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THE FORECLOSURE CRISIS

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

MARCH 8, 2011

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THE FORECLOSURE CRISIS

TUESDAY, MARCH 8, 2011

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Baltimore, MD.

The committee met, pursuant to notice, at 9 a.m. at the Nathan Patz Law Center at the University of Maryland, 500 West Baltimore Street, Baltimore, MD, Hon. Darrell E. Issa (chairman of the committee) presiding.

Present: Representatives Issa, Walberg, Amash, Cummings, Tierney and Welch.

Staff present: Ali Ahmad, deputy press secretary; Molly Boyl, parliamentarian; Katelyn E. Christ, research analyst; John Cuaderes, deputy staff director; Linda Good, chief clerk; Christopher Hixon, deputy chief counsel, oversight; Hudson T. Hollister, counsel; Justin LoFranco, press assistant; Lisa Cody, minority investigator; Carla Hultberg, minority chief clerk; Lucinda Lessley, minority policy director; and Davida Walsh, minority counsel.

Chairman ISSA. This hearing for the Committee on Oversight and Government Reform will come to order.

Today's hearing concerns the ongoing foreclosure crisis that has left tens of millions of American homeowners without an important piece of the American dream.

Today's hearing is but another hearing in a continuation that this committee has looked into since 2007. Long before the economic meltdown, Americans were finding the American dream escaping them. Back in 2007, this committee went to Cleveland, Ohio where for a number of years home prices had stopped going up and were beginning to go down at a frightening rate. As a result, homeowners who had purchases with little or no money down and/or been laid off found themselves losing their home. As a result, communities were beginning to be boarded up. As communities were boarded up, the cycle began to escalate with home values going down.

All of this began without an economic world meltdown, but it foretold many things that we now see here today. The fact is the American home mortgage was designed based on an assumption that homes would never go down in value. All of us know better today that you can't have a national deflation among homes that ultimately if you lose your job, you will not be able to keep a home that was highly leveraged.

So as we hear from witnesses, beginning with the State's Governor, we want this committee to realize that the Government

plays a part in it but there are other factors that always will supersede even Government's best intentions.

This committee has begun and continues to look at HAMP's success or failure and the various Government agencies, including Freddie and Fannie, that failed to secure the dollars that they were supposed to in order to be prepared for down times.

This committee came to Baltimore today at the request of the ranking member. He has worked diligently on the issue of home foreclosures and continues to be a voice on the committee for further investigation.

With that, I recognize the ranking member for his opening statement.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. Thank you very much.

Chairman Issa, I want to thank you for convening today's hearing, and I welcome you and the other members of the committee to my hometown of Baltimore. And I want to welcome Governor O'Malley and Mayor Rawlings-Blake when she arrives.

And I want to thank you, Mr. Governor, for your leadership and you, Mr. Issa, for yours.

Thanks also to the University of Maryland School of Law, my alma mater, for hosting us all here today and to Associate Dean LaMaster and Ed Fischel and certainly to Dean Phoebe Haddon.

Mr. Chairman, we are in the grips of a nationwide foreclosure crises. In 2009, there were about 2.8 million foreclosures across the country. Last year there were 2.9 million. And this year there may be more than 3 million.

This week researchers at Johns Hopkins University here in Baltimore prepared a report for the committee called "The Impact of Foreclosure Waves On the city of Baltimore." I ask that this report be made a part of the official hearing report.

Chairman ISSA. Without objection, so ordered.

[The article entitled, "The Impact of Foreclosure Waves on the City of Baltimore," follows:]

The Impact of Foreclosure Waves on the City of Baltimore

Peter Rosenblatt & Katherine Newman

Krieger School of the Arts and Sciences, Johns Hopkins University

3/7/2011

The Impact of Foreclosure Waves on Baltimore

Summary

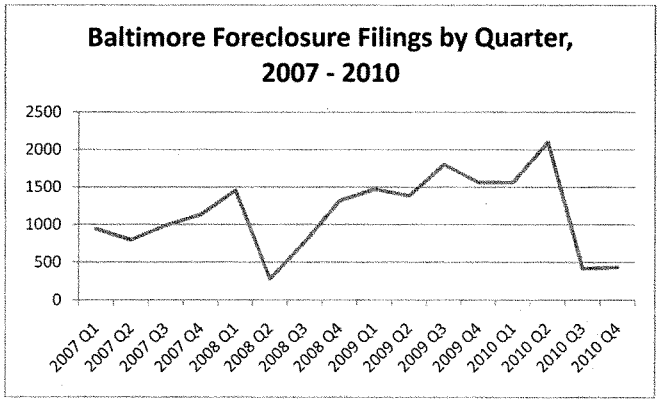
The past three years has seen a wave of foreclosures land on families and neighborhoods throughout the city of Baltimore. Altogether, foreclosures **cost Baltimore families more than $1.5 billion between 2008 and 2010; the average family lost almost $150,000.** In addition to the damage foreclosure did to individuals and families, the city itself was a victim because property taxes that would otherwise have helped to support the public sector went uncollected. In 2010 alone, we estimate that the **city lost $13.6 million in property taxes**. This figure is almost certainly an underestimate of the total loss to the city, because it does not take into account the negative impact that proximity to a foreclosed house has on property values of other homes in the neighborhood.

Virtually every neighborhood—from middle class communities like Hamilton, to working class areas in west Baltimore, to the redeveloping neighborhoods around Patterson Park – has been affected, and few have been left untouched. Overall, middle and working class neighborhoods saw a greater impact: homes in these neighborhoods were more than twice as likely to be foreclosed upon as homes in the city's wealthy neighborhoods. Although majority white neighborhoods had a lower incidence of foreclosure than majority black neighborhoods, mixed-race areas actually saw the highest incidence, with more than 6% of occupied homes in the average mixed race neighborhood experiencing a foreclosure. Areas in the midst of renewal, like Washington Village or north Patterson Park, were particularly hard hit, with more than one out of every 10 homes foreclosed. In the neighborhood north of Patterson Park, foreclosures occurred on just about every street, and many blocks had multiple houses that families lost to foreclosure.

Between 2007 and 2010, there were more than 18,000 foreclosures in Baltimore. The number of foreclosures rose from a low in the second quarter of 2008 to an overall peak in April- June of 2010, a three month period during which there were more than 2,000; twice as many as there had been at the start of 2007. In the analysis below, we look more closely at those foreclosures which took place between 2008 and 2010.

The Big Picture

A foreclosure filing is a legal action in the Baltimore City Circuit Court, representing the initiation of a legal procedure by a lending agency to reclaim the title to a property due to non-payment on a mortgage loan. Not all filings result in actual foreclosures. Under Maryland law, foreclosure fillings take place no sooner than 90 days after the loan is in default.[1]



Foreclosures increased steadily from the second half of 2008 through the middle of 2010. The second quarter of 2010 saw the peak of foreclosures in the city, at more than 2,000. This was more than double the number of foreclosure filings than in the beginning of 2007.

To understand the impact of the problem on Baltimore neighborhoods, we analyzed **11,188** foreclosure filings that took place within the city of Baltimore between January of 2008 and December of 2010[2].

---

[1] The data do not allow us to determine whether or not a foreclosure filing led to an actual foreclosure. Using the Baltimore Neighborhood Indicators Alliance data base, we use the filings to approximate the incidence and cost of foreclosures in the city.

[2] We could not retrieve data on foreclosures that took place in the first two quarters of 2009. Thus the analysis presented here likely underestimates the number and impact of foreclosures on the city as a whole during this time period. However, there is no reason to believe that the pattern of foreclosures would differ in the first half of 2009—thus the calculations that follow likely representative of the impact of foreclosures on different kinds of neighborhoods in the city throughout the period in question.

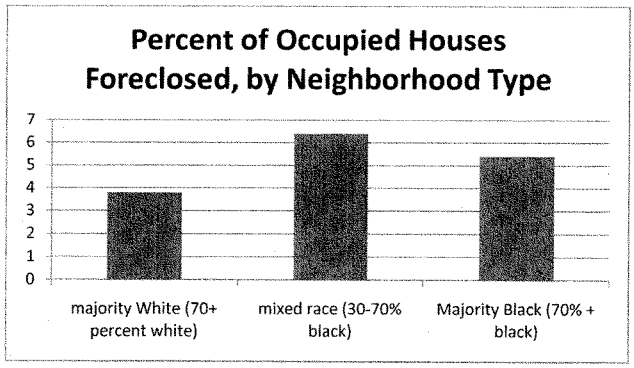
Who Lost? The Disparate Impact of Foreclosures

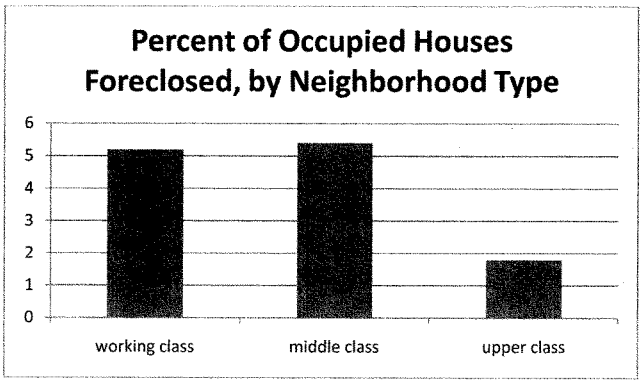
Almost Every neighborhood in Baltimore was touched by the foreclosure crisis. 194 of 200 census tracts in the city experienced at least one foreclosure, for an average of 58 per tract or 5.2% of its occupied housing stock. But averages can be misleading, since the variation in impact is considerable. On the low end, only 0.35% of occupied houses went into foreclosure proceedings; at the high end, the proportion was 18%. Communities in which home owners are more vulnerable to unemployment or that are serviced by lenders offering less favorable mortgage terms, are more vulnerable to foreclosure. They are not necessarily the very poorest neighborhoods because the poor are less likely to be home owners in the first place. The "high impact" neighborhoods are, however, likely to be among the least affluent home owners.

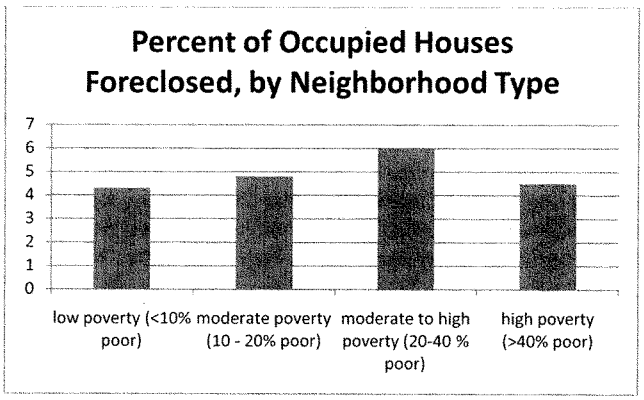
Poorer, mixed race neighborhoods had a higher incidence of foreclosure than well-off majority white neighborhoods. The average white neighborhood had 44 foreclosures, less than 4% of its occupied housing stock. The average mixed race neighborhood had 68 foreclosures, more than 6% of its occupied housing stock. Majority black neighborhoods were more like mixed race neighborhoods, with 5.4 % of their houses foreclosed.

Affluent neighborhoods (where the median household income was more than $95,000) saw less than 2% of their houses foreclosed. Working and middle class neighborhoods were much more likely to experience foreclosure, with incidence rates more than twice as high. *Please see Technical Appendix for definition of class.*

Moderate to high poverty neighborhoods (with poverty rates between 20 and 40%) had a higher incidence of foreclosure than lower poverty neighborhoods, at 6% of occupied houses. Very high poverty neighborhoods did not have as high an incidence of foreclosure, which is almost certainly due to the higher percentage of renters they contain. In Baltimore, high poverty neighborhoods are 73% renter occupied on average, compared to low poverty neighborhoods that are only 32% renter occupied. Majority black neighborhoods also have a higher percentage of renters (54% on average) than majority white neighborhoods (39% on average).



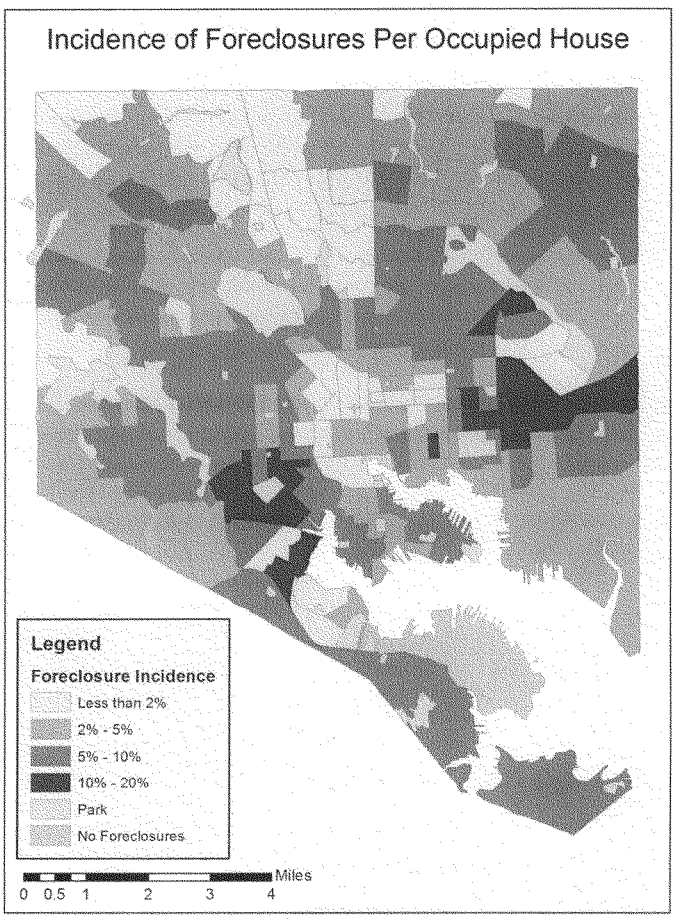




The Geography of Foreclosure

Given the disparate impact of foreclosure by income, it comes as no surprise that the geographic distribution of the "waves" is uneven. As **MAP 1** makes clear, the west and northeast areas of the city saw 5-10% of their occupied housing stock go into foreclosure. The highest incidences in the city are in the Washington Village area in the southwest and the area north and east of Patterson Park. By contrast, Midtown and the Roland Park/Mt. Washington areas of the city were the least affected by the foreclosure crisis.

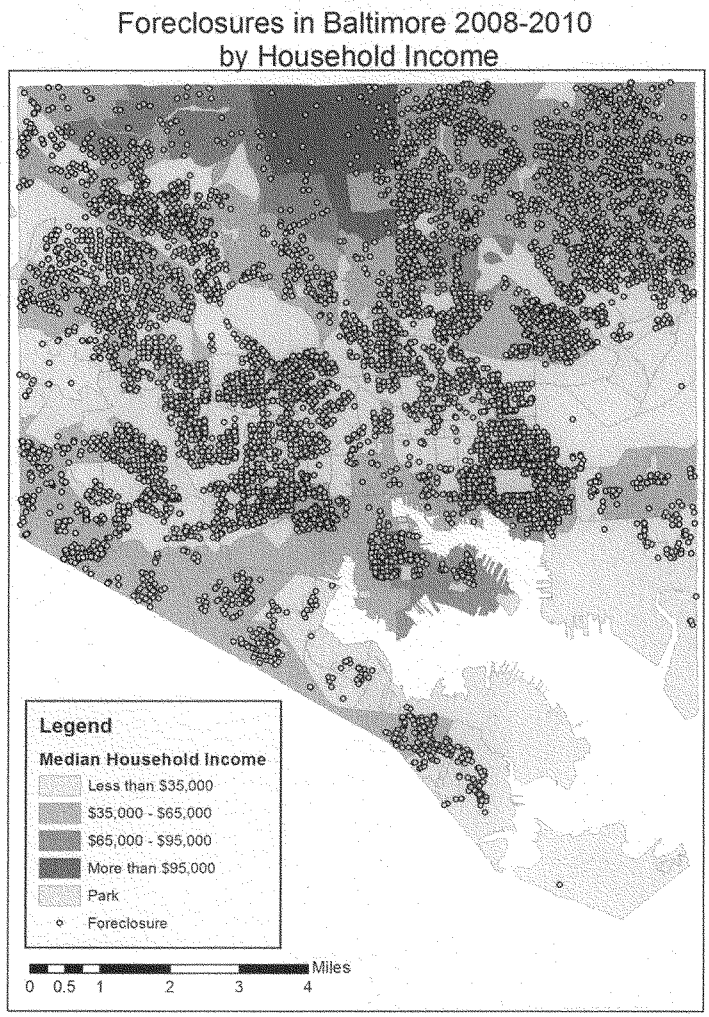
Map 1



MAP 2a illustrates the relationship between neighborhood income and foreclosure. Each yellow dot represents one foreclosure. The background of the map shows the median household income in the census tracts. There are only a scattered few foreclosures in the city's wealthiest

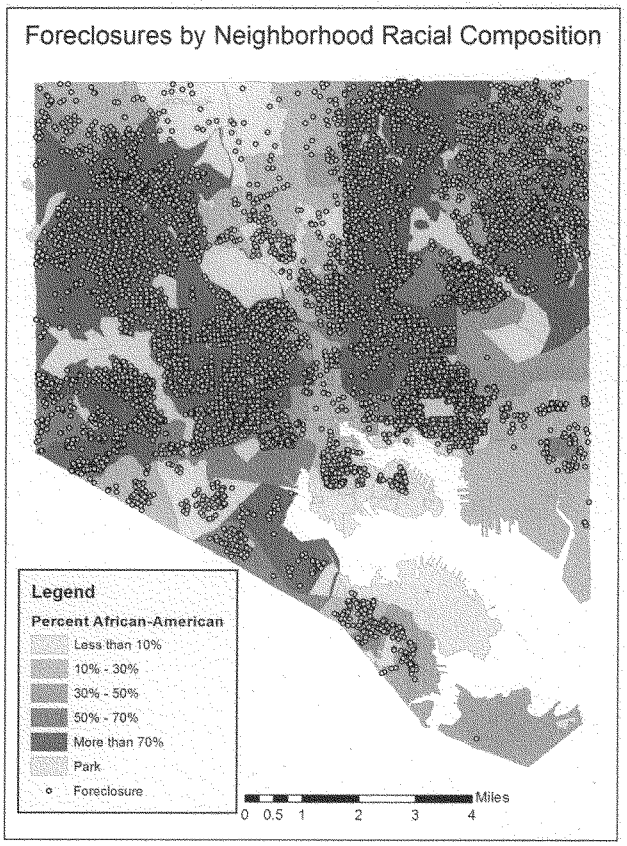
neighborhoods in the north-center region, although there are more in the upper-middle class neighborhoods along the waterfront (Canton and Federal Hill).

Map 2a



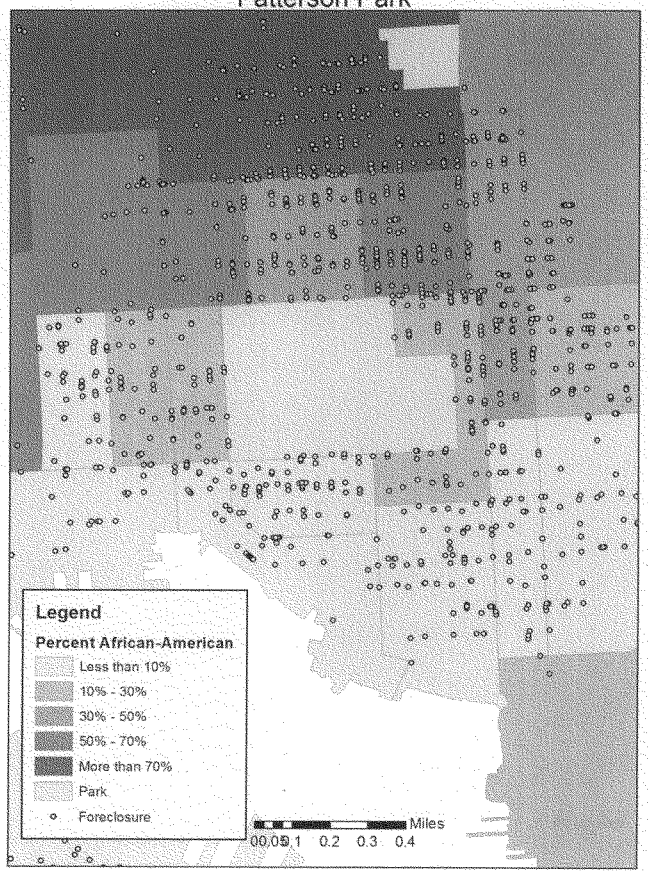
Map 2b shows the spread of foreclosures compared to the racial composition of the neighborhood. Foreclosures are clustered around Patterson Park and across majority-African-American neighborhoods in west Baltimore and east Baltimore

Map 2b



A close-up picture of the Patterson Park area shows that both Canton and the area north of the park were affected, with foreclosures on almost every block north of the park. The higher incidence tracks the racial composition of the area, with mixed race and concentrated African American neighborhoods taking the hardest hits.

Foreclosures by Neighborhood Racial Composition: Patterson Park



What Did Foreclosure cost families? [3]

The financial impact of foreclosure varies by income, with the greatest losses mounting in the most affluent areas, but overall the "epidemic" has been very costly: the average family in the city of Baltimore lost almost $150,000 due to foreclosure.

Not surprisingly, families in the wealthiest neighborhoods lost the most, since they had the most to lose in the first place. On average, high income areas lost $291,204 per foreclosure compared to $168,628 in middle class neighborhoods or $121,552 in working class neighborhoods.[4] Similarly, low-poverty neighborhoods had higher average losses than moderate or high poverty neighborhoods ($184,708 lost due to each foreclosure in the average low poverty neighborhood, compared to $145,254 in moderate poverty neighborhoods).

However, the average **middle class and mixed race neighborhood accounted for more total dollars lost**:

Income Class of Neighborhood	Average total loss in neighborhood	N (neighborhoods)
Working Class	$5,824,022	93
Middle Class	$10,400,000	97
Upper Class	$6,697,706	4

Racial Mix of Neighborhood	Average total loss in neighborhood	N (neighborhoods)
Majority White	$9,075,690	48
Mixed Race	$9,769,773	40
Majority Black	$7,126,917	106

This pattern is mostly likely accounted for by the fact that there were more foreclosures in middle class and mixed race neighborhoods than in wealthy and majority white neighborhoods—thus even though individual losses were lower in less affluent areas, there were more foreclosures in them.

Altogether, foreclosures in the city cost Baltimore families $1.58 billion between 2008-2010.[5]

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[3] Financial Loss is calculated from the amount of the lien reported in the foreclosure filing for each address. The calculations in this section assume that all foreclosure filings went to foreclosure.

[4] Average losses were higher in white neighborhoods ($221,134) than in mixed race or black neighborhoods ($151,646 and $125,678 respectively)

[5] This calculation does not include foreclosures that occurred in the first or second quarter of 2009.

What Did Foreclosures Cost the City?[6]

As a result of foreclosures, the city lost an estimated total of $13.6 million in property taxes. This estimate is probably low, since it does not take into account the negative impact of foreclosure on neighboring property values, which decline precipitously. Each foreclosure within an eighth of a mile of a home has been found to decrease its value by 0.9%.[7] The long term consequences of these reductions in the property tax base are hard to calculate, but almost surely lead to negative multiplier effects. If the city is forced to reduce services, property values may fall even farther, unemployment in the public sector may rise, and a new cycle of foreclosures can kick into gear. This "vortex" effect can be difficult to reverse.

Conclusion

The origin of the 2007 recession in the nation's housing markets has had particularly devastating consequences for urban areas. Baltimore has experienced waves of foreclosures that have seen losses in equity and housing stability that have been especially hard on its mixed race, middle class and working class neighborhoods. These are the areas where a thin cushion of savings erodes quickly when unemployment strikes. The wealth loss sustained by these working families will be exceptionally hard to recover and may have consequences for decades to come as the savings represented by housing, which might have helped support the retirement expenses of the elderly or the college tuition of the younger members of their households, are no longer available.

The claim to the "American dream" that has long revolved around home ownership has taken a hard hit in Baltimore. The city itself has sustained a wound that will be hard to heal given the loss of wealth and the compounding loss of property taxes needed to support essential public services. It will take a sustained economic recovery and considerable investment to revive the neighborhoods affected by the foreclosure wave.

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[6] Please see Technical Appendix for more on our property tax loss estimate.

[7] Dan Immergluck and Geoff Smith, 2006. "The External Cost of Foreclosure: The Impact of Single Family Mortgage Foreclosures on Property Values," *Housing Policy Debate* 17(1) : 57-79).

TECHNICAL APPENDIX

1. A note on class: We used the median household income (in 2009) in a census tract to measure social class of a neighborhood. We compared the median income in each tract in Baltimore to the median income in the average census tract in central Maryland ($65,000 in 2009). Tracts with a median income more than 1 standard deviation below the central Maryland average were coded as "working class," while tracts with a median income more than 1 standard deviation above the central Maryland average were coded as "upper class." Central Maryland is a good approximation of the housing market for the metropolitan area, and includes Baltimore City, Baltimore County, Howard County, Harford County, Anne Arundel County, and Carroll County. The class breakdowns for Baltimore city are as follows:

	Neighborhood Median Income range	N
Working Class	Less than $35,000	93
Middle Class	$35,000 to $95,000	97
Upper Class	More than $95,000	4

We considered using the median income of the average *Baltimore city* neighborhood to make our class cut points, but this resulted in an income division that we felt was not representative of the wider concept of social class. For instance, the upper range of neighborhood incomes in Baltimore city (those more than 1 SD above the city mean) begin at $59,000, which is less than the average neighborhood income in the metropolitan area as a whole. We did not feel that designating these neighborhoods as "upper class" would be consistent with the wider use of the term. Our class breakdown (outlined above) results in fewer "upper class" neighborhoods, but is more representative of the divisions in the metropolitan area and Baltimore's social class composition relative to the rest of the state. Because our measure of foreclosure incidence is not a total count, but is normalized according to the number of houses in the neighborhood, it is not influenced by the different number of upper class and middle or working class neighborhoods in the city.

2. Estimating property taxes: We linked individual addresses in our foreclosure database to the Maryland Department of Assessments and Taxation (http://www.dat.state.md.us/) , which provided us with the assessed value of the foreclosed property. Ideally, we would have done this for every property in our database—but because the properties had to be looked up individually, this was not feasible for the amount of time and manpower we had. Instead, we chose a single property from each census tract in the city. We chose the property that had the

median foreclosure loss in the tract—this is not a perfect match for median assessed value, but it is a better proxy than choosing a property at random. We then used that assessed value to represent the assessed value of every foreclosure in the tract. We then multiplied the assessed value by the Baltimore city property tax rate (2.268%), to derive the amount of property taxes lost on each foreclosed property. The total amount of property taxes is provided above ($13.6 million).

This analysis is for 2010 only, because the Department of Assessments and Taxation database contains the most recent property tax assessment, which in many cases was done in 2010—it would therefore not be representative of property assessments in 2009 or 2008.

3. Count of Foreclosures: Some of the properties in the database are commercial or industrial. We had no way of identifying them in the data, but came to this realization as we looked individual properties up on the Assessment and Taxation website. In our analysis of incidence and loss amount (Sections 1 and 2, above), we excluded all properties where the foreclosure amount was greater than $1 million (285 total cases out of more than 11,000). This limits our analysis to the properties we believe to be homes. The analysis in Section 3 includes properties where the amount of foreclosure loss was greater than $1 million, because the city would still lose property taxes as a result of foreclosure on these properties. In an alternative calculation, we dropped all properties where the foreclosure amount was greater than $1 million—the calculation of property tax loss was $11.5 million in 2010.

Mr. CUMMINGS. The report finds that between 2008 and 2010 there were more than 11,000 foreclosures in the city of Baltimore alone, and cost families more than $1.5 billion.

The foreclosure crisis is a wrecking ball smashing through communities across the Nation, and Baltimore is one example of that destruction.

This crisis not only threatens our Nation's economic recovery, making it harder to reduce unemployment and spur economic growth, it also drains State and local budgets that rely on property tax revenues for schools, police and emergency services. It destroys neighborhoods and devastates families. And it harms individuals. It is a national crisis with very local consequences.

What is so frustrating is that this crisis is being aggravated by actions of the mortgage servicing companies that conduct foreclosures. There are no national standards for these companies and they have engaged in systematic abuses across the country.

In our committee's first hearing this year the Inspector General for TARP testified that the performance of mortgage servicing companies has been, "abysmal." He also said this, "From the repeated loss of borrower paperwork, to blatant failure to follow program standards, to unnecessary delays that severely harmed borrowers while benefiting servers themselves, stories of servicer negligence and misconduct are legend."

These companies have signed false affidavits by the tens of thousands, inflated fees, performed illegal actions against military service members and veterans and aggressively pursued foreclosures when modifications made more sense and were already underway. This system does not work for homeowners, and it does not work for State and local governments. It does not even work for mortgage investors who want to salvage their investments through loan modifications rather than foreclosures.

The Association of Mortgage Investors, which represents private investors, pension funds, universities and endowments reports that investors have suffered material losses as a result of faulty and inefficient and at times improper servicing of mortgage loans. It seems that the only ones who support this flawed system are the ones with their hands on the lever of the wrecking ball—the mortgage servicing companies. They are swinging it more recklessly each year, and we cannot stem this damage unless we hold them accountable.

Mr. Chairman, our committee is taking a great first step today by hearing about the State and local impact of foreclosure crisis. When we return to Washington, I hope we will be able to hear directly from the mortgage servicing companies themselves.

I want to thank you and, again, I want to welcome the mayor, and it is good to have you here, Madam Mayor.

With that, I yield back.

Chairman ISSA. I thank the gentleman.

All members will have 5 legislative days in which to include opening statements and any other remarks.

Do either of you want to make an abbreviated opening statement?

Mr. AMASH. No. Thank you.

Chairman ISSA. Okay. Thank you.

With that, as is the policy of the committee, we will begin reading the mission statement. I know every city and State have their mission statements, here's ours:

"The Oversight Committee, we exist to secure two fundamental principles:

First, Americans have the right to know that the money Washington takes from them is well spent. And, second, Americans deserve an efficient, effective government that works for them. Our duty on the Oversight And Government Reform Committee is to protect these rights. Our solemn responsibility is to hold government accountable to taxpayers because taxpayers have a right to know what they get from their government.

We will work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy."

This is the mission of the Oversight and Government Reform Committee.

And with that, we go to our first two witnesses.

Governor O'Malley. I am sure that we could all do a lot of introductions, but quite frankly I think you are better known than we are here.

And Mayor Rawlings-Blake.

It is the rule of the committee that all witness be sworn in. Would you please rise to take the oath?

[Witnesses sworn.]

Chairman ISSA. Let the record reflect both answered in the affirmative.

It is also tradition on Capitol Hill that witnesses speak for 5 minutes and then be endlessly asked questions from the dais. We will change that considering your input. We would ask you remember that your official opening statements are in the record, however, we recognize you for such time as you may consume, Governor.

STATEMENTS OF MARTIN O'MALLEY, GOVERNOR OF MARYLAND; AND STEPHANIE RAWLINGS–BLAKE, MAYOR OF BALTIMORE

STATEMENT OF MARTIN O'MALLEY

Governor O'MALLEY. Mr. Chairman, Chairman Issa, thank you very, very much, and Ranking Member Cummings and all of the members of the committee.

Well, I should leave that to the mayor, right, to say welcome to Baltimore. I can say welcome to Maryland, the rich and the land of the free, home of the brave.

It is a honor to be with you and to be able to address on this important, important issue along with Mayor Stephanie Rawlings-Blake.

As we make this turn out of the recession and into a new economy, I firmly believe, as you do, that the building block for our stronger growing middle class is a family's home. It is the building block. And there is no more powerful place in our State than a family's home. And the loss of even one home impacts not just entire families, but entire neighborhoods, entire communities, entire cit-

ies, entire counties. Home ownership is critically important to our ability to make it in America.

And while we are by no means out of this crisis, we still have a lot of people looking for jobs, we do believe that we have been able to do some things that have helped to protect family homes, protect home ownership and allow many of our moms and dads to be able to get to the other side of this recession.

Our foreclosure rate is now significantly lower than the national rate. Last month RealtyTrac reported that we have driven foreclosures down 70 percent compared to a year ago. It is the sharpest decline that any State in the country has been able to achieve over the course of this last year. And yet too many of our fellow citizens continue to lose their homes. And as mortgage companies and the post-robo signing moratoriums, we are very cognizant of the fact that those foreclosures once again will start to go up.

With reforms we passed last year mortgage giants in America are now required to meet with homeowners at the negotiating table before they can throw them out on the street. They must prove that they've made a full review of mitigation options. This was legislation that we enacted, as I say, just last year. Prior to that, when this crisis hit, we enacted other legislation. In fact, at the time, the Washington Post characterized it as one of the most sweeping legislative packages in America to slow down the fast track to foreclosure. It might have been sweeping, but it was not as effective as we would have liked. So that is why we had to go back again and give every homeowner the right to a mandatory mediation before they can be thrown out of their home.

We have now reached agreements with multiple mortgage services to create a streamlined and transparent loss mitigation process. We've assembled a pro bono network of a thousand attorneys called forth by the Chief Judge of our Court of Appeals, Judge Robert Bell. And we've teamed with nonprofit housing counselors to assist more than 54,000 Marylanders.

When the robo-signing incident came to light, we partnered with Congressman Cummings and our Attorney General for our State to demand that servicers halt foreclosure proceedings until they reworked their practices. And we partnered with our court system which adopted emergency rules to protect homeowners. We are part of that multi-State effort that, I believe, was joined by all 50 Attorneys General. I hope I put the right plural in the right place there.

Many servicers still do not have the basic systems in place to keep track of paperwork to provide timely responses to loan modification applications. Maryland's housing counselors tell us that obtaining even a trial loan modification typically takes 6 months.

We have taken action at the State level to protect homeowners and hold the national mortgage giants accountable. But we cannot go it alone and we need your help. And to that end I ask that you number one, hold mortgage giants accountable. We favor the creation of clear and specific national servicing standards. Each one of these modifications should not be some grand mystery started from scratch every time a homeowner is looking for a little relief.

Number two, housing counseling empowers our most vulnerable homeowners with the tools and the know-how to save their homes.

I want to understand how critically important the dollars have been from, I believe, the Federal Government and also our State that we put into the nonprofit housing counselors. They have acted as mitigation originators, if you will. And they are critically important. Now is not the time to slash those dollars.

Number three, rather than dismantling the imperfect and yet critically important Home Affordable Modification Program, the HAMP Program, we believe that it can and should be retooled for greater efficiency, greater transparency and higher performance. The simple truth is that without access to affordable and sustainable loan modifications, more Americans will lose their homes, slowing our recovery.

Number four, HUD's Emergency Homeowner Loan Program is projected to help more than a 1,000 unemployed Marylanders who are struggling to make mortgage payments while looking for work. I believe that this is another tool that has to be preserved and has to be employed.

Number five, community development block grants and the Neighborhood Stabilization Program can be the difference between saving or losing a neighborhood in the course of these difficult times.

So, I urge you to continue your oversight, continue to drive performance. These are programs that should work more effectively than they have worked. We do believe that we have found the right alchemy of several steps, one of them being the mandatory right to mediation, that has greatly reduced the number of homes we are losing to foreclosure.

I thank you again for your attention to this important matter.

[The prepared statement of Governor O'Malley follows:]

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TESTIMONY OF MARTIN O'MALLEY

GOVERNOR OF THE STATE OF MARYLAND

On

THE FORECLOSURE CRISIS
MORTGAGE SERVICING ABUSE AND MARYLAND'S FORECLOSURE PREVENTION EFFORTS

Before the

House Committee on Oversight and Government Reform

United States Congress

March 8, 2011

Baltimore Field Hearing

Chairman Issa, Ranking Member Cummings, Members of the Committee:

Welcome to the Greatest City in America. We are honored to host you in Maryland for this field hearing, and grateful that you've chosen to address the critically important issue of protecting homeownership.

In order for our country to win the global competition for jobs and opportunity, we must curtail the national foreclosure crisis. It has been suggested that there is no more powerful place than a family's home. Homeownership is the bedrock of a strong, growing, upwardly mobile middle class – and it is more important now than ever before, as we make this turn into a changing new economy.

This is one of those challenges that we can only hope to tackle together. Private citizens, private companies, and governments at every level have a role to play.

And all of us share a stake in the outcome. The loss of even one home impacts not just an entire family, but entire neighborhoods, communities, cities, and even states. This is a lesson we learned all too well here in the City of Baltimore through decades of population loss, as vacant homes led to vacant neighborhoods – and with them vacant hearts. Reclaiming vacant properties became a critically important part of our strategy for turning around our City and continues to be under the leadership of Mayor Rawlings-Blake.

Today I wanted to share a few of the things we've been doing in the State of Maryland to prevent family homes from becoming vacant houses, and a few of the areas for which we hope to continue to have your help at the federal level.

COMBATING FORECLOSURE IN MARYLAND

While we are by no means out of this crisis in Maryland, our strategies have been delivering results.

According to information from the Maryland Judiciary, in the first half of 2010 there were more than 25,000 foreclosure filings in MD and just 4,000 in the second half of 2010. We attribute this dramatic drop to two issues: the July 1 enactment of Maryland's new Mediation law and subsequent robo-signing scandal that surfaced in the latter half of the year. While the slow down that is attributable to robo-signing is temporary, we are hopeful that the Mediation law is having the desired dampening effect on foreclosure filings. The law substantially increases requirements for lenders to communicate with borrowers prior to foreclosing and to exhaust loss mitigation remedies available before a sale can occur.

But, as you know, too many of our fellow citizens continue to lose their homes. As mortgage companies end their robo-signing moratoriums and give the green light to their attorneys to proceed to foreclosure, we will likely lose even more.

The current foreclosure crisis and nationwide spike in foreclosure activity across the nation saw its origin in a vast surge in subprime lending that proliferated during the housing boom. Between 2000 and 2007, the subprime market share in Maryland climbed from just over 1.5% to almost 12% of all mortgage loans.[1] Loans with higher interest rates and "exotic" options that were originated with little to no verification of a borrower's ability to repay made up 60% of all foreclosures in Maryland during 2007.[2]

Today, the face of foreclosure has changed. Homeowners with basic fixed-income mortgages are losing their jobs in the overall economic downturn and, therefore, cannot sustain their mortgage payments. Housing values for all homeowners have tumbled, depleting the wealth that all middle class families need to finance educational choices and a dignified retirement.

As Mayor in Baltimore City, my Administration recognized the importance of sustaining homeownership, not just creating it. We developed one of the first citywide partnerships in the country that brought the City government together with private sector nonprofits and local lenders – the Baltimore Homeownership Preservation Coalition. In early 2006 we began to train and support a network of nonprofit foreclosure prevention counselors and starting in the Fall of 2006 we used the City's "311" number to connect citizens to the national HOPE Hotline. We used what we learned in the City to expand to a statewide scale.

After becoming Governor in early 2007, my Administration moved quickly to convene the Homeownership Preservation Task Force to develop an action plan to address escalating foreclosure rates and identify legislative and education and outreach strategies to preserve homeownership for Maryland families. The Task Force represented a wide cross section of stakeholders and produced a report that garnered bipartisan support in passing what the *Washington Post* called some of the most "sweeping" legislation in America to combat foreclosure. Between 2008 and 2010, dramatic changes were made to the foreclosure and lending process in Maryland in an effort to bring increased accountability and stability to the market in Maryland, including:

- Credit and lending reform regulation tightened lending standards and strengthened licensing requirements in the mortgage industry that implemented:
  - --Ability to repay standard for borrowers
  - --Tangible net benefit standard
  - --Duty of good faith and fair dealing by mortgage professionals
- The Mortgage Fraud Protection Act created Maryland's first comprehensive mortgage fraud statute;

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[1] Maryland Homeownership Preservation Task Force, November 29, 2007 *available at* http://www.dhcd.state.md.us/Website/documents/TaskForceReportFinal.pdf
[2] Id.

- The Protection of Homeowners in Foreclosure Act which bans foreclosure rescue scams and provides greater protections for distressed homeowners;
- The Foreclosure Law Process Reform Bill reformed the foreclosure process providing homeowners with more time and effective notice before their home is sold;
- The Foreclosure Mediation law introduced mediation in the foreclosure process so that homeowners facing foreclosure have the opportunity to sit, face to face, with the party bringing the foreclosure action and explore all foreclosure alternatives available; and
- The Tenants in Foreclosure law provides greater notice to renters of pending foreclosures against landlords.

Recognizing that improvements to the foreclosure process itself, are not enough to avoid costly losses and preventable foreclosures, my Administration further leveraged the assistance of more than 1,000 *pro bono* attorneys that have been recruited to assist hundreds of vulnerable families. Maryland's HOPE network of 40 non-profit counseling organizations – supported by state and important federal resources – have assisted more than 54,000 Marylanders since the summer of 2007.

This is significant. A December 2010 Urban Institute analysis of the federally funded National Foreclosure Mitigation Counseling (NFMC) Program found that counseled borrowers were:

- Almost twice as likely to cure their foreclosure than non-counseled borrowers
- Received larger payment reductions through loan modifications than non-counseled borrowers ($267 more a month, totaling $3,200 in a year)
- Were 45% more likely to remain current on modified loan payments than non-counseled borrowers
- Were 53% more likely to bring their loan current than non-counseled borrowers

In 2010, I signed a new foreclosure mediation law which requires lenders to verify through affidavits that they have made a full review of a household's loss mitigation options. The law also gives homeowners the new right to a face to face meeting with the foreclosing lender. This puts families on a more equal footing with the national mortgage giants by requiring them to come to the settlement table before they can throw another family out on the street.

SERVICER REFORM

As the foreclosure crisis spread, it became abundantly clear that the servicers that had previously acted as a mere pass through channeling payments to investors were ill-equipped and understaffed to respond to the growing ranks of households seeking loss mitigation assistance. Every day since I became Governor in 2007, my office has received phone calls and letters from desperate homeowners who are willing to make whatever sacrifices are necessary in order to keep the family home. Remarkably, years

later, servicer inefficiency and lack of accountability continues to be a major obstacle to achieving sustainable foreclosure alternatives.

I am realistic in recognizing that not every home can be saved and not every foreclosure can be avoided. However, I strongly believe, and my Administration has taken every step to ensure that every preventable foreclosure should be prevented and at the very least, the homeowner making calls to their mortgage servicer should have someone answer the phone and not lose their loss mitigation application. Those eligible for a loan modification should receive a timely loan modification.

The current system is broken. Within a single servicer, there are multiple data systems and procedures for processing requests. There is no consistent single point of entry for submission of loss mitigation request and yet, when following the protocol set-forth by a given servicer, files are still transferred from department to department, documents are misplaced and authorizations expire. While at the same time, late fees and penalties continue to accrue and the file continues on a dual track that leads to foreclosure. To this very day, Maryland consumers consistently report that servicers repeatedly lose paperwork and take extended amounts of time to answer even basic inquiries about their eligibility for a loan modification.

The recent "robo-signing" scandal is a symptom of an industry in crisis. Many in the industry quickly mischaracterized the use of faulty affidavits in the foreclosure process as a mere technicality. This is not the case. I caution that the defective affidavits relied upon by the courts in foreclosure proceedings, as uncovered through the "robo-signing" scandal, are just one more concrete example of the overall failings of the industry.

Simply put, the scandal illustrates another symptom of an industry that needs accountability and transparency in its operations. Mortgage loan servicing is a critical function – linking the homeowner, secured party, escrow agent and insurer and with broader reach imparting direct influence on overall market performance. It is, therefore, critical that the infrastructure at these institutions is strong, with strong incentives for increased efficiency, sufficient internal controls and accountability in operations. Timely customer service must be a goal that is tracked, not something that matters only when an elected official such as Congressman Cummings or me brings a case to a lender's attention.

This is not to say that the issue of the faulty "robo-signing" affidavits used in the foreclosure process should not be addressed -- the underlying operations that resulted in this practice cannot be ignored. When news of the "robo-signing" scandal broke this past fall, my Administration took swift action:

- On October 4th, I jointly issued a letter to the major servicers covering the majority of the Maryland market with Congressman Cummings and Maryland Attorney General Gansler requesting a stay of foreclosure proceedings until each servicer could provide assurance of the validity of the process undergone;

- Commissioner of Financial Regulation Mark Kaufman sent letters to Maryland licensed servicers on October 5th requesting the same;
- On October 9th, with the support of the Maryland Congressional Delegation, I asked Chief Judge Bell, the chief judge of Maryland's highest court, for court intervention, to ensure fair practices in the foreclosure process. The Judiciary responded immediately and adopted emergency rules providing that if the court has reason to suspect that any affidavit filed in a foreclosure may be invalid because of affiant's lack of sufficient knowledge of the facts stated in the affidavit, the court may decline to accept or may strike the affidavit and may order the party to show cause why the action should not be dismissed or other relief granted;

On October 13th, the Administration took a leadership role in the national initiative for coordinated multi-state review of foreclosure procedures at major servicers nationwide that includes all 50 state attorneys general and 37 state banking commissions led by Iowa Attorney General Tom Miller. Commissioner Kaufman, as a member of the Executive Committee of the Multi-State Mortgage Committee, a group of regulators from 10 states that coordinates the efforts of all 50 states, has been an active participant in this initiative. You will hear additional details from Commissioner Kaufman on the status of the examinations currently under way.

My Administration, through the Office of the Commissioner of Financial Regulation in Maryland's Department of Labor, Licensing and Regulation, will continue to work on a coordinated multi-state solution of servicing abuses with the state attorneys general under Iowa Attorney General Tom Miller's leadership. We are aiming for specific reforms and standards to ensure a healthy and functioning housing market. It is important to note that because this investigation is currently underway, I am limited in commenting on the specific work of the multi-state group.

FEDERAL ACTION

We are several years into this crisis and servicers are still without the basic systems in place to keep track of paperwork and provide timely responses to the loan modification applications of consumers; it still takes months and months to process loan modifications. We are doing everything we can at the State level to protect homeowners and hold the national mortgage giants' feet to the fire. But we can't go it alone or fight this battle with a hand tied behind our back. The federal government, as you know, has jurisdiction over the largest national banks. We need your help in holding them accountable – and on other fronts in this battle:

1. We favor the creation of clear and specific national servicing standards which will hold the mortgage giants accountable that includes offering loss-mitigation workouts under certain circumstances, providing incentives for foreclosure avoidance, establishing adequate internal controls and appropriate monitoring;

2. With Americans continuing to lose their homes, now is not the time to slash the investments we make in Housing Counseling, which is the most cost effective way to empower our most vulnerable homeowners with the tools and know-how to save their homes;

3. Don't dismantle the imperfect, yet critically important, Home Affordable Modification Program. This would in effect dismantle the ability of homeowners in every part of our country to save their homes with affordable and sustainable loan modifications. According to the latest monthly HAMP report from the U.S. Treasury, Maryland, permanent HAMP modifications are steadily rising, from below 5,000 in January of 2010, to just over 22,000 at the end of January 2011. Just as the face of the current foreclosure crisis has evolved, the HAMP program should continue to be shaped and improved to include aggressive loss mitigation, including principal reduction for loans severely underwater;

4. HUD's Emergency Homeowner's Loan Program (EHLP) is threatened to be cut from the budget even before it gets off the ground. More foreclosures are now due to unemployment or underemployment and a program like EHLP is slated to help one thousand or more Marylanders stay in their homes while they seek employment in the recovering economy;

5. We are deeply concerned about proposed deep cuts to Community Development Block Grants and the elimination of the Neighborhood Stabilization Program, which allow us to stabilize neighborhoods we might otherwise lose when homes are lost to foreclosure.

It is critical that Members of Congress do not abandon these programs now, just as we are trying to turn the corner and emerge from the Great Recession.

CONCLUSION

Across our country there are too many families who have worked hard throughout their lives, balancing sometimes two or three jobs – if they are fortunate to be able to find work - only to have the rug pulled out from under them during this Great Recession. As a country, we must commit to strengthening and stabilizing our middle class to ensure an America that not only competes globally but is rooted locally, with a strong foundation from which our future generations can grow. Now is the time to make that commitment rather than walk away from the problem. In Maryland, we have made the commitment and will continue to do our part to require transparency in the foreclosure process. For the reasons stated above, families across the nation need the same commitment from their representatives in Congress.

Thank you again for tackling this most important issue, for traveling to Maryland, and for giving me the opportunity to speak to you today. I look forward to continuing to work with you towards a national solution to the current crisis.

Chairman ISSA. Thank you, Governor.

Mayor.

STATEMENT OF STEPHANIE RAWLINGS–BLAKE

Mayor RAWLINGS-BLAKE. Thank you very much, and good morning.

I want to thank Chairman Issa and Ranking Member Cummings, and the members of the committee for allowing me to speak to you this morning. The matters being considered by your committee are of vital importance in addressing the foreclosure crises facing Baltimore and our Nation.

I applaud Congressman Cummings and the committee members on holding this hearing to gather testimony on the abuses in the mortgage service industry that greatly compound this crisis.

Let me very briefly outline the scale of foreclosures in Baltimore. Since 2007, some 18,000 properties in Baltimore City have had foreclosures filed against them. All but a handful of neighborhoods in the city have been impacted by foreclosures. Many of our neighborhoods have been impacted severely. Well over one-third of our neighborhoods have had more than 5 percent of their properties foreclosed against. Many of these neighborhoods that I'm talking about are the bedrocks of our city.

Our community is comprised of both rowhomes and detached structures with high occupancy rates and majority homeowners. The foreclosure crisis has imperiled many of these areas.

It is not only Baltimore homeowners that have been impacted by foreclosures. Over 40 percent of all properties that have been foreclosed against in the past 4 years are rentals. This had led to the extremely unfortunate situation where residents who have paid their rent are at risk of losing their housing.

The city's foreclosure rate would undoubtedly be significantly higher had Governor O'Malley's administration not taken legislative action that slowed the foreclosure process and improved opportunities for mediation with mortgage holders. As foreclosures began to dramatically increase in 2007, city government in concert with State and Federal agencies and the foundation community began to increase financial and organizational support to nonprofit entities providing foreclosure counseling. It was through the network of counselors that we became increasingly aware of the abysmal performance of the mortgage service industry in constructively addressing this crisis. Among the many troubling aspects of this performance is the almost systematic loss of supporting documentation for loan modifications that particularly stands out as an error that needs to be corrected.

The dedication and professionalism of so many of the housing counselors in the city is to be commended. This is difficult, exhausting work carried out under daunting circumstances. Their perseverance and their unwavering support of homeowners in crisis have helped many Baltimore homeowners avoid foreclosure. Unfortunately, the insufficient efforts on the part of the mortgage service industry has in many cases lessened the effectiveness of these counselors.

As concerns the abuses being examined by this committee let me note the following: Baltimore households have suffered from vir-

tually all of the abuses; predatory loans, robo-signing, wrongful foreclosure, failure to properly maintain and file mortgage documents and false affidavits, all being invested by this committee.

Often services have profited handsomely from these abuses. Despite this, they have not employed enough staff to locate and properly process the loan documentation but routinely file lost note affidavits. Some lenders have steered buyers into loans they could not afford, and then profiting through initiating fees and points, bundling the loans into mortgage-backed securities and sold them off to secondary markets, thus selling off their risk.

These predatory lending and services practices caused equity stripping, home loss and blighting vacancies. These practices not only devastate families, they cost the city millions of tax dollars lost in property tax and transfer tax revenue.

As concerns regulatory solutions, the committee may examine, and I hope consider the following:

The real party and interest should be the named plaintiff in any foreclosure action. Currently only the trustee or substitute trustee must be named, usually the attorney hired by the servicer.

The lack of transparency makes it difficult to understand and document trends in lending and foreclosure practices in our city, thus handicapping our ability to protect our residents.

The Home Mortgage Disclosure Act should be amended to require that borrowers' credit scores be reported as publicly available data in addition to the race and other data currently being reported. This will enable Federal, State and local law enforcement agencies to discover and document predatory practices without the burdensome need for instituting suit or obtaining discovery.

Every document that a foreclosure plaintiff files should be served on the homeowner who is at risk. For example, the Report of Sale is not served on the homeowner and is not uncommon for a homeowner to answer their door and just have a stranger tell them "I just bought your house and you need to leave."

Increased transparency will enable distressed homeowners to better defend their homes and better plan for their future.

Increased Federal oversight and enforcement is also needed. Much of the subprime predatory lending that helped trigger this crisis could have been avoided had there not been lax enforcement of the Fair Housing Act and banking regulations.

Again, I want to thank you for being here in Baltimore, a city that has been tremendously impacted by abuses in the mortgage industry. I hope that this committee hearing serves to be fruitful in your efforts to correct the wrongs.

[The prepared statement of Mayor Rawlings-Blake follows:]

STEPHANIE RAWLINGS-BLAKE
Mayor
250 City Hall
Baltimore, Maryland 21202

To:	The Members of the U.S. House Committee on Oversight and Government Reform
From:	Stephanie Rawlings-Blake, Mayor, Baltimore City
Date:	March 8, 2011
Re:	The Foreclosure Crisis in Baltimore City

Chairman Issa, Ranking Member Cummings and Members of the Committee:

I am pleased to be before the committee today, testifying about the current foreclosure crisis in Baltimore City. Since 2007 almost 18,000 properties in Baltimore City have had foreclosure filings made against them. Few neighborhoods have been immune from foreclosure and many have been significantly impacted. Over one-third have had more than 5% of their residential properties foreclosed against. Many of these neighborhoods are the bedrock of the city – row house communities with high occupancy rates and majority homeowners. The foreclosure crisis has imperiled many of these areas.

It is not only Baltimore homeowners who have been impacted by foreclosure. Over 40% of all properties that were foreclosed against are rentals. This has led to the extremely unfortunate situation where residents who have paid their rent are at risk of losing their housing.

The City's foreclosure rate would undoubtedly be significantly higher had Governor O'Malley's administration not taken legislative actions that have slowed the foreclosure process and improved opportunities for mediation with mortgage holders.

As foreclosures began to dramatically increase in 2007, City government, in concert with State and Federal agencies and the foundation community, began to increase financial and organizational support to non-profit entities providing foreclosure counseling. It is through the network of counselors that we became increasingly aware of the abysmal performance of the mortgage service industry in constructively addressing this crisis. Amongst the many troubling aspects of this performance the almost systematic loss of supporting documentation for loan modifications stands out.

The dedication and professionalism of so many of the housing counselors in the city is to be commended. This is difficult, exhausting work carried out in daunting circumstances. Their perseverance has helped many Baltimore households avoid foreclosure. Unfortunately, the ineptitude of the mortgage servicers has lessened their effectiveness in many cases.

The matters being considered by this Committee are of vital importance in addressing the foreclosure crisis in Baltimore and the nation. As far as the concerns regarding the regulatory issues affecting foreclosures in Baltimore the following should be noted:

- Baltimore has suffered from all of the servicer abuses delineated in Congressman Cummings' letter. We are a majority African-American city. As documented in our amended complaint against Wells Fargo (now pending in federal court), banks targeted AA borrowers and AA neighborhoods for predatory loans that caused high rates of default and foreclosure.

Visit our Website @ www.baltimorecity.gov
Phone: 410.396.3835 fax: 410.576.9425 e-mail: mayor@baltimorecity.gov

- The servicers have profited hugely from these abuses—as they streamlined their ability to collect late fees and to foreclosure on homes. They have not paid employees to locate the loan documentation that is required by law to be part of a foreclosure filing, but they routinely file "lost note affidavits." They have had robo signers instead of requiring a qualified employee to actually review the foreclosure and loan documents and to attest by affidavit that they conducted the review and determined that the foreclosure is justified.

- The lenders like Wells Fargo that steered African-American and other minority residents into loans they could not afford profited at the outset through initiation fees and points. They then bundled the loans into mortgage backed securities and sold them on the secondary market, selling off the risk of nonpayment. Often, they have profited again by becoming the servicers of the loans and capturing late fees and bonuses for foreclosing, once the predatory loans defaulted as they were likely to do.

- These predatory lending and servicing practices cause equity stripping, home loss and blighting vacancies. These practices not only devastate families, they cost the City millions of dollars in lost property tax and transfer tax revenue, increased expenditures for police, fire, and housing services, and in undermining taxpayer investments in community development. The damage to families and to the City are very real.

- The Maryland Court of Appeals has appropriately issued emergency rules changes to curb some of the worst abuses. Further reforms are required: a) the real party in interest should be the named plaintiff in any foreclosure action. Currently, only the Trustee or a Substitute Trustee must be named, usually the attorney hired by the servicer. This lack of transparency makes it difficult to understand and document the trends in lending and foreclosure practices in our City, thus handicapping our ability to protect our residents; b) the Home Mortgage Disclosure Act should be amended to require that borrowers' credit scores be reported as publicly available data in addition to the race and other data currently reported. This will enable federal, state and local law enforcement agencies to discover and document predatory practices without the burdensome need for instituting suit and obtaining discovery; c) Every document that a foreclosure plaintiff files should be served on the homeowner whose home is at risk. For example the report of sale is not served on the homeowner and it is not uncommon for a homeowner to answer the door to have a stranger tell them, "I just bought your house and you need to leave." Increased transparency will enable distressed homeowners to better defend their homes and to better plan for their futures.

- Federal reforms are in order, but it is important that federal regulations be established as the floor and not the ceiling for regulation. States, and to a lesser extent, municipalities must be free to protect their residents when federal authorities decline to act. The current housing crisis, precipitated in large part by the subprime predatory lending meltdown, could have been avoided had there not been lax enforcement of the Fair Housing Act, combined with federal relaxation of federal banking regulations, federal refusal to regulate derivatives, combined with federal preemption of states' ability to regulate lenders. Federal inaction concurrent with the tying of localities' hands created an environment in which racially discriminatory predatory lending flourished. Baltimore is currently contending with the devastating economic fallout.

Thank you, Mr. Chairman and Members of the Committee, for the opportunity to appear before you today. I hope you keep these issues in mind as you continue to take a look at this most important issue of the health of municipalities and their neighborhoods. I stand ready to answer any questions you might have.

Chairman ISSA. Thank you, Mayor.

I want to particularly thank the city of Baltimore for having us here.

And Governor, I'll start with you. The committee has, and somewhat to the mayor's statement, been working to try to create transparency in Government. On a bipartisan basis we tried to interject open standards into the Dodd-Frank bill that passed last year, and failed. Congressman Frank and others have offered to help us to get it through this Congress, and we intend to get through data standards that would allow for anyone who wants to give an access either individually or for statistical purposes to be able to very transparently get all of that information.

One of the things that our earlier hearings showed us was that in fact there is no standard for submission so that you have to go bank-by-bank. And unless somebody wants to pay the bill to consolidate all these divergent standards and get, if you will, the credit score lined up between different loan organizations, you're not going to get there.

But, Governor, you mentioned HAMP in your opening statement. As you know, the HAMP program is highly flawed. By its own testimony it's not getting to its goals and the servicers make it very clear that the only people that are getting permanent loan modification are people that would get it without HAMP program, even though it's cost $30 billion. And, yes, we have that under oath.

So, my question to you is as Congress looks at how to spend the next $40 billion of a $70 billion program, shouldn't we consider making the HAMP the loan modification of last resort and not first? Cause all people to go through and be refused loan modification and then only if they're unable to get it through ordinary means at the bank's own expense, the bank's servicers' benefit, should they be able to come to the Government? Have you considered that in order to try to narrow the basis down to those who would not otherwise get a loan modification?

Governor O'MALLEY. I know there are probably other people on the panel who can speak with greater situational awareness on the ground. It's my understanding that in the absence of any sort of lender responsibilities or penalties for lender deviation from the HAMP guidelines, that it's not being maximized to its greatest degree.

I think one of the recommendations that our staff has is that there be a one-step modification rather than a two-step modification. I take it the chairman's talking about maybe a third step?

Chairman ISSA. No, Governor. Currently the servicer gets no money for doing a trial loan modification. It's all on their back. So as they go through the process to decide whether or not somebody could be eligible for loan modification, they get no funding, nothing comes out of HAMP. Once they do a permanent loan modification, then that $30 billion that we've obligated comes into play.

So, in our case what we're finding is is that's what most criticized is the portion that HAMP doesn't pay for, which is the trial modification. Initially the trial modifications modified everybody, everybody got in. Later on they decided that a lighter loan, coming back to be a lighter loan application wasn't a good idea. Then you should have to before you get into the first step, have some sub-

stantiation that you have real tangible income on which you might be able to have a loan modification. So they've made changes, but it still comes down to HAMP as the first step; everybody goes and says "Am I eligible for it?" and makes the application. And 6 months, as you said, or more goes by before they find out yes they are or no they're not. In the meantime, the system is essentially stalled.

So, I won't belabor the point, but for both of you as Congress considers changing or canceling HAMP, one of our questions is clearly going to be: Should HAMP exist, and if so, should it only apply to those who otherwise would not get a modification versus paying the banks who shift through about a 3–to–1 ratio or so, about three don't get it for every one that does. And then we find that the ones who get it are the ones who would have gotten it anyway. They didn't need a Government bailout to get it.

Mayor, you mentioned the 40 percent of homes which were basically income properties that have been put through foreclosure. From your knowledge do you have a program or can the Government have a program that causes those renters' money to go to the actual mortgage company? Because I assume that the renters' money is being diverted by the mortgage holder, or mortgagee.

Mayor RAWLINGS-BLAKE. Mr. Chairman, that is something that we have been looking into. Prior to being mayor, I was the President of the City Council and this issue we've been working on since that time. So over a year to try and protect the money that the renters are paying with no protection.

As you can expect, we met significant opposition from the banking industry, you know who has control over that money.

Chairman ISSA. But I assume the banks would love nothing more than for the renters' money not to be diverted so they could at least be getting something for the home, where in most cases the actual borrower once they know they're going into foreclosure, simply keeps collecting the rent and not paying it. This is something we ran into in our Cleveland investigation 4 years ago.

Mayor RAWLINGS-BLAKE. Yes. One of the problems that seemed to come up was that the banks felt like then they were dealing with two mortgage holders; one with no real responsibility to the mortgage. That while they were dealing with one mortgage holder that was in default, another one was attempting to pay and the efforts weren't connected. That there was no way for the—you know if there was money that originally the landlord didn't submit, that there could have been a gap and then the bank wouldn't be able to close that gap if there was some lapse. So I would love to hear more about what happened in Cleveland to fix that problem because it is a significant issue in Baltimore City. So if there is a way to make sure that the banks are on board, it would be helpful.

Chairman ISSA. I appreciate that.

And I don't want to monopolize your knowledge, so with that I recognize the ranking member for his questions.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

I just want to go back to some of things that you talked about.

The chairman talked about the HAMP program. And one of the things that we on the Democratic side are most concerned about in Congress is that if that program is eliminated as opposed to, as you

said, I guess to borrow an old expression "mending-and-not-ending," what recourse do people have? That is our problem.

In other words, I think that all of us agree that, as you said, the program needs be retooled. But you would not, I'm sure that you are not an advocate for having nothing there?

Governor O'MALLEY. No, not at all. I mean, it would be a miraculously occurrence if a Government program were operating at 100 percent proficiency and performance less than a year or two after its creation. I mean, there are some programs that have been around for many, many decades and I think we can all agree that they can be improved.

But there are approximately 22,000 modifications that have been made, 4,500 I'm told are active trial modifications, 17,000 are permanent modifications. So that's 22,000 households in our State that have been helped by this in Maryland, and that's for over the course of this I think just this last year. I think we're only now starting to get on top of this wave that had the mortgage companies so utterly underwater themselves in terms of servicing this problem that I think it would be a real mistake to back away right now.

I think HAMP probably can be improved. I think monthly reporting and maybe some sort of standardization so that we know which servicers are getting on top of this and which are not. And maybe there's a way that you can put some incentives in there for those servicers that are actually doing the better job on their modifications.

Mr. CUMMINGS. You know this robo-signing issue, Mr. Governor, I think here we are sitting in a law school I think that the mayor, you and I graduated from this school.

Governor O'MALLEY. Me, too.

Mr. CUMMINGS. And the Governor.

Chairman ISSA. I'm the odd man out I'm afraid.

Mr. CUMMINGS. And the question is, you know last fall the Nation's largest mortgage servicing companies admitted to robo-signing; tens of thousands of affidavits in foreclosure cases falsely swearing to the accuracy of information that they never actually reviewed.

Governor, you and I took immediate action to protect Maryland homeowners of this abuse. We wrote to these companies and asked them to suspend foreclosures here in Maryland.

Even though they halted foreclosures in 23 other States they refused to stop faulting them in Maryland, is that right?

Governor O'MALLEY. Pardon. This Mark Kaufman, who is our——

Mr. CUMMINGS. Yes, I know Mark Kaufman will be here in a minute. But what impact do you think that had?

Governor O'MALLEY. I believe it's had a tremendous impact. I think the two things—and it's hard to separate out which one was most responsible, but roughly at the same time our mandatory mediation requirement kicked in and shortly thereafter the robo-signing problems arose and many of the large servicers halted their foreclosure proceedings in Maryland.

It's resulted in a 60 percent reduction since last year of foreclosure actions in our State. As I said, it's hard to separate out the two.

Mr. CUMMINGS. Yes.

Governor O'MALLEY. But I do think putting families on an equal footing with the mortgage servicers and forcing them to come to the table in front of the judge or judicial officer before they can go forward with the foreclosure is really, really important. How tragic that this apparatus, this sort of meat grinder of home ownership destruction continued to go unchecked and even accelerate in the course of this recession. If anything, it should have been slowed down, and I think we have found a way to do that now. But the modifications are still very much a work in progress and we need the Federal Government at the table in order to force the mortgage servicers to stay at the table.

Mr. CUMMINGS. Madam Mayor, in Baltimore we have a fragile situation where we're trying to make sure that the city neighborhoods are strong. You talked about the number of foreclosures. A lot of people don't realize how much foreclosures bring down property values and affect a city's ability to function. Can you just talk about that for a moment?

Mayor RAWLINGS-BLAKE. It's significant. I mean, there are things that we can measure, like the amount of property tax loss in 2010. We lost almost $14 million due to the foreclosure crisis in Baltimore City, and that's what we can measure.

There's also intangibles. You know, the impact, the continued impact of blight in the vacant properties when these homes go vacant, what that means to a community, how that drags down property values and creates unsafe neighborhoods.

We're struggling in Baltimore with a significant amount of vacant properties, investors that come in, purchase properties and are sitting on them. We're tackling that, and added to that is the issue of the foreclosure crisis and the vacancy that's creating. So, you know it's layering on intractable problems.

Mr. CUMMINGS. I see my time expired. I yield back.

Chairman ISSA. I thank the gentleman.

We now recognize the gentleman from Michigan, Mr. Walberg for 5 minutes.

Mr. WALBERG. Thank you, Mr. Chairman.

And Mr. Governor and Madam Mayor, thank you so much for your hospitality and having us here. I've always enjoyed my time spent in Maryland or Baltimore, and it's good to come back this morning early enough to miss the traffic jams as well.

Coming from Michigan, we understand foreclosure well and economic hard times.

Mr. Governor, you mentioned in your statement several times this morning your support for HAMP and realistically a Government program that isn't perfect. But in looking at some of the figures that I've had in front of me, nationwide HAMP has resulted in just over 539 permanent modifications as of January of this year, but has also resulted in 8,800 cancellations. Homeowners whose HAMP modifications, and I think this is a significant problem, are canceled often end up worse than if they had never been part of the program in the first place.

In your testimony you mentioned the creation through HAMP of 22,000 permanent modifications in Maryland. How many temporary modifications have been canceled in Maryland and how many permanent modifications, if you have those records, have been canceled in Maryland?

Governor O'MALLEY. Congressman, the numbers I had in front of me and as I look over my shoulder here at my able staff who are looking over their shoulders——

Mr. WALBERG. I'm not looking over mine.

Governor O'MALLEY. The numbers I had in front of me was by the end of January, I had 4,000—I don't have the cancellations. I have 4,545 active trial modifications and 17,483 permanent modifications for a total of 22,000. I do not have numbers in front of me on cancellation.

Mr. WALBERG. It's similar to the rest of the country, if those figures hold. But we do not know the cancellations.

Governor O'MALLEY. Well, we might be able to find that if someone would consult the State satellite.

Mr. WALBERG. Well, the concern is what happens to those people whose temporary and permanent modifications are canceled. Because, indeed, if it's like the rest of the Nation, it appears that as a result of being given the hope and yet for one reason or another not following through they end up in a worse situation than before having spent money in the process, continued on mortgage payments as opposed to the foreclosure completing and go on with life. So, it would be interesting to have those numbers, but if they're not available to you at this time, let me move on and turn to the mayor. Again, appreciate you taking the time to be here.

It has been stated several times during the course of testimony this morning that the recent robo-signing scandal is a symptom of an industry crises. Simply put, the scandal illustrates another symptom of an industry that needs accountability and transparency. The Governor stated that very clearly as well in his testimony.

Nevertheless, in looking at this situation Treasury's own reviews suggest that even if servicers' performance was perfect, which it won't be, HAMP's results would not improve significantly. Under Treasury's Second Look Program, Treasury's compliance agent reviews a statistical sample of homeowner loan files that were not chosen for HAMP modifications. For the second quarter of 2010, the most recent period for which results are available, Treasury's agent only disagreed with servicer actions 2.4 percent of the time.

And so my question is do you believe that HAMP's results would improve significantly if servicers' compliance was better, and how so?

Mayor RAWLINGS-BLAKE. Yes. I am not an expert on the fix. I am an expert in the impact of the problem.

I anecdotally have heard so many times in community meetings that I go to all throughout the city where people feel that they have been working on a modification, but in essence it is being dual tracked. So they are thinking that they are working on a modification but at the same time aggressive foreclosure is being pursued at the same time.

I mentioned about the lost documentation and people really being strung along. These are the things that I know about.

As far as the regulatory fix, I am sure that they are coming to testify much more seasoned people that give you recommendations on the fix. I can speak about the problems I hear from my constituents.

And people are being lied to. They are being given false hope. And they are depending on the word of these financial institutions to the detriment of themselves and their families, and as a result to our communities and our city. So that's what I know the problem is. And my hope is we can get to a solution.

Mr. WALBERG. Thank you.

I yield back.

Chairman ISSA. I thank the gentleman.

We now recognize the gentleman from Massachusetts, Mr. Tierney for 5 minutes.

Mr. TIERNEY. Thank you, Mr. Chairman. Thank you for having these hearings.

And thanks to Mr. Cummings for having these hearings and doing the work that he's doing on this subject as well.

Governor and Mayor, thank you for the work that you all do. I think Maryland and Baltimore has done quite well in comparison to other parts of the country on this very perplexing issue.

This is an industry that didn't cover itself in glory when it led us into the financial crisis that we're in today, and it is certainly not covering itself with glory as we try to get out of it.

And I understand the HAMP program is not perfect. I am as frustrated or more frustrated than anybody with its imperfections. The question for us pretty soon, this week in fact, is going to be whether we leave the banks on their own and we have pretty much seen where that's led to, or whether we try to get a system in there that works to help the homeowners. Because, Mayor, like you Mr. Cummings' office staff and through all my colleagues' staffs, my staff are pulling their hair out trying to help people who come in desperate. We have a holdover from a previous administration in the head of the Office of Comptroller of the Currency that seems to be more concerned with the banks then he is with homeowners.

We have the Federal Housing Finance Administration that I think is not doing its job in terms of the conservatorship with Fannie Mae, Freddie Mac. If they were, they would insist on some of the principal on that basis that would better protect the taxpayer and investors than letting them go to foreclosure.

So there is a lot of work to be done in this area, and I thank you for your efforts.

Governor, there are 50 States, and Maryland is one of them involved in court action. And there is talk in the newspapers of the amount of money that banks, servicers may be forced to come to the table with.

Elizabeth Warren, who is the Consumer Protection Advocate, obviously just recently appointed by the President, thinks that $20 billion is not enough. Do you have a position on what your State will be arguing in those settlement proceedings as to what ought to be an appropriate amount of money for the people to come to the table on, or do you know?

Governor O'MALLEY. I do not, Congressman. I have left that to the Attorney General.

Mr. TIERNEY. All right. Well, do you have a feeling of what standards ought to be put in place? What ought to be placed into that lawsuit that these services and banks have to comply with to make this system work better?

Governor O'MALLEY. I think that there needs to be, and not only the openness and transparency with regard to underwriting standards, standards for a modification, there needs to be some strike zone, if you will, that is easily understood in terms of the ratios so that we're not recreating the wheel every time we get somebody to answer the phone.

And second, I also believe that there needs to be some enforceable period of time, some timeframe within which a person should expect their modification to be reviewed, approved or disapproved. And I think those two things are the most important things that we can achieve.

In the suit I suppose you can load up with the penalties and the like, but at the end of the day I mean I think there really should be some expectations and some enforceable way to make these mortgage service companies protect consumers, respond to consumers, be able to make the modifications or not make the modifications. And that is what's been lacking in all of this.

Mr. TIERNEY. Mayor, do you have an opinion as to how valuable HUD's program for unemployed homeowners would be, the opportunity for them as of the Dodd-Frank Act for them to receive some stipend to carry them through at least 24 months if necessary until they get reemployed and until they can handle their mortgage again? Is that a factor here in Baltimore?

Mayor RAWLINGS-BLAKE. Any subsidy that we can get to help bridge unemployed individuals to employment is helpful in Baltimore. Anything. So if it is the Act that you were talking about or unemployment insurance, all of those things are significant factors in helping people stay in their homes, helping people get to a point where they can get reemployed. It takes time.

We have programs that work to retrain individuals. We are investing in workforce development, also in emerging technology. But you can't walk out of one job and go into another that requires specialized training. So these things are helpful.

Mr. TIERNEY. I should put you on alert. Thank you for your answer. Put you on alert that if the budget process that was a couple of weeks ago put through, you will not have that work force training program to worry about because $3 billion sliced out of that is going to shut them down. One stop shots on that. So, we have——

Mayor RAWLINGS-BLAKE. Our employment development——

Mr. TIERNEY [continuing]. Got some work to do on that part as well to help out cities and towns on that.

Mayor RAWLINGS-BLAKE. Yes.

Mr. TIERNEY. Let me just say, I think I am still an advocate and always have been of a clamp down process on this. Until the banks have some incentive to write down some of the principal and treat this thing honestly, we are all going to be in a lot of trouble on this situation. My contention is that if a bankruptcy judge had the authority to do that, it would never get to that point. That these

banks would finally wake up and go to the table and negotiate with these people. But they are not going to do anything voluntarily. I think they have shown that quite clearly.

Thank you.

Chairman ISSA. Thank you. I thank the gentleman.

Recognize the gentleman from Vermont, Mr. Welch for 5 minutes.

Mr. WELCH. Thank you very much, Mr. Chairman. I want to thank you for having the hearing. Thank our witnesses.

Representative Cummings has been the leader in Congress in focusing attention on what the impacts are in neighborhoods when we lose that base of homeowners. And both of you have spoken quite eloquently about it.

But I also actually think, Mr. Issa, you have a point about the HAMP program. If it is not working, the question is why.

And I was interested, Governor, when you testified that you have had success in reducing the foreclosure rate by 70 percent. So you seem to be doing something right that the HAMP program isn't.

And when I think about how practically to deal with this, which you all are on the front line of. The bottom line seems to be somehow, some way there has to be the mortgage servicer with authority to say yes or no. And this is where I think Congressman Tierney has a point. One of the reasons I have supported the bankruptcy provision is that it is the only way to force a decision. And it seems that one of the biggest problems in getting to a practical resolution is that these mortgages have been issued, then they have been bundled, then they have been sold to investors and they have been sliced and diced. So some investors who are in the front of the line before prepayment are going to do Okay, some at the end of the line won't. The servicer is caught between its obligation to these various owners of the packages of securities that they are mentioning. So they literally do not even have the ability to say yes to a reasonable deal. And unless, in my view, we deal with that so there is a party in the room who can say yes to a good deal, however much counseling we provide people it is not really going to work. So the only way I know that would work is with bankruptcy, and that is a contentious debate within Congress because it does raise some policy questions. But I have always supported it because it is the only practical way to get from here to there with an answer. And I just wanted to ask each of you whether that would help you in your efforts to try to stabilize and revive these neighborhoods where you've got your citizens doing their best to hang on.

Governor?

Governor O'MALLEY. That is on the bankruptcy, Congressman?

Mr. WELCH. That is right, just as a tool to help you?

Governor O'MALLEY. Well, I think it would be very helpful. In fact, had that tool been in place we would not have had to put into place a mandatory right for mediation with those who now handle it at the Office of Administrative Hearings in our State, and the same entity that provides administrative law judges that preside over traffic matters and other sorts of regulatory things.

Mr. WELCH. Right.

Governor O'MALLEY. But I think I had been of the belief that because of the slicing and dicing it was nearly impossible to get people with authority in a huge percentage of these. And that has not been our experience, and perhaps our banking commissioner or other people that follow in the subsequent panels.

I think the bigger problem is not the lack of authority, it is the lack of them being present. It is the efficiency with which the court system kind of grinds through this foreclosure process versus the thought and the staff work required to send someone to actually make a decision. I think they actually had the authority, I think they are choosing not to exercise the authority.

Mr. WELCH. Yes.

Governor O'MALLEY. And I think so long as they are able to make money simply by churning and postponing any sort of reckoning, whether to write down in the principal or some other modification, I think they are going to do that.

Mr. WELCH. So do you have some suggestions of some steps we could take at the Federal level to help that happen? Because, again, I think there is some fair criticism of the HAMP program. If you just can't get to a resolution, then that is a fair criticism. Because the goal here is not just to have another Government program. The goal is to help folks stay in their homes. So do you have some concrete suggestions on what we could do that might help you be successful?

Governor O'MALLEY. I think the bankruptcy suggestion that both of you have talked about and giving the courts the authority to pull them in, I think that would be a step in the right direction. I think in the meantime, otherwise you are going to see a different circumstance in every State and they are just going to kick the ball down the road hoping that it is better when they wake up another year from now.

Mr. WELCH. Okay. Thank you.

Mayor?

Mayor RAWLINGS-BLAKE. I agree. I mean I think in your opening you made it clear, I mean you made the point. There needs to be someone in the room that has the authority to make the decision and they are not doing it on their own. I think it would be helpful. I agree with the Governor.

Mr. WELCH. Would we have to give some help to the mortgage services if they are caught between competing interests of the various mortgage holders that if they make a prudent decision in the interest of the overall resolution, that they would have some protection against liability by one tranche of the security? I don't know if they've been clear on that.

Governor O'MALLEY. No, I——

Mr. WELCH. You got a mortgage servicer and there might be six of us up here who each own one tranche. And Congressman Tierney's tranche might be more jeopardized than Congressman's Cummings if the mortgage servicer settles. So the mortgage servicer is not so much worried about the judge or anyone else, he's worried about getting sued by one of the security holders. And my question is: Would it make sense to give some legal protection to the mortgage servicer so that if they made a prudent financial deci-

sion in the overall interest of that security, they would not have to fear retaliation or suit?

Mayor RAWLINGS-BLAKE. I think if you do not, you are not really giving the authority.

Mr. WELCH. Yes.

Mayor RAWLINGS-BLAKE. If they are acting or not acting on a fear that they are going to be sued, we are not really given the tool.

Mr. WELCH. Right. Okay. Thank you.

I yield back.

Chairman ISSA. Thank you.

Mayor, Governor, you have been very generous with your time. Would you mind one or two follow-up questions.

Governor O'MALLEY. Sure.

Chairman ISSA. One of them is for the record. Our committee cannot find one criminal prosecution that we can say this servicer, this mortgage company as a result of this meltdown after the fact, if you will, has been prosecuted.

You know, in the savings and loan we had bank presidents, all kinds of people, who went to jail.

If you don't mind, particularly Governor, if you can enlighten us for the record on any prosecutions for the misconduct leading to these loans. Because we are not finding them and it is one of the questions for the committee is: If so many bad things happened on the way and if so many people were misled and so on leading to them having a mortgage that now is ruining their lives, we would like to know about any of those prosecutions. We figured if there are going to be prosecutions, it probably would have happened by now.

The second one, Governor, since you are a graduate of this law school——

Governor O'MALLEY. Ah-oh.

Chairman ISSA [continuing]. Mortgage law is completely State, right?

Governor O'MALLEY. Mortgage law is completely State.

Chairman ISSA. In other words, bankruptcy law is completely Federal. We reserve that in the Constitution. But cramdowns within mortgage law, recourse, nonrecourse; those parts of contractual law are within the purview of your State. And the reason I ask that is you would have the ability to effectively create, for example, a right of a homeowner to match the lowest price at the time of the sale. You would have that right within the State.

So we often—inaction is one of the things we do well in Congress. The other is overreact. So, assuming we are going to do the former, inaction in on bankruptcy reform, do you not have the right to create a mortgage law that would allow the homeowner to effectively get the equivalent of cramdown, meaning getting the actual value of the property at the time that it is going to be liquidated, put them first in line so that they, as long as they can go find a new lender, a new source they would have that ability. Because the theory of joint venture that used to be in cramdown was eliminated, and it is not likely to come back. Meaning that when I was in private life we often had contractors, people building massive real estate structures, they had the theory that if it won they got the prof-

it and if it lost, the bank shared in the loss. And that was what bankruptcy reform fixed in the early 2000's.

Getting back the idea that you are in a joint venture; that heads you get the appreciation in your house and tails you lose is unlikely, even if we did bankruptcy reform. So my real question, and it is kind of an open-ended question, is don't you have the authority to do more at the State level someplace in which you have shown a willingness to do it quicker than the Congress?

Governor O'MALLEY. Well, we are certainly open to doing everything at the State level. I mean if we see these start ticking up, we will be back to the drawing board right away.

And I believe that in a crisis like this unprecedented maybe only one other time in our country's history, that if our Government cannot get off its haunches and put on the gloves and get into the ring to protect home ownership when it is under threat like this, then I mean none of us really have any business being in public service if we cannot get into the ring to fight for homeowners in this crisis.

Chairman ISSA. I agree with you, Governor.

Anyone else have a followup question?

Mr. CUMMINGS. I want to just go back to my colleagues, Mr. Tierney and Mr. Welch. You know, it is interesting, Mr. Welch talked about in questioning you, Governor, with regard to getting people together, in other words getting the banks together with the borrowers, the servicers together with the borrowers.

And for the record what we do in our office, we have a person who spends her entire day 5 days a week, sometimes 6, just bringing together—I think we all do—bringing together the servicer together with the borrower. And a lot of the problems you have already stated, and I know Mr. Kaufman in his excellent testimony that I have read will talk about it even more. But we have a situation where people are being, as you said, Madam Mayor. I know you hear about it. We experience it in our office. We see it everyday. People being lied to. Borrowers are placed in a situation where they call the mortgage company and they get one person one day—well, first of all, they get nobody. And then eventually finally get somebody on the phone and they're transferred to somebody else, somebody else, their paperwork is lost. We have even had instances, Mr. Chairman, and Debbie Perry who is sitting over here in my office deals with this everyday.

We have had situations where paperwork has been sent to servicers four and five times and they claim they never got it. And then they turn around, Mr. Governor, and we send them from our office and they claim they never got it.

So, you know there is a phenomenal abuse. And you are right, Mr. Governor, I thank you for saying what you said. We can do better. We can do better as a Nation. We have to protect home buyers. And this is the greatest transfer of wealth that I have ever seen in my life. And the middle class, we claim we are fighting for the middle class. If the middle class loses their homes, which is their number one investment, then we are in great trouble in this country if we plan to have a middle class.

And so, I just wanted to add on that to what the Chairman said.

Thank you, Mr. Chairman.

Chairman ISSA. Thank you.

Mr. Tierney.

Mr. TIERNEY. Well, I am going to ask all the witnesses here to contact the White House, contact Secretary Geithner, Secretary Donovan on that and talk to them a little bit about the situation.

The Federal Housing Finance Agency now has oversight authority over Fannie Mae and Freddie Mac. Fannie Mae and Freddie Mac hold a very high percent of all the paper of loans that are resold in this country. As oversight authority, the Federal Housing Finance Agency is charged with taking actions necessary to put the regulated entity, that would be Fannie Mae and Freddie Mac, in a sound and solvent condition and to preserve and conserve the assets and property of the regulated entity. They have refused, FHFA has refused to allow Fannie Mae and Freddie Mac to engage in principal reduction. All they basically have to do is turn around to these recalcitrant banks and servicers and say "We are not going to buy your paper until you take care of those homeowners that are in trouble." And they would in fact then be better servicing Fannie Mae and Freddie Mac who represent the investor in this case, the taxpayers, because you would get more out of a modified loan in most cases than you would on a foreclosure.

So, I invite you to add your voice to the White House and to the administration, particularly to the individual that is heading up FHFA right now, who I thought the President probably ought to show the exit to and find somebody to replace them until they start getting aggressive and start dealing with it.

I just add that to the record. Thank you, Mr. Chairman.

Chairman ISSA. Thank you.

The gentleman from Michigan, Mr. Amash.

Mr. AMASH. No. Thank you.

Chairman ISSA. Okay. Thank you.

Mr. AMASH. Thank you, Mr. Chair.

And thank you for your testimony today.

Mr. Governor, the question I have is HAMP was designed to assist homeowners whose payments are increased but who still have an income and are able to make payments. You testified today that the face of foreclosures has changed due to joblessness. What solutions to the foreclosure crises, if any, are possible without a broad-based economic recovery?

Governor O'MALLEY. None. Everything we hope to do as a Nation depends on our recovery.

Mr. AMASH. And what solutions are you suggesting for a broad-based recovery?

Governor O'MALLEY. Broad-based recovery? I believe that we need to balance and move forward at the same time. We cannot be the first generation of Americans that responsibly refuses to invest in our own time in our infrastructure, not only our highway, our transportation infrastructure including high speed rail, but also cyber infrastructure and broadband to connect all of our smaller communities and our small business with this new economy.

I believe we need to invest in the education of our children.

And I believe that rather than slashing and cutting research and development at places like NIH, which truly makes us a moral leader of this world, we should be increasing those investments be-

cause in a knowledge-based economy those are the things that education, the innovation, the rebuilding of our infrastructure which creates a strong and great economy.

How sad, how very, very sad that China invests a larger percentage of its GDP in its infrastructure than we are able to in the United States of America. What a national shame that as fewer of our people are receiving a college education that we would be slashing Pell grants and putting college further out of the reach of hardworking middle class families. I think we are better than this. I think we have better days in front of us, but not if we continue to try to hack and cut and slash our way to a better future. It does not work like that.

If you have ever tried to stay up on a bicycle very long simply by balancing, you are going to fall over. You have to pedal forward. And that is what we need to as a country. We need to balance but we also need to pedal forward.

Mr. AMASH. And what would you suggest regarding our current debt crises that we face in this country?

Governor O'MALLEY. Fifty-five percent of deficit by 2019 will have been caused by Bush-era tax cuts that disproportionately benefited the wealthy 1 percent of Americans. That 1 percent now claims a greater amount of our Nation's wealth than it ever has since, say, 1929, I do believe. So that is 55 percent of that deficit.

Another 13 percent of the driver is a series of desert wars which, for whatever reasons, we have chosen to finance on debt rather than paying as we go.

So an economy that comes back is an important part of attacking that deficit. The other important part of attacking that deficit is to bring into light the spending curves. Not slamming on the brakes of the recovery and causing us to plunge back through another double dip, but bringing the cost curves into line.

It is amazing to me with all the debates that go on in Washington, we act like tax cuts for the wealthiest 1 percent do not cost money. They do. Let's get a handle on that, shall we?

Social Security is not out of whack. Everybody rattles their sword about Social Security and if we all need to go back to the days of Coolidge and Hoover, let's go back to the days of rational fiscally responsible budgeting where we do not act like tax cuts for the wealthiest 1 percent do not cost all of our Nation a lot in terms of our economic competitiveness, our infrastructure and our ability to move forward as a people. I think we need to be a lot more forthright and honest about the costs of all of these things and wake ourselves up out of this wonderland world where we pretend that tax cuts for the wealthiest 1 percent of Americans do not cost the Nation money.

Mr. AMASH. So to summarize, your solution would be to raise taxes?

Governor O'MALLEY. No, that is not my solution. And that is not what I said. Although sometimes it does require a combination of those things.

I mean, in our State we are one of eight States that still has a AAA bond rating. And you know what Congressman? We also have the best schools in America 3 years in a row. Everyone in our State was willing to pay another penny on their sales tax in order to be

the only State over these last 4 years that went 4 years in a row without a penny's increase to college tuition for people.

You get what you pay for in this world. It is true in the America of our grandparents, it is true in our America. And we owe to our kids to not be the last great generation of Americans.

I think this country is not only worth fighting for, I think it is worth investing in. And I think a majority of the people of this country still believe that.

Chairman ISSA. Thank you very much.

You know, it is fitting that we should end on you get what you pay for. Others paid for you to be here today. I want to thank both the Governor and the mayor for kindly giving us far more time than we originally scheduled.

And with that, we are going to take a 5-minute recess.

[Recess.]

Chairman ISSA. We're joined now by three additional witnesses. Mr. Mark Kaufman is Maryland's commissioner of financial regulation. Mr. Kevin Jerron Matthews is an Air Force veteran and Maryland homeowner who has experienced mortgage lender abuse.

And we're being joined by Ms. Jane Wilson, she's the Chair of the Board of St. Ambrose Housing Aid Center here in Baltimore. St. Ambrose is a housing counseling agency founded in 1968. And I might note for the record that we have now received your opening testimony, so that will complete the record. And I want to personally thank you, Ms. Wilson, for coming in. You were a last minute inclusion, and I appreciate your coming here today.

Pursuant to the rules of the committee, if you could please rise to take the oath?

[Witnesses sworn.]

Chairman ISSA. The record will reflect that all witnesses answered in the affirmative.

Now I am going to announce because you were all here patiently on the previous two dignitaries, that the rules of the committee are that opening statements will be for 5 minutes. Your entire written statements will be placed in the record. And as my predecessor Chair said, everywhere in America the green light means keep talking and the yellow light means wrap up and the red light means stop. So, if you could observe that, it would be very much appreciated. I know there will be a lot of followup questions and, again, your full statement will be placed in the record.

With that, we will first go to Mr. Kaufman.

STATEMENTS OF MARK A. KAUFMAN, COMMISSIONER OF FINANCIAL REGULATION, MARYLAND DEPARTMENT OF LABOR, LICENSING AND REGULATION; KEVIN JERRON MATTHEWS, HOMEOWNER; AND JANE WILSON, CHAIR OF THE BOARD, ST. AMBROSE HOUSING AID CENTER

STATEMENT OF MARK A. KAUFMAN

Mr. KAUFMAN. Thank you. Chairman Issa, Ranking Member Cummings, members of the committee, thank you for the opportunity to testify today.

My name is Mark Kaufman and again, I'm the State's commissioner of financial regulation.

As the Governor has described, foreclosure issues have been a focus for those of us at the State level for years. They are more than numbers or percentages, they are phone calls, letters and emails from constituents with desperation revolving around their situation and scams that evolve within the crevices of the law. With the Governor's leadership the State has taken significant steps to address the problem reforming the entire foreclosure process and more recently implementing a mediation program.

As commissioner my office has also played an active role.

We have used delinquency data that we received to send over a quarter of a million outreach packages to severely delinquent borrowers.

We have launched an examination program that has resulted in hundreds of thousands of dollars of refunds to consumers.

And we have also implemented a reporting requirement, at the time the first of its kind at the State level, for licensed mortgager servicers.

When we required servicers to report not only data, we required them not only the number of modifications that they were achieving but the impacts of those modifications on the borrower's monthly payment. Shockingly, the early results documented that for most of the borrowers who successfully ran the gauntlet of modification they wound up paying more when they were finished then when they started. These modifications seemed doomed from the start.

When the Federal regulators began to collect data we urged them to also collect data on the impact on payment. It took more than 8 months and several requests from our congressional delegation, including from Congressman Cummings, before the OCC agreed to collect data on payment terms.

Our office is also targeted with other States. Together with four other banking commissioners we joined 12 State Attorneys General in 2007 in the State Foreclosure Prevention Working Group led by Iowa's Attorney General Tom Miller. The group published five reports between 2008 and 2010 and forms the foundation for the robo-signing investigation which I will describe in a moment.

Many of the problems that we face today are a function of changes in the mortgage market. Today, as you know, most mortgages are originated, secure tied, sold and serviced by different parties. This unbundling process may reduce costs and increase efficiency, but it has also fragmented roles, distorted incentives and severely complicated the effort to avoid preventable foreclosures.

In theory, servicing is a scale business. This is certainly true when things are going well as automation created profits while driving down costs. When the mortgages began to default, however, the situation flipped leaving servicers without the expertise, the resources and the incentives to meet the new need.

To make matters worse, the same economies of scale drove consolidation. The percentage of the market in servicing handled by the top five servicers in this country has doubled over the last 10 years to over 60 percent. Beyond the increased management challenge of operating these behemoths in a crises, they're virtually all owned by the major banks, the same banks which are too big to fail. I believe this results in a market that is particularly ill suited to reprice in order to meet elevated needs. After all, the current

provider never goes bankrupt and the process of restoring reasonable returns for a well run and operated business is impaired, in large part at the expense of the homeowner who has no choice in who his servicer is. The invisible hand is essentially broken.

These issues were thrust into the public eye with the recent robosigning scandal. As the Governor's described, the response in Maryland was swift. Our elected officials, including the Governor and Congressman Cummings, called on the servicers to halt foreclosures until their processes cold be validated. Our courts implemented new rules on an emergency basis. My office, through the working group that we were part of, joined the 50 State AG investigation along with 37 bank regulatory agencies. I am proud to serve on the Executive Committee of that investigation.

Without going into the details, let me make the following observations:

First, this is not just a technical issue. As our courts have noted, due process and the rule of law are not to be trivialized. More broadly the problems are symptomatic of the broken process that has been described today. We have seen incomplete files, shady record keeping and in certain instances inaccurate loan data. Third party oversight is weak, as evidence by the improper affidavits that we've see here in Maryland. And we continue to see borrowers getting mixed signals believing they are on the road to a modification only to find themselves deeply down the road to foreclosure.

And these are not only our findings, by the way. The FDIC, the Fed, the OCC have also publicly acknowledged similar issues.

The public senses the same problem, that is why the term "robosigning" has caught fire. It embodies everyone's sense that while servicers and borrowers are struggling along, the foreclosure is operating in the next room unincumbered.

As we look to the future, let me quickly talk about the things we see as necessary.

Ultimately we believe that borrowers need a single point of contact in order to move through this process. We also need to have servicers, these single points of process, need to be backed by adequate staffing and training and support infrastructure.

As I've noted, I question the profitability of the entire model, so I believe those issues will have to be addressed by demands rather then by requests.

And I also believe we need to increase accountability from third party oversight.

None of this will be easy and none of it will be free. But as I have mentioned, I believe that the invisible hand of the market will not fix it, at least not in any near term and not without a lot of continued human cost and economic costs.

I thank you for the opportunity to testify. We will be pleased to answer any questions.

[The prepared statement of Mr. Kaufman follows:]

TESTIMONY OF MARK A. KAUFMAN

MARYLAND COMMISSIONER OF FINANCIAL REGULATION

On

THE FORECLOSURE CRISIS AND EFFORTS TO RESPOND

Before the

Committee on Oversight and Government Reform

United States House of Representatives

March 8, 2011, 9:00 a.m.

University of Maryland, Nathan Patz Law Center

Chairman Issa, Ranking Member Cummings and members of the Committee, thank you for the opportunity to appear before you today to address this important topic. As a lifelong Marylander, I appreciate not only your attention to critical foreclosure issues nationally, but your traveling to Baltimore to conduct this hearing in the field and to gain a window into the challenges we face here at the state and local level

I. Background

For state financial regulators, as well as Attorneys General and other officials, issues of foreclosure, loan servicing and loss mitigation have been at the forefront of our efforts for several years. While the macro problems gain nationwide attention in numbers that boggle the mind, we face them every day in our communities - in the voices of those calling our office for help, in the letters that document months of frustration and desperation, and in the literally thousands of foreclosure rescue scams that continue to evolve and morph within the crevices of the law. The costs are staggering – not only in economic terms, but in the lost homes and hopes of homeowners in neighborhoods all around our city and our state. And, as you know, Maryland is not the hardest hit.

Under Governor O'Malley's leadership, we have taken significant steps in Maryland to confront this crisis. As the Governor described, the entire foreclosure process was revamped in 2008 to provide a clear process for borrowers to follow in pursuing loss mitigation and additional resources in terms of early notice, outreach and support. In my office, we have captured address information from Notices of Intent to Foreclose that are furnished pursuant to those reforms and have used that information to deliver some 250,000 outreach packages to severely delinquent homeowners. Each package contains both mortgage assistance and scam prevention

information. At the same time, our state Department of Housing and Community Development has worked in concert with a network of housing counselors throughout the state to assist borrowers in distress. Last year, the Governor spearheaded enactment of a mediation program to ensure that homeowners have a forum for a conversation with the lender or servicer and a final opportunity to avoid foreclosure.

The Office of Financial Regulation has also been focused on servicing and related foreclosure issues from a regulatory perspective. Maryland is one of the few states that requires licensure to service loans. As such, my Office had jurisdiction over non-bank mortgage servicers, many of whom were focused on sub-prime loan servicing, as problems began to emerge. We developed and implemented an examination program for servicers beginning in 2008 and, looking back, the findings from our first exam are eerily familiar to those we confront today. The key areas of focus noted for management and board attention included (i) modifications that appeared unsustainable on their face and inconsistent with the licensee's stated policy to avoid foreclosure, (ii) technology that lacked robust loan resolution and loss mitigation capabilities and (iii) internal customer service reviews that showed average satisfaction levels were "below satisfactory" and falling.

In addition, at the Governor's behest, we undertook a series interagency meetings in 2009 and 2009 with larger servicers many of whom were beyond our legal jurisdiction. At these meetings, we raised similar issues of capacity and capabilities, and were assured by many of the largest servicers that they were adequately staffed and were prepared to meet the challenges that they faced. The reality obviously fell well short.

Leveraging our regulatory reach, the Office of Financial Regulation also implemented a reporting requirement for our licensed mortgage servicers, the first of its kind for any state. We

did this to ground our policy conclusions in empirical data, not anecdotal stories. Further, good reporting also helps steer good performance. This reporting provided an important tool to look more substantively into the handling of troubled mortgages. Then, in response to the results of our initial examinations and other reports from the field, we modified our reporting in mid 2009 to measure the impact of modifications on the borrower's monthly payment. Shockingly, the results documented month after month that most of those who had successfully run the gauntlet of modification were paying more after completing the process than before. With the economic downturn deepening, it seemed very likely that these modifications were doomed from the start.

The Federal regulators began to collect data shortly thereafter, and we noted the failure to include a similar measure of the impact of the modification on monthly payments. The Office of the Comptroller of the Currency measured and publicized only redefault rates on modifications, which were predictably high, while doing nothing to capture the increased payments that our data suggested often lay beneath. It took almost a full year and requests from Congressional representatives including Congressman Cummings before the Comptroller would examine the impact of modifications on the borrower's underlying payment obligation. Once measured, modification terms began to improve materially and redefaults began to fall.

We have also partnered with our colleagues in other states who share the same foreclosure-related challenges and frustrations. Together with banking commissioners in four other states, our Office of Financial Regulation joined twelve state Attorneys General in the State Foreclosure Prevention Working Group launched under the leadership of Iowa Attorney General Tom Miller in 2007. This group sought to work collaboratively with the mortgage servicing industry and other parties to identify solutions to the myriad of problems we were seeing in addressing the crisis. The group gathered data submitted voluntarily from the largest subprime

servicers and published five reports during 2008 to 2010 providing analysis on foreclosure issues and the servicing response. Unfortunately, this data and the related dialogue fell short of its potential as the Office of the Comptroller of the Currency forbade national banks from providing loss mitigation data to the states.

II. Securitization and the Third-Party Servicing Model

The advent of securitization and third-party servicing has forever changed the mortgage landscape and the experience of borrowers in Maryland and beyond. Gone are the days when local banks and bankers made mortgage loans that they kept on their books. The community banks that I regulate hold only a small minority of loans in our state and candidly, account for virtually none of the foreclosure complaints that flood our office. Instead, most mortgage loans are originated, securitized, sold and serviced by differing parties. The unbundling process may have facilitated the flow of cheap capital, but it has also fragmented roles, distorted market incentives and severely complicated the task of modifying loans to avoid preventable forclosures.

This evolution lies beneath many of the problems we face today. In theory, mortgage servicing is a scale business. This is certainly true when things are going well as automation and scale create a high volume operation that is profitable at low fees. It resembles any other transaction processing business model. Unfortunately, this structure is poorly suited to addressing problem loans. When mortgage defaults began to mount, third-party servicers were left without the expertise, financial incentives, and, most importantly, the resources they needed to engage in effective loss-mitigation programs.

To make matters worse, the same scale economies also drive consolidation. The market share of the top five mortgage servicers has nearly doubled since 2000, from 32 percent to almost 60 percent. Beyond the increased management challenge that comes from operating such a large operation in a crisis, I note that the largest servicers are owned by our major banks – the same banks that are systemically significant. This results in a market that is poorly suited to re-price the service in order to meet the new need. After all, the current provider, who is likely operating at a structural loss, is also too big to fail. The process of restoring a reasonable economic balance that supports a properly run business is distorted – and in large part at the homeowner's expense.

As a result, we continue to confront a major market failure, with all the accompanying inefficiencies. We see and hear from distressed borrowers who report all too frequently that they are forced to resubmit paperwork because it has been lost by the servicer. Loss mitigation requests are delayed for weeks and months as servicing staff seek to manage the volume. Ultimately, financial documents are stale and then must be resubmitted – triggering further delays and confusion. Servicers have remained largely unaccountable for these issues, while the borrower remains on a short leash. If lost documents are not resubmitted properly or strict deadlines are not met by the borrower, the modification is denied. The borrower has no leverage or remedy in the relationship. After all, it's not as if they have a choice selecting their servicer.

Through it all, the foreclosure process proceeds in parallel. This dual tracking is the most difficult element of all. Servicers have consistently told us that while they don't want to foreclose, they must keep the process moving and the pressure on. This creates enormous stress, particularly when the left hand doesn't know what the right hand is doing. Borrowers believe

they are proceeding toward a modification only to find out they are headed for a foreclosure sale, while late fees and penalties continue to accrue, further compounding the problem.

III. The Mortgage Foreclosure Multistate Group

Shortfalls in the servicing process were thrust into the public eye late last year with the so-called "robo-signing" scandal. As Governor O'Malley described, the response to the scandal in Maryland was forceful. He joined the Attorney General and Congressman Cummings in contacting the major servicers and demanding a halt to foreclosures until these issues could be addressed. Likewise, our courts responded and adopted emergency rules providing that if the court has reason to suspect that any affidavit filed in a foreclosure may be invalid because of affiant's lack of sufficient knowledge of the facts stated in the affidavit, the court may decline to accept or order the party to show cause why the action should not be dismissed.

Through our pre-existing relationship with the State Foreclosure Prevention Working Group, our office was invited along with Attorney General Gansler to participate in a joint effort of the 50 state Attorneys General and a committee of bank regulators representing all 50 states to address the problem. I am proud to serve on the Executive Committee of this task force.

The Working Group believes that the effort of the task force is critical for several reasons. First, we are closer to the problems than our federal counterparts and foreclosure remains an issue with local ramifications. Further, I hope I have demonstrated that we have been grappling with these issues for a long time on an organized, cooperative basis. Finally, speaking for the financial regulators involved, we bring critical expertise. To the extent servicing has been reviewed previously, we have been doing it. We have implemented coordinated multi-state

examinations of the largest non-bank servicers under our jurisdiction. Currently, my staff is leading one of those examinations and supporting the others that are underway.

At the same time, we appreciate the focus that this issue has received from the federal level and remain committed to working cooperatively with the various agencies involved. We are well aware that the largest servicers handling the majority of loans in our states are federally supervised. A long term solution cannot be implemented without the support of the federal regulators responsible for that supervision.

As our investigation is ongoing, I am limited in the specifics that I can provide. However, I can make some observations based on the efforts of our team.

First, let me be clear that we do not view this as simply a technical issue. At one level, a home is a principal asset and given the stakes, compliance is and should be demanded. Moreover, as my Attorney General colleagues have noted, legal process matters. Due process rights and the rule of law are to be respected, not trivialized.

More broadly, we are concerned that the issues that drove the investigation are symptomatic of problems that have undermined the loss mitigation process for years. In that regard, the efforts reveal shortfalls in many areas. On an operating basis, we have found that files are incomplete, recordkeeping is inadequate and, in certain instances, loan data is inaccurate. At the same time, third-party oversight is lacking. In Maryland, we have seen this issue in our process with improper affidavits filed by foreclosure counsel. On the modification front, we find borrowers who continue to be given mixed signals throughout the process, believing they had qualified for a modification only to see foreclosure proceedings initiated. In Maryland, for example, my office received a copy of an affidavit attesting to the court that the borrower had failed a trial modification and therefore that the foreclosure should proceed. In

point of fact, no plan had yet been offered. We have also identified instances where payoff amounts were overstated and foreclosures proceeded. While the resulting deficiency may not be enforced, such overstatements create a further impediment to foreclosure alternatives.

These problems are serious and the findings are not limited to our group. Acting Comptroller Walsh recently testified that his agency's review is also uncovering similar issues. He indicated deficiencies that "have resulted in violations of state and local foreclosure laws, regulations, or rules and have had an adverse affect on the functioning of the mortgage markets."[1] Federal Reserve Governor Tarullo indicated that their reviews revealed, among other things, "significant weakness in risk management, quality control, audit and compliance practices" as well as "staff training, coordination among modification and foreclosure staff, and management and oversight of third parties."[2]

The efforts of the multi-state task force are ongoing, as are the efforts to design and implement a remedy. Our federal counterparts are working toward the same end and I urge this Committee to support their efforts.

In the end, the critical issue is fixing the loss mitigation system. As the Governor has noted, we do not believe that every foreclosure is avoidable. To the contrary, we expect modification where the returns will exceed those of a foreclosure sale. At the same time, the costs of foreclosure are large, not just to the lender, but to our families, communities and economies. Recent events underscore our concerns that borrowers are being foreclosed upon even when it is not the economically best outcome. This is why the term "robo-signing" captured public focus so quickly. The term embodies the public's general sense that while

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[1] Testimony of Acting Comptroller John Walsh before the United States Senate Committee on Banking, Housing and Urban Affairs, February 17, 2011.
[2] Testimony of Governor Daniel Tarullo before the United States Senate Committee on Banking, Housing, and Urban Affairs, December 1, 2010.

servicers and borrowers are stumbling through the broken process of loss mitigation, the foreclosure machine is robotically grinding forward in the next room, its methodical processes unencumbered by human involvement or oversight.

As we look to the future, I urge this Committee to press forward and to demand improvement. The federal banking regulators have begun development of national servicing standards. I support this effort and believe that it is essential given that the largest players are under federal supervision. Such standards would apply to all loans, delinquent or not, and would serve to professionalize the process over the long term.

In the short run, however, we must maintain focus on ensuring that those borrowers who have the desire to stay in their homes and qualify for a modification, receive that modification. This begins with a single point of contact for borrowers. This single human interface is key to providing consistency and clarity. That person must also be backed by adequate support staff and technology. As I have indicated, I question the profitability of the current servicing model, so I suggest such investment will need be demanded, not simply requested. Perhaps most importantly, I believe we need to increase accountability. This extends from the transaction level, where denials of loan modifications should be reviewed by an outside party before a sale proceeds, to the enterprise level with board and ultimately regulatory oversight.

None of this will be easy and none of it will be free. But the invisible hand of the market will not fix this – at least not in any near term time frame and not without significant economic and human cost along the way. Mitigating those costs, like mitigating the losses on the underlying loans, requires focus, resources and will.

IV. Conclusion

I want to thank Chairman Issa, Ranking Member Cummings and the members of this Committee once again for coming to Baltimore to conduct this field hearing. The foreclosure issues that you are considering are impacting communities like ours all over the country and cannot be ignored. As state officials, we are doing everything we can to battle this issue and to ensure that deserving homeowners retain their homes. But the forces and players involved are bigger than any one community or state. We need your support and we stand ready to provide ours.

Chairman ISSA. Thank you.

Mr. Matthews? Could you pull the mic just a little closer?

STATEMENT OF KEVIN JERRON MATTHEWS

Mr. MATTHEWS. Mr. Chairman and members of the committee, my name is Kevin Jerron Matthews. I am here to talk to you about the mortgage foreclosure that happened to me.

By the way of brief background, I'm a former high school JROTC cadet, member of the U.S. Air Force and Maryland Army National Guard and served with the 243rd Engineering Co. in Iraq.

In 2008 with the help of the VA Guaranty Loan Program I purchased my home on 3216 East Northern Parkway. When I purchased my property I had a good income. I was a contractor at Fort Meade in the field of wastewater. I also made all my mortgage payments on time and everything was going Okay. But in December 2008 I was in a horrific car accident that made my previous injuries worse than war.

In February 2009 as a result of my injuries and resulting in continued absences from work, I was laid off from my job while I was in the hospital. Realizing the difficulty to my situation, in an effort to be proactive I contacted by mortgage servicer, USAA, to inform them of my hospitalization, disability and anticipated financial hardship.

I continued to contact USAA after my release from the hospital and during my rehabilitation, and I continually thereafter keep them informed of my situation and to see if I could secure any help from them while I had no income, including the possibility of a forbearance or modification.

I made every effort to keep up my mortgage payment including draining all of my 401(k), using my tax returns and short-term disability benefits. I also did not pay any other bills in an effort to keep my mortgage current and depleted all of my savings.

In July 2009, I ran out of money and in August I officially went 30 days late. I continued to contact USAA in an effort to find a resolution to the delinquent payments on my home. I wanted desperately to save my home or find any other alternative to foreclosure. After contacting USAA more than 50 times over the course of 12 months or more and retaining one of the best housing counsels in the State, USAA proceeded to sale on May 21, 2010 with USAA not even looking at the mitigation package. On the phone I was told they did not care and it was not their problem.

After the sale I obtained legal counsel with Civil Justice, Inc. and the University of Maryland Law School Consumer Protection Clinic and my lawyers filed a formal exception to the foreclosure sale with the court.

While the exceptions were pending consideration of the court and before the lender had the legal right to acquire possession of the property, I was required to go out of town for an internship related to my studies. I returned home to learn that my house had been taken over by the lender without permission of the court and that a lockbox had been placed on my front door and that all my personal belongings as well as that of my son's had been taken from the house by the lender's agents who secured the house. In addition, as a result of the illegal lockout, I had to go find an apartment

and buy all new furniture and clothing for not only myself, but my son. To this date I have never received my property back.

After I obtained legal counsel with Civil Justice and the University of Maryland Law School Consumer Protection I also learned that GMAC and not USAA owned my mortgage. Apparently to what USAA had told the media, it permits GMAC to use its name for customers like me so we don't know the loan has been transferred.

I have also learned since the foreclosure my loan was a VA guarantee loan. The VA requires my lender to undertake loss mitigation efforts prior to foreclosing on the loan, including a face-to-face meeting, review of my loan and circumstances for modification. The possibility of temporarily modifying my loan to allow my conditions to improve, the exploration of the possibility of a deed in lieu as an alternative to foreclosure and as a last resort only. None of these things were done.

In the fall of 2010 when the national and State robo-signing scandals came to light we learned that an individual by the name of Jeffry Stephan had admitted under oath in a deposition that he had signed tons of thousands of bogus affidavits used to initiate foreclosure proceedings on behalf of GMAC and other lenders including my own foreclosure. Apparently Mr. Stephen never reviewed the required documentation and affidavits were falsely notarized without Mr. Stephen being present as required by law.

After the hearing we had attempted to secure the key to the lock GMAC had illegally placed on the door of my home. However, they never gave my counsel the keys and as a result, I had to break into my own house. Unfortunately, the neighbors who did not know me called the police and I had to explain this entire situation to them. Luckily, I was not arrested.

Upon entering the house I found that the house had not been properly winterized by the company hired by GMAC to discontinue with the utilities. As a result, my sewage pipe and hot water heater cracked from the water expansion in the cold weather requiring me to fix both in order to move back into the house.

Mr. Chairman, and members of this honorable committee, as a member of the Armed Service I took an oath where I rose my right hand and stated that I solemnly swore to support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same, and that I will obey the orders of the President of the United States and orders of officers appointed over me according to regulation and the Uniform Code of Military Justice, so help me God. I did all that was asked of me proudly and unreservedly. Today I am here not to tell you my story, but to ask each of you that you will assist not only me, but the tens of thousands of homeowners throughout this country to receive the equal protections of the laws and rights to due process that are guaranteed to each of us by that very same Constitution that I was asked to defend.

I am an example of everything that can go wrong when lenders abuse the system and not held accountability. Hopefully through your actions, other homeowners trying to be proactive and do the right thing that they will not have to endure what I suffered and continue to suffer through each day.

Thank you for your time and efforts to work together to find a common sense solution.

[The prepared statement of Mr. Matthews follows:]

TESTIMONY OF KEVIN JERRON MATTHEWS

TO THE UNITED STATES HOUSE OF REPRESENTAIVES

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

March 8, 2011

Dear Mr. Chairman and Members of the Committee,

My name is Kevin Jerron Matthews. I was born in Baltimore, Maryland on December 13, 1980. I attended high school at Baltimore Polytechnic Institute where I graduated in June of 1998. While in high school, I was a member of Air Force JROTC. This experience helped me to choose the Air Force as a career after high school, enlisting upon my graduation on July 31, 1998. While in the Air force, I was stationed Kadena Air Base in Okinawa, Japan and Ft. Huachuca, AZ. I also had various deployments, including Iraq in peace time. My Air Force active duty ended in 2001, when I was discharged on a family hardship.

In 2002, I returned home to Baltimore and started working as a security manger, but I still wanted to be a part of the military in some way, so I enlisted in the Maryland Army National Guard. While with the Guard, I was stationed with the 29th Discom Unit based out of Towson, Maryland until April of 2005. In May of 2005, I was selected to be deployed to Iraq with the 243rd Engineer Company. Our Mobilization station was Camp Atterbury, Indiana. We officially deployed to Iraq in August 2005.

While in Iraq, I served in the capacity as a fuel tanker driver, ITT and liaison for state correspondence. After returning home in 2006, I began to feel the effects of the stress of deployment had caused on me and many others like me. I began to suffer from chronic back

pain, tinnitus, post traumatic stress disorder, and migraine headaches. Even with all of my issues, I still continued to work. In 2006 I married and in 2007 my son, Kevin was born.

In 2008, with the help of the VA Guaranty Loan Program, I purchased my home on 3216 East Northern Pkwy. When I purchased my property I had a good income. I was a contractor at Ft. Meade in the field of waste water. I also made all my mortgage payments on time and everything was going okay, but in December of 2008, I was in a horrific car accident that made my previous injuries worse. In February of 2009, as a result of my injuries and resulting continued absence from work, I was laid off from my job while I was in hospital. Realizing the difficulty of my situation and in an effort to be proactive, I contacted my mortgage servicer USAA to inform them of my hospitalization, disability and anticipated financial hardship before I fell behind on my mortgage. I continued to contact USAA after my release from the hospital and during my rehabilitation in a continued effort to keep them informed of my situation and to see if I could secure any help from them while I had no income, including the possibility of a forbearance or modification. I made every effort to keep up on my mortgage payments including draining my all of my 401k, using my tax returns, and short term disability benefits.

I also did not pay any other bills in an effort to keep my mortgage current and depleted all of my savings. In July of 2009, I ran out of money and in August of 2009, I officially went thirty days late. I continued to contact USAA in an effort to find a resolution to the delinquent payments on my home. I wanted desperately to save my home. I faxed hardship letters and called twice a week every month, but I was just given wrong information and guidance, and the situation just got more negative. I informed them that I applied for disability services in March of 2009, but they didn't want to listen. In August of 2009, I contacted USAA about the possibility of executing a Deed in Lieu as an alternative to foreclosure, and was instructed to

draft a letter stating my financial situation and asking that a Deed in Lieu be accepted. I drafted the letter and faxed it to USAA, however I never received a response. In January of 2010, in one of my many phone calls to USAA, I specifically asked about the status of the Deed in Lieu and was told that a Deed in Lieu was not possible unless the house had been on the market for at least ninety days.

By February of 2010, the stress had finally taken a toll on my family and I was going through a divorce. That same month, I received a 45 day notice of intent to foreclose letter. However, some things did begin to turn around for me, I was approved for my disability through Social Security, and also I began school through the Veterans Administration program. In addition, I began making some additional income from tutoring, but it wasn't very much. In March of 2010, I went to the Belair Edison Neighborhood Association for assistance with my mortgage. I began working with Mr. Roy Miller who was assigned to me as a housing counselor. In March of 2010, Mr. Miller submitted a mortgage modification package to USAA. USAA denied my modification on the grounds of insufficient income. I appealed the decision and resubmitted a package in late April 2010. The company received the package on April 30th and acknowledged receipt. By this time, a foreclosure sale date had been set for May 21, 2010. However, since I had a VA loan and the package had not even been viewed, it was my understanding that the date should have been pushed back. At the beginning of May, Mr. Miller contacted USAA on my behalf to verify that the sale date had been pushed back; Mr. Miller never received a response. On May 21, the sale date proceeded with USAA not even looking at my package. On the phone, I was told that they did not care and it wasn't their problem.

Mr. Miller referred me to legal counsel and my attorneys filed a formal exception to the foreclosure sale with the court. While the exceptions were pending consideration of the Court

and before the the lender had the legal right to acquire possession of the property, I was required to go out of town for an internship related to my studies. I returned home to learned that my house had been taken over by the lender without the permission of the court, that a lockbox had been placed on my front door and all of my personal belongings and property as well as that of my son's had been taken from the house by the lender's agents who secured the house. In addition, as a result of this illegal lockout, I had to go and find an apartment and buy all new furniture and clothing for not only myself but my son. To this date I have never received any of those items back.

After I obtained legal counsel of Civil Justice Inc. and the University of Maryland School of Law Consumer Protection Clinic, I also learned that GMAC and not USAA owned my mortgage. Apparently, according to what USAA has told the media, it permits GMAC to use its name for customers like me so we don't even know the loan has been transferred. Had I known who owned my loan, either Mr. Miller or myself could has escalated my mitigation requests to the true owner. However, this information was concealed from me by USAA and GMAC and their agents in violation of Maryland law requiring the identification of the owner of the loan.

I have also learned since the foreclosure sale that since my loan was a VA Guaranteed Loan, the VA required my lender to undertake loss mitigation efforts prior to foreclosing on the loan including a face to face meeting, review of my loan and circumstances for modification, the possibility of temporarily modifying my loan to allow my conditions to improve, the exploration of the possibility of a deed in lieu as an alternative to foreclosure and as a last resort only foreclosure. None of these things were done for me. At no time did GMAC or USAA ever inquire about the circumstances of my default, what I could afford to pay, the permanency of my condition, the possibility of a short sale or deed in lieu, or the possibility of meeting face to face

to discuss any loss mitigation alternatives. All I received was incorrect or conflicting information, denial letters to my requests for modification with no other explanation other than I had insufficient income and verbal statements from their representatives that I was required to pay my full payment or I would be foreclosed upon.

In the Fall of 2010 when the national and state robo-signing scandals came to light, we learned that an individual by the name of Jeffry Stephan had admitted under oath in a deposition that he had signed tens of thousands of bogus affidavits used to initiate foreclosure proceedings on behalf of GMAC and other lenders including my own foreclosure. Apparently Mr. Stephan never reviewed the required documentation and the affidavits were falsely notarized without Mr. Stephan being present as required under the law.[1]

In a further effort to undo my foreclosure sale and the pending foreclosures against hundreds of other Maryland homeowners like me based on bogus documents, we filed a defensive class action case against GMAC in my foreclosure case and asked the court to dismiss all similar cases in Maryland. In response to my request GMAC eventually agreed to voluntarily dismiss hundreds of similar cases in Maryland. This agreement occurred at a hearing in court where GMAC's local counsel stated those pending foreclosures based upon Jeffrey Stephen's signature would be dismissed. To me this was not only a victory but a clear admission by GMAC of their guilt and wrong doing in filing these actions against me and other home owners.

After the hearing, we have attempted to secure the keys to the locks GMAC had illegally placed on the door to my home. However they have never gave my counsel the keys and as a result I had to break into my own house. Unfortunately, certain neighbors who did not know me

[1] We also learned in the Fall of 2010 that the attorneys suing me in the foreclosure have admitted in hundreds of Maryland foreclosure actions that they also permitted non-attorneys to robo-sign their signatures on foreclosure papers and affidavits.

called the police and I had to explain this entire situation to them. Luckily, I was not arrested. Upon entering the house, I found that the house had not been properly winterized by the company hired by GMAC prior to discontinuing the utilities. As a result my sewage pipe and hot water heater cracked from the water expansion in the cold weather, requiring me to fix both in order to move back in and use the house.

Mr. Chairman and Members of this Honorable Committee, as a member of the armed service I took an oath where I rose my right hand and stated that I solemnly swore to support and defend the Constitution of the United States against all enemies, foreign and domestic; that I would bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. So help me God. I did all that was asked of me proudly and unreservedly. Today I am here to not only tell my story but to ask of each of you that you assist not only me but the tens of thousands of homeowners throughout this country to receive the equal protection of the law and rights to due process that are guaranteed to each of us by that very same Constitution I was asked to defend. I am an example for everything that can go wrong when lenders abuse the system and not held accountable. Hopefully through your actions, other homeowners trying to be proactive and do the right thing will not have to endure what I have suffered through and continue to suffer through each day. Thank you for your time and efforts to work together to find common sense solutions.

Chairman ISSA. Thank you, sir.

Ms. Wilson.

STATEMENT OF JANE A. WILSON

Ms. WILSON. Chairman Issa, Ranking Member Cummings and members of the committee, thank you for allowing me to appear.

Chairman ISSA. You might want to pull the mic just a little closer.

Ms. WILSON. Thank you for the opportunity to allow me to be here today to share with you the experiences of the Maryland homeowners facing foreclosure.

Chairman ISSA. I guess a lot closer might be better.

Ms. WILSON. Okay.

Chairman ISSA. They try to compensate, but that's what causes the feedback.

Ms. WILSON. Okay.

And also the steps that St. Ambrose is taking to try to try to preserve sustainable home ownership and neighborhood stabilization.

By way of background, St. Ambrose Housing Aid Center is a nondenominational 501(c)(3) nonprofit located here in Baltimore. We are a HUD certified counseling agency and a chartered member of NeighborWorks America. Since our founding in 1968, we have provided direct housing services to over 100,000 low and moderate income families through our several interrelated housing programs.

In particular, our Foreclosure Prevention Division provides default counseling services and direct legal representation and legal counsel to homeowners and nonprofit housing agencies across Maryland.

St. Ambrose has been involved with foreclosure prevention for over 30 years. During that span we have witnessed a dramatic change in the face of foreclosure. In particular, over the last few years our attorneys and housing counselors have found and continue to find that homeowners eligible for certain types of loss mitigation relief including relief available under HAMP, faced impending foreclosure sales of their homes despite having submitted applications for review under the applicable State, Federal and investor specific loss mitigation guidelines.

We have never before witnessed such systemic and deliberate dysfunction at the large mortgage loan services that has resulted in the sizable loss of wealth to homeowners and communities across Maryland. We recognize that not every home can be or must be saved in the process. But the losses are not limited to the homeowners. We also see the sizable losses to investors, taxpayers and the Government as a result of the systemic failings within the servicing industry.

Time does not permit me to recount each example of servicer failings that I've provided in my prepared testimony, but I would like to highlight one example. I wish I could say this one example is an isolated case, it is not. I also wish I could say that the described events that occurred in 2008 or 2009 would not occur today, but I cannot.

We had a client who came to us in late 2008 with her mortgage payments 2 months in arrears. Between December 2008 and February 2010 our housing counselor helped her submit the necessary

loss mitigation information to her servicer on 10 separate occasions, only to be told more than 30 days after each submission that the modification package was incomplete. Our client finally received a HAMP trial period plan in February 2010 and made her first payment. Only a few days later she was notified that the servicing rights had been transferred to another servicer who claimed that they had no record of the HAMP trial plan and that if she wanted assistance, she'd have to start over again.

Most recently, the current servicer offered our client an unaffordable repayment plan, not a modification but a repayment plan that required a payment of approximately $800 a month more than her pre-hardship payment. As you might anticipate, this was not a viable option for the client. One of our attorneys continues to advocate for a modification for this client.

I might note that the servicer failures in this case are particularly frustrating because the loan is owned by Fannie Mae. Efforts by St. Ambrose staff to discuss the case directly with Fannie Mae have produced no results.

The servicing industry must be repaired. The problems within the industry from our perspective are deeply rooted and systemic. We at St. Ambrose are committed to doing our part to ensure that every homeowner whom we can assist receives our assistance. But our efforts are too often frustrated by the failure or inability of the servicers to respond to legitimate requests from loss mitigation.

The Board and staff of St. Ambrose are grateful to Congressman Cummings and to all of you for supporting this area and we thank you for taking the time to come to Baltimore and to discuss this critically important topic with us today.

[The prepared statement of Ms. Wilson follows:]

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TESTIMONY OF JANE A. WILSON
CHAIRWOMAN, BOARD OF DIRECTORS
ST. AMBROSE HOUSING AID CENTER, INC.
On
THE FORECLOSURE CRISIS
Before the
Committee on Oversight and Government Reform
United States House of Representatives
March 8, 2011
Baltimore Field Hearing

Chairman Issa, Ranking Member Cummings and members of the Committee, thank you for coming to Baltimore today and for the opportunity to share the experiences of Maryland homeowners facing foreclosure and the steps that St. Ambrose is taking to try to preserve sustainable homeownership and neighborhood stabilization.

My name is Jane Wilson and I am the Chair of the Board of Directors of St. Ambrose Housing Aid Center, Inc. St. Ambrose Housing Aid Center, Inc. ("St. Ambrose") is a non-denominational, 501(c)(3) non-profit, located in Baltimore, Maryland. St. Ambrose is a HUD-certified counseling agency and a chartered member of NeighborWorks America ®. Since its founding in 1968, St. Ambrose has provided direct housing services to over 100,000 low and moderate income families through five distinct but interrelated housing programs. The Foreclosure Prevention Division of St. Ambrose provides default counseling services and direct legal representation and legal counsel to homeowners and nonprofit housing agencies across Maryland. St. Ambrose has been involved with foreclosure prevention for over 30 years of its 43 year history.

In the rich history of the organization, we have witnessed a dramatic change in the face of foreclosure. In 2007, as the crisis began to take shape, our counselors were working with homeowners that had been given unaffordable loans with high interest rates and features such as negative amortization. These loans were offered without verification of a borrower's ability to repay the loan or the value of the underlying property backing the mortgage. As we know, what is now referred to as the subprime lending crisis was just the beginning of what was to come as the risky loans packaged and sold as securities on Wall Street ultimately collapsed the entire market. Over these past few years, it has been the experience of the attorneys and housing counselors assisting homeowners facing foreclosure in Maryland that homeowners eligible for certain types of loss mitigation relief, including that available under the Making Home

Affordable Program introduced by President Obama in March 2009, face impending foreclosure sales of their homes despite applications submitted for review under applicable state, federal or investor-specific loss mitigation guidelines. In the 33 years of providing foreclosure prevention services to families in Maryland, we have never witnessed such systemic and deliberate dysfunction at the large mortgage loan servicers that has resulted in the sizeable loss of wealth to homeowners and communities across Maryland.

As you have heard from Maryland Governor Martin O'Malley, the State of Maryland has made a significant commitment in working to maintain and preserve stable communities here in Baltimore and across the State. Maryland foreclosure law was changed to provide meaningful notice and an opportunity for homeowners facing foreclosure to obtain relief, regulatory oversight and enforcement actions have grown, and trained housing counseling agencies, like St. Ambrose, have taken on the monumental task of advocating on behalf of homeowners that become collateral damage as they are lost in the maze of trying to negotiate some type of loss mitigation relief to avoid for foreclosure, or at the very least, obtain a dignified exit from their home that is not devastating to the broader community where the property is located. We recognize that not every home can be or must be saved in the process, but we also see the sizeable losses to investors, taxpayers and the government as a result of the systemic failings within the servicing industry.

I would like to share a few examples of these failings, which are by no means isolated cases:

1. A client fell behind on her mortgage payments in 2008 after she and her husband separated. She contacted St. Ambrose when she was approximately two months behind in her mortgage payments. One of our housing counselors originally sent a modification request on behalf of the client to her servicer in December 2008. Between December 2008 and February 2010, our housing counselor helped the client submit loss mitigation information to the servicer on ten separate occasions. Each time, the servicer stated that it would take at least 30 days to review the loan for a modification. Each time, 30 days or more later, the servicer told our housing counselor that the modification package was incomplete.

   In February 2010, our client was finally sent a HAMP trial period plan. A few days after making her first payment on the trial period plan, she was notified that the servicing rights for her loan had been transferred to a different servicer. The new servicer informed our client that they had no record of the HAMP trial period plan, and that if she wanted assistance, she would need to submit a new loss mitigation request to them. Most recently, the new servicer offered our client an unaffordable repayment plan—not a modification—that requires a payment approximately $800 more per month than her pre-hardship payment. She could not accept that agreement, and since that time, a St. Ambrose attorney has continued to advocate for a modification.

   The servicer failures in this case are particularly frustrating because the loan is owned by Fannie Mae, and despite our attempts to discuss the client's case with Fannie Mae, neither Fannie Mae nor the servicers have done anything to assist our client.

2. A client fell behind on her mortgage payments in March 2008. This client is self-employed and suffered a decrease in income due to loss of business. St. Ambrose submitted a loss mitigation request on her behalf to the mortgage servicer in October, 2008. A representative of the servicer contacted the client regarding loss mitigation independently of the request we submitted, and told the client he could not speak to the St. Ambrose representative because he did not have on file a third party authorization to release information to St. Ambrose. The authorization had in fact been submitted with the loss mitigation request.

   We subsequently sent the client's third party authorization to the servicer on four more occasions over four months. The loss mitigation request with the client's financial information was resubmitted three separate times.

   By the end of January 2009, our client had been denied a modification twice. The servicer claimed that the second denial occurred because it had not received the appropriate financial documents despite the information having been sent in each request that we faxed to the servicer.

   Over the next five months, St. Ambrose had to send updated information on behalf of the client to the servicer six more times before the loan was reviewed for a modification. During this time, a foreclosure action was filed and the Order to Docket was posted on the client's property.

   In June 2009, the client was approved for a HAMP trial period plan, and she began making payments. However, shortly after making her first trial period payment, she received notice that a foreclosure sale of the property had been scheduled for June 24, 2009, which, as you can understand, caused the client great distress over the conflicting information she had been receiving. A St. Ambrose attorney was able to get this sale cancelled, and the client successfully completed her trial period plan.

   In October, 2009, the servicer informed our client that she was in review for a permanent loan modification through HAMP and that the servicer did not require any further documents for this review. She was further told that she should receive her final modification documents for execution in the mail. When she did not receive these documents, St. Ambrose contacted the servicer and was told that she needed to submit further income documentation in order to be approved for the final modification. However, the servicer did not provide the appropriate contact information to transmit these documents until the end of November, 2009.

   Our client finally received her permanent modification agreement from the servicer at the end of January, 2010. She executed the modification and has been successfully making payments. Nevertheless, it took more than a year, from December 2008 to January 2010, of sending and resending documents to arrive at the permanent modification. During that time, our client accrued significant arrearages, which were eventually recapitalized into the loan.

3. Another client came to St. Ambrose in December 2008 seeking assistance in preventing the foreclosure of her home. She was nine months behind on her mortgage due to loss of employment. A foreclosure case had been filed, and the client had received an Order to Docket, but no sale had been scheduled. Prior to coming to St. Ambrose, the client was able to find new employment and needed assistance in modifying the loan to reduce the monthly payments and to bring the loan current.

   In February 2009, St. Ambrose submitted its first loss mitigation request to the servicer on behalf of this client. After months of following up with the servicer and repeatedly faxing documents, the servicer told a St. Ambrose attorney in June 2009 that there were no notes on the file since the beginning of April. This appeared to indicate that the servicer had taken no action on the case in approximately two months. At this point, our attorney escalated the case with the servicer and submitted a new loan modification request. Despite escalation efforts in June, the borrower was not offered a HAMP trial modification plan until November 2009—almost six months later.

   In March 2010, the client contacted St. Ambrose again due to suffering a further hardship. She is originally from Haiti and has many family members still living there who lost their homes and were injured in the earthquake that occurred in January 2010. She spent a significant amount of money to aid her devastated family, and would have to continue to provide them with financial support.

   In May 2010, St. Ambrose contacted the servicer on the client's behalf to request a new loss mitigation plan, citing this new hardship as the basis for the request. It again took over six months of following up and repeatedly faxing paperwork to the servicer to get any response. Despite escalation efforts, the servicer informed St. Ambrose that the client could not qualify for a loan modification because she had not made nine payments on the loan. This requirement is not a part of HAMP and is not consistent with our experience assisting clients in this situations. When our attorney sought an explanation from the servicer, we were told that they had no record of the trial modification being offered to the client. The St. Ambrose attorney then emailed the servicer a copy of the trial modification offer sent by the servicer . Despite this evidence, the servicer informed St. Ambrose that the file had been closed and in order to reopen it, the client would have to submit an entirely new loss mitigation request.

   Presently, this case remains unresolved as the client is still gathering the required documents to include in the new request for a loan modification.

4. Another client fell behind in her mortgage payments in May 2010 after incurring significant unexpected medical costs. The health issue kept her out of work beyond her accumulated sick time, and when she began working again, her income was reduced for several months as she repaid the additional sick time. The client was attempting to work with her mortgage servicer during this time, but did not complete a loan modification package. In September 2010, a foreclosure case was filed, which included a Final Loss Mitigation Affidavit. Under Maryland's new mediation law, a Final Loss Mitigation Affidavit certifies that the servicer has reviewed the loan for all loss mitigation options prior to filing the foreclosure.

> The Final Loss Mitigation Affidavit in this case was signed by a non-attorney representative of the servicer who was located in Missouri. The Affidavit falsely stated that the borrower had entered into modification trial period plan and failed out of that plan due to non-payment. In fact, the loan was never reviewed for a loan modification, and our client never received approval for a trial period. The servicer had simply filed a false affidavit with the Court.
>
> St. Ambrose filed a motion to dismiss the foreclosure based on the false affidavit and, in lieu of responding to the substance of the motion, the servicer directed its local attorneys to dismiss the foreclosure. This case has all the indicia of a case of robo-signing.

The servicing industry must be repaired. The problems within the industry, from our perspective, are deeply rooted and systemic. We at St. Ambrose are committed to doing our part in ensuring that every homeowner that we can assist receives our assistance, but our efforts are too often frustrated by the failure or inability of the servicers to respond to legitimate requests for loss mitigation.

It is also important to note the effect of the current crisis on vulnerable communities in Baltimore. As mentioned previously, in addition to foreclosure counseling, St. Ambrose provides additional services to the community that we serve. One of those services includes the acquisition and rehabilitation of vacant properties in certain Baltimore City neighborhoods.

The Housing Development Program has for the past five years operated as an Asset Control Area manager purchasing 171 foreclosed and vacant properties and renovating and reselling those properties to homeowners in northeast Baltimore. St. Ambrose has been chosen by the City of Baltimore to duplicate this model in communities identified to receive funding through the Housing Recovery Act's Neighborhood Stabilization Plan I and II. In FY10, we acquired, renovated, and sold 30 homes under the ACA program and 1 in the NSP I program. This year, we expect to acquire, rehabilitate and sell 70 homes.

Our ability to bring stability to vulnerable Baltimore neighborhoods has been made possible by Community Development Block Grants funding from the Neighborhood Stabilization Program. It is critical that these programs continue to receive adequate funding in order to preserve entire communities in Baltimore and across the nation.

The Board and Staff of St. Ambrose are grateful to Congressman Cummings for his leadership and support in this area and we thank you for taking the time to come to Baltimore to discuss this critically important topic with us today.

Chairman ISSA. Thank you. And thank you for being exactly 5 minutes. Uncanny. I am glad we got you instead of the earlier proposed witness.

With that, I'll recognize myself for 5 minutes.

Mr. Matthews, having had 35 years with USAA, I was relieved when you got to the fact that GMAC was behind, if you will, the servicing company and ultimately GMAC held it. But it still does not excuse USAA for any portion of their involvement or any of the other entities involved. And I sincerely feel for, I guess, what is now a corrected loss but not fully correct and probably won't be fully corrected for a long time.

Ms. Wilson, I'd particularly note that when we look at Freddie and Fannie, they do hold $7 trillion worth of these notes, the largest holders by far. So as we talk about servicers, obviously we're really talking about services on behalf of GMAC in some cases, Freddie and Fannie, entities that were bailed out and continue to be bailed out by the U.S. Government.

So, Mr. Kaufman, I'll go to you. First of all, there was some talk about modifying bankruptcy. From your past experience before you came into your current job if we were to open up the door of cramdown broadly, the way they were in the 1980s and 1990s, what effect would that have on commercial construction and all the other entities that used to avail themselves of cramdown briefly?

Mr. KAUFMAN. I am not sure I am exactly——

Chairman ISSA. Well, another way to put it is what would it cost if bank consortiums that we are funding, shopping malls and large home development plans, suddenly had to look and say "If anything goes wrong, we are not even going to have the right to take back the property. We are going to be forced into a cramdown," maybe as many as three cramdowns as we found under the old bankruptcy law.

Mr. KAUFMAN. Well, I am not sure that it is sort of statistically possible to make an estimate. I guess I would make two points, at least one from previous experience working as an investment banker, which is the leverage to hand back the keys to that is how workouts get done.

You know, we hear a lot about borrowers who are not holding up their end of responsibilities, who are acting immorally, etc., who I would observe act a lot like corporations or investors that I worked with and nobody questioned their morals. That was really just how business was done.

I also think it is difficult to estimate. I mean, at some levels costs would go up, but I am still frankly looking for the study that even shows you that the cost of an elongated timeline for foreclosure or for some of the foreclosure reforms that we put in place raise the cost of credit for consumers. So, for example, when we talked about changing the foreclosure process one of the issues was if you do this, this, or this everyone will pay for it. The person will get a benefit but every borrower will pay for it in terms of increased rates. We have a 50 petri dish of experimentation with different foreclosure timelines, and I am not aware of massively different interest rates in States which have extremely rapid foreclosure timelines versus States that don't. It is a natural market and so

if that was a huge impact, I would think we would see it. But at this point we still do not.

Chairman ISSA. Okay. Following up on that, you know home mortgages are almost non-recourse. So, basically the only asset you have is the property itself. Maryland is no different. You are a non-recourse State, is that correct?

Mr. KAUFMAN. I believe that's correct.

Chairman ISSA. Okay. So knowing that you can't go after other assets, earlier testimony by the mayor of 40 percent of all the properties in foreclosures that she dealt with were rental properties. Basically you had somebody who was collecting the rent, not paying the mortgage.

Mr. KAUFMAN. Right.

Chairman ISSA. And you could not go after their other homes or property. Realistically the question about being able to go after other property, recourse versus non-recourse and all the other mortgage questions that I asked your Governor, aren't these all things which the petri dish, as you said it so well, could be dealing with? In other words, before you come to the Federal Government for bankruptcy change and others, are there not some others in which States could and should begin making those changes so that they protect constituents from an unreasonable foreclosure?

Mr. KAUFMAN. I guess yes in the general sense, and I think we have been trying everything that we can throw at this problem. At a high level, I think the Governor's response was we are open to any suggestions that people we have. We have elongated timelines, we have gone after servicers, we have undertaken examinations; we have tried everything we can.

Chairman ISSA. Mr. Matthews' case, for example, he was not given a mandatory mediation where he could have shown how absurd the foreclosure process had become and how there had been no attempt to legitimately look at his willingness to pay, his willingness to liquidate his 401 and all the other things that they did. In a sense, your State fix should have, if available for Mr. Matthews, would have helped him, is that correct?

Mr. KAUFMAN. Well, our State fix is an opt-in program so he would have had to opt-in. My guess, and without getting into the timing, is the program just went into effect in July, the law just passed. I am not sure that there would——

Chairman ISSA. Well that is what I said, if it had been available.

Mr. KAUFMAN. The intent is to address that.

Chairman ISSA. Okay. So you have some fixes which in the future might protect Mr. Matthews and other are possible?

Mr. KAUFMAN. After a lot of damage is done.

Chairman ISSA. A lot.

Mr. KAUFMAN. But we are trying, yes.

Chairman ISSA. I thank you.

Recognize the ranking member for 5 minutes.

Mr. CUMMINGS. Yes. Just following up on Jim's question, in reading your testimony which is excellent, by the way, throughout that testimony you seem to express some frustration with regard to the limitations of the State. In other words, you only can go but so far. Can you comment on that and why it is so important that we act on the Federal level?

Mr. KAUFMAN. Well I mean on a couple of levels. In very real terms, you know the vast preponderance of mortgages in our State and every other State are serviced by institutions which are primarily federally supervised. And I supervise 50 community banks on the bank side as banking commissioner. We get virtually no complaints relative to their mortgage practices of any scope. A vast preponderance are coming from institutions that I have no jurisdiction over from a supervisory standpoint.

Mr. CUMMINGS. Because they service their loans, is that right, basically?

Mr. KAUFMAN. Because if it is a national bank I do not have any jurisdiction.

Mr. CUMMINGS. I am talking about the community banks.

Mr. KAUFMAN. The community banks, right, own and service their own loans.

Mr. CUMMINGS. Okay.

Mr. KAUFMAN. So that's a piece of it.

You know, the other piece is even where we have jurisdiction, quite candidly, these are national operators operating out of State where we're trying to run an examination program, trying to oversee institutions which are largely beyond the physical reach of our employees with very limited resources. Where you are able to identify clear violations that you can go after, that is one thing. But when you start trying to address sort of system-wide practices of an institution, there is a limit in the sense that ultimately it gets down to are you willing to pull the license? Are you willing to go in and tell XYZ servicer they simply cannot operate in your State, which is going to impact the vast preponderance of their customers who are actually paying? So there is a limit to what can be addressed even where you have regulatory authority.

Mr. CUMMINGS. Now with regards to the robo-signing situation, you commented on that. How many people did that affect in Maryland, if you know?

Mr. KAUFMAN. I do not think we know at this point.

Mr. CUMMINGS. Okay.

Mr. KAUFMAN. And I would point out again, and this is why again I think that the term has caught such fire. It is less sort of a technical, and there's a lot of oh, this is a technical issue, it is a touch valve. It has more, I think, just sort of captured everybody's sense of exactly the sort of impersonal and methodical nature of what is going on.

Mr. CUMMINGS. One of your recommendations was that the servicers staff up, that they have more staff. And I just want you to comment on that. Because I used to wonder whether or not they had any staff. I mean, seriously. I mean, it just seems like these papers were going in, I mean they were being faxed right into a trash can. So I was just wondering. I mean is that——

Mr. KAUFMAN. I think resources have been an issue from the word "go." I mean I think at the end of the day, you know they have staffed up, they have added resources, they haven't added fast enough.

And I go back to, you know I know that there's a lot of sort of this consistent hand-wringing from regulators and constant sort of political pressure, etc., and public pressure from Governors and

mayors and so forth. But, you know I believe at the bottom line is these guys are not profitable. So it is very difficult to ask a money losing enterprise to expect that they will sort of on their own continue to invest in issues that they need. I mean, it is going to have demanded, not requested. And I think that is why it has been slow to come.

Mr. CUMMINGS. So which entities do you say are not profitable?

Mr. KAUFMAN. My point is the whole business model, my sense from the first time I started talking to servicers 3 years ago, is that they signed up thinking they were going to take payments, you know receive payments and mail statements. Not run call centers. Not do massive mediation. Not run their business the way a collection agency runs. I used to go see collection agencies as an investment banker. And the first question you'd ask is: "What is your turnover in your call center?" It is a 100 percent. If it is under a 100 percent, it is a well running collections agency.

So these are very difficult businesses to operate. And I do not think they had any—I mean I know they didn't have any plan to get into that business.

Mr. CUMMINGS. So they never were equipped to even do this? So that means that is——

Mr. KAUFMAN. I think we, they, everyone has been chasing this problem the whole way.

Mr. CUMMINGS. Now you heard the testimony of Mr. Matthews. Could he have been helped through this mitigation process do you think?

Mr. KAUFMAN. Well, I mean ultimately if we had gotten to mediation, we would at least be able to get the right people in the right room. I mean, there is sort of a sense of how do you know there's a problem that can be fixed. I think all of us that have escalation contacts, we have them, I know your office has them, when you escalate they get fixed. And, sure, maybe some number that get fixed because of the ranking member or the chairman would not have gotten fixed solely on their economics. I am not that high up the chain.

When they are getting fixed because of our escalation contacts, I believe they are economic and they still get fixed when we escalate them.

Mr. CUMMINGS. Thank you.

Chairman ISSA. Mr. Walberg.

Mr. WALBERG. Thank you, Mr. Chairman.

And appreciation of each of you as witnesses today and what you bring to the table.

Ms. Wilson, thank you for the work you do.

Mr. Matthews, thank you for your service to the country. Hearing your testimony and on face value of what you've said here, you were submitted to the unjustified perfect storm of a breakdown that went there. And I just wish the best as it moves forward here. And I think these hearings and as we consider further, hopefully, we will come to some conclusions that will benefit others as a result of what you have gone through.

Mr. Kaufman, in listening to your testimony you mentioned very clearly that mortgage servicers did not have the expertise, the financial incentives or resources to engage in large scale mortgage

modifications when foreclosures began to mount. The question I would ask in context of HAMP then if the servicers did not have these incentives, resources or expertise, did HAMP provide them with expertise that they needed?

Mr. KAUFMAN. No. I think the intention was to try to provide this through an incentive, at least solve the incentive part.

Mr. WALBERG. Did HAMP provide the incentives necessary?

Mr. KAUFMAN. Necessary I don't know, and it certainly tried to provide additional incentives by definition.

Mr. WALBERG. For large scale modifications?

Mr. KAUFMAN. For modifications that were done, correct.

Mr. WALBERG. What about the resources, did HAMP provide the resources necessary?

Mr. KAUFMAN. No, I think—I mean I know there is a lot of concern about HAMP. There is a lot of disappointment HAMP, I share that disappointment with all of you. It is no secret that the program has not lived up to anyone's expectations.

You know, the program did not provide expertise.

I will say one of the things it did do was begin to standardize a completely unstandardized modification process. That, I think you sort of have to grant. It was the wild west of modifications. When we started gathering modification data pre-HAMP, it was all over the board and again, it was shocking to me as a former business person that most people who got a modification wound up paying after then before. You know, we did not put it in our initial data requests——

Mr. WALBERG. So in some ways it escalated the problem?

Mr. KAUFMAN. Yes. You could look at these at scratch your head and say "Well, how is this every going to—how does this work?" I mean, I couldn't see the underlying case, but the numbers were big enough that the rational conclusion that if he is here looking for a modification, what is the likelihood he is going to be able pay more next month than he could pay last month was a head scratcher.

Mr. WALBERG. Yes. To say the least.

Ms. Wilson, thinking of Mr. Matthews' experience here and from your experience in working with cases like this, what was the first step that was missed and what you have had you worked with Mr. Matthews—I assume you didn't work with Mr. Matthews?

Ms. WILSON. No, our organization did not work with Mr. Matthews.

Mr. WALBERG. What would have been the first step that was missed and what would you have taken action on immediately to deal with that, to give us instruction and how we can move from here?

Ms. WILSON. Well, I believe Mr. Matthews did have and went to one of the local counseling agencies and did have counseling. I cannot say for sure that things would have been any different had he come to us. There are several very good peers of ours in terms of counseling. And——

Mr. WALBERG. Yes, I do not want you to dump on any of your peers. I am not asking that. But I am just hearing a complete breakdown. In this case we are not talking about the stereotypical underwater mortgage from the very get-go. We are talking about

a military service personnel who had set up plans, had the finances in place, had a job that stable but for the fact of an accident, as I hear the description here. And all of a sudden it just escalates. And how would we stop that?

Ms. WILSON. I think the way we stop it is to get the servicers to do what they are supposed to do. Exactly what method we have left to use, I do not know the right answer of how we get there. But this is yet another situation where we have a breakdown with the servicers not matter what kind of assistance the homeowner has on his side.

Mr. WALBERG. Yes. I appreciate that. Thank you.

I would yield back.

Chairman ISSA. Thank the gentleman.

Mr. Tierney.

Mr. TIERNEY. Thank you.

I think, Ms. Wilson, you are right and what we have here is insufficient regulatory work resulting in a mess for a lot of people on it. So how do we work ourselves out of that?

Mr. Kaufman talked about possible incentives. I tell you as a taxpayer it is a little offensive to think that this free market enterprise that was not regulated properly has caused a huge mess and now in order to get them to straighten out we are going to pay them, or give them some incentive on that? I think I like the demand side a little bit more; we just make them step it up and do it right and that is why we talk about cramdown, which incidentally was not a broad-based cramdown effect every single mortgage in the world going forward and backward and all people. And that was very narrowly targeted the cramdown authority that we had talked about and put forward on that. But, you know, and I think it is going to take that. It is going to take somebody demanding or forcing these banks to step up and do what they should do. After having put this country in the condition that it is in, I should think they would find a way to do that. And I mentioned in some of earlier comments made to the other panel, and I think we will let that stand on the record.

Let me ask you, Mr. Kaufman, if we were to eliminate HAMP, what do you envision the situation to become?

Mr. KAUFMAN. It is not going to help, let me put it that way. I mean that is my concern at the end of the day. Look, the program is not perfect, but I think it is somewhat where you first have to put it in context of where it came from.

You know, when we started at this and prior to HAMP when we started gathering data, there was hope now which I think essentially an 800 number and some counseling. And we were not doing very well, to say the least. So, I think trying to refine this program and trying to push it forward and continue to push the process forward is important.

The other thing I would observe based on what we are seeing from the robo-signing effort is if we are going to declare ultimately just throw out the program or throw out the baby with the bath water, we are doing it in the context of very poor execution on the part of the primary party in execution, which is the servicer. So we are working to try to remedy that.

Certainly the State AGs contend, we intend through this settlement to the extent we can do to try to reform practices.

Mr. TIERNEY. Well, you are doing great work, and I thank you for it. You are doing essentially the work that our constituent representatives are doing in our office, and they are pulling their hair out. So I can only imagine what your organization is going through on that.

But you indicated that you are at sort of a loss as to how we resolve this problem. So it is not that I won't ask you, it is I think you have answered that.

But, Mr. Kaufman, if you are going to keep HAMP, what do you do to make it work in a way that does not get you so angry you want to throw it away?

Mr. KAUFMAN. Well, I mean, I think we have talked about some of the things that we would intend, we think need to be fixed more generally and they apply.

We would like to see better third party and third party review and some sort of ombudsman or something within the program for appeal.

I think that the lack of technology for input into this process is pretty poor. The fact that there is not sort of a single portal which is being talked about on the State AG side for people to be able to get data and information into this, better visibility for a consumer.

I mean, I have the sense throughout this that as a current borrower that you have relatively good visibility into your mortgage as you pay. And as soon as you stop paying, it is a completely opaque process that you cannot really exercise on behalf of yourself. So we would like to see that.

We would like to see the timelines upheld, and that applies to HAMP and otherwise. I mean, I think a lot of this applies to everything and not just HAMP.

Mr. TIERNEY. So the question is now who is going to pay for this? Who is going to pay for the personnel and who is going to pay for the technology? What is your recommendation there?

Mr. KAUFMAN. Well the servicing industry is going to—I come back to, I sort had this sense, I don't have a scientific study, if these were freestanding small businesses, they would go under and the next guy that got hired to do it would say "I am not doing that for a dollar. It costs $5." And that would be painful, but we would have a process where the market would provide $5 of service, I would think. We are not getting there. We are not going to get there naturally, at least not in the short run. I mean, the long run this industry will reprice. There may very well be special servicers, for example, who do only delinquent loans, which is what happens in commercial loans. And that may happen. And that may work fabulously well in 2015. But for the people that are in the process now, that is not going to get them there.

Mr. TIERNEY. I guess I am still at a loss. How are you going to force those services that you are telling us are tapped right now, don't have the resources, how are you going to force them to hire on extra people and get technology?

Mr. KAUFMAN. In most cases the institution——

Mr. TIERNEY. The people—that started at the bank.

Mr. KAUFMAN. In most cases the institutions that they sit within are not, by any means, tapped out. I think there is someone in many instances go to a quarterly board meeting and announces how much money his division just lost and says that he needs to lose even more in the next quarter. And my guess is that your corporate advancement is not solid if that's your—it is not a winning strategy.

Mr. TIERNEY. I want to get that a little clearer on the record. We are talking about the people with the deep pockets——

Mr. KAUFMAN. Yes.

Mr. TIERNEY [continuing]. Are the ones that got us into this mess in the long-term, are the ones that are going to have to pay to get us out?

Mr. KAUFMAN. Yes.

Mr. TIERNEY. Thank you.

I yield back.

Chairman ISSA. Does the gentleman yield?

Mr. TIERNEY. Sure.

Chairman ISSA. Just to put it, and his testimony is very clear, what you are talking about is deep pockets at major banks are not in fact hurting, but the servicers which are either different divisions or different companies are in fact uncapitalized to do this and that is part of the reason that Mr. Matthews and all these others have run into robo-signing and so on is that the compartmenting, we see the large profits of B of A, we do not see the servicing entity separately? Is that correct?

Mr. KAUFMAN. That is my sense. I mean, I do not have somebody's balance sheet. It strikes me that it is very unlikely that a transaction processing business model that has suddenly become a call center, which is what has happened, can operate on economics that looked anything like what they were designed to.

Chairman ISSA. Thank you. That is one thing that our committee can find out for the record from others that we work with.

Mr. KAUFMAN. I mean, and it was why I tried to look—the GSEs are trying to look at incentive, the compensation models for that very reason.

Chairman ISSA. Thank you.

Mr. Welch.

Mr. WELCH. This is helpful. I mean, the servicers will never be able to staff up to do the job if the more they staff up, the more they lose. It just will not happen. That's more or less what you are saying.

Mr. KAUFMAN. It will not happen quickly. It will not happen without a lot of duress. And I think that is why it has taken public pressure, events that have happened in districts, the Governors——

Mr. WELCH. But just explain this to me. The big banks, I mean most of these loans have been sold, right?

Mr. KAUFMAN. Correct.

Mr. WELCH. So——

Mr. KAUFMAN. Some of them are sold and serviced by the same institutions.

Mr. WELCH. Right. But many of them are owned by like pension funds. They are owned by, well pension fund investors who had no

clue as to what the future would be anymore than the servicers did. So it is not just all owned by the big banks, am I right?

Mr. KAUFMAN. Correct.

Mr. WELCH. So on a practical level it is the owners of the loans that ultimately have to be brought to the table to make a decision——

Mr. KAUFMAN. Correct.

Mr. WELCH [continuing]. About whether that asset which has depreciated by 40 percent, there should be a mark down, right?

Mr. KAUFMAN. Correct. But it falls to the service provider to provide the level of service to even get to the decisionmaking process. And that servicer has to provide the service.

Mr. WELCH. Right. But if you have this loan, you know is it my mortgage or Mr. Matthews' mortgage, let's say, is divided into 20 different tranches, so literally there is 20 different owners out there somewhere that are making a claim on Mr. Matthews and you have a servicer trying to balance the competing interest of those 20 different owners, how does that possibly get done?

Mr. KAUFMAN. The conundrum of the fragmentation of the underlying security is sort of a separate issue from the problem that I am even getting to.

Mr. WELCH. So that——

Mr. KAUFMAN. But that is another layer of questions.

Mr. WELCH. See, two things seem to get in our way. I mean, one, often times we get into the argument about who is responsible; the big banks, the mortgage originators, the individual homeowners who brought the MacMansion when they could have for a house.

Mr. KAUFMAN. Yes.

Mr. WELCH. And there is plenty of Fannie Mae, Freddie Mac, a lot of focus there. And there is plenty of blame to go around.

Mr. KAUFMAN. Yes.

Mr. WELCH. I think what we're hoping on this committee, it is, look—we've got a practical problem. We had the Governor in here, we had the mayor in here, and they are dealing with the devastating consequences of people getting foreclosed on, neighborhoods starting to fall apart. It is really bad. So, I see this as a practical problem that is very difficult to resolve because there is such fragmentation. So if you had a suggestion on something concrete where we just sort of put our rhetorical guns back in our holsters for a while and stop having the debate about who is at fault because there is plenty of fault to go around, what would be a practical way where basically you would be able to sooner rather than later make a decision on: All right, this loan is hopeless and it will be foreclosed; this loan could be saved if we made some modification? I mean, what would be the legislative or legal things we would have to do in order to allow that to happen?

Mr. KAUFMAN. You know, that is what the program has tried to do with the NPV calculation, which is a little opaque for those of us on the outside. And that is essentially the calculation that is trying to be run and then get some better clarity as to what's in it and harmonization in that calculation.

Mr. WELCH. But at the end of the day nobody has authority. You have a servicer who has a bad business model——

Mr. KAUFMAN. The servicers, I mean we have talked to—it has been a little while, but when we did our initial round at the behest of the Governor, I met with servicers. And we said "Do you have the authority to do what you need to do?" They generally said yes. I mean, it was not a legal question, although we did have, and I would again give HAMP some credit for this, we did have people say that we have to defend what we do as prudent and ordinary course of business practice. And in that regard, I would note that the modification program has at least provided some notion of what is routine and ordinary course, which presumably gives them better defense. But they did not come in, frankly, as aggressively as we expected at all with "Hey, our hands are tied."

Mr. WELCH. Yes.

Mr. KAUFMAN. That is not it.

Mr. WELCH. Well, thank you very much.

Mr. CUMMINGS. Will the gentleman yield?

Mr. WELCH. Yes, I yield.

Mr. CUMMINGS. Just one clarification going back to something that the chairman said.

Mr. Kaufman, when we have a situation where—I mean a lot of these servicers are owned by the banks, right? I believe it was asking about deep pockets, is that right?

Mr. KAUFMAN. Yes. Yes.

Mr. CUMMINGS. Well, do you have a percentage or would you guess?

Mr. KAUFMAN. Of the top five, all but one is State licensed but is a subsidiary. But they virtually all are. I mean, our jurisdiction as a license server, because we do not do much of that reporting anymore because the number of people who have to report to us is below 15 percent of the market. So that gives you some approximate for it.

Mr. CUMMINGS. Thank you.

Chairman ISSA. Could you stay for a few more follow-up questions?

Mr. KAUFMAN. Sure.

Chairman ISSA. Mr. Kaufman, you actually scared me a little bit when you said basically like commercial, we should work to workout units. You know, there are all kinds of workout units in the commercial market.

Mr. KAUFMAN. Right.

Chairman ISSA. And I remember from my own days in business that, you know, you would do anything to modify not to go to that workout unit. But your point, and I think the ranking member hit it very well, there is basically an artificial wall between the servicing division and the banks if the bank is holding the mortgage. If the bank is not holding the mortgage, if Freddie and Fannie were some other entity, some pension plan or whatever is holding it, then it really is not artificial because that entity's line does not go back to the bank's capital base, it goes back to the Federal Government, is that correct?

Mr. KAUFMAN. If I am following you correctly, yes.

Chairman ISSA. Yes. So as this committee goes through its due diligence to try to get through, and the gentleman said, you know our guns in the blame game. And he is right, that often is part of

what the committee does. But also figuring out how do we get a reform and where do we get the money for a reform from?

Currently Freddie and Fannie have received over $150 billion, HAMP has obligated over $30 billion. So it appears as though Freddie and Fannie are still losing money and their $7 trillion portfolio would be well served if this system worked better. Would you agree?

Mr. KAUFMAN. Sure.

Chairman ISSA. So in your background how often do you see any difference in the actions of the servicer based on whether the GSEs hold the loans or some other entity? Do you see any discernable difference in how the servicers do their job?

Mr. KAUFMAN. When the cases come to us, that is not really an issue that seems to come up, frankly.

Chairman ISSA. And this is my real question here that I sagaciously got to: If we bring Freddie and Fannie in, and perhaps the third largest holder of this debt, and we asked them what they are going to do to do a better job of interfacing with the servicers to get the right outcome to minimize foreclosure, to maximize benefit for these values, do you believe we would be well served in pushing that end of it? Because you mentioned that the servicers only have so much money, but the real loss is at the GSEs.

Mr. KAUFMAN. I think the GSEs are, I mean my understanding and you all are closer to this than I, is that the FHFA and GSEs are already looking at compensation practices and trying to see what they can do to reform service for compensation in order to better align the incentives. So, yes.

Chairman ISSA. Although it has been several years since this problem began.

Mr. KAUFMAN. I am not here to defend the—but I think they do recognize the issue. I mean, that the system needs to be addressed.

Chairman ISSA. This is one of the problems we find in Government, is everybody's about to reorganize about the time we are willing to close down something. And it seems to be miraculous how that works.

Anyone else need to followup?

Mr. CUMMINGS. Just real quick.

Chairman ISSA. Mr. Cummings.

Mr. CUMMINGS. Just going back, you know we have a situation where Mr. Matthews, I am just curious. Did you ever—you said there was quite a bit of damage done to your place. What kind of money did you have to spend for that?

Mr. MATTHEWS. Basically when you start, they call it winterizing the house——

Mr. CUMMINGS. Yes.

Mr. MATTHEWS. I know specifically now when you put things through your pipes, you basically had to winterize the place, draining pipes to make sure everything is so when it gets cold, basically the pipes do not freeze.

Mr. CUMMINGS. So what did it cost you to get it?

Mr. MATTHEWS. It cost me approximately $1,500 to replace the hot water heater and any standing pipes in my house.

Mr. CUMMINGS. And you have not been reimbursed for that?

Mr. MATTHEWS. No, sir. I have not been reimbursed for that either.

Mr. CUMMINGS. I am sorry you went through all of that. So you are still in the process, and you are still in the process of going through this?

Mr. MATTHEWS. Yes, sir. There has been a lot more process, basically we are still going through the process as we speak.

Mr. CUMMINGS. There is just two documents I want to get into the record, Mr. Chairman.

Aforementioned Counselor Bernard Jack Young has submitted a statement for the record, and I ask unanimous consent that it be included in the record.

Chairman ISSA. Without objection, so ordered.

[The prepared statement of Mr. Young follows:]

Bernard C. "Jack" Young
President
Baltimore City Council

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E-Mail councilpresident@baltimorecity.gov

TO: Congressman Elijah E. Cummings, Ranking Member, U.S. House Committee on Oversight and Government Reform

FROM: Baltimore City Council President, Bernard C. "Jack" Young

DATE: March 8, 2011

RE: Testimony on the Debt Foreclosure Crisis

POSITION: Maintain federal resources designed to help foreclosure-stricken communities like Baltimore, Maryland

Like many metropolitan areas, Baltimore homeowners lack education on real estate transactions. Therefore, when the foreclosure crisis hit, Baltimore residents were severely impacted.[1] From 2005 to 2009, the number of foreclosure filings almost doubled, increasing by 96%. In 2009, 6,263 properties filed for foreclosure. By mid-2010, more than 2,100 properties filed for foreclosure.[2] This was due, in part, to the fact that many residents, in good faith, did not fully comprehend the foreclosure process and their rights. Indeed, even experts had difficulty comprehending the sophisticated and complicated mortgage terms buried in the subprime mortgage products inflicted on our homeowners and communities.

Most striking are statistics indicating the impact of the foreclosure crisis on Baltimore City children. According to a new report produced by the Baltimore Neighborhood Indicators Alliance-Jacob France Institute, the number of public school children affected by home foreclosures in Baltimore City rose almost 20% between 2004 and 2009.[3]

In light of these statistics, it is imperative that we educate the homeowners of Baltimore City on the foreclosure process and their rights, as well as facilitate interactions between them and lenders. In 2008-2009, Philadelphia had a Foreclosure Diversion pilot program that unfortunately did not spread to cities like Baltimore.[4] In 2010, Congressman Elijah Cummings hosted a Foreclosure Prevention Workshop in his district, which includes most of Baltimore City.[5] Due to Baltimore's limited resources, we need the help of the federal government to sustain efforts like these.

Federally funded programs like the Home Affordable Modification Program (HAMP), HUD's Neighborhood Stabilization Program (NSP), the Emergency Homeowner Loan Program (EHLP) and the FHA Short Refinance Program must continue. Perhaps these programs are not, at the moment, helping millions of people. But they are helping some people;[6] these programs are worth keeping.

The foreclosure crisis is a consequence of years of greed, regulatory neglect and consumer naiveté. Just as the causes did not materialize overnight, the solutions will likewise require time. Almost two years ago, at a forum sponsored by the University of Baltimore School of Law, we heard that:

> Economic recovery funding should be targeted in a manner that prioritizes communities that exhibit three characteristics: (1) highest levels of unemployment; (2) greatest concentrations of foreclosures; and (3) historically under-funded, inferior or poorly maintained infrastructure. The city of Baltimore would be a primary beneficiary of this type of strategic focus. Channeling dollars to individuals and communities that need them most will immediately stimulate the economy and save and create jobs, because families living on the margins of survival will pour those recovery dollars immediately back into the economy through spending on food, medicine, clothing, child care, energy, transportation and other necessities.[7]

We are familiar with the phrase, "Rome was not built in a day." It takes time for a program to begin working efficiently. Initiating these programs was the first step; re-engineering

these programs is the next step. If we abandon these programs now, we will be abandoning not only the programs but also the people that are in desperate need of these programs; people that are in desperate need of guidance. The answer is to re-work these programs to produce better results.

We just learned through the 2010 U.S. Census that Baltimore City lost approximately 30,000 residents.[8] In the coming years, a goal of Baltimore City Government should be to help stabilize the City's population, and one way to do this is by promoting home ownership. But how can we achieve this goal when you see rows of vacant properties in city neighborhoods? It will be difficult.

It will be particularly difficult to stabilize Baltimore if recently proposed legislation introduced in the U.S. House of Representatives passes. Specifically, H.R. 861 would terminate NSP[9] and, consequently, threatens to undermine the efforts that Baltimore has made with a grant for $26,092,880 in NSP2 funds,[10] which are given to communities to help rehabilitate and resell vacant homes that received foreclosure.[11]

Baltimore City needs the support of the federal government to help us provide a community in which our citizens want to live and raise families. The foreclosure crisis is a problem that we all have a responsibility to solve. Through the continuation of these federal programs, help us help the citizens of Baltimore City be forewarned, not foreclosed.

[1] Libby Lewis, *Baltimore Blames Lender for Wave of Foreclosures*, NPR, Jan. 11, 2008, *available at* http://www.npr.org/templates/story/story.php?storyId=17994964 (last visited March 6, 2011) (stating that "you can see the mortgage credit crisis up close and personal" in a Baltimore City neighborhood that was coming back to life before the foreclosure crisis hit. City housing chief Paul Graziano said, "There's no life" in the neighborhood. "Nothing but empty houses and for-sale signs.").

[2] Matthew Kachura, *Children and Foreclosures: Baltimore City: An Examination of Students Affected by Foreclosures, 2003-2008, available at* http://www.bniajfi.org/uploaded_files/0000/0467/children_and_foreclosures_report_phase_1_final.pdf (last visited March 6, 2011).

[3] Richard Webster, *How Has the Foreclosure Crisis Affected Baltimore Children?*, EXAMINER, Jan. 31, 2011, http://www.examiner.com/education-headlines-in-baltimore/how-has-the-foreclosure-crisis-affected-baltimore-children (last visited March 5, 2011) (citing Matthew Kachura, *supra* note 2 (identifying an increase from 1,951 to 2,409)).

[4] *Residential Mortgage Foreclosure Diversion Program*, THE PHILADELPHIA COURTS, *available at* http://www.courts.phila.gov/mfdp/ (last visited March 6, 2011).

[5] *Foreclosure Prevention Workshop*, Dec. 18, 2010, *available at* http://cummings.house.gov/pdf/Foreclosure_Prevention_Flyer_12%20_8_10.pdf (last visited March 6, 2011).

[6] Les Christie, *Obama's Mortgage Mod Plan is Still Lacking*, CNN, Dec. 14, 2010, *available at* http://money.cnn.com/2010/12/14/real_estate/HAMP_still_stalled/index.htm (last visited March 6, 2011).

[7] James H. Carr, Chief Operating Officer, National Community Reinvestment Coalition, Speech at the University of Baltimore School of Law Symposium: *The Death of An ... American Dream* (April 3, 2009), *available at* http://articles.baltimoresun.com/2009-04-13/news/0904120085_1_foreclosure-crisis-predatory-lending-communities-of-color (last visited March 6, 2011).

[8] Yeganeh June Torbati, *Census Figures Show More Diverse State*, BALTIMORE SUN, Feb. 20, 2011, *available at* http://articles.baltimoresun.com/2011-02-10/news/bs-md-state-census-20110131_1_baltimore-population-census-figures-baltimore-area (last visited March 6, 2011).

[9] Jon Prior, *House Pushes Back HAMP, NSP Debate*, HOUSINGWIRE, March 3, 2011, *available at* http://www.housingwire.com/2011/03/03/house-pushes-back-hamp-nsp-debate (last visited March 6, 2011) (H.R. 861 is sponsored by Rep. Gary Miller (R-Calif.)).

[10] *Healthy Neighborhoods NSP2 and Direct Purchase Programs*, HEALTHY NEIGHBORHOODS, *available at* http://www.healthyneighborhoods.org/buyandrenovate/dollars_for_foreclosures.aspx (last visited March 6, 2011) (The NSP2 grant was given to Healthy Neighborhoods, Inc. in consortium with the City of Baltimore Department of Housing and Community Development, St. Ambrose Housing Aid Center, Druid Heights Community Development Corporation, Habitat for Humanity of the Chesapeake and Telesis Baltimore Corporation.).

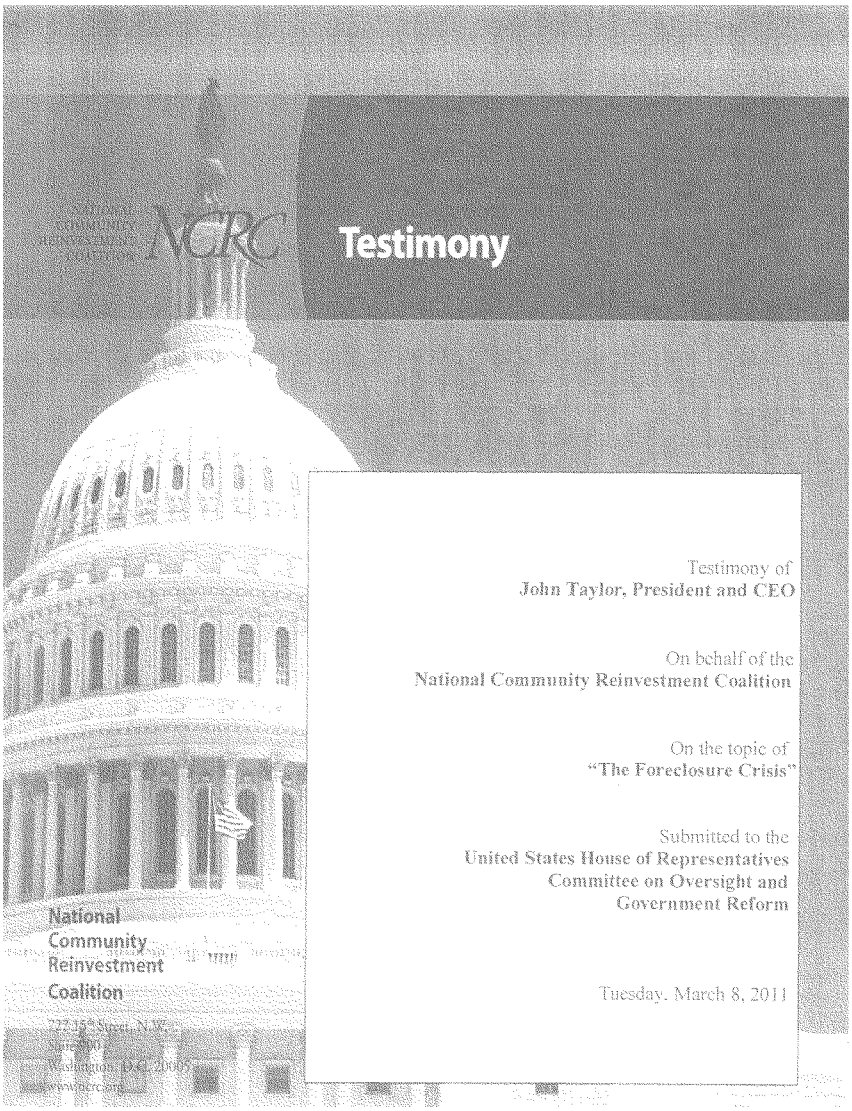
[11] Jon Prior, *supra* note 9.

Mr. CUMMINGS. Additionally I ask that a statement from the National Community Reinvestment Coalition be also included in the record.

Chairman ISSA. Without objection.

Mr. CUMMINGS. Thank you, sir.

[The prepared statement of the National Community Reinvestment Coalition follows:]


NCRC
Testimony
Testimony of
John Taylor, President and CEO
On behalf of the
National Community Reinvestment Coalition
On the topic of
"The Foreclosure Crisis"
Submitted to the
United States House of Representatives
Committee on Oversight and
Government Reform
Tuesday, March 8, 2011
National
Community
Reinvestment
Coalition

John Taylor
President & Chief Executive Officer
National Community Reinvestment Coalition
Testimony submitted to the record of the
House Committee on Oversight and Government Reform
"The Foreclosure Crisis"

Introduction

Good Afternoon, Chairman Issa, Ranking Member Cummings, and other distinguished Members of the Committee on Oversight and Government Reform. The National Community Reinvestment Coalition (NCRC) is honored to be given the opportunity to discuss with you our deep concerns about the continued foreclosure crisis and widespread servicer abuse, and to offer some practical policy solutions.

NCRC is an association of more than 600 community-based organizations that promotes access to basic banking services, including credit and savings, to create and sustain affordable housing, job development, and vibrant communities for America's working families.

NCRC was formed in 1990 by national, regional, and local organizations joined together by a common mission: to increase the flow of private capital into traditionally underserved communities, in a manner consistent with safety and soundness concerns. In light of the current economic crisis, this mission has become even more critical as America's working families continue to struggle with lingering unemployment, depressed home values, and an unhealthy freeze of credit, all of which drastically limit opportunities for economic recovery in these communities. NCRC is also a HUD-certified Housing Counseling Intermediary, providing counseling services to thousands of families nationwide.

Before address the topic at hand, NCRC would like to first applaud the leadership Congress has shown in regard to the recently-enacted Dodd-Frank Regulatory Reform Bill and for your insight in creating the much-needed Consumer Financial Protection Bureau (CFPB). Both are critical to helping protect America's families from the type of "greed" and "corruption," as described by Former Federal Reserve Chairman Alan Greenspan, that swept through our financial industry in the years leading up to this crisis.

However, ensuring that this historic piece of legislation is strongly implemented is just as important as enacting it. NCRC strongly believes that if the CFPB had been enforcing basic consumer protections in the decade leading to this foreclosure crisis, much of this crisis could have been avoided.[1] Likewise, if the CFPB is given the tools to be effective, it too can play a serious role in protecting consumers from the widespread servicer abuses that this Committee is discussing today.

[1] Jim Carr, Testimony before the United States Joint Economic Committee on the Subject of "Unregulated Markets: How Regulatory Reform will Shine a Light in the Financial Sector." December 2, 2009.

First and foremost, it should be said that the foreclosure crisis and its devastating effects are, quite simply, a bipartisan issue. Foreclosures are occurring in red and blue districts alike and without a bipartisan commitment to addressing this issue, foreclosures will continue to devastate families, destroy neighborhoods, and hamstring our economy – not just in Baltimore or Maryland, but in cities and states nationwide.

The unfortunate reality is that the foreclosure crisis is simply nowhere near over. Experts predict that in 2011, foreclosure rates will increase by nearly 20 percent to reach record highs.[2] Others estimate that home repossessions will double from 3 million homes to 6 million by 2013.[3] To make matters worse, an additional 5 million loans are seriously delinquent and are on the brink of foreclosure.[4] Ultimately, the fate of these homeowners impacts all of us.

With each foreclosure, families, neighborhoods, and communities continue to lose billions of dollars of wealth. Some experts estimate that the cost to lenders alone for each foreclosure is $50,000.[5] According to the Joint Economic Committee, when one adds up the costs, not only to lenders, but to homeowners, neighbors, and local governments, the average foreclosure costs $77,935. Meanwhile, the cost to prevent a foreclosure is merely $3,300.[6] You don't have to be a mathematician to understand the value of preventing unnecessary foreclosures and reigning in servicer abuse that prevents sustainable modifications from being issued. You also don't have to be a mathematician to know that if Congress does not act to address this foreclosure crisis head on, the American people and our state governments will be the only actors left to pick up the pieces.

While the foreclosure crisis cannot solely be attributed to problematic servicers, they have certainly exacerbated the problem by undermining any attempt by this Administration and Congress to deal effectively with the foreclosure crisis. With so much at stake with each new foreclosure, we cannot afford to allow problematic servicer behavior to impede our nation's ability to revive our economy.

With this testimony, NCRC hopes to shed light on how national servicing standards can help prevent widespread servicer abuse, and ultimately, promote sustainable homeownership. In addition, NCRC also urges this Committee to consider other ways to support sustainable homeownership, whether through the budget process, through discussions regarding the future of housing finance, by addressing potential fair lending violations in the mortgage servicing industry, and by ensuring access to credit in a manner that is consistent with safety and soundness.

This week, your colleagues will consider proposals to terminate federal programs that to help neighborhoods recover from our foreclosure crisis and keep families in their homes. NCRC

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[2] http://www.bloomberg.com/news/2011-01-13/u-s-foreclosure-filings-may-jump-20-this-year-as-crisis-peaks.html
[3] http://www.bloomberg.com/news/2011-01-13/u-s-foreclosure-filings-may-jump-20-this-year-as-crisis-peaks.html
[4] http://www.bloomberg.com/news/2011-01-13/u-s-foreclosure-filings-may-jump-20-this-year-as-crisis-peaks.html
[5] http://www.nga.org/Files/pdf/0805FORECLOSUREMORTGAGE.PDF
[6] http://jec.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=efd3213c-7e9c-9af9-703e-ebff4ee97b6d&ContentType_id=66d767ed-750b-43e8-b8cf-89524ad8a29e

strongly urges you to oppose these efforts.[7] Ending these programs will only make a terrible problem even worse. Instead, Congress should be looking for ways to expand the scope of these programs and for ways to make them more effective. Given the fragile state of our economy, Congress should be investigating proposals that solve the problem, not ignore it.

Likewise, many are beginning to debate the future of our housing finance markets and what the role of the federal government should be. While there are a number of proposals on the table, none contain explicit mechanisms to ensure that the private market provides access to capital for all creditworthy individuals, including low- and moderate-income families.[8] Without clear mechanisms in place, Congress risks creating a dual marketplace in which the government is the sole provider of housing finance to lower income communities. Clearly, separate is not equal, and a dual marketplace could serve as a safe haven for the return of redlining and discrimination by private financial institutions.

Additionally, NCRC urges Congress to investigate potential fair lending violations in the mortgage servicing industry. In March 2010, NCRC released a survey of homeowner experiences in the loan modification process, conducted by over 29 of NCRC's affiliated housing counseling organizations.[9] The survey revealed a number of troubling trends, including possible race and age disparities in quality of treatment. For example, this study found that loan servicers foreclose on delinquent black or African American borrowers more quickly than White or Hispanic borrowers. Due to the seriousness of these findings, NCRC is conducting a comprehensive survey to explore these issues further, with additional findings to be released in the coming months.

Lastly, NCRC urges Congress to act promptly to improve access to credit and to investigate the nation's largest Federal Housing Administration (FHA) approved lenders for possible violations of federal housing rules. While individuals are eligible for the FHA program with a minimum credit score of 580 and above with a 3.5% down payment, a recent investigation by NCRC revealed that a majority of top FHA lenders were refusing to offer credit to the full breadth of qualified borrowers. [10]

Of the lenders tested, 32, or 65 percent, refused to consider consumers with credit scores below 620. An additional 11, or 22 percent, refused to extend credit to consumers with credit scores below 640. Only 5, or 10 percent, had policies in place that served consumers with credit scores at 580 and up, in accordance with the underwriting policy of the FHA.

The decision by these lenders to arbitrarily cut off credit has an enormous impact on our nation's economic recovery. Not only because one-third of all Americans have a credit score below 620, but because these actions also have a disparate impact on African-American and Latino communities. While NCRC has filed complaints with the U.S. Department of Housing and Urban Development, NCRC urges Congress to also investigate this troubling finding.

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[7] http://www.ncrc.org/media-center/press-releases/item/575-eliminating-housing-programs-will-make-a-bad-problem-worse
[8] http://www.ncrc.org/resources/reports-and-research/item/574-analysis-of-administrations-housing-finance-proposals
[9] http://www.ncrc.org/images/stories/mediaCenter_reports/hamp_report_2010.pdf
[10] http://www.ncrc.org/media-center/press-releases/item/531-ncrc-calls-for-federal-investigation-into-lenders

National Servicer Standards

NCRC urges that Congress act quickly to reign in servicer abuses and protect consumers, promote transparency and accountability, and ultimately, make our federal and private modification programs more effective, by supporting national servicing standards. Both Congress and the newly-created Consumer Financial Protection Bureau should play a role in developing how national servicing standards can be used to deal effectively with the ongoing foreclosure crisis.

As you know, in the absence of Congressional leadership on this issue, several state Attorneys General and federal government agencies are in the midst of negotiating settlements with major mortgage servicers with provisions that would help reign in servicer abuse. While the final details are this negotiation are as of yet, unknown, NCRC applauds these state Attorneys Generals and federal agencies for taking this first step toward greater accountability. These negotiations represent a significant opportunity for Congress to be more active in developing thoughtful, generally applicable standards that will cover all servicers.

Any national servicing standard that is developed will need to address risk management, audits, quality control and compliance practices. Specifically, NCRC recommends developing uniform standards for customer service that provide struggling homeowners with reasonable opportunities to avoid foreclosure, improving transparency while ensuring that new standards do not unduly increase the cost of mortgage financing to consumers, and addressing shortcomings in servicer operations and internal controls that came to light during the crisis in order to ensure the accuracy of information, proper handling of documentation, and adherence to state and federal laws.

These national servicing standards should (1) provide enforcement mechanisms to prevent dual track issues, (2) mandate principal reduction, (3) increase transparency, and (4) ensure that issues with second lien holders do not impeding the ability of homeowners to receive a modification.

Preventing Dual Track Issues

The practice of simultaneously pursuing foreclosure and addressing a borrower's request for a loan modification is known as "Dual Track." When dual tracking occurs, a foreclosure has been commenced and is proceeding at a nearly unstoppable pace, even before the loan modification process is completed. This practice has caused confusion and stress for homeowners, their representatives, and the loan servicers who are called upon to both foreclose and determine a borrower's qualification for a loan modification.

In 2011, several states have introduced legislation to resolve this issue, including: California SB1275, which would require a servicer to evaluate the borrower's qualification for a loan

modification and provide an answer prior to initiating foreclosure; Connecticut H.B. No. 6351, which would offer homeowners facing foreclosure an opportunity to participate in the foreclosure mediation program without simultaneously engaging in litigation and to give courts the discretion to extend the mediation period by more than thirty days; and Virginia HB1506, which would require notice and contact information pertaining to loan modifications to borrowers before a foreclosure sale. Likewise, in 2010, the state of Maryland enacted legislation requiring lenders to determine if the borrower qualifies for programs that may avoid foreclosure. However, under this law, a foreclosure may be filed before this determination is made.

Consumer Vignette

NCRC's Housing Counseling Network staff has witnessed an increase in the frequency of dual track issues. One NCRC counselor had several cases where foreclosures processes continued despite the fact that clients entered into negotiations with the servicers. Some of these cases resulted in foreclosure stays right before the foreclosure sale date.

The harmful consequences of dual tracking are widely recognized. Last month, the Acting Comptroller of the Currency, John Walsh testified before the Senate Committee on Banking, Housing and Urban Affairs and expressed concern for dual-track issues and noted that the OCC had directed national bank servicers to suspend foreclosure proceedings for borrowers in successfully performing trial modifications when they have the legal ability under the servicing contract to do so. Similarly, FDIC Chairwoman Sheila Bair stated before the Consumer Federation of America Financial Services Conference in December 2010 that the "uncoordinated dual- track process...has often led to needless confusion for borrowers, and can result in costly and unnecessary foreclosures."

Yet, the practice remains widespread. On February 16, 2011, Treasury Chief of Homeownership Preservation, Phyllis Caldwell testified before the House Committee on Financial Services Subcommittee on Insurance, Housing and Community Opportunity, and recognized that dual tracking "can cause enormous stress and confusion for individuals already in a difficult period."

Caldwell went on to say that the Treasury Department had issued guidance as early as June 2010 to prohibit foreclosure sale unless servicers first issue a written certification that "all available loss mitigation alternatives have been exhausted and a non-foreclosure option could not be reached." NCRC recommends not only that this guidance be included as a part of national servicing standards, but also that it be accompanied by the capacity to enforce compliance.

Mandating Principal Reduction

Significant reductions in monthly payments are needed for successful and sustainable modifications. Often, the most effective means to significantly reduce monthly loan payments is to offer reductions in loan principal or the outstanding loan amount.

Currently, nearly 25 percent of homeowners in this country have negative equity, meaning that they owe more on their outstanding loan balance than their homes are worth. A number of these borrowers may lose their incentive to continue making loan payments because equity losses are so substantial. Even after several years of making payments, these borrowers may not have accumulated any equity, particularly in parts of the country experiencing sharp home price declines. As a result, some homeowner engage in "strategic defaults," in which borrowers simply walking away from what looks like a hopeless proposition of reclaiming their wealth. In addition, many borrowers who are "underwater" default on their mortgage because they unable refinance their loans.

In recent years, experts have found that loans involving principal reduction are least likely to re-default. Because a loan modification with a principal reduction reduces the Loan-to-Value ratio, the modification has lower re-default probabilities even when it results in same monthly mortgage payment as an interest rate reduction. In fact, the Center for Community Capital found that a combination of principal and rate reduction lowers re-default probability greater than rate reduction alone. This is likely due to the fact that principal reduction addresses both the short-term issue of mortgage payment affordability and the longer-term problem of negative equity.[11]

Unfortunately, principal reduction is rare in the experience of NCRC's housing counselors. Instead of offering principal reduction, servicers are tacking large "balloon payments" to the end of loans. On occasion, interest rate reductions have been accompanied by fees added to the loan amount or upfront fees, which can actually increase monthly payments for borrowers experiencing financial distress.

Substantial research and programmatic experience also indicate that significant principal reduction is needed on a large scale, particularly in geographical regions of the country experiencing high levels of negative equity, foreclosures, and nonprime lending.

Despite this, federal programs do not require principal reductions and the current servicer compensation structures actually create disincentives servicers to offer sustainable loan modifications. As Federal Reserve Board Governor Sarah Bloom-Raskin has stated, we need "a new pricing model that better compensates servicers for the handling of nonperforming loans and provides them with incentives to keep borrowers in their home."

In order to impact the volume of homeowners facing foreclosure, substantial principal reductions must be considered. With millions of foreclosures looming well into 2012, Congress must create national servicing standards that encourage principal reductions.

Increasing Transparency

[11] Roberto G. Quercia and Lei Ding, *Tailoring Loan Modifications: When is Principal Reduction Desirable*, Working Paper - August 23, 2009, Center for Community Capital, pp. 16-20, see http://www.ccc.unc.edu/documents/Tailor.Loan.Mods.8.23.09.pdf

National servicing standards must bring sunshine to an otherwise opaque process. Currently, servicers do not share with homeowners the method they use to determine the net present value (NPV) of a home, despite the fact that the NPV equation is the key tool used by servicers in determining whether or not to modify a home loan. Without having access to this formula, homeowners have no clear idea of whether or not they will even be considered for a private-label modification.

Because the NPV analysis is so opaque, denials of loan modifications appear to be arbitrary and hamper appeals of denials. Housing counselors do not know the underwriting variables used by the model and whether the data for the variables was even accurate. It is not possible for counselors to assess whether borrower income data, property value, or other data used by the model was accurate.

Consumer Vignettes

NCRC's housing counselors have seen many cases in which the lack of servicer transparency prevented consumers from receiving modifications or caused consumers to wait.

Case 1: One NCRC consumer has been denied a modification four times. Each time, the denial was due to a failure of the NPV test and by a miscalculation of income. NCRC's counselor has submitted the borrower's documents for the fifth time. In the meantime, the servicer has attempted three sales of the home. NCRC's counselors report that this consumer's situation typifies the use of the NPV as a blanket denial system without explaining the numbers used to make the determination of eligibility.

Case 2: A married couple came to NCRC seeking to reduce the monthly payments on their home mortgage loan in March 2009 with an early delinquency. They were a few months behind in their mortgage payment due to a reduction in income, as the husband, a construction contractor, experienced decreased employment opportunities during the economic downturn. They were ideal candidates for modification because of their reduced, yet steady, income level.

The couple has submitted and re-submitted the modification application and corresponding documentation several times. The servicer has not provided any clear indication of their status or any direction for what remains outstanding in their application. With the persistence of housing counselors, NCRC was able to get updates on the client's file from the servicer. However, the servicer lost submitted documents multiple times, did not account for all documents submitted by the client until NCRC's housing counselor demanded an investigation and verified submission, miscalculated client income resulting in a denial of the application, and assigned at least 3 negotiators (handlers) to the case. This case is heading into 2 years of negotiations with the lender with no clear resolution and no clear answers for why the process is taking such a long time. Although the

servicer has acknowledged the calculation error, an unreasonable period of time has gone by without any resolution to this case.

NCRC recommends that any national servicing standard ensure that NPV analysis be transparent, including both the NPV formula and the data used, so that counselors and borrowers can appeal denial requests when warranted.

Addressing Second Lien Holders

The interests of financial institutions holding the first and second mortgages of distressed borrowers often diverge and thus prevent modifications. In some cases, the second lien holder will not allow the first lien holder to modify the loan because the second lien holder believes that its claim for borrower payments may be wiped out by the modification.

In other cases, under existing law if a first mortgage undergoes significant modification, the holder of the first mortgage loses its status as a first mortgage holder and the second mortgage holder is now in the first position for receiving loan payments.

No satisfactory mechanism has yet been established to deal effectively with the issue of second liens. The HAMP program has a second lien component offering subsidies for second lien holders to participate in modifications, however, only a few banks participate in this program.

Conclusion

The National Community Reinvestment Coalition strongly supports the creation of national servicing standards as a key tool to reign in servicer abuses. Because the foreclosure crisis is nowhere near over, and because each foreclosure results in significant losses to homeowners, neighborhoods, and state and local governments, Congress must act to prevent servicer abuse which is exacerbating the foreclosure crisis by undermining any attempt to deal effectively with mass foreclosures.

Specifically, NCRC recommends developing national servicing standards for customer service that provide struggling homeowners with reasonable opportunities to avoid foreclosure, improving transparency, and addressing shortcomings in servicer operations and internal controls. These national servicing standards should (1) provide enforcement mechanisms to prevent dual track issues, (2) mandate principal reduction, (3) increase transparency, and (4) ensure that issues with second lien holders do not impeding the ability of homeowners to receive a modification.

Chairman ISSA. Mr. Tierney.

Mr. TIERNEY. Thank you, Mr. Chairman.

Mr. Kaufman, I agree with you that Fannie Mae and Freddie Mac could get into it. What we really need is the Federal Housing Finance Agency who is now their overseer to come in.

Mr. KAUFMAN. Yes.

Mr. TIERNEY. And I would like very much to have them come in front of this committee so he could answer of why he is not acting aggressively enough to have these other, the big banks and the other people who will make the ultimate decision on writing down principal, why he is not insisting that they do that, particularly where it would save the taxpayer investor in this case and Freddie Mac and Fannie Mae money, where actually getting a modification would save you more than going through the foreclosure procedure, he should come in and he should answer that or he should pack up and leave on this basis, and the administration get going.

The head of the OCC, same thing. Why are they not using their regulatory authority to get this thing resolved? He is making statements on records of different hearings about worried about the conditions of the banks. The banks have made more money in this past year then they were making before the recession. So I am not sure if we should be as worried about their financial health right now as we should about these homeowners like Mr. Matthews and the people that Ms. Wilson is dealing with and get them going. And maybe he should pack his bags and leave town if he cannot see a way to do the job on that.

But I hope the chairman has a hearing and brings in the head of the Federal Housing Financial Agency, the OCC, the large banks and maybe start with the top five or whatever and let them tell us why they cannot recognize reality that someday they are going to have to acknowledge the point to all of those mortgage loans that those properties aren't worth what they were. And that in some instances they should and could write down the principal, but they all refuse to recognize that and take that step because they think somehow mystically it is going to come around and their books are going to balance out in the future.

So, Mr. Kaufman, you have been helpful to us and we thank you for that.

Mr. Matthews and Ms. Wilson, thank you for your personal stories and the work that you are doing.

And again, Mr. Matthews, to you I hope that things resolve quickly and favorably for you and that you are so emblematic of so many people that call my office, and the story that Ms. Wilson told us the same. So we need to do something, and we will. Thank you all.

Mr. MATTHEWS. Thank you.

Chairman ISSA. Mr. Walberg.

Mr. WALBERG. Thank you, Mr. Chairman. And thank you for holding this field hearing.

And I thank each of you for sharing your testimony with us, your thoughts and ideas.

And I would agree with my good colleague from Vermont that we have a problem here now, and it is not so much the blame game, it is how do we deal with it. How we complete the process and get

ourselves back on track. And I think, Mr. Matthews, you illustrate something that puts a pace in front of the problem, the key problem.

But I think we would be remiss, too, on this committee and in Congress if we do not look back even further to 2006 or so when indicators were very clear that we are going to have a meltdown and Congress refused to act at that point. The leadership refused to take the necessary steps to say "Yes, we have a problem and it is going to result in human suffering that we could deal with right now if we would do it." That did not take place and now we have the results.

We can talk about cramdown, we can talk about Government getting involved, we can talk about whacking different entities in the process, but let us not forget that when the time was there, indicators were there that there was a financial crises looming that was going to take this country to its knees, to a great extent, it was not dealt with. And we would do well to remember that for the future.

Thank you.

Chairman ISSA. The ranking member.

Mr. CUMMINGS. Thank you very much.

Just to you, Mr. Kaufman, I know that negotiations are going on with regard to this settlement. I mean, when we read the newspaper articles about it and whatever, it sounds like it is going to be a robust settlement that is going to, hopefully, and I know a lot is in dispute and you are trying to figure it out. Without disclosing anything you should not be, I am just wondering are you hopefully that settlement because it is going to resolve a number of these issues? Because just the other day some of us met with Secretary Donovan and Secretary Geithner and they seemed to have some confidence. I was just wondering, do you?

Mr. KAUFMAN. Yes, I mean we are hopeful. It is a robust group. The States have a lot of expertise in this area from the regulatory standpoint and from having managed, tried to deal with the fallout of what you have seem by banning together we have an opportunity to have a voice that individually we have not had. For those of us that have been in the group for going on 4 years, this is finally an opportunity to really have a more meaningful discussion with teeth then anyone of us can have on their own. At the end of the day anyone of us as we talk about it falls back "Am I going to put this guy out of business?" And that is a tough threat in a State where most people are still paying and need the services that this servicer provides on an ongoing basis.

So, you know, we are very hopeful.

Mr. CUMMINGS. And again, I just want to thank all of our witnesses and everybody here at the University of Maryland for all that you have done to make this happen.

Mr. Chairman, I do appreciate you coming to Baltimore. As a matter of fact, within 2 minutes of my house. Cannot do much better than that. Thank you very much.

And to my colleagues, I thank you all for being here, too.

Chairman ISSA. You know, next time though we've got to figure out how to carpool.

And with that, I too would like to thank all the witnesses and all those who attended the entire hearing.

And with that, the committee stands adjourned.
[Whereupon, at 11:34 a.m., the committee was adjourned.]

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