option with some safeguards to protect government exposure, I think is still very much needed and will be a big help going forward.

Mr. LYNCH. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from Texas.

Mr. HENSARLING. Madam Chairwoman, as I understand it, the insurance fund is at a 5-year low; the number of culpable banks, it is at 5-year high; the insurance fund has slipped below the minimum target level that Congress has set.

Do I have my facts correct?

Ms. BAIR. That is correct.

Mr. HENSARLING. Is it my understanding that you are looking at a system of perhaps raising premiums on the banks that may have riskier portfolios, and if so, can you go into some details on what your thinking is?

Ms. BAIR. Well, first of all, we are required by statute to implement a restoration plan once the reserve ratio drops below 1.1 percent. It is slightly above 1 percent, as you indicated.

The IndyMac failure, where our losses are very high, took us below the 1.1 percent minimum that Congress has specified in the statute, so we are required to institute a restoration plan. We will be proposing new premiums in early October. Yes, we will be proposing raising premiums.

Congress also provided us with the authority in the recently enacted deposit insurance reform law that was finalized in early 2006 to do risk-based pricing for our premiums. It is common in the private sector. You charge higher premiums to people who have greater risk, institutions that have greater risk.

Mr. HENSARLING. You might be surprised to know how uncommon it is in the government.

Ms. BAIR. So we are focusing on risk factors that became apparent to us with the recent closings that we have had. We are going to be providing positive incentives for high levels of Tier 1 capital and subdebt of unsecured debt, which tends to lower our resolution costs.

But those banks that rely excessively on secured lending or excessively on brokered deposits to fuel rapid growth, those are higher-risk-profile institutions that, in our experience, produce higher losses to us if we have to close those banks. So we are proposing higher premiums on those institutions—we think, as a matter of equity, that they, with that profile, should pay higher premiums—and also trying to provide positive economic incentives for them to change their profile so if they develop more core funding and are less reliant on brokered deposits, for instance, they can lower their risk profile. That makes them safer and sounder from our perspective, and also, if we did have to close them, it would reduce our resolution costs.

Mr. HENSARLING. You mentioned that the IndyMac failure brought you below your reserve requirement.

Hindsight being 20–20, and understanding we do not live in a risk-free society, but were there tools that you did not have that you should have that might have prevented that collapse? Was IndyMac a well-regulated institution?

Ms. BAIR. Well, we were not the primary regulator of IndyMac. It was a thrift, a nationally chartered thrift.

I will be testifying on this tomorrow because there is a hearing on this subject over at the Senate Banking Committee.

We have backup supervisory authority and we do offsite monitoring of all banks that we insure. We are the primary regulator of nonmember State chartered banks. We have about 5,200 of our own banks that we have to worry about as primary Federal regulator, but we do offsite monitoring of all banks that we insure, especially those large institutions.

IndyMac was flagged in mid-2007. We initiated with the OTS and started having joint meetings with them; and then in January of 2008, we requested a joint presence in the examination, and had been working with OTS on that institution.

So we were well aware of some of the problems and issues, and I think the losses, frankly, were embedded at that point and, as OTS indicated, it did not have strong underwriting—did a lot of stated income loans, did a lot of loans that were only underwritten at the introductory rate as opposed to the reset rate. It previously relied on the originate-to-distribute model, and when the secondary market froze up, they started taking those loans on their balance sheet, but didn't do much to improve their underwriting.

So I think, if anything, it underscores why we really needed the nontraditional guidance and the subprime guidance that was issued. I wish it had kicked in earlier; I wish it had an impact on this institution earlier.

But it is what it is. And I will have to say all the regulators have institutions that we would rather not have. This is a volatile situation; and we all have institutions that have not pursued as strong underwriting as they should have, and we try to deal with it.

Mr. HENSARLING. Speaking of the capital requirements of your banks, a two-part question. Number one, concerns about Fannie and Freddie stockholdings in the bank, how are you treating that? I have heard from some investment banks that they would be willing to add additional capital into banks, but they are concerned about triggering the bank holding company regime, and they don't care to do that.

If you can comment on those.

Ms. BAIR. On the latter issues, that is really a call for the Federal Reserve. They administer the Bank Holding Company Act and how limitations on nonfinancial entities or nonbank entities can or cannot have ownership interests in banks.

With regard to the equity securities, GSEs, they were not wiped out, but their value was hit significantly because of the priority status the Treasury now has in terms of future income streams. So this did create some hits to capital for a small number of institutions.

We identified them in advance and we reached out to them in advance and are working with them very closely on an individualized basis, as are the other regulators. We think we can deal with the problems that were raised by this.

Again, it is a small number of institutions. I don't want to discount the importance to them that it is. But we will exercise some flexibility in terms of helping them get a capital restoration plan in place, consistent with prompt corrective action. But recognizing the suddenness of this, we will be providing sufficient additional flexibility to them to get their balance sheet back in shape, given the write-down that they have had to take.

The CHAIRMAN. I am just going to ask quickly, and I apologize, but obviously it has been a busy day. I noticed when you talked about this—you talked earlier and you just covered this. We will go back over it.

But there was a differentiation in your ability to deal with these potential foreclosures between those that IndyMac owned outright and those where you were the servicer.

Ms. BAIR. Right.

The CHAIRMAN. Now, does that mean that you have great discretion; is it that, as the outright owner, you have more public policy input into what you can do and you are more concerned about economic analysis? How constrained are you as a servicer? I guess that is the question.

Ms. BAIR. I think for the loans we own, our only constraint is maximizing value for the Deposit Insurance Fund. But there are no strictures on how we do that, so we have very wide latitude to restructure the loans to facilitate refinancing.

For the serviced loans, our flexibilities are governed by the pooling and servicing agreements. We have gotten investor support for that servicing portfolio.

One issue we are trying to work through is our ability to modify, where default is reasonably foreseeable versus where delinquency has already occurred. We clearly have the flexibility to do it in advance of the reset for the owned portfolio, but—

The CHAIRMAN. That reinforces my view. I got the general answer, well, no problem with servicers, but—I have a great deal of confidence in the way you have been administering the Agency. I am strongly inclined to believe that what you are doing with the loans you own is the right thing to do.

The fact that you as servicer are not able as fluidly to do that as you do with the stuff you own reinforces my view that we have to reexamine the servicer model. It does seem to me, as a matter of public policy, that, as servicer, somebody ought to have the same flexibility you have as the owner.

Ms. BAIR. I think that absolutely needs to be looked at going forward.

I think the good news—Fannie and Freddie had some restrictions on their PSAs, which now that they are in conservatorship, an advantage is, again, they are now working with us on loan modification.

The CHAIRMAN. We often lament in the social sciences that we don't get to do experiments. But you are both the control and the other. Here you are, you are the same person with similar—identical kinds of paper, and the one difference is in the legal status with which you address them. I think that makes you ideally situated to work with us next year when we talk about what changes.

I have confidence that you are doing the best you can, and we will be urging others to follow your model. We will be talking to some of the private servicers today. So I think you are setting a very good example here. You will be helpful to us as we decide what needs to be done.

Mrs. Biggert.

Mrs. BIGGERT. Thank you, Mr. Chairman.

It was recently brought to my attention that Fannie Mae and Freddie Mac have a preferred list of attorneys who work with the securitizers to work out the foreclosures. My concern is that in Illinois there are two providers, and I think a few were added, not on a competitive bidding process, but to add to that.

I have also heard that there really is no loan mitigation at all, that these lawyers are told to fast-forward as fast as they can through the foreclosure process and that there is no capability of reaching anyone, a live person, by any means to address the loan mitigation or to address anything.

I don't know if you have heard that. You say you are going to be working with Fannie and Freddie.

Ms. BAIR. We have not.

Again, their restrictions did not permit them to work with us before, but now that they are in conservatorship, they are providing more flexibility. So they did have their own loss mitigation program in place.

I have not heard that, at least not with IndyMac.

Mrs. BIGGERT. I think if you look and see how very few loans have had any mitigation at all, which has been all of our policy, that it is very important to do that if it is at all possible.

Ms. BAIR. I will mention this. Jim Lockhart and Secretary Paulson are actively looking at the ability to expand loan modifications with Fannie's and Freddie's portfolios. It is something they should be aware of as well.

Mrs. BIGGERT. Given the unusual number of FDIC-insured banks in FDIC receivership, or potentially entering that, what are your procedures for lawyers or law firms to bid on the opportunity to contract with the FDIC, specifically to the FDIC-insured banks?

Ms. BAIR. To buy assets of troubled banks?

Mrs. BIGGERT. No, to carry out—looking at the foreclosures.

Ms. BAIR. We are using IndyMac's own servicing. We have FDIC staff onsite at IndyMac working with management, and we are using—they have a fairly sophisticated servicing platform, so we have not contracted it out. We are using IndyMac's community servicing staff.

Mrs. BIGGERT. So you have no outside lawyers?

Ms. BAIR. Definitely, for receivership activity.

If you are asking about our contracting procedures more generally, there are longstanding procedures in place. We have long used contractors for various parts of our asset marketing process.

I would be happy to arrange a briefing for you with the staff who do that. It does not involve the Chairman's office, but I would be happy to arrange it.

Mrs. BIGGERT. Is there a competitive bidding process?

Ms. BAIR. Absolutely, yes. Yes, I believe we follow government procurement procedures. So whatever those rules are, yes, we follow those.

Mrs. BIGGERT. What are some examples of the items that would prevent a lawyer or a law firm from being selected by the FDIC to do this type of work?

Ms. BAIR. I think the servicers performed and the value that we would get.

We have conflict rules. Obviously, they can't have an interest—if they are helping to sell a bank, they can't have an interest in the bank.

I think it is just general government contracting rules; I am not aware that we have any type of special procedures unique to the

FDIC. Obviously, conflicts are a key issue. And they must not have a conflict at the bank they would be working on.

Mrs. BIGGERT. About how many outside firms have you engaged?

Ms. BAIR. It depends on various parts. We have lawyers, we have investment bankers, we have due diligence firms. I would be happy to get you a list of our contractors.

Mrs. BIGGERT. That would be great.

A briefing would be good. Thank you.

I yield back.

The CHAIRMAN. The gentleman from Texas.

Mr. GREEN. Thank you, Mr. Chairman.

I thank you for your comments earlier. I would like to do some follow-up. Thank you, again, Madam Chairwoman.

You used a term just a moment ago that I found quite interesting, "a cross current of interest," or something similar. I would like to explore this because within the class of investors you have different tranches. There is a term that has been used to explain to some extent what is happening between the various classes. It is called "tranche warfare."

Can you kindly, if you would, give me your rendition of what "tranche warfare" is?

Ms. BAIR. Well, a securitization pool will be broken up into various tranches, and the investors that take the first loss are generally called the equity and the mezzanine tranches. Typically, they will take the first loss. So if there is a foreclosure, generally these pools are over-collateralized to some significant degree, and that protects the AAA-rated tranche, the least riskiest part of the securitization structure. So you can have a fair number of loans go into foreclosure with attendant credit losses that will be absorbed by those lower-rated tranches before they would impact the lower-risk, higher-rated AAA tranches.

What can happen, though, with loan modifications is that the rate is reduced, with no foreclose, so there is no credit default to be absorbed by the lower tranche. However, reducing the interest rate on the loan as part of the restructuring will impact the income streams going to every segment of the investor pool.

So some in the highest-rated, lowest-risk tranche may not view it in their interest necessarily to have the loan modified to reduce the revenue streams generated by interest rate reductions. It might be better for them to have the credit loss, which the lower tranches would have to absorb.

Mr. GREEN. May I say that differently, and if you would, help me with my diction. Sometimes it is not superb.

Are you indicating that those in the AAA tranche may have reason to see foreclosure as a better way out for them than those who are in the lower tranches?

Ms. BAIR. That is right. It will depend on the degree of over-collateralization and the quality of the mortgages.

I think some of the AAA rated investors are now starting to realize that foreclosure rates are getting to the point where even these investors might be impacted. But there will be some level of foreclosure before they would have any impact at all on that.

Mr. GREEN. That is as a result of this preferred position—by the way, they pay for this?

Ms. BAIR. They do.

Mr. GREEN. It is not as though they are asking for something they are not entitled to. But by virtue of having this preferred position in a AAA tranche, that creates this crosscurrent of interest that you mentioned earlier.

If you are a typical servicer, you don't always know who holds these various positions, but you do know that the positions exist and they have been codified, and that you have to respect them to some extent, do you not?

Ms. BAIR. The American Securitization Forum, which represents the securitization industry, a year ago in June came out with best practices that said very clearly that a servicer's obligation is to the pool as a whole, so that the servicer is not required to look at each individual investor group's interest. They are to maximize value to the pool as a whole.

That said though, as a practical matter, sometimes these investors give the servicers a lot of pushback, a lot of scrutiny, even though that is clearly what best practice is. So it does complicate the servicer's ability, I believe, to modify these loans.

Mr. GREEN. Now, to go to one other term, sometimes it is, for the servicer, cheaper to foreclose expeditiously, as opposed to allowing it to linger, because of the cost associated with carrying it to foreclosure.

Is that something that is a major factor as you have looked at this process, because we want servicers to act posthaste? But if there is not necessarily an incentive, but there is reason, if you will, to move quickly, as opposed to giving the workout, the restructuring, an opportunity, then that is something that we need to look at?

Ms. BAIR. Right. I do think it varies by securitization trust, but generally once a loan becomes delinquent, servicers are required to advance for a certain number of months payments on that mortgage to the securitization trust; and they won't get paid back in full unless they go to foreclosure, and then they are repaid off the top. In some circumstances, this can create incentives for servicers if they have liquidity problems, if they are subject to these requirements.

Mr. GREEN. Can you kindly give some example of this advance that you are talking about, wherein they are required to advance? Give us a little example.

Ms. BAIR. The servicer collects mortgage payments from the mortgage borrowers and passes those payments on to the investors, the securitization trust, from where, in turn, they are disbursed to the securitization investors.

If the loan becomes delinquent, frequently the pooling and servicing agreement will require the servicer to continue—out of the servicer's own pocket—to advance payments for a certain period of time, and then one way to get that paid back is through a foreclosure. Once the loan goes into foreclosure, those advances can typically be repaid off the top.

But we have been told by some that this can also create skewed incentives for foreclosure.

Mr. GREEN. So the servicer continues the process of paying the loan, notwithstanding default by the borrower, and in so doing, is

obligated to go into a coffer that the servicer has to pay the investors?

Ms. BAIR. That is right.

Mr. GREEN. And in paying the investors, this coffer starts to diminish, and at some point the servicer starts to feel the added pressure of, I am now putting my coffer at risk; I need to try to get out of this as quickly as possible.

That is the kind of enlightened self-interest that is experienced by the servicer, which would then promote pushing forward to foreclosure, as opposed to taking the time to restructure, because time becomes money?

Ms. BAIR. That can be a dynamic at play.

Again, I think servicers, for the most part, are increasingly seeing that it is in everyone's interest to get these loans restructured. But, yes, we do think that at times the need to restore liquidity will pressure servicers by requiring them to make these advanced payments and get those funds back through foreclosure, and that can create another crosscurrent of economic incentive.

Mr. GREEN. Madam Chairwoman, thank you so much. I greatly appreciate the time. While I have many other questions, I think I have been completely edified with reference to the ones I did ask.

Mrs. MALONEY. [presiding] Congressman Castle.

Mr. CASTLE. Thank you, Madam Chairwoman.

Chairman Bair, this has been touched on, but I am sort of curious about it. I had a long conversation with a significant officer of ING, which is located in Wilmington, Delaware, where I am from, and he indicated that they are in fact doing quite well.

And they are a big mortgage issuer. My impression—and I think he said this—is that they hold their own mortgages and, I assume, servicer-owned mortgages. We talked about servicing here a little bit before.

I know from my own personal experience, I had a mortgage once which was assigned and I had all kinds of problems getting ahold of people, straightening out an escrow account. It was a mess.

I am interested in dealing locally. It seems to me if you have that local connection, you are more inclined to pay attention to people and, perhaps, pay your mortgage or whatever it may be.

Are there any statistics in this foreclosure world about serviced or assigned-in-service mortgages versus mortgages which are held, or is that just beyond anything anybody has looked at?

Ms. BAIR. I can check with our economists to see if we can quantify the loans that are held with unbroken service by the lending institution versus those moved off the balance sheet and contracted.

Editorially, I am with you. My mortgage is at a community bank that holds and services its loans. That was a factor when I got my mortgage because I like that high touch, too.

I don't know, Congressman. I will see if I can get those numbers for you.

Mr. CASTLE. Apparently, you talked about this earlier and I wasn't here; I apologize.

Do you, in your own mind, believe that some of the problems that we have now lie in the fact that the servicers are not providing the same availability, or even ability to make necessary modifications

or to give people advice in terms of what they have to do, other than just pay their mortgage, to protect themselves?

Ms. BAIR. Again, I think this gets back to Chairman Frank's observation. We have a lot more flexibility to modify loans for the IndyMac portfolio, which IndyMac and, now, we own, as opposed to those that are serviced for others.

Yes, there is more flexibility if the lender still owns the mortgage and is doing the servicing. And that was the old model that provided a wide latitude to get these loans restructured. The ability to restructure has been enormously complicated through these securitization trusts, absolutely.

Mr. CASTLE. It just seems to me that the whole business of liquidity and assigning mortgages and quick returns on your dollar or whatever, it may be may be good when things are going well, but in the long-term interests of financial institutions and thrifts, it may be counterproductive.

Are we in any way looking more deeply at that in terms of restrictions or other ways of determining who is actually going to hold and service mortgages in the future?

Ms. BAIR. I think now, with the private securitization market, there is not a functioning market at this point. So I think it is somewhat moot.

I think in terms of the GSE secondary market, an advantage of conservatorship is—again, I think the government can now take a look at some of the restrictions that apply to loan workouts and see if we can provide more flexibility going forward.

I think it is frustrating that what we all know may be the optimal economic result, that the modified mortgage will have greater economic value, that is the economically efficient result we want. When the modified loan has a greater economic value than the foreclosed loan, we want the modified loan.

But, yes, I agree that the current system has not been conducive to making sure that always happens. I think there have been unnecessary foreclosures because of that, and I think that has contributed to our larger economic problems by putting further downward pressure on home prices.

Refinancing these loans out of these securitization trusts is one way to deal with it. Also, we have worked with you in your leadership role on the issue of litigation protection for servicers who make long-term, sustainable loan modifications. Those are measures that have helped.

But, again, it is frustrating; there is just no silver bullet here. We can't wipe the slate clear and say, you know, all of this has to go away. The contracts are there. They can't be abrogated. And we have to work within those confines at this point.

Mr. CASTLE. It just occurs to me, maybe with all the focus and all the press focus on all those institutions which either have failed or have not done particularly well, if we look at the INGs of the world and others that have had a successful track record and talk about that a little bit and perhaps let that be a guideline for others, it could be tremendously helpful.

Ms. BAIR. I think that is happening. We are getting back to basics in mortgage lending, and a lot of it is consumer driven. I think consumers are starting to realize the advantages of working with

a local bank, the person you know that is going to maintain the servicing, that you can pick up the phone and call and know who you are talking to when you have a problem with your mortgage payment. I think we are getting back to those basics, and that might be a long-term benefit from the current problems we are facing.

Mr. CASTLE. Thank you, Chairman Bair.

Mrs. Maloney. [presiding] Congressman Cleaver.

Mr. CLEAVER. Thank you, Madam Chairwoman.

Madam Chairwoman, I just have one question, which may spur others; but I have become somewhat concerned, and I am interested in your concern about what happened with the London Interbank Offered Rate (LIBOR). I am not sure whether they skyrocketed the lending rate because of what they saw happening here with Lehman Brothers and others, but what alarmed me was the fact that over 6 million U.S. mortgages, almost all of the subprime mortgages are connected to LIBOR. And my concern is—unless you tell me otherwise—we have no influence over or connection with LIBOR. So we can't impact those mortgages; am I correct?

Ms. BAIR. Well, you are right that the subprime resets are tied to LIBOR. I have asked our staff this morning to do an analysis and see what kind of impact that might have on subprime resets.

I would say that one loan modification technique we have long advocated and that is reflected in the Treasury Department's HOPE NOW protocols is to just—if the borrower cannot make the reset, just extend the starter rate on the subprime loan. Those starter rates are very high on subprime, and I think more and more servicers are doing that.

So I think to the extent the reset problem becomes more severe because of LIBOR going up, there is an accepted loan modification protocol of extending the starter rate for a minimum of 5 years. It is already in place and can help deal with that.

Mr. CLEAVER. Thank you. Thank you, Madam Chairwoman.

Mrs. MALONEY. Thank you very much. I regret that I had to attend a meeting with Speaker Pelosi and missed some of your questions and answers. If you have already answered this question, then I can just read it in the transcript.

What I am hearing from the street, from my constituents and others, even if they have good credit, they have money in the bank, and they want to buy one of these foreclosed homes, they are finding that the wait time is 1, 2, or 3 months. This is just slowing down the market, and many times people will just give up and go someplace else and not persist with the red tape.

What can we do to just get this moving? This is a critical part of our economy.

Ms. BAIR. Right. Well, I did comment earlier, and I think this would be an excellent question for the next panel as well.

All I can tell you is that we are telling our banks to lend. We want them to lend. We want well-underwritten loans. We want loans that people can afford to repay over the long term. But we want them to lend; that is the message we are sending to our examiners.

I have not personally gotten complaints regarding the institutions that we regulate that there have been undue delays. All I can

tell you is that for the institutions we regulate, our message to them and our examiners is lend. Again, we want good loans that can be repaid, but we want them to lend.

Mrs. MALONEY. Well, thank you for your time. We have three additional panels. I know that many people have many more questions, but we thank you for your leadership and your time here today, always. Thank you so much, Chairwoman Bair.

The next panel is called up: Governor Betsy Duke; Mr. Phillip Swagel, who is the Assistant Secretary for Economic Policy for the United States Department of the Treasury; the Honorable Brian Montgomery, the Assistant Secretary for Housing, Federal Housing Commissioner, U.S. Department of Housing and Urban Development; and the Honorable Thomas J. Curry, Director of the Federal Deposit Insurance Corporation.

It is my understanding that this panel will be giving one joint testimony, and the person speaking for the panel will be Mr. Montgomery. We welcome all of you and thank you for your service.

Mr. MONTGOMERY. I take it that is my cue to begin.

Mrs. MALONEY. That is your cue, and you have 5 minutes to summarize.

JOINT STATEMENT OF THE HONORABLE BRIAN D. MONTGOMERY, ASSISTANT SECRETARY FOR HOUSING-FEDERAL HOUSING COMMISSIONER, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; THE HONORABLE ELIZABETH A. DUKE, GOVERNOR, FEDERAL RESERVE BOARD; THE HONORABLE PHILLIP L. SWAGEL, ASSISTANT SECRETARY FOR ECONOMIC POLICY, U.S. DEPARTMENT OF THE TREASURY; AND THE HONORABLE THOMAS J. CURRY, DIRECTOR, FEDERAL DEPOSIT INSURANCE CORPORATION

Mr. MONTGOMERY. Thank you very much, Madam Chairwoman, Ranking Member Bachus, and members of the committee. I am Brian Montgomery; and yes, I drew the short straw, so I will be speak on behalf of—my colleagues actually voted unanimously for me do this. But it is my honor to join Betsy Duke, Phillip Swagel, and Tom Curry on this panel this morning.

Our written testimony is also provided on behalf of the entire board. And I want to say, it is an example of the remarkable cooperation that has been the hallmark of the board's efforts so far.

To keep my remarks within the time allotted, I would like to simply update you on what we have been doing to implement the HOPE for Homeowners program, and of course, we will be happy to answer any questions.

First and foremost, I want to assure you that we are firmly committed to having the program up and running by October 1st of this year; and we still believe that goal is achievable. While getting a new government program operational in less than 2 months is no easy task, the board and respective staff are committed to meeting this challenge.

In fact, our initial planning session was held only 3 hours after the President signed the act into law on July 31st. In fact, since that time, we have been working diligently and cooperatively to develop and implement the program in a manner consistent with the

terms and purposes of the HOPE for Homeowners Act, which, by the way, we refer to as H4H.

We have assembled a team of exceptional staff from all four agencies, and I have to say from my personal involvement, they bring a wealth of market knowledge and program expertise to the job. With this team working literally around the clock, we have been able to take all the steps necessary to get the board fully operational and to move forward into a program design without—hopefully, no further delay.

For example, we adopted bylaws and rules that set out the necessary administrative infrastructure for important things such as financial oversight, record keeping, and preparation of the board's mandated monthly reports that will go to Congress. We established and appointed personnel to several key officer positions to ensure that a team of professionals are charged with the day-to-day responsibility of keeping the program on track. And we have approved a $29.5 million budget—this is an initial funding, I should say—to ensure that we have the resources to pay for the program's start-up costs. And the Treasury Department immediately issued HOPE bonds—as provided under the Act, by the way—to generate those funds.

More importantly, we created policy teams that have spent hundreds, and I mean hundreds, of hours discussing and debating the program parameters to develop and present policy options and recommendations to the full board. We engaged in extensive outreach to solicit the views of potential stakeholders, including lenders, counselors, and consumer advocacy organizations to improve our understanding of obstacles to successful and sustainable loan modifications, as well as the appropriate eligibility and underwriting standards for the program.

We have also conducted outreach with the financial market participants. In fact, also, in just 5 weeks, we have held five official board meetings, including a half-day, we called it a "roll-up-your-sleeves working session," where we discussed many aspects, including of course the program design.

We are also keenly focused on the program operations, including several key elements that are necessary to assure the program's success: Consumer protections; program monitoring; and obviously, outreach and education. As a board, we feel very strongly that we must incorporate protections within this program to help ensure that borrowers are placed in appropriate and sustainable mortgages.

And to quickly sum up our efforts on these fronts, we will require lenders to provide a simple and clear consumer disclosure that explains the features of the program and what is expected of the borrower. We will engage in extensive outreach and education to reach lenders, counselors, and most importantly, consumers. And we are developing a multitude of informational materials for distribution as well as Web posting.

We are designing a training curriculum which will be geared towards servicers who view the program as another loss mitigation tool, originators who are trying to serve borrowers in need, and counselors who are working with distressed homeowners.

We will be performing additional monitoring activities for this program to prevent any predatory practices that could push unsuspecting and unprepared borrowers into another loan that they cannot afford. And we will use state-of-the-art fraud detection tools recommended by HUD's own Inspector General to screen out potential problem loans.

In summary, I want to assure you that we, the board, are doing all that we can to design and implement a successful HOPE for Homeowners program. Thank you for the opportunity to update the committee. Again, we will be happy to answer your questions.

[The joint prepared statement of Assistant Secretary Montgomery, Governor Duke, Assistant Secretary Swagel, and Director Curry can be found on page 105 of the appendix.]

Mrs. MALONEY. Thank you very much.

The Chair will first recognize the gentlewoman who has had a great deal to do with creating this program, Congresswoman Waters.

They are saying they want to hear from all the witnesses, but it was my understanding there would be one joint statement.

Ms. WATERS. Well, thank you very much for being here. I appreciate the work that you have been doing to try and get FHA all strengthened in order to do the tremendous refinancing that you are going to have to do.

I want to know whether or not you have developed the technology that you need in order to manage all of the new and expanded responsibilities of FHA.

Mr. MONTGOMERY. I will answer that question on two fronts. On the H4H—again, the HOPE for Homeowners side—luckily there was a funding mechanism in there for us to do some needed upgrades to our systems; and we approved that budget quickly. Those systems upgrades are being made as I speak.

But on the other side of the equation for FHA modernization, there were no funds for additional staff or for additional IT upgrades; and as you may be aware, we are working desperately to try to find the funds to meet those needs.

Ms. WATERS. Have you requested assistance with those?

Mr. MONTGOMERY. Yes, we have. We have spoken to key staff in the appropriate committees. I think they are very well aware of our concerns in that area. But again, that is on the FHA modernization side.

Ms. WATERS. I see.

I really would like to talk a little about the discussions that we had about the kind of risk that you thought would be involved in complying with some of the mandates of the legislation.

How are you feeling about your ability to be able to extend opportunities to low- and moderate-income borrowers and be able to have loans that will not default?

Mr. MONTGOMERY. Well, speaking for the group, what is first and foremost on our mind is, at what point do we begin the program, you know, recognizing that we have, hopefully, the ability to pay for the positive credit subsidy that this program may generate, but recognizing, by its nature, FHA reaches higher-risk borrowers.

In the prime conventional space the ratios, front and back end, are 28–36. As you know, for FHA it is 31 and 43. So, again, by our design, we take on riskier borrowers.

By the way, hearing some of the discussion about foreclosures and all of that, as you know our foreclosure rate is very low, something we take much pride in. But going forward it is, where do we put that mark down saying what will be the underwriting criteria. And we have been working around a framework: Is 31–43 the starting point? Should we go to maybe 38 and 50, but with some trial modifications to see if the borrower can in fact make those payments? Because the last thing we want now is to have the borrower go through the expense of a closing and all that just to be foreclosed on again.

So, first and foremost, that has been our primary concern is just where to set those underwriting criteria.

Ms. WATERS. Thank you very much.

And you have mentioned that your foreclosure rate has been very low. And even at the point where the other initiators of loans in the private sector were offering all of these exotic products and FHA was not being utilized as much, I want to take you back to downpayment assistance programs that were very actively involved with FHA.

I did not hear any complaints about the fact that their loans were defaulting at any higher rate than any other loans. Did something new happen that we don't know about?

Mr. MONTGOMERY. Madam Chairwoman, I have testified previously about the foreclosure rates, the default rates of borrowers who used seller-funded down payment assistance. As you know, those rates are 3 times what—on loans that don't have that type of assistance.

I would say that if this committee wants to address a true zero down product, then I would say we go back and look at the original FHA bill that we passed in June of 2005 that had a true zero down product that this committee passed, that the full House passed; and let's go back and revisit that product.

I would also say that I think history has proven to us that a zero down product proved hazardous for many families. But we did find a responsible way to do that. So, in effect, we don't necessarily need the seller-funded, if that is the desire of the committee to go back and look at a zero down product.

Ms. WATERS. Well, as you know, seller-funded down payment assistance does have a lot of support still. And I still have not seen the data or the information that would lead me to believe otherwise. So I suppose we will continue to try and move forward with this.

I thank the chairwoman, and I yield back the balance of my time.

Mrs. MALONEY. Thank you.

The Chair recognizes Congressman Shays.

Mr. SHAYS. I thank the gentlelady.

I am a strong supporter of what I thought was going to be a pretty positive program. Banks agreed to take 85 percent of the present-day market value, and if there is appreciation in the future, it is shared. And it struck me that at least in theory this ben-

efited both the homeowner and those who had outstanding mortgages.

First off, I want to ask each of you, do you conceptually believe in that program? I would like to hear from each one of you.

Ms. DUKE. I would be happy to start. Yes—

Mr. SHAYS. You need a microphone.

Ms. DUKE. Yes, I would be happy to start. And, yes, I do believe in the program.

While this is a difficult time to come to the Federal Reserve, I am fortunate that this is my first appearance before this committee, because the level of engagement and enthusiasm amongst all the work groups, as well as the oversight board, has been just tremendous. And our goal has been to put out a program that is as good as we can make it.

Mr. SHAYS. Okay. Let me just ask, does anyone not agree with the program then?

Okay, so we will make an assumption that all four of you are on board.

Now we have a problem. I think we have a problem. And the problem is, where do we get the $300 billion? So, first, I am curious where we got the $29 million, and then tell me where we get the $300 billion. And we are not taking it from Fannie and Freddie.

Mr. SWAGEL. Sir, the $29.5 million was funded—million dollars with an "M"—was funded by the Treasury by the sale of the HOPE bonds that were specified in the Act.

Mr. SHAYS. Right.

Mr. SWAGEL. And then these were sold by the Treasury to the Federal Financing Bank. So within 1 day the money was in the account. Now, as you said, the Act does specify for the GSEs to, in a sense, be assessed a fee and have that fund, in part, the $300 billion. What happens with that going forward is up to the regulator, is up to the FHFA. It is going to be some time, in our understanding, before the regulator gets around to making a decision about those assessments. In the meantime—

Mr. SHAYS. And that is basically because Fannie and Freddie are basically under the control of the Federal Government?

Mr. SWAGEL. That is right. The FHFA is acting as conservator. In the meantime, the HOPE bond mechanism is in place and we can continue to fund the needed appropriations.

Mr. SHAYS. Does that imply that we are just going to go more slowly?

Mr. SWAGEL. No, absolutely not. The funding mechanism is in place. So all the resources needed to fund the program are available and will be made available by the Treasury. The issue is, how eventually will it be paid back; and that is something to be determined.

Mr. SHAYS. Can I infer that—do we have a sense yet of how the banking community is going to respond to this program?

Mr. MONTGOMERY. Well, there is certainly a desire to have product out on the street. As you know, we currently have the FHASecure product, which reached its 350,000th refinance borrower yesterday. And as we stand up this product, many lenders have told me—and I suspect they will tell you after this panel—

that they think it is a nice complement to have both of those products in the H4H, sir.

Mr. SHAYS. Okay. So the answer is you are finding that the community is eager to see what the product ultimately will be and when it will be in place, and you have a sense that it will be attractive to a number within the banking community, the lenders?

Mr. MONTGOMERY. Well, I think they see it as an attractive loss mitigation tool.

Mr. SHAYS. Right.

Mr. MONTGOMERY. They have other things they want to do before they do a principal write-down, as you know, but ultimately, if it gets down to their doing a principal write-down, assuming they work through some of the issues on the pooling—

Mr. SHAYS. When will we have a sense that this program is working? When will we be out in the marketplace and having a sense that the lending community is responding favorably?

Mr. MONTGOMERY. Sir, my honest opinion is that will probably be later this calendar year or on into early 2009.

Mr. SHAYS. It really has to take that long?

Mr. MONTGOMERY. Sir, just as a basis of comparison, on FHASecure, we announced that program on August 31st of 2007. It was really a month and almost 45 days before we saw a lot of activity. There is a good reason for that. Lenders need to retool their systems, in addition to FHA retooling their systems. Now, there are some cases where they can do manual underwriting and things of that nature.

So just inherently standing up the program this fast, recognizing that we can only work as quickly—or rather the lenders can only work as quickly as we can, there just are some inherent hurdles in that process that everybody is working very hard to overcome, sir.

Mr. SHAYS. Mr. Curry, do you want to jump in on any point before I give up my time?

Mr. CURRY. No, I just wanted to add that the board is very mindful of—

Mr. SHAYS. I am sorry, what is mindful?

Mr. CURRY. The board, the oversight board, is very mindful of what the industry reaction will be, what the reaction will be from borrowers. And we have expressed a willingness to revisit the design of the program to make whatever necessary changes we see appropriate after it is in effect.

Mr. SHAYS. Thank you. I am happy to know that all four of you were favorably inclined toward the program.

Thank you, Madam Chairwoman.

Mrs. MALONEY. The gentleman's time has expired.

The Chair recognizes Congresswoman Speier for 5 minutes.

Ms. SPEIER. Thank you, Madam Chairwoman. And I apologize if this question has already been asked, since I had to leave and then come back.

Part of the criticism has been around the fact that, to date, the kinds of activities that HOPE NOW has engaged in have been more around payment rescheduling rather than loan modification.

Could any of you respond to that?

Mr. SWAGEL. As you know, Secretary Paulson has been working very hard with HOPE NOW and, you know, in a sense pushing them toward the longer-term modifications that we all want to see. We all want to see these sustainable situations.

They have been moving in that direction. They are on track for 2 million total loan changes this year. That is a combination of the short-term, the longer-term, the 5-year and beyond. Those are up now to about 40 percent of the total changes from 10 or 15 percent. So it is progress, but we are still moving, you know, trying to move them further.

If I can say one more word, which is, you know, part of the way we see this, the HOPE for Homeowners program is one more tool. So we have the HOPE for Homeowners program and the HOPE NOW Alliance, we have the GSEs' covered bonds, and this is one more tool to make sure that people have affordable access to mortgage financing.

Ms. SPEIER. So if I understand you correctly, of the interventions that you have engaged in to date, 40 percent of them have been loan modifications, and 60 percent of them have been rescheduling.

Mr. SWAGEL. Some combination of reschedulings, in some cases forbearance—you know, you don't have to make your payment for a few months. So shorter-term modifications are about 60 percent.

Ms. SPEIER. I think certainly the interest of many of us on this committee is they be loan modifications, not rescheduling, because what you are doing then is just postponing the inevitable, and that is not going to right the system over the long term.

Let me ask you this question. The Chairman of the FDIC spoke about how they have engaged in dealing with the IndyMac situation of the foreclosures there and the kinds of loan modifications that they have offered up and the model that they have created. Is that something that, within the jurisdiction of HOPE NOW, they could be offering at some point as well?

Mr. CURRY. The FDIC—and I am a board member of the FDIC—is operating under a different structure. Specifically, we are acting as the receiver for the institution. So there is more inherent flexibility.

The terms of the HOPE for Homeowners program are laid out by statute; other than some of the underwriting flexibility that we have, we are constrained by the statute itself.

Ms. SPEIER. All right. Let me ask you probably the biggest elephant question in the room.

When do we flip the switch from this being voluntary to this being mandatory if there is not enough take-up by the banks holding the loans?

Mr. MONTGOMERY. Well, the Act requires us, once the program is up and running, to make monthly reports to Congress on the volume. And that certainly is an issue I think we are going to have to continue to monitor.

The key thing—and I want to put an exclamation point on what Phill said and Chairwoman Bair earlier said—a lot of the key to that are these pooling and servicing agreements. And the servicers are bound contractually to represent the best interests of that trust.

It could be difficult for us, as they view this as just another tool in the loss mitigation, that they want to try other things before they get to writing down principal—and that is probably what most of us would do if we were in their shoes. So ultimately it will get to a point, I think, where they are saying, all right, let's go to the HOPE for Homeowners. And for some, you know, that could come sooner, it could perhaps come later.

Ms. SPEIER. I guess my concern is that we are not going to act swiftly enough. And if we have a model with the FDIC where, by modifying these loans, they are seeing great response by the actual homeowners—and in fact, based on Ms. Bair's testimony, it makes more sense to modify than to foreclose in a cost-benefit ratio—at some point we are going to have to make the case for that and move everyone in that direction if we don't have voluntary participation. And I, for one, think you as our agents need to assess that on a regular basis because voluntary may just not be good enough.

I yield back my time.

Mrs. MALONEY. Thank you.

Congressman Castle.

Mr. CASTLE. Thank you, Madam Chairwoman.

I could be wrong about this, but my sense is that we have gone through some transformations in this country in the belief about homeownership and mortgages. There was a time not that long ago in which people would sacrifice practically anything to make sure they paid their mortgage and they kept their home.

Then we went through a period in more recent years in which you invested in a home with the idea it would go up greatly in value and you would perhaps get wealthy doing this.

And then, of late, with a shift in bankruptcy laws in terms of how housing is handled and with respect to the credit crunch and other problems in this country, there seems to be a greater feeling that it is not the end of the world to let your house go—sort of a greater acceptance of that, if you will.

In the work that you are trying to do in the HOPE for Homeowners program, I am worried that we are dealing with perhaps a different mindset than we had before. I don't know this, but I assume you have been reaching out to the various players in this field and getting ready for all this, including lenders and housing trade groups or whatever it may be.

My question is, and it is not dissimilar from other questions that have been asked, but I am curious as to whether you truly think that this new program will be effective in reducing the number of foreclosures and effective perhaps in a significant way. Or are we beyond that at this point, and no matter what we do, it is going to be very limited in terms of its effect?

Anybody?

Mr. SWAGEL. Sure. You know, one way to look at it is that the people who get into the program, they are going to benefit in a number of different ways. They are going to have a lower principal, the second lien will be extinguished. And that is—one of the things we are working on is, is essentially providing an enticement, a financial enticement to the second lienholder to give up that claim, so they will have lower payments and sustainable payments. And that is really what we are working on.

Now, we have a problem that you mentioned. We want to make sure that the benefits of that go to people who have the desire to stay in their home, who have paid payments, who have tried to make payments. And that is one of the balancing acts that we face.

Mr. CASTLE. What is your or any of your gut reactions to this, though, that you are going to be able to identify those people and bring them into the program? Or are you going to be dealing with people who have sort of let it go and don't care that much?

Maybe you don't have a feel for that. And I know there are no statistical criteria for it, but I am curious to see your beliefs as to where it is all going.

Mr. MONTGOMERY. I will say the lenders have told me—and I have met with them; they view this as another loss mitigation tool for them and, I think, a good loss mitigation tool.

But the key point is the government, and certainly speaking for FHA, there are other things that we can do with a family—that are probably in the best interests of the family, I should add—before it gets to the point of a principal write-down, recasting the loan, extinguishing soft seconds, whatever, that have been working equally well.

They all tell me it is a welcome tool, and there are other ones they are going to use before that, but it is good to know that there will still be H4H, there will be FHASecure.

So I think the tools are there. Again, it is just the devil is in the details of unwinding those current agreements on those mortgages with a reservicer.

Ms. DUKE. If I could answer more from my other life as a community banker and having gone through a lot of workout lending, one of the things that you get to—and I think these loans are going to be most helpful in the situations that are the most difficult, situations where the credit is seriously impaired, where the values have dropped and maybe are considered to continue to drop.

And so, again, working one-on-one with the borrower, there are a lot of cases where you really thought there was a chance this could work, you wanted to work with it; and this will give us some way to work with those more difficult credits to be able to—once you have written down the value to 90 percent, you have protected the credit a little bit. And then from the standpoint of the lender or the servicer, with the guarantee from FHA, then you have protected yourself a little bit from having to go through yet another modification on it.

Also the flexibility that we have to work with the junior liens, to work with those who have other interests in the property, and perhaps to clear some of those up I think will maybe allow some loans that otherwise couldn't be restructured to be restructured.

So I don't think this is the end-all answer, but it is another tool, and I think it is a tool that we have been missing.

Mr. CASTLE. Good. Well, I thank you for what you are doing. I wish you luck with it. I hope that eventually we can overcome the foreclosure circumstances we have in our country. And, hopefully, you are going to be a part of that.

I yield back, Madam Chairwoman.

Mrs. MALONEY. Thank you very much.

Is there anything that the government can do to help you get your job done quicker and faster? That is what people are asking us. Is there anything impeding your ability to get it done and to get this program out there helping people?

Mr. MONTGOMERY. Well, I don't want to sound like Johnny One Note here, but you know, COBOL was introduced in 1959, and it is the basis for our IT systems, the oldest of which is late 1970's, early 1980's.

For many generations, HUD staff have gone back to this committee, have gone back to the appropriators asking for funds to modernize their systems. And a good example here, Madam Chairwoman, is just to make these adjustments, we have to go to 17 different systems, all probably built by different contractors, and make very expensive improvements—or modifications, rather.

And at some point going forward we have to modernize FHA's systems. Especially now, where our market share—when I first came to this committee in 2005 was about 1.8 percent; our market share now is 12 to 14 percent—and growing, I might add.

Mrs. MALONEY. Well, thank you. I thank all the panelists, and I would like to call up the next panel. Thank you.

I want to thank the third panel for being here: Mr. Steven D. Hemperly, senior vice president, mortgage default servicing, CitMortgage; Ms. Molly Sheehan, senior vice president, Chase Home Lending; Mr. Michael Gross, managing director for loss mitigation, mortgage, home equity and insurance services, Bank of America; and Ms. Mary Coffin, executive vice president, Wells Fargo Home Mortgage.

Thank you very, very much. We will start with you, Mr. Steven Hemperly. You are recognized for 5 minutes, thank you.

STATEMENT OF STEVEN D. HEMPERLY, SENIOR VICE PRESIDENT, MORTGAGE DEFAULT SERVICING, CitiMORTGAGE

Mr. HEMPERLY. Thank you.

Mrs. MALONEY. Turn your microphone on and pull it closer to you, please.

Thank you.

Mr. HEMPERLY. Chairman Frank, Ranking Member Bachus, and members of the Financial Services Committee, thank you for the opportunity to appear before you today to discuss Citi's loss mitigation efforts and the implementation of the HOPE for Homeowners program. My name is Steve Hemperly, and I am the senior vice president of CitiMortgage Real Estate Default Servicing.

As a Top 5 servicer with more than $800 billion in our loan servicing portfolio, Citi services approximately 7 percent of the loans in the United States. We believe this gives us a unique understanding of the scope and dynamics related to the foreclosure challenges confronting the Nation, and the work that needs to be done to keep borrowers in their homes.

In this enormously difficult housing market, Citi has moved aggressively to help distressed borrowers. In support of our specific focus on finding long-term solutions for borrowers in need, our primary loss mitigation tool is loan modification. We have found modifications to be effective in helping certain borrowers manage through difficult times and avoid foreclosure.

Citi has a specially trained servicing unit that works with homeowners to find solutions short of foreclosure, and tries to ensure that, wherever possible, no borrower loses his or her home. Citi continuously evaluates each of its portfolios to identify those customers who can save money and reduce monthly payments, and offers them timely and tailored loss mitigation solutions. Among other things, we provide free credit counseling, workout arrangements, and other options so, wherever possible, we can help borrowers stay in their homes.

We have adopted various strategies to reach out to borrowers with resetting ARM loans. Qualified borrowers receive customized monthly communications and are eligible for streamlined refinance processing. Communications to customers with resetting loans start prior to reset and consist of direct mail, statement messaging, telephone contacts, and e-mail.

Citi's foreclosure prevention activities have an excellent resolution rate for distressed borrowers with whom we are able to make contact. However, we are not able to reach everyone, and in those circumstances, there are limits to what we can do.

To better meet the increased needs of struggling borrowers and reach as many of these borrowers as possible, we have dedicated significant resources to our loss mitigation area. We have doubled our loss mitigation staff this year, with plans for an additional 50 percent by year end.

In order for policymakers, regulators, consumers, and market participants to better understand the extent of the current situation and our efforts to improve it, we think it is important to share what we know. To assist in this effort, for the past three quarters we have produced and publicly released the Citi U.S. Mortgage Lending Data and Foreclosure Prevention Efforts Report. The report goes into specific detail on our originations, delinquency trends, ARM resets, loss mitigation efforts, foreclosures in process, and new foreclosures initiated.

Our most recent report shows that distressed borrowers serviced by Citi who received modifications, reinstatements, or repayment plans outnumbered those who were foreclosed on by more than four to one. The data demonstrate that our commitment to long-term solutions is yielding results. The number of borrowers serviced by Citi who received long-term solutions in the form of loan modifications in the second quarter of 2008 increased by 27 percent as compared with the first quarter. Our loss mitigation efforts are keeping more struggling borrowers in their homes.

Nevertheless, as we are all aware, current market conditions continue to be challenging, and we have seen foreclosures in process increase over the past year. Although foreclosures in process often do not result in a foreclosure completed, we actively pursue alternative loss mitigation for every borrower.

Citi recognizes that access to credit and housing affordability are critical issues for at-risk borrowers trying to keep their homes. In 2007, to address these concerns, we founded the Citi Office of Homeownership Preservation, or OHP. The mission of the OHP is to increase contact with distressed borrowers and keep those borrowers in their homes.

In addition to our own efforts, we reach out to borrowers by supporting and partnering with community organizations across the country. We are a founding member of HOPE NOW and partner extensively with a number of community-based organizations that are also committed to helping our borrowers. Much has been accomplished in partnership with these organizations, yet we realize there is a great deal more to be done.

Mr. Chairman and members of the committee, in keeping with the actions I have described and our desire to do more, I want to assure you that Citi shares your interest in implementing the benefits of the HOPE for Homeowners refinance program, and we strongly support this committee's leadership in promulgating the House and Economic Recovery Act of 2008.

CitiMortgage is a long-standing FHA lender and servicer. In preparation for implementation, Citi has reengineered our FHA originations process to improve efficiency and quality. To accommodate the changing housing market and in preparation for the realization of the HOPE for Homeowners program, we have substantially increased our FHA staff.

While Citi's risk, technology, and servicing personnel are all engaged in review of the HOPE for Homeowners program, some important details have yet to be determined, and we are eagerly awaiting the specifics of the regulations so that we can get our systems in place. We look forward to the initiation of the HOPE for Homeowners program, and view it as a useful lending and servicing tool for struggling borrowers.

In closing, I want to again emphasize Citi's commitment to keeping borrowers out of foreclosure and in their homes.

Thank you, and I will be happy to answer any questions.

[The prepared statement of Mr. Hemperly can be found on page 99 of the appendix.]

The CHAIRMAN. Thank you.

I apologize again for having to be in and out. It is that kind of day.

Ms. Sheehan.

STATEMENT OF MARGUERITE SHEEHAN, SENIOR VICE PRESIDENT, CHASE HOME LENDING, JPMORGAN CHASE & CO.

Ms. SHEEHAN. Chairman Frank, Ranking Member Bachus, and members of the House Financial Services Committee, my name is Molly Sheehan. I work for the Home Lending Division of JPMorgan Chase as a senior housing policy advisor. We appreciate this opportunity to appear before you today on this most important topic of helping homeowners.

We recognize that no one benefits in a foreclosure. Chase's simple goal is shared by homeowners and community groups alike: Keep homeowners in their homes whenever possible.

In total, Chase has assisted more than 110,000 customers from January 2007 through July of 2008 with loan modifications, repayment plans, reinstatements, and forbearance, and is working today with an additional 30,000 customers. In total, we have modified or refinanced over $6.3 billion of subprime mortgages, primarily ARMs.

For example, we modified 3.5 billion in loans through our proactive outreach program. We have proactively locked in the initial interest rate for the life of the mortgage on $345 million of subprime ARMs that we own, and for an additional $1.57 billion of subprime ARMs that are serviced for third parties. We have refinanced over $976 million of subprime ARMs, and we are in the process of modifying an additional $995 million of subprime mortgages. So there is a lot of activity that is going on on a consistent basis at Chase around modification.

In addition to our efforts in the subprime world, we have modified more than $2.2 billion of loans, both ARM loans and fixed loans, for prime borrowers because we are seeing additional stress in that market. We believe that the performance of our modified loans is very solid. After 12 months, 5 out of 6 customers are making their payments on time.

Currently, we are piloting a program to offer an FHA refinance product to our borrowers on the mortgage loans that we own, and that would include the recently enhanced FHASecure product. We plan to expand the offer that we currently have ongoing to include borrowers eligible for HOPE for Homeowners once the final parameters become available.

In preparation to launch the H4H program, we have reviewed our service portfolio, conducted a preliminary analysis of loans that might be eligible based upon the criteria we know today. For this preliminary population targeted for H4H, we are currently in the process of calculating the best financial choice for the loan's owner and the borrower so that the borrower receives an affordable payment.

We have convened a project team to define the strategy and procedures we would need to develop and execute on the H4H program as soon as the final program parameters become available. This will include extensive training of our personnel, preparing consumer outreach efforts, updating underwriting systems, programming new documents, and developing scripts for our call centers and loan specialists.

We are pleased to have the H4H program as an additional tool to help homeowners. We do believe, however, based on our experience, that there are going to be some issues that will arise in the context of widespread use of the program.

This is going to require a lot of effort on the part of the borrower, compared to a loan modification. What we have found is even using relatively simple documentation, it still requires multiple follow-up calls.

The H4H program does have novel features that are not in most mortgages, such as the shared appreciation and shared equity, so there is going to need to be a lot of consumer education in order to make the program very successful. Additionally, I think, as has been mentioned by earlier speakers, the investor community still disfavors principal reductions. The preference is more to have a principal forbearance used to make the loan payment affordable; and that is similar to what, frankly, is in the IndyMac program that the FDIC has recently announced. So we do see that as an issue.

We continue to work with our investors. And so it is not that they disfavor modifications per se; it is really how the sort of principal piece of the modification is handled. So if you can make that payment affordable through a forbearance rather than a reduction, that is going to be a more attractive alternative to an investor.

The other thing we would just mention is that in the context of the incentives that are being provided to the second lienholders to extinguish their liens, which we understand—and that is sort of a very sensible approach—there is not a similar incentive that is being provided to the lender or the holder of the loan to recoup the principal loss they would take when they make use of the program. And we think that would be an incentive that would make the program more successful.

In conclusion, we are committed to addressing the needs of customers who encounter financial difficulties as we continue to reexamine and improve our practices to respond to changing market conditions and their impact on our customers. We believe our programs truly are helping our customers through this challenging environment.

Thank you. I will be happy to take any questions.

[The prepared statement of Ms. Sheehan can be found on page 118 of the appendix.]

The CHAIRMAN. Thank you very much. I appreciate the focus on exactly the question.

Mr. Gross, welcome back. We had you here once before, and we appreciated that, so please go ahead.

STATEMENT OF MICHAEL GROSS, MANAGING DIRECTOR FOR LOSS MITIGATION, MORTGAGE, HOME EQUITY AND INSURANCE SERVICES, BANK OF AMERICA

Mr. GROSS. Thank you, Mr. Chairman. It is our privilege.

Mr. Chairman and committee members, thank you for the opportunity to appear again to update you on Bank of America's efforts to help families prevent avoidable foreclosures.

As the Nation's leading mortgage lender and servicer, we fully understand our role in helping homeowners in these difficult times. We are committed to being a responsible lender and servicer, facilitating both new homeownership and retention.

Bank of America is leading the industry in today's challenging environment. We know that consumers who are experiencing financial challenges, but who ultimately have the ability to repay their loans, need our help. We are ready to help them, because everyone loses from a foreclosed home. Our continued goal is to modify and work out at least $40 billion in mortgages by the end of 2009, helping to keep over a quarter of a million families in their homes.

Before providing a further update on our home retention efforts, I want to update the committee on our efforts to help individuals and families who are suffering from the devastation of Hurricane Ike. For mortgage customers whose homes have suffered hurricane-related damage, or who have temporarily been unable to return to work, we will offer payment forbearance, waive late fees, and decline to report overdue payments to credit bureaus during the forbearance period.

We are also suspending foreclosure sales for properties with confirmed damage, subject to investor requirements. We are continuing to assess the situation, working with Members of Congress and in the impacted communities to develop other relief solutions.

Regarding our current home retention efforts, I want to reaffirm to the committee our support for the recently enacted HOPE for Homeowners program and assure you that we are engaged in efforts to utilize the new tools that it provides. We expect the program will contribute to efforts to bring stability to the housing market, and we believe that it can help both homeowners and investors alike.

To that end, we are actively refining preliminary assessments as to which customers whose mortgages currently are in foreclosure may qualify for the program. We are in the process of contacting these customers to confirm their eligibility for and interest in program participation. Subject to investor contracts and State procedural considerations, we will avoid completing foreclosure sales for customers identified while the implementing regulations are being drafted.

In response to the needs of our customers, we have added more staff and improved the experience and training of the professionals dedicated to home retention. Over the past 18 months, the home retention staff has doubled to over 5,000. We will continue to maintain sufficient staffing levels to ensure we are responsive to our customers.

The Countrywide acquisition closed on July 1st. Legacy Countrywide data reflects that in the months of July and August 2008, we successfully completed over 52,000 home retention workouts, a 326 percent increase over the same period in 2007.

At the core of our combined operations are the commitments we made to engage in aggressive home retention efforts. Bank of America currently uses a range of home retention options to assist customers who are struggling to make their monthly payments, including loan modifications that may significantly reduce interest rates, extend maturities or, otherwise, loan terms; targeted strategies for customers facing interest rate resets that include automatic interest rate reductions for at least 5 years; formal and informal workout arrangements that allow customers additional time to bring their loans current; and partial claims that involve unsecured, no-interest, or low-interest loans to customers to cure payment defaults. Early communication with customers is the most critical step in helping prevent foreclosures.

So far in 2008, we have participated in more than 200 home retention outreach events across the Nation. We are proactively reaching out to customers by seeking to contact customers through outbound calls, including 18 million outbound calls in August, averaging over 17 attempts per month per loan. These outbound calls resulted in approximately 1 million conversations in the month of August with at-risk homeowners. We also mailed over 800,000 personalized letters and cards that offered customers the choice to contact Bank of America or a HUD-approved counseling agency. Furthermore, company home retention counselors attend events across the Nation and in our branches to meet directly with homeowners who need assistance.

Both the pace of workouts, as well as the types of workout plans, have increased in the past year. In the first 8 months of 2008, we closed over 169,000 retention workouts, a 407 percent increase over the same period in 2007. Since we announced a series of home retention initiatives last autumn, loan modifications have become the predominant form of workout assistance. Year-to-date, through August of 2008, loan modifications have accounted for more than 74 percent of all home retention plans, while the short-term repayment plans accounted for just 12 percent.

I will close by reiterating Bank of America's commitment to helping our customers avoid foreclosure whenever they have a desire to remain in the property and a reasonable ability and willingness to make payments. Foreclosure is always a last resort. Today's market conditions demand that we expand our home retention efforts and develop new approaches which mitigate losses to investors. We are up to the task of meeting these demands.

Thank you, and I would be happy to answer any questions you may have.

[The prepared statement of Mr. Gross can be found on page 87 of the appendix.]

The CHAIRMAN. Next, Ms. Coffin.

STATEMENT OF MARY COFFIN, EXECUTIVE VICE PRESIDENT, WELLS FARGO HOME MORTGAGE

Ms. COFFIN. Mr. Chairman, Ranking Member Bachus, and members of the Financial Services Committee, I am Mary Coffin, head of Wells Fargo's Mortgage Servicing Division.

In July, we testified, and we are here to show you our progress with the people we are helping to keep their homes. We thank you for inviting us back so that we can report further advancements, including our intended use of the HOPE for Homeowners program.

Wells Fargo has been, is, and will continue to be focused on finding ways to keep our customers in their homes. We can accomplish this only when we are diligent at reaching out to those who need us and to work with them to understand their personal situations.

At Wells Fargo, we are successful in contacting 9 out of every 10 of our at-risk customers. When we reach these customers, 7 of the 10 engage with us and work with us to develop a solution, while 2 customers tell us they do not need or want our help or assistance. And of every 10, 5 customers are able to avert foreclosure by improving or holding their delinquency status.

We monitor our process to ensure we provide answers to customers as quickly as possible. Once we receive the required documents, on average, we complete a loan workout decision in less than 30 days.

To accomplish all of this, we have extended our hours, we have participated in more than 150 face-to-face forums, and we have increased our loan workout team from 200 to 1,000. At Wells Fargo, however, staffing is about much more than simply adding employees; it is about ensuring our customers get the guidance and service they need. For this reason, we prioritize our staffing based on customer needs.

Short sales, for instance, are complex and require specialized knowledge. We have consolidated this operation into a separate

unit so as not to take away from customers who ask us for help in helping them to retain their homes.

As always, in working with our customers to find home retention solutions, our goal remains to seek lasting affordability. Affordability can best be achieved by using the tools that most appropriately fit each customer's unique financial needs. Some of our at-risk borrowers are not upside down on their mortgages; they simply cannot afford their monthly payments. In these cases, an interest rate reduction provides the greatest lift. For borrowers who have too much housing debt and already have a low interest rate, a principal reduction could be the only solution. Yet others need us to employ several of our tools to reach a sustainable payment.

Our responsibility as a servicer is to use the right tool in the right circumstance. For example, we have found that the same affordability can be reached through a 2 to 3 percent interest rate reduction and term extension as can be reached through a 25 to 30 percent principal reduction.

And now before us is yet another solution, the HOPE for Homeowners program. To prepare for the program's launch, we have already established both a team of experts who understand what we believe the criteria will be and a dedicated toll-free customer hotline.

In response to your requests for a moratorium for those who could potentially benefit from this program, we mailed letters to our customers we believed could be eligible and who were scheduled to enter foreclosure this month. We told them their foreclosure sale would be stopped until at least October the 15th. By then, we intend to reconnect with them to confirm their qualifications and see if they have an interest in this program.

Based on assumptions about the final criteria, we estimate as many as 30- to 40,000 of our customers who might not reach affordability from other solutions may qualify for HOPE for Homeowners. You have our commitment that we will work with our borrowers to find the optimal solution for sustainable affordability, and we will use this program where it is needed.

We believe our participation in HOPE for Homeowners reflects the nature of our portfolio. Our company has not and does not make or service negative amortizing or option ARM loans. These borrowers are the most likely to benefit from the program, because their loans have higher interest rates and their principal balances are likely to be higher than the current value of their home.

In closing, while making progress in avoiding many foreclosures has already been achieved, as servicers, we must continue to adapt to the ever-changing market before us. With the volume of foreclosures, we see the need to help investors understand the unique circumstances of customers and work with us to challenge contractual obligations. Our work with the government, HUD, the GSEs, and the American Securitization Forum has yielded success. However, further infusing flexibility into solutions is critical to our continued success in helping at-risk borrowers.

Mr. Chairman and members of the committee, thank you for your time today, and I would be happy to answer any questions you have on our processes.

[The prepared statement of Ms. Coffin can be found on page 84 of the appendix.]

The CHAIRMAN. Thank you.

Because I have to leave, and because of his interest, I am going to switch questioning slots with Mr. Ellison. He is recognized for 5 minutes.

Mr. ELLISON. Thank you, Mr. Chairman, and thank you for having this very important hearing.

Just a few demographic questions in the beginning, and this is for everybody on the panel: What percentage of late mortgagors are aware of the HOPE for Homeowners program? I guess my question is, as good as this program is, is it meeting the needs that are out there, given that we may see a million foreclosures?

Mr. GROSS. I guess for Bank of America what I would state is that we have an active program; since the program was indeed authorized, that we have been sending letters and making outbound call campaigns to all of the at-risk homeowners who are at risk of foreclosure to ensure their awareness.

Mr. ELLISON. So I think that—well, Ms. Coffin shared some statistics that they have at Wells.

Do you all have any in terms of what percentage of homeowners that you contact about—

Mr. GROSS. I don't have those statistics. What I can share with the committee is that for foreclosure sales that were scheduled between September 8th and September 22nd, where we felt that the homeowner would be or could be eligible for this program, we have postponed over 1,650 foreclosure sales.

Mr. ELLISON. That is a lot.

And also, I am curious to know about how the write-downs that you have been doing are impacting your companies. Is it impacting stock price? How is it impacting your company? How are your investors reacting to this?

Ms. Coffin, do you want to start?

Ms. COFFIN. Sure. Well, I will say straight up there is nothing affecting our stock price, as you can tell, on a day-to-day basis.

And, two, my spirit of this is, we work with many of our investors. We don't take for granted what is in the contracts. We are reaching out to them on almost a day-to-day basis. We are making sure that we receive, where we can, especially on the coasts, delegated authority to make sure that we are able to quickly and swiftly make decisions, and where principal reductions are necessary.

And we make sure that we are doing—as was spoken to this morning, our net present value analysis, that we are making the best decision in the interests of the entire trust—those decisions are being made.

Mr. ELLISON. So, in other words, engagement in aggressive action is not just helping the homeowners, it is actually not hurting the company.

Ms. COFFIN. That is exactly right.

Mr. ELLISON. Mr. Gross, do you want to add anything to that?

Mr. GROSS. I would completely concur with those remarks. I would also add in terms of investor reaction, I think, at least in your original question, I believe that you sort of mixed between the

investors who own the mortgages versus the investors who hold shares in the banks, which are two different groups, generally.

I would say as far as the investors who hold the mortgages and the relationship, what we heard earlier called tranche warfare, I can assure you that in no case has Bank of America or any other servicer that I am aware of made any decisions based upon a specific level of risk within a security or a position that a specific investor may hold. Our contractual obligations are to the trust in total, not to any specific party who has a unique position.

Mr. ELLISON. Do you think other servicers in the industry are doing what you are doing as aggressively as you are doing it? Are you leading the industry? How would you describe it?

Ms. COFFIN. I will state that as our size and the reputation that Wells Fargo has had, we are doing everything we can to lead, to set best practices, to show the technology that can be available, to show we are streamlined, the analytical departments we have, to look at the unique aspects of certain customer situations, and have brought that to bear across the entire industry, and also this group at this table has worked extensively together to find solutions collectively.

Mr. ELLISON. Ms. Sheehan, did you want to add something?

Ms. SHEEHAN. I just wanted to add to really what Mary said, is that there is a core group of the larger servicers who have really been working last spring very actively together to try to set the tone for the industry as a whole. We are all obviously part of that group.

Mr. ELLISON. Well, let me just say as I wrap up that although there is no magic bullet to solve this foreclosure crisis, I think this is one of the important ways to solve it. I am happy to hear some of the reports that you have shared with us today.

Thank you.

The CHAIRMAN. The gentleman from Delaware.

Mr. CASTLE. Thank you very much, Mr. Chairman. I don't need to really point this out, but obviously you represent as many mortgages as any four people we probably could put together at a table, and we appreciate the attitude of trying to help resolve this problem. You are leaders for everybody else. I think we need to keep that in mind.

Sometimes it is very confusing for me to follow the bouncing ball of just how you hold owner serviced mortgages. I assume, based on the testimony of some of you, and this is just an assumption, that in some cases, you have mortgages which you issued, which you own, and which you serviced, and I assume in some cases you have acquired mortgages which you have serviced, and in some cases, perhaps you just serviced mortgages. You can distinguish if I didn't categorize all that correctly.

My question is: Has anyone tried to distinguish statistically in that category of where the greatest problems are? Do you have many problems with mortgages you just service? And I ask that on the basis that you are all very responsible entities, but you may have acquired mortgages that perhaps came from somebody who is not quite as conscientious as you were, and perhaps you are depending upon credit rating agencies for that institution as opposed to knowledge about the particular mortgages, and therefore there

are greater problems with those service-type mortgages as opposed to something you issued yourself. Is that beyond your knowledge? Or don't you understand the question? Any of the above.

Ms. SHEEHAN. I understand the question. That is not information I have in front of me today. I would just observe that many times it has more to do with the actual nature of the mortgage itself. And we see, at least I have observed, greater differences in those performance statistics. For example, prime versus subprime versus all day; I think we probably have all observed similar types of things.

Mr. CASTLE. Anybody else?

Ms. COFFIN. I will comment. First of all, you did an excellent job of describing the different components. At Wells, we do keep separately those loans for which we acquired only the servicing and we did not set the underwriting standards. I can tell you that they are more difficult to service, they are more difficult to find solutions for, and we believe it is a part of the responsible lending that we are advocating as to some of the brokers who were not regulated and what they did and what is in those portfolio loans. We do keep them separate, and we do have higher delinquency and higher foreclosure rates on those portfolios.

Mr. CASTLE. Interesting. Thank you.

Mr. GROSS. We would concur with that evaluation. It has been historically the case and remains the case that loans originated by third parties tend to have higher delinquency ratios than those of retail originations.

Mr. HEMPERLY. On behalf of Citi, we concur as well. From a servicing standpoint, the approach that we take relative to the customers is, in my view, somewhat blind to the path that the customers loan traveled to get into our servicing shop. I think it is important to note that because the efforts that go into trying to help the customers and keep them in their home, to make contact, and try to solve for affordability are largely very consistent on the loans we hold on portfolio, as well as the loans we service for others. Occasionally we may need approvals or whatever. But I don't think that there are material obstacles in helping the people who need help.

Mr. CASTLE. Thank you. Let me jump on to a different subject. When we did the big bill earlier on this, I was involved in writing legislation to try to help with some liability issues with respect to modification of loans. It was a general statement saying, basically, if you stayed in compliance with regular terms, you could not be sued, etc.

But my question is, as you are doing your loan modifications or your workouts and servicing these mortgages, are you having liability concerns at any point in any aspect of it that is reducing your ability or will to go to these workout situations, or do you feel comfortable that that is not an issue in terms of dealing with the various borrowers that you are dealing with on the workouts and modifications?

Mr. GROSS. We are comfortable that the liability issues are not significant factors that would enter into our consideration. Generally speaking, as long as we are comfortable that we are in conformance with the pooling and servicing agreements and other doc-

uments that may regard the sale and servicing of loans, then we should have no liability issues whatsoever.

Mr. CASTLE. Does anybody else wish to respond to that? If not, I will just take credit for writing good legislation to help with all of that.

I appreciate that answer. As I said at the beginning, I appreciate what you are doing. I just think we are all, I mean society, and America in general, is in this together, and I think you are leaders in this. You keep demonstrating the steps that can be taken to deal with the individual mortgage issues which collectively are major structural issues to the economy of our country. We appreciate it.

I yield back, Mr. Chairman.

The CHAIRMAN. Thank you. I really appreciate the focus we are getting. You talked about some of the specifics that might help. When you talked about recoupment, and I apologize, there have been messages coming in and out, I know we have in here that if you are the beneficiary as the borrowers of this write-down etc., and you made a sale for profit within 5 years, you share that with the Federal Government. Was it your suggestion that the holder of the loan also share in those proceeds? You were talking about some recoupment for the one who wrote it down. I apologize for not focusing. Would you elaborate?

Ms. SHEEHAN. Yes, that is what I was referring to. Not only the way the legislation is currently being interpreted by the regulators who are writing the rules, is the potential for a second lienholder to share in appreciation, and there is a potential for the borrower to share and the government to share, but not for the first lienholder.

The CHAIRMAN. What we were driven there by was obviously the imperative of trying to hold down the tax liability. We are unlikely to modify it right away, but that is something to keep in mind.

Mr. Gross, one of the things you talked about last year in August was the integration of Countrywide into Bank of America. For these purposes, is that now complete?

Mr. GROSS. No, it is not, sir. They are operating as two entities within the Bank of America, and the full integration of the two servicing operations is probably about 18 months out. I would say that both operations are under the leadership of Steve Bailey, who is now the servicing executive for Bank of America.

The CHAIRMAN. An obvious question; are there policy differences between the two, or are they making the same decisions?

Mr. GROSS. We are essentially making the same decisions, sir.

The CHAIRMAN. So that if you are a former Countrywide borrower, you will not be treated substantively differently than if you had been a Bank of America borrower?

Mr. GROSS. That is correct.

The CHAIRMAN. In that case, the integration is less important, and of course—and we obviously want to have people reassured that the acquisition of Merrill Lynch won't disturb this.

Mr. GROSS. I assume that those same rules that I have just outlined that govern Countrywide—they would be the same. There is no discrimination that would take place.

The CHAIRMAN. There are people who are worried that Bank of America will soon be the only bank in America.

I am reassured. We had different things on the servicer issue. We will want to work with all of you to see whether there are things we can do, even the transaction costs.

But let me say that we will have had, by the time we are finished next week, Chairwoman Bair, IndyMac, and Fannie Mae and Freddie Mac, with their vast portfolios. We have the four largest banks here. We are very appreciative. I am pretty sure that by the time we finish here, well over 90 percent of the holdings will have been before us.

We are pleased with what we hear. I think it is, frankly, very important. This is a time when a lot of people in this country have already lost confidence in our system, are feeling put upon, are feeling unfairly treated. We are dealing here not just with the question of individuals being treated fairly, and that is very important, and even the near-term macroeconomic situation.

In the hands of the people here, to a very great extent, rests the question about whether a lot of average Americans are going to continue to believe that they live in a fair country. You can't translate that to the bottom line, but I think we all have an interest in that being firmed up.

You are major pillars of our financial system. I have to talk about Sheila Bair. Sheila Bair has ownership of servicers that are regulated, unrelated. One of the things that strikes me is the extent to which you, the commercial banks, the more highly regulated entities, are being asked to come to the rescue of the more lightly regulated entities. I do think this is a sign that regulation, properly done, can be done well.

We all have that vested interest. I appreciate what you are doing. Obviously, you are private corporations with shareholder obligations. But I think, in this case, your shareholders need, all of us need a restoration of a sense of fair play that has ebbed among a lot of our fellow citizens. And your four institutions collectively can do a great deal about that. So I appreciate your being here and your acknowledgement, and I hope things go well.

I am going to have to temporarily step out again. Ms. Speier will take over.

Ms. SPEIER. [presiding] This is a unique situation for a freshman, I might add.

Mr. Shays.

Mr. SHAYS. Let me just thank my colleague for her presence here. I was such a good friend with Congressman Lantos. So you represent an important district, in my mind, and represent it well.

I don't know if I have a conflict. I have a mortgage with Wells Fargo, my credit card is with Bank of America, and my second loan was with Chase. I appreciate all you do to try to provide goods and services for Americans.

What I am really interested in knowing is the likelihood that the whole program will be successful. My general logic is that 85 percent of present market value could result in $100,000 worth of loss, or more, for some loans, particularly in my area. But my sense is that if you have to go into foreclosure, you would be looking at much higher losses.

So, one, I just want to know from each of you if conceptually you believe in the program. I would like to start with you, Mr. Hemperly.

Mr. HEMPERLY. Conceptually, we absolutely support the program. I believe that it is a good tool that we can use, in conjunction with some of other of our other tools.

Mr. SHAYS. If anyone disagrees with that, speak up.

Let me ask the second point: Why does it have to take so long? Would you be ready to go right away if this program were out there, all set to go? Would you be ready to take advantage of it?

Mr. HEMPERLY. We have significant resources decked against getting ready for this program. The October 1st deadline is a very vast deadline for us. As soon as we can get the additional guidance, we will know more about our readiness timelines.

Mr. SHAYS. Let me hear from others.

Mr. GROSS. If I could, I think sort of putting aside the October 1st date, the fundamental objective of the HOPE for Homeowners Program is to stop foreclosures. To the extent that Bank of America and other servicers are evaluating at-risk homeowners presently, and postponing foreclosures—

Mr. SHAYS. That is amazing.

Mr. GROSS. So to the extent that we are aware that this homeowner might be eligible for it, and we have stopped the foreclosures process.

Mr. SHAYS. The bottom line is had this program not been in place, you might be more inclined to move more quickly.

Mr. GROSS. There may well have been foreclosures that occurred had this program not be in place.

Mr. SHAYS. Would you agree, Ms. Coffin?

Ms. COFFIN. I do.

Mr. SHAYS. Ms. Sheehan.

Ms. SHEEHAN. I do.

Mr. SHAYS. That is encouraging. Do you all need to hire a lot more people to make this system work properly? Let me start with you, Ms. Coffin, and go down the panel.

Ms. COFFIN. As I stated in my testimony, we already have a dedicated team beginning to learn what we believe will be the criteria and setting up—

Mr. SHAYS. Besides a dedicated team, are you having to hire more people to do this?

Ms. COFFIN. Well, in general, we are hiring more people just because the nature of the time of the year and the seasonality. We are coming into the fourth quarter of the year, which is usually a higher time for delinquencies. So, yes, we are hiring more people, but not specifically just for this program.

Mr. SHAYS. Mr. Gross.

Mr. GROSS. Yes, we are adding staff.

Ms. SHEEHAN. We have already added a specialized staff around FHASecure, and this third FHA program will become part of that. So we have sort of completed that process.

Mr. HEMPERLY. We have also made very extensive additions to our FHA staffing.

Mr. SHAYS. What would be your biggest concern that this program could be screwed up? In other words, if it was going to be

screwed up, what would be the likely concern? Do you get the gist of my question?

The bottom line is they could incorporate the rules in a regulation that is workable and they could go in the opposite direction. Is there a debate on the books right now that you are having with them, trying to move them in a direction that makes the program work?

Mr. GROSS. I don't think that there is necessarily a debate about that as yet. We haven't seen the final rules from the oversight board. Probably my biggest concern is that expectations for the HOPE for Homeowners refinance program at times might be too high, just from the standpoint that in the hierarchy of workout options that you have heard about this morning and on a few different occasions, that regardless of who owns the loan, we are going to present the homeowner with the option that gives them a sustainable monthly payment and presents the owner of that loan with the least loss. If that is an interest rate or a term modification that would arrive at that sustainable payment, then we would choose that option for the homeowner.

Mr. SHAYS. The bottom line is that if they can afford to pay, you would probably go with FHASecure, if they have the capability, before you would go into the HOPE for Homeowners, correct?

Ms. COFFIN. That is correct.

Mr. SHAYS. Thank you, Madam Chairwoman.

Ms. SPEIER. Thank you. To follow up on the gentleman from Connecticut's question, let me ask you this: A number of you in your testimony suggested that your preference is to reduce the interest rate and extend the length of the loan. Those are your first priorities in terms of modification. That being the case, HOPE NOW is all about reducing the actual value of the home to 90 percent.

So I am trying to understand if, in fact, what you are saying is that HOPE NOW will be the last resort. Is that a fair statement? You can each answer that.

Mr. HEMPERLY. The HOPE for Homeowners program does call for principal reductions. We currently do offer principal reductions. We believe though that there are several ways that we can solve for affordability when we are dealing with our distressed customers. The way that we have done most often is we have made a shift in rate to solve for their affordability. That seems to work, in our view, very frequently. When it doesn't work, we will look at term extensions and we will look at principal reductions. So they absolutely have their place in the tool box.

That being said, currently we take fewer principal reductions in our modifications than we do because we can solve for rate more times than that.

Ms. SPEIER. In terms of your principal reductions, what percentage then are principal reductions?

Mr. HEMPERLY. I do not have that data.

Ms. SPEIER. Could you provide that to the committee?

Mr. HEMPERLY. Absolutely.

Ms. SPEIER. Ms. Sheehan.

Ms. SHEEHAN. I agree with what Steve is saying, but I would note also that sort of between the option of reducing rate and extending term to get to the affordable payment, if that is not ade-

quate, you can actually do a principal forbearance. That was the reference I made earlier to the IndyMac program.

Principal forbearance is where you calculate now the monthly payment, take off that certain amount of principal. Let's just say it is 10 percent. It becomes a silent balloon at the end. There is no payment obligation attached to it at that point. But it does give the holder of the loan the ability, should the home be sold, to share in that future appreciation.

That was the comment that I was making earlier, that the one distinction between doing a principal forbearance and HOPE for Homeowners is that the first lienholder doesn't get that ability to recoup through the appreciation.

Ms. SPEIER. I understand that. It was your testimony that first triggered my question because it does appear that your interest in reducing the actual value of the home is the least attractive of the choices that you have.

Mr. Gross.

Mr. GROSS. As previously stated, the reduction of principal, which presents generally the greatest loss to the investor, would be our last resort.

Ms. COFFIN. As my testimony has stated, we have actually analyzed that. Our number one goal is to get affordability, and sustainable affordability, and we can actually get there quicker with a rate and a term extension than we can with going very deep on a principal reduction.

But, as stated, as we have analyzed our portfolio to prepare for HOPE for Homeowners, we have to look at what is the outstanding debt for the borrower. I will tell you that a vast majority of our borrowers who are at risk do not have high LTVs. They have either had a loss of income in their home. So it isn't always just about all the foreclosures because people are upside down in their homes. We have many people who have an 80 percent LTV who cannot afford their mortgages today.

Ms. SPEIER. I am going to quote some testimony from Mr. Hacobian, who is about to testify. He gives an example of a homeowner who was told the investor would not approve this family for a loan modification. They tried 3 times to have their loan modified. They were scheduled for foreclosure auction in July 2008.

On June 10th, the servicer was changed from Option One to American Home Mortgage. On July 1st, the new servicer sent this family a loan modification proposal reducing the interest rate from 11 percent to 6.5 for the life of the loan. The amount they were in arrears was capitalized into the loan. This came as a complete surprise to the homeowners and the counselor.

Option One had explained to our counselor that they had proposed a loan modification, and it had been denied by the trustee. Our counselor contacted the trustee, who explained that they rely on the recommendations of the servicer in considering a loan modification.

Once American Home Mortgage took over the operation of Option One, one of the three loan modification proposals that had been previously denied was approved. The trustee, as it turns out, was Wells Fargo. So there is a lot of finger pointing in this particular example, and it seems like it certainly meets all of your pref-

erences, which is to reduce the interest rate, extend the loan, and yet this home almost went to auction, but for the change of the servicer.

So, Ms. Coffin, could you respond to that, please?

Ms. COFFIN. Yes, I can. Let me be clear. The responsibility of a modification and a decision on a modification for a program is held by the servicer. It is our contractual obligation to understand that contract and to make that modification decision. And in your example, that was Option One's responsibility.

The responsibilities of a trustee; the trustee is established by the securitization, and the trustee oversees the administration actually of the contract itself, the disbursement of funds to the end investors, because ultimately there are many investors involved in a securitization. They are more of an administrative role.

Now, in between a trustee and the actual servicer is yet another, and that is called a master servicer, if you have heard of that. A master servicer can work with a servicer to provide interpretation of the contract, but it is not the trustee or the master servicer's fiduciary responsibility to say yes, that looks like a good modification. Do it. That is not their job. That is our responsibility as a servicer.

Ms. SPEIER. All right. One last question for Mr. Gross. The last time you were here, we talked about the waiver section that appeared in the Countrywide contract. You said you—

Mr. GROSS. Bank of America and Countrywide do not use the waiver language in their loan workout and modification documents.

Ms. SPEIER. Thank you for that clarification. Thank you all for your participation.

We will now have panel four. I would like to welcome, as we are changing seats here, let me welcome to the committee: Mr. Mossik Hacobian, the president of Urban Edge Housing Corporation; Ms. Tara Twomey, of counsel for the National Consumer Law Center; Mr. Ron Phipps, first vice president of the National Association of Realtors; and Mr. Alan White, assistant professor, Valparaiso University School of Law.

Mr. Hacobian, would you like to begin?

STATEMENT OF MOSSIK HACOBIAN, PRESIDENT, URBAN EDGE HOUSING CORPORATION

Mr. HACOBIAN. Thank you, Madam Chairwoman. Thank you for the opportunity to testify on this very important issue affecting our communities.

Urban Edge is a community development corporation in its 35th year of operation. We have developed and preserved over 1,300 units of rental and ownership housing affordable to very-low-, low-, and moderate-income households. We also offer classes in first-time home buyers training, credit counseling, and post-purchase counseling. For the past 2 years, however, we have had to focus a lot of our attention on foreclosure prevention, under contracts with the City of Boston, MassHousing, NeighborWorks America, and a variety of other programs.

We analyzed in preparation for today 254 cases that we have in our organization involving 51 different servicers. A summary of that analysis was included in my written testimony to you.

Our counselors have been able to secure loan modifications for 62 homeowners out of the 254 cases. That is a 24 percent success rate. More than three-quarters of those 254 cases, or 196, are being handled by 24 of the 51 servicers with whom we are in contact. Our success rate with these 24 servicers is a little bit better than an average rate of 32 percent.

Loan modifications this year represent 83 percent of our successful outcomes. In 2007, they represented only about 10 percent, or 3 out of 30. The increase in loan modifications in 2007 to 2008 has basically been tenfold. It has become, as was testified earlier, the preferred method of homeownership retention.

About 80 percent of these modifications are permanent. About 20 percent are short-term, meaning 2 to 5 years. In the past, meaning 2 years ago, the servicers' posture was to find ways to disqualify homeowners for loan modifications. At present, more servicers are cooperating to modify loans for homeowners whose incomes will allow them to make the payments. This is pretty consistent with what you just heard.

For example, of the 115 City of Boston intakes in 2007, we resolved 30 cases successfully, only 10 percent of which were modifications. In the first 7 months of 2008, with 65 additional intakes, we successfully resolved 82 cases, 30 of which, or 37 percent, were loan modifications.

So, as I said before, in the first 7 months we have done 10 times as many modifications as in all of 2007.

What more can be done? The loan modification process should be more standardized. Too often, the successful loan modification is dependent on the personality of the servicer, and the skill, imagination, and tenacity of the counselor. Some servicers are helpful, others are obstructionist. There is too much art and not enough science in obtaining a successful modification.

It will also be helpful to hold the senior executives or presidents of servicer organizations accountable for outcomes. As you were kind enough to read from my testimony, we have had situations where we talked to a servicer who refuses a modification. We then called the president of the company and the same servicer who denied the modification all of a sudden is able to do it.

When you call, you don't always get the same person. So sometimes it is a question of getting the right person, having them understand what you are requesting, and staying with them until it is resolved.

We have had a manager of a company responsible for investor and community relations express frustration with their inability to make changes to the pooling agreements that was explained before. Because these are parts of trusts, they feel they don't have the authority to make those recommendations, despite what you just heard. Well, not despite what you just heard.

At the level of the trustee, who would like to make—and in this example, we are talking about somebody at Wells Fargo—they wanted to make a change, but were not able to make a change without the recommendation because of the constraint of the pooling agreements.

In this example, the change in the servicer apparently resulted in the new servicer making a recommendation that the trustees

were willing to entertain, whereas the previous servicer didn't feel they were able to exercise that judgment.

So to the extent, and this was testified to earlier, to the extent there could be greater flexibility for both the investor and the servicers to negotiate a case-by-case merit-based solution, we think that would be helpful for both the investors, the servicers, and the homeowners.

You already gave one of the examples that I was going to cite, so I won't repeat it, where Wells Fargo was very interested in a solution, and what is important to note is that the previous principal, which was $275,000 at 11.13 percent, cost the homeowner $500 or $600 a month more than the new higher principal which included all the arrearages that were capitalized at 6½ percent, was $500 less on a monthly basis and resulted in a reduction of the share of the household income that went to the mortgage payment from 62 percent to 49 percent.

We were puzzled at how such a change could happen so quickly from one servicer to the other. So clearly it can be done.

In another example that is included in my testimony, we have a situation where a homeowner has an adjustable rate mortgage that started at 9.45 percent. We are attempting to secure a loan modification for a fixed rate mortgage. The homeowner can afford to make the payments if the interest rate is reduced to 6 percent.

We were initially negotiating with Litton Loan Servicing. Litton sold the loan to Select Portfolio. We are told the investor is Magnitar Financial.

While some of the testimony you just heard is from major organizations, we have many, many loans that are held by servicers that have one or two loans that we are dealing with. It is very labor intensive. The servicers have told us because of the pooling agreement, the interest rate cannot be reduced to a rate lower than the starting rate of 9.45 percent. If that is not reduced, this home, unlike the previous example, will go into foreclosure.

Thank you. I would be happy to answer any questions.

[The prepared statement of Mr. Hacobian can be found on page 95 of the appendix.]

Ms. SPEIER. Thank you.

Ms. Twomey.

STATEMENT OF TARA TWOMEY, OF COUNSEL, NATIONAL CONSUMER LAW CENTER

Ms. TWOMEY. Congresswoman Speier, Chairman Frank, and members of the committee, thank you for inviting me to testify.

My name is Tara Twomey, and I am an attorney of counsel with the National Consumer Law Center. Prior to joining NCLC, I was a clinical instructor at Harvard, where my practice included foreclosures prevention in the low-income communities of Boston.

We are facing the worst foreclosure crisis since the Great Depression. As you know, the statistics are grim. Bank-owned properties now make up 16 percent of the inventory of existing homes for sale nationwide, and in some communities, that number tops 40 percent.

The housing market is hemorrhaging, and for a majority of residential loans the only entities that can stop the bleeding are the

mortgage servicers. Mortgage servicers provide the critical link between mortgage borrowers and the mortgage owners, but their financial interests are sometimes adverse to both. The oft-quoted phrase, "everybody loses with foreclosures," does not necessarily apply to the servicer.

Because of systemic problems in the mortgage servicing industry, voluntary, large-scale loan modifications are an aspiration rather than a reality. The recently passed HOPE for Homeowners Act addresses important barriers to creating affordable, sustainable loan modifications. We applaud the call by the chairman and members of the committee for a halt to foreclosures until the program is up and running.

While the promise for HOPE for Homeowners is great, substantial hurdles remain. The most significant of these is that the program remains entirely voluntary. Since May of 2007, the government has been calling on the financial services industry to engage in meaningful, voluntary loan modifications, and we would suggest to you that the reason voluntary measures have fallen short is because the mortgage service industry is fundamentally broken when it comes to servicing the needs of borrowers.

Instead of responding to borrowers' needs, servicers answer to their own bottom lines. Pushing the distressed into a maze of automated voice response systems saves them money. Failing to respond to borrowers' disputes or answer borrowers' requests for information reduces costs. And forcing the financially distressed to waive important rights in order to save their homes improves the servicers' bottom lines. This practice of requiring borrowers to sign broad waivers and loan modification agreements, which was highlighted in the last hearing before the committee, is still widespread.

Charging unreasonable and unauthorized fees also improves the servicers' bottom lines. Despite what the industry may tell you, a lengthy default culminating in foreclosure can also improve the servicers' profitability.

Indeed, the servicers generally seem unconcerned that high defaults and foreclosures will negatively impact their bottom line. For example, this is what we heard from David Sambol, then chief operating officer for Countrywide almost a year ago. And I quote, "Increased operating expenses in times like this tend to be fully offset by increases in ancillary income in our servicing operation, greater fee income from items like late charges and, importantly, from insourced vendor functions that represent part of our diversification strategy."

As a result of this diversification strategy, servicers are burying our borrowers in fees and costs. Once a property is foreclosed, those fees will be paid to servicers first and taken out of the fund remitted to the investor. Investors lose, borrowers lose, and the servicer adds to their bottom line.

Based on the industry structure, it is no wonder we have one of the Nation's largest servicers charging an elderly borrower for property inspections on other peoples' property and for inspections that never took place. In a recent court decision, a bankruptcy judge found that the servicer was charging for inspections that allegedly took place when Jefferson Parish, where the home is lo-

cated, was under evacuation orders as a result of Hurricane Katrina and, nevertheless, the borrower was being charged for property inspections that took place during that time.

Chairman Frank, members of the committee, we commend you for enacting HOPE for Homeowners, a bill that addresses some of the barriers to loan modification. However, we believe that so long as compliance remains voluntary, we will not see the number of affordable, sustainable loan modifications necessary to stem the tide of foreclosures.

We believe that Congress must still do more. The now government-controlled GSEs must freeze foreclosures and aggressively pursue loan modifications, including principal write-downs.

Congress should enact Congresswoman Waters' bill, H.R. 5679, which aligns mortgage servicers' interests with those of homeowners by mandating borrower access to a decisionmaker, by requiring information and dispute resolution prior to foreclosure, and by creating a duty to consider reasonable loss mitigation alternatives prior to foreclosure.

H.R. 5679 would also prohibit the waiver of claims provisions in loan modifications that are still standard operating procedure for many mortgage servicers.

Lastly, Congress should allow bankruptcy courts to modify home mortgages, just as they can do for virtually every other kind of secured and unsecured debt. The family home does not deserve less protection in bankruptcy than a car, a boat, or a vacation home.

Thank you for the opportunity to testify before the committee. We look forward to working with you to address the challenge of our Nation's foreclosure crisis.

[The prepared statement of Ms. Twomey can be found on page 124 of the appendix.]

The CHAIRMAN. Mr. Phipps.

STATEMENT OF RON PHIPPS, FIRST VICE PRESIDENT, NATIONAL ASSOCIATION OF REALTORS

Mr. PHIPPS. Good afternoon, Chairman Frank, and members of the committee. Thank you for inviting me today to testify on behalf of the National Association of Realtors' (NAR) more than 1.2 million members.

My name is Ron Phipps, and I am a broker with Phipps Realty in Warwick, Rhode Island. I have been a broker for 30 years and a realtor for 30 years. I currently serve on NAR's executive committee and have been elected the 2009 first vice president.

NAR commends the committee for holding this hearing. The hundreds of thousands of families who are facing foreclosure are not just statistics, these are people who need help now: 6,000 people will lose their homes from foreclosure today, and 3 months from now, many others will be out of their homes. For some, this is inevitable. But there is much that can be done to mitigate the long-term pain of this loss. My written comments go into more detail.

But I would like to take this moment to focus on one tool that can lessen the pain; the short sale process. A short sale occurs when the sales price of a home is not sufficient to cover all of the liens and associated costs of a sale and the seller can't cover the deficiencies.

There are benefits to successful short sales. First, unlike foreclosures, short sales allow the homeowner to maintain some level of good credit. Second, lenders avoid the liability and expense of owning properties for extended periods of time and the costs associated with the foreclosure and sale. Third, a quick sale at a higher price helps support home values and the tax base in the community, in the neighborhood.

Although short sales can be very effective foreclosure and loss mitigation tools, consumers have encountered significant roadblocks in the process. For example, when contacting lenders, consumers, and Realtors find it difficult to find the right person to talk to, and when they do, calls are often left unanswered. If we manage to reach a human being, they are overwhelmed and often lack the experience to handle the short sale. The resulting delays often force potential buyers to walk away from a transaction and the homeowner is one step closer to foreclosure.

Another problem we encountered is the rejection of offers. Bank appraisals often don't reflect local market values, the distressed nature of the sale, or the condition of the property.

One of my clients, a Rhode Island senior citizen, owed just over $300,000 on a house. We obtained a cash offer of $285,000. The lenders' Massachusetts-based appraiser said the house was worth $340,000, and the offer was rejected. Incidentally, we had it listed for $300,000.

The house went through foreclosure, was relisted at $259,000, and 6 months later sold for $279,000, with additional significant seller or lender concessions.

Finally, in the case of homes with more than one mortgage, that is very commonplace. Lenders holding a second or a third mortgage often will not accept a short sale effort. Frankly, why would they, when there is little or no repayment of their mortgage?

As an example, a Warwick house has a first and second mortgage and has had multiple offers pending for months. The inability to get an approval from the subordinate lender meant that four families were on hold. If the response by each of the lenders had been timely, then the unsuccessful bidders, three of them, would have moved on and bought other homes. Their purchases would have boosted sales that are necessary for housing market recovery.

NAR has been working on several fronts to solve the problem. We have developed educational materials to help our members understand the short sale process and how to work with clients in these situations. We are working with Fannie Mae and Freddie Mac and more closely with our multiple listing servicers to provide them with real-time housing market information to expedite the short sale decisions.

We are obviously working with industry partners to educate them of the problems and the need for improvements to the process. We are proposing first that all lenders and their servicers make it easier for sellers and agents to contact the department and individual who handles the short sale application. Second, the development of a single industrywide short sale application and list of supporting documents. Third, a commitment from lenders and servicers to update the seller and the listing agents on the status

of short sale application. And an online, password-protected report would help immensely.

Finally, we believe lenders and their servicers should deliver a clear answer, yes or no, to all offers in a timely fashion, not 2 months or 6 months later.

In closing, there is no question that America faces a significant challenge in restoring confidence in housing and financial markets. We look forward to working with you to make that happen. We believe that we can help more families avoid the financial and emotional disaster of foreclosure and preserve the American dream of homeownership for the next generation of home buyers. Thank you.

[The prepared statement of Mr. Phipps can be found on page 111 of the appendix.]

The CHAIRMAN. Mr. White.

STATEMENT OF ALAN WHITE, ASSISTANT PROFESSOR, VALPARAISO UNIVERSITY SCHOOL OF LAW

Mr. WHITE. Thank you. Thank you, Chairman Frank, and members of the committee, for this opportunity to testify about the research I have been doing on mortgage modifications and the activities of mortgage servicers.

I would like to try and comment a little bit on three questions, based on my research: What is it that mortgage servicers are doing now specifically with respect to mortgage modifications? What more could they be doing? And what are the obstacles to doing more meaningful loan restructuring? It is, after all, the monthly payments of principal and interest by American homeowners that are the base of the debt pyramid that is currently collapsing all around us.

To respond to one of the questions that was asked earlier about how many loan modifications are actually resulting in principal reduction, what I found so far is that it is an extremely small percentage. In the survey that I recently completed, about 1½ percent, that is about 65 out of 4,000 loan modifications I looked at, involved any significant reduction of principal. I think you heard some of the reasons for that earlier. It is probably the last choice that most servicers look at when they consider their options.

I looked at 26 pools of subprime loans that were originated in 2005 and 2006. They are all subprime loans, which account for most foreclosures, but not all. Those pools started out with about 105,000 mortgages. In the 12-month period from July of last year to June of this year, out of those 100,000 mortgages, at the beginning of the period, 20,000 of them were delinquent or in foreclosure or REO, so about one 1 out of 5. At the end of the period, 27,000 were delinquent, and about 8,300 foreclosure sales had been completed. So about 30 percent of them were delinquent and about 8 percent had been foreclosed and sold during that 12-month period. As I say, during that same 12-month period, 4,300 loans had been modified.

Now the category of loan modification encompasses a lot of different things. I think when we have been talking about modifying and restructuring loans, we have been talking about reducing principal and reducing payments. What I found, as I said, is that in almost no cases were principal balances reduced, and in only about

half of the cases, about 57 percent of the cases, was the monthly payment reduced.

So we are actually in these reports of loan modifications lumping together several different concepts. I think you can really put them in three categories. There is a type of modification which is really just a recasting of arrears and a capitalizing of unpaid payments. That type of modification seems to be very popular and it results in the principal balance increasing, not decreasing, and if the interest rate is left unchanged, the monthly payment will also increase. Those modifications occur quite regularly.

A second type is the teaser-freezer modification. This is one where the principal and the payment are unchanged, but we avert a potential or a real increase in the payment as a result of the interest adjustment. Unfortunately, the reports don't tell me whether those changes are temporary or permanent so I know that in 20 or 25 percent of the modifications, that seems to be what is happening. But whether the payment has been frozen for 5 years or for the life of the loan, that we don't know.

And then probably the most popular type of modification, accounting for about 55 percent of the cases, is a modification that reduces the interest rate. That is basically all that is happening. That does, in fact, have sometimes a very significant impact on reducing the monthly payment, but it doesn't solve the overhang problem or deal with people who are underwater on their houses. That is a very common indicator of future foreclosure. So if you solve the payment problem, but not the debt overhang problem, you are really only dealing with part of the difficulties that the homeowner faces.

Even on those interest rate reductions, these are not bailout by any means. The average interest rate after modification in the sample I looked at was about 7½ percent. Considerably above the current prime rate. Even just looking at modifications where the rate has been reduced, it is about 6.7 percent.

Now why is it that we don't see more principal write-downs? It is particularly striking since in the same sample that I looked at, the loss severities went from 30 percent a year ago to about 40 percent last July. In other words, when the lenders are foreclosing, they are losing 40 cents on the dollar on every one of those loans, on the principal, and of course they are not recovering any interest. It is hard to understand why exactly it is. I think it has to do, in part, with the simple fact that losses on foreclosures are not being realized now today. So when modifications are done that involve principal write-downs, those principal reductions have to be reported that month to the investors, whereas doing foreclosures results in losses that will occur later, and a lot of the losses that are inherent in these pools haven't been realized yet.

So that is kind of the good news and bad news, is that we have a large inventory of people who are delinquent or in foreclosure but haven't actually lost their homes yet.

I see my time is up, and I would be happy to answer any questions about the research or share it with any members of the committee. Thank you.

[The prepared statement of Mr. White can be found on page 142 of the appendix.]

The CHAIRMAN. Thank you. It has been useful. Let me say first we have been hearing promising things from a lot of the servicers. We then are told sometimes whether or not they are living up to it. Generalized complaints don't tell us much, so send us your specifics if you have them. You have heard these promises. If you can show us where these promises are not being met, that is where we need to work. That has worked in some cases because generality doesn't get us there.

Mr. White, I am fascinated by your last point. I am wondering now, as you said this, whether there was something we could do certainly for regulated entities to require an earlier recognition of the loss so as to neutralize that. We will look at the accounting effect you are just talking about.

The other question, is there any reason to believe that under the new law and the pressures to take some advantage of it, because the new law does call for principal foreclosures, is there any reason to think that might increase significantly the number of principal reductions?

Mr. WHITE. I think that is very difficult to say. I think the reasons the servicers are very reluctant to write down principal are still going to be there. I think the testimony earlier from all the members of the industry was that is their major reservation, and they are very reluctant to do that.

The CHAIRMAN. They will be inviting the kind of rewrite of servicing laws that may be necessary, and that frankly, Ms. Waters has been pushing for.

I will say this: Votes in this Congress for stricter regulatory action have increased in the past couple of months. Non-regulation, leave the market alone, doesn't look quite as attractive to a lot of my colleagues as it used to. So as we are pushing for maximum advantage of this, we will also be looking at what should be done in terms of restructuring the servicing law.

Beyond that, I am going to have to move on, and Ms. Waters will take over to finish this up. But you have heard what they have said. I don't think any of the people who testified were being insincere, but they have a lot of people working for them, and there are old habits, etc. Please do not hesitate to send to us, any of us on this committee, and committee staff, examples of where they are not living up to what they say, and we will press that.

Before I go, we received a number of letters we want to put in the record, from the Mortgage Bankers; from the Attorney General of Massachusetts; from the Director of HOPE NOW; from the Housing Policy Council Financial Services Roundtable; and then we wrote to many of the servicers with questions about how they plan to respond, and we have the answers. There are a lot of them. We will be putting them in the record as well. People can examine them.

Once again, if you find disparities between what we are being told and what is happening out in the field, you will help us by telling that. Because being told in general that people aren't living up to something doesn't get us anywhere; specifics do. Thank you.

Ms. Waters will proceed from here.

Ms. WATERS. [presiding] Thank you very much for your patience. I know it has been a long day, but I want you to know that the

information that you are sharing with us is very important. As we have decided to learn more about servicers, what they do, and how they are able to be of assistance, and what impediments they have to do what we would want them to do, it is very important that you are here to help us learn all of this.

Let me just start with my first curiosity question. I learned that many of the loans that Fannie and Freddie picked up on the secondary market were loans that they supported from Countrywide, for example. And then I learned that Fannie and Freddie also purchased services from Countrywide, that Countrywide not only originated loans, but they also had a big servicing operation.

Can anybody help me to understand that if Countrywide was the originator of the loan, and if Fannie picked it up on the secondary market, and if Fannie then purchased the servicing services from Countrywide, is there some kind of conflict there? Is there something there that makes you a little uneasy? Why am I feeling that I need to know more about this?

Ms. Twomey, can you help me?

Ms. TWOMEY. Congresswoman, I think what you described there is not just unique to Countrywide, it actually happens throughout the industry, which is many of the loan originators sell their loans off, they are picked up by Fannie or Freddie, or private securitization, but they retain the servicing rights. That is actually a very valuable asset for them. And so it is not uncommon, and it happens industrywide.

It is not just Countrywide. Wells Fargo, that testified earlier, probably sells many of their own loans off, and retains the servicing rights. I would expect many of the loan originators do that. A very small proportion are held in portfolio, as you know. It is not an uncommon practice to see that.

Ms. WATERS. Because it is a practice, and maybe it is their right, maybe there is no need to wonder whether or not the contractual relationships between the originator and the secondary mortgage purchaser could in some way be in conflict, work against the borrower in ways that would not make it easy for them to get loan modifications, etc. Is that something that we can explore?

Ms. TWOMEY. There is one significant disadvantage to the borrowers from this process, which is while the borrower for the most part probably doesn't know that the loan is ever sold, that is, Countrywide remains the entity to whom they took their loan out and to whom they make their payments, they probably don't realize that their loan has been sold into the secondary market. They probably also don't realize that the new holder of the loan in many cases has no liability for the bad conduct of the originator due to a legal doctrine called the holder in due course doctrine.

So essentially, those loans get scrubbed as they go through into the secondary market, and it becomes very difficult, for example, for a borrower to defend a foreclosure as a result of bad conduct on the part of the originator because you have a different holder who doesn't have liability because of the way the whole industry structure is set up. So there is some real disadvantage to the structure to the borrower in the way this is set up. The loan originator retains that important asset of the servicing rights, but the liability is kind of moved away.

Ms. WATERS. I would like to ask, have any of you seen a contract, a services contract that has been worked out with a loan originator or a secondary market purchaser? Have you seen what it is they enter into, the agreements that they enter into to service these contracts?

Ms. TWOMEY. Pooling and servicing agreements?

Ms. WATERS. Yes.

Ms. TWOMEY. I think both Professor White and I have looked at them.

Ms. WATERS. Are we talking about loan services agreements that pretty much are standard throughout the industry? Or are these all different kind of things? Mr. White?

Mr. WHITE. Unfortunately, they are not standard. And particularly as far as how much latitude the servicer has to work out loans and modify them varies a lot from one contract to another. The FDIC, I think, is discovering this now even with their IndyMac loans that they are servicing, where IndyMac was the servicer and the FDIC would like to do the right thing. Some of these contracts allow them to write down principal, for example, change interest rates, other contracts do not. So certainly trying to set some standards going forward for pooling and servicing agreements would be a very valuable thing to do, although it is not going to help the millions of people who are in foreclosure, serviced under the old contracts now. I do want to mention, though—

Ms. WATERS. In the future, do you think that any efforts we could make to set some standards may be helpful?

Mr. WHITE. Yes, I think that is true. I think we also have a unique opportunity even now not only with the FDIC running the IndyMac servicing portfolio, but the largest investors in subprime securities are now basically managed by the Federal Government, Fannie Mae and Freddie Mac. And they are in a position as the investors to tell the servicers what they would like the servicers to do.

Ms. WATERS. You are absolutely correct. I forgot that as of today, the Federal Government has nationalized a number of our big financial services industry's operations or organizations. And I use the word "nationalized" because I hear it being used rather frequently in the last few days when people realize that all of a sudden, the government may be more and more in the business of managing these businesses. And of course, it makes some cringe when you say that. Thank you very much. Let me just ask a few other questions before I go to my colleague.

Professor White, should servicers be able to provide us with real-time analysis like you did, or is there some tremendous obstacle to carrying out the work you did for a select pool of securities across the board in a comprehensive way?

Mr. WHITE. No, there is no obstacle to mortgage servicers aggregating their information on loaned modifications and reporting it to any Federal agency that wants to collect it. I think right now that some of the banking regulators are asking some banks to report that information, but it is not being done industry-wide and comprehensively. That would be a very valuable thing for not only for policymakers in the government, but for investors to have an idea what is really going on.

Ms. WATERS. Ms. Twomey, can you tell me what a well-aligned service compensation system would look like and how quickly can we get toward that from where we are today? Are there specific next steps that the servicers, the regulators, and we in Congress need to take to move the system in the right direction?

Ms. TWOMEY. Congresswoman Waters, as I mentioned in my testimony, I think one of the next steps that Congress should take is to move forward on H.R. 5679. I think that bill encompasses a number of important corrections to the industry, including getting somebody on the phone who can make a decision, not just about borrowers. You have heard from different industry players how that is problematic. I think other things to look at in the future, not necessarily covered by H.R. 5679, is how servicers are compensated, the fact that they make up, particularly for loans in default, any losses are made up in these ancillary fees or in source vendor functions.

And so there is a real incentive for them to charge borrowers fees that may not need to be charged to the borrower. Property inspection fees automatically get generated and charged to the borrower's account every 30 days even if there is no change in circumstance. And that is because that goes right back to the servicer. It contributes to their bottom line. That is an issue that we haven't really looked at in depth. And the fact that a borrower doesn't get to pick their servicer really puts them at a disadvantage. They don't have a choice. There is no market incentive from the borrower's perspective that allows them to say, "Hey, you are charging me for stuff that you shouldn't charge me for, so I am going to go to somebody else." Borrowers don't have that option, and so the borrowers continue to be in a really difficult position.

Ms. WATERS. Thank you very much. Mr. Green.

Mr. GREEN. Thank you, Madam Chairwoman. And I thank you for your insightful questions, because you have caused me to rethink my line of questioning. Let's talk for just a moment. Ms. Twomey, am I pronouncing—

Ms. TWOMEY. Twomey.

Mr. GREEN. Twomey? Ms. Twomey, it appears to me here is a situation we have, we have an originator who after the loan is originated passes this loan on to maybe a GSE. The GSE bundles and passes it to the investors. The originator maintains servicing rights. The originator loses all liability with reference to the loan once the loan is passed to the GSE, saving fraud or some criminal act, once the loan is passed to the GSE or it gets into the secondary market.

Ms. TWOMEY. Let me just correct you there, because the originator will retain liability. The liability doesn't go with the loan, though. So for example, the borrower could always go back and sue the originator.

Mr. GREEN. Excuse me, I meant liability in the sense of the loan itself—

Ms. TWOMEY. Oh, sorry, yes.

Mr. GREEN. —having to—the cost of the loan, the dollars that were lent—

Ms. TWOMEY. That is right.

Mr. GREEN. —that all moves away from the originator.

Ms. TWOMEY. That is right.

Mr. GREEN. The originator does maintain liability in terms of fraud, some criminal acts, those kinds of things.

Ms. TWOMEY. That is correct.

Mr. GREEN. Okay. The reason I am painting this picture is because here is what we have, an originator that really does not have an incentive to make sure the borrower can pay the loan because the originator can sell it, and once it is sold the originator has no, no liability in terms of losing money on the loan itself. But the originator is clever enough to keep the servicing rights so that the loan that the originator no longer has to worry about being repaid, the originator collects funds on for someone else who bought it and gets paid to do it.

Ms. TWOMEY. That is right.

Mr. GREEN. I just wanted somebody who may have missed that to see it. Maybe somebody did. So what we have when the Chair said isn't there something about this, it hit me that there is really something about it, and it is this: The originator is in the business now of getting as many loans originated as possible. No money down, buy one get one free, you know, Tuesday specials, whatever we need to do to get the loan made because we know we can get that loan in another person's bailiwick, if you will, and we will continue to service it. And we make a fee on the servicing.

Now, tell me how valuable is maintaining the right to service? You said it is valuable. In terms of dollars, can you give some indication?

Ms. TWOMEY. Typically, servicers are paid 25 to 50 basis points based upon the outstanding principal balance of the loan pool. So I don't have a calculator with me, I would have to calculate that out for you. But so let's see, my colleague here says—

Mr. PHIPPS. .25 would be—

Ms. WATERS. Mr. Phipps, you can speak up.

Ms. TWOMEY. Someone can do the math better than I can.

Mr. PHIPPS. I think it is $250 per 10,000 of mortgage amount.

Mr. GREEN. $250 per $10,000 principal balance?

Mr. PHIPPS. That is a service fee in the course of a year, if I recall correctly. Yes, I believe that is accurate.

Mr. GREEN. $250 per $10,000 principal balance.

Mr. PHIPPS. $2,500 a year per $100,000.

Mr. GREEN. $2,500 a year for a $100,000 loan?

Mr. PHIPPS. And that is assuming there is someone to service it. I mean, the situation parenthetically right now, I have a Naval officer who is transferred from Texas who is going back to Texas. He bought a house in Rhode Island 3 years ago. He unfortunately is upside down. He owes more than the house is worth. Unfortunately, his mortgage was sold several times. GMAC now has it. He contacted GMAC last week saying, "I need to discuss loss mitigation and short sale." The person there said, "Well, we have no one doing originations anymore. We don't know what we are doing, because we are no longer in that business. So we don't even know where to go with the servicer to get relief."

Mr. GREEN. But the servicer—I want to stay focused on what the value of this is.

Ms. TWOMEY. So Congressman, I actually have numbers here for you.

Mr. GREEN. Thank you.

Ms. TWOMEY. So a loan pool with a balance of $2 billion would result in a servicing fee of just over $9.5 million a year.

Mr. GREEN. A $2 billion loan pool—

Ms. TWOMEY. —would be $9.5 million per year.

Mr. GREEN. $9.5 million per year. Now if the servicer, originator, one and the same had not gone through this process, that $9.5 million, which is an asset now, would not be received if they kept the loan in their portfolio. If they maintained it, they don't get any tangible benefit from servicing it, or would they still make that $9.5 million by virtue of the way the contract is structured?

Ms. TWOMEY. Well, if they are retaining the loan in portfolio, then there is not going to be a pooling and servicing agreement. And if they have retained both servicing and the rights to the loan itself, then what happens now is that fee is taken out of the remittance that goes to the investor. Right? So this $9.5 million comes out of what would otherwise go to the investor. What would happen if the entity was both the servicer and the holder of the loan is they would just keep that $9 million.

Mr. GREEN. So the $9.5 million is still accorded—

Ms. TWOMEY. It is still there.

Mr. GREEN. It is still there for the servicer originator who holds a $2 billion loan portfolio?

Ms. TWOMEY. That is right.

Mr. GREEN. They would still have it?

Ms. TWOMEY. That is right.

Mr. GREEN. Okay. The difference is they have it now and they don't have the concern of whether the borrower is going to repay in terms of a loss being charged to them.

Ms. TWOMEY. That is right.

Mr. GREEN. Okay. That is good. Now, Madam Chairwoman?

Ms. WATERS. Please.

Mr. GREEN. Thank you. Earlier, you heard Chairwoman Bair speak of servicers having to pay out of a coffer a certain amount of money when a loan is in default or not being paid and that money has to go to the investors. So at some point, that coffer starts to diminish, and it can put pressure on the servicer to try to close quickly so as not to have to make these payments. Can you comment on this, please?

Ms. TWOMEY. I completely agree with the statement of Chairwoman Bair. The servicers do have to—in most pooling and servicing agreements do have to advance those principal and interest payments at least until—there is usually some trigger point in that pooling and servicing agreement that tells the servicer when they no longer have to make those advances. So in some pooling and servicing agreements, once the loan goes into foreclosure they don't have to make those advances any more. Not completed foreclosure, but once the foreclosure, for example, in a judicial foreclosure state, once that foreclosure complaint has been filed, the servicers no longer have to make that advance.

Now they are still out that money, that coffer still remains low until the foreclosure actually takes place. And then under most

pooling and servicing agreements, the servicer gets reimbursed first. You know, their funds get replenished before funds get passed onto the investor.

Mr. GREEN. Now, isn't that a strong inducement to foreclose as quickly as possible so you don't end up spending money out of your coffer to cover?

Ms. TWOMEY. Yes, I think it is certainly an incentive to at least get to the point where you are filing the foreclosure so you are no longer having to make the advances. I will tell you that one of the consequences of that is once that foreclosure gets filed, you have just heaped a lot of fees and costs onto the borrower. Because now instead of just having to make up their missing principal and interest payments and maybe some late fees, now there is also costs associated with this loan. So they are going to have to pay—and sometimes the costs that we see can double the amount that the borrowers owe. So you go from owing $4,000—

Mr. GREEN. Excuse me, numbers are easier to work with.

Ms. TWOMEY. I will give you an example. I am working on a large empirical study in bankruptcy, and a servicer has filed a proof of claim that says the borrower is behind about $4,000. But the total amount of the proof of claim, the total amount that the servicer says they are owed is over $10,000. And the difference represents fees and costs associated with the foreclosure, or possibly—it could have been more than one. But the gist or the point here is that the guy owes $4,000 in principal and interest and he owes more than $10,000 in order to bring the loan current. And that is a real barrier to loan modifications, to being able to bring loans out of default. If the servicer is not writing off the late fees and the costs of default, then the borrower still has a large sum of money they may have to come up with in order to get to a loan modification.

So I think one of the important things to realize is that the servicers have a financial incentive here. They are making money when that loan is in default.

Ms. WATERS. Would the gentleman yield for one moment on this point?

Mr. GREEN. Yes. Absolutely.

Ms. WATERS. The kinds of fees and the number of fees that the servicer can charge associated with servicing this account are not dictated anywhere in statute. Some contracts may have five or six different kinds of fees that they use. Another contract could have different kinds of fees. And they could number six or seven or two or three. It is just all over the place. Is that right?

Ms. TWOMEY. Typically, this is governed by the mortgage contract, and most mortgage contracts will say that the lender or servicer is entitled to recover any reasonable fees necessary to protect their interests in the property. I think one of the problems we are seeing in the example that I provided in my testimony, where a borrower is charged for property inspections while the property is under an evacuation order, is because we have moved from, you know, a human system to a computerized system. And the computerized system doesn't know that the property is under an evacuation order as a result of Hurricane Katrina.

So it just keeps generating these property inspection orders. Something is coming back saying, yes, it is done, and the borrower gets charged the fee for it. And I think one of the things that we see that is very problematic is we see a lot of these in bankruptcy court because we have good information about what the servicers are charging. The concern is if that is what is happening when you have a Federal judge overseeing the proceeding and you have these kind of charges being tacked on, what is happening for the millions of homeowners who aren't entering bankruptcy? What kind of fees are getting charged to their accounts? And oftentimes, it is not $10,000. I mean, you could be charged $300 for an appraisal 4 times, which would be $1,200. Most borrowers aren't going to fight over that. They want to save their home. Who is going to fight over $500 or $600 or $700 other than you?

Ms. WATERS. Okay. That is very interesting. Thank you, and I yield back.

Mr. GREEN. Thank you, Madam Chairwoman, for the clarity. I am going to propose a solution, and I would like to hear your thoughts on the solution. Given that we, meaning the people of the United States of America, the taxpayers, we now own at least two financial services institutions and maybe three, could be four if you count IndyMac and you count the GSEs and you count the latest one that we just purchased yesterday, or today, maybe we have purchased one since I started this, I am not sure, but if we require the mortgage loans that we purchase to have specific fees associated with them and guidelines, we can't make the originators draft their contracts that way. But if they want to sell them to us, meaning the government now, if they want to sell them to the government they have to contain certain language. We don't need to go into what the language is. My question is, is that a good vehicle to create a standard in the marketplace?

Ms. TWOMEY. Absolutely. I think it has always been a good vehicle. And as an example, several years ago many of the subprime loans had arbitration agreements in them. And at some point, Freddie and Fannie said they would no longer take loans with arbitration agreements. You saw a real shift in terms of what the loans looked like, and now we don't see as many arbitration agreements after Freddie and Fannie made that decision.

So it is not that it could happen now. It could even happen then; it just didn't. And so I think now you are in the driver's seat, and you can make that happen, and I think it would make a difference in the industry as a whole.

Mr. GREEN. And finally, Mr.—is it Phipps?

Mr. PHIPPS. Yes, sir.

Mr. GREEN. With reference to the short sales, I can see how they can be beneficial, but my suspicion is that they are somewhat difficult to close right now notwithstanding the write down, notwithstanding the willingness on a seller to take a loss and the borrower to do whatever is necessary to get out of it. I can see that it might be difficult to close.

Mr. PHIPPS. We are seeing a significant number in fact close, but we need to have cooperation from the lender to have the closing take place. When there are multiple mortgages, it is very problematic because the second and third lienholders don't want to give up

everything. They want to have a stake. And for them, the foreclosure process is of more value. There is a perception among many homeowners and within the real estate community that the lenders themselves want that to be the common sense or the general perception, that short sales are just not worth doing, foreclosure is the better, more desirable outcome.

But in terms of costs, short sales will cost significantly less, and to keep people in houses and not have empty houses. In Rhode Island, in August, 23.6 percent of all of the houses, single family houses sold were REOs. That is too many. And it really impacts average value. One other footnote, my correction on my .25 basis points, it would be $250 per $100,000.

Mr. GREEN. Per $100,000. One quick point. You heard me talk about tranche warfare earlier. Could we now coin a term called "lienholder warfare" as well?

Mr. PHIPPS. Very much so, and that is a much more substantive problem. At the end of the day, that is a critical element that prevents short sales. Short sales make so much sense. And frankly, even in refinancing, I have another one that is an IndyMac first, that IndyMac bought, and we can't seem to resolve the second and third lienholder to have the people stay in the house. They are making an income, they would like to stay in the house, but the second and third lienholders—

Mr. GREEN. I am going to have to thank you and yield back. The Chair has been more than generous. Thank you very much.

Mr. PHIPPS. Thank you.

Ms. WATERS. Well, thank you very much. I would like to thank Mr. Hacobian, Ms. Twomey, Mr. Phipps, and Mr. White for your patience today, for sharing with us your tremendous knowledge, and for helping us to understand what is happening, particularly with the subprime meltdown and the attempts that we are making to keep homeowners in their homes and work out something that is fair and just, and to understand whether or not there are real modifications going on, short sales, why not, who is doing what. You have been so very helpful today. I thank you very much. And this committee is adjourned. Thank you.

[Whereupon, at 2:40 p.m., the hearing was adjourned.]

A P P E N D I X

September 17, 2008

EMBARGOED UNTIL DELIVERY

STATEMENT OF

SHEILA C. BAIR
CHAIRMAN
FEDERAL DEPOSIT INSURANCE CORPORATION

on

A REVIEW OF FORECLOSURE MITIGATION EFFORTS

before the

FINANCIAL SERVICES COMMITTEE
U.S. HOUSE OF REPRESENTATIVES

September 17, 2008

2128 Rayburn House Office Building

Chairman Frank, Ranking Member Bachus, and members of the Committee, I appreciate the opportunity to testify on behalf of the Federal Deposit Insurance Corporation (FDIC) concerning strategies to avoid unnecessary foreclosures, including implementation of the HOPE for Homeowners Act of 2008 and the FDIC's recent loan modification efforts at IndyMac Federal Bank.

My testimony will provide a brief discussion of the problems created for communities and individuals by unnecessary foreclosures and the importance of converting distressed loans into long-term, sustainable loans through programs such as the HOPE for Homeowners. In addition, I will provide an update of the FDIC's recently launched loan modification program for customers of IndyMac Federal Bank.

The Housing Markets and the Impact of Unnecessary Foreclosures

In testimony before this committee in April, I discussed various proposals to address the turmoil in the mortgage markets and stem unnecessary foreclosures. This turmoil was caused by a complex set of interrelated causes, including weakened lending standards, inadequate consumer protections, regulatory arbitrage and speculative activity. Steep home price declines are an important dynamic that drives up foreclosure rates. Falling home prices reduce homeowner equity, which then makes it more difficult to refinance or sell a home, leading to lower sales and higher delinquencies.

Following a period of sustained growth in home sales, new home construction and average home prices in the first half of this decade, U.S. housing markets are now experiencing their most serious downturn of the past 60 years. Severe housing market downturns have occurred in California, Nevada, Arizona, Florida and other boom markets where rapid increases in home prices proved unsustainable. Dozens of cities have now experienced average home price declines of more than 10 percent, and the Case-Shiller index of 20 large U.S. cities has declined by almost 19 percent from its July 2006 peak.

Through the second quarter of 2008, U.S. residential construction activity has fallen for 10 consecutive quarters, subtracting an average of almost 1 percentage point from annualized GDP growth over that period. Yet even as construction activity has declined, inventories of unsold homes have steadily risen. The Census Bureau reports that the inventory of unsold new homes in July stood at a level equal to 10.1 months of current sales—or twice the level at the end of 2005.

Declining home prices and an excess supply of unsold homes are closely linked to the historic levels of credit distress that have recently been recorded in nonprime mortgage portfolios. As of June, seriously delinquent loans amounted to some 4.5 percent of all U.S. mortgage loans outstanding and almost 27 percent of subprime adjustable-rate mortgages.[1] An estimated 1.5 million mortgages entered foreclosure during 2007, followed by almost 1.2 million additional loans in the first half of 2008.

[1] Source: Mortgage Bankers Association, *National Delinquency Survey*, Second Quarter 2008. Seriously delinquent loans are defined as loans 90 days or more past due or in foreclosure.

Distressed sales continue to place downward pressure on home prices in the most troubled markets. An estimated 45 percent of all California home sales in July 2008 were foreclosure resales, up from 7.6 percent one year ago.[2]

The rising trend of foreclosures imposes costs not only on borrowers and lenders, but also on entire communities. Foreclosures may result in vacant homes that may invite crime and create an appearance of market distress, diminishing the market value of other nearby properties. In addition, the direct costs of foreclosure include legal fees, brokers' fees, property management fees, and other holding costs that are avoided in workout scenarios. These costs can total up to 40 percent or more of the market value of the property.[3]

Minimizing foreclosures is important to the broader effort to stabilize global financial markets and the U.S. economy. Foreclosure is often a very lengthy, costly and destructive process that puts downward pressure on the price of nearby homes, as noted above. While some level of home price decline is necessary to restore U.S. housing markets to equilibrium, unnecessary foreclosures perpetuate the cycle of financial distress and risk aversion, raising the possibility that home prices could overcorrect on the downside.

Over the past year and a half, the FDIC has worked with mortgage lenders, the securitization industry, servicers, consumer groups, other regulators and Congress to

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[2] Source: DataQuick press release at: http://www.dqnews.com/News/California/RRCA080820.aspx.
[3] Capone, Jr. C. A., Providing Alternatives to Mortgage Foreclosure: A Report to Congress, Washington, D.C.: United States Department of Housing and Urban Development, 1996.

identify and correct barriers to solving current market problems while establishing controls to guard against their reappearance in the future.

The HOPE for Homeowners Act

As I stated in April, no single solution or "silver bullet" can address the adverse effects of the deficiencies that have contributed to the current market turmoil. Rather, a number of approaches emphasizing different solutions for the different segments of the market are required. One of these approaches, for which Congress should receive significant credit, is the HOPE for Homeowners Act. The HOPE for Homeowners Program (Program), which the Act established, will make a positive difference for many homeowners facing foreclosure.

I am pleased the FDIC is able to lend our assistance as a member of the Board of Directors of the Program (Oversight Board), which oversees implementation of the HOPE for Homeowners Act. The Oversight Board consists of the secretaries of Housing and Urban Development (HUD) and Treasury and the chairpersons of the Board of Governors of the Federal Reserve System (FRB) and the Board of Directors of the FDIC, or their designees. General duties of the Oversight Board include establishing requirements and standards for the Program that are not otherwise specified in the legislation, and prescribing necessary regulations and guidance to implement those requirements and standards.

The FDIC and fellow Oversight Board members are committed to full implementation of the Program by the October 1, 2008 deadline. Our respective agencies have worked cooperatively together to address the many issues necessary to achieve full implementation by the statutory deadline. These efforts also have included outreach, projecting the volume of potential loan activity in the Program, forecasting loss rates for new loans, and estimating credit subsidies. Representatives of various groups that will be affected by the new program, including lending, loan servicing, and consumer groups, have participated in what has been an intense and collaborative effort by the agencies to get the Program up and running quickly.

The statutory approach for the Program made effective use of existing governmental and market structures. By modeling the proposal on existing FHA programs, the time and expense of implementing the Act have been significantly reduced. The new program incorporates many of the principles the FDIC considers necessary to be effective. It converts current problematic mortgages into loans that should be sustainable over the long-term and convertible into securities. It also requires that lenders and investors accept significant discounts and prevents borrowers from being unjustly enriched if home prices appreciate.

As part of the planning for the HOPE for Homeowners launch on October 1, the Board will be authorizing a series of efforts across the country to quickly inform the public about the availability of the Program. The FDIC's Community Affairs program

staff is working with HUD on an outreach strategy and will provide whatever support and expertise we can to assist in the effort.

IndyMac Federal Bank Loan Modifications

As the Committee knows, the former IndyMac Bank, F.S.B., Pasadena, California, was closed July 11. The FDIC is conservator for a new institution, IndyMac Federal Bank, F.S.B. (IndyMac Federal), to which the accounts and assets of the former IndyMac Bank, F.S.B. were transferred. As a result of this arrangement, the FDIC has inherited responsibility for servicing a pool of approximately 742,000 mortgage loans, including more than 60,000 mortgage loans that are more than 60 days past due or in foreclosure. As conservator for IndyMac Federal, the FDIC has the responsibility to maximize the value of the loans owned or serviced by IndyMac Federal. Like any other servicer, IndyMac Federal must comply with its contractual duties in servicing loans owned by investors. Consistent with these duties, we hope to convert as many of these distressed loans as possible into performing loans that are affordable and sustainable over the long term. We are now actively evaluating distressed mortgages for refinancing through FHA programs, including FHA Secure. Once it is implemented, we certainly plan to utilize the Hope for Homeowners Program as well.

An additional option that I have long advocated is streamlined loan modifications. This is particularly necessary as delinquencies have continued to increase. IndyMac certainly has experienced significant delinquencies. As a result, on August 20, the FDIC

announced a loan modification program to systematically modify troubled residential loans for borrowers with mortgages owned or serviced by IndyMac Federal. Of the more than 60,000 delinquent mortgages serviced by IndyMac Federal, approximately 40,000 are now eligible for our loan modification program because they are either owned by IndyMac Federal or serviced under securitization agreements providing sufficient flexibility. We are working with the owners of the remaining mortgages to gain approval to apply the new modification program to those loans as well.

As we have done in some past failures, the FDIC as conservator for IndyMac Federal has suspended most foreclosure actions for loans owned by IndyMac Federal in order to evaluate the portfolio and identify the best ways to maximize the value of the institution. As mentioned above, the FDIC also has begun a program of loan modifications for delinquent and at-risk borrowers. The FDIC as conservator for IndyMac Federal is systematically identifying loans in the portfolio that are currently delinquent or in default, or where borrowers are unable to make their payments due to interest rate resets or other reasons. Where it will improve the value of the loan, IndyMac Federal is offering loan modifications to eligible borrowers.

By achieving mortgage payments for borrowers that will be both affordable and sustainable, these distressed mortgages will be rehabilitated into performing loans and avoid unnecessary and costly foreclosures. We expect that by taking this approach, future defaults will be reduced, the value of the mortgages will improve, and servicing costs will be cut. The streamlined modification program will achieve the greatest

recovery possible on loans in default or danger of default, in keeping with our statutory mandate to minimize impact on the insurance fund and improve the return to uninsured depositors and creditors of the failed institution. At the same time, we can help troubled borrowers remain in their homes. Under the program, modifications are only being offered where doing so will result in an improved value for IndyMac Federal or for investors in securitized or whole loans, and where consistent with relevant servicing agreements.

Applying workout procedures for troubled loans in a failed bank scenario is something the FDIC has been doing since the 1980s. Our experience has been that turning troubled loans into performing loans enhances overall value. In recent years, we have seen troubled loan portfolios yield about 32 percent of book value compared to our sales of performing loans, which have yielded over 87 percent.

In implementing the loss-mitigation program, IndyMac Federal's first priority is maximizing the value of the mortgages by assisting borrowers who are seriously delinquent or in default on their mortgages. However, where its servicing agreements permit, IndyMac Federal also is working with borrowers who face upcoming resets or other changes in their ability to repay.

Only mortgages on the borrower's primary residence are eligible for the streamlined approach, and borrowers have to demonstrate ability to repay the modified loan by documenting income. Under the loan modification program, IndyMac Federal

determines whether the modified mortgage payments will be affordable to the individual borrower based on the borrower's income information. The modifications are designed to be sustainable based on achieving a 38 percent first mortgage debt-to-income ratio of principal, interest, taxes and insurance.

A combination of interest rate reductions, extended amortization and forbearance are all tools being used to reach a payment affordable for the borrower. The modified mortgages are capped permanently at the current Freddie Mac survey rate for conforming mortgages -- currently about 5.93 percent. To achieve a sustainable mortgage payment equal to a 38 percent DTI, IndyMac Federal can reduce the rate to as low as 3 percent for five years. After five years, the interest rate would gradually increase by 1 percentage point per year until it reached the Freddie Mac survey rate applicable when the mortgage was initially modified. The interest rate would be fixed at this rate for the balance of the mortgage term. If necessary to achieve a payment at a 38 percent DTI, IndyMac Federal also can extend the amortization term of the mortgage or defer payments on a portion of the principal of the loan. Application of these options always must be evaluated to ensure IndyMac is maximizing the value of the mortgage that can perform as compared to foreclosure. No fees are being charged for these loan modifications, and unpaid late charges are being waived.

If a borrower's income information reveals that the borrower is not qualified for the proposed modification, IndyMac Federal will work with the borrower to discuss

alternatives to allow the borrower to remain in the home, including options such as the HOPE for Homeowners Program.

By the end of August, more than 4,000 modification proposals had been mailed to IndyMac borrowers. Through today, IndyMac has mailed more than 7,400 modification proposals to borrowers and has called many thousands more in continuing efforts to help avoid unnecessary foreclosures. While it is still early in our implementation of the program, over 1,200 borrowers have accepted the offers and many more are being processed. I am pleased to report that these efforts have prevented many foreclosures that would have been costly to the FDIC and to investors. This has been done while providing long-term sustainable mortgage payments to borrowers who were seriously delinquent. On average, the modifications have cut each borrower's monthly payment by more than $430.

Our hope is that the program we announced at IndyMac Federal will serve as a catalyst to promote more loan modifications for troubled borrowers across the country.

Conclusion

The FDIC strongly supports programs that result in mortgage loans that are sustainable over the long term and avoid unnecessary foreclosures that harm individual borrowers and the economy. Prudent workout arrangements are in the long-term best interest of both the financial institution and the borrower. As a member of the Oversight

Board for the HOPE for Homeowners Program, the FDIC is committed to successful implementation by the October 1 deadline. In addition, the FDIC will continue the systematic program now in place at IndyMac Federal to convert troubled loans into performing loans and enhance the value of these assets.

I commend the Committee on its leadership in passing the HOPE for Homeowners Act and look forward to working with Congress on this and other programs to return our housing markets to stability and improve our economy.

Testimony of

Mary Coffin
Executive Vice President
Wells Fargo Home Mortgage Servicing

Before the

Committee on Financial Services
United States House of Representatives

September 17, 2008

Mr. Chairman, Ranking Member Bachus, and Members of the Financial Services Committee, I'm Mary Coffin, head of Wells Fargo's mortgage servicing division.

In July, we testified about progress our company has made to keep people in their homes. Thank you for inviting us back so we can report further advancements, including our intended use of *Hope for Homeowners.*

Wells Fargo has been, is, and will continue to be focused on finding ways to keep our customers in their homes. We can accomplish this only when we are diligent at reaching out to those who need us, and work with them to understand their personal situations.

- At Wells Fargo, we are successful in contacting 9 out of every 10 of our at-risk customers.

- When we reach these customers, 7 of the 10 engage with us and work with us to develop a solution, while two customers tell us they do not need or want our help or assistance. And, of every ten, 5 customers are able to avert foreclosure by improving or holding their delinquency status.

- We monitor our process to ensure we provide answers for customers as quickly as possible. Once we receive the required documents, on average we complete a loan workout decision in less than 30 days.

- To accomplish all this, we have extended our hours, we have participated in more than 150 face-to-face forums, and we have increased our loan workout team from 200 to 1,000. At Wells Fargo, however, staffing is about much more than simply adding employees. It's about ensuring our customers get the guidance and service they need. For this reason, we prioritize our staffing based on customer needs. Short sales, for instance, are complex and require specialized knowledge. We have consolidated this operation into a separate unit, so as not to take away from customers who ask for our help to keep them in their homes.

- As always, when working with our customers to find home retention solutions, our goal remains to seek lasting affordability. Affordability can best be achieved by using the tools that most appropriately fit each customer's unique financial needs. Some of our at-risk borrowers are not upside down on their mortgages – they simply cannot afford their monthly payments. In these cases, an interest rate reduction provides the greatest lift. For borrowers who have too much housing debt and already have a low interest rate, a principal reduction could be the only solution. Yet, others need us to employ several of our tools to reach a sustainable payment. Our responsibility, as a servicer, is to use the right tool in the right circumstance. For example, we have found that the same affordability can be reached through a 2 to 3 percent interest rate reduction and term extension, as can be reached through a 25 to 30 percent principal reduction.

And now, before us is yet another solution – *Hope for Homeowners*. To prepare for the program's launch, we have already established both a team of experts who understand what we believe the criteria will be and a dedicated toll-free customer hotline.

In response to your request for a moratorium for those who could potentially benefit from this program, we mailed letters to our customers we believe could be eligible and were scheduled to

enter foreclosure this month. We told them their foreclosure sale would be stopped until at least October 15. By then, we intend to reconnect with them to confirm their qualifications and see if they are interested in the program.

Based on assumptions about the final criteria, we estimate as many as 30,000 to 40,000 customers who might not reach affordability from other solutions, may qualify for *Hope for Homeowners*. You have our commitment that we will work with our borrowers to find the optimal solution for sustainable affordability, and we will use this program where it is needed.

We believe our participation in *Hope for Homeowners* reflects the nature of our portfolio. Our company has not and does not make or service negative amortizing or Option ARM loans. These borrowers are the most likely to benefit from the program because their loans have higher interest rates, and their principal balances are likely to be higher than the current value of their homes.

In closing, while progress in avoiding many foreclosures has been achieved, we, as servicers, must continue to adapt to the ever-changing market. With the volume of foreclosures before us, we see the need to help investors understand the unique circumstances of customers and work with us to challenge contractual obligations. Our work with the government, HUD, the GSEs and the American Securitization Forum has yielded success. However, further infusing flexibility into solutions is critical to our continued success in helping at-risk borrowers.

Mr. Chairman and Members of the Committee, thank you for your time today. I would be happy to answer any questions you may have about our practices.

TESTIMONY OF

MICHAEL GROSS

MANAGING DIRECTOR, LOAN ADMINSTRATION LOSS MITIGATION

BANK OF AMERICA

Before the

HOUSE FINANCIAL SERVICES COMMITTEE

UNITED STATES HOUSE OF REPRESENTATIVES

WASHINGTON, DC

September 17, 2008

Good morning, Mr. Chairman, Ranking Member Bachus and Committee Members. I am Michael Gross, Bank of America's Managing Director of Loan Administration Loss Mitigation. Thank you for the opportunity to appear here today to update you on the efforts of servicers like Bank of America to help families prevent avoidable foreclosures.

Let me start by saying that Bank of America is committed to doing its part to help individuals and families who are suffering from the devastation resulting from Hurricane Ike. We already have announced our disaster relief program for 29 counties in Texas and 10 parishes in Louisiana that have been most heavily impacted by the Hurricane. Bank of America mobile ATM units and mobile banking centers staffed by Bank of America associate volunteers are being positioned around the Houston area to assist impacted customers with their banking needs. Under the Company's disaster relief program, customers may qualify to receive emergency credit line increases on their Bank of America credit cards, access to special no-cost loans and lines of credit, and penalty waivers on withdrawals from time deposits and existing Bank of America IRAs.

With respect to Bank of America and Countrywide mortgage customers whose homes have suffered hurricane-related damage, or who have temporarily been unable to return to work, we will offer payment forbearance, waive late fees, and decline to report overdue payments to credit reporting bureaus during the forbearance period. Importantly, we are suspending foreclosure sales for properties with confirmed damage, subject to investor requirements. We will continue to monitor effects of the Hurricane to determine whether the relief program needs to be expanded.

I also want to reaffirm to the Committee Bank of America's support of the Hope for Homeowners program in the Housing and Economic Recovery Act of 2008 and assure you that

we are engaged in efforts to utilize the new tools that it provides. We expect the Hope for Homeowners program will contribute to efforts to bring stability to the housing market, and we believe it will help both homeowners and investors alike. To that end, we are actively making and continually refining preliminary assessments as to which customers whose mortgage loans currently are in foreclosure may qualify for the program. We are proactively contacting these customers to confirm their eligibility for, and interest in, participating in the program. Subject to investor consent and state procedural considerations, we will avoid completing foreclosure sales for the customers identified while the implementing regulations are being drafted.

As the leading lender and servicer of mortgage loans in the country, following the acquisition of Countrywide in July 2008, Bank of America understands and fully appreciates our role in helping borrowers in these difficult economic times. We are committed to being a responsible lender and servicer, and facilitating home ownership and retention. Bank of America recognizes its responsibilities to improve the mortgage lending process by offering a range of products that respond to market and consumer needs, are sustainable and fair, and includes terms and features that are understood by our customers. To accomplish this, we are improving the mortgage origination process through affordable product offerings, enhanced sales and underwriting controls, and clear borrower disclosures and education materials. We are also continuing to make affordable mortgages available to those traditionally underserved, including low- to moderate-income and minority households.

Bank of America is leading the mortgage industry out of today's challenging environment. We know that consumers who are experiencing financial challenges, but who ultimately have the ability to repay their loans, often need our help to stay in their homes. We are ready to help them. We do so because *no one* benefits from a foreclosed home. Our continued

goal is to modify and workout at least $40 billion in mortgages by the end of 2009, helping to keep over a quarter million families in their homes.

In response to the needs of our customers, we have added more staff and improved the experience, quality and training of the professionals dedicated to loss mitigation. Over the past 18 months, the combined home retention staff for Bank of America and Countrywide has more than doubled, to over 5,000, and the company has committed to maintaining no less than 3,900 home retention professionals to assist customers, until at least July 1, 2009. We will continue to maintain sufficient staffing levels to ensure that we are responsive to our customers.

The Countrywide acquisition closed on July 1,2008. Legacy Countrywide's data reflects that in the months of July and August 2008 we successfully completed over 52,000 home retention workouts, a 326% increase over the 12,300 retention workouts completed in July and August 2007. At the core of our combined operations are the substantial commitments we made to engage in aggressive loss mitigation efforts to help customers avoid foreclosures and remain in their homes. Bank of America is devoting significant resources to modifying and working out loans for customers who are facing default and possible foreclosure. We are continuing many effective home retention practices *already in place*, and we are improving and supplementing these practices where we can.

Specifically, we are tailoring our workout strategies to a customer's particular circumstance. Bank of America currently uses a range of home retention options to assist customers who are struggling to make their monthly loan payments. These options include:

- Formal and informal workout arrangements that allow customers additional time to bring their loans current;

- Partial claims that involve unsecured, no-interest or low-interest loans to customers to cure payment defaults;
- Loan modifications that may significantly reduce interest rates, extend maturities or otherwise modify loan terms; and
- Targeted strategies for customers facing interest rate resets that include automatic interest rate reductions for up to five years.

Bank of America uses these options to assist at-risk borrowers from the moment we become aware a customer is having difficulty making mortgage payments through the foreclosure process. We continue to be particularly proactive in contacting customers with adjustable rate mortgages who are facing a significant rate reset and providing them with assistance to remain in their homes. We also continue to educate customers about the options available to them and the workout solutions they may able to employ to stay in their homes.

A key component of successful loss mitigation initiatives undertaken by national servicers such as Bank of America includes partnerships with financial counseling advocates and community based organizations such as Hope Now, NeighborWorks, ACORN, NACA and the Homeownership Preservation Foundation. At Bank of America, we are expanding our efforts to ensure that every customer that needs help and can make reasonable mortgage payments is reached. We are also actively engaged in foreclosure prevention outreach programs with both governmental and community organizations around the country. We will continue to work with investors, the GSEs, regulators and community partners to further identify ways to improve our ability to reach customers with affordable home retention solutions.

Early and open communication with customers is the most critical step in helping prevent foreclosures. So far in 2008, we have participated in more than 200 home retention outreach

events across the country, including foreclosure prevention and "train the trainer" events. We are proactively reaching out to customers by:

- Making an average of 17 attempts per month to contact delinquent homeowners through phone, mail and other means.
- Seeking to contact customers through outbound calls, including nearly 18 million outbound calls in August. These outbound calls resulted in approximately 1 million conversations with at risk homeowners in August.
- Mailing, on average, 800,000 personalized letters and cards each month that offer customers the choice to contact Bank of America, a HUD-approved housing agency, or a nonprofit housing organization.
- Sending company workout counselors to branch offices and events all over the nation to meet directly with homeowners who need assistance.

In the first eight months of 2008, the Home Retention Division completed over 169,000 retention workouts, a 407% increase over the first 8 months of 2007. Again, in the months of July and August 2008, we successfully completed over 52,000 home retention workouts, a 326% increase over the 12,300 retention workouts completed in July and August 2007. I would emphasize here that these are workouts in which the customer enters into a plan to *keep their homes*. It does *not* include deeds in lieu of foreclosures or short sales.

Comparing August 2008 with August 2007, the Home Retention Division workouts are up over 234%. The primary reason for this increase was a 450% jump in loan modification plans, from about 2,800 modifications in August of last year, to more than 15,750 in August 2008.

	2008 Home Retention Workouts Completed	Percent change over similar time period in 2007
January – August	169,000	+407%
July – August	52,000	+326%
	2008 Loan Modification Plans	Percent change over similar time period in 2007
August	15,750	+450%

In addition to sharply increasing the pace of workouts, we have also become more aggressive in the types of workout plans completed. Since we announced a series of home retention initiatives last autumn, loan modifications have become the predominant form of workout assistance. Year to date, through August of 2008, loan modifications have accounted for more than 74% of all home retention plans, while repayment plans accounted for 12% of home retention plans. Prior to the programs announced last year, loan modifications accounted for less than one-third of all home retentions. These loan modification plans generally result in holding in place or reducing the loan's interest rate, and consequently reducing the customer's monthly payment. Interest rate relief modifications – where the servicer freezes or reduces the borrower's interest rate – were extremely rare until late last year. Today, interest rate modifications account for 67% of all the loan modifications completed in 2008. Importantly, the vast majority of these rate relief modifications have durations of at least 5 years.

Bank of America is committed to helping our customers avoid foreclosure whenever they have a desire to remain in the property and a reasonable ability and willingness to make payments. Foreclosure is always a last resort for lenders, for servicers and for the investors in the mortgage securities. We recognize that there is still much more to be done. Today's market conditions challenge us both to expand our existing home retention efforts and to develop new approaches which mitigate losses to investors. This is a critically important undertaking act that

must be done right if we as an industry are going to preserve the flow of mortgage credit to support housing, and at the same time protect communities and neighborhoods from avoidable foreclosures. Please be assured that we are up to the task of meeting the challenges of today's housing market with leading-edge foreclosure prevention technology, training, programs and partnerships.

Thank you and I would be happy to answer any questions you might have.

United States House of Representatives Committee on Financial Services

Hearing on the Implementation of the HOPE for Homeownership Program and Review of foreclosure Mitigation Efforts

Wednesday, September 17, 2008

Testimony of Mossik Hacobian, President
Urban Edge Housing Corp., Boston, MA

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify and share some of our experience in addressing the foreclosure crisis facing our community.

Urban Edge is a community development corporation (CDC) in its 35th year of operation. Our primary service area consists of the Boston neighborhoods of Jamaica Plain and Roxbury and surrounding areas. Urban Edge has developed and preserved 1,360 units of rental and ownership housing affordable to households with very low-, low- and moderate-income. Our current rental housing portfolio consists of 1,147 homes and apartments with 90% of the homes affordable to households whose incomes are less than 60% of the area median income and two thirds with incomes less than 50% of the area median income.

Urban Edge also offers classes for first time homebuyers, credit counseling and post-purchase counseling.

We are supported in our efforts by the City of Boston, the Commonwealth of Massachusetts, the U.S. Department of Housing and Development, United Way of Massachusetts Bay and Merrimack Valley, NeighborWorks® America and a host of local and national foundations, lenders, investors and intermediaries.

Although we continue to develop new affordable housing and preserve and improve existing affordable housing in our portfolio and in Boston neighborhoods, for the past two years we have been focused on assisting homeowners who are at risk of losing their homes. Our first contract was with the City of Boston starting in November 2006 followed by contracts with MassHousing, NeighborWorks® America, the National Foreclosure Mitigation and Counseling Program and the Homeownership Preservation Foundation. Earlier this year, the City of Boston awarded Urban Edge a contract to undertake a pilot program to refinance Boston homeowners out of their existing at risk mortgages. We hope to launch this new product later this year with support of the City of Boston, Citizens Bank, United Way, NeighborWorks® America, Neighborhood Housing Services of America (NHSA) and FannieMae.

In preparation for today's testimony, we analyzed 254 current cases involving 51 servicers. A summary of that analysis is attached to the written testimony that I have provided to the Committee.

As illustrated in the analysis, our counselors have been able to secure loan modifications for 62 homeowners out of 254 pending cases. That is a 24% success rate. More than three-quarters – 196 of the 254 cases -- are being handled by 24 of the 51 servicers with whom we are in contact. Our success rate with these 24 servicers is a little better, at an average rate of 32%.

Please note that in addition to facilitating loan modifications we have been successful in helping qualified homeowners avoid foreclosure by implementing other successful workout options such as re-instatements, refinancing, and forbearance agreements and in a few cases repayment plans. When appropriate we have guided homeowners through bankruptcy, and in other cases, out of bankruptcy and into loan modifications.

Let me respond to the three specific questions you posed in your letter inviting me to testify:

1. **What have been your experiences regarding the willingness of mortgage servicers to make substantial loan modifications necessary to avert foreclosure?**

More servicers have become active and helpful to counselors in obtaining loan modifications for homeowners who can demonstrate that they can make the payments on a modified mortgage. In the past, the servicers' posture was to find ways to disqualify homeowners for loan modifications. At present, more servicers are cooperating with counselors to modify loans for homeowners whose incomes will allow them to make the payments.

However there are still servicers who refuse to do loan modifications although they are increasingly in the minority.

2. **What more can be done?**

The loan modification process should be more standardized. Too often the successful loan modification is dependent on the personality of the servicer and the skill, imagination or tenacity of the counselor. Some servicers are helpful and others are obstructionist. There is too much art and not enough science in obtaining a successful modification.

It would also be helpful to hold the presidents of servicing organizations accountable for outcomes. Some servicers will tell our counselors that they do not do loan modifications. Our counselors then contact the office of the president and in some instances the same servicer who had previously denied the loan modification finds it possible to modify the loan. This may be due in part to the lack of staff capacity at the servicing entities to address the flood of requests due to the current high volume of foreclosures.

3. **What if anything do you believe is preventing more meaningful modifications.**

Our counselors tell me that the pooling agreements between servicers, trustees and investors pose a serious obstacle to obtaining more loan modifications.

In discussions with one our counselors, a manager of a company responsible for relations with investors and the community in relation to foreclosures, expressed frustration with his inability to make changes in the pooling agreements. He explained that many loans are part of a trust which his company manages and as such they are governed by a pooling agreement. He stated that he is attempting to obtain approvals from the investors to try to make exceptions to the PSA, the Pooling and Servicing Agreements, to be able to make loan modification decisions at the individual loan level. He does not have that authority now.

The problem with the pooling agreements, as you well know, is that when investors purchased traunches of loans in the secondary market they made covenants to protect their investments. These covenants were based on the incorrect premise that the loans were written using reasonable underwriting standards. Because the underwriting was flawed, the covenants and the pooling agreements act in a counter-productive manner to restrict the ability to modify loans.

The effect of this inflexibility is that it results in mandated losses for both the investor and the homeowner. Everyone would be better off if the servicers and the trustees had more latitude to make individual decisions based on the merit of each case and not be limited by inflexible pooling agreements.

Two recent examples our counselors encountered illustrate this problem with servicers:

Homeowner #1: Homeowner was told the investor will not approve this family for a loan modification. They tried three times to have their loan modified. They were scheduled for a foreclosure auction in July 2008. On June 10, 2008 the servicer was changed from Option One to American Home Mortgage. On July 1, 2008 the new servicer sent this family a loan modification proposal reducing the interest rate from 11.13% to 6.5% for the life of the loan. The amount they were in arrears was capitalized into the loan. This came as a complete surprise to the homeowner and our counselor.

Option One had explained to our counselor that they had proposed a loan modification and it had been denied by the Trustee. Our Counselor contacted the Trustee who explained that they rely on the recommendation of the servicer in considering a loan modification. Once American Home Mortgage took over the operations of Option One, one of the three loan modification proposals that had previously been denied was approved. The details of this case are as follows:

<u>Servicer</u>: Option One Mortgage replaced by American Home Mortgage
<u>Trustee</u>: Wells Fargo Bank

<u>Before Loan Modification</u>
Outstanding principal: $275,084
Interest Rate: 11.13%
Monthly payment: $2,678
Mortgage payment as percent of homeowner's $4,332 monthly net income: 62%

<u>After Loan Modification</u>
Outstanding principal: $322,243 (including capitalized arrearages)
Interest Rate: 6.5%
Monthly payment: $2,140
Mortgage payment as percent of homeowner's $4,332 monthly net income: 49%

How could one servicer do so quickly and easily what another servicer claimed the investor would not allow?

Homeowner #2: Homeowner has an adjustable rate mortgage that started at 9.45%. We are in the process of attempting to secure a loan modification for a fixed rate mortgage. The homeowner can afford to make payments if the interest rate is reduced to 6%.

We were initially negotiating with Litton Loan Servicing. Litton sold the loan to Select Portfolio. We are told the investor is Magnitar Financial.

The servicers have told us that because of the pooling agreement the interest rate cannot be reduced to a rate lower than the starting rate of 9.45%. If the interest rate is not reduced this home will probably go into foreclosure.

Thank you again for the opportunity to testify. I am happy to answer any questions or to provide you with additional details.

Testimony of

Steven D. Hemperly
Senior Vice President, Real Estate Default Servicing
CitiMortgage, Inc.

Before the

Committee on Financial Services
United States House of Representatives

September 17, 2008

Chairman Frank, Ranking Member Bachus and Members of the Financial Services Committee, thank you for the opportunity to appear before you today to discuss Citi's loss mitigation efforts and the implementation of the Hope for Homeowners program.

My name is Steve Hemperly and I am the Senior Vice President for CitiMortgage Real Estate Default Servicing. As a top five serivicer with more than $800 billion dollars in our loan servicing portfolio, Citi services approximately 7% of the loans in the United States. We believe this gives us a unique understanding of the scope and dynamics related to the foreclosure challenges confronting the Nation and the work that needs to be done to keep borrowers in their homes.

In this enormously difficult housing market, Citi has moved aggressively to help distressed borrowers. We have a high degree of success in keeping borrowers in their homes when we are able to make contact with them, they want to remain in their homes and they have a stable source of income to make a monthly payment. In support of our specific focus on finding long term solutions for borrowers in need, our primary loss mitigation tool is loan modification. We have found modifications to be effective in helping certain borrowers manage through difficult times and avoid foreclosure.

Citi has a specially trained servicing unit that works with homeowners to find solutions short of foreclosure and tries to ensure that, wherever possible, no borrower loses his or her home. Citi continuously evaluates its portfolios to identify customers who are likely to benefit from a reduced monthly payment, and offers them timely and tailored loss mitigation solutions. Among other things, we provide free credit counseling, providing access to our loss mitigation staff to borrowers or counseling organizations to provide work-out arrangements and other options to help borrowers remain in their homes.

We have adopted various strategies to reach out to borrowers with resetting ARM loans. Qualified borrowers receive customized monthly communications and are eligible for streamlined refinance processing. Communications to customers with resetting loans start prior to reset and consist of direct mail, statement messaging, telephone contacts and email.

Citi's foreclosure prevention activities have an excellent resolution rate for distressed borrowers with whom we are able to make contact; however, we are not able to reach everyone, and in those circumstances, there are limits to what we can do.

To better meet the increased needs of struggling borrowers we service and reach as many of these borrowers as possible, we have dedicated significant resources to our loss mitigation area. We have stepped up our loss mitigation staffing nearly 100% this year with plans for an additional 50% by year end, and have provided additional training for our existing staff.

In order for policymakers, regulators, consumers and market participants to better understand the extent of the current situation, and our efforts to ameliorate it, we think it is important to share what we know. To assist in this effort, for the past three quarters we have produced and publicly released the *Citi U.S. Mortgage Lending Data and Foreclosure Prevention Efforts* report. The Report goes into specific detail on our originations, delinquency trends, ARM resets, loss mitigation efforts, foreclosures in process and new foreclosures initiated.

Our most recent report shows that distressed borrowers serviced by Citi, who received modifications, reinstatements or repayment plans outnumbered those who were foreclosed by more than four to one. The data demonstrate that our commitment to long term solutions is yielding results; the number of borrowers serviced by Citi who received long term solutions, in the form of loan modifications, in the second quarter of 2008 increased by approximately 27% as compared with the first quarter of 2008.

Our loss mitigation efforts are keeping more struggling borrowers in their homes; nevertheless, as we are all aware, current market conditions continue to be challenging and as we reported in our most recent report, we have seen foreclosures in process increase over the past year. However, foreclosures in process often do not result in a foreclosure completed or the loss of a borrower's home as we actively pursue alternative loss mitigation actions to return borrowers we service to performing status.

Citi recognizes that access to credit and housing affordability are critical issues for at-risk borrowers trying to keep their homes. In 2007, to address these concerns, we established the Citi Office of Homeownership Preservation, or OHP. The mission of the OHP is to increase direct and / or indirect contact with borrowers in distress and keep Citi-serviced borrowers in their homes, and provide them with access to affordable loans. The OHP furthers homeownership preservation efforts with Citi's OHP 25 City Tour. The Citi OHP team conducts intensive outreach events for borrowers in each city in partnership with a local nonprofit engaged in foreclosure intervention work.

In addition to our own efforts, we reach out to borrowers by supporting and partnering with community organizations across the country. We are a founding member of HOPE Now and partner extensively with ACORN, Neighborhood Assistance Corporations of

America (NACA), Consumer Credit Counseling Service (CCCS), Consumer Counseling Resource Center (CCRC), National Community Reinvestment Coalition (NCRC) and other community-based organizations, both at the local and national level, that are committed to finding solutions for borrowers in need of assistance. Much has been accomplished in partnership with these organizations, yet we realize there is a great deal more to be done.

In keeping with the actions I have described and our desire to do more, Mr. Chairman and members of the Committee, I want to assure you that Citi shares your interest in implementing the benefits of the Hope for Homeowners refinance program, and we strongly support this Committee's leadership in promulgating the Housing and Economic Recovery Act of 2008

CitiMortgage is a long-standing FHA lender and servicer. In preparation for implementation, Citi has re-engineered our FHA originations process to improve efficiency and quality. To accommodate the changing housing market and in preparation for the realization of the Hope for Homeowners program, we have substantially increased our FHA underwriters by 245% and aim to further increase that number to 330% by year end. We also intend to partner with correspondent sellers for FHA offerings to bring further liquidity to the secondary market.

While Citi's risk, technology and servicing personnel are all engaged in review of the Hope for Homeowners program, some important details have yet to be determined, and we are eagerly awaiting the specifics of the regulations so that we can get our systems in place. We look forward to the initiation of the Hope for Homeowners program and view it as a useful lending and servicing tool for struggling borrowers.

In closing, I want to again emphasize Citi's commitment to keeping borrowers who we service out of foreclosure and in their homes whenever possible. Thank you again, and I would be pleased to answer questions.

STATEMENT OF BRIAN D. MONTGOMERY

Assistant Secretary for Housing – Federal Housing Commissioner
U.S. Department of Housing and Urban Development

Hearing before the Committee on Financial Services
United States House of Representatives

"The Implementation of the HOPE for Homeowners Program and a Review of Foreclosure Mitigation Efforts"

September 17, 2008

Chairman Frank, Ranking Member Bachus, and members of the Committee, we are pleased to appear today on behalf of the Board of Directors of the HOPE for Homeowners Program (Board) to discuss the significant progress that the Board has made – and continues to make – to implement the HOPE for Homeowners Program (Program).

I am Brian Montgomery, Commissioner of the Federal Housing Administration (FHA). I was honored to be designated by Secretary Preston as his designee to the Board and to be elected Chairman of the Board by my fellow Board members who appear with me today. They are Elizabeth A. Duke, Governor of the Federal Reserve Board (Federal Reserve), Phillip L. Swagel, Assistant Secretary for Economic Policy at the U.S. Department of the Treasury (Treasury), and Thomas J. Curry, Director of the Federal Deposit Insurance Corporation (FDIC). This testimony is provided on behalf of the entire Board and is an example of the remarkable cooperation and collegiality that has been a hallmark of the Board's efforts.

First and foremost, we want to assure you that we are firmly committed to having the Program up and running by October 1, 2008, and believe this goal is achievable. We have been working diligently and cooperatively to develop and implement the Program in a manner consistent with both the terms and purposes of the HOPE for Homeowners Act (Act). The Board held a planning meeting only hours after President Bush signed the Act into law. We also are committed to issuing rules and guidance, as well as related documentation and informational materials before October 1st. These materials will comprehensively describe the Program's terms, conditions and requirements so that eligible borrowers, lenders, servicers, and investors can make informed choices as to both the benefits and costs of the Program.

We fully recognize the importance of the Program and our obligations as members of the Board. The Program was established by the Housing and Economic Recovery Act of 2008 to achieve a number of important policy objectives. These include providing eligible, distressed homeowners an opportunity to refinance into more affordable and sustainable home loans; providing lenders and servicers a new and potentially valuable tool to use in pursuing loss-mitigation strategies; and helping to stabilize communities, housing prices and mortgage markets by reducing the number of foreclosures.

In this testimony, we will provide an overview of the significant steps that both the Board and the Federal Housing Administration (FHA) have taken to date to implement the Program. In addition, we will touch on some of the key challenges that Congress faced in designing the Program and that the Board and FHA have been addressing in implementing it. As noted previously, the Board expects to approve soon final rules, guidance, documentation and informational materials for the Program. We will of course provide these materials to the Committee as soon as they are approved in final form.

Implementation Efforts and Status

We are committed to having the Program open for business on October 1, 2008. While getting a new government program operational in less than two months is no easy task, the Board and respective staff are dedicated to meeting the challenge. Since the Act became law on August 2nd, we have held 5 official Board meetings, including a half-day "roll up the sleeves" working

session to discuss various aspects of the Program. We have all benefited from the tremendous collegiality, expertise and the level of intellectual discourse that has been brought to bear at these meetings to ensure that the Program is sensible and accessible.

Administration, Staffing and Funding

While perhaps mundane, we have taken steps to put in place the type of administrative infrastructure that is critical to the successful implementation and oversight of any program. For example, we have adopted by-laws, rules governing access to Board records, and procedures for financial oversight, recordkeeping, and preparation of the Board's mandated monthly reports to Congress. In addition, we have established and appointed personnel to several key officer positions for the Program to ensure that a team of professionals are charged with the day-to-day responsibility for keeping the Program on track. These officers are led by Margaret Burns, Director of FHA Single Family Program Development, who serves as Executive Director of the Program.

Each agency represented on the Board also has dedicated an experienced team of policy, research and legal staff to the Program. These staff members bring a wealth of market knowledge, program expertise, and a true commitment to the goals of the Program. Working under the direction and oversight of the Board, agency staff held numerous meetings and conference calls to develop and present to the Board options and recommendations for effectively implementing the Program in a timely manner. The Board also approved $29.5 million in initial funding for the Program's start-up costs associated with outreach, personnel, contracting, and systems upgrades. The Department of the Treasury quickly provided the funds through the issuance of HOPE Bonds, as required in the Act, and they have been transferred to HUD.

Outreach

The Board and FHA have already engaged in extensive outreach to solicit the views of potential stakeholders on Program implementation, including housing trade associations, lenders, counselors, and consumer advocacy organizations. For example, at the direction of the Board, staff of FHA and the other agencies have held numerous conference calls with servicers, investors and consumer groups. We have used these discussions to improve our understanding of obstacles to successful and sustainable loan modifications. This outreach also sought to best determine the type, characteristics and number of eligible loans that may be directed to the Program, the areas where additional guidance or actions by the Board or FHA may be necessary or useful to clarify the types of loans and borrowers that may be eligible for the Program, and the rights and responsibilities of both existing mortgage holders and the originating lender of the new HOPE for Homeowners loan.

Market Reaction

At the Board's invitation, Joseph Murin, President of the Government National Mortgage Association (GNMA), has attended meetings of the Board. Working with GNMA, the Board and FHA have conducted outreach with financial market participants to help ensure that the

market is ready for securitizations backed by HOPE for Homeowner loans. Familiarity should promote liquidity, which in turn should help the product trade as close as possible to FHA Secure and other FHA-insured products. However, given the distressed nature of the borrowers likely to participate in the Program, as well as the 1.5 percent annual mortgage insurance premium mandated for HOPE for Homeowner loans, early indications are that HOPE for Homeowner loans likely will have a higher interest rate than other FHA-insured products, including *FHASecure*, because they will cost more than standard FHA loans . Recognizing this raises concerns about affordability, we will require that the new HOPE for Homeowners loan have a lower monthly payment than the mortgage or mortgages it replaces.

Program Design

Finally, and most importantly, the Board has been working diligently to finalize all aspects of the Program's design. The Program adopted by Congress recognizes that, because of the substantial economic and social costs associated with foreclosures, providing an FHA-insured refinancing product to facilitate the restructuring of distressed loans, may in certain circumstances create a better outcome for borrowers, lenders, servicers, and investors than would otherwise be attainable if the foreclosure process was allowed to run its course.

In its most basic form, the Program will allow lenders and borrowers on a voluntary basis to refinance an existing distressed loan into a new, sustainable FHA-insured 30-year fixed-rate mortgage. To do so, the existing first mortgage holder must agree to write-down its existing mortgage loan to 90 percent or less of the current appraised value of the property and pay the borrower's initial 3.0 percent FHA mortgage insurance premium. All holders of existing senior and junior mortgages must release their liens on the property and the homeowner from all indebtedness under the mortgages. The borrower will receive a new, sustainable mortgage and equity in the home, but also will be obligated to share both that initial equity and any future appreciation on the property with HUD. HUD also is directed to facilitate agreement between the existing senior lien holders and junior lien holders, which is necessary to allow the refinance to proceed, including the sharing of HUD's interest in the future appreciation in the property.

In enacting this basic Program design, Congress sought to balance several important policy objectives. These include:

- The desire to offer relief to a significant number of borrowers to help address the personal, economic and social costs associated with foreclosures and help stabilize the housing and mortgage markets;
- The need to address the real potential for the Program to induce moral hazard on the part of borrowers and adverse selection on the part of lenders and servicers;
- The need to avoid, through prudent underwriting standards and adequate cost recovery mechanisms, the origination of new, unsustainable mortgages that would unduly add to taxpayer costs; and,
- The need to offer junior mortgage holders an appropriate incentive to participate in any proposed refinancing and restructuring.

As we work towards finalizing the Program's design, we are keenly aware of the balance that Congress sought to strike in enacting the Program and the importance of reflecting that balance in our rules and guidance. For example, Congress' intent regarding the type of borrowers eligible to benefit from the Program is very clear—homeowners that desire to stay in their home but, because of the terms of their existing mortgage or declining home values, are struggling financially and have few, if any, other refinancing options available. A unique aspect of the Program is the requirement that first mortgage holders take a significant principal write-down to qualify homeowners for the Program. Because principal write-downs are costly for lenders, we can be certain that most applicants will be severely distressed homeowners. These borrowers may well have missed several payments on their mortgage or even be facing a pending foreclosure, have a high overall household debt burden and few financial assets, and have little or no equity in their homes.

The Board, however, also is charged with responsibility for establishing underwriting standards that are designed to ensure that the borrower, after any write-down in principal mandated by the statute or offered by the existing lender to further improve affordability, has a reasonable ability to repay the new FHA-insured mortgage, consistent with Federal credit policies. Developing workable underwriting standards for a population of distressed applicants is a challenge. It is likely that few, if any, of the likely applicants to this Program would be accepted under normal FHA or private lender standards.

Excessively lenient standards would result in greater borrower participation, but also raise serious concerns about Program performance and costs. We recognize that a Program with a high default and foreclosure rate is not successfully meeting the goal of putting borrowers into sustainable mortgages. We will not achieve the goals of the Program if borrowers simply are transferred from one unsustainable mortgage to another. We also are conscious that creating a Program that simply defers foreclosures, rather than preventing them, will only prolong the mortgage crisis and lead to significant costs to the Government – an outcome no one wants. At the same time we recognize that setting underwriting standards too high will result in participation volume that is significantly less than would otherwise be the case, thereby limiting the Program's effectiveness in addressing the foreclosure crises for which it was designed.

Congress also made clear that the Program is not available to borrowers who have intentionally defaulted on their existing mortgage, who knowingly or willfully provided false information to obtain their current mortgage, or who have been convicted of fraud within the prior 10 years. Likewise, the Program is not open to investor-owned properties or to homeowners that own additional properties. We expect to adopt documentation requirements that will ensure that all potential borrowers are clearly informed of these prohibitions and certify their compliance. FHA also expects to use state-of-the-art fraud detection tools, recommended by HUD's Inspector General, to proactively identify (before insurance is granted) loan applicants who have been convicted of fraud.

One of the greatest challenges to successful loan modifications is obtaining the consent of all existing lien holders, including the holders of junior mortgages. In recognition of this challenge, and of the need for junior mortgage holders to participate in the HOPE for Homeowners Program to achieve the broadest possible penetration, Congress gave the Board the authority to share a

portion of the government's interest in any appreciation of the property's value, and directed HUD to take such actions as may be necessary and appropriate to facilitate coordination and agreement between the holders of the existing senior and junior mortgages on the property.

We have focused a great deal of attention on how to implement these key authorities. In evaluating this important issue, we have been greatly assisted by the modeling expertise, economic research and market knowledge of the agencies, as well as by the input we have received through our outreach efforts to lenders, servicers and other market participants. We expect the final rules and guidance will be adopted and issued soon to provide both a mechanism and a formula for a junior mortgage holder to receive limited compensation if the holder agrees to release the borrower from all indebtedness under the junior mortgage and release the lien on the property.

We also are keenly focused on the other elements of the overall Program operations that are necessary to ensure the Program's success and appropriate consumer protections. As a Board, we feel strongly that we must incorporate protections within this Program to help ensure that borrowers are placed in appropriate and sustainable mortgages and are not exploited. In this regard, the Program has several unique features, such as a relatively high mortgage insurance premium and initial equity and future appreciation sharing requirements. It is vitally important that consumers have a clear understanding of these provisions so they can adequately weigh both the benefits and costs of participating in the HOPE for Homeowners Program. To this end, the Board is developing disclosures to ensure that applicants receive clear and concise information about these unique features. In addition, the Board is creating supporting documents that will give borrowers additional details about the Program and answer anticipated questions. These documents will provide borrowers with necessary context and examples of the amount of equity and appreciation they will be required to share over time. In combination with these upfront disclosures to consumers, the FHA will conduct more stringent monitoring of participants in this Program in order to prevent predatory practices that could push unsuspecting and unprepared borrowers into another loan they cannot afford.

In addition, the Board is forming an extensive outreach and education campaign in order to educate lenders, counselors, and consumers about the HOPE for Homeowners Program and its requirements. In connection with this effort, we are designing a training curriculum that will address a lender's ability to use the Program as an option for loss mitigation and, from the borrower's perspective, help achieve sustainability going forward.

Conclusion

Thank you for the opportunity to update the Committee on our ongoing efforts to implement the HOPE for Homeowners Program and, thus, provide an opportunity for relief to eligible homeowners, lenders, servicers and communities being impacted by the current difficulties in the mortgage and housing markets. We feel confident that the Program will offer homeowners and the housing finance industry a good refinancing option that will be an important tool to help address the fallout from ongoing mortgage market difficulties in a positive way. We are committed to having the Program operational on October 1, 2008.

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HEARING BEFORE THE

U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON FINANCIAL SERVICES

ENTITLED

THE IMPLEMENTATION OF THE HOPE FOR HOMEOWNERS PROGRAM AND A REVIEW OF FORECLOSURE MITIGATION EFFORTS

WRITTEN TESTIMONY OF

RONALD PHIPPS

ON BEHALF OF THE NATIONAL ASSOCIATION OF REALTORS®

SEPTEMBER 17, 2008

Introduction

Chairman Frank, Ranking Member Bachus, and Members of the Committee, thank you for inviting me to testify today on the current state of foreclosure mitigation efforts.

My name is Ron Phipps. I am a 3rd generation member of a 4 generation family tradition in the Rhode Island residential real estate industry. My passion is making the dream of homeownership available to all American families. As direct result of my passion, I have become very active within the NATIONAL ASSOCIATION OF REALTORS® (NAR); holding significant positions at both the state and national levels. Since 2000, I have been President of the Rhode Island Association, an NAR Regional Vice President, and a member of the NAR Executive Committee. Most recently, I was elected NAR First Vice President for 2009.

I am here to testify on behalf of more than 1.2 million REALTOR® members who are involved in residential and commercial real estate as brokers, sales people, property managers, appraisers, counselors, and others engaged in all aspects of the real estate industry. Members belong to one or more of some 1,400 local associations/boards and 54 state and territory associations of REALTORS®.

NAR commends the committee for holding today's hearing on the issues impacting foreclosure and loss mitigation efforts. These are critically important issues that impact everyone involved in residential home sales (REALTORS®, lenders, servicers, investors, appraisers, mortgage insurers, and title companies). Today, we would like to focus our comments on two aspects of the larger discussion that is the subject of this hearing: the challenges facing consumers who attempt to negotiate a short sale as an alternative to foreclosure and the Hope for Homeowners Program.

Short Sales – A Valuable Foreclosure Mitigation Tool

A short sale is a sale that occurs when the sales price for a property is insufficient to pay the total of all mortgages, liens and costs of sale, and where the seller does not or cannot bring sufficient liquid assets to the closing to cure all deficiencies. A short sale can occur when an individual is in arrears on a mortgage and headed toward foreclosure. We are particularly concerned about delays in the short sale process when short sellers are in default on their mortgage loans and headed for foreclosure.

We note, too, that a short sale can also occur when an individual is current on his/her payments but the value of the house has fallen below the outstanding balance on the mortgage. Some home owners who bought at the top of the market may find that they need to sell because of divorce, job transfer or other unforeseen circumstance but find themselves upside down, owing more than the home is currently worth.

A short sale is one tool that can help both these categories of borrowers. It has particular utility as a mechanism that can be used to avoid a foreclosure. A short sale allows the borrower to sell a property that they can no longer afford. If a borrower can avoid the foreclosure process, a short sale allows the consumer to maintain some level of creditworthiness while still remitting

to the lender a higher amount of the remaining loan balance than the lender would otherwise receive from the sale of a property after foreclosure.

A lender can also benefit from a short sale by avoiding the liabilities it assumes by owning the property after foreclosures. The bank's funds are not tied up while it holds the property after the foreclosure and until resale, and the bank avoids the additional costs associated with a bank-owned property such as attorneys' fees and maintenance expenses. If the bank can avoid foreclosure, then it will not need to accumulate the additional reserves it would need if the number of foreclosed properties increases in the bank's portfolio.

A 2002 study by Craig Focardi of the Tower Group estimated that the average cost of a foreclosure was $58,759 and took 18 months.[1] Thus, even though the bank will incur a loss in a short sale, the bank's overall position remains more stable than would occur if it carried out a transaction to foreclosure and ultimate resale of the property.

In addition, all the parties benefit from a quick sale and a higher short sale price. The short sale provides the added bonus of providing more support for home values in the associated neighborhood than a price derived from the sale of the foreclosed property. REALTORS® nationwide believe short sales should be used more often and more effectively because of the benefits to consumers, lenders and community tax bases.

Unfortunately, our membership is increasingly encountering road blocks that are preventing troubled homeowners from utilizing the short sale process. A main theme that is regularly mentioned by our members is that lenders are taking an extraordinary amount of time to decide if they are willing to accept a short sale purchase offer. This "waiting period" can extend 30, 60 or even more than 90 days after submission of an offer and the requested documentation.

Given these lender delays, REALTORS® indicate that it is increasingly common for exasperated potential homebuyers to walk away from their purchase offers to find another property. Too often, the original property then moves to foreclosure, and eventually the bank finds itself forced to sell it for much less than they could have if they had approved the short sale. This is disastrous for everyone involved – the homeowners, their neighborhoods and communities, and the lender.

A number of factors contributing to the problem encountered in the short sale process have been identified by our members. These include: understaffed or inexperienced loss mitigation staffs, bank appraisal values that do not reflect the distressed nature of the sale, a second mortgage that necessitates two lender/servicer approvals for the sale, and/or the approval of the entity that holds the pool of loans if the mortgage has been securitized.

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[1] Focardi, C. (2002). Servicing Default Management: An Overview of the Process & Underlying Technology. Needham, MA: Tower Group

Lender Loss Mitigation Staffing

The recurring complaints that REALTORS® hear from consumers who are interested in a short sale are that (1) it is difficult to determine who is the correct department or individual to contact with a lender or servicer, (2) no one at the lender shop answers or returns their phone call, and (3) submitted paper work is often "lost". As an example of this issue, one account comes from a REALTOR® who sat with a client, on hold for over an hour, to get an update on their short sale application. When they finally reached the customer service representative to discuss the situation, they were informed that no paperwork could be found and they would need to re-send their information before they could proceed.

Problematic Appraisals

Another issue that REALTORS® are encountering frequently is that lenders are commonly rejecting legitimate offers. In these situations, the bank's home appraisals come in much higher than the proposed short sales prices. In many cases, the bank-selected appraisers have not taken into account that the sale is a duress sale, that there may be many foreclosed homes in the neighborhood and/or that the property is often times in poor or less than optimal condition.

In early September 2008, an NAR member provided a practical example of the situation:

> *"I wrote a full price offer on May 2 for a property that had a third party involved in it. We changed the purchase agreement's closing date to August 31, 2008 as the third party made the comment that they doubted they could close it by the end of July. Two weeks before the closing, the lender rejected my buyer's offer and wanted over $10,000.00 more than the short sale price as the appraiser came in higher than what the purchase price was. This appraiser did not give any consideration to the condition of the property, or the fact that the property was a short sale. If you do the comps for this property, the listing agent was right on with the price, which we offered."*

Second Trust Holders

Finally, consumers with junior trust obligations (e.g., second mortgages or home equity lines of credit) are being hampered in their quest for a quick resolution to their financial burden because the primary lender must negotiate with the holder of the second trust to approve the short sale. In most instances, NAR is being informed that junior trust holders are unwillingly to accept the primary lender's proposed settlement to facilitate the short sale. Extended negotiations between the primary and junior trust holders increases the time required to sell the home, which often forces the potential homebuyer to search for another non-short sale property.

Actions like this are leading our members to ask:

- If I have a seller who needs to sell their home and a qualified buyer that wants to make the purchase, why does it take so long for the lender to review the information and make a decision?

- Why does the lender counter these offers only to lose the buyer and eventually have to resort to an expensive foreclosure proceeding and an even less lucrative foreclosure sale?

- Why don't the lenders who made the loans that put the borrower in this tenuous position initially want to resolve their own financial problems in a timely manner?

By thwarting the short sale, the lender sets off a negative cascade effect that hurts everyone from the borrower, who loses the property and has damaged his/her credit report; the lender, who loses money by bearing the expense of foreclosing on and then reselling the property well below the offered short sale price; the neighborhood, where home values recede due to the artificially low sales price of the foreclosed property, and the community, where the property tax base and collections also suffer.

NAR's Efforts to Address Member Concerns with Short Sales

In support of our members calls for assistance, NAR has been working on several fronts to help resolve issues encountered during the short sales process. First, in February of this year, we established a Short Sale Working Group composed of REALTORS® from across the country to examine what is occurring in the marketplace, why it is occurring, and what NAR can do to address these issues. The Working Group made a number of recommendations as to what could be done to address the problems being encountered.

First, the Working Group recognized that there was a need to educate our members about the short sale process. A nationwide residential real estate downturn is outside the experience of almost anyone born after World War II. Most of our members had never experienced even a regional soft market. As a result, NAR has a number of materials designed to help our members understand the key components of the short sale process and how to work with clients in these situations. In addition, with our input, Freddie Mac has developed an "Introduction to Short Sales" webinar for real estate professionals. We just completed testing the offering with live participants and will soon make it available to our state and local associations, as well as the general membership via the Internet along with the materials already posted.

As a direct result of this working group, NAR also began working with the Government-Sponsored Enterprises (GSEs) to create a MLS-GSE information sharing pilot that is just getting underway. Under the pilot, the GSEs are working with multiple listing services (MLSs) in high foreclosure areas to share real-time information about housing markets so the GSEs can expedite short sale decisions.

Finally, NAR is reaching out to our partners in the real estate industry to further develop and implement the other recommendations made by the Working Group:

- Make contact information for lender/servicer loss mitigation personnel easily available to borrowers: Troubled borrowers need to be able to easily locate online the correct department and the individual who will be responsible for processing the short sale application.

- Develop a single industry-wide short sale application (Uniform Short Sale Application) and list of supporting documents that all lenders and servicers would agree to accept.

- Garner commitments by all lenders and their servicers to keep the listing agent and seller regularly informed of the status of the short sale application throughout the process and respond to reasonable requests for information, and

- Obtain a commitment by all lenders and their servicers to deliver a clear answer, in writing (yes or no), within a reasonable time frame (i.e. 30 days).

A Bright Spot for Short Sales

Over the course of the past 25 years, regional real estate markets have occasionally experienced downturns related to problems in their local economies. Before 2007, if borrowers and lenders in these distressed local markets agreed to a short sale, a heavy tax burden fell on the borrower. A short sale triggered a taxable event. If a lender forgave some portion of a mortgage obligation, the tax laws required that the borrower recognize income in the same amount as the forgiven debt. Thus, even though a house was sold and the seller/borrower received absolutely no cash from the transaction, the borrower was assumed to have received income in the amount of the forgiven debt and was required to pay tax on that phantom income at ordinary rates. As early as 1995, NAR sought legislation to overturn this result. It seemed unreasonable that at a tax burden would be applied at the time of an individual's biggest economic setback.

The residential real estate market prospered during the late 1990's and boomed as the new century began. When the housing and subprime crisis began in late 2006 or early 2007, individuals who lost their homes in both short sales and foreclosures were alarmed to find that their financial problems were compounded with this tax burden. In early September 2007, President Bush and Ways and Means Chairman Rangel both concluded that it was essential to remove the tax burden associated with forgiven debt. Chairman Rangel introduced H.R. 3648, the Mortgage Forgiveness Debt Relief Act.

In December 2007, President Bush signed H.R. 3648. It provided tax relief for mortgage debt forgiven on a principal residence. Tax relief is provided for loan forgiveness of up to $2 million ($1 million on a married filing separate return). The relief is available for sales or exchanges in 2007, 2008 and 2009. NAR had sought permanent relief, but was nonetheless pleased that this important measure is now enacted and that it will ease some burdens. NAR deeply appreciates the care and attention given to this important provision.

The Hope for Homeowners Program

The Hope for Homeowners (H4H) program, created in the recent Housing and Economic Recovery Act (HERA), was designed to help homeowners who are facing foreclosure refinance with a safe, affordable mortgage. This program could prevent hundreds of thousands of families from losing their homes and more. However, timely and careful implementation will be necessary to make it work.

NAR strongly supports the goals of the Hope for Homeowners program. Allowing qualified homebuyers to refinance their mortgage into a safe, affordable 30-year fixed FHA loan will help many families avoid foreclosure. At the same time the program protects the investment of the government and taxpayers by sharing in equity and appreciation with the homeowner. However, the programs must be carefully implemented to ensure lender participation, while continuing to safeguard the FHA fund.

We applaud HUD for reaching out to government agencies, lenders and other interested parties immediately after the bill was signed to discuss how this program will be implemented. HUD has sought input from many stakeholders in the FHA and refinancing process. NAR has participated in several conference calls. Moreover, we believe HUD's efforts to engage the lenders in the design and implementation process is critical to their participation in the program. We encourage lenders to provide their input now, so the final program is one they can willingly embrace. Widespread lender participation and well-informed REALTORS® can help many families to keep their piece of the American dream.

Conclusion

Our nation faces a significant challenge in dealing with the economic turmoil in today's housing market. In order to overcome this threat, we must assist those families threatened with the loss of their home through the use of all of the tools that we have at our disposal. The short sale is a tool that offers families who cannot avoid the loss of their home a viable method to repay a portion of their debt obligation, while maintaining a level of dignity during this trying period. Moreover, this foreclosure mitigation tool will reduce the amount of write-offs lenders face due to the disposition of property after foreclosure and will lessen a foreclosure's negative impact on communities. For those families that have the ability to stay in their homes if their problematic mortgages are responsibly restructured, we remain hopeful that the Hope For Homeownership Program will allow them to keep their piece of the American Dream.

I thank you for this opportunity to share our thoughts. The National Association of REALTORS® stands ready to work with Congress and our industry partners to improve upon current short sale practices and make loan modification programs effective tools to help struggling homeowners and communities.

TESTIMONY OF MARGUERITE SHEEHAN
JPMORGAN CHASE & CO.

BEFORE THE COMMITTEE ON FINANCIAL SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES

September 17, 2008

Chairman Frank, Ranking Member Bachus and Members of the House Financial Services Committee, we appreciate the opportunity to appear before you today on this most important topic of helping homeowners. We recognize that no one benefits in a foreclosure.

My name is Molly Sheehan and I work for the Home Lending Division of JPMorgan Chase as a senior housing policy advisor. Chase is one of the largest residential mortgage servicers in the United States, serving over 6.4 million customers with mortgage and home equity loans of approximately $845 billion in every state of the country. We are proud to be part of one of this country's pre-eminent financial institutions with a heritage of over 200 years.

Chase services about $170 billion in mortgages and home-equity loans it originated and owns; that's $75 billion (9%) in first-lien mortgage loans and $95 billion in home equity (11%). It also services or sub-services more than $675 billion (80%) in first-lien mortgage loans owned by investors. In the combined $845 billion portfolio, there is $65 billion (8%) of subprime: approximately $15 billion owned by Chase and $50 billion owned by investors.

Chase understands that the current economy, the reduced availability of credit and the reality of flat and declining home prices are creating financial hardship for a growing number of homeowners. This can be especially painful for borrowers who have little savings to rely on when facing financial difficulties, including the risk of foreclosure.

That's why Chase has worked to supplement its existing programs and expand its outreach to millions of homeowners. Chase's simple goal is shared by homeowners and community groups alike: keep homeowners in their homes whenever possible. Through the experience of servicing $845 billion of home loans, Chase has created a toolkit to help homeowners through the special challenges of 2008 and 2009.

Since early 2007, Chase has had special programs in place to help homeowners. For example, Chase tells its ARM borrowers in advance how their interest rate and monthly mortgage payment likely will change at the reset date. Many customers lose track of their ARM reset date or simply don't understand how dramatically the interest-rate reset could increase their monthly payment. Through the process, Chase seeks to focus the customer on the impending financial impact and to make its specialists available to discuss the homeowner's options if the increased payment would not be affordable.

In evaluating modification and refinancing possibilities, we review information the customer has provided about their earnings, expenses and assets. That helps us determine what options may be viable. Sometimes, however, our analysis shows that a borrower simply does not have enough monthly income to support any reasonable modification of the mortgage. And neither the borrower nor the investor benefits from stretching out an unworkable situation. At that point, we consider alternatives that include a short sale (accepting the sale of a home for less than the mortgage balance), a deed in lieu of foreclosure, and following the process through foreclosure.

Chase has created a customized reporting system to track the results of its foreclosure prevention programs so it can continue to improve them. In total, Chase has assisted more than 110,000 customers from January 2007 through July of 2008 with loan modifications, repayments plans, reinstatements and forbearance and is working with an additional 30,000 customers. A loan modification was the solution in 35% of the cases overall – and in about 50% of the subprime situations. In total, Chase modified or refinanced $6.38 billion of subprime mortgages, primarily ARMs.

For example:

- Chase has modified $3.5 billion of loans through notification programs
- Chase proactively locked in the initial interest rate for the life of the mortgage on $345 million of subprime ARMs that it owns and $1.57 billion of subprime ARMs that it services for third parties
- Chase has refinanced $976 million of subprime ARMs
- Chase is in the process of modifying an additional $995 million of subprime mortgages
- For prime borrowers, Chase has modified more than $2.2 billion of loans, both ARMs and fixed-rate

Chase charges no modification fees when the Homeowner's Assistance Department modifies a loan to make it affordable. The performance of the modified loans is solid. After twelve months, five out of six customers are making their payments.

Chase knows that worried homeowners might be more comfortable seeking help from a trusted community group and might not respond to the company's outreach. So Chase created its Homeownership Preservation Office in 2004 to make it easier for those non-profit community groups to talk directly to Chase about customers at risk of losing their home. Chase then works with the community group to provide in-depth counseling to the homeowner in distress. The Homeownership Preservation Office has expanded its staff to meet the increasing needs of our borrowers. Its toll-free hotline staffed by full-time case managers received more than 7,600 calls from non-profits in 2007. Year to date through August of 2008, the case managers have received over 12,260 calls and opened up over 12,200 new cases. As the call volume has increased, so has the need to offer training to our non- profit partners. Through 35 foreclosure prevention workshops in 2007 alone, Chase trained 1,344 counselors and public officials. In 2008, Chase's Homeownership Preservation Office has participated in over 100 outreach events for distressed borrowers to date, where Chase representatives are available in person to assist Chase customers.

Chase's Homeownership Preservation Office has worked with targeted foreclosure prevention programs in Chicago, Cleveland, Colorado, Dallas, Detroit, Indiana and New York. The Homeownership Preservation Office also manages Chase's Gifting Program. This Program donates real estate that Chase acquires as a result of foreclosures to our

non-profit partners. The Homeownership Preservation Office is also working internally and with external task forces to enhance Chase's REO disposition procedures and explore opportunities through new partnerships with community-based organizations.

In October, 2007, Chase and other industry leaders responded to calls from the U.S. Treasury and the Housing and Urban Development Departments to address the mortgage issue. Chase contributed both its expertise and an experienced executive to help create HOPE NOW, a national alliance of counselors, servicers, investors, and other mortgage market participants. Recognizing that a consistent approach applied across the industry is most effective, alliance members have achieved over 2 million workouts for families by July of 2008. As a member of HOPE NOW, Chase has mailed more than 222,400 outreach letters to delinquent borrowers under the HOPE NOW banner inviting those borrowers to seek counseling and foreclosure prevention assistance. About 14% of these borrowers responded either to a counselor or directly to Chase. Chase has also worked internally, as well as with its community partners, to develop innovative contact methods including multiple contacts by telephone and in person. In 45-50% of these cases, Chase reaches the borrower and is able to discuss his situation.

In December 2007, Chase joined with government and industry leaders in supporting a new federal initiative designed to keep more homeowners in their homes. The five-year, interest-rate freeze for qualifying borrowers helped Chase further streamline its process to review and approve loan modifications for qualified homeowners.

In February 2008, Chase joined with other major servicers in announcing Project Lifeline, which can stop the clock on the foreclosure process for 30 days for homeowners who are 90 days or more behind on their mortgage payments. As with other efforts, the goal is to get homeowners in contact with Chase to determine if a modification or refinance can be worked out. The lifeline is being offered to people with any residential mortgage for their primary home—not just subprime borrowers.

Chase is piloting a program to offer new FHA products to borrowers on the mortgage loans we own. A key part of this program is to offer the recently enhanced FHASecure product. The expansion of FHASecure was adopted by HUD to make more loans available for consumers with adjustable- rate mortgages that have a need to refinance but may have some delinquencies on their mortgage payment for the prior year. Just as we responded to the changes in FHASecure, we will further expand our offer to include borrowers eligible for the HOPE for HOMEOWNERS (HFH) Program, once the final parameters become available. We are pleased to have yet another refinance option available to assist our borrowers.

In preparation to launch the HFH Program, we have reviewed our servicing portfolio and conducted a preliminary analysis of loans that might be eligible, based on general criteria. For example, we eliminated loans with ineligible property types, such as investor properties or second homes. We will refine this analysis once important parameters of the Program become available, such as maximum debt to income ratios. We expect this to occur over the coming weeks.

For this preliminary population of loans targeted for HFH, we are currently in the process of calculating all the possibilities to find the best financial choice for the loan's owner and the borrower, so that the borrower receives an affordable payment: FHA refinance, FHASecure, or a loan modification through a rate reduction, term extension, principal forbearance, or some combination. To the extent these solutions are not viable, this Program can be a solution if the borrowing household has shown they want to maintain their home and an affordable payment can be structured through reducing principal.

We are also convening a project team to define the strategy and procedures we would need to develop and execute on the HFH Program as soon as the final program parameters become available. This will include extensive training for default, sales and underwriting personnel, preparing consumer outreach efforts, updating underwriting systems, programming new documents, developing scripts for call centers and loan specialists, determining pricing and secondary marketing execution.

Our initial emphasis has been on the portfolio of mortgage loans we own, as securitized loans serviced for the benefit of investors present special challenges since investors prefer to avoid principal write downs. Going forward, Chase will recommend the Program to its investors to avoid unnecessary foreclosures.

Chase is pleased to have the HFH Program as an additional tool to help homeowners. Looking at our total owned and serviced book, including both prime and subprime – based on a very rough preliminary estimate – we believe about $2.5 billion in loans may qualify (about 14,000 households). Of course the actual amount may be much higher or lower depending on the additional qualifying criteria still under consideration by HUD and the Oversight Board. As a result, some of our assumptions may have been overly conservative. But we do believe, based on our experience of the last year and a half, that the numbers of borrowers who ultimately take advantage of the Program could be lower than the number that preliminarily qualify, as there may be several crucial barriers to the Program's widespread use.

On the borrower side:

The challenges of contact: Despite multiple efforts, including home visits and partnering with counselors to knock on doors, we successfully contact our borrowers only 35-50% of the time, on average.

The challenges of follow through: Even in loan modifications that require only straightforward income verification and simple documentation, we typically have to make multiple follow-up calls. This Program will present a higher hurdle, requiring significant effort from borrowers who will face novel features. For example, the borrowers will need to certify that they did not intentionally default on their current loan and be free of fraud convictions for the last ten years. They will also need to grapple with information on the shared equity and shared appreciation features of their new loan- especially the impact when they sell their home.

On the lender/investor side:

No share in appreciation: Under the Program, the loans' owners will take a loss when the principal balance is written down to the maximum allowable LTV of 90%, but will have no opportunity to share in any future appreciation to recoup that loss. For many investors, the Program may not be viewed as an attractive option, especially when our experience shows we can achieve relatively low rates of re-default when we modify a loan through a rate reduction that lowers the borrower's monthly payment to an affordable level. As mentioned earlier, our experience shows that five out of six borrowers are current 12 months after modification. And we believe we use appropriate underwriting criteria, even though it is more liberal than what we understand is being contemplated by the HFH Program.

Second becomes first: It seems counterintuitive that the second lien holder moves into a favored position in sharing future appreciation. While we understand the intent is to encourage second lien holders to extinguish their liens, we believe it would enhance the success of the Program were a similar incentive provided to the first lien holders.

As mentioned earlier, Chase is actively seeking to use the Program for its own portfolio as yet another solution for homeowners seeking to maintain their homes. In the case of securitized loans, Chase will utilize the Program where a principal write-down is best for both the borrower and the investor. In general, however, we believe that investors will prefer principal forbearance options that bring the monthly payment down to an affordable level while retaining the opportunity to share in future appreciation, similar to the program recently announced by the FDIC for IndyMac Bank.

Chase is proud of the programs it has developed over time, especially in the last year, to address the needs of customers who encounter financial difficulties. We continually re-examine our practices to respond to changing market conditions and their impact on our customers. We believe our programs are helping our customers through this challenging environment.

The Implementation of the HOPE for Homeowners Program and a Review of Foreclosure Mitigation Efforts

Written Testimony
of

Tara Twomey
National Consumer Law Center

Before the United States House of Representatives
Committee on Financial Services

September 17, 2008

I. Introduction.

Chairman Frank, Ranking Member Bachus, and members of the committee, thank you for inviting me to testify at today's hearing on "The Implementation of the HOPE for Homeowners Program and a Review of Foreclosure Mitigation Efforts." I am an attorney, currently of counsel to the National Consumer Law Center (NCLC).[1] Prior to joining NCLC, I was a clinical instructor at Harvard Law School where my practice focused on foreclosure prevention in the low-income communities of Boston. I am also a co-investigator, along with Professor Katherine Porter from the University of Iowa, in the Mortgage Project, a national empirical study of mortgage claims in consumer bankruptcy cases.

I testify here today on behalf of the National Consumer Law Center's low-income clients. On a daily basis, NCLC provides legal and technical assistance on consumer law issues to legal services, government and private attorneys representing low-income consumers across the country.

II. The Foreclosure Crisis Requires Substantial Action.

We are facing the greatest foreclosure crisis since the Great Depression. As we know, the statistics are grim. For the second quarter of 2008 foreclosure filings nationwide were up 121% over the second quarter of 2007.[2] In the same time period, nearly a quarter of a million properties were foreclosed.[3] As of July 2008, REO, or bank-owned, property

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[1] The National Consumer Law Center, Inc. (NCLC) is a non-profit Massachusetts Corporation, founded in 1969, specializing in low-income consumer issues, with an emphasis on consumer credit. On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of seventeen practice treatises and annual supplements on consumer credit laws, including *Truth In Lending*, (6th ed. 2007) and *Cost of Credit: Regulation, Preemption, and Industry Abuses* (3d ed. 2005) and *Foreclosures* (2d ed. 2007), as well as bimonthly newsletters on a range of topics related to consumer credit issues and low-income consumers. NCLC attorneys have written and advocated extensively on all aspects of consumer law affecting low-income people, conducted training for thousands of legal services and private attorneys on the law and litigation strategies to deal predatory lending and other consumer law problems, and provided extensive oral and written testimony to numerous Congressional committees on these topics.

[2] RealtyTrac, Inc., *Foreclosure Activity Up 14 Percent in Second Quarter* (July 25, 2008), *available at* *http://www.realtytrac.com/ContentManagement/pressrelease.aspx?ChannelID=9&ItemID=4891&accnt=64847*.

[3] *Id.* (reporting 222,391 REO properties for the quarter).

represented more than 16 percent of the inventory of existing homes for sale.[4] In some communities, bank-owned properties make up nearly 40 percent of existing inventory.[5]

The trouble is not behind us. Foreclosures have continued to surge in 2008.[6] In both the prime and subprime markets seriously delinquent[7] loans have continued to rise at an alarming rate, increasing three-fold since early 2006.[8] The figures for adjustable rate mortgages (ARMs) are more shocking. As the chart below demonstrates,[9] seriously delinquent ARMs have more than quadrupled in the past two and a half years. By mid-2008, nearly one-third of subprime ARMs were more than 90 days late or in foreclosure. Nationwide, it is estimated that 2.2 million households with subprime mortgage loans have lost or will lose their home to foreclosure over the next several years.[10]

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4 RealtyTrac, Inc. has reported more than three quarters of a million properties are in its active REO database. *See* RealtyTrac, Inc., *Foreclosure Activity Increases 8 Percent in July* (Aug. 14, 2008), available at http://www.realtytrac.com/ContentManagement/pressrelease.aspx?ChannelID=9&ItemID=5041&accnt=64847; National Association of Realtors, *July Existing-Home Sales Show Gain* (Aug. 25, 2008)(reporting total housing inventory at the end of July at 4.67 million existing homes for sale), *available at* http://www.realtor.org/press_room/news_releases/2008/july_ehs_show_gain.

5 Kelly Bennett, *Local Prices Down 30 Percent from Peak* (Aug. 27, 2008)(reporting 135 of 337 properties listed for sale on Aug. 21 and 22, 2008 in San Diego area were bank repossessions), available at http://www.voiceofsandiego.org/articles/2008/08/27/housing/869dataparty082708.txt.

6 *See* Chris Reidy, *2008 could be even worse for local foreclosures*, Boston Globe (Mar. 28, 2008)(estimating 2008 foreclosures to be at least 15 to 25 percent higher than the historic highs reached in 2007), available at http://www.boston.com/business/ticker/2008/03/report_2008_wil.html#

7 Seriously delinquent loans includes loans that are at least 90 days delinquent plus the loans in foreclosure inventory.

8 The seriously delinquent rate for subprime loans, both fixed and adjustable in the first quarter of 2006, was 6.22%. By the second quarter of 2008 that number had grown to 17.85%. Similarly, in the prime market the number of seriously delinquent loans has climbed from .77% in the first quarter of 2006 to 2.35% in the second quarter of 2008.

9 This chart contains data from the Mortgage Banker's Delinquency Survey for each of the quarters listed.

10 Ellen Schlomer, et al., *Losing Ground, Foreclosures in the Subprime Market and Their Cost to Homeowners*, Center for Responsible Lending (Dec. 2006) at 3.

YEAR	SERIOUSLY DELINQUENT ARMs: PRIME	SERIOUSLY DELINQUENT ARMs: SUBPRIME
2006	Q1: .82 Q2: .92 Q3: 1.14 Q4: 1.45	Q1: 6.28 Q2: 6.52 Q3: 7.72 Q4: 9.16
2007	Q1: 1.66 Q2: 2.02 Q3: 3.12 Q4: 4.22	Q1: 10.13 Q2: 12.40 Q3: 15.63 Q4: 20.43
2008	Q1: 5.43 Q2: 6.78	Q1: 24.11 Q2: 26.77

The consequences of this foreclosure crisis have not only ripped through Wall Street, they are taking a heavy toll on Main Street. Abuses in the subprime market have undermined the efforts of hardworking families to acquire and retain the dream of homeownership. Instead of building wealth, families are losing equity.[11] Worse yet, some foreclosed families are unable to find replacement shelter and become homeless.[12] Renters suffer, too, as lenders quickly evict tenants from foreclosed homes.[13] More and more Americans are being driven into bankruptcy.[14] And, neighborhoods are deteriorating as foreclosed homes are boarded

[11] *Id.* (estimating that foreclosures will cost homeowners as much as $164 billion, primarily in lost home equity).

[12] *See* Erlenbusch, et al., *Foreclosure to Homelessness: The Forgotten Victims of the Subprime Crisis,* National Coalition for the Homeless (Apr. 15, 2008).

[13] It is estimated that 18% of the foreclosure started in the third quarter 2007 were not occupied by the owners. *See* Brinkmann, *infra* note 30 at 10. *See also* Testimony of Sheila Crowley to the Financial Services Committee, U.S. House of Representatives (April 10, 2008)(discussing the affects of the foreclosure crisis on renters), *available at* http://www.house.gov/apps/list/hearing/financialsvcs_dem/crowley041008.pdf; John Leland, *As Owners Feel Mortgage Pain, So Do Renters, New York Times* (Nov. 18, 2007);

[14] The number of bankruptcy filings is projected to top more than one million filings for 2008—the highest number of filings since the 2005 amendments to the Bankruptcy Code. See Posting Robert Lawless on *Credit Slips* blog, Bankruptcy Filings Reach New High in August, http://www.creditslips.org/creditslips/2008/09/bankruptcy-fili.html#more (Sept. 2, 2008).

up and left vacant.[15] Crime in high-foreclosure neighborhoods is on the rise.[16] Overgrown lawns and trash-strewn yards symbolize growing community abandonment and disinvestment.[17]

To date the magnitude of the foreclosure crisis dwarfs the current response from the financial services industry and federal regulators. However, one of the few bright spots in the effort to stem the rising tide of foreclosures has been the enactment of the HOPE for Homeowners Act of 2008.

III. The Promises and Pitfalls of the HOPE for Homeowners Act of 2008.

In July 2008, the President signed into law a wide-ranging housing bill—the "Housing and Economic Recovery Act of 2008."[18] A key component of the law is the "HOPE for Homeowners Act of 2008."[19] The HOPE for Homeowners Act creates a new, temporary program authorizing FHA to refinance homeowners into 30-year fixed rate FHA mortgages. Under this program, the principal balance and/or interest rate for an eligible homeowner is reduced through refinancing into an affordable FHA-insured loan based on current property values. The goal is to convince existing mortgage holders that they are better off taking a short payoff rather than foreclosing. We appreciate the call by Chairman Frank and Committee members Waters, Watt and Miller to halt foreclosures until the program is up and running.

HOPE for Homeowners addresses important barriers to creating affordable, sustainable mortgage loans through a combination of loan modification and refinancing. First, the program specifically encourages principal writedowns, which have been virtually non-existent to date.[20] The amount of the principal obligation under the program must take into

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[15] *See* Letter, Senator Dodd to Senator Reid (Jan. 22, 2008)(describing cycle of disinvestment, crime, falling property values and property tax collections resulting from foreclosures), *available at* http://dodd.senate.gov/multimedia/2008/012308_ReidLetter.pdf.; Brad Heath and Charisse Jones, *Mortgage defaults force Denver exodus*, USA Today (Apr. 1, 2008)(in some Denver neighborhoods as many as one-third of residents have lost their homes).

[16] *See, e.g.,* J.W. Elphinstone, *After foreclosure, crime moves in*, Boston Globe (Nov. 18, 2007)(describing Atlanta neighborhood now plagued by house fires, prostitution, vandalism and burglaries).

[17] *See* Daphne Sashin and Vicki Mcclure, *Foreclosure leave painful ripple effect*, Orlando Sentinel (Oct. 15, 2007)(describing a once safe neighborhood now dotted with empty homes and overgrown lawns).

[18] Pub. L. No. 110-289 (2008).

[19] Title IV, Pub. L. No. 110-289 (2008).

[20] *See* Alan M. White, *Rewriting Contracts, Wholesale: Data on Voluntary Mortgage Modifications from 2007 and 2008 Remittance Reports* (Aug. 2008) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1259538 (studying voluntary loan

account the ability of the borrower to make the new loan payments, and the loans must run for at least 30 years. The law acknowledges that prepayment penalties can be a significant barrier to refinancing for distressed borrowers and requires such penalties to be waived. Similarly, fees and penalties related to defaults and delinquency must be forgiven. The program mandates appraisal independence to prevent the deliberate overstatement of property values—a practice underlying a significant number of mortgage fraud cases.[21] It addresses the "subordinate mortgage problem" by providing that all holders of outstanding mortgage liens on the property eligible for a new insured loan must agree to accept the proceeds of the insured loan as payment in full, and all related encumbrances must be removed. Lastly, the act checks the potential for "tranche warfare"[22] by providing that, unless the contract between a servicer of securitized mortgages and an investor states otherwise, a servicer is considered acting in the best interests of all investors of the pooled mortgages if the servicer enters into a modification or workout plan, including a modification or refinancing plan under the HOPE program.

The promise of HOPE for Homeowners is great. Set to begin on October 1, 2008, the program is authorized to insure up to $300 billion in mortgages and is expected to serve approximately 400,000 homeowners. Unfortunately, the pitfalls are also large.

Many anticipate that we will be well into 2009 before the program is operating at full speed. In the meantime, foreclosures will continue to run their course. In California alone, actual foreclosures auctions now average 700 per day.[23] Delay in full implementation means that hundreds of thousands of families who could have been helped will lose their homes. Additionally, while the act requires the establishment of "a reasonable limitation on origination fees" it remains unclear whether financially distressed homeowners will have the funds available to cover the costs, which average 2-3% of the loan amount, either directly or

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modifications and finding principal writedowns of more than 1% in only 62 (1.4%) of 4342 loan modifications within the sample).

[21] *See* FBI Press Release, *Mortgage Fraud Operation "Quick Flip,"* (Dec. 14, 2005)(estimating that industry professionals engaged in fraud for profit make up 80% of the mortgage fraud cases and rely, in part, on inflated property values), available at http://www.fbi.gov/pressrel/pressrel05/quickflip121405.htm.

[22] "Tranche Warfare" is a term used to describe mismatched interests among the investors in any given loan pool. A typical securitization results in different classes of securities, called tranches. Loan modifications can have different effects on different tranches giving rise to a conflict of interest between investors. As a result, servicers may be reluctant to engage in significant loss mitigation for fear of being sued by disgruntled investors.

[23] *See* DataQuick, Information Systems, Inc., *Another Increase in California Foreclosure Activity* (July 22, 2008)(63,061 trustees' deeds recorded, evidencing actual loss of home to foreclosure, during second quarter 2008), available at http://www.dqnews.com/News/California/CA-Foreclosures/RRFor080722.aspx.

indirectly. The largest obstacle, however, to achieving the promise of HOPE for Homeowners is that participation in the program remains entirely voluntary.

For more than a year now, the financial services industry has been encouraged to meet this growing foreclosure crisis by scaling-up voluntary loan modifications efforts. In May 2007, Senate Banking Committee Chairman Dodd announced a set of servicing principles aimed at long-term affordability.[24] Those principles called, in part, for loan modifications that would "create a solution for the borrower to ensure that the loan is sustainable for the life of the loan."[25] In June 2007, Chairman Sheila Bair of the FDIC called for automatic loan modifications for borrowers with subprime ARMs.[26] Like Senator Dodd's servicing principles, Chairman Bair emphasized the importance of providing sustainable loan modifications. A report from the Joint Economic Committee also suggested that automatic loan modifications were needed.[27] In September 2007, the federal and state banking regulators issued a joint statement on loss mitigation strategies, referencing earlier guidance and encouraging use of loss mitigation authority available under pooling and servicing agreements.[28] In October 2007, Treasury Secretary Paulson sought voluntary commitments from servicers to contact borrowers and explore new loan modification approaches.[29] Then in December, 2007, Secretary Paulson announced a plan for "fast track" loan modifications.[30]

Despite widespread efforts to encourage voluntary loan modifications, it is clear that the financial services industry has failed to implement a loan modification strategy on a scale commensurate with the problem. As Chairman Bair recently acknowledged, "[w]hile voluntary loan modifications have shown significant progress, at this point, it must be

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[24] Senator Dodd Unifies Industry Members, Consumer Representatives to Help Preserve the American Dream of Homeownership (May 2, 2007), *available at* http://dodd.senate.gov/index.php?q=node/3863/print

[25] Homeownership Preservation Summit Statement of Principles (May 2, 2007), *available at* http://dodd.senate.gov/multimedia/2007/050207_Principles.pdf.

[26] Remarks of FDIC Chairman Sheila C. Bair, American Securitization Forum (ASF) Annual Meeting (June 6, 2007).

[27] *The Subprime Lending Crisis: The Economic Impact on Wealth, Property Values and Tax Revenues, and How We Got Here*, Report and Recommendations by the Majority Staff of the Joint Economic Committee (Oct. 2007)(one of the key policy recommendations put forth in the report was to direct servicers and lenders to make safe and sustainable loan modifications).

[28] Statement on Loss Mitigation Strategies for Servicers of Residential Mortgages (Sept. 2007), *available at* http://www.occ.treas.gov/ftp/bulletin/2007-38a.pdf.

[29] Associated Press, *Paulson to Mortgage Industry: Help Curb Defaults* (Oct. 31, 2007), *available at* http://money.cnn.com/2007/10/31/real_estate/paulson_housing.ap/.

[30] American Securitization Forum, "Streamlined Foreclosure and Loss Avoidance Framework for Securitized Subprime Adjustable Rate Mortgage Loans", Executive Summary (Dec. 6, 2007), *available at* http://www.treas.gov/press/releases/hp706.htm.

acknowledged that the pace has not been sufficient to achieve the scale necessary to contain broader harm to communities and our economy."[31]

The data available thus far support the conclusion that little is being done by the financial services industry to help homeowners facing foreclosure. The HOPE NOW program issued its first data in early 2008.[32] Although touted as showing substantial improvement, the HOPE NOW report actually demonstrates that little progress has been made. The same can be said about the Mortgage Bankers Association's report on loan modifications issued in January 2008.[33] Both reports confirm that servicers are relying heavily on repayment plans rather than loan modifications. Repayment plans require homeowners to make increased monthly payments to cure arrears. They do not address payment affordability problems caused by high interest rates and resets. Most recently, a study by Professor Alan White of Valparaiso University School of Law supports the conclusion that the industry has not engaged in meaningful loan modifications.[34] Professor White analyzed loan level information from service remittance reports from July 2007 through June 2008. He concludes that:

> [W]hile the number of modification rose rapidly during the crisis, mortgage modifications in the aggregate are not reducing subprime mortgage debt. Mortgage modifications rarely if ever reduced principal debt, and in many cases increased the debt. Nor are modification agreements uniformly reducing payment burdens on households. About half of all loan modification resulted in a reduced monthly payment, while many modifications actually increased the monthly payment.

As Professor White notes, the result of mortgage modifications that do not reduce principal balances and in many cases do not even reduce monthly payments delay, is that they do not prevent large numbers of foreclosures.

We appreciate Congressional leadership on this issue and this Committee's continuing persistence in seeking solutions to the foreclosure crisis. While voluntary measures may be

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[31] Statement of Sheila C. Bair, Chairman, Federal Deposit Insurance Corporation on Using FHA for Housing Stabilization and Homeownership Retention, Testimony before the Committee on Financial Services, U.S. House of Representatives (Apr. 9, 2008).

[32] *See* HOPE NOW: Results in Helping Homeowners (Feb. 2008)(data covers 18 servicers representing 2/3 of the industry), *available at* http://www.fsround.org/hope_now/pdfs/JanuaryDataFS.pdf. The HOPE NOW data covers the period from July 1, 2007 to January 31, 2008. *See also* HOPE NOW Alliance Servicers, Prime and Subprime Residential Mortgages: 2007 Loss Mitigation Activities (February 2008), *available at* http://www.fsround.org/media/pdfs/NationaldataFeb.pdf.

[33] Jay Brinkmann, An Examination of Mortgage Foreclosures, Modifications, Repayment Plans and other Loss Mitigation Activities in the Third Quarter of 2007, Mortgage Bankers Association (Jan. 2008), *available at* http://www.mortgagebankers.org/files/News/InternalResource/59454_LoanModificationsSurvey.pdf.

[34] *See* White, *Rewriting Contracts, supra* at note 20.

able to help some borrowers, we believe that structural barriers inherent in the mortgage servicing industry will hamper the effectiveness of any voluntary programs, including the HOPE for Homeowners program. Accordingly, an essential component of any mortgage crisis solution involves enhanced obligations on the part of servicers to communicate with borrowers and seek reasonable loss mitigation prior to foreclosure.[35]

IV. The Servicing Industry Is Fundamentally Broken When It Comes To Meeting The Needs of Borrowers.

Mortgage servicers provide the critical link between mortgage borrowers and the mortgage owners. Since the 1990s, mortgage servicing has become an increasingly specialized and lucrative industry, driven in part by the need for one party to coordinate the distribution of mortgage revenues to the investors in securitized loans. The rights to service mortgage loans are routinely sold or transferred independently of the loans themselves. The servicers' goals in managing loans are generally two-fold: 1) to maximize its own profits and 2) to maximize the returns to the owner of the loan.

Servicers are generally responsible for account maintenance activities such as sending monthly statements, accepting payments, keeping track of account balances, handling escrow accounts, calculating interest rate adjustments on adjustable rate mortgages, reporting to national credit bureaus, and remitting monies to the owners of the loans. Servicers also are responsible for engaging in loss mitigation activities and prosecuting foreclosures.

Despite the important functions of mortgage servicers, borrowers have few market mechanisms to employ to ensure that their needs are met. While borrowers must be notified about any change in servicer,[36] they cannot choose the servicer that handles their loan or change servicers if they are dissatisfied. Recent headlines and court decisions around the country have called into question servicer and holder conduct with respect to borrowers in default.[37] For some time now homeowners and consumer advocates have struggled with

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[35] Recent efforts by the FDIC to engage in affordable loan modifications for delinquent Indymac borrowers demonstrate that reasonable loss mitigation programs on a large scale can be done. *See* Loan Modification Program for Distressed Indymac Mortgage Loans, *available at* http://www.fdic.gov/consumers/loans/modification/indymac.html.

[36] *See* 12 U.S.C. § 2605 (detailing transfer notice requirements).

[37] *See, e.g.,* Gretchen Morgensen, *Dubious Fees Hit Borrowers in Foreclosures,* New York Times (Nov. 6, 2007); Porter, Katherine M., *Misbehavior and Mistake in Bankruptcy Mortgage Claims* (November 6, 2007). University of Iowa College of Law Legal Studies Research Paper Series Available at SSRN: http://ssrn.com/abstract=1027961 (describing the systematic failure of mortgage servicers to comply with bankruptcy law and fees and charges that are poorly identified and do not appear to be reasonable); *In re Foreclosure Cases,* 2007 WL 3232430 (October 31, 2007)(dismissing 14 foreclosure

servicers who have no interest in helping families stay in their homes. Rather, in the interest of maximizing profits servicers have engaged in a laundry list of bad behavior and exacerbated foreclosure rates.[38] The most common abuses in loan servicing include misapplication of payments, use of suspense accounts, failure to make timely escrow disbursements, and cascading fees imposed upon homeowners in default.[39] These abuses exist because there are market incentives rather than deterrents for this type of behavior.[40]

Cutting Cost, Cutting Service. As with all businesses, servicers add more to their bottom line to the extent that they can cut costs. Servicers have cut costs by relying more on voicemail systems and less on people to assist borrowers, by refusing to respond to borrowers' inquires and by failing to resolve borrower disputes. Recent industry efforts to "staff-up" loss mitigation departments have been woefully inadequate. As a result, servicers remain unable to provide affordable and sustainable loan modifications on the scale needed to address the current foreclosure crisis. Instead borrowers are being pushed into short-term modifications and unaffordable repayment plans. These "kick the can" approaches to solving the foreclosure crisis do not provide real solutions for those affected borrowers. Instead, they merely postpones the day of reckoning.[41]

Obtaining Timely, Accurate and Consistent Information Is Difficult. The widespread use of automated voice response systems and the decline in "live" assistance for borrowers may improve the servicers' profits, but it is enormously frustrating to borrowers in need of help. From the homeowner's perspective one of the biggest obstacles to loan modification is finding a live person who can provide reliable information about the loan account and who has authority to make loan modification decisions. Stories abound of exasperated homeowners attempting to navigate vast voice mail systems, being bounced around from one department to another, and receiving contradictory information from different servicer representatives.[42] For example, an October 2007 survey from the Neighborhood Housing

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cases because purported holder could not demonstrate ownership of the loan at the time the foreclosure action were filed).

[38] *See* National Consumer Law Center, *Foreclosures*, Ch. 6 (2d ed. 2007)(describing the most common mortgage servicing abuses).

[39] *Id.*

[40] *See* Kurt Eggert, *Comment on Michael A. Stegman et al.'s "Preventive Servicing Is Good Business and Affordable Homeownership Policy": What Prevents Loan Modifications?,* 18 Housing Pol'y Debate 279 (2007).

[41] *See* Brinkmann, *supra* note 33 (Tables 2 and 3 showing that a large number of foreclosures result from failed repayment plans).

[42] *See, e.g.,* Gretchen Morgensen, *Can These Mortgages Be Saved?,* New York Times (Sept. 30, 2007)(describing one homeowner who identified 670 calls relating to her home foreclosure in the previous three months and who received nine different answers about how best to proceed from 14 different people at the company); *Miller v. McCalla*, Raymer, 214 F.3d 872, 875 (7th Cir.

Services of Chicago found that "countless counselors shared stories of having a client in the office ready to begin dealing with long-deferred financial problems, but then having to wait 30 minutes or more in order to talk to an appropriate loss mitigation staff person."[43] Unfortunately, things have not improved in recent months as servicers struggle to keep up with the increased workload caused by the foreclosure crisis.[44]

Servicers' claims that the lack of loan modifications is cause by unresponsive borrowers[45] are belied by the success of some industry players. For example, in July of this year, Mary Coffin, Executive Vice President of Wells Fargo Home Mortgage Servicing, testified to this Committee that Wells Fargo connected with 94 percent of its customers that were 60 or more days past due, but not in bankruptcy or foreclosure.[46] Wells Fargo's apparent success in reaching their delinquent customers, begs the question of what they are doing that other mortgage servicers are not? (Of course, what happens after the servicer connects with the borrower also is of great importance.)

Finding a Decision Maker Is Not Straightforward. Even if borrowers can get through to a servicer representative, there may be no one within the servicer operation who has the authority to negotiate a loan modification. In a response to FDIC Chairwoman Bair's call for automated loan modifications, the Consumer Mortgage Coalition described a structure devoid of decision-makers.[47] For private securitizations, the CMC complained that there is simply no active manager the servicer can call to get approval on a loan modification or a waiver of restrictions on modifications found in the pooling and servicing agreements (PSAs). The CMC stated: "While this passive structure may appear to give the servicer more discretion, in fact, because of the lack of an active decision-maker from which the servicer could obtain waivers of the usual requirements, no entity exists with the authority to grant

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2000)(describing the process of trying to get through to an 800 number as a "vexing and protracted undertaking").

[43] Neighborhood Housing Services of Chicago, Inc., *Lessons from the Front Lines: Counselor Perspectives on Default Intervention*, p.6 (Oct. 29, 2007).

[44] *See* Kate Berry, *The Trouble with Loan Repayment Agreements*, American Banker (Jan. 9, 2008)(noting that servicers push repayment plans instead of modifications because they "need twice the staff, and in part they can't manage the volume").

[45] See Testimony of Michalea Albon, Washington Mutual, before the United States House of Representatives, Subcommittee on Housing and Community Opportunity (Nov. 30, 2007)("Perhaps our biggest challenge, however, is simply reaching the borrowers who are most in need. If we can't reach them directly or indirectly such as through community organizations, we cannot help them).

[46] Testimony of Mary Coffin, Executive Vice President, Wells Fargo Home Mortgage Servicing, before the United States House of Representatives, Committee on Financial Services (July 25, 2008) at 3.

[47] Sam Garcia, *Group Warns on Large Scale Modifications: Consumer Mortgage Coalition sends letters to the FDIC*, Mortgage Daily News (Oct. 9, 2007).

waivers." An industry structure that provides no decision maker to deal with loan modifications is of little value to financially distressed borrowers trying to save their homes from foreclosure.

Unanswered Requests and Unresolved Disputes Are the Norm. Additionally, responding to borrower's written requests for information or written disputes is also time-consuming and costly for servicers. Currently, the Real Estate Settlement Procedures Act requires servicers to respond to such requests within 60 days.[48] However, it appears that the cost of compliance outweighs the cost of non-compliance. As a result, many borrowers requests simply go unanswered.[49] Borrowers' remedies for the servicers' disregard are limited. In fact, under current law, even if borrowers dispute the servicers' loan accounting, servicers may nevertheless continue a foreclosure proceeding without resolving the dispute.[50]

Getting to Affordable Loan Modifications Takes Work. Creating affordable and sustainable loan modifications for distressed borrowers is labor intensive.[51] The borrower's financial circumstances must be evaluated. Property valuations and debt service levels must be considered. In many respects, reaching affordable results requires servicers to reunderwrite the loan.[52] Under many pooling and servicing agreements, additional labor costs incurred by servicer's engaged this process are not compensated by the loan owner. By contrast, most servicers are paid a fee to foreclose on a borrower. Under this cost and incentive structure, it is no surprise that servicers continue to push borrowers into less labor-intensive repayment plans or towards foreclosure. As Moody's has noted "[i]t is not advantageous to modify a loan without knowing if the borrower can afford the modified obligations. If they can't, it may simply serve to postpone an eventual foreclosure and increase, rather than decrease, the ultimate loss on the loan."[53] Despite this obvious proposition, the financial services industry continues to oppose a duty to consider affordable alternatives to foreclosure.

Maximizing Income is a Servicer's Main Goal.

[48] 12 U.S.C. § 2605(e).
[49] *See, e.g.*, Maxwell v. Fairbanks Capital Corp., 281 B.R. 101 (Bankr. D. Mass. 2002).
[50] Reg. X, 24 C.F.R. § 3500.21(e)(4)(ii)(servicer not prohibited from pursuing collection activities during 60-day response period).
[51] Joseph R. Mason, *Mortgage Loan Modification: Promises and Pitfalls*, at 7(Oct. 3, 2007), *available from SSRN at* papers.ssrn.com/sol3/papers.cfm?abstract_id=1027470.
[52] Moody's, *U.S. Subprime Mortgage Market Update* (Apr. 2007), *available at* http://www.americansecuritization.com/uploadedFiles/US%20Subprime%20Mortgage%20Market%20Update%20%20April%202007.pdf
[53] *Id.* at 3.

Unpaid Principal Loan Balance Is the Key to Servicer Income. Customarily, the servicer collects a monthly fee in return for the services provided to the trust (or investors). The servicing fee provides the largest income stream for servicers. The fee is based on the unpaid principal loan balance and typically ranges from 25 basis points (prime loans) to 50 basis points (subprime loans). A PSA with a 50 basis point servicing fee and a principal balance of $2 billion would result in a servicing fee of just over $9.5 million per year. With the most significant portion of a servicer's income derived from the outstanding principal loan balance, it is not surprising that servicers have not engaged in large-scale principal writedowns. Indeed, to do so would cut directly into their profits.

Unreasonable and Unearned Fees Boost Servicer Income. Ancillary fees are imposed on borrowers to compensate servicers for the occurrence of particular events. The most common ancillary fee is a late fee, although a variety of other "servicer" fees exist. Such fees are a crucial part of the servicers' income because servicers are typically permitted under PSAs to retain such fees. Ocwen Financial Corporation reported that in 2007 nearly 12% (just over $40 million) of its servicing income was derived from late fees and other loan collection fees.[54] In 2006, Countrywide reported $285 million in revenue from late fees alone.[55] Because servicers are permitted to retain these ancillary fees, they have a perverse incentive to charge borrowers as much in fees as they can. Just one improper late fee of $15 on each loan in one average size loan pool (3500 loans) would generate an additional $52,500 in income for the servicer. The profit potential of retained fee income gives servicers a financial incentive to overreach in imposing ancillary fees and to load up accounts with such fees even when doing so may lower the ultimate return to investors.

While we know that servicer costs increase during times of high defaults, we also know that those higher costs are likely to be fully offset by other fees and costs charged to the borrower and recouped by the servicer upon foreclosure. For example, in a 2007 third quarter earnings call for the nation's largest servicer at the time, Countrywide Financial Corp., we learn that servicers generally are not concerned that high defaults will negatively impact their bottom line:

> "Now, we are frequently asked what the impact on our servicing costs and earnings will be from increased delinquencies and loss mitigation efforts, and what happens to costs. And what we point out is, as I will now, is that increased operating expenses in times like this tend to be fully offset by increases in ancillary income in our servicing operation, greater fee income from items like late charges, and importantly from in-sourced vendor functions that represent part of our diversification strategy, a

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[54] Ocwen Financial Corporation, Form 10-K (March 13, 2008), at 27 available at http://www.sec.gov/Archives/edgar/data/873860/000101905608000419/ocn_10k07.htm

[55] *See* Gretchen Morgenson, *Dubious Fees Hit Borrowers in Foreclosures*, New York Times (Nov. 6, 2007).

> counter-cyclical diversification strategy such as our businesses involved in foreclosure trustee and default title services and property inspection services."[56]

A recent bankruptcy case from Louisiana shows us how servicers can profit from unearned or illegal fees.[57] The case involves an elderly borrower and widow fighting to save her home in bankruptcy. Because inspections are automatically generated by the servicer's computer system, the servicer inspected the property on average every 54 days. However, upon closer examination of the servicer's records, the court found that some of those inspections were performed on other people's property and two were allegedly conducted at a time when Jefferson Parish, where the home was located, was under an evacuation order because of Hurricane Katrina. The court found that the penalty to the borrower for missing one $554.11 payment was $465.36 in late fees and other charges. The fees and charges almost equaled the amount of her one missed payment.

V. What more can be done?

Because of systemic problems in the mortgage servicing industry, voluntary, large-scale, affordable loan modifications are an aspiration rather than a reality. NCLC recommends several additional steps that Congress can take to address the still growing foreclosure crisis.

1. The now government-controlled GSEs should freeze foreclosures and modify loans.
2. Congress should enact H.R. 5679 that aligns mortgage servicers' interest with those of homeowners.
3. Congress should allow bankruptcy courts to modify home mortgage loans just as they can do for virtually every other kind of secured and unsecured debt.

A. The GSEs Should Freeze Foreclosures and Modify Loans

The GSEs should freeze foreclosures for a substantial period of time on all whole loans in their portfolios to allow for modification. Additionally, the GSEs should aggressively remove troubled loans from their securitized pools, without waiting for the loan to become delinquent, and place them in their portfolios so they can be subsequently modified. FHFA, along with Treasury and Congress, should design a modification process to avoid any negative tax consequences for homeowners. Principal reductions, which the GSEs have

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[56] Statement of David Sambol, President, Chief Operating Officer, Director, Countrywide Financial Corporation, Q3 2007 Earning Call (transcript on file with T. Twomey).

[57] *In re Stewart*, 391 B.R. 327 (Bankr. E.D. La. 2008) (awarding damages and legal fees and sanctioning Wells Fargo for the abusive and negligent imposition of fees, and moreover, ordering Wells Fargo to conduct an audit of every proof of claim filed on its behalf in cases pending in the district on or after April 13, 2007).

refused to do, interest rate reductions, and term extensions must all be used to create affordability. In the past, the GSEs have refused to pull loans from their securitized loans or modify delinquent loans aggressively. With the U.S. government now backing the GSEs, any barriers to changing these policies should be removed. To do otherwise would continue to undermine housing markets, create needless stress and disruption to beleaguered homeowners, and increase the number of foreclosed homes across the country. Secretary Paulson was recently quoted as saying that the regulators would work with financial institutions that own considerable GSE preferred stock to restore their capital positions. The same should be done for American homeowners. Moreover, the GSEs are substantial investors in subprime mortgage-backed securities, including in pools with loans originated by major subprime originators. The GSEs, as investors in senior tranches, should be playing a role in the decisions made by the servicers of these loans and moving the servicers toward more loan modifications, including principal writedowns, rather than mass movement toward foreclosures without reasonable loss mitigation.

B. Congress should enact H.R. 5679 that aligns mortgage servicers' interest with those of homeowners.

Congresswoman Waters has introduced a bill that recognizes the shortcomings of the mortgage servicing industry and would align mortgage servicer interests with those of homeowners trying to save their homes.

Mandating Borrower Access to a Decision Maker. From the homeowner's perspective one of the biggest obstacles to loan modification is finding a live person who can provide reliable information about the loan account and who has authority to make loan modification decisions. H.R. 5679, section 2(a) requires mortgage servicers to provide borrowers with contract information for a real person "with the information and authority to answer questions and fully resolve issues related to loss mitigation activities for the loan."

Requiring Information and Dispute Resolution Prior to Foreclosure. While the Real Estate Settlement Procedures Act currently requires servicers to respond to borrowers' request for information and disputes within 60 days, in practice many such inquires go unanswered. Despite this failure to respond, servicers are still permitted to proceed to collection activities, including foreclosure. H.R. 5679 ensures that borrowers facing foreclosure are no longer at the mercy of their servicer. Section 2(c) provides transparency to the servicing process by allowing the homeowner to obtain key information about the loan and its servicing history. The section also prohibits servicers from initiating or continuing a foreclosure proceeding during the period in which and outstanding request for information or dispute is pending.

Getting to Affordable Loan Modifications Takes Work. Creating affordable and sustainable loan modifications for distressed borrowers is labor intensive. It is no surprise, then, that

servicers continue to push borrowers into less costly repayment plans and short-term modifications. H.R. 5679 would align mortgage servicer incentives with those of the homeowner seeking to prevent a foreclosure. Section 2(a) of the bill creates a duty to provide reasonable loss mitigation prior to any foreclosure and prioritizes "home-saving" loss mitigation options over those that result in loss of the home. Any loss mitigation must be based on an affordability analysis that considers the borrowers debt to income ratio and residual income—to ensure enough actual dollars for non-housing expenses—as well inclusion of the borrower's full debt profile, including junior liens on the property.

Curbing Opportunities for Abuse. Loan modification or forbearance agreements often contain a waiver of claims provision that purports to release the servicer and holder from any past or future claims that the borrower may have. Broad release language potentially cuts off all claims the borrower may have related to the origination or servicing of the loan and is inappropriate in the context of a loan modification or forbearance agreement. H.R. 5679, Section 2(a) nips this pernicious practice in the bud by banning such waiver of rights in loan modification or forbearance agreements. The section also prohibits the equally abusive practice of forcing borrowers to arbitrate any disputes with the lender or servicer.

C. Congress should allow bankruptcy courts to modify home mortgage loans just as they can do for virtually every other kind of secured and unsecured debt.

To help families save their homes from foreclosure, we propose an amendment to the Bankruptcy Code to give bankruptcy courts the same authority to modify home mortgage loans as they have for virtually every other kind of secured and unsecured debt. Our recommendation does not attempt to revisit the changes to the Code made by the 2005 amendments. Rather, it addresses the limitations in current Chapter 13 based on the special protection afforded to home mortgage lenders by the 1978 Bankruptcy Code.

A fundamental goal of chapter 13 has always been to provide an opportunity for consumers to repay their obligations. Unfortunately, this has become exceedingly difficult in recent years because our bankruptcy laws have not kept pace with the enormous changes in the mortgage marketplace that have occurred since those laws were first enacted. New non-traditional loan products have challenged the ability of hard-working families who have fallen on difficult times to effectively use chapter 13 to save their homes.[58]

Generally, section 1322(b)(2) of the Bankruptcy Code permits debtors to modify the rights

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[58] *See* John Eggum, Katherine Porter and Tara Twomey, *Saving Homes in Bankruptcy: Housing Affordability and Loan Modification*, 2008 Utah L. Rev. __ (forthcoming September 2008).

of secured and unsecured creditors. Some of the ways that secured claims may be modified include altering the payment schedule, reducing the contract interest rate, or "stripping down" the amount of the claim.[59] These modifications can be applied to loans secured by cars, boats, second homes and vacation homes. However, an exception to this general rule restricts modification of "a claim secured only by a security interest in real property that is the debtor's principal residence."[60] This limitation can make it nearly impossible for debtors with unaffordable mortgage payments to save their homes from foreclosure through the bankruptcy process.[61] To bring the treatment of family homes in line with the provisions applicable to cars, boats and vacation homes we recommend the following:

Repeal Special Protection for Home Mortgages in Section 1322. This change will permit some borrowers who were provided unaffordable loans to lower their monthly payment to an amount they can pay and to keep that payment amount permanent by converting their ARM to a fixed rate mortgage. It will help borrowers blunt the devastating effect of future rate adjustments which were often not properly considered by lenders when assessing ability to repay at the time the loans were made. For high LTV loans made based on the lender's careless underwriting decisions and inflated or fraudulent appraisals, and which have prevented borrowers from refinancing out of unaffordable loans, borrowers who file Chapter 13 to deal with a foreclosure would have the right to reduce the mortgage claim to the value of the property. This change will extend to low- and middle-income consumers the same protections that are afforded family farmers, corporations, and wealthy individuals who own investment properties.

Amend Section 1322 to Permit Reamortization. Permitting modification by itself does not fully address the problem based on the current structure of the Code. This is because modified secured claims in Chapter 13 must be paid in full during the three to five years of the plan. For home mortgages with large outstanding balances, this is impossible for most borrowers and they would not benefit from the change permitting modification. To address this, we propose a solution which Congress has already provided for family farmers in

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[59] "Stripping down" or bifurcating a secured creditor's claim means to divide the claim into two parts: the secured portion, which is equal to the value of the collateral, and the unsecured portion represented by any amount owed over the value of the collateral. 11 U.S.C. § 506(a). Through this process, the secured creditor's rights in the collateral are preserved, but its rights to the debtor's property other than the collateral are limited and no greater than those of other creditors. Thus, the Code prevents the secured creditor from obtaining an unfair advantage in the bankruptcy case over the unsecured creditors out of proportion to the true value of its security interest.

[60] 11 U.S.C. § 1322(b)(2); *Nobleman v. Am. Sav. Bank*, 508 U.S. 324, 332, 113 S. Ct. 2106 (1993).

[61] In order to retain a home in bankruptcy, the Code generally requires debtors to make ongoing monthly mortgage payments as well as additional monthly payments to make up any arrearage on the mortgage loan.

Chapter 12 cases. Section 1322 should be amended to include a provision similar to section 1222(b)(9) which permits the borrower's loan to be reamoritized based on the modified terms and paid over a period beyond the plan term, generally up to thirty years.

VI. Conclusion

Thank you for the opportunity to testify before the Committee today. The foreclosure crisis is continuing to swell and the need to act is great. Foreclosure freezes and loan modifications by the GSEs, passage of H.R. 5679 and enactment of bankruptcy legislation all are needed to save homes and stabilize the market. We look forward to working with you to address the economic challenges that face our nation today.

Testimony of Alan M. White

Valparaiso University School of Law

Before the House Committee on Financial Services

Hearing on the Implementation of the HOPE for Homeowners Program and a Review of Foreclosure Mitigation Efforts

September 17, 2008

Chairman Frank, Ranking Member Bachus, and members of the Committee, thank you for this opportunity to testify concerning the vital questions of how we are responding and should respond to the foreclosure crisis. I have studied the subprime mortgage industry for the past ten years, and I am currently researching mortgage defaults, foreclosures, workouts and modification agreements. At a Federal Reserve Board hearing in Boston on August 4, 2000, I testified that while high fees and frequent refinancings were a concern, mounting foreclosure rates were a bigger problem, and I urged the Federal Reserve to require reasonable determinations of repayment ability by subprime lenders. Before I moved to full-time teaching last year, I worked with hundreds of homeowners facing foreclosure as a legal services lawyer in Philadelphia, and negotiated dozens of loan modification agreements.

Today I will summarize my findings thus far on mortgage modifications during the last twelve months, suggest the need for a federal role in gathering and reporting information on mortgage foreclosure and workouts, and offer some observations on why mortgage servicers are not modifying mortgages more aggressively.

Given the stakes and the economic impact of foreclosures, there is surprisingly little reliable information about whether the Administration's plan to rely on voluntary industry-led measures is working. Policy makers and the public want to know answers to some basic questions: How much longer will record levels of foreclosures continue? Are we doing everything possible to avert preventable foreclosures? Are mortgage servicers offering appropriate restructuring terms to distressed homeowners, and are mortgage investors suffering needless losses on distress-price foreclosure sales? On the other hand, are homeowners simply delaying the inevitable, because payment plans and modification agreements are not working, which will lead to further defaults and losses?

To address the lack of information on mortgage modifications, I have begun collecting data from monthly remittance reports prepared by mortgage servicers for investors. These reports are generally not filed with the SEC, because of a rule that exempts securitizations with fewer than 300 investors from ongoing reporting. However, some mortgage servicers and trustees make these reports available on their web sites.

So far I have gathered information about 4,300 mortgage modifications made between July 2007 and June 2008, in a sample of 105,000 mortgages. The sample included nine of the top fifteen subprime mortgage lenders and eight of the top fifteen servicers. The loans were all originated in 2005 and 2006, and were predominantly hybrid adjustable-rate mortgages.

The first striking finding is that in 98% of the modifications, the principal balance is not being significantly reduced, and in about half the cases the balance is increasing. This is very troubling, given the decline in home values, and the fact that many of these homeowners already owe more than their house is worth. Even if their short-term payment problem is resolved, the long-term incentives for homeowners with negative equity are not good.

Principal reductions of more than 1% were made in only about 1.5% of the modifications. (I treated principal changes of plus or minus 1% or less as no change in principal.) Nearly two-thirds of the very few principal reductions were made in two of the twenty-six loan pools, those serviced by Ocwen. Ocwen is publicly known as being more aggressive with loan modifications than its peer servicing companies.

The second striking finding is that nearly half of all loan modifications did not even reduce the monthly payment amount. These truly are short-term solutions, which may be quite appropriate for homeowners who faced temporary difficulties, but are not useful in the more common situation where the monthly payment was unaffordable from the origination of the loan.

It appears that there are three types of loan modifications commonly being used by these subprime servicers. The first type is the widely publicized teaser-freezer plan, which converts adjustable-rate mortgages to fixed-rate, at least temporarily, in order to prevent an unaffordable payment increase. Teaser-freezer modifications appear to have been relatively uncommon. I compared the reset date for these mortgage pools, many of which were heavily dominated by so-called 2/28 ARMs, with the level of modification activity, and did not find any obvious association between the number of modifications and the date of the rate resets. It is certainly possible that rate freezes are offered many months before or after the reset date, but most modifications seem to fall in two other categories.

The second type of loan modification, accounting for half of the cases, is an interest rate reduction, associated with a payment reduction, and usually no significant change in the principal debt. These interest rate concessions can produce large monthly savings, and certainly can ease homeowners' cash flow problems, while not impairing investors' return of principal. Some interest rates were reduced to 4%, or even 1%. On the other hand, the average rate *after reduction, for loan modifications with rate reductions,* was more than 6.7%, and the negative equity problem remains for these families.

The third type of loan modification, accounting for about a quarter of all modifications, is a capitalization of unpaid interest arrears and reamortization of the increased principal. In this arrangement, the interest portion of missed payments gets added to the loan balance. These recasting agreements result in a higher principal balance, and a higher monthly payment, and leave the interest rate unchanged. In some cases, reducing the interest rate mitigates this effect, but that does not seem to be a modification package that is commonly offered.

Thus, if the problems to be solved are: first, excessive total mortgage debt and second, payments that are not affordable, the first problem is almost never being solved, and the second is being redressed in only about half of the modifications offered.

At the same time, the urgent need for sustainable mortgage modifications grows every month. During the past twelve months the loss severities on completed foreclosures have increased from about 30% to almost 40% on average, meaning that investors are doing worse and worse by choosing the foreclosure option. At the same time, the ability of borrowers to refinance has steadily eroded, to the point where by June 2008 there were more foreclosure sales than refinancings.

Equally striking was the fact that the number and type of modifications varies tremendously from one servicer to another. Although the trustee was the same for all the mortgage pools I studied, there was no uniformity in the approach to workouts. Some servicers made significant principal and monthly payment reductions, while others offered only reamortizations that increased loan balances. During the twelve months in question, one servicer modified 2% of the delinquent mortgages in a pool, while another servicer modified 56% of the delinquent mortgages in one of its pools.

The complete paper detailing my findings is available on line at http://ssrn.com/abstract=1259538.

Although there is not much reliable data on how well borrowers do after their loans are modified, industry estimates on re-default rates seem to run at about 35% to 40%. While this seems high, it means that more than half of these homeowners are able to maintain their new payments, even without any significant principal reductions, and often without even a payment reduction. It seems intuitively obvious that more generous loan restructuring would produce better success rates. As for borrowers who are defaulting a second time, it is true that investors may suffer increased losses, but measuring those incremental losses, and comparing them with the savings from successful modifications and workouts, is a complex undertaking. In my view, the fact that 2007 loan modifications were not uniformly successful should not necessarily lead us to give up on more aggressive modifications as a solution to the crisis.

I would also like to address briefly the need for better public information gathering and reporting concerning the unfolding crisis. At present the public does not know the answers to basic questions about foreclosures and workouts, although the information exists. The Mortgage Bankers Association's quarterly National Delinquency Survey (NDS) comes out two months after the fact. While its coverage is comprehensive, the NDS provides the number of foreclosures started, and the number in process, but not the number of final foreclosure sales, or any information about foreclosure alternatives such as modification agreements. The HOPE NOW coalition releases monthly data in a more timely fashion, but does not cover the entire mortgage market, and while their reports do provide numbers of loan modifications, there is no information about the nature of those modifications, nor about whether they are successful, i.e. whether homeowners are remaining current on modified mortgages. The state agency Foreclosure Prevention Working Group has released two reports to date, with richer detail, but does not appear to be a regular and permanent source of public

information. The federal banking regulators are gathering data from the banks they supervise, but thus far have not made it publicly available.

It would be extremely useful for the Federal Reserve Board or another regulator to conduct and make public a monthly survey of mortgage servicing, that would tell us not only how many delinquencies and new foreclosures there are, but would report all the important outcomes. The survey should include how many foreclosure sales were completed, how many new modification and repayment agreements were made, how many prior modification agreements have re-defaulted, and the terms of the modification agreements, including their effect on principal, interest, and monthly payment, and whether they are permanent or temporary. This information could not only inform future policy initiatives, but also stabilize capital markets by allowing investors to better gauge the extent of losses and loss mitigation efforts.

Why have there been so few principal write-downs? One important factor is investor psychology. Ocwen has aggressively modified loans it services and has stopped the rise in delinquencies as a result. But it has also raised a hue and cry from its investors, because the modifications have meant immediate realization of losses, which show up in monthly cash flow reports. Until now, the real losses hitting investors in the wallet have dribbled out, a little at a time, as the long, slow foreclosure process winds forward. Experts expect that subprime pools will eventually have losses of 25% or more, but the realized losses to date have often been less than 5%. The worst is still to come, and investors are in denial. When loan modifications are done, the loss shows up right now, in this month's remittance report.

Fear of liability is also undoubtedly a factor. The Housing and Economic Recovery Act's provision regarding servicers' fiduciary duties may be helpful in assuaging these fears, but groupthink in the mortgage industry still seems to be very wary of principal write-downs. That resistance may prove difficult to overcome, even in the context of the new FHA refinancing program.

One difficulty with the Hope for Homeowners FHA refinancing initiative is the requirement that all foreclosure costs and fees be waived, rather than simply requiring them to be paid from investor proceeds (i.e. added to the principal loss.) This provision may prevent servicers from passing on foreclosure costs and expenses to investors. This would result in an incentive to foreclose, so that servicers can charge the investors for their costs and advances.

On the other hand, the nationalization of Fannie Mae and Freddie Mac offers a tremendous opportunity to change servicer psychology. Just as the FDIC has done with the IndyMac alt-A mortgages, the FHFA could insist on immediate implementation of aggressive loan restructuring by Fannie and Freddie, not only for the subprime and alt-A loans they hold, but the large pools in which they are the principal investors through their holdings of subprime mortgage-backed securities. Fannie and Freddie hold significant shares of mortgages originated by Countrywide, Option One, Ameriquest and many other major subprime lenders. We have met the investors, and the investors are us.

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August 27, 2008

The Honorable Barney Frank
Chairman
House Committee on Financial Services
Washington, DC 20515

The Honorable Maxine Waters
Chairman, Housing and Community Opportunity Subcommittee
Washington, DC 20515

The Honorable Mel Watt
Chairman, Oversight and Investigations Subcommittee
Washington, DC 20515

The Honorable Brad Miller
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Frank, Chairman Waters, Chairman Watt, and Rep. Miller:

Thank you for your letter of August 5, 2008, regarding the implementation of the Housing and Economic Recovery Act of 2008 (HERA) and how lenders will be preparing to use the Hope for Homeowners program.

Because the American Bankers Association is a trade association and not a lender, we do not have portfolios of loans or servicing agreements. Therefore, while I have no information to provide you in direct response to your specific questions, I do want to let you know of the significant efforts the ABA is undertaking to ensure that our members know of the Hope for Homeowners program and are ready and able to utilize it when it is implemented.

We do expect, and will encourage, our members to participate in the Hope for Homeowners Program when it becomes active. ABA's witness before your Committee, James Barber, CEO of Acacia Federal Savings Bank, offered the following observation in his testimony:

> Clearly, the targeted industry effort is having a positive effect, though we believe things could be improved. Legislation crafted by you and this Committee, Mr. Chairman, has a key component which the ABA believes will provide additional tools for assisting more troubled borrowers. The Hope for Homeowners Act contained in that legislation will create a voluntary program through which troubled borrowers will be able to work with servicers to reduce their indebtedness, gain some equity in their homes, and stabilize their financial situation. While servicers and investors choosing to participate in the program will have to take a significant haircut as the existing loan is replaced with an FHA loan, we expect that many might choose to do so...

Feedback received from our members since the passage of the HERA further bolsters our belief that member institutions will use this important new tool.

Banks will need to know specifics about the underwriting and eligibility standards governing the Hope for Homeowners Program before they can begin to offer the program to troubled borrowers. These standards are currently being developed by the Federal Housing Administration (FHA) and the board established under the authorizing legislation.

Immediately after final passage of the legislation, we began discussions with staff of the FHA about the best avenues for assisting in implementing the program. We have assembled a working group of bankers who are working, along with ABA and FHA staff, to provide insight, assistance, and feedback on the implementation of the program with a date certain of October 1 for implementation.

We have provided ABA members and our affiliated state associations with a detailed summary of the provisions of the legislation through our website, www.aba.com. A teleconference, which will be heavily promoted to our membership and made available to all ABA members, will promote the program and ensure that members are reviewing their portfolios for eligible loans.

We are also providing information to members on both a group and individual basis about the program and how and when they can utilize it. We have promoted, and we shall continue to promote, the program in a number of our information sources for members, including our Washington Information Network News, Washington Perspective, and NewsBytes publications. We also provide individual responses to banker inquiries arising from the information published in these sources.

The ongoing instability in the mortgage markets and the potential foreclosures facing many homeowners are among the most serious problems facing our nation. ABA applauds Congress for providing the important set of tools included in the Housing and Economic Recovery Act of 2008, and we pledge to continue to work with our members to see that those tools are put to good use.

Please do not hesitate to contact me if I may be of further assistance or provide additional information.

Sincerely,

Edward L. Yingling

American
SECURITIZATION
FORUM

August 31, 2008

Representative Barney Frank 2252 Rayburn House Office Building Washington, D.C. 20515	Representative Maxine Waters 2344 Rayburn House Office Building Washington, D.C. 20515
Representative Melvin Watt 2236 Rayburn House Office Building Washington, D.C. 20515	Representative Brad Miller 1722 Longworth House Office Building Washington, D.C. 20515

Dear Representatives Frank, Waters, Watt and Miller:

On behalf of the American Securitization Forum ("ASF")[1], I am pleased to respond to your letter to me dated August 5, 2008. In your letter, you requested information on certain mortgage servicing practices as they may be relevant in the context of the FHA "Hope for Homeowners" refinancing program, which was enacted as part of the recent housing reform legislation.

As a not-for-profit securitization industry association, ASF cannot respond to the questions posed in your letter in the same manner as individual loan servicers with respect to servicing activities that they undertake directly. We expect that individual servicers will address their own servicing practices in their separate responses to you. However, ASF has worked extensively and on a collective basis with many loan servicers in connection with their loan modification and loss mitigation activities, and for that reason we have several perspectives to share on the issues and questions raised in your letter.

Initially, and as we have emphasized in prior public statements and in testimony before your Committee, foreclosures serve no one's interest. From a secondary market perspective, foreclosure is usually the most costly, and therefore typically the least preferred, alternative for resolving a troubled mortgage loan. ASF's members and securitization market participants generally therefore share your goal of doing everything possible to prevent avoidable foreclosures, and to ameliorate the pain, cost and dislocation that foreclosures visit upon borrowers, communities and our society.

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[1] ASF is a broad-based professional forum of over 370 member organizations that are active participants in the U.S. securitization market. Among other roles, ASF members act as servicers, issuers, institutional investors, financial intermediaries, professional advisers and rating agencies working on securitization transactions backed by all types of assets. ASF's mission includes building consensus, pursuing advocacy and delivering education on behalf of the securitization markets and its participants. Additional information about the ASF, its members and activities may be found at ASF's internet website: www.americansecuritization.com. ASF is an independent forum of the Securities Industry and Financial Markets Association.

In recognition of this shared goal, ASF has undertaken numerous initiatives, working collaboratively with industry participants, counseling organizations, other industry groups and regulatory, legislative and policymaking bodies to design, implement and promote effective loss mitigation, loan modification and foreclosure prevention initiatives. Examples of such ASF initiatives include: 1) our June 2007 guidance that facilitated widespread use of loan modifications by mortgage loan servicers where appropriate; 2) our December 2007 guidance that developed a streamlined loan modification framework that most mortgage loan servicers have adopted; and 3) our October 2007 and May 2008 operational guidelines that have created a market practice for mortgage servicers to reimburse credit counselors from securitization cashflows in appropriate circumstances. We believe that these and other industry-led initiatives have had a meaningful impact on foreclosure avoidance, and ASF's work in this area is continuing.

The main perspectives that ASF would like to share with you relate to those portions of your letter that ask servicers to forbear pursuing foreclosures for borrowers that might be eligible for the Hope for Homeowners program, and that inquire whether servicers are prepared to make principal reductions necessary to qualify at-risk borrowers for refinancing into that program. In particular, we would like to share with you some perspectives on the factors that influence servicer decision-making among various loss mitigation alternatives, specifically as they relate to distressed mortgage loans that in typical securitization transactions.

We believe that the Hope for Homeowners Program is a helpful and desirable loss mitigation program that may offer another alternative to foreclosure for some, and perhaps many borrowers. However, it is essential for this program to remain genuinely voluntary, and for servicers to retain all loss mitigation options available to them, both now as well as after the program goes into effect. This means that a servicer should seek to use the Hope for Homeowners program where it concludes, in its professional judgment and consistent with its existing contractual duties to investors, that refinancing under this program is likely to maximize recovery on the related loan.

Now that legislation authorizing the Hope for Homeowners Program has been enacted, we understand that servicers are beginning to evaluate borrowers and loans within their securitized portfolios for potential program eligibility. Indeed, consistent with their existing contractual obligations, servicers have a duty to investors to evaluate whether using this program represents best available option to maximize the net present value of a mortgage loan in comparison with other alternatives, including but not limited to foreclosure.

However, not all loans and borrowers theoretically eligible for this program will be viable candidates for refinancing, for a host of reasons that may be unrelated to the satisfaction of initial program eligibility criteria. Moreover, formal program eligibility criteria are still being developed, and at this stage, it is therefore not possible for servicers to determine with precision which borrowers and loans will be likely to qualify. In the meantime, in fulfillment of their contractual duties to investors, servicers remain obligated to undertake appropriate loss mitigation actions with respect to loans in their securitized portfolios. In some cases, servicers

may conclude that investors' best interests will be served by deferring a foreclosure action, where they believe the Hope for Homeowners Program potentially offers a better loss mitigation alternative than other, non-foreclosure alternatives. However, there will also be situations where servicers conclude that this is not the case, and that some other loss mitigation alternative—including foreclosure—should be pursued. In these cases, servicers should not be subjected to undue pressure to defer foreclosures, or to second-guessing of good faith servicing judgments they make in fulfillment of their contractual duties to investors.

With respect to principal reductions, your letter states that the Hope for Homeowners Program permits servicers and investors to take a single large loss now (through a principal reduction), while eliminating the risk of future loss, and that doing so will keep more people in their homes and avoid the enormous losses associated with foreclosure. We agree that the Hope for Homeowners Program eliminates redefault risk to existing noteholders and caps investor loss on loans that are refinanced through the FHA. However, it does not eliminate the uncertainties that servicers face, and the judgment they need to exercise, regarding whether and to what extent to write down principal on a loan. This is because the availability of the Hope for Homeowners Program does not in any way affect the analysis of whether a principal reduction (coupled with an FHA refinancing) maximizes recovery on a mortgage loan in comparison with other options that may be available to a servicer, including foreclosure. Maximizing the net present value of a mortgage loan—not capping the amount of loss on that loan—is the central and overriding duty that a servicer must fulfill to investors. Accordingly, servicers may reasonably and appropriately conclude (even for loans that are eligible or potentially eligible for principal writedowns and refinancing via the Hope for Homeowners Program) that alternative loss mitigation solutions should be pursued in order to satisfy their contractual duties to investors.

In closing, I would again like to emphasize that ASF believes that the Hope for Homeowners Program can be a valuable tool that may be used in appropriate circumstances to avoid otherwise preventable foreclosures. Our interaction with servicer members of ASF indicates that they are undertaking a thoughtful and systematic process to evaluate and to make full use of the program for eligible borrowers in a manner that is also consistent with their contractual duties to investors in securitized instruments. We hope the foregoing perspectives are helpful to your continuing consideration of these important issues, and we stand ready to assist you and the Committee in any way that we can. Please feel free to contact me at 212.313.1111 or at gmiller@americansecuritization.com with any additional questions that you may have.

Sincerely,

George P. Miller

George P. Miller
Executive Director
American Securitization Forum

Bank of America

Federal Government Relations

September 3, 2008

The Honorable Barney Frank, Chairman
Committee on Financial Services
United States House of Representatives
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Maxine Waters,
Chairwoman
Subcommittee on Housing and Community
Opportunity
United States House of Representatives
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Melvin L. Watt, Chairman
Subcommittee on Oversight and
Investigations
United States House of Representatives
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Brad Miller, Member
Committee on Financial Services
United States House of Representatives
2129 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Frank, Chairwoman Waters, Chairman Watt and Congressman Miller:

This letter is in response to your letter to Kenneth D. Lewis dated August 5, 2008 asking for additional information on Bank of America's mortgage servicing practices and plans with respect to the Hope for Homeowners Program.

As the leading lender and servicer of mortgage loans in the country, following the acquisition of Countrywide in July 2008, Bank of America understands and fully appreciates our role in helping borrowers maintain homeownership. We are committed to being a responsible lender and servicer, and facilitating home ownership and retention. To that end, Bank of America currently uses a range of home retention options – tailored to individual circumstances – to assist borrowers who are struggling to make their monthly loan payments. These options include:

- Formal and informal workout arrangements that allow borrowers additional time to bring their loans current;
- Partial claims that involve unsecured, no-interest or low-interest loans to borrowers to cure payment defaults;
- Loan modifications that may significantly reduce interest rates, extend maturities or otherwise modify loan terms; and
- Targeted strategies for borrowers facing interest rate resets that include automatic interest rate reductions for up to five years.

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Bank of America, DE5-001-02-07
1100 North King Street, Wilmington, DE 19884-0127

Recycled Paper

Bank of America uses these options to assist at-risk borrowers from the time the borrower is having difficulty making their mortgage payments through the foreclosure process.

Bank of America is working diligently to expand the home retention options available to borrowers in distress. The Hope for Homeowners Program will be another tool available to help these homeowners. We expect to include Hope for Homeowners among the options that we utilize to aid at-risk borrowers and are actively working on incorporating this tool into our consumer mortgage servicing business.

We respond to your specific questions as follows:

1. Will you be using the next few months to review loan documents, contact borrowers and forbear foreclosure for those that may qualify?

Yes.

Bank of America is taking action so that borrowers who may qualify for the Hope for Homeowners Program do not lose their homes to foreclosure pending its effective date. While we do not yet have regulations that provide greater certainty as to who will qualify, we are in the process of making preliminary assessments as to which borrowers whose mortgage loans are currently in foreclosure may qualify for the program. We expect to use the next month to attempt to contact borrowers so identified, in order to confirm their eligibility for and interest in participating in the program. Subject to investor consent and state procedural considerations, during this time we will avoid completing foreclosure sales for the borrowers identified.

2. Do you anticipate making the principal reductions necessary to qualify for refinancing at-risk borrowers into the Hope for Homeowners Program?

Yes.

Bank of America will continue to tailor our workout strategies to a borrower's particular circumstances and loan economics. In those instances where the Hope for Homeowners Program is the best option to use, we would expect to make the principal reductions necessary under the program and will work with investors for approval to make these principal reductions when required under the terms of our servicing agreements. With regard to second lien holders, we believe the regulations will need to appropriately incent those lien holders to participate in the program in order to increase participation.

3. Do your servicing practices provide that a previous loan modification would not disqualify a borrower from the principal modifications required by the Hope Program?

Our servicing practices do not automatically disqualify a borrower with a prior loan modification from being eligible for a principal reduction that would be necessary for

participation in the Hope for Homeowners Program. A borrower's performance under a prior modification generally is, however, a factor that is considered in determining whether further loan modifications will effectively optimize recovery on a mortgage loan.

* * *

We believe the Hope for Homeowners Program will be a valuable addition to the many programs Bank of America already has in place to assist borrowers in bringing their delinquent loans current and saving their homes from foreclosure. Please feel free to have your staff contact me if you have any further questions.

Respectfully,

John Collingwood
Senior Vice President

CHASE

David B. Lowman
CEO Global Mortgage

September 5, 2008

The Honorable Barney Frank
Chairman, Committee on Financial Services
United States House of Representatives
2120 Rayburn House Office Building
Washington DC 20515

Dear Chairman Frank:

I have been asked to respond to your letter of August 5th, 2008 to Jamie Dimon on behalf of the residential mortgage servicing operations of JPMorgan Chase & Co., which include Chase Home Finance and EMC. You requested that we provide the Committee with additional information regarding our mortgage servicing practices and indicated three specific areas of interest. We would like to take this opportunity to respond to your inquiry and are always available for further discussion.

Will you be using the next few months to review loan documents, contact borrowers and forbear foreclosure for those who may qualify?

Chase has had an ongoing and proactive outreach program to our borrowers in place since early 2007. As new programs become available that may provide relief to distressed borrowers, we are continuously evaluating customers in our portfolio for eligibility and developing procedures to make those programs available to qualifying borrowers. A recent example includes the expansion of FHASecure. Using portfolio segmentation techniques based on the parameters available from FHA, we were able to target the customers most likely to qualify for such a refinance offer and reach out to them.

We anticipate taking a similar approach to the Hope for Homeowners Program. However, limited eligibility criteria is presently available, so any segmentation we undertake now will have to be done on a very broad basis. When more defined credit parameters become available from HUD and the Board, we will be better equipped to advise borrowers regarding their eligibility to participate in the Program. To that end, we are actively engaged with HUD and others in the industry to help refine the eligibility criteria based upon the requirements set forth in the law that was recently passed.

We will continue to make our decisions regarding the initiation of foreclosure as we do today, that is taking into account all the facts and circumstances of a particular borrower and their history, and we will include their possible eligibility for this program as a factor in the case of our owned portfolio loans. For loans not owned by Chase, we will continue to work with our investors and the Government Sponsored Enterprises (GSEs) to ensure we are achieving the best result for our customers, consistent with our contractual obligations to our investors. Through

our work with the HOPE NOW Alliance and the GSEs, there are a number of programs already available, such as Project Lifeline, that provide for a "pause" in the foreclosure process to allow borrowers to reach a viable workout solution.

Do you anticipate making the principal reductions necessary to qualify for refinancing at risk borrowers into the Hope for Homeowners Program?

Since the Program, as designed, contemplates that most borrowers will need a reduction in principal to qualify for the Program, that becomes part of the portfolio analysis we will undertake. Using information available to us, we will model out the home's value and what type of payment reduction we expect would be needed to fit the Program's requirements and be a sustainable affordable payment for the borrower. Then we can compare the economic loss that represents relative to other alternatives. As you rightly point out, there are a number of factors to take into consideration including future house price depreciation, the impact of the surplus inventory already on the market, as well as the pain and expense of foreclosure and the destabilizing effect it has on neighborhoods.

Do your servicing practices provide that a previous loan modification would not disqualify a borrower from the principal modification required by the Hope Program?

There are policies we are required to adopt under the FFIEC's guidance respecting multiple modifications and re-aging. These policies are designed to ensure that the assets are being fairly represented as performing assets. However, we do not believe that our policy would be a barrier to refinancing a borrower into a new restructured loan that materially reduces the payment amount and should significantly increase the prospects for timely performance in the future. We intend to engage in a dialogue with our primary regulator, the OCC, to be sure they are comfortable with our approach from a safety and soundness perspective.

We will continue to work vigorously to help keep borrowers in their homes.

Very truly your,

Dave Lowman

David B. Lowman

Cc: Jamie Dimon

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August 29, 2008

Honorable Barney Frank
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Frank:

Citigroup, Inc. is in receipt of your letter relating to the "Hope for Homeowners" refinance program included in the Housing and Economic Recovery Act of 2008. Citigroup shares your interest in implementing the benefits of this program at the earliest possible opportunity prior to its effective date of October 1, 2008. As Citigroup has long supported efforts to keep willing borrowers in their homes and avoid foreclosure, we share your concerns. Citigroup strongly believes not one borrower should lose his/her home solely due to the delay in the effective date.

We want to take this opportunity to assure you that Citigroup, Inc. as a servicer of residential mortgage loans will not, to the extent consistent with existing contractual duties to investors, initiate foreclosure on the home of any eligible borrower prior to the October 1, 2008 effective date. Eligible borrowers will include those who (i) are in contact with us; (ii) remain in the home and want to continue to do so; (iii) are interested in a workout of any current default or reasonably foreseeable default and (iv) will qualify for a refinance under the FHA "Hope for Homeowners" program. Having been granted a previous loan modification will not, in and of itself, render the borrower ineligible for further loss mitigation. Borrowers who are ineligible and are unable to be helped by loss mitigation will only proceed to foreclosure when all other solutions have been exhausted.

Citigroup has developed extensive loss mitigation programs designed to help borrowers who want to remain in their homes and have the ability to do so. We have published periodic reports outlining our mortgage foreclosure prevention efforts. These industry-leading reports reflect the extensive loss mitigation efforts Citigroup employs to assist our borrowers. For borrowers who may not qualify for the "Hope for Homeowners" program, Citigroup will review their qualifications for assistance under our other loss mitigation programs.

The "Hope for Homeowners" program provides another powerful tool to offer our customers and increases our ability to keep customers in their homes. Thank you for the opportunity to reconfirm Citigroup's position on this matter.

Sincerely,

cc: Honorable Maxine Waters, Committee on Financial Services
Honorable Mel Watt, Committee on Financial Services
Honorable Brad Miller, Committee on Financial Services

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TESTIMONY OF MASSACHUSETTS ATTORNEY GENERAL
MARTHA COAKLEY
U.S. HOUSE FINANCIAL SERVICES COMMITTEE

Wednesday, September 17, 2008

Lenders and Servicers' Promises of Loan Modifications in Massachusetts are Not Matched by Meaningful Actions That Promote Sustainable Loans

I thank Chairman Frank and the Committee for allowing me the opportunity to submit testimony on this important issue of foreclosure mitigation efforts as it relates to the predatory lending crisis that has permeated our nation.

By way of background, I would like to provide a brief overview of our office's commitment to combating predatory lending and guarding against the impact of the foreclosure crisis. In Massachusetts, as in many parts of the country, we are experiencing a dramatic surge in home mortgage foreclosures, due in large measure to unsound and predatory lending practices. In fact many foreclosures have resulted from loan practices and products that were destined to fail because too many lenders departed from the bedrock lending principle that one should reasonably assess the borrower's ability to repay before lending money.

In response, our office has sought accountability through litigation, regulation and other advocacy. On the enforcement side, we have brought predatory lending cases against two major subprime lenders, Fremont Investment & Loan/Fremont General and H&R Block/Option One Mortgage Corporation. In the Fremont action, we obtained an

unprecedented injunction that restricts foreclosure on certain loans that were doomed to foreclosure because of the specific combination of ultra risky loan features used by Fremont. The injunction is one of the first pronouncements by a court that it is an unfair trade practice to sell mortgage loans that require borrowers to refinance while making such refinancing virtually impossible to obtain, at least absent a perpetual increase in home values. We have also brought enforcement actions against mortgage professionals who engaged in loan application fraud and other loan origination misconduct.

On the regulatory side, our office enacted regulations to prevent predatory lending and worked together with the Massachusetts Division of Banks for the enactment of legislation that provides additional protections for borrowers facing foreclosure. Our office issued new regulations, effective in January 2008, governing the mortgage brokers and mortgage lenders in Massachusetts. These regulations, 940 CMR 8.00, amended and expanded regulations first issued in 1992, and significantly extended the applicability of the regulations to purchase-money and refinance mortgage loans. These consumer protection regulations now address an array of unfair and deceptive practices in home lending that have contributed to the ongoing foreclosure crisis and harmed thousands of Massachusetts residents and their communities.

Our office also has joined other states to seek real progress from lenders and servicers on the issue of loan modifications. We have coordinated training efforts for attorneys willing to take pro bono case assignments to help homeowners avoid foreclosure. In addition, we have advocated for stringent federal regulation of mortgage lenders and brokers. We recognize that combating the current foreclosure crisis will require the resources and cooperation of federal, state and local authorities.

A critical aspect of our enforcement efforts, specifically in the Fremont case, has been the successful demand that lenders' loan origination misconduct—selling loans that were doomed to foreclosure and selling loans without assessing a borrower's ability to repay—must be taken into account before a foreclosure proceeds. In February 2008, we obtained a preliminary injunction that prevents Fremont or its assignees from foreclosing on certain risk-layered loans until our office has reviewed the loan, and if we object, Fremont must obtain the court's approval. I am pleased that other enforcement agencies—State Attorneys General and last week the Federal Trade Commission—have seen fit to follow this law enforcement approach to combating unfair and deceptive lending and servicing practices. In lieu of always resorting to litigation, we have tried to combat unnecessary foreclosures in Massachusetts by engaging lenders and urging them to "do the right thing"—to modify loans in order to staunch the public harms of foreclosures while still protecting their economic interests. Federal authorities have urged the same thing, in a very public way. Regrettably, this approach has not been successful. Indeed, the "voluntary" approach to loan modifications has failed. In Massachusetts, our office, Governor Deval Patrick, and the Legislature have focused on avoiding unnecessary foreclosures for more than a year. Based on our experience in Massachusetts—and we have no reason to believe we are unique—we have reached the following conclusions:

- Loan modifications are not being achieved in significant numbers. When compared to the number of foreclosures in process, far too few borrowers are able to restructure their loans to generate a sustainable loan; and
- When so-called loan modifications do occur, they often do not result in a sustainable loan. Lenders and servicers routinely offer and complete so-called loan modifications that increase monthly payments and increase overall debt. They do not meaningfully avoid foreclosure. At best, they

> temporarily delay the inevitable delinquency and eventual foreclosure—they "kick the can down the road."

Put simply, lenders, holders and servicers have not lived up to their very public promises of avoiding foreclosures by achieving loan modifications. As this Committee, and federal agencies, and state law enforcement continue to combat foreclosures and the unfair lending practices that caused this crisis, that reality should impact your decisions.

I would like to explain our office's experience with respect to loan modifications as well as the specific bases for my conclusions.

Very early in my involvement in the subprime lending crisis, as our office was developing enforcement actions, we realized, like many others, that a vital part of combating foreclosures was to work with lenders to modify loans. Our office has explored wide scale loan modifications in the litigation we are conducting against predatory subprime lenders, with some success (discussed below). We also have been part of the States Foreclosure Prevention Working Group that has collected data from most of the nation's top twenty subprime servicers and engaged them in discussions on implementing wide scale loan modifications. Iowa Attorney General Tom Miller, among others, has testified before this Committee on that group's goals and findings. More recently, the Massachusetts legislature enacted a 90 day right to cure period, requiring that lenders provide 90 days of breathing room before foreclosure during which, hopefully, borrowers and servicers would explore ways to restructure a sustainable loan and avoid foreclosure. Together with Governor Deval Patrick and Banking Commissioner Steve Antonakes, on May 1, 2008 we urged lenders and servicers to use that 90 day period as a real opportunity for loan modifications, not simply a new procedural hurdle for foreclosing attorneys. We state officials used that initial 90 day

period to engage some of the nation's largest creditors, asking them to agree to a loan modification protocol to ensure that avoidable foreclosures did not take place. We asked only that they commit to loan modifications consistent with their own economic interests. Nonetheless, we got the brush-off. And Massachusetts, like the rest of the country, still is not witnessing real loan modifications in meaningful numbers.

We continue to believe that, especially in the current real estate market, a significant portion of foreclosures should be avoided through loan modifications. The loan modifications that I speak of would serve both borrowers and holders: borrowers, of course, would achieve a monthly payment that they can afford, usually achieved by reducing interest rates and, as necessary, addressing arrearages, not necessarily by erasing them, but in a manner that still promotes an affordable monthly payment. The holder benefits because they can significantly adjust the monthly payment to achieve a sustainable income stream that still exceeds the value recovered following a foreclosure. To be clear: we do not contend that every loan must be restructured. We have seen enough fraudulent subprime loans in our office to know that many are beyond saving. Our approach—at least with non-defendants—has always been focused on (i) evaluating the borrower's current ability to pay, (ii) comparing the value of that income stream to the expected losses at foreclosure, and (iii) demanding that lenders/servicers achieve a loan modification when it serves borrower interests as well as the holder's economic interest.

If implemented, this simple approach can result in massive numbers of loan modifications. It is not controversial. Indeed, when shared with servicers, we hear a

chorus of agreement, much like the chorus of "helping borrowers" that emanates from Hope Now. But results have not followed.

One year after our office first zeroed in on seeking voluntary loan modifications, and four months after the start of the initial 90 day right to cure period under Massachusetts law (which commenced May 1, 2008 and ended August 1, 2008), we in Massachusetts can fairly assess the results of asking lenders and servicers to modify loans to avoid foreclosures: The results are dismal. Successful modifications continue to be a tiny fraction of loans that are in foreclosure. Likewise, the number of modifications pales when compared to the number of loans that are delinquent. Just as important, when so-called loan modifications are completed, they routinely fail to provide an affordable monthly payment, and therefore fail to result in a sustainable loan. Instead, they almost always increase, not decrease, principal and often increase, not decrease, the borrower's monthly payments. By any measure, those types of loan modifications are not helping borrowers and are not helping solve this foreclosure crisis.

I will briefly touch on the bases for these conclusions. First, back in April 2008, the State Foreclosure Prevention Working Group released its second data report based on loss mitigation statistics collected from thirteen major servicers. That data indicated that an unacceptably small number of loans in serious delinquency were the subject of loss mitigation efforts—7 out of 10 borrowers in serious delinquency were not on track for any type of loan work-out or loss mitigation to help them avoid foreclosure. An even lower percentage of troubled loans actually accomplished a loan modification or other loss mitigation approach. The intervening months have not changed this prognosis. For example, in Massachusetts the number of loan modifications filed with the Registry of

Deeds in recent months (144 loan modifications in last three months) is miniscule compared to the number of loans in active foreclosure; in the same period there were 4,721 foreclosure starts (Orders of Notice filed with Land Court) and 4,324 foreclosure deeds (signaling a completed foreclosure process). Even presuming the loan modification figure understates actual loan modifications (because some creditors may not file loan modifications) the number of solutions pales compared to the scope of the problem.

Equally troubling is the type of modifications that are actually being completed by servicers. They may be captioned "loan modification," and lenders and Hope Now may call them loan modifications and claim they are helping borrowers, but they fail to promote a sustainable loan and thus fail to provide a meaningful solution to foreclosure.

On this point, I commend a recent study by Professor Alan White of Valparaiso Law School. Professor White analyzed a sample of 106,000 securitized subprime loans, 4,344 had been the subject of a loan modification, defining that term broadly. Analyzing those modifications, Professor White concluded:

- Although technically the number of "modifications" has increased in recent months, the modifications rarely decrease debt and often do not promote affordability.
- The modifications reviewed virtually never reduced the principal debt owed, and often increased the principal.
- Only 50% of modifications reduced, in any amount, monthly payments; increased monthly payments are just as likely to result from these loan modifications.
- There is no consistency among lenders or servicers as to their approach to loan modifications—how much benefit may be extended and how modifications are actually achieved.

These conclusions from August 2008 are consistent with the State Foreclosure Prevention Working Group's conclusions in April 2008. They are likewise entirely consistent with the Center for Responsible Lending's testimony before this Committee on July 25, 2008 which, among other things, warned that servicers were completing loan modifications that failed to promote loans that were sustainable over the long term.

We have analyzed loan modification information from the Massachusetts registries of deeds to attempt to answer the same questions addressed by Professor White's study. Namely, to the extent loan modifications are occurring in Massachusetts, do they result in sustainable loans? Based on our Massachusetts investigation, the answer is a resounding "No." My office reviewed 144 loan modification documents, reflecting all loan modifications filed in 14 counties. Although not all loan modifications are necessarily filed with the registries, this is at least a representative sample. We found:

- *Not one of the 144 loan modifications reduced the principal mortgage balance of Massachusetts homeowners* (identical to Professor White's conclusion drawn from a national sample). I do not suggest that loan modifications need to reduce principal to afford meaningful relief. It is worth noting, however, that many holders have already written down these assets significantly, but that does not appear to translate into a willingness to reduce principal in the loan modification process.

- *Virtually none of the 144 loan modifications reduced the monthly payments for Massachusetts homeowners, so the distressed loans are no more affordable after "modification" than before.* This finding is startling. It undermines the notion that servicers are helping to preserve home ownership. Our analysis shows that servicers almost always capitalize arrearages, penalties, attorneys fees and the like, increasing the principal balance. Therefore, even though they may also reduce the interest rate, the impact of the reduction is offset by capitalizing arrearages. While the loan terms technically have been modified, the resulting loan is neither affordable nor sustainable.

We are not suggesting that arrearages must be forgiven or that principal must be invaded for loan modifications to be meaningful. But if the point is sustainable loans instead of

foreclosure—a premise with which lenders publicly agree—that clearly is not achieved when both principal and monthly payments increase.

This sobering analysis of Massachusetts loan modifications is matched by the feedback we receive from those on the front lines of the foreclosure crisis. Our office is in constant contact with housing counselors, legal services lawyers and bankruptcy court personnel, and recently surveyed them to learn about their experiences in obtaining loan modifications from servicers. The reports we have received say loan modifications are few and far between. Some servicers never offer them, some servicers still cannot manage to answer the phones, and some get started on loss mitigation but cannot deliver the necessary papers, or worse, retract initial promises of restructuring.

Whether national reports like Professor White's, Massachusetts-specific analysis by our office, or anecdotal reports from the field, the evidence we have received is uniform: the voluntary call for loan modifications, by this Committee, by state government, and by federal officials, has failed to succeed. Our direct experience points in the same direction. We engaged three major creditors—Bank of America, Citigroup, and Wells Fargo—in an effort to explore a reasonable loan modification protocol, one that would memorialize the mutual interests of holders and borrowers, and which would allow their commitment to be measured. Once we proposed to move beyond general principles to measurable details, silence fell. These lenders have simply refused to move beyond platitudes and press releases.

The evidence and experience I have described here will undoubtedly contradict what this Committee will hear from the lending and servicing community. It certainly contradicts the glowing press releases issued by Hope Now every time state officials or

housing advocates suggest the pace of modifications is slow. Hope Now and the major lenders may reiterate their supposed commitment to avoiding foreclosures; may cite increased servicing staff; and may point to improved raw numbers of loss mitigation contacts. But I urge this Committee, and the public, to compare the number of modifications to the astounding number of loans in delinquency and foreclosure. I urge you to look behind the numbers to determine what type of loan modifications are actually being completed—whether they provide affordability, whether it is temporary or sustainable, whether it just delays inevitable failure of the loan. The answers to those questions are a critical part of the story. The superficial tale told by lenders and Hope Now must be tested and, when tested, there is no denying that it fails. The disconnect between words and action has lasted more than a year. It is time to end this disconnect and for lenders to make good on their promises.

Our recent experience indicates that loan modifications can occur on a broad scale when the holders are motivated. It is possible to memorialize a loan modification protocol that provides significant relief to borrowers and accounts for the economic interests of holders. For example, in the Fremont matter, we negotiated with WMD Capital, the purchaser of a bundle of Fremont-originated subprime loans, to account for the Fremont's loan origination misdeeds. Specifically, WMD Capital agreed to provide payment relief for borrowers who could not afford their current scheduled payment. If their current ability to pay warranted it, borrowers could reduce their monthly payment dramatically (as much as 50%) and still remain in their home. WMD, in my view, was willing to do so because it was willing to acknowledge the other side of the ledger—its expected losses if it was forced to foreclose in a difficult real estate market. While it is

true that WMD presumably purchased that bundle of loans at a serious discount, this agreement is a perfect example of how economic realities can justify meaningful loan modifications.

In closing, I turn to some policy implications of this failure of the voluntary model for loan modifications. First, I sincerely hope that October 1 brings a significant change to the loan modification landscape. The incentive toward meaningful, sustainable loan modifications provided by the Hope for Homeowners Act appears to be very real. I hope it works, and breaks the logjam. We cannot predict whether that will happen because, in the end, it remains the choice of lenders and servicers to participate in the program.

Second, unless the Hope for Homeowners Act proves successful in achieving broad scale sustainable loan modifications, more must be done. The economic incentives of mortgage holders continue to point in the same direction as borrower interests and the public interest—loan modifications should occur. I urge Congress to continue to consider its points of leverage to motivate real loan modifications. At the state level, we are frustrated by the chorus of agreement but absence of meaningful action. Because our cooperative efforts have not borne fruit, we will bolster our litigation efforts when appropriate, and we also will be exploring legislative and regulatory approaches to stimulating industry solutions to this very real, very public problem.

Finally, I would like to touch on our office's Abandoned Housing Initiative, as it is a creative state-based approach to combating the impact of foreclosures. One way Massachusetts is addressing the rising number of abandoned properties created as a result

of the foreclosure crisis, is through the Massachusetts Attorney General Office's Abandoned Housing Initiative.

In the mid-1990s, our office created its Abandoned Housing Initiative, which in large part provides legal assistance with respect to the receivership process. In its current form, the Initiative addresses abandoned housing problems throughout the state by coordinating the resources of our office, municipal officials, local community groups and local residents. When local outreach and coordination does not work, Assistant Attorneys General utilize civil code enforcement protocols and the Massachusetts Sanitary Code's receivership provision, G.L. c.111, §127*I*, to rehabilitate dangerous and abandoned homes in these neighborhoods. This rehabilitation is significant because evidence has shown that abandoned properties within a community bring with them increased crime including violence, drugs, and arson.

This program has been extremely successful in providing cities and towns with the necessary tools to take properties into receivership in order to revitalize neighborhoods. Because of its success, our office is currently working towards expanding this Initiative. By expanding the Massachusetts Attorney General's Abandoned Housing Initiative, Massachusetts can increase its enforcement of the state receivership provision; expand its coordinated outreach with local officials and community groups; and ultimately reduce the amount of abandoned properties in the state. That is why I respectfully ask for any federal assistance that might aid us in our expansion, so that we can begin to hire more attorneys to conduct outreach within the community and assist in the receivership process.

Thank you again for the opportunity to provide testimony to the Committee today. I applaud the Chairman and the Committee members for their work on this issue, particularly, the recently enacted Housing and Economic Recovery Act of 2008, and I look forward to working with you on this issue in the future.

CBA | CONSUMER BANKERS ASSOCIATION

August 29, 2008

The Honorable Barney Frank
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Maxine Waters
Chairwoman
House Financial Services Subcommittee on Housing and Community Opportunity
U.S. House of Representatives
Washington, DC 20515

The Honorable Melvin Watt
Chairman
House Financial Services Subcommittee on Oversight and Investigations
U.S. House of Representatives
Washington, DC 20515

The Honorable Brad Miller
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Frank, Chairwoman Waters, Chairman Watt, and Congressman Miller:

Thank you for asking for CBA's input on the Hope for Homeowners Program. We agree with your letter that borrowers who qualify for the Hope for Homeowners Program should begin to benefit with a minimum of delay. Our members who service loans have been working at an enhanced pace to respond to the needs of those who are delinquent and at risk of foreclosure, and this additional tool will undoubtedly provide another outlet for those most at risk. October 1 is fast approaching, but there is much work to be done to prepare and we need to begin immediately. Of course, we do not yet have the final regulations, but there are some steps servicers can take in anticipation of final rulemaking.

The HOPE NOW coalition, to which CBA belongs, reports that over 2 million foreclosures prevented since July 2007 through the use of repayment plans and loan modifications by members, and that a record-high number of homeowners were helped last month. This is due to the concerted effort of the participants, along with governments, nonprofits and consumers. We have attached the most recent release describing the coalition's progress. We believe still more needs to be done, and the Hope for Homeowners Program will be one more valuable method available to servicers who are dealing with loans that qualify for the program and consumers who would benefit thereby. In response to your specific questions:

Will you be using the next few months to review loan documents, contact borrowers and forbear foreclosure for those that may qualify?

Servicers will continue their efforts to prevent foreclosures in the coming months and will take what steps they can to anticipate the final regulations under Hope for Homeowners. Some borrowers will almost certainly not qualify under the statutory requirements (for example, loans

entered into after January 1, 2008 or loans secured by other than a primary dwelling), and servicers can begin to draw broad distinctions at this time. But beyond those broad categories, they will have to await the regulations to know with any certainty which borrowers would be eligible. We will insure that our member servicers are made aware of the new resources provided by the Hope for Homeowners Program; and we expect they will take steps to anticipate the use of the program prior to its implementation. Though the program is voluntary, it will undoubtedly provide servicers with one more useful tool.

Do you anticipate making the principal reductions necessary to qualify for refinancing at-risk borrowers into the Hope for Homeowners Program?

As you have noted, principal reductions are less attractive to servicers and investors than repayment plans and loan modifications that do not reduce the principal. In some cases modifying the rate or the loan term can save the home and benefit the homeowner without the need for principal reduction. Nevertheless, the Hope for Homeowners Program is a valuable additional resource, and we anticipate that servicers will make use of it for qualified at-risk borrowers, when other alternatives do not prove satisfactory. Additional factors may affect the servicers' participation on a case-by-case basis. These include the need to obtain the approval of the second-lien holder, the involvement of the investor in the case of securitized loans, and the responsiveness and involvement of the borrower. One obstacle that many servicers continue to report, for example, is the reluctance of some homeowners to respond to their overtures so they can participate in work outs and loan modifications. However, the industry is working hard to overcome this and improve their communications with homeowners.

Do your servicing practices provide that a previous loan modification would not disqualify a borrower from the principal modifications required by the Hope Program?

We have no reason to believe that CBA members would automatically disqualify a borrower from participation in the Hope for Homeowners Program merely because they engaged in previous loan modifications. It is not unusual for servicers to work repeatedly with borrowers who are unable to meet their repayment terms because subsequent events make it hard for the borrower to continue to meet the new terms, and we do not think that this situation is fundamentally different in that regard. Of course, borrowers who are currently able to meet their repayment terms, and are not at risk of foreclosure, where those terms are based on a previous work out arrangement, would presumably not qualify for the Hope for Homeowners Program. Other than that, we do not anticipate that they will be barred from participation if they otherwise qualify.

Thank you for your interest. If you have any further questions, please do not hesitate to contact us.

Sincerely,

Joe Belew
President

Steven Zeisel
Vice President & Senior Counsel

Statement on Responses to Latino Foreclosures in Los Angeles, California

Submitted at:

Implementation of the Hope for Homeowners Program and a Review of Foreclosure Mitigation Efforts

U.S. House Committee on Financial Services

Submitted by:

Angelica Rubio
Director, Community Wealth Department

East Los Angeles Community Corporation
530 South Boyle Avenue
Los Angeles, CA 90033
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September 17, 2008

My name is Angelica Rubio, and I am the Director of the Community Wealth Department at East Los Angeles Community Corporation (ELACC). ELACC is a 501(c)(3) non-profit community development corporation based in East Los Angeles. Since 1996, ELACC has harnessed millions of dollars in housing and other community development resources for the benefit of low-income residents of Boyle Heights and Unincorporated East Los Angeles. In addition to building affordable housing for rent and for sale to low-income families, ELACC works to help low-income families to build their wealth through the purchase of a home, matching savings accounts, and financial literacy. Thanks to the support of and partnership with the National Council of La Raza, ELACC receives funding for housing counseling through the U.S. Department of Housing and Urban Development (HUD) Housing Counseling Program and the National Foreclosure Mitigation Counseling (NFMC) program. We work one-on-one with families who want to purchase a home. We help them to access government subsidies, provide in depth financial literacy and financial counseling to families as they save up for their purchase.

In 2006, ELACC's Housing Counselors began receiving calls from homeowners facing foreclosures throughout Southern California. These calls steadily increased in the early months of 2007 when we launched our Foreclosure Prevention program, and by the summer of 2007 our phone system crashed amid a tidal wave of foreclosure calls. These callers who eventually became our clients were facing the loss of their American dream. Our Foreclosure Prevention program is one of the only services in Southern California that conducts Spanish language, face-to-face counseling and advocates with lenders on behalf of our mostly mono-lingual Spanish speaking clients. Since June, 2007 ELACC has served over 400 families who are facing or will soon face foreclosure. As more families lose their homes, they are thrown into an extremely tight rental market. In this market homelessness is a very real risk.

Latino families are among the hardest hit in this foreclosure crisis. It is clear that a generation of Latino wealth and financial security is at stake. As an organization working on the frontlines of this crisis, I hope to describe to you the issues that many of our families are facing all across the country and how it is necessary for the federal government to intervene more aggressively.

During the time in which we have been working with families facing foreclosure, not one logical or realistic modification or loan workout, has been granted. In the beginning, we understood the limited capacity and/or the challenges many banks/servicers faced. Unfortunately they were not prepared for the initial wave of foreclosures in 2007 and thus had no formal, institutionalized structure to deal with the sudden increase in defaults. As advocates we were patient and worked diligently to support those banks/servicers, understanding that it was difficult to handle the influx of calls coming into the servicing centers all across the country. Banks and servicers promised us that they were implementing a structure to respond to the increase in foreclosures and we hoped for the best in the coming months. However, more than a year has passed and very little has changed. Many banks/services have yet to implement a cohesive infrastructure or an overall consistent protocol which would facilitate loss mitigation. If these financial institutions would develop procedures and protocols

borrowers would be better able to navigate the overwhelming and intimidating banking system and would be in a better position to get the help they need to prevent the foreclosure.

While many financial institutions implore their customers to call them immediately, often stating that if the customer does not take this first step, little can be done. We at ELACC have found this to be false advertising. On numerous occasions our clients have taken the first frightening step and called their lenders, but most banks/servicers did not respond. When we call on behalf of our clients we are met with numerous challenges: The banks lose our third party authorization forms and must constantly re-fax documents; we often spend up to an hour on hold before speaking to someone and when we finally do get through, we are transferred to someone that "might" be able to help. This is a daily challenge that is met by thousands of advocates all over the country. If those of us in the business of foreclosure prevention are having a difficult time, we can only imagine how much more difficult it is for the millions of distressed homeowners losing their homes at this very moment, trying to work with banks/servicers directly.

Robert and Araceli Maffie are homeowners that I have been working with since March 2008. Their situation is important because like many other distressed homeowners all over the country, they have fallen on financially hard times, but they met their financial challenge head on and took it upon themselves to contact their loan servicer early. Mr. Maffie, a small business owner, began to have financial difficulties when his wife was diagnosed with a life threatening illness that required immediate medical attention. Medical expenses resulted in a substantial loss of household income. Without medical insurance and the loss of this income, the Maffie financial situation was dire. Starting in fall 2007, Mr. Maffie worked tirelessly with loan servicers Option One and HSBC, to seek a loan modification. In March 2008, after attending one of ELACC's Foreclosure Prevention workshops, he still had not received a response. Mr. Maffie had repeatedly submitted modification packet after modification packet to replace documentation the servicers repeatedly lost. Once the servicers admitted to having a complete modification package, they sat on the request for six months. While Mr. Maffie is an ideal candidate for a modification based on his hardship and his ability pay at a lower rate, his modification request was ultimately rejected. The reason Option One and HSBC gave for the modification denial - the indebtedness accumulated during the six months of waiting for both to make a decision. This is where ELACC stepped in. We made countless calls on behalf of Mr. Maffie, and almost nine months after submitting his first modification packet, Option One granted Mr. Maffie a modification. This modification was a great financial relief to Mr. Maffie and his family. But, had ELACC not stepped in the result could have been disastrous, compounding an already difficult family situation. HSBC has yet to respond to ELACC's calls. If a diligent homeowner cannot get his lenders to act, imagine the countless other families who when faced with an unresponsive lender have no recourse and lose their homes.

If advocates, banking institutions, investors and government do not have a meeting of the minds necessary to make the radical changes necessary, millions of dollars

of investments will be lost and millions of families will become homeless. Everyone: families, neighborhoods, schools, city/county governments, banks, investors, and our economy will be affected and possibly crippled for many years to come. No amount of counseling funding will have an impact if the lenders are not required to meaningfully respond to the individual families facing foreclosure. We believe that lender response to families facing foreclosures must be regulated. This is the only way that the negative impacts can be addressed fully across the country. Loss mitigation only works to alleviate the impact of this crisis on the economy if it is employed in a meaningful uniform fashion across the country. Specifically we urge you to:

- Enact loss mitigation response regulations that:
    - Requires lenders and loan servicers to respond to borrowers seeking loss mitigation assistance within a specified period of time.
    - Require lenders to modify loans under certain prescribed circumstances. The discretion across the industry makes it almost impossible for counselors to accurately advise clients and results in discriminatory and unequal treatment.
    - Require lenders to freeze all mortgage re-sets where the family cannot afford the new mortgage payment based on current income.
    - Prohibits servicers from commencing foreclosure activities when the borrower's file is pending in the loss mitigation department.

- Create a "soft second" mortgage program for families facing foreclosure so that homeowners who are underwater or cannot otherwise afford their mortgages can re-finance into mortgages they can afford. A soft-second mortgage will insure that money owed will eventually be repaid rather than having to be completely written off by the banks.

We at ELACC and other housing advocates all over the country understand that the recommendations listed above will not solve the housing problem, but it will begin to acknowledge the priority of assisting our homeowners. Too much focus has been put on financial institutions in recent months and it is about time that the conversation be focused on our families. Thank you!

FannieMae

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President and Chief Executive Officer

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August 29, 2008

The Honorable Barney Frank
The Honorable Maxine Waters
The Honorable Melvin L. Watt
The Honorable Brad Miller
United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

Dear Members of Committee on Financial Services:

Thank you for your letter of August 5 inquiring about our mortgage servicing practices and our home retention and foreclosure prevention efforts.

During the period of booming home values, many institutions were engaged in either buying or making mortgage loans and then packaging the loans for sale in structured transactions involving the issuance of mortgage-backed securities. These transactions allocated credit risk to the purchasers of the securities, leaving the institutions with minimal long-term credit risk and little financial interest in the subsequent performance of the loans.

Fannie Mae's business model is fundamentally different in that, when a loan is acquired, the credit risk almost always remains with Fannie Mae. This structure creates tremendous incentives for us to minimize the number of costly foreclosures. Fannie Mae has a long history of working with borrowers to keep them in their homes. This is not a recent phenomenon, but has always been our priority for two reasons: (i) it makes good economic sense for Fannie Mae and our shareholders and (ii) it is good public policy.

Helping to create affordable and sustainable home ownership is our mission and this mission applies not only when we acquire a loan, but also when a loan falls into delinquency. To that end, we constantly review the range of options and incentives we provide to assist homeowners in staying in their homes. Since early 2007, Fannie Mae has helped more than 255,000 borrowers keep their homes by working out more manageable loan terms for approximately 95,000 homeowners and refinancing more than 160,000 subprime borrowers into affordable, sustainable loans.

We use a range of tools to modify loans, including interest rate reductions, term extensions, repayment plans, forbearance, and HomeSaver® Advance (short-term

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financing to help borrowers who are in default due to short-term life events). Our portfolio also provides us with the ability to place loans on the balance sheet for increased loss mitigation flexibility.

The first step in this process is to contact the borrower. We instruct our servicers to make every effort to contact delinquent borrowers to determine what steps are most likely to keep borrowers in their homes. In addition, we sponsor booths at conferences, conventions, fairs and other public events in connection with our HomeStay initiative, pay for radio advertisements informing the public of such events and offer gift cards to borrowers who attend. Making contact with delinquent borrowers can be surprisingly difficult, but it is our experience that, if we can establish contact with the borrower, we can usually find a way to keep that borrower in his home.

We have offered a number of incentives and made significant operational changes to increase the number of borrowers that we can help. These include:

- Providing cash incentives (recently increased) to servicers for each loss mitigation action they complete.
- Providing incentive payments for foreclosure attorneys who "workout" a loan rather than taking it through foreclosure.
- Delegating 80 percent of loss mitigation decisions to our servicers so that they are able to react more quickly to the needs of troubled borrowers.
- Implementing 18 operational changes requested by servicers to help them work more effectively with borrowers.
- Placing Fannie Mae staff on-site at our largest lenders to provide expertise and oversight.
- Increasing the number of staff working on loss mitigation.

As the environment continues to evolve, we will continue to adapt our policies and initiatives to minimize the negative impact of the current market situation on families and communities.

With regard to your specific questions, please see below.

- ***Will you be using the next few months to review loan documents, contact borrowers and forbear foreclosure for those that qualify?***

  We are currently reviewing our loans to determine their potential eligibility for the Hope for Homeowners Program. When the Board of Directors of the Hope for Homeowners Program has established requirements and standards for the

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program, we will consider on a loan-by-loan basis if it is an appropriate solution given the circumstances surrounding the particular loan. Meanwhile, as discussed above, Fannie Mae has an active loss mitigation initiative that makes every effort to avoid foreclosures. In those cases where our servicers make contact with a borrower facing foreclosure, we will forbear from foreclosure while we attempt to arrive at a workout or refinancing plan that will keep the borrower in his home.

- ***Do you anticipate making the principal reductions necessary to qualify for refinancing at-risk borrowers into the Hope for Homeowners Program?***

  As discussed above, once the program requirements and standards are in place, we will evaluate our loans on a case-by-case basis and, when appropriate, make use of the program.

- ***Do your servicing practices provide that a previous loan modification would not disqualify a borrower from the principal modifications required by the Hope Program?***

  There are no requirements or limitations in our servicing practices that would preclude multiple loss mitigation actions in an effort to prevent a foreclosure.

We at Fannie Mae appreciate the efforts of the Committee to protect homeowners in this time of great difficulty. The Housing and Economic Recovery Act of 2008 is an historic achievement that will help people throughout the Nation. We look forward to continuing to work with the Committee on our common mission of promoting affordable and sustainable homeownership.

Sincerely,

HOUSING POLICY COUNCIL
THE FINANCIAL SERVICES ROUNDTABLE

1001 PENNSYLVANIA AVENUE, N.W.
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August 27, 2008

Chairman Barney Frank
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Congresswoman Maxine Waters
U.S. House of Representatives
Washington, DC 20515

Congressman Mel Watt
U.S. House of Representatives
Washington, DC 20515

Congressman Brad Miller
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Frank, Congresswoman Waters, Congressman Watt, and Congressman Miller:

We appreciate your concern over the ability of the agencies and the industry to prepare quickly to take advantage of the Hope for Homeowners (HFH) program, and are pleased to update you on the progress our members have made in preparing to respond to the program. Our members are approaching the new program to ensure that they are doing everything they can absent the necessary final agency guidance required by the Act. We are engaged now in active dialogue with the FHA to develop the necessary rules in an effort to make the program available as soon as possible after the October 1 effective date.

Our member companies are providing a variety of options to homeowners to prevent foreclosures. The HOPE NOW foreclosure prevention program in which the HPC and our members are deeply involved will continue to coordinate industry and non-profit efforts to assist homeowners. The new Hope for Homeowners program is complementary to the work servicers are already doing through the Hope Now Alliance and its servicer guidelines published in June 2008. Our members have established procedures that integrate the guidelines developed through HOPE NOW. Now they are working to add the procedures and processes which will permit them to integrate the HFH provisions in their systems to utilize it as a method to assist troubled homeowners.

1. ***Will you be using the next few months to review loan documents, contact borrowers and forbear foreclosure for those that may qualify?***

Our members are awaiting the promulgation of the regulations needed to permit them to determine which borrowers will be eligible for the Hope for Homeowners program. Currently, our members are using the standards in the statute to separate out those loans in their portfolios which clearly do not meet the HFH standards. This process also helps identify the potential group of borrowers who might qualify for HFH depending on the details of the final regulations.

The borrowers who do not qualify for the Hope for Homeowners program will continue to be part of the processes outlined in the HOPE NOW guidelines and servicers will continue to work to assist them through a variety of loss mitigation options. The goal of all these efforts is to enable the homeowner to avoid foreclosure whenever possible.

Many members have already begun reviewing their portfolios based on the statutory requirements and identifying those loans which the statute bars from the Hope for Homeowners program. Lenders can determine which borrowers clearly do not qualify; for example, mortgages entered into after January 1, 2008, the mortgage debt to income ratio is less than 31%, or the house is not the primary dwelling. Even with those statutory provisions, however, it is not clear whether the guidance from the regulators might modify the tests used by our members in deciding, for example, how they determine if the collateral is in fact serving as the primary dwelling of the borrower.

At this time, it is still not clear which of the loans remaining will ultimately be eligible for the program, but companies are establishing procedures to determine which loans could be eligible when more guidance is provided by FHA and the other participating regulators. For the borrowers who might qualify for Hope for Homeowners, absent external factors and subject to any required investor approvals, our lenders will consider not initiating foreclosure proceedings. In addition, this group is also eligible for several loss mitigation options, depending on their circumstances, including loan modifications and repayment plans.

Once past the basic requirements of the statute, lenders will need to review guidance on many provisions in the program to know if a loan is eligible. In addition, if our members are servicing loans that are not held in their portfolios, they will need to know what investors such as Fannie Mae and Freddie Mac plan to do should our members forebear on loans that currently would not meet the forbearance guidelines for those investors. Under the HOPE NOW Alliance, many servicers and investors agreed to place a 30-day "pause" on foreclosure proceedings for seriously delinquent borrowers through the Project Lifeline program, and they may be willing to do the same thing with a view toward moving more loans through the Hope For Homeowners program. A 30-day pause, however, may or may not be sufficient depending upon the speed of the agencies in publishing guidance and the ability of FHA to process applications. While awaiting the HFH program launch, our lenders continue to explore loss mitigation options for all borrowers.

2. ***Do you anticipate making the principal reductions necessary to qualify for refinancing at-risk borrowers into the Hope for Homeowners Program?***

In many circumstances, yes. If the servicer can approve an affordable payment option through a rate and term modification that meets or beats the payment on a Hope for Homeowner program loan, that option may offer a better return to the investor while at the same time providing an affordable resolution for the borrower. When such a modification is not possible, the Hope for

Homeowners program provides another tool to avoid foreclosure. If the loss severity on a foreclosure is more than the principal reduction, and the application can meet the eligibility standards in the statute and the regulations, then lenders (with the approval of the second lien holders, and investors in cases of securitized loans) will participate in the Hope for Homeowners program. HPC member companies are always looking for desirable ways to avoid foreclosure. In deciding whether to make principal reductions to qualify for the Hope for Homeowners program, HPC member companies will evaluate several factors including their portfolios, the return to the security holders (in aggregate) and the financial situation of the borrower.
While we understand that it would be useful to the Committee to state that we anticipate that a certain percentage of loans, or loans in a certain geographical area, or loans entered into at a certain time or with specific characteristics would be eligible subjects for application, our members' experience forces them to conclude that this is not possible to project the numbers or types of loans that will be eligible until more is known about the underwriting standards for the program.

This analysis must be done on a loan-by-loan basis; lenders cannot judge where geographically or what category of prices of loans will be the most likely candidates for the Hope for Homeowners program. The position to be taken by second lien holders will be crucial in many cases. Similarly, as we have said, the agreements with investors require our members to make decisions that sometimes will be very difficult, and must be on a case by case basis; they cannot be done collectively.

Our members will continue to work with their customers to find solutions to avoid foreclosures. The HFH program provides another option to avoid foreclosure through principal reduction. When that possibility is the best one, our members will use it.

It is important to note that a significant unknown factor continues to be the responsiveness of the borrower. Once lenders and servicers have the agency standards and guidance, they will reach out to borrowers who qualify for the program. However, servicers cannot guarantee that these borrowers will always respond, and it is the experience of our members that many times customers simply do not engage, even when the offer made has been agreed to by them and all they need to do is sign and return the documents, or come to the office and do the same. It is critical for the success of the program for the borrower as well as the servicer to be actively engaged and in communication.

3. ***Do your servicing practices provide that a previous loan modification would not disqualify a borrower from the principal modifications required by the Hope Program?***

A previous loan modification will not automatically disqualify a borrower for the Hope for Homeowners program. Today, servicers will continue to work intensively with borrowers even after a workout plan has failed. Often borrowers experience additional hardships that require a

more aggressive workout. Sometimes, a borrower may need counseling assistance to help them better manage their household finances. For every borrower who may qualify for the Hope for Homeowners program, an individualized analysis is still necessary. Servicers and lenders want to ensure that this program is helping those that are intended to benefit from it. If a borrower received a loan modification and is again having difficulty making their mortgage payments, they may be a candidate for the Hope for Homeowners program. If the borrower has received a modification and thereafter has simply not communicated in any way and failed to make any payments under the modification, a separate decision will have to be made and such a borrower might not be a candidate even for the Hope for Homeowners program.

However, if a borrower received a loan modification and is not having problems making the mortgage payment and has no foreseeable issues with the payments in the future, they would likely not be a good candidate for the program. The statute is intended to prohibit borrowers purposely becoming delinquent in order to qualify for the program. We agree with that goal.

There is much work to be done by October 1. We are and have been working diligently with our member companies and the regulators to ensure that the program functions properly by October 1. We look forward to continuing communicating with you on the implementation of this important program.

If you have any questions or need additional information, please do not hesitate to contact us at 202-589-1922 (John Dalton) or 202-589-2410 (Steve Bartlett).

With best wishes,

John H. Dalton
President
Housing Policy Council

Steve Bartlett
President and CEO
The Financial Services Roundtable

HOUSING POLICY COUNCIL
THE FINANCIAL SERVICES ROUNDTABLE

Housing Policy Council

Statement for the Record

House Financial Services Committee Hearing on

"Implementation of the Hope for Homeowners Program and Foreclosure Mitigation Efforts."

September 17, 2008

Chairman Frank and Ranking Member Bachus, we are pleased that the Committee is holding this hearing on preparations for the FHA Hope for Homeowners refinancing program. We would like to share with you the views of the Housing Policy Council as our member companies prepare to implement the Hope for Homeowners program, as well as our on-going efforts to assist at-risk homeowners and prevent foreclosures.

The member companies of the Housing Policy Council are preparing for the October 1 effective date of the Hope for Homeowners Program (HFH). At the same time, they continue to work with their borrowers on a variety of loss mitigation programs, as well as to work through the Hope Now Alliance to reach and assist more borrowers. The Hope for Homeowners program will provide an additional resource for our members to utilize in developing options for at-risk homeowners seeking to stay in their homes.

Our members have been working with staff of the FHA and other regulators to ask questions and discuss issues regarding Hope for Homeowners which our member companies have identified as needing clarification or resolution before they can prepare their internal systems and operations for the program. We have been pleased with the willingness of the regulators to discuss many of our questions. We have participated in two calls hosted by FHA and other regulators in which trade associations and individual companies have participated, and we expect there have been additional calls with consumer groups and others who have an interest in working with the regulators as they move quickly to complete their task of preparing the guidance to implement the program. Without a cooperative

effort by all parties, it would be very difficult to complete the guidance for the program before the effective date.

We understand and accept that we will not know what the actual guidance and regulations the Board will publish simply by discussing issues with staff. The staff has made it clear that it cannot discuss specifics of the standards that will guide the program until final decisions are made by the oversight board and they can be formally announced. We do feel, however, that we have received some guidance that will help industry participants to prepare for the program.

In addition to these discussions on how to prepare systems to handle the program, our members are trying to identify their customers who may be eligible from those that clearly will not be eligible. Those who may be eligible will be tracked into a process that will determine options to assist them, which includes the possibility of the Hope for Homeowners program as well as the other workout options that our member companies are using. At the same time, borrowers who do not meet the criteria for Hope for Homeowners will not be abandoned. Our members continue to try to work with those borrowers who have contacted them to try to find a solution that will avoid foreclosure. It is critical for homeowners in difficulty to continue to seek assistance. They can contact their servicer directly; call the Homeowners HOPE hotline (888-995-HOPE); or contact a local NeighborWorks affiliate or other HUD-certified non-profit counseling agency.

Our member companies are providing a variety of options to homeowners to prevent foreclosures, including repayment plans and loan modifications. Servicers are continuing to directly contact their customers by mail and by telephone. In addition, servicers participating in the HOPE NOW Alliance are continuing to contact at-risk borrowers through the HOPE NOW monthly direct mail campaign; via the 888-995-HOPE hotline; and, through a series of homeowner outreach events across the country. We are also partnering with other groups. A number of our member mortgage servicers participated in the "Save the Block Party" foreclosure prevention event in Prince Georges County, Maryland hosted by the National Community Reinvestment Coalition on September 13 and in the upcoming event in Fairfax County, Virginia on September 20. At these events focused on specific communities, homeowners can meet directly with a servicing representative. Our members will continue to participate in the HOPE NOW Alliance to better coordinate industry and non-profit efforts to assist homeowners. The Hope for Homeowners program will add to the work servicers will continue to do through the Hope Now Alliance and its servicer guidelines published in June 2008. Our members have established procedures that integrate the guidelines developed through HOPE NOW. Companies are working to add the procedures and processes which will permit them to integrate the Hope for

Homeowners provisions in their systems to utilize it as a method to assist troubled homeowners. Borrowers who do not qualify for the Hope for Homeowners program will continue to be part of the processes outlined in the HOPE NOW guidelines and servicers will continue to work to assist them through a variety of options to avoid foreclosure.

The goal of all these efforts is to enable the homeowner to avoid foreclosure whenever possible.

Many of our members and other servicers are reviewing their portfolios to determine whether borrowers could potentially benefit from the Hope for Homeowners program. As we have noted, we do not know exactly who will ultimately be eligible for the program, but we hope that we will know soon, since it is our understanding that guidance will be forthcoming from the regulators before the October 1 effective date for the program.

Companies will try to integrate it promptly; and we would expect that there will be applications sent to the FHA very soon after the effective date. A larger number of applications, of course, will flow through the system in the weeks that follows, and we would expect a substantial number to be flowing through the system within a short time. While we would like to be able to state a specific timetable, with expected production numbers for the program, we cannot and any attempt to do so would create expectations that might or might not be able to be met.

Loan servicers are also awaiting information on whether the GSEs will adjust their policies on forbearance on certain loans. This is a complex issue that will have to be addressed by the new leadership of the enterprises under the conservatorship. We would hope that there will be guidance on these matters soon.

Principal reductions are one solution for distressed borrowers in certain circumstances. Our member companies will certainly consider principal reduction as an option. The contractual obligations to the holder of the loan must be considered, as well as whether the solution will benefit the borrower and enable them to avoid foreclosure.

HPC member companies are continuing to constantly review the most desirable and effective methods to avoid foreclosure. In deciding whether to make principal reductions to qualify for the Hope for Homeowners program, HPC member companies will evaluate several factors including their portfolios, the return to the security holders (in aggregate) and the financial situation of the

borrower. This analysis must be done on a loan-by-loan basis; but we hope to provide additional information as we receive the underwriting standards for the program and they can be applied to potential candidates for the Hope for Homeowners program.

Our members will continue to work with their customers to find solutions to avoid foreclosures. The HFH program provides another option to avoid foreclosure through principal reduction and a new FHA-insured loan.

It is also important to note that a significant unknown factor continues to be the responsiveness of the borrower to outreach efforts and their willingness to accept the requirements of the Hope for Homeowners program. Once lenders and servicers have the agency standards and guidance, they will reach out to borrowers who qualify for the program. However, servicers cannot guarantee that all borrowers will respond, and it is the experience of our members that many times customers simply do not engage, even when the offer made has been agreed to by them and all they need to do is sign and return the documents, or come to the office and do the same. It is critical for the success of the program for the borrower as well as the servicer to be actively engaged and in communication.

There is much work to be done by October 1. Our members are working diligently to ensure that the program can function properly by October. We will continue to communicate with you on the implementation of this important program.

Freddie Mac
We make home possible℠

Richard F. Syron
Chairman and Chief Executive Officer

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8200 Jones Branch Drive
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August 28, 2008

The Honorable Barney Frank
Chairman
House Financial Services Committee
US House of Representatives
~~2252~~ Rayburn House Office Building 2129
Washington, DC 20515

Dear Chairman Frank:

Thank you for your letter of August 5, 2008 requesting servicers to forbear foreclosures for homeowners who may be eligible for refinance into a loan insured by the Federal Housing Administration (FHA) when the authority provided by the HOPE for Homeowners Act of 2008 becomes effective on October 1, 2008. Your letter requests that we provide additional information on mortgage servicing practices and respond to specific questions.

We understand that the overall purpose of the HOPE for Homeowners refinance program is to provide an additional option for investors and servicers to sustain affordable homeownership for homeowners who are delinquent on their mortgage while helping investors and servicers mitigate credit losses. At Freddie Mac, we are constantly reviewing ways to help borrowers with delinquent mortgages in order to keep families in their homes. Our servicing policies require the servicers of our loans to pursue workouts on troubled loans that we own with a focus on workouts that will be sustainable. The HOPE for Homeowners refinance program will be an additional option that we will consider in servicing a delinquent loan.

We have set forth below in bold text each of the questions in your letter of August 5, 2008 followed by our responses.

Will you be using the next few months to review loan documents, contact borrowers, and forbear foreclosures for those who may qualify?

As outlined in our Seller/Servicer Guide, we require servicers of loans that we own to work with borrowers to try to resolve troubled loans in lieu of a foreclosure sale. Going forward, this process will include an assessment of whether a borrower could be eligible for the HOPE for Homeowners refinance program and, if so, whether such a refinance would most benefit the homeowner and result in a lower credit loss for Freddie Mac than other alternatives.

During the next few weeks, before the authority provided by the HOPE for Homeowners Act is in effect, our servicers will continue to review loan documents, contact borrowers, and arrange viable workout options. To the extent our servicers believe that there is a reasonable possibility that the borrower will be able to qualify for the HOPE for Homeowners refinance program, and that this alternative is a viable alternative, they will forbear on the foreclosure. Our servicers may also explore other workout options that will enable them to

avoid foreclosing. We are currently evaluating the program and will provide guidance to our servicers on the situations where we believe such an alternative is likely to be the best alternative. As explained in more detail below, our analysis is preliminary since the Board of Directors of the HOPE for Homeowners refinance program has not yet determined the acceptable underwriting standards in accordance with statutory guidance.

Freddie Mac remains focused on loan modification approaches that improve the affordability and sustainability of borrowers' existing mortgages and reduce the losses borne by Freddie Mac. Such approaches include capitalizing interest arrearages, extending the term of the mortgage, and reducing the interest rate of the mortgage, among others. Our experience suggests that, for most borrowers who want to maintain homeownership, we can achieve affordability and sustainability through reductions in the interest rate of the mortgage.

We think it is important to provide economic incentives to our servicers to take all reasonable steps to avoid foreclosure. To further promote and encourage our servicers to pursue loan workouts, we have doubled the amount we pay servicers for each loan workout that keeps a delinquent borrower out of foreclosure. This payment by Freddie Mac substantially exceeds our contractual obligations. In addition, to give servicers more time to arrange loan workouts with borrowers, we have extended the time to foreclosure in states that have relatively fast foreclosure processes. We are currently processing approximately 1,600 workouts each week. Our actions demonstrate that we are pursuing alternatives to foreclosures whenever it makes sense to do so.

Do you anticipate making the principal reductions necessary to qualify for refinancing at-risk borrowers into the Hope for Homeowners Program?

We anticipate the HOPE for Homeowners refinance program will be a viable economic option in some circumstances and we would expect our servicers to utilize the refinance program in those circumstances. We will require our servicers to compare the all-in cost of the HOPE for Homeowners refinance alternative to other alternatives, including short sales to third party buyers.

For many borrowers who want to maintain homeownership, we believe that we can achieve affordability through combinations of term and interest rate modifications, thereby avoiding the losses associated with reductions in principal. Moreover, in those circumstances where interest rate reductions or term extensions are not sufficient to allow for sustainable homeownership, it is likely that we could in many cases limit our losses while allowing the borrower to maintain homeownership through partial reductions in principal, rather than through incurring the full market value loss, plus an additional 10 percent write down and potentially a 3 percent up-front fee, as established by the HOPE for Homeowners Act. However, we appreciate having the HOPE for Homeowners refinance program as an additional alternative to help borrowers avoid foreclosure.

It is also important to note that the decision of whether to pursue a refinance through the HOPE for Homeowners Program is not just ours. Homeowners, too, will want to weigh the options available to them through our workout offerings with the benefits and costs of the HOPE for Homeowners program, which will permanently limit the homeowner's gains in home equity in that particular home.

Every day we work with our servicers to help achieve the best possible outcome for delinquent borrowers. As of August 15, we have completed over 41,000 successful workouts in 2008 and we are projecting over 82,000 workouts for the entire year.

As described above, Freddie Mac's servicers are bound by contract to work with borrowers who are delinquent on their loans to try to resolve troubled loans short of a foreclosure sale. The refinance of a loan through the HOPE for Homeowners program is a new loan origination. The servicing operations of our servicers, however, are typically not qualified or able to originate mortgages. Rather, to take full advantage of the HOPE for Homeowners refinance program, most of our servicers will need to refer the borrower to an originator or lender that is able, and is appropriately licensed and qualified, to evaluate the borrower's eligibility for an FHA-insured mortgage loan under the HOPE for Homeowners Act and implementing regulations and guidance. This may create operational obstacles in implementing the program.

While the HOPE for Homeowners Act establishes some requirements and standards against which to assess borrower eligibility for an FHA-insured mortgage loan, several important standards and requirements remain to be established by the Board of Directors of the HOPE for Homeowners refinance program. Among the open issues with respect to the program are whether a portion of any future property appreciation will be used to pay junior liens and whether the junior liens will receive part of the FHA refinance proceeds. These issues could affect the willingness of holders of outstanding first mortgage liens to agree to accept the proceeds of the FHA-insured loan as a short payoff of all indebtedness under the mortgage.

Do your servicing practices provide that a previous loan modification would not disqualify a borrower from the principal modifications required by the Hope Program?

A previous loan modification would not disqualify a delinquent borrower from an additional loan workout or modification, including assessing the borrower's eligibility for the HOPE for Homeowners refinance program. Our servicers may allow delinquent borrowers to enter into a subsequent loan workout or modification, including a refinance, to keep the borrower in a home they can afford. We do, however, have some concerns that borrowers for whom we previously modified loans may view the refinance alternative as a "better" alternative for them, even if it creates potentially significant incremental costs for Freddie Mac. An important dimension of this program is that the Board of Directors must establish standards to ensure that borrowers do not inappropriately become delinquent to take advantage of a better opportunity.

Thank you for the opportunity to provide this information in response to your questions. We look forward to working with you on approaches to sustaining affordable homeownership. Please do not hesitate to contact me if you have any questions.

Sincerely,

Dick Syron

Richard F. Syron

cc: Chairwoman Maxine Waters, Subcommittee on Housing and Community Opportunity
Chairman Melvin Watt, Subcommittee on Oversight and Investigations
Representative Brad Miller

HOPENOW

Support & Guidance For Homeowners

FOR IMMEDIATE RELEASE

Press Only Contacts: Kara Ross 202.683.3117
Kate McGann 202.683.3143
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Over 2 Million Foreclosures Prevented In Past Year By Hope Now Alliance Members

Number of homeowners helped in July 2008 sets another monthly record

Washington, D.C. (August 27, 2008) – HOPE NOW, the private sector alliance of mortgage servicers, counselors, and investors that has been working aggressively over the past year to prevent foreclosures today announced that over 2 million homeowners have avoided foreclosure and have been able to stay in their homes due to the unwavering efforts of HOPE NOW and the broader mortgage industry.

HOPE NOW also announced that the number of foreclosures prevented in July 2008 was at a record high for the second consecutive month, and was 6 percent higher than the number of foreclosures prevented in June. Compared to July 2007, the number of foreclosures prevented has increased by more than 54 percent.

In July 2008, HOPE NOW mortgage servicers helped homeowners avoid foreclosure by completing more than 192,000 mortgage workouts. Workouts include both modifications to the terms of existing mortgages and repayment plans. All workouts are intended to be permanent changes that, barring a life event such as a job loss, death, or illness, will enable the homeowner to stay in the home as long as he or she wishes to do so.

"The industry's overwhelming commitment to helping homeowners avoid foreclosure and stay in their homes is undeniable and steadfast," said HOPE NOW's Executive Director Faith Schwartz. "Because of HOPE NOW's vast and multifaceted efforts, more than 2 million families and the communities in which they live are much better off today than they otherwise would have been."

The HOPE NOW report estimates that on an industry-wide basis:

- The total number of foreclosures prevented by mortgage servicers since July 2007 has risen to nearly 2.07 million.

- Mortgage servicers provided loan workouts for approximately 192,000 borrowers in July, an increase of 11,000 loan workouts over June.

- Approximately 112,000 of the homeowners with prime and subprime mortgages helped by servicers in July received repayment plans; approximately 80,000 received loan modifications.

- Nearly 52 percent of homeowners with subprime loans received modifications.

A summary table of the results is attached and can be found at http://www.hopenow.com/media/press_release.php.

According to Schwartz, the rapid pace of foreclosure prevention by HOPE NOW members is likely to accelerate further in the coming months due to the alliance's continuing efforts to reach out to millions of homeowners through mailings, the HOPE Hotline, and the regional homeowner workshops it has been holding around the country.

"At the same time Tropical Storm Fay was raging, more than 3,600 people attended the homeowner workshops held in Florida last week," she said. "These targeted efforts led by the HOPE NOW alliance clearly demonstrates the sheer volume of homeowners that will continue to be helped in the coming months."

Because of several factors, the numbers reported by HOPE NOW differ from those reported by the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), and other regulators. For example, OCC collects information from 9 nationally chartered banks, OTS collects information from 5 federally chartered thrifts, and HOPE NOW collects data from 23 companies with a variety of charters and regulators. HOPE NOW members report approximately 38 million loans, substantially more than the number included in either the OCC or OTS reports.

The HOPE NOW survey estimates the effort by the total mortgage lending industry to help homeowners avoid foreclosure. By contrast, OCC and OTS only provide data from the largest chartered institutions they oversee.

None of these differences invalidate the information in any of the reports.
HOPE NOW also announced today the results of a separate survey of subprime adjustable rate mortgages with rates resetting in 2008. The results, reported by 9 companies representing approximately 60 percent of subprime loans, are as follows:

- Approximately 1.1 million subprime loans were scheduled to reset between January and July 2008.

- Since rates began to reset on these loans in January 2008, those loans that were current at reset and subsequently started the foreclosure process account for less than 1 percent of remaining loans.

- Nearly 80,000 of these loans have been modified. Over 74 percent of these modifications are for 5 years or longer.

- 436,000 of the subprime adjustable rate loans that were originally scheduled to reset during this period were paid in full when the homeowner refinanced the loan or sold the property.

ABOUT HOPE NOW

HOPE NOW is an alliance between counselors, mortgage market participants, and mortgage servicers to create a unified, coordinated plan to reach and help as many homeowners as possible.

The Homeownership Preservation Foundation's HOPE Hotline (1-888-995-HOPE), which is available 24 hours a day, 7 days a week, and 365 days a year, receives an average of more than 4,000 calls a day. There is no cost to homeowners for using the HOPE Hotline.

HOPE NOW coordinates a nationwide campaign to reach homeowners who may be at risk of losing their homes. So far, HOPE NOW has sent almost 1.9 million letters. About 18 percent of homeowners receiving the HOPE NOW-coordinated letters have contacted their servicer, six times more than the routine 2-3 percent response rate servicers receive when they send their own mailings.

In the past seven months, HOPE NOW has connected thousands of homeowners with their lender and/or a HUD-certified housing counselor at workshops in 20 different cities in California, Georgia, Illinois, Pennsylvania, Ohio, Nevada, New Jersey, Texas, Wisconsin, Tennessee, Florida, Massachusetts, Florida and Indiana. Additional workshops are being scheduled so that more troubled borrowers can be helped.

In addition, HOPE NOW members recently agreed to make substantial additional efforts to contact homeowners whose mortgages will reset in the coming months and to further expedite the process used to determine how best to keep them in their homes.

# # #

WORKOUT PLANS (Repayment Plans + Modifications) and FORECLOSURE SALES

July 2007 - July 2008

BORROWER LOAN WORKOUT PLANS

	2007 Q3	2007 Q4	2008 Q1	2008 Q2	2008 July	Total
Repayment Plans	322,909	333,393	312,225	301,894	111,993	**1,382,414**
Prime	120,254	136,364	146,586	141,126	57,822	602,152
Subprime	202,656	197,029	165,639	160,768	54,171	780,262
Modifications	75,326	140,401	170,090	220,100	80,042	**685,959**
Prime	29,999	37,162	48,022	55,907	22,115	193,204
Subprime	45,327	103,239	122,068	164,193	57,927	492,754
Workout Plans	398,236	473,794	482,315	521,994	192,034	**2,068,372**
Prime	150,253	173,526	194,607	197,033	79,937	795,356
Subprime	247,983	300,268	287,708	324,961	112,097	1,273,016

FORECLOSURE SALES

	2007 Q3	2007 Q4	2008 Q1	2008 Q2	2008 July	Total
Foreclosure Sales	135,330	151,403	202,970	245,688	91,752	**827,142**
Prime	53,760	59,750	82,819	107,661	44,090	348,079
Subprime	81,570	91,653	120,151	138,027	47,662	479,063

Worklout Plans = Repayment Plans + Modifications

Repayment Plans: A plan that allows the borrower to become current and catch up on missed payments that are appropriate to the borrower's circumstances, which involves deferring or rescheduling payments but the full amount of the loan is expected ultimately to be paid and within the original contractual maturity of the loan.

Modifications:

A modification occurs any time any term of the original loan contract is permanently altered. This can involve a reduction in the interest rate, forgiveness of a portion of principal or extension of the maturity date of the loan.

HOPENOW

Support & Guidance For Homeowners

Statement for the Record of

Faith Schwartz

Executive Director, HOPE NOW Alliance

Hearing on

The Implementation of the Hope for Homeowners Program

and Review of Foreclosure Mitigation Efforts

Committee on Financial Services

United States House of Representatives

September 17, 10:00 a.m.

2128 Rayburn House Office Building

Chairman Frank, Ranking Member Bachus, and members of the Financial Services Committee, I am pleased to submit this statement for the record on behalf of the HOPE NOW Alliance on our ongoing efforts to assist homeowners and prevent foreclosures. As you know, HOPE NOW is an alliance between counselors, servicers, investors, and other mortgage market participants to prevent foreclosures through outreach to delinquent borrowers, counseling, and loan workouts based on the borrower's ability to repay. As you hold this hearing about preparations for the Hope for Homeowners FHA program, I wanted to provide you a brief update on the activities of the HOPE NOW Alliance. The Alliance's work in preventing foreclosures is continuing and advancing.

HOPE NOW's efforts will continue as long as there is need. The servicer members of HOPE NOW will add Hope for Homeowners to their current efforts to avoid foreclosure and find workable solutions for at-risk homeowners. The HOPE NOW servicers are working to prepare to implement the Hope for Homeowners program and are talking to staff of HUD and the Oversight Board about how the program will be executed. HOPE NOW encourages its servicers to utilize all loss mitigation options available to assist homeowners in avoiding foreclosure.

HOPE NOW's activities and efforts in reaching, counseling and assisting at-risk homeowners is continuing. In June 2008 the HOPE NOW servicers adopted Servicing Guidelines, a strong uniform set of procedures and guidelines intended to improve responsiveness and provide clarity and guidance on how servicers are working to respond to homeowners and counselors. These servicing guidelines do four critically important things that will benefit homeowners: expedite, inform, protect and remedy. Here are the critical elements of the guidelines and HOPE NOW's progress:

- **Communication and Outreach:** HOPE NOW is committed to reaching out to all borrowers who are having difficulty paying their mortgage or are otherwise at-risk of foreclosure. HOPE NOW is achieving this through a variety of outreach efforts.
    - Homeownership Preservation Workshops: HOPE NOW is conducting a series of in-person workshops for homeowners. These workshops are held across the country, providing at-risk borrowers an opportunity to meet directly and talk with their loan servicer or a local HUD-approved counselor. Since the first week of March, HOPE NOW has held twenty homeowner events, reaching over 11,000 families. These collaborative workshops are enabling more homeowners to meet with their mortgage company and develop workout solutions that help them stay in their home.
    - Direct Mail Campaign: Since November 2007, HOPE NOW servicers have sent over 1.6 million letter to borrowers who are 60 days or greater past due. The average monthly response is 20 percent. While that is far better than the typical 2-3 percent response rate servicers get when sending their own mailing, it is not nearly enough; the vast majority of no-contact delinquent borrowers still have no contact with their servicer. We urge you to continue to get the message to your

constituents who receive a letter to call their lender or the Homeowner's HOPE Hotline, 888-995-HOPE.

- HOPE Hotline 888-995-HOPE: The Homeownership Preservation Foundation's HOPE Hotline, 888-995-HOPE, continues to have a dramatic and positive impact for distressed borrowers. The hotline directly connects homeowners with trained counselors at non-profit counseling agencies that are HUD-certified. This counseling service is completely free to borrowers and is offered in English and Spanish. The counselors have direct access to the services through improved single points of entry that all HOPE NOW Alliance members agreed to create. To date, the Homeownership Preservation Foundation has received 903,919 calls and counseled 306,547 homeowners. In 2nd Quarter 2008, the Hotline received 198,450 calls and counseled 68,899 borrowers. In addition to this, in-person counseling is available through NeighborWorks and other HUD-approved counseling agencies.

- Early Contact: All HOPE NOW lenders are committed to contacting their borrowers at least 120 days prior to the initial rate reset on an adjustable rate mortgage.

- Ad Council Campaign: A national Ad Council campaign urges homeowners in trouble to call the 888-995-HOPE Hotline because "nothing is worse than doing nothing."

- **Reporting:** HOPE NOW servicers agree to track and report on their performance to gauge industry progress towards reducing foreclosures and increasing options for distressed homeowners. The latest HOPE NOW data shows that additional homeowners are continuing to receive assistance to avoid foreclosure and remain in their homes. From July 2007 through July 2008, over 2 million borrowers avoided foreclosure through loan workouts. In July 2008, HOPE NOW servicers helped homeowners avoid foreclosure by completing more than 192,000 mortgage workouts; this includes 112,000 repayment plans and 80,000 loan modifications. HOPE NOW will continue to track and measure outcomes and will continue to report these results to the Committee.

  - State Level Data: HOPE NOW has state-level data available on counseling, outreach letters, delinquencies, and loan workouts. For example, since July 2007, over 26,500 Massachusetts homeowners avoided foreclosure through the efforts of HOPE NOW. In that same time period, nearly 24,000 Alabama homeowners also avoided foreclosure. If you would like this information for your state, please contact HOPE NOW.

- **Loss Mitigation Options / Solutions for Preventing Foreclosure:** HOPE NOW servicers continue to commit to assisting homeowners through various loss mitigation options consistent with investor guidelines or approvals including forbearance, repayment plan, modification, partial claim, short sale, and deed in lieu of foreclosure. HOPE NOW

servicers will add the Hope for Homeowners program as an additional loss mitigation option.

- **Performance Measures:** HOPE NOW servicers continue to commit to a variety of guidelines that will greatly enhance the process used to assist the borrower. These timelines represent a strong commitment on behalf of servicers to respond and reach out to borrowers and third party housing counselors in a timely manner. This is in direct response to requests from borrowers on the status of their loans that are being reviewed for options to avoid foreclosure.

- **Subordination of Second Liens:** Subject to applicable servicing agreement limitations, HOPE NOW servicers servicing second liens should re-subordinate their loans with respect to an existing first lien where the second lien holder's position is not worsened as a result of a refinance or loan modification.

The HOPE NOW servicing guidelines can be found on the HOPE NOW's website, www.hopenow.com.

HOPE NOW's top priority is to keep people in their homes and to avoid foreclosure whenever possible. The HOPE NOW Alliance will continue to work on these issues and we will keep the Committee updated on our efforts.

HSBC

Niall S. K. Booker
Chief Executive Officer

August 25, 2008

The Honorable Barney Frank
Chairman
Committee on Financial Services
United States House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Frank:

We appreciate the opportunity to respond to your inquiry requesting information related to HSBC Finance Corporation's ("HSBC") position on the Federal Housing Administration's "Hope for Homeowners" program. We commend your leadership in championing the cause of preserving homeownership and preventing foreclosures. HSBC has been and remains strongly committed to our customers' homeownership preservation.

HSBC is primarily a portfolio lender that retains servicing rights. This means we can be flexible in offering solutions to our customers. We are pleased to advise you that as part of our own programs, we have provided relief to 25.5% of our real estate secured portfolio at June 30, 2008. In the first half of 2008, we expanded our foreclosure avoidance and account modification programs to qualify more customers for payment relief with longer term modifications (generally either two or five years.) Under these programs, we modified 32,288 customers with a dollar value of $4.8 billion in the first half of 2008

As noted above, HSBC continues to be aggressive in our efforts to help our customers through a broad range of existing home preservation initiatives within our company. At the same time, we are also actively engaged in the "Hope for Homeowners" program. Since "Hope for Homeowners" was announced, HSBC has already begun to review our portfolio to identify possible qualified homeowners, and as such, when formalized guidelines become available, we plan to move forward where individual circumstances suggest this may be a suitable solution. We encourage your committee and the agencies responsible for publishing program guidelines to act swiftly so that we can utilize the tool as part of a broader suite of options to provide relief to our customers.

HSBC has plans underway to launch a direct mail campaign to our customers, to build awareness for "Hope for Homeowners, along with our own longstanding foreclosure avoidance programs. Additionally, HSBC will utilize available dedicated resources within our operating centers to provide information to customers who contact us directly.

HSBC will utilize principal reductions as appropriate. HSBC has and will examine customers' individual circumstances in order to determine the best available option which may include a loan modification, repayment plan or participation in the "Hope for Homeowners" program.

HSBC Finance Corporation
26525 N. Riverwoods Boulevard, Mettawa, IL 60045
Tel: (224) 544-6990
niallbooker@hsbc.com

The Honorable Barney Frank
August 25, 2008

HSBC servicing guidelines will not preclude customers who act in good faith and previously received payment relief from participating in the "Hope for Homeowners" program, as we understand the program guidelines currently,

We are pleased that HSBC's many existing programs and initiatives align closely with the efforts to prevent foreclosures such as the "Hope for Homeowners" program and continue to work on refining future programs as more knowledge and data are acquired. We will continue our active involvement in community and industry initiatives and above all will continue to be proactive in working with our customers to achieve creative solutions and preserve homeownership where it is in everyone's interest to do so.

If you have any additional questions, please do not hesitate to contact me at (224) 544 - 6990 or Monique Frazier, Vice President, Government Relations, at (202) 778-1432 and she will direct your call to the appropriate HSBC personnel.

Yours sincerely,

Niall S. K. Booker
Chief Executive Officer

cc:

The Honorable Maxine Waters
Chairwoman
Financial Services Subcommittee on Housing and Community Opportunity

The Honorable Melvin L. Watt
Chairman
Financial Services Subcommittee on Oversight and Investigations

The Honorable Brad Miller
Ranking Member
Financial Services Subcommittee on Oversight and Investigations

INDEPENDENT COMMUNITY BANKERS of AMERICA

August 29, 2008

Honorable Barney Frank
Chairman
Committee on Financial Services
United States House of Representatives
Washington, DC 20015

Dear Chairman Frank:

I am writing in response to your letter of August 5, 2008, posing several questions regarding foreclosures and mortgage restructuring for borrowers unable to pay their mortgages and the potential use of the Hope for Homeowners Program, which will become available on October 1st. First of all, I would like to commend your leadership on the historic Housing and Economic Recovery Act of 2008, which provides vital support for the housing and mortgage sectors.

As you know, the Independent Community Bankers of America is a national trade association that represents some 5,000 community banks and is not itself a mortgage lender. We contacted Taylor, Bean and Whitaker (TB&W), a national wholesale mortgage lender and servicer that services mortgages on behalf of many of our members, to assist us in answering your questions. TB&W works with a representative cross section of our membership. As a result, the answers from TB&W fairly reflect the mortgage practices of community banks. We have also received information from some ICBA members who retain servicing on mortgages originated by those members.

Before answering your specific questions, I would like to comment on the role of community banks in the current mortgage and housing crisis. To put it simply, community banks played no role because, by and large, they did not engage in the subprime lending practices at the heart of the current crisis. As a result, community banks are not experiencing unusual levels of mortgage defaults.

You asked whether community banks will be reviewing loan documents, contacting borrowers that may qualify for the Hope for Homeowners Program and forbearing foreclosure for those that may qualify for the program. As noted above, community banks are not experiencing unusual levels of default. As a standard practice, TB&W and community banks that service their own mortgages monitor payment activity for changes that might signal a borrower could have difficulty paying the mortgage. If that occurs, it

INDEPENDENT COMMUNITY BANKERS of AMERICA *The Nation's Voice for Community Banks®*
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is the practice of these servicers to contact the borrower quickly to avoid potential problems. It is not their practice to rush to foreclosure, which has significant negative consequences for both borrowers and lenders.

You asked whether we anticipate making principal reductions in order to qualify borrowers for the Hope for Homeowners Program, and in addition, whether a prior loan modification would disqualify a borrower from the principal modification required by the Hope Program. Working with borrowers on case-by-case basis, TB&W and community banks have and will continue to make loan modifications to avoid foreclosure, when loan modification is a viable option.

A number of ICBA members have been preparing to use the Hope for Homeowners Program by sending staff to training and applying to become approved FHA lenders. TB&W is a leading FHA approved lender. ICBA has partnered with TB&W to provide ICBA members easier access to all FHA programs, including the HOPE Program.

Community banks and TB&W will continue to work with individual borrowers to find the best solution to keep the borrowers in their homes, including through a loan modification under the Hope Program, when a modification is in the best interest of the borrower and lender. A prior modification in of itself should not disqualify a borrower from the modification needed to qualify under the Hope Program, as long as the borrower demonstrates an ability and willingness to repay the modified loan.

Community banks are truly invested in long-term relationships with their customers and their communities. When community banks service mortgages, they have a strong interest in maintaining those relationships, and not just guarding the interests of investors. Community banks' involvement in finding solutions for consumers extends beyond their own customers as community banks have offered refinancing to troubled borrowers with loans from other institutions as well.

Thank you for the opportunity to respond to these questions. Please let me know if I can provide any additional information.

Sincerely,

Camden R. Fine

Camden R. Fine
President and CEO

cc: Rep. Maxine Waters
Chairwoman
Subcommittee on Housing and Community Opportunity

Rep. Melvin L. Watt

Chairman
Subcommittee on Oversight and Investigations

Rep. Brad Miller

LLS™ Litton Loan Servicing®

Larry B. Litton, Jr.
President and Chief Executive Officer
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Houston, Texas 77081
713-966-8803
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August 29, 2008

The Honorable Barney Frank
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Frank:

We are responding to your letter dated August 5, 2008, inquiring about certain business practices Litton Loan Servicing LP ("Litton") will be executing in advance of the October 1 start date for the "Hope for Homeowners" refinance program. We appreciate this opportunity to respond to your questions.

(1) Will you be using the next few months to review loan documents, contact borrowers and forbear foreclosure for those that may qualify?

For more than 20 years, Litton has focused substantial efforts on providing loss mitigation opportunities for distressed homeowners with the goal of helping these consumers preserve homeownership whenever possible. Our company works very hard to identify homeowners who may be in danger of losing their homes, and we work with these customers to find reasonable solutions while simultaneously protecting the interests of investors whose loans we service under various contractual agreements.

As we have often said, the interests of homeowners and investors are generally aligned, and frequently we can achieve solutions, such as loan modifications, that both sides find acceptable. Over the past 12 months, Litton has modified in excess of 36,000 mortgage loans, representing 27.44% of our portfolio that was one or more months past due during this time. These modifications changed the terms of the original loan, and in most cases included waiver of all or part of arrearages, principal reductions, decreases in interest rates and term extensions, among other efforts meant to help customers continue to make their monthly mortgage payments.

We use automated processes to identify at-risk homeowners, particularly those who are facing an interest rate reset that will cause an increase in their monthly payments, and we employ a wide-range of strategies to reach out to customers who are delinquent or likely to become delinquent.

For those with adjustable rate mortgages, Litton will make contact well in advance of their reset dates, and we use this time to determine the customers' ability to make the reset payments and

offer a rate freeze for five years to those customers who will have difficulty making an increased payment.

For current customers who proactively call us inquiring about a workout option and for delinquent customers we contact, we gather information about their financial situations in order to find an appropriate workout solution. By understanding a customer's financial situation and ability to make payments, along with considering applicable terms of the servicing agreement, we can determine if a loan modification, short sale, short refinance, or other option is most suitable and affordable for that customer.

Specific to the Hope for Homeowner's FHA refinance program, our servicing system may not contain all of the data elements a lender will need to qualify a homeowner for a FHA refinance. Litton is a servicer of mortgages and does not originate any loans. Therefore, Litton does not have all data that will allow us to determine exactly who will or who will not qualify for the new FHA loan product, but it may be possible for us to determine this as we work with customers through our standard loss mitigation processes. When we identify customers who may be good candidates for the new FHA refinancing program, we can refer interested customers to originators.

For customers facing foreclosure and who are actively seeking a modification, loss mitigation, or a refinance solution, we will suspend foreclosure actions for a temporary time period to allow customers time to negotiate in good faith the terms of a short sale, refinance settlement, or loan modification with Litton. However, foreclosure will recommence once we determine that a customer does not have the willingness or ability to honor the terms of such solutions or if the customer is not acting in good faith.

(2) Do you anticipate making the principal reductions necessary to quality for refinancing at-risk borrowers into the Hope for Homeowners Program?

Yes, we will consider making principal reductions to the extent they are allowed in the various servicing agreements we have with investors. As previously stated, many times the modifications we have completed have included reducing principal. Modifications can also include reducing or waiving interest arrearage and/or advances for taxes, insurance, late charges, among other accrued costs.

Of the approximately 36,000 loans modified in the last 12 months, about 75% contained some form of debt reduction as part of the modification agreements accepted by our customers. Additionally, we have performed more than 2,400 short sales/payoffs during this same time period where we have accepted a payoff for substantially less than the total amount due. Litton will waive principal when necessary to complete a loan modification, short refinance, or short sale in instances where we can demonstrate that our investor will lose less money as opposed to a foreclosure action.

(3) Do your servicing practices provide that a previous loan modification would not disqualify a borrower from the principal modifications required by the Hope Program?

Previously modified consumers who have defaulted on their modification plans will not be precluded from requesting additional loss mitigation opportunities or a short refinance payoff where appropriate and needed.

One danger we must safeguard against is the abuse of this concept where repeated defaults are "rolled" forward into new loan modifications. These new modifications may not necessarily be meaningful and would serve only to postpone and ultimately increase losses and not address the fundamental payment issue for the customer. If we believe a legitimate issue is adversely impacting a customer's ability to pay and if we believe that the customer is acting in good faith, we will provide that customer with additional loss mitigation opportunities including accepting a short refinance that is funded by the new FHA loan product when available.

We appreciate this opportunity to answer your questions. Litton remains committed to finding ways to help customers maintain homeownership whenever possible, while at the same time living up to the contractual obligations we have with thousands of investors who made these mortgage lending opportunities possible.

Sincerely,

Larry B. Litton, Jr.
President and CEO

MORTGAGE BANKERS ASSOCIATION
Investing in communities

August 29, 2008

The Honorable Barney Frank
Chairman, Committee on Financial Services
United States House of Representatives
Washington, DC 20515

The Honorable Maxine Waters
Chairwoman, Subcommittee on Housing and Community Opportunity
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

The Honorable Melvin L. Watt
Chairman, Subcommittee on Oversight and Investigations
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

The Honorable Brad Miller
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Dear Chairman Frank, Chairwoman Waters, Chairman Watt & Representative Miller:

Thank you for your letter asking the mortgage industry to consider forbearing foreclosures in anticipation of the October 1, 2008 implementation of the Hope for Homeowners program. We are eager to help the Hope for Homeowners program become another effective tool for servicers and investors to help keep homeowners in distress in their homes. This letter responds to the specific questions raised in your August 5, 2008 letter.

Identifying and Evaluating Qualifying Borrowers

The Mortgage Bankers Association is working closely with the Department of Housing and Urban Development (HUD), the Department of the Treasury, the Federal Reserve and the Federal Deposit Insurance Corporation (FDIC) (collectively known as the Oversight Board) to garner significant support for the Hope for Homeowners program from all constituents, including borrowers, originators, servicers, investors and insurers. It is important to understand, however, that several critical borrower eligibility provisions are still being discussed by the Oversight Board, such as underwriting criteria and the formula for equity and appreciation sharing. Until these parameters have been established, the industry cannot accurately identify which borrowers may qualify for the program and, therefore, which borrowers should be considered for pre-implementation forbearance. Nevertheless, our members have assured us that ongoing forbearance activities will possibly capture candidates for Hope for Homeowners refinance transactions, although they may find that some people who are granted forbearance may not ultimately qualify for the program.

As demonstrated by HOPE NOW's Project Lifeline, servicers commonly grant forbearance while evaluating a borrower's request for loss mitigation. Servicers are performing record volumes of loss mitigation helping many borrowers today. HOPE NOW data indicate that servicers prevented over 2 million foreclosures through modifications and repayment plans between June 2007 and July 2008. Other modification options are also offered that are not captured in these numbers, including forbearances, advance claims and delinquent refinances.

These activities will continue during the regulation-writing period with the same urgency. Servicers will continue to evaluate borrowers for loss mitigation, including forbearance, modifications, repayment plans and other foreclosure avoidance options. Borrowers with a willingness to retain their home and with reasonable financial means to do so will be considered for a range of options, including forbearance from foreclosure. In many cases, borrowers will be more immediately served through a modification and will not need to wait for the new Hope for Homeowners program.

MBA is also working to make the Hope for Homeowners program the best tool it can be by sharing its views with the Oversight Board on how to address several critical questions that will ultimately determine how broadly the program can be used. These questions include how to structure the shared appreciation, how to secure the rights to equity and appreciation sharing and what the underwriting standards will be. At the same time, investors, such as Fannie Mae, Freddie Mac and even Ginnie Mae must define the extent to which the program can be used on their pooled or insured loans. MBA has identified several statutory provisions which may limit the applicability of the program and as they are identified, we are working quickly and closely with the appropriate agencies to develop solutions. Indeed, loss mitigation activities will continue with the same urgency, even while regulations and guidance are in flux.

Ultimately, the goal is to help more borrowers in distress stay in their own homes. Accordingly, while we work to make Hope for Homeowners the best program it can be, we are also continuing to focus on enhancing other tools, particularly *FHASecure*, to ensure that borrowers and lenders have all of the tools they need to reach the best possible outcomes.

Principal Reductions to Qualify Borrowers

Your letter specifically asked whether servicers will write down the principal necessary to qualify a borrower for the program. Servicers have indicated that writing down principal will be considered provided that it is not prohibited by investment contracts. In determining the correct course of action when comparing principal write-downs to modifications or other loss mitigation options, the servicer is duty-bound to take the course that has the least negative impact on the investor or its own shareholders. As stated at the hearing before the House Financial Services Committee on July 25, modifications of the term, interest rate and/or principal deferrals are always preferred over principal write-down as they have less financial impact on the investor and are often better for the borrower. In the vast majority of cases, affordability can be achieved through modification without the need for principal write-downs. Moreover, in many cases, modifications and other loss mitigation tools will have less impact on the borrower by avoiding premium charges, closing costs and equity/appreciation sharing. As a result, we do anticipate that loss mitigation will outpace originations of Hope for Homeowners loans. This is not an undesirable outcome – as members of the Committee acknowledged at the hearing. The objective is to keep willing borrowers in their homes when they have reasonable resources to do

so. The Hope for Homeowners program will be a valuable tool, but it will have most value for people for whom other forms of loss mitigation do not work.

Previous Modifications as an Additional Obstacle to Refinance

Lastly, you also request information as to whether a previous modification would disqualify a borrower from a Hope for Homeowners loan. MBA believes a previous loan modification would not disqualify a borrower from the principal modifications required by the Hope for Homeowners program. Servicers will consider a borrower for another work out option despite a previous modification. We understand that borrowers' situations change and that modified payments approved in the past may not accommodate current financial circumstances. Again, servicers will have to determine which alternative is a better course of action – a refinance through the Hope for Homeowners program or an additional modification. It is important to point out that borrowers who repeatedly default without additional hardship, who fail to adequately adjust their spending habits or fail to pursue adjustment to non-housing debt contributing to their financial difficulties will find servicers and investors are reluctant to take additional losses. This is a reasonable business decision and one that is based on the particular circumstance of the borrower.

MBA appreciates this opportunity to respond to these important questions. We would welcome the opportunity to speak with you at length about the implementation of this program, particularly when the Oversight Board finalizes its requirements and servicers have the opportunity to properly analyze the loans and borrowers with which they work.

Sincerely,

John A. Courson

John A. Courson
Chief Operating Officer

Statement of John A. Courson
Chief Operating Officer
Mortgage Bankers Association

for the Record of the
House Financial Services Committee

Hearing on

"The Implementation of the Hope for Homeowners Program and A Review of Foreclosure Mitigation Efforts"

September 17, 2008

Chairman Frank and Ranking Member Bachus thank you for the opportunity to submit this statement for the record regarding the new Hope for Homeowners (HFH) program.[1] The Mortgage Bankers Association[2] believes the HFH program can become another effective tool for servicers and investors to help keep distressed homeowners in their homes.

The HFH program was created this past summer by the Homeownership and Economic Recovery Act of 2008 (HERA). HERA is an enormous accomplishment for Congress and the housing industry alike. The Act includes several reforms that will help stabilize the market and provide new opportunities for consumers, even as the market continues to evolve in response to great pressures.

Among HERA's important reforms is the HFH program. The HFH was designed as a "rescue plan" to help distressed mortgage borrowers for whom the value of their property has declined below the outstanding amount of their mortgage loan. The Federal Housing Administration (FHA) was given an additional $300 billion in FHA mortgage insurance authority for the purpose of refinancing eligible borrowers into new, affordable FHA-insured loans with lower fixed rates based on the current property values. These loans would also be made available for securitization through Ginnie Mae.

MBA is working closely with the Department of Housing and Urban Development (HUD), the Department of the Treasury, the Federal Reserve Board and the Federal Deposit Insurance Corporation (FDIC) (collectively known as the Oversight Board) to garner significant support for the HFH program from all constituents, including borrowers, originators, servicers, investors and insurers. MBA has already submitted many comments and suggestions on how to implement the program.

Implementation of Hope for Homeowners

HERA requires that mortgages eligible for refinancing through HFH satisfy three main criteria: 1) the loan was originated on or before January 1, 2008; 2) the borrower's debt-to-income ratio is greater than 31 percent (or a higher ratio set by the Oversight Board) as of March 1, 2008; and 3) the eligible borrower have only one primary residence.

As the Committee is aware, several critical details of the borrower eligibility provisions are still being discussed by the Oversight Board, including underwriting criteria and the formula for equity and appreciation sharing. Until these parameters have been established, the industry cannot accurately identify which borrowers may qualify for the program and, therefore, which borrowers should be considered for pre-implementation forbearance. That said, our members

[1] Sections 1401-1404 of P.L. 110-289 (July 30, 2008).

[2] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 370,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications Its membership of over 2,400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

believe that their ongoing forbearance activities likely will capture potential candidates for HFH refinance transactions, although it is likely that many borrowers who are granted forbearance by our members may not ultimately qualify for the HFH program.

As HOPE NOW's Project Lifeline demonstrates, servicers commonly grant forbearance while evaluating a borrower's request for loan modification or other accommodations. Servicers are now performing record volumes of loan modifications and other accommodations to the benefit of millions of borrowers. HOPE NOW data indicate that servicers prevented over 2 million foreclosures through modifications and repayment plans from July 2007 to July 2008. Other modification options are also offered that are not captured in these numbers, including forbearances, advance claims and delinquent refinances.

These activities will continue during the regulation-writing period with the same urgency. Servicers will continue to evaluate borrowers for loss mitigation, including forbearance, modifications, repayment plans and other foreclosure avoidance options. Borrowers with a willingness to retain their home and with reasonable financial means to do so will be considered for a range of options, including forbearance from foreclosure. In many cases, borrowers will be more immediately served through a modification and will not need to wait for the new HFH program.

MBA is also working to make the HFH program the most effective and beneficial tool it can be by sharing its views with the Oversight Board on how to address several critical questions that will ultimately determine how broadly the program can be used. These questions include how to structure the shared appreciation, how to secure the rights to equity and appreciation sharing and what the underwriting standards will be. At the same time, investors, such as Fannie Mae, Freddie Mac and even Ginnie Mae must define the extent to which the program can be used on their pooled or insured loans. MBA has identified several statutory provisions which may limit the applicability of the program and, as they are identified, we are working quickly and closely with the appropriate agencies to develop solutions. Indeed, loan modification and other accommodation activities will continue with the same urgency, even while regulations and guidance are in flux.

Ultimately, the goal is to help more distressed borrowers stay in their own homes. Accordingly, while we work to make HFH the best program it can be, MBA and its members continue to focus on enhancing additional tools, particularly FHASecure, to ensure that borrowers and lenders have a full palette of options available to reach the best possible outcomes.

Principal Reductions

While there is much to admire about the HFH program, we want to emphasize that it is one of many tools available to the industry to help distressed borrowers. In particular, the HFH's core feature of reducing the necessary principal to make borrowers eligible for HFH likely will make producing such loans difficult. Servicers have indicated that they are willing to consider writing down principal to aid distressed borrowers provided that it is not prohibited by the servicing agreements. Principal write-downs are not the only potential aid to borrowers that servicers will consider, however. In evaluating possible courses of action, including principal write-downs, loan modifications and other accommodation options, the servicer generally is legally obligated to seek to minimize investor losses. Based on guidance from the American Securitization Forum, servicers generally have determined the size of the loss by calculating a net present

value of the alternative to the investor (looking at securitization trusts as a whole and not looking at how the modified payment stream would affect different classes of investors in the trust). As the Committee is aware, this guidance was essentially adopted both by Section 1403 of HERA and by California's SB 1137.

As stated at the Committee's hearing on July 25, modifications of the term, interest rate and/or principal deferrals are always preferred over principal write-down as they have less financial impact on the investor and are often more beneficial to the borrower. In the vast majority of cases, affordability can be achieved through modification without the need for principal write-downs.

Moreover, in many cases, modifications and other accommodation options will have less negative impact on the borrower by avoiding premium charges, closing costs and equity/appreciation sharing. As a result, we anticipate that such options will outpace originations of HFH loans. This is not an undesirable outcome – as members of the Committee acknowledged at the July 25 hearing. The objective of HFH and other foreclosure prevention efforts is to keep willing borrowers in their homes when they have reasonable resources to do so. The HFH program will be a valuable tool, but it will have the most value for people for whom other forms of loss mitigation do not work.

Obstacles to Greatest Use of the Program

MBA has been working closely with the Oversight Board to evaluate the various provision of the HFH program and have identified several areas of concern that may reduce borrower or lien holder interest and capacity to participate in the program. We believe the Committee may benefit from a brief discussion of some of these key issues.

* **Market Rates for the Product:** A significant obstacle to originating high volumes of HFH loans is the treatment of these loans in securitization. We understand that HFH loans will not be eligible for the Ginnie Mae TBA market. Instead, HFH loans will be subject to custom pooling, which currently trade at a spread behind Ginnie Mae TBAs, resulting in higher interest rates to borrowers. In some cases, borrowers refinancing into this program will see their interest rates increase. If servicers are required to further reduce principal beyond the 10 percent amount to account for the high cost of the financing, servicers are likely to find loan modification or other alternatives more attractive on a net present value basis. Additionally, it seems likely that borrowers will find the equity and appreciation share provisions less attractive than loan modification and other options.

* **Lien Holder Write Downs:** HERA grants authority to FHA to share future house appreciation with subordinate lien holders. However, the bill appears to exclude first lien holders from recouping any write downs through this same offset. As a result, the program makes it more difficult economically for first lien holders to participate. MBA would welcome a legislative correction of this issue.

* **Possible Treatment as High Cost Loans Under HOEPA:** A critical concern to new originators of HFH loans is the possibility that such loans will exceed the thresholds in the Home Ownership and Equity Protection Act (HOEPA) and therefore become subject to significantly increased liability, including broader rescission, mortgage cancellation penalties and assignee liability. As you know, because of the heightened liability risk of HOEPA loans, lenders simply

do not originate them. At this time, it is unclear how the "appreciation share" must be accounted for in Truth in Lending disclosures and whether the "appreciation share" in itself will contribute to a loan exceeding the HOEPA thresholds where it would not have done so otherwise. Until this issue is resolved, there may be significant reluctance in the industry to originate HFH loans.

* **Fully Insured Loans:** It appears that FHA-insured loans will be eligible for the HFH program. However, it is unclear whether FHA will pay the full claim based on the principal balance (plus other reimbursable amounts) prior to the write down. Unless FHA will provide a full claim, it seems unlikely that servicers will be able to justify the HFH refinance to investors because the transaction would result in the loss of a significant portion of the FHA insurance protection as a result. This loss of coverage likely would make the HFH program fail the net present value test when compared to loan modifications and other options that do not reduce the existing FHA insurance coverage.

* **Representations and Warranties:** HERA requires that originators of HFH loans make certain representations and warranties. Lenders who breach the representations and warranties cannot be paid a claim. In addition, the Act denies insurance on loans where there is a first payment default. These are substantial changes from existing practices, and it seems likely that many lenders will view these changes as significant deterrents to making HFH loans. Depending on how stringently a first payment default is defined, lenders and servicers may not be able to absorb the elevated credit risk associated with making loans to delinquent borrowers.

* **Appraisal Standards:** MBA has significant concerns about the appraisal standards for originating HFH loans. The Act requires the use of certified appraisers, a higher standard than for other FHA loans. While it is critical that the integrity of the valuation process be ensured, there may not be sufficient numbers of certified appraisers in all geographic areas. Delays in closing loans, therefore, may occur unless a long phase-in period is provided. Given that it can take a seasoned appraiser over eighteen months to complete the prerequisites to certification, an appropriately-timed phase-in period is warranted.

In addition, the Act prohibits interested parties from compensating, instructing, inducing, intimidating, not-paying, and reporting in regards to the appraisal. These terms are not terms of art in either the mortgage industry or the legal provision and are interpreted differently in various jurisdictions. It is not difficult to envision numerous scenarios where appraisers and lenders and servicers may have to communicate to resolve conflicts over differences in valuations. If such conflicts cannot be resolved efficiently and effectively, the closing of loans where there are disagreements about valuation may be inhibited. To avoid such a negative result, it is critical that such conversations not be prohibited universally. MBA would welcome legislative correction of the appraisal issues.

FHASecure

As MBA mentioned above, the HFH program is but one of the options available to the industry in working with distressed borrowers. An important alternative to HFH is the FHASecure program. In many ways, FHASecure is more flexible—and, therefore, may be more attractive to both borrowers and industry—than the HFH program. For example, FHASecure allows lien holders to bifurcate mortgages, allows first lien holders to participate, and provides important controls through the recording of two liens. This flexibility, which provides significant benefits to borrowers, more than justifies its continued existence during this time of elevated delinquencies.

While the HFH program is an important option to borrowers and the industry, MBA believes FHASecure is an essential alternative and MBA has strongly urged HUD to keep this program active.

MBA understands that FHA has the authority to make changes to FHASecure's underwriting criteria to allow more distressed borrowers to qualify. MBA would support the following changes and encourages the Commissioner to consider these expansions of the program:

- **Permit delinquent fixed-rate loans to be eligible** – Currently, FHA allows delinquent borrowers with adjustable-rate loans to refinance into *FHASecure* mortgages under certain conditions. Delinquent borrowers with fixed-rate mortgages are not currently eligible. Nonetheless, many borrowers with conventional fixed-rate products have experienced financial hardships for the same extenuating circumstances as ARM borrowers. We recommend that *FHASecure* be expanded to allow the refinance of delinquent conventional fixed-rate loans with extenuating circumstances.

- **Allow delinquencies prior to reset and for reasons other than a rate reset on Interest Only and Payment Option mortgages** – While interest rate changes are one factor affecting delinquency and foreclosure rates, other factors are also impacting these figures. Many borrowers are experiencing financial hardships for reasons other than rate resets. As a result, we recommend that FHA eliminate the requirement that borrowers be current six months prior to rate reset on Payment Option mortgages and Interest Only mortgages. Instead, we recommend that borrowers demonstrate that their delinquencies were due to extenuating circumstances and that they are now capable of affording the new *FHASecure* loan. Similarly, we recommend that FHA eliminate the requirement that lenders demonstrate that a delinquency post-reset was due to an interest rate change, as it is extremely hard for an originator to document. In many cases, the borrower does not become immediately delinquent, but relies for some period of time on savings or investments, making it hard to clearly evidence the reason for default.

- **Reducing the risk of late endorsements** – Lenders must have assurances that FHA will not change its late endorsement policy to require a six-month good payment history. Such a requirement would increase the credit risk to the servicer and reduce the effectiveness of the program.

- **Increase the debt-to-income (DTI) ratio and permit 40-year amortization** – In an effort to help more distressed borrowers, we recommend raising the published DTI threshold and permitting 40-year amortization mortgages. We would welcome further discussions on this issue.

- **Create appropriate compensating factors** – Current borrowers and certain delinquent borrowers are eligible for *FHASecure* even if their DTIs exceed 31/43 percent, provided, however, that there are compensating factors. Those factors are designed for purchase money transactions and not for delinquent refinances. MBA urges FHA to publish compensating factors that more appropriately deal with the *FHASecure* product. MBA is exploring alternatives and will provide recommendations in the near future. In addition, we urge FHA to consider appropriate compensating factors for borrowers that are 90-

days delinquent. Currently, this category of borrower is not eligible to exceed the DTI ratios for any reason.

- **Pool certain refinances with simultaneously created seconds into Ginnie Mae I and II -** Today, a current borrower can refinance his or her first lien mortgage into an FHA-insured loan even when there is a preexisting second that is "underwater." These loans are eligible for pooling into Ginnie Mae I and Ginnie Mae II. However, a current borrower who refinances a loan into an *FHASecure* mortgage with a simultaneously created "underwater" second must be pooled into a multiple issuer specified Ginnie Mae II M FS pool. Price is significantly worse on these securities, resulting in higher interest rates to borrowers. Assuming no other material underwriting distinction, borrowers in both scenarios are similarly situated from a credit risk perspective. As a result, we request that Ginnie Mae consider pooling *FHASecure* loans made to current borrowers with newly created seconds into Ginnie Mae I and Ginnie Mae II.

- **Allow more severe delinquencies –** Currently, borrowers who are more than 90-days delinquent are not eligible for *FHASecure* even if the new monthly payment under the *FHASecure* loan would make the loan affordable and resolve the delinquency. We request that FHA consider allowing more severe delinquencies to be eligible for *FHASecure*.

Evaluating Servicers on Entire Spectrum of Assistance

Because the HFH program is one of many options available to industry for working with distressed borrowers, the success of foreclosure avoidance efforts cannot be evaluated by focusing solely on the use of the HFH program. While MBA hopes that the HFH program will provide meaningful benefits to many distressed borrowers, as discussed above, many borrowers and industry participants may favor other alternatives, including loan modification. Indeed, as other alternatives of foreclosure avoidance improve, it seems likely that these other alternatives may be even more attractive relative to the HFH program. MBA believes the ultimate goal must be keeping distressed borrowers in their homes, not the implementation of a particular program. MBA, therefore, urges that the industry's success in working with borrowers be measured in terms of foreclosures avoided, not solely in terms of the volume of HFH loans.

Conclusion

On behalf of MBA, I would like to thank the Committee for the opportunity to present our views on the HFH program and helping distressed borrowers through FHA. While much of the regulatory guidance is still forthcoming, the mortgage industry has already begun to prepare borrowers for the new option the HFH program affords.

MBA looks forward to continuing to work with FHA, the Oversight Board, and this Committee in the future to bring more solutions home to more distressed homeowners.

OCWEN

Ronald M. Faris
President

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August 29, 2008

Representative Barney Frank
United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

Re: "Hope for Homeowners"

Dear Representative Frank:

We are in receipt of your August 5, 2008 correspondence regarding the FHA "Hope for Homeowners" refinance program and appreciate the opportunity to share our plans and practices targeted at homeowners struggling to avoid foreclosure. We have always maintained that foreclosure is the least desirable and most expensive resolution for a non-performing mortgage loan, so we are pleased to see the "Hope for Homeowners" program provide another resolution option to homeowners as an alternative to foreclosure.

At Ocwen Loan Servicing, LLC, we strive to be a leader in loss mitigation strategies that keep borrowers in their homes. Since 2007, we have increased the number of professionals handling loans in default by approximately 65%. During the first half of 2008, we modified 36,147 loans - bringing the loans out of delinquency at payment terms affordable to the borrower based on our ability to pay calculators – with an average application to modification time of less than two weeks. Below we have provided more detailed information on our mortgage servicing practices, specifically in response to each inquiry:

- ***Will you be using the next few weeks to review loan documents, contact borrowers and forbear foreclosure for those that may qualify?*** *Although the program will not be fully up and running until October 1, several servicers have pledged to use this time to review their loan files and work with borrowers likely to qualify.*

  Yes, we are willing to forbear foreclosure on any borrower who may qualify for the "Hope for Homeowners" program and who agrees to a resolution option permitted under our contractual obligations. In the ordinary course of our business, we make daily attempts to contact delinquent borrowers in an effort to determine desire and ability to affect a loan resolution. A review of the loan documentation is not necessary, as we regularly attempt to contact every delinquent borrower through the date of foreclosure - daily attempts through Day 93 of delinquency and at least twice weekly from Day 94 through foreclosure sale.

  We are committed to finding workable loan resolutions for our borrowers that will prevent foreclosure and eviction, while maintaining cash flows for the securitization investors. We anticipate that the "Hope for Homeowners" program will be a welcomed addition to the growing list of resolution options available to homeowners facing foreclosure and look forward to participating in any such program to the fullest extent of our legal authority.

- ***Do you anticipate making the principal reductions necessary to qualify for refinancing at-risk borrowers into the Hope for Homeowners Program?*** *A number of servicers have informed us that – although they have generally avoided significant principal write downs to date – they expect to substantially increase these write downs to take advantage of the Hope for Homeowners Program. The general view has been that principal write downs have a "last option' for servicers because they represent an immediate loss for investors but (even if meaningful) leave investors and servicers with ongoing credit risk. Given falling housing prices, servicers and investors have heretofore preferred to take their losses now – foreclosing on property – rather than a principal loss now and potentially greater loss later (if the borrower redefaults). This, of course, facilitates more foreclosures, put more houses on the market, and risks a vicious cycle. The Hope for Homeowners Program eliminates this collective action problem by permitting servicers and investors to take a single large loss now (through a principal reduction) – but eliminates the risk of future loss. This keeps more people in their homes – slows the decline in housing prices and avoids the enormous losses associated with foreclosure.*

  Yes, we anticipate making principal reductions as necessary to assist borrowers to qualify under the "Hope for Homeowners" refinance program to the extent our contractual obligations permit us to do so. We have a very successful loss mitigation program, which typically boasts delinquent loan resolution rates near 80% and includes principal reduction where appropriate and contractually permissible. Principal reduction, interest rate reductions, maturity extension and/or combinations thereof are all considered as potential options when seeking a resolution. In cases in which we do not have authority to approve a principal reduction, we will solicit such authority or approval from the note owner.

- **Do your servicing practices provide that a previous loan modification would not disqualify a borrower from the principal modifications required by the Hope Program?** *In our conversations with servicers, they have informed us that a previous loan modification would not disqualify a borrower from the principal reductions required to participate in the Hope Program. However, a number of housing counselors have informed us that some borrowers are not currently receiving a second modifications even if the first modification was clearly too small to meaningfully affect their ability to repay the loan. Please confirm that these previous modifications will not limit willingness to work with qualified borrowers under the Hope Program?*

  Yes, we evaluate every situation on individual merit regardless of any prior modification or other resolution, as financial circumstances can change. Therefore, a previous loan modification would not disqualify a qualified borrower from being considered for the "Hope for Homeowners" program.

Hopefully, we have fully addressed your questions at this time. Should you have any questions or require further information, please feel free to contact me at (561) 682-8560 or Ronald.Faris@Ocwen.com.

Sincerely,

Ronald M. Faris
President

cc: Representative Melvin Watt
2236 Rayburn House Office Building
Washington, D.C. 20515

Representative Brad Miller
1722 Longworth House Office Building
Washington, D.C, 20515

Representative Maxine Waters
2252 Rayburn House Office Building
Washington, D.C. 20515

WaMu

David C. Schneider
President, Home Loans
1301 Second Avenue
Seattle, WA 98101

August 27, 2008

The Honorable Barney Frank
Chairman, Committee on Financial Services

The Honorable Maxine Waters
Chairwoman, Subcommittee on Housing and Community Opportunity

The Honorable Melvin L. Watt
Chairman, Subcommittee on Oversight and Investigations

The Honorable Brad Miller
Member, Committee on Financial Services

Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Re: Mortgage Servicing Practices and Hope for Homeowners Act of 2008

Dear Sirs and Madam:

This letter is in response to your August 5th letter to Kerry Killinger requesting information on Washington Mutual's mortgage servicing practices in light of the recently enacted Hope for Homeowners Act of 2008. Enclosed please find Washington Mutual's responses to the questions posed in your letter.

Washington Mutual appreciates the efforts of Congress and the Administration to stabilize the housing markets and supports your efforts in promoting the Hope for Homeowners Program. We share the same goal of helping at-risk homeowners avoid foreclosure whenever possible, and believe that the Hope for Homeowners Program will provide another option for borrowers and servicers in addressing troubled loans.

I hope you find our responses helpful in your oversight of the implementation of this new Program, and thank you for the opportunity to discuss our activities related to it and broader homeownership preservation efforts.

Sincerely,

David C. Schneider
President, Home Loans
Washington Mutual

Enclosure

1. **Will you be using the next few months to review loan documents, contact borrowers and forbear foreclosure for those that may qualify?**

   At this time, the federal agencies have not published guidelines for the new Home for Homeowners (HFH) Program, which we anticipate will include maximum debt-to-income and other credit qualifications, so it isn't yet possible to fully determine individual borrower eligibility for the HFH Program. However, in the interim, Washington Mutual is establishing a process to implement the new program and will continue to actively work with all of its borrowers to pursue workout options that will enable them to stay in their homes. Once HFH Program guidelines are available, which we hope will be in the next few days, we will review the cases in which we believe borrowers may be eligible and will work to help those borrowers either through the HFH Program or another one of our borrower assistance options (which would include providing forbearance with regard to foreclosure).

2. **Do you anticipate making the principal reductions necessary to qualify for refinancing at-risk borrowers into the Hope for Homeowners Program?**

   Washington Mutual continues to be committed to preserving homeownership for our borrowers whenever possible, and use a variety of workout options that enable us to do this effectively. We recognize that market conditions and falling home prices are important considerations when evaluating the potential investor or bank loss associated with various workout options. We anticipate that for borrowers whose income does not support other workout or modification options, we will offer to make the principal reduction necessary to allow eligible borrowers to participate in the HFH Program if the potential loss under the program would be lower than the anticipated loss associated with a foreclosure.

3. **Do your servicing practices provide that a previous loan modification would not disqualify a borrower from the principal modifications required by the Hope Program?**

   Our practices do not preclude a customer from receiving a subsequent loan modification, even if a previous modification was unsuccessful. As such, we don't anticipate that borrowers would be ineligible from participation in the Hope for Homeowners Program on the sole basis that they had previously accepted a modification on their loan and failed to remain current on the new terms.

WELLS FARGO HOME MORTGAGE

Wells Fargo Home Mortgage
MAC X2401-064
1 Home Campus
Des Moines, IA 50328

August 27, 2008

The Honorable Barney Frank
Chairman
Committee on Financial Services
U.S. House of Representatives
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Melvin Watt
Chairman
House Financial Services Subcommittee on Oversight and Investigations
US House of Representatives
2236 Rayburn House Office Building
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The Honorable Maxine Waters
Chairwoman
House Financial Services Subcommittee on Housing And Community Opportunity
US House of Representatives
2344 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Brad Miller
U.S. House of Representatives
1722 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Frank, Chairwoman Waters, Chairman Watt and Congressman Miller:

Thank you for requesting our input on the *Hope for Homeowners Program*. We support the program and feel it will be a valuable addition to the loan workout options already available to reduce foreclosures. These include loan modifications that can change any or all of the provisions of the loan (interest rate, term, unpaid principal balance), re-payment plans for customers facing short-term concerns, partial claims on specific FHA and GSE loans, and other solutions that fit the unique needs of our customers.

Our initial review shows that the borrowers who will benefit most from *Hope for Homeowners* are those who have an Option ARM or loan containing a negative amortization feature. This is primarily because these types of loans generally have higher interest rates, and the principal balance will generally be higher in relation to the current value of the home due to the negative amortization features. Customers with conventional loan products without negative amortization features, who need our help, are usually better served in achieving affordability through an interest rate modification. The most important aspect of avoiding foreclosure is helping our customers to find a payment they can afford. From the many customers we have assisted, interest rate reductions have a greater impact on their payment, and therefore affordability, than do principal reductions. Based on these considerations – and since Wells Fargo did not originate and does not service any Option ARM or negative amortization loans our company's use of the *Hope for Homeowners* program may not be as extensive as that of originators or servicers of those types of loans.

Will you be using the next few months to review loan documents, contact borrowers and forbear foreclosure for those that may qualify?

We already have begun analyzing our loans to determine potential use of the program. Because regulations have not yet been released that define the underwriting criteria and the equity appreciation, this analysis currently is an estimate. We may hold off foreclosing on loans that fit what we anticipate the program's criteria will be, provided that it appears likely they could benefit from the program and that it is the best option for both our customer and the beneficial owner of the loan.

Do you anticipate making the necessary principal reductions to qualify for refinancing at-risk borrowers into the Hope for Homeowners Program?

Principal reductions are one of the alternatives we consider to reach affordability for the borrower while balancing the needs of all parties involved. In many cases, affordability is better enhanced by a significant interest rate reduction as opposed to a principal reduction. We recognize that an aspect of the program may be that it reduces the risk of future loss, but we must still comply with our contractual obligations and, as provided in the act, we must maximize the recovery on the loan through a net present value analysis. That is why, for each case, we must perform an analysis of the potential solutions that fit the customer's circumstances and pursue the workout option that maximizes the recovery on the loan.

Do your servicing practices provide that a previous loan modification would not disqualify a borrower from the principal modifications required by the Hope For Homeowners Program?

A prior loan modification and our customer's performance history are factors used in making the determination of the appropriateness of any solution. However, there is no broad or definitive rule that prohibits or limits the number of times that workout arrangements may be made available.

Wells Fargo remains committed to communicating and working with our at-risk customers to minimize foreclosures. As you are aware, our company has undertaken a number of initiatives designed to help financially distressed consumers sustain homeownership. We appreciate the work that you and your staff have done to bring *Hope for Homeowners* to bear. The more solutions that can be found to help our customers in varying circumstances, the better off everyone will be in addressing this challenging issue.

We look forward to continuing to work with you and participation in further discussions concerning this program. Thank you for the opportunity to provide input on this issue.

Respectfully,

Cara K. Heiden
Co-President

Response to questions from the Honorable Michael N. Castle
from Sheila C. Bair, Chairman,
Federal Deposit Insurance Corporation

Q1: Do you have any statistics with regard to performance of loans that are held on-book and serviced by the lending institution contrasted with those that are moved off balance sheet and contracted?

A1: We do not have any data comparing performance of loans that were held on-book and were serviced by the lending institution to those that were sold and subsequently serviced by someone other than the originator.

Banks that file Call Reports include data on loans sold and securitized where the selling bank has retained servicing or has provided recourse or other credit enhancements. Only 93 banks reported this item as of June 30, 2008. At those banks, delinquency rates were lower for loans retained on the balance sheet than for those sold, but the net charge-off rate was higher for loans retained on the balance sheet.

	30-89 past due rate	90 day or more past due rate	Net charge-off rate (YTD)
1-4 Family real estate loans on balance sheet	2.58%	1.03%	1.09%
1-4 Family real estate loans securitized and sold	2.79%	2.00%	0.17%

Response to questions from the Honorable Carolyn McCarthy
from Sheila C. Bair, Chairman,
Federal Deposit Insurance Corporation

Q1: In the case of delinquent mortgages for multi-unit dwellings held by IndyMac that cannot be modified, how does the FDIC deal with tenants? How much time do they have to vacate property once foreclosure proceedings have begun? Are they notified that they must vacate the property? When is notification given?

A1: For loans that IndyMac services, IndyMac adheres to the criteria specified in the servicing agreement and provides the tenant with a 30-day eviction notice or the timeframe specified by state law if it differs.

For loans that IndyMac owns, IndyMac recently revised its processes for working with tenants, regardless of whether the property is a single unit or a multi-unit dwelling, as follows:

- IndyMac does not initiate the eviction process until after it receives legal control of a property.
- After the foreclosure sale is finalized, IndyMac sends tenants an informational letter informing them that the property has been foreclosed. The letter advises that IndyMac is providing the tenants with a 60-day holding period to arrange their relocation prior to initiating the eviction process, and IndyMac may be able to financially assist the tenants with their move.
- Upon expiration of the 60-day holding period, IndyMac sends the tenants a second notice informing them that the eviction process will be initiated. Depending on where the property is located, the eviction process typically takes between 30 to 60 days.

Q2. Is it time to increase the amount insured by the FDIC on individual and retirement accounts?

A2. The Emergency Economic Stabilization Act (EESA) of 2008 has already temporarily raised the general coverage limit from $100,000 to $250,000, which is also the existing coverage limit for retirement accounts. The increase will last until the end of 2009. The EESA directs us not to consider the temporary coverage increase to $250,000 in setting assessments. Therefore, we do not include the additional insured deposits in calculating the fund reserve ratio, which guides our assessment planning. If Congress were to decide to leave the $250,000 coverage level in place indefinitely, however, it would be necessary to account for the increase in insured deposits to determine the appropriate level of the fund.

Q3. Of the 20,000 of IndyMac loans in delinquency that are not owned by IndyMac or with servicing agreements with[out] sufficient flexibility for modification, how do you expect to obtain approval to apply new modification programs to these loans?

A3. Since the streamlined loan modification program was launched on August 20th, IndyMac has been modifying securitized loans according to the servicing agreements' terms. In general, modifications are permitted by the servicing agreements so long as the borrower is delinquent and the modification provides better value than foreclosure.

Some of the loans that IndyMac services are not securitized, but owned as 'whole' loans by investors. The servicing agreements for these 'whole' loans do require consent before modifications can be implemented. IndyMac has obtained approval from the investors for the majority of the 'whole' loans and is implementing the modification approach for those loans.

Q4. How many of the 60,000 delinquent IndyMac mortgages do you expect you will not be able to modify?

A4. Of the more than 60,000 first lien mortgage loans that were delinquent when the FDIC became the conservator for IndyMac in July 2008, not all are eligible for modification. The total delinquent loans includes loans to borrowers who are less than 60 days past due, in bankruptcy, whose foreclosure sale is imminent, or where there are various legal issues that preclude application of our modification approach. This total also includes borrowers who have a modification in process or recently completed a modification, but who IndyMac has to reflect as delinquent until the borrowers pay according to the modified terms for six months. Excluding these loans reduces the potential number of loans eligible for modification by about a third.

The remaining pool of approximately 40,000 loans must then be reviewed under the criteria for the loan modification program to determine if an affordable payment can be achieved for the borrower. IndyMac also must determine that the proposed modification will achieve a better value than foreclosure. Once these criteria are applied, a substantial proportion (about 40 percent) cannot be modified under the streamlined approach. However, even if a loan cannot be modified under the streamlined approach, IndyMac will still review the loan to determine if some alternative to foreclosure is possible. To date, IndyMac has mailed more than 23,000 modification offers to borrowers. In the coming weeks, we anticipate mailing out thousands more modification offers. To date, more than 5,000 borrowers have completed all income verification requirements and thousands more are in process. While we cannot yet determine how many of the borrowers will accept the proposed modifications, we hope that many thousands of borrowers will avoid foreclosure while the FDIC maximizes its recoveries on the IndyMac loans and servicing rights.

Q5. Beyond calls and mailers, what other outreach methods are used by the FDIC? Is the FDIC using in-person outreach methods?

A5. IndyMac and the FDIC have proactively enlisted the help of community newspapers to reach borrowers in their local area. In addition to maintaining its relationship with the HOPE Now Alliance, IndyMac also partnered with local HUD-approved counseling agencies that are affiliated with NeighborWorks. These agencies were specifically chosen to obtain their assistance to contact borrowers in states (California, Florida, New York, and New Jersey) that have a majority of the past due loans. Southern California, and Los Angeles County in particular, represent the highest concentration of delinquent borrowers. As a result, the FDIC is partnering with Los Angeles Mayor Villaraigosa's office and certain local non-profit organizations to sponsor the IndyMac Loan Modification Day on November 22nd. A similar event is planned for the Inland Empire (Riverside and San Bernardino Counties). IndyMac plans to use "in-person" outreach methods at these functions, as our representatives will directly work with borrowers on loan modifications.

Response to questions from the Honorable Melvin L. Watt
from Sheila C. Bair, Chairman,
Federal Deposit Insurance Corporation

Q1: Has there been a significant spike in credit card debt in recent months?

A1: According to the Federal Reserve's G.19 Statistical Release, consumer revolving credit outstanding amounted to nearly $970 billion as of July 2008, an increase of 6.6 percent from the July 2007 level. The G.19 release is a monthly estimate of the size of the revolving consumer credit market, which primarily represents loans made through credit and charge cards.

Consumer Credit, July 1998 - July 2008 ($Millions)			
Date	Total	Revolving	Nonrevolving
Jul-98	1,380,721	560,554	820,167
Jul-99	1,491,002	600,653	890,348
Jul-00	1,627,656	645,627	982,030
Jul-01	1,797,899	709,146	1,088,754
Jul-02	1,942,153	738,426	1,203,727
Jul-03	2,037,011	764,706	1,272,305
Jul-04	2,138,561	786,598	1,351,963
Jul-05	2,254,707	811,574	1,443,134
Jul-06	2,342,259	850,587	1,491,672
Jul-07	2,464,963	909,608	1,555,355
Jul-08	2,587,427	969,899	1,617,528

Federal Reserve G.19 Release

O