FAILURE TO RECOVER: THE STATE OF HOUSING MARKETS, MORTGAGE SERVICING PRACTICES, AND FORECLOSURES

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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FAILURE TO RECOVER: THE STATE OF HOUSING MARKETS, MORTGAGE SERVICING PRACTICES, AND FORECLOSURES

MONDAY, MARCH 19, 2012

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The Committee met, pursuant to call at 9:30 a.m., in Borough Hall, 209 Joralemon Street, Brooklyn, New York, Hon. Darrell Issa (chairman of the committee) presiding.

Present: Representatives Issa, Platts, Towns, and Cummings.

Staff present: Linda Good, Chief Clerk; Christopher Hixon, Deputy Chief Counsel, Oversight; Justin LoFranco, Deputy Director of Digital Strategy; and Rebecca Watkins, Press Secretary.

Chairman ISSA. Okay, if we can all start taking our seats we are going to start in about 30 seconds. Thank you.

The committee will come to order.

The Oversight Committee's mission statement is that we exist to secure two fundamental principles: first, Americans have a right to know 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.

[Disturbance in the hearing room.]

Chairman ISSA. Please clear the room of anyone who is speaking out of turn. Please remove the protestors.

[Disturbance in the hearing room.]

Chairman ISSA. Please remove the protestors.

[Disturbance in the hearing room.]

Chairman ISSA. Please remove that gentleman. Thank you.

[Disturbance in the hearing room.]

Chairman ISSA. Ladies and gentlemen, as they finish clearing, this is democracy at work. This was the first 5-minute opening statement. These, of course, were unsworn testimonies and we will not have a chance for rebuttal.

While they are leading, I would like to take a moment to thank Mr. Towns because, in fact, this is the second time we have been here on this subject. He, in fact, has been steadily working for every person who just left and for every person that remains. We will now———

[Disturbance in the hearing room.]

Chairman ISSA. Okay, perhaps there were two opening statements.

Americans deserve an efficient, effective government that works for them. Our duty, on a bipartisan basis, 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. Our job is to work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the American bureaucracy.

Today's hearing continues the committee's extensive efforts to explore the causes and consequences and ongoing problems plaguing the housing market. A year ago this month, the committee held a similar hearing in Baltimore, Maryland, with Ranking Member Cummings, who sits to my right. We did so on much the same subject and with a slightly different panel. Two years earlier, we were here in Brooklyn, a time in which prices were still dropping on homes and the eventual outcome was still unclear.

I am pleased to note that last month we reached a 2-year high in national home prices, meaning it is possible the bottom is behind us. But as we look at our first and second panels today, it is clear that people in and out of this room are, in fact, still suffering.

I might note that this committee 5 years ago, 2007, shortly after the Democratic majority was named, went to Cleveland with my good friend Dennis Kucinich. There we saw the beginning of a problem, one that perhaps Mr. Cummings and Mr. Towns have also seen. In 2007, Cleveland was reporting a significant blight. Home affordability was still technically there, you could get those loans that we talked about and will talk about today. But, in fact, the price of homes has stopped rising and suddenly there were a mass of people abandoning their homes and leaving to eventual foreclosure.

Since 2009, the Obama administration has launched dozens of housing refinancing programs in an attempt to mitigate the foreclosure prices. But I believe there is universal agreement that these programs like HAMP have failed to help or at least have been not sufficiently up to the task of helping the hurting homeowner.

Unfortunately, despite all this government's interventions in the marketplace, conditions for homeowners across the country have not improved. And in some ways, until recently, they have gotten worse. Today, still 28 percent of all borrowers in this country are underwater. That is more than in 2009 when the President took office.

We continue to examine the causes of foreclosure prices and assess the pain experienced by millions of homeowners now facing foreclosure. I am committed to find workable solutions to getting the government out of the housing market where appropriate and into the housing market if necessary.

More than anything else we know that high unemployment will continue to lead to people not being able to afford homes regardless of whether they have equity or not. Only a broad-based economic recovery will ultimately be a significant cure to this wave of private sector foreclosures.

It is fitting that we convene today here in Brooklyn, the district of my good friend and former chairman of the committee Ed Towns, and a neighborhood where homeowners are no strangers to foreclosure. Doubtlessly a tough economy and consistently high unemployment in Brooklyn are linked to the foreclosures. Additionally, as America's first suburb, many people in Brooklyn worked on Wall Street, and Wall Street earnings are certainly not what they were a few years ago.

Currently about 6,000 homes are in foreclosure in this area. Against back drop we examine the causes and effects of the continued record foreclosures.

Reports emerged almost 2 years ago of some mortgage servicers committing violations of the law. Clearly we have looked into this, the Federal Government has looked into it, state governments have looked into it, and we found wrongdoing. Most notably, the term "robo-signing" is a buzzword for wrongdoing on that side. But let us understand, in many cases these were infractions after homeowners quit paying. They are, in fact, failures by a swamped organization or organizations who were unequipped to deal with the quantity of foreclosures and perhaps unwilling to make the investments in additional personnel and training necessary to do it and do it right.

The Office of the Comptroller of Currency and the Federal Reserve were at the forefront of investigations of these allegations and have taken many remedial actions. The Committee has worked closely with both agencies throughout the year on their efforts, and representatives from both these agencies are here today to update the committee on compliance with the enforcement actions.

We will also hear today from the Federal Housing Finance Agency, or the FHFA, on the role of Fannie Mae and Freddie Mac in the foreclosure crisis and what mitigation efforts are in place to deal with the foreclosures of properties owned or guaranteed by the American people. We must remember, however, that Fannie and Freddie played a large role in getting us into this mess. Not an exclusive role, perhaps not even the first to lead in that role, but a major role, and up until today have cost American taxpayers approximately $180 billion that will not be returned.

The FHFA's primary responsibility is to protect taxpayers against additional losses. And I look forward hearing from our witness on these efforts.

Again, the primary responsibility of FHFA is to protect taxpayers. If, in fact, making or redoing loans is in the protection of those loans, it is their obligation to make those modifications. If, in fact, it is not in the best interests of the taxpayers and will lead to greater loss, it is their fiduciary responsibility not to do so.

I stress that point because, in fact, we have not changed the law on bankruptcy in a major way since 1978 effecting home loans. We have not changed the responsibility of this agency before, during, or even til today.

Chairman ISSA. We also will hear from the four largest mortgage servicing companies in the country. And I want to thank them for being here today. These witnesses are not here because they want to be here. They are here because they have a great obligation. They, in fact, have a history of both success and failure. We want to hear about both. We want to know that the servicing operations and borrower assistance programs they have in place are helping struggling homeowners.

I want to thank our witnesses for being here. I want you all to feel that this is a fair hearing, so I will announce in advance we will have a full round. We expect to have a limited second round if there is time. And we will invite all of you to extend your remarks and answer additional questions if you are willing in writing so that all of you will have a full and complete opportunity to be heard both today and in follow-up.

And with that I will now recognize the ranking member, Mr. Cummings, for his opening statement.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. And Mr. Chairman, I sincerely thank you for bringing this hearing to Brooklyn. And I want to thank Congressman Towns for your tremendous hospitality in inviting the committee to your district, but I also thank you for all of your hard work on behalf of your district and for all Americans who are going through this dreadful thing called foreclosure.

It is a pleasure to be here to examine the Nation's housing market and to hear from four of the Nation's largest mortgage servicers. According to the Federal Reserve as much as $7 trillion in household wealth may have been destroyed by the collapse of our Nation's housing market, and home prices are still falling. The firm realty track is estimated there have been nearly 4 million foreclosures since 2007. Today there are 11 million homeowners who owe more on their mortgages than their homes are worth. That is more than 20 percent of all households with a mortgage.

According to Mark Zandi, chief economist of Moody's Analytics, the housing is ground zero for the economy's problems, high unemployment and loss of jobs. The reason is simple: the purchase of a house is the largest, single investment most Americans will ever make. Experts agree that we cannot fully renew our Nation's economic growth until families see these investments stabilized and eventually recover their value.

In my opinion, stabilizing the housing market requires two key actions.

First, the mortgage servicing industry has to stop abusing borrowers. The banks testifying today recently settled allegations by the Department of Justice and 49 state attorneys general—by the way, both Republican and Democrat—that they engaged in, and I quote, "Unfair and deceptive consumer practices," end of quote, with respect to loan origination, loan servicing, and foreclosure management as well as violations of the False Claims Act and the Financial Institutions Reform and Enforcement Act and the Serviceman's Civil Relief Act. I did not say that, the attorney general said that.

The national mortgage settlement is the largest Federal/state settlement in history and requires services to provide $25 billion in relief and restitution to homeowners, states, and the Federal Government.

The banks testifying today also owe monetary penalties in more than $1 billion to their Federal regulators, the Federal Reserve, and the OCC for their, and I quote, "Unsafe and unsound practices and violations of applicable Federal and state law and requirements," end of quote.

As a result of the settlement and these enforcement actions, we will, hopefully, have a mortgage servicing industry that complies with the law, simply complies with the law, that services mortgages effectively and efficiently, and that immediately halts the widespread systemic abuses against homeowners.

I applaud the steps that have finally been taken by the Obama administration, the independent regulators, and the states to resolve the abuses, but we must have a full accounting of the scope of these abuses to ensure that everyone who has been harmed receives relief.

The second action I believe that is necessary to stabilize the housing market is to provide meaningful aid to borrowers who are underwater. Under the national mortgage settlement, the banks will provide at least $17 billion to borrowers who have the intent and ability to stay in their homes, 60 percent of which goes to the reducing principal balances for borrowers in default or at risk of default.

This aid will help hundreds of thousands of borrowers, but the reality is that many families that call their servicers seeking aid may be disappointed. They will discover that their loans are not eligible because they are guaranteed by Fannie Mae for Freddie Mac. Their regulator, the Federal Housing Finance Agency, has forbidden them from offering loan modifications that include principal reduction. These families will discover that they are ineligible for principal reductions regardless of how strong their credit is.

FHFA's refusal to allow Fannie Mae and Freddie Mac to participate in this settlement is inexplicable. I have joined with Representative Tierney, who has been a tireless advocate for homeowners, in asking the acting director of FHFA, Mr. Ed DeMarco, to explain his blanket opposition to principal reduction. In response, Mr. DeMarco has asserted that principal reduction is not going to be the least cost approach for the taxpayer. By the terms of his own data, which he finally provided the committee in January, it appears that just the opposite is true. Principal reductions save more money than any other type of modification, including principal forbearance, particularly for Fannie Mae. For that reason FHFA should authorize Fannie Mae to offer principal reductions as soon as possible.

Because of his ideological objections to providing the most effective aid available to underwater borrowers, Ed DeMarco may be the biggest hurdle standing between our Nation and the recovery of our housing market. It is time for him to become part of the solution or step aside.

And with that, Mr. Chairman, I yield back.

Chairman ISSA. I thank the gentleman.

Chairman ISSA. And it is now with great pleasure that I recognize my good friend the former chairman of this committee, the man who brought us here today, Mr. Towns, for his opening statement.

Mr. TOWNS. Thank you very much, Mr. Chairman. I want you to know that we are delighted to have you in Brooklyn. In spite of the reception that you received, we are delighted to have you, no doubt about it.

Chairman ISSA. Those people are from Manhattan, I am sure. [Laughter.]

Mr. TOWNS. I am sure. I am sure.

[Disturbance in the hearing room.]

Mr. TOWNS. We are delighted to have you here.

Let me just say that it is my pleasure to welcome the members of the Oversight and Government Reform Committee to the great borough of Brooklyn to discuss solutions to the national foreclosure crises. This is an issue that is critical to the economic stability of Brooklyn, the State of New York, and the Nation. Mr. Chairman, I thank you and Ranking Member Cummings and Congressman Platts for traveling to Brooklyn for this hearing.

In 2011, the Federal Reserve Board of New York reported that one in eight Brooklyn home mortgages was either in foreclosure or in danger of being in foreclosure. In some neighborhoods, like Bedford-Stuyvesant, Crown Heights, Cypress Hills, East New York, and Canarsie, the foreclosure rate is one of every four homes. Families and homeowners in these communities were the subject of excessive subprime lending in 2003 and through 2007. This problem, coupled with high unemployment rates and loss of business income, has exacerbated the rate of foreclosure in these communities. As the number of foreclosures filed in Brooklyn rose from 3,000 in 2006 to 7,000 in 2012, our witness, Judge Schack, has shown that he refuses to provide a rubber stamp on a deeply flawed process, and we salute him for that.

As former chair of this committee, one of the causes I championed was ensuring that legal professionals would be available to provide foreclosure prevention and legal services in our neighborhoods across the country. Today in Brooklyn, we have a model that is being duplicated across the country. To that end I thank Legal Services of New York City for working with my staff to confirm that resources will continue to be available to keep Bedford-Stuyvesant Legal Services and Brooklyn Legal Service Corporation, Inc., operating in the heart of Bedford-Stuyvesant, Bushwick, Cypress Hills, East New York, and Canarsie.

I also thank the Honorable Betty Staton and Catherine Asobie for Bedford-Stuyvesant Community Legal Services and all—and, of course, Mr. Bryan of Brooklyn Legal Services Corporation A for their outstanding work on foreclosure assistance to the community.

I would be remiss if I do not encourage the growth of the newly formed New York State Foreclosure Defense Bar headed by Attorney Yolande Nicholson to ensure that legal services are available to all homeowners facing foreclosure no matter what their income bracket is.

We are fortunate to have with us today Bank of America, CitiMortgage, JPMorgan Chase, Wells Fargo. It is my hope that the banks will explain what they have been doing to address the foreclosure crisis here in Brooklyn and nationally. The courts, the legal service providers, and most importantly Brooklynites are eager to hear from you.

We will also hear from the Federal Reserve and the Office of Comptroller of the Currency, who are the government regulators enforcing actions against servicers to address patterns of misconduct and negligence. The Federal Housing Finance Agency will also be with us to share their initiatives on how to help the 60 percent of borrowers nationwide whose mortgage they own.

This hearing will address a serious problem that has great, great, great impact on the economic recovery of this country. I look forward to getting solid, workable answers from our witnesses.

Again, let me thank you for coming to Brooklyn. And, of course, I think it is so important that we are able to listen to people right in the area where there is the epicenter, and Brooklyn is definitely the epicenter. And I am happy to have you hear and hope that as a result of our being here that we will be able to ascertain some information that we can go back to Washington to begin to work on the problem. Because in many cases a person's home is the only thing that they have and we should make certain that they do not lose it.

Thank you very much, Mr. Chairman. And thank you again for coming.

[The information follows.]

Committee On Oversight and Government Reform

Opening Statement

Rep. Edolphus Towns

Hearing on "Failure to Recover: The State of Housing Markets, Mortgage Servicing Practices, and Foreclosures"

March 19, 2012

It is my pleasure to welcome the members of Committee on Oversight and Government to Brooklyn to discuss solutions to the national foreclosure crisis. This is an issue that is critical to the economic stability of Brooklyn, the State of New York and the rest of the nation. Mr. Chairman, I thank you, Ranking Member Cummings, and the members of this committee on both sides of the aisle for traveling to Brooklyn for this hearing, a place considered New York's epicenter in the foreclosure crisis.

In 2011, the Federal Reserve Board of New York reported that one in eight Brooklyn home mortgages was either in foreclosure or in danger of being in foreclosure. In some in neighborhoods like Bedford-Stuyvesant, Crown Heights, Cypress Hills/East New York and Canarsie, the foreclosure rate is one in four homes. Families and homeowners in these historically African-American, Hispanic American and immigrant communities were the subjects of excessive subprime lending in 2003 to 2007. This problem, coupled with high unemployment rates and loss of business income has exacerbated the rate of foreclosure in these communities.

As the number of foreclosure filings in Brooklyn rose from 3000 in 2006 to 7000 in 2012, our witness, Judge Arthur Schack has had a front row seat in the arena. In a series of impressive judicial decisions that shine a light on shoddy and fraudulent foreclosure filings by creditors with no legal right to proceed to foreclosure, Judge Schack has shown that he refuses to provide a rubber stamp on a deeply flawed process.

As Former Chair of this Committee, one of the causes I championed was ensuring that legal professionals would be available to provide foreclosure prevention and legal services in our neighborhoods across the country. Today, in Brooklyn, we have a model that is being duplicated across the country. To that end, I thank Legal Services of New York City for working with my staff to confirm that resources will continue to be available to keep Bedford-Stuyvesant Community Legal Services and Brooklyn Legal Services Corporation A operating in the heart of Bedford Stuyvesant, Bushwick, Cypress Hills, East New York and Canarsie.

I also thank the honorable Betty Staton, and Catherine Isobe of Bedford-Stuyvesant Community Legal Services, and also Daniel Bryan of Brooklyn Legal Services Corporation A for their outstanding work on foreclosure assistance to the community. I would be remiss if I don't encourage the growth of the newly-formed New York State Foreclosure Defense Bar, headed by attorney Yolande Nicholson, to ensure that legal services are available to all homeowners facing foreclosure, no matter what their income bracket is.

Today's hearing comes on the heels of a national settlement between the Attorneys General of 49 states and the five largest mortgage servicers in the country. The investigation leading to the settlement involved allegations that servicers and the law firms that they hired to handle foreclosures, were making false and fraudulent attestations in state and federal courts and failing to properly conduct loss mitigation efforts for borrowers who became delinquent on their mortgages.

The settlement provides for $17 billion in principal reduction and other loan modifications for troubled borrowers; $3 billion in refinancing; and $1.5 billion in restitution to individuals who were foreclosed upon due to the illegal or improper actions of servicers. That works out to approximately $2000 per harmed homeowner. The settlement, however, does not apply to mortgages guaranteed by Fannie Mae and Freddie Mac, who own 60 percent of the mortgages nationally.

We are fortunate to have with us today, Bank of America, Citi Mortgage, JPMorgan Chase, and Wells Fargo. The banks will explain what they have been doing to address the foreclosure crisis here in Brooklyn and nationally. The courts, the legal service providers and most importantly, Brooklynites are eager to hear what they will say.

We will also hear from the Federal Reserve and the Office of Comptroller of Currency who are the government regulators enforcing actions against servicers to address patterns of misconduct and negligence. The Federal Housing Finance Agency will also be with us to share their initiatives on how to help the 60% of borrowers nationwide whose mortgage they own.

This hearing will address one of the most serious issues which impact on the economic recovery of this country. I look forward to getting solid, workable answers from our witnesses. Thank you all for being here. Mr. Chairman I yield back.

Chairman ISSA. Thank you. And thank you for your leadership on this issue.

At this time I would ask unanimous consent that the article in the January of this year verdict by Yolande Nicholson be placed in the record entitled "The Elusive Plaintiff Problem in Foreclosure Actions." Without objection, so ordered.

We now go to our first panel of witnesses. I would like to recognize Mr. Morris Morgan, who is deputy comptroller for large bank supervision at the Office of the Comptroller of the Currency. Ms. Suzanne G. Killian is senior associate director for the Division of Consumer and Community Affairs at the Federal Reserve. Mr. Alfred Pollard is general counsel of the Federal Housing Finance Agency. Mr. Eric—and it is Schuppenhauer? Close enough, okay. Is senior vice president of mortgage banking at JPMorgan Chase Bank. Mr. Joe Ohayon—oh, my goodness you just had a heck of a holiday. I have got to get the O right. [Laughter.] Ohayon is senior vice president for community relations at Wells Fargo Home Mortgage. Mr. Jeff Jaffee is Chief Regulatory Affairs Office of CitiMortgage. And Ms. Sheila Sellers, is national mortgage outreach executive for Bank of America.

STATEMENTS OF WITNESSES

Chairman ISSA. I would like to welcome you all here and I would like to ask that you please rise to take the oath pursuant to our committee regulations.

[Witnesses sworn.]

Chairman ISSA. Let the record reflect that all witnesses answered in the affirmative. Please take seats.

Field hearings are exactly the same as hearings in Washington except we get more local color. So just as in Washington, for those who have seen it, ladies and gentlemen who remain, this is a hearing not run by Republicans or Democrats. This is a hearing in which the people of Brooklyn have a unique opportunity because of their member to participate in a respectful way. These individuals were brought here not because they necessarily wanted to be here, but because Mr. Towns and Mr. Cummings asked to have these witnesses. They represent regulators and banks. Many of the people who have left the room dislike the regulators because they have not done enough and the banks because they did not do it right. This is your chance to hear them being asked questions.

They will, in fact, be held accountable. That is what we do here. I will ask that, please, from here on, understand that exactly the protestors' sentiment is why we are here today. This is something that has been asked for and asked for by the very groups that left here after being disrespectful.

So if you want to remain, please remain. Please limit your talk, whether you are a protestor or simply not as interested as you should be, please limit it to whispers at most. If we have disruptions, I will ask people to leave and they will have to leave. This is too important to the people of Brooklyn, the people of America not to get it right.

Mr. CUMMINGS. Mr. Chairman? May I just———

Chairman ISSA. Yes, of course.

Mr. CUMMINGS. Thank you very much for yielding, Mr. Chairman. I would ask the same thing of the witnesses. This is a hearing that we had asked for and Mr. Towns has been very instrumental in that. And it is important, I agree with you, Mr. Chairman. There are people who have come out here to hear this. It is a very unique and special hearing. And I would ask those who may have disagreement that you keep those to yourselves and let us get through this, and we really would appreciate that. And thank you for your time.

Chairman ISSA. Thank you. We ask that you observe the light in front of you, try to stay within the spirit of the 5-minutes or less. Understand that your entire opening statements, prepared statements, will all be placed in the record, so you need not make sure you read it all. You can ad lib if appropriate and you certainly can skip over areas, recognizing that if your statement is beyond 5 minutes, the last part will not be heard if you go substantially beyond it.

So we will go down the row starting with Mr. Morgan and be recognized for 5 minutes.

Mr. MORGAN. Chairman Issa———

Chairman ISSA. And see if you can get the mic a little closer. We cannot quite hear you.

STATEMENT OF MORRIS MORGAN

Mr. MORGAN. Chairman Issa, Ranking Member Cummings, and members of the committee, my name is Morris Morgan, and I am a deputy comptroller for large bank supervision at the OCC. I have been a national bank examiner for 26 years and I am responsible for overseeing the activities of several of the large mortgage servicers and their compliance with the OCC's enforcement actions issued in April 2011. I appreciate the opportunity to appear before you this morning.

Nearly a year ago, the OCC issued comprehensive enforcement orders against the major mortgage servicers we supervise to correct a wide range of deficient and unsafe and unsound practices documented in the orders, identify borrowers who may have suffered financial harm as a result of those practices, and provide any harmed borrowers with financial remediation. Simply put, we wanted to fix what was broken, identify borrowers who were financially harmed, provide compensation for that injury, and make sure this does not happen again. My written testimony details extensive work performed by our examiners and their findings that became the foundation for our enforcement actions.

My statement also describes the wide range of mortgage servicing and foreclosure processing activities we have required servicers to correct. These efforts include improvements in mortgage servicing, foreclosure processing, and oversight in management of third-party service providers.

The OCC has also required the servicers to retain independent consultants to conduct a review of each servicer's foreclosure activities for 2009 and 2010. This review has two parts. First, a request for review process for borrowers who believe they were financially harmed by defective servicing and foreclosure practices; and second, a file review.

This is a significant undertaking. As of last week, more than 121,000 requests for review have been received and the file review at national banks contain nearly 135,000 borrowers. Therefore, more than a quarter million files are currently slated for review and this number will in increase.

The request for review process was launched last November 1st. Since then, more than 4.3 million letters have been sent to borrowers explaining how they can request an independent review. Requests for review may be submitted until July 31, 2012.

Throughout the independent review process we have worked with a number of community and housing organizations. These discussions have influenced our decisionmaking in a number of areas, including marketing and research. The OCC has required servicers to use advertising, the website, toll-free number, and various other forms of outreach in both English and Spanish to increase awareness and understanding of the review process. To date, advertisements have appeared in more than 1,400 publications nationwide, including those that serve minority and underserved audiences, and the circulation covers all 50 states. The OCC has significantly complemented this effort with our own media outreach and public service advertising.

As stated earlier, our enforcement orders also require independent consultants perform file reviews of identified segments of borrowers. They are using sampling and other tools to identify files for review subject to guidance and oversight of the OCC. We are requiring 100 percent review of some borrower segments, including cases involving the Service Members Civil Relief Act, bankruptcy cases involving foreclosures, and cases referred by state and Federal agencies.

When independent consultants find errors, misrepresentations, or other deficiencies, the next step is to determine if those errors caused financial injury, then recommend remediation. We have provided guidance of what might constitute financial injury and we are finalizing a remediation framework which clarifies expectations about the amount and the type of compensation recommended for certain categories of harm. Importantly, there are no caps or limits to the amount of compensation that will be paid out or remediated by the servicers.

Finally, we are pleased to see the finalization of the national mortgage settlement last week. We have been in regular communication with the Justice Department and other Federal agencies for more than a year to ensure that our enforcement actions did not interfere with and were complementary to actions required by national settlement. We will continue to work closely with Justice and others to ensure the servicing standards required by that settlement are met by the servicers we supervise.

Again, I appreciate the opportunity to testify and am happy to answer your questions.

[Prepared statement of Mr. Morgan follows:]

Chairman Issa, Ranking Member Cummings, and members of the Committee, my name is Morris Morgan, and I am a Deputy Comptroller for Large Bank Supervision. I have been a National Bank Examiner for 26 years and am currently responsible for overseeing the activities of several of the large mortgage servicers in their compliance with the OCC's enforcement actions issued in April 2011. I appreciate the opportunity to appear before you this morning to provide information about the comprehensive enforcement actions that the OCC undertook when major problems came to light about the mortgage servicing and foreclosure processing activities at the country's largest mortgage servicers, and the status of follow-through on those enforcement actions.

Nearly a year ago, pursuant to formal Enforcement Orders ("Orders"), the OCC put in place a comprehensive program for major mortgage servicers to correct the deficient and unsafe and unsound practices documented in the Orders, and to identify borrowers who may have suffered financial harm as a result of those practices in order to provide them financial remediation.[1] These steps are well underway, and my testimony will describe their progress. More recently, in addition to the actions already begun as a result of the OCC's Orders, other important reforms have been initiated, which I also will describe in my testimony. In this regard, it is particularly important to stress that the remedies that we are requiring in our Orders do not impede, but instead, complement in important ways these other initiatives, particularly the

[1] Eight national bank servicers were examined by the OCC: Bank of America, Citibank, HSBC, JPMorgan Chase, MetLife Bank, PNC, U.S. Bank, and Wells Fargo. The OTS also examined four federal savings association servicers and two holding companies: Aurora Bank, FSB; EverBank (and the thrift holding company, EverBank Financial Corp.); OneWest Bank, FSB (and its holding company IMB HoldCo LLC); and Sovereign Bank. On July 21, 2011, regulatory responsibility for federal savings associations transferred from the OTS to the OCC under the Dodd-Frank Wall Street Reform and Consumer Protection Act. Consent orders taken by the OTS prior to the transfer against federal savings associations remain in effect and enforceable by the OCC. Consent orders taken by the OTS against thrift holding companies remain in effect and enforceable by the Board of Governors of the Federal Reserve System.

actions certain servicers will be taking pursuant to the National Mortgage Settlement involving certain federal agencies and state Attorneys General filed on March 12, 2012.

My testimony this morning provides information organized around three main areas. First, I describe the Independent Foreclosure Review process required by our enforcement actions. Importantly, this undertaking has two parts: a file review to identify financially harmed borrowers, and a process by which borrowers who believe they suffered financial injury within the scope of our Orders may request an individualized review of their situation. My testimony provides updates on both components of this effort. Second, I describe other comprehensive actions underway required by our Orders to correct deficient and unsafe or unsound practices in mortgage servicing and foreclosure processing. These reforms apply to all the servicers that are subject to our Orders, not just the servicers that are parties to the National Mortgage Settlement. Third, I summarize other activities and initiatives stemming from the foreclosure crisis, including the National Mortgage Settlement, and how the OCC's Orders relate to those other initiatives.

I. Background

Before addressing these three areas, it is useful to provide a brief background.

In the fall of 2010, following reports of irregularities in the foreclosure processes of several major mortgage servicers, the OCC directed the largest national bank servicers to conduct self-assessments to identify problems related to foreclosure processing. Concurrently, the OCC, the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation, and the Office of the Thrift Supervision (OTS) coordinated efforts to conduct "horizontal" examinations of foreclosure processing at 14 large federally regulated mortgage servicers during fourth quarter 2010.[2]

The examinations evaluated controls and governance over bank foreclosure processes, including compliance with applicable federal and state law. Examiners evaluated bank self-assessments and remedial actions, assessed foreclosure operating procedures and controls, interviewed bank staff, and conducted an in-depth review of approximately 2,800 borrower foreclosure cases in various stages of foreclosure, spanning the 2009-2010 period. Examiners focused on foreclosure policies and procedures, organizational structure and staffing, third-party management, quality control and audits, accuracy and appropriateness of foreclosure filings, and loan document control, endorsement, and assignment. When reviewing individual foreclosure files, examiners checked for evidence that servicers were in contact with borrowers and had considered alternate loss mitigation efforts, including loan modifications. More than 100 examiners spent over four months conducting these exams, interviewing servicer and third-party employees, and observing servicer practices.

In general, the examinations found the loans in the sample were seriously delinquent. However, the examinations also found critical deficiencies in foreclosure governance processes, document preparation processes, and oversight and monitoring of third parties. These deficiencies constitute unsafe and unsound banking practices, which also resulted in violations of certain laws, regulations, or rules. All servicers exhibited similar deficiencies, although the number, nature, and severity of deficiencies varied by servicer.

The sample of foreclosures reviewed as part of the interagency examination provided a basis for enforcement action; however, it is important to recognize that, due to the limited

[2] See "Interagency Review of Foreclosure Policies and Practices," (http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47a.pdf), April 13, 2011.

number of files that were reviewed, this process could not have identified the universe of borrowers who might have been financially harmed by those deficiencies.

On April 13, 2011, the OCC, the FRB, and the OTS announced the issuance of formal Enforcement Orders against each of the 14 servicers subject to our respective jurisdictions, and two service providers reviewed as part of the examinations. Crucial components of these enforcement actions are processes to identify borrowers who suffered financial injury as a result of the practices identified in the Orders, and to provide financial remediation to them through an Independent Foreclosure Review (IFR) process.

II. <u>Independent Foreclosure Review</u>

Importantly, the IFR has two components — a process by which borrowers who believe they suffered financial injury within the scope of our Orders may request an individualized review of their situation, and a file review ("look-back") conducted by independent consultants, retained under the terms of the OCC's Orders, to identify financially harmed borrowers. Between these two processes – which will involve the review of more than a quarter million foreclosure cases and thousands of reviewers, we seek to maximize, to the extent feasible and within a reasonable time frame, the identification of borrowers who have suffered actual financial injury as a result of the deficiencies identified in our Orders and to provide financial remediation to them.

Request for review forms have now been mailed to all 4.3 million borrowers, and as of last week, 121,725 forms had been completed and returned for review. Among the requests received so far, 87 percent involve modification issues, 62 percent claim the recorded mortgage balance was not correct, 47 percent cite improper fees, and 47 percent refer to payment processing errors. (These percentages will exceed 100 percent because many requests cite multiple issues). Also as of last week, 90,472 files are actively under review as a result of the "look-back" review process.

Role of Independent Consultants

The Orders require the servicers to retain independent consultants to conduct comprehensive independent reviews of foreclosure activities that took place in 2009 and 2010. The engagement process for independent consultants subject to the OCC's Orders followed the same process the federal banking agencies generally utilize with respect to implementation of requirements to hire independent third parties to conduct reviews under §1818 enforcement orders. Under this process, the financial institution is required to propose engagement of an outside independent party, which is subject to agency non-objection, and the institution is required to pay directly for the third-party services. The banking agency oversees the engagement and examines the results. Under this process, consultants are motivated to perform their services independently, competently, and thoroughly; because, if they do not, they risk having their independence called into question, their resulting work-product rejected, and they risk not receiving future approval by the regulators to serve as an independent outside third-party with respect to other projects.

The scope of work by the independent consultants was set out in engagement letters between each servicer and its consultant. The OCC reviewed these letters and required changes to ensure compliance with the intent of our Orders and a level of consistency across the servicers. The OCC accepted the letters in late September, and made them publicly available on November 22, 2011.[3]

[3] See http://www.occ.gov/topics/consumer-protection/foreclosure-prevention/independent-review-foreclosure-letters.html. Some proprietary and personal information was redacted from the engagement letters prior to their release. Examples of redacted information include: names, titles, and biographies; proprietary systems information;

Since the acceptance of the letters in September 2011, the independent consultants have refined and adjusted processes, procedures, and methods outlined in the letters in consultation with OCC staff. In many cases, some details of the processes being implemented differ from those described in the letters because of subsequent direction from the OCC. Most notably, the OCC required changes to ensure a uniform and coordinated claims process among the servicers.

The independent consultants retained by each servicer to conduct these reviews of national banks and federal savings associations are:

- Allonhill, LLC, for Aurora Bank;
- Clayton Services, LLC, for EverBank;
- Deloitte & Touche, LLP, for JPMorgan Chase;
- Ernst & Young, LLP, for HSBC and MetLife Bank;
- Navigant Consulting, Inc., for OneWest;
- PriceWaterhouseCoopers, LLC, for Citibank and US Bank;
- Promontory Financial Group, LLC, for Bank of America, PNC, and Wells Fargo Bank; and
- Treliant Risk Advisors, LLC, for Sovereign Bank.

The OCC required independence of the consultants and the law firms hired by the consultants. During the selection process, we rejected some proposed consultants and law firms to prevent conflicts of interest. We focused particularly on situations where consultants and law firms may have previously expressed positions on the issues on which they would be called upon to express independent judgment in the foreclosure review process. To formalize our

references to specific bank policy; fees and costs associated with the engagement; and descriptions of past work performed by the independent consultants.

expectations for independence from the servicers, the OCC required engagement letters to contain specific language stipulating that consultants would take direction from the OCC and prohibiting servicers from overseeing, directing, or supervising any of the reviews. The OCC specifically required each consultant to:

- Comply with requirements of the Order and conduct each foreclosure review as independent from any review, study, or other work performed by the servicer or its contractors or agents with respect to the servicer's mortgage servicing portfolio or the servicers' compliance with other requirements of the consent order.
- Ensure its work under the foreclosure review would not be subject to direction, control, supervision, oversight, or influence by the servicer, its contractors, or agents.
- Require immediate notification to the OCC of any effort by the servicer, directly or indirectly, to exert any such direction, control, supervision, oversight, or influence over the independent consultant, its contractors, or agents.
- Agree that the independent consultant is solely responsible for the conduct and results of the foreclosure review, in accordance with the requirements of article VII of the order.
- Pursuant to the monitoring, oversight, and direction of the OCC: 1) promptly comply with all written comments, directions, and instructions of the OCC concerning the conduct of the review, and 2) promptly provide any documents, work papers, materials, or information requested by the OCC, regardless of any claim of privilege or confidentiality.
- Agree to provide regular progress reports, updates, and information concerning the conduct of the foreclosure review to the OCC, as directed.
- Conduct the review using only personnel employed or retained by the independent consultant to perform the work required and not to employ services provided by the servicer's employees, contractors, or agents unless the OCC provides written approval.
- Adhere to requirements with respect to communication with the servicer, which provide for the independent consultant to use documents, materials, or information provided by the servicer, and to communicate with the servicer, its contractors, or agents, to conduct the review. Within these limits, agree that servicers' employees may not influence or attempt to influence determinations of the consultant's findings or recommendations.
- Agree that legal advice needed in conducting the review shall be obtained from the outside law firm whose retention to advise the independent consultants has been approved by the OCC and not to obtain legal advice (or other professional services) in conducting the review from the servicers' inside counsel, or from outside counsel

retained by the servicer or its affiliates to provide legal advice concerning the Order, or matters contained in the Order.

- Require the servicer to agree that if the OCC determines that the consultant has not fully complied with the standards for independence, the OCC may direct the servicer to dismiss the consultant and retain a successor consultant.

These standards and oversight by the OCC are aimed at ensuring that the end result of the review – the findings and recommendations of the independent consultants – will be the product and opinion of those consultants, not of the servicers, their directors, their managers, or their attorneys.

The Process for Borrowers to Request Reviews

The request for review process provides the opportunity for borrowers to request an individualized review of their case if they believe they suffered financial injury as a result of errors, misrepresentations, or other deficiencies in foreclosure actions pertaining to their primary residence between January 1, 2009 and December 31, 2010. For any financial injury that the reviews identify, the Orders require financial remediation by the servicers, subject to regulator approval.

On November 1, 2011, outreach efforts began to inform "in-scope" borrowers of the process for requesting reviews. As described below, these efforts are multi-faceted, and we have continued to make adjustments to improve the scope and effectiveness of the borrower outreach efforts.

To be "in-scope" and eligible for review, a borrower's loan must have been active in the foreclosure process between January 1, 2009 and December 31, 2010; the property must have been the primary residence; and the loan must have been serviced by one of the servicers below:

America's Servicing Company	Countrywide	National City Mortgage
Aurora Loan Services	EMC	PNC Mortgage
BAC Home Loans Servicing	Everbank/Everhome	Sovereign Bank
Bank of America	Financial Freedom	SunTrust Mortgage
Beneficial	GMAC Mortgage	U.S. Bank
Chase	HFC	Washington Mutual
Citibank	HSBC	Wells Fargo
CitiFinancial	IndyMac Mortgage Services	Wilshire Credit Corp.
CitiMortgage	Metlife Bank	

A loan is considered active in the foreclosure process if:

- The property was sold due to a foreclosure judgment.
- The loan was referred into the foreclosure process, in which case the borrower may have been notified in writing, but was removed from the process because payments were brought up-to-date or the borrower entered a payment plan or modification program.
- The loan was referred into the foreclosure process, but the home was sold or the borrower participated in a short sale or chose a deed-in-lieu-of-foreclosure action.
- The loan was referred into foreclosure and remains delinquent but a foreclosure sale has not taken place.

To inform borrowers of the coordinated request for review process, the OCC has required direct mail outreach, establishment of a Web site and a toll-free number, advertising, and other outreach.

Direct mail outreach began on November 1, 2011, through an integrated claims processor, which all servicers are using. Between November 1, 2011, and December 31, 2011, 4,341,357 letters were mailed to eligible borrowers with instructions on how to fill out and return that form to request an Independent Foreclosure Review. The form walks borrowers through examples of situations that would be likely examples of financial injury, but it also allows the opportunity for borrowers to simply tell their story. The crucial objective is to get as much information as possible into the pipeline for an independent foreclosure review. Borrowers must return the form by July 31, 2012.

The direct mail effort includes use of address tracing methods to locate borrowers who lost their home to foreclosure. If an address is not current, the integrated claims processor will run the borrower data through a national change-of-address database to find a current address. Returned mail will be processed through a third-party consumer database using information from credit bureaus, public records and registrations, utilities, phone number databases, etc., to determine most likely current addresses. Mail will be processed three times in an attempt to determine the most likely address. As of last week, only 5.6 percent of mailings have been undeliverable.

A Web site—www.IndependentForeclosureReview.com—and toll-free phone number—1-888-952-9105—were also launched on November 1, 2011. Both provide information about the review process. Assistance is available from the toll-free number Monday through Friday from 8 a.m. to 10 p.m., and Saturday from 8 a.m. to 5 p.m. (Eastern time). As of last week, the Web site has been visited 395,327 times since its launch. During that same period, the toll-free number has received 177,195 calls, and 12,956 callers have requested forms to be sent to them. On March 2, 2012, the Web site was significantly enhanced to allow for the intake of request for review forms on-line, which should also facilitate the filing of requests for review.

The outreach effort also includes print and online advertising. The print advertising includes full-page advertisements in widely-read national publications (e.g., *Parade Magazine, People, TV Guide*) as well as publications targeted to minority and Spanish-speaking populations. The advertisements ran in January and February and appeared in more than 1,400 publications nationwide (the total includes all of the individual newspapers that carry *Parade* and *USA Weekend*) that cover a wide range of demographics, as well as Hispanic and African-American publications. The circulation covers all 50 states, with a higher concentration among states with geographic and demographic factors most affected by foreclosure, including California, Florida, Illinois, Michigan, and New York. Total impressions from the advertising to date are estimated at more than 341 million. We will continue to monitor participation and evaluate the need for additional advertising.

The online advertising includes purchasing keywords (e.g., "foreclosure review") on major search engines (e.g., Google, Bing) to allow borrowers to find information about the review more easily. By purchasing keywords associated with the foreclosure review, these efforts will redirect significant numbers of borrowers to the Independent Foreclosure Review Web site.

In addition to the mailings, Web site, phone number, and advertising by the servicers, the OCC is conducting its own media outreach efforts that include e-mail, media outreach, and public service advertising (PSA). The announcement of the kickoff of the foreclosure reviews, the subsequent release of the interim report on November 22, 2011, and related testimony were distributed to more than 32,000 subscribers through our e-mail information service. This electronic distribution network is being used to share additional communications about these reviews with interested community and consumer organizations as well as others who subscribe to this service. In early January, the OCC released a series of public service advertisements that include both print and radio spots in English and Spanish. The print items were distributed to more than 10,000 local newspapers and publications. The 30-second radio items were distributed to more than 6,500 small radio stations throughout the country. Spanish items have been distributed to more than 700 Spanish-language newspapers and 500 Spanish-language radio stations. The public service items highlight the toll-free number, the Web site, eligibility, and the deadline for action. Through March 7, 2012, the PSAs have run 515 times in print and on the radio in 29 states. The total potential readership and listening audience exceeds 51 million people.

"Look-Back" Reviews

In addition to the process whereby borrowers may request an individualized review of their assertion of financial harm, our Orders require the independent consultants to conduct "look-back" file reviews. This review supplements the request for review process to further identify deficiencies, errors, or misrepresentations that may have caused financial injury. In October, the independent consultants began selecting files for review, in accordance with plans contained in engagement letters submitted to, and accepted by, the OCC.

The Orders allow the consultants to use sampling and other tools to identify certain types of files for review. Guidance from the OCC described methods and controls to ensure that samples are representative of the in-scope mortgages. The engagement letters contain descriptions of the statistical basis for the sampling methods used as approved by the OCC.

Some segments require 100 percent review, including cases involving the Servicemembers Civil Relief Act (SCRA), certain bankruptcy cases facing foreclosure in 2009 and 2010, cases referred by state or federal agencies, and reviews requested through the request for review process described above. With respect to SCRA cases, we reached out to the Defense Manpower Data Center of the Department of Defense and the Department of Justice to explore how to effectively identify servicemembers whose cases should be reviewed as part of the 100 percent review. The result of that collaboration is that processes are being developed that will enable the names of all identified in-scope borrowers for each servicer to be batched-checked against servicemember information relevant to the in-scope period. This is an invaluable step to ensure that all eligible servicemembers are included in the 100 percent file review.

Mortgages in the sampling population may be segmented based on characteristics that include geography, third-party attorney, types of borrower history in paying mortgages, prior customer complaints, and participation in modification programs, such as the federal Home Affordable Modification Program (HAMP). The segments and sizes of the samples selected for review were determined by the consultants, based on guidance from the OCC and in consultation with the servicers, but not determined or dictated by servicers.

In some cases, sampling may be appropriate at the outset, but initial results may lead to more in-depth review. These second-level reviews are subject to OCC oversight to ensure they are appropriately structured and implemented. The OCC expects the consultants to assess the results of the ongoing reviews continuously to identify potential "pockets" or systemic instances of financial harm and adapt the review plan accordingly. The tolerance for error is low—reliability, or confidence level, should not be less than 95 percent.

During the "look-back" reviews, the independent consultants must assess:

- Whether the foreclosing party had properly documented ownership or was otherwise a proper party to the action;
- Whether the foreclosure was in accordance with applicable state and federal law;
- Whether the foreclosure sale occurred when a loan modification or other loss mitigation request was under consideration, or when the loan was performing in accordance with a trial or permanent loan modification, or when the loan had not been in default for a sufficient period to authorize foreclosure;
- Whether, for any non-judicial foreclosure, the foreclosure sale and post-sale confirmations were in accordance with the mortgage loan and state law requirements;

- Whether a borrower's account was charged only fees or penalties permissible under the terms of the loan, applicable state and federal law, and were reasonable and customary;
- Whether the frequency of fees assessed was excessive under the terms of the loan or applicable state and federal law;
- Whether the requirements of HAMP and proprietary loss mitigation programs were followed; and
- Whether any errors, misrepresentations, or other deficiencies identified in the review resulted in financial injury to any borrower or mortgagee.

Input from Community and Housing Advocates

The OCC has been working with a number of community and housing advocacy organizations to explain the IFR process, and we have undertaken an ongoing dialogue with a number of groups regarding their concerns about the scope and effectiveness of the outreach program. Beginning last November, the OCC began meeting and talking regularly with a cross-section of such advocacy organizations to get the benefit of their experiences, as well as their input on specific issues as we continued to implement the IFR. [4] Our discussions with these organizations have informed our decision-making in numerous areas, including marketing and outreach, additional resources for non-English speakers, the need for additional time for borrowers to request reviews, types of financial harm, remediation, and transparency.

Large elements of the media plan described earlier were suggested by representatives of these organizations, most notably revised ads that include Spanish-language placements in key markets, as well as other publications serving minority populations, the public service advertisement campaign, and the addition of Spanish-language Frequently Asked Questions on the Web site. We also worked with the FRB to provide training at a national conference and to

[4] The OCC has been having discussions with a range of community groups which has included: the National Consumer Law Center, National Fair Housing Alliance, Center for Responsible Lending, National Association of Consumer Advocates, National Council of La Raza, National Asian American Coalition, Consumer Action, and several others.

produce two nationwide webinars to help educate housing counselors and increase awareness of this effort.

There are also multiple efforts currently underway to make outreach and information about the IFR available in languages other than English. The toll free call center has translation services available in over 240 languages, and the operators can also translate documents for borrowers over the phone. Spanish-language translations of the Frequently Asked Questions and a Spanish-language guide on how to complete the form are now available on the IndependentForeclosureReview.com Web site. The OCC will be monitoring the volume of calls coming into the RUST call center from borrowers who request translation services and will use this data to determine if other similar translations are necessary to serve other non-English speaking populations.

The IndependentForeclosureReview.com Web site has been significantly enhanced to allow borrowers to complete their request for review forms online, which should also facilitate the filing of requests for review. And finally, as representatives of these organizations urged, we extended our request for review deadline to July 31, 2012, to allow time for this expanded outreach to take hold.

The advocates also have emphasized the need for more resources to allow housing counselors to handle the additional effort of helping make borrowers aware of the opportunity to take advantage of the IFR and, where needed, to assist those borrowers during the process. The OCC is encouraging servicers to provide those resources. Recently, for example, a major national bank servicer has provided funding to 11 community organizations that will assist in reaching borrowers eligible for an independent review.

Our discussions are ongoing with these advocacy organizations. Their comments increased our awareness in numerous areas as we formulated the Remediation Framework (discussed in the next section), and they have informed several other pieces of the effort that we are still developing. We look forward to continuing that dialogue.

Financial Injury and Remediation

When independent consultants find errors, misrepresentations, or other deficiencies, their next step is to determine whether financial injury occurred. Financial injury is defined as monetary harm directly caused by a servicer error.

Examples of financial injury identified in joint OCC-Federal Reserve guidance that was provided to the independent consultants include, but are not limited to, the following:

1. The borrower was not in default pursuant to the terms of the note and mortgage at the time the servicer initiated the foreclosure action.
2. The servicer initiated foreclosure or conducted a foreclosure sale in advance of the time allowed for foreclosure under the terms of the note and mortgage or applicable state law.
3. The borrower submitted payment to the servicer sufficient to cure the default pursuant to the terms of the note and mortgage, but the servicer returned the payment in contravention of the terms of the note or mortgage, state or federal law, or the servicer's stated policy covering payments when in default.
4. The servicer misapplied borrower payments, did not timely credit borrower payments (including failure to properly account for funds in suspense), or did not correctly calculate the amount actually due from the borrower, in contravention of the terms of the note and mortgage, state or federal law, investor requirements, or the servicer's stated policy covering application of payments.
5. The borrower paid a fee or penalty that was impermissible.
6. A deficiency judgment was obtained against the borrower that included the assessment of a fee or penalty that was impermissible.
7. The servicer placed an escrow account on the mortgage, and the placement resulted in monies paid by the borrower into escrow in contravention of the terms of the note or mortgage, state or federal law, or the servicer's stated policy covering escrow accounts.

8. The servicer placed insurance on the mortgage, and the placement resulted in monies paid by the borrower toward insurance in contravention of the terms of the note or mortgage, state or federal law, or the servicer's stated policy covering placed insurance.

9. The servicer miscalculated the amount due on the mortgage and secured a judgment against the borrower for an amount greater than the borrower owed.

10. A borrower's remittance of funds to a third party acting on behalf of the servicer was not credited to the borrower's account.

11. The borrower was performing under the terms of an approved trial loan modification or an approved permanent loan modification, but the servicer proceeded to foreclosure in contravention of the terms of the modification offered by the servicer to the borrower.

12. A borrower was denied a modification in contravention of the terms of the governing modification program or the servicer's stated policy covering modifications.

13. There is evidence that the borrower provided or made efforts to provide complete documentation necessary to qualify for a modification within the period such documentation was required to be provided by the governing modification program, and the servicer denied the loan modification in contravention of the terms of the governing modification program or the servicer's stated policy covering modifications.

14. The servicer initiated foreclosure or completed a foreclosure sale without providing adequate notice as required under applicable state law.

15. The servicer foreclosed on or sold real property owned by an active military servicemember in violation of SCRA.

16. The servicer did not lower the interest rate on a mortgage loan entered into by a military servicemember, or by the servicemember and his or her spouse jointly, in accordance with the requirements of SCRA.

17. The servicer failed to honor a borrower's *bona fide* efforts to redeem a sale under applicable state law during the redemption period.

18. The borrower was protected by the automatic stay under the bankruptcy code, and a court had not granted a request for relief from the automatic stay or other appropriate exception under the bankruptcy code.

19. The borrower was making timely pre-petition arrearage payments required under an approved bankruptcy plan and was current with their post-petition payments.

20. The borrower purchased a payment protection plan; was or should have been receiving benefits under the plan; and those benefits were not applied pursuant to the contract.

21. The servicer was not the proper party, or authorized to act on behalf of the proper party, under the applicable state law to foreclose on the borrower's home, and this resulted in, or may result in, multiple foreclosure actions or proceedings.

22. The servicer failed to comply with applicable legal requirements, including those governing the form and content of affidavits, pleadings, or other foreclosure-related documents, where such failure directly contributed to: (a) the borrower paying fees, charges, or costs, or making other expenditures that otherwise would not have been paid or made; or (b) the initiation of a foreclosure action or proceeding against a borrower who otherwise would not have met the requirements for initiating such an action.

If the independent consultants determine that financial injury occurred as a result of errors, misrepresentations, or other deficiencies, they will develop recommendations for remediating that injury. In addition to providing guidance in the form of 22 scenarios where financial injury might be present, we are finalizing additional guidance in the form of a Financial Injury Remediation Framework (Framework) which clarifies expectations as to the amount and type of compensation recommended for certain categories of harm. We expect this Framework to be released later this month.

The objective of the Framework is to ensure that remediation recommendations are consistent across the 12 OCC-supervised servicers for similarly situated borrowers who suffered similar harms. The Framework sets "baseline" standards. In cases where the independent consultant or servicer proposes to offer remediation above what is set forth in the Framework for a particular borrower or groups of borrowers, the OCC would not object. The independent consultants also have flexibility to determine whether a different type or amount of compensation may be required to address the borrower's direct financial injury under a borrower's particular circumstances. The Framework also addresses additional examples of financial injury beyond the 22 listed above, including instances where servicer errors or delays in decisions about loan modifications under HAMP resulted in borrower financial injury or require other remediation. A key feature of the remediation provisions in our Orders is that there are no caps or limits to the amount of compensation that will be paid out or remediation that will be implemented by the servicers.

The reviews are expected to take several additional months to complete. However, we expect some servicers to begin offering remediation on a rolling basis before the entire independent review is complete.

III. Other Actions Required by OCC Enforcement Orders

In addition to the IFR, our Orders direct other work to correct unsafe and unsound practices in mortgage servicing and foreclosure processing. The OCC has directed each mortgage servicer to establish systems and processes to correct identified deficiencies and to begin implementing those new processes. The OCC has received detailed action plans from all mortgage servicers describing the corrective actions to be taken to correct deficiencies in mortgage servicing activities, oversight and management of third-party service providers, activities related to Mortgage Electronic Registration Systems (MERS), management information systems, risk assessment and management, and compliance oversight. Implementation of the plans is a multi-step process first requiring development of new or revised policies and operating procedures, addition and training of staff, and development or modification of existing work-streams and processing systems as applicable. As the action plans are being implemented, the servicer's internal control functions such as internal audit, compliance and risk management will provide ongoing oversight and control, including testing and validation. Following implementation, the OCC will review, test, and validate corrective actions as necessary to determine that they are effective and sustainable. The OCC is closely overseeing the work of the servicers in this regard, and the servicers are in various stages of implementing their action plans in accordance with the complexity of the process changes required.

Mortgage Servicing

The consent orders require servicers to correct deficiencies in mortgage servicing. Plans submitted by the servicers included:

- Measures to ensure that staff members handling loss mitigation and loan modification requests routinely communicate and coordinate with staff members processing foreclosures on the borrowers' properties;
- Deadlines for responding to requests for loan modifications and other communications from borrowers, as well as deadlines for making final decisions on loan modification requests; deadlines must be at least as responsive as the timelines under HAMP;
- An easily accessible and reliable single point of contact established for each borrower throughout loan modification and foreclosure processes;
- A requirement for written communications to each borrower identifying the single point of contact and specifying how a borrower can communicate with the contact;
- A requirement that each single point of contact have access to data necessary to provide borrowers with timely, accurate, and complete information about the status of their loan modification requests and foreclosure cases;
- Measures to ensure that staff members are trained adequately about handling mortgage delinquencies, loss mitigation, and loan modifications;
- Procedures and controls to ensure that, before a foreclosure sale occurs, a final decision regarding a borrower's loan modification request (either on a trial or permanent basis) is communicated in writing to the borrower within a reasonable period and explains the reasons why the borrower did not qualify for the trial or permanent modification;
- Procedures and controls to ensure that, when a loan has been approved for modification on a trial or permanent basis, no foreclosure or further action preceding foreclosure occurs, unless the borrower defaults on the terms of the trial or permanent modification;
- Policies and procedures to enable borrowers to submit complaints about the loan modification process, denial of modification requests, the foreclosure process, or foreclosure activities that impede the pursuit of foreclosure prevention options, as well as a process for making borrowers aware of the complaint procedures;

- Procedures for promptly considering and resolving borrowers' complaints, including a process for timely communication of the resolutions;

- Policies and procedures to ensure that payments are credited promptly; that payments, including partial payments to the extent permissible under the terms of applicable legal instruments, are applied to scheduled principal, interest, and escrow before fees, and that any misapplication of borrowers' funds is corrected promptly;

- Policies and procedures to ensure that timely information about foreclosure prevention options is sent to borrowers in the event of delinquencies or defaults, including plain language notices about loan modifications and foreclosures;

- Policies and procedures to ensure that servicers properly maintain and track documents related to foreclosures and loan modifications, so that borrowers are not required to resubmit the same documents already provided, and that borrowers are notified promptly of the need for additional information; and

- Policies and procedures to consider loan modifications or other foreclosure prevention activities with respect to junior lien loans, and to factor the risks associated with such junior lien loans into loan loss reserving practices.

Each servicer has established policies and procedures for providing single points of contact to assist borrowers throughout the loan modification and foreclosure processes. Actions include the establishment of procedures for communicating information about the single points of contact to the borrowers including direct ways to reach these contacts; creation of training programs to instruct single points of contact about their responsibilities; establishment of specific organizational structures to perform these duties; and the creation of standard communication strategies for conveying information to and from borrowers. Servicers were also required to have initiated processes for establishing single points of contact and to develop supporting procedures by the end of last year. Implementation of those processes and procedures is now underway.

All servicers have implemented controls to prevent "dual-tracking" of loans to ensure no foreclosure or further legal action relating to foreclosure occurs when a borrower's loan has been approved for modification on a trial or permanent basis. Specific actions related to "dual-tracking" vary from servicer to servicer but include review at designated points before the foreclosure sale, enhanced communication between loss mitigation and foreclosure processing staff, and development and use of matrices or checklists to ensure appropriate holds are placed on further foreclosure processing when appropriate.

The OCC also expects that servicers will revise action plans to comply with any higher standards that might be required of them by the government sponsored entities (GSEs), developing national servicing standards, or other negotiated settlements or contractual agreements, including those subject to the National Mortgage Settlement. However, it is important to recognize that contractual requirements and requirements imposed by other sources and third parties, including the servicing standards of the GSEs (Fannie Mae and Freddie Mac), FHA, or the requirements of the various private pooling and servicing agreements under which servicers operate, will affect how these requirements can be implemented in practice.

Third-Party Management

The Orders require servicers to improve oversight of third-party service providers that support mortgage servicing and foreclosure activities. The servicers submitted plans in July, and work is under way to establish processes for appropriate due diligence in evaluating the qualifications of potential third-party service providers before entering into new contractual arrangements. The plans also provide for regular reviews of third-party service providers and assessment of their performance based on qualitative standards for competence, completeness, and legal compliance rather than standards based solely on the volume of foreclosures processed or the speed of processing. Additionally, the plans provide for the secure custody and accuracy of records transferred to these third parties during the foreclosure process.

Specific actions vary from servicer to servicer. Examples of actions include:

- Assessing risks associated with third-party activities to determine specific levels of oversight and activities based on identified risks.
- Establishing new policies, or enhancing existing policies, for oversight of third parties.
- Enhancing due diligence in assessing the capabilities of potential third parties.
- Establishing oversight committees to monitor the practices and activities of third parties, to implement processes to assure the quality of their work, and, if necessary, to terminate underperforming or noncompliant third parties.
- Creating procedures to track complaints about third party activities and performance.
- Scheduling and conducting on-site audits and quality assurance processes of third parties.
- Including language in service contracts with third-parties setting specific work standards.
- Periodically assessing the performance of third-party service providers, including attorneys and law firms providing foreclosure counsel, and the discontinuation of servicing contracts and agreements when appropriate.
- Improving management information systems used by third parties to ensure accuracy of records contained in, and transmitted by, those systems.

Management Information Systems

The Orders require the servicers to improve management information systems that support mortgage servicing and foreclosure processing. Each servicer has submitted a plan for the operation of its management information systems for foreclosure and loss mitigation to ensure the timely delivery of complete and accurate information to permit effective decision making regarding foreclosure, loan modification, or loss mitigation. The plans include descriptions of systems used by servicers for foreclosure and loss mitigation purposes. They also include timetables for changes or upgrades necessary to monitor compliance with legal requirements, servicing guidelines of GSEs, and requirements of the Orders. Improvements to management information systems will ensure accuracy of records and provide staffs working on foreclosures and loss mitigation efforts access to necessary and timely information provided by the borrowers.

Work is under way and includes:

- Consolidation of mortgage servicing platforms.
- Standardized and automated workflows to assist personnel with loan modification and foreclosure decisions and processing.
- Development of standardized reporting and improved quality controls.
- Implementation of case management software to provide better access to single points of contact interacting with borrowers.
- Periodic audits.
- Evaluation of requirements and documentation to ensure that management information systems meet the needs of stakeholders from mortgage servicing, loss mitigation, foreclosure processing, and MERS-related activities.
- Escalation and enhanced reporting to executives and boards of directors.

Enhancing management information systems is a continuous process. Substantive improvements have been made and will continue throughout the next year.

Risk Assessment and Risk Management

The Orders require the servicers to assess risks posed by their mortgage servicing operations and develop plans to manage those risks. Servicers have conducted their assessments and developed specific action plans to effectively mitigate or manage identified risks on an ongoing basis. Work on those plans is under way and includes:

- Conduct periodic third-party audits or self-evaluation of risks associated with mortgage servicing and foreclosure processing.
- Conduct periodic assessment of risks and develop action plans to reduce risks from specific functional areas, including loan modifications, disposition of bank-owned real estate, bankruptcy, and compliance with SCRA.
- Strengthen policy and internal guidance concerning foreclosure and loss mitigation.

- Identify specific individuals or groups accountable for compliance and operational risk associated with mortgage servicing and foreclosure practices.
- Integrate key processes to ensure consistency of policy and procedures related to foreclosure and loss mitigation activities.
- Establish additional training associated with foreclosure and loss mitigation risks.
- Develop and report key indicators to support monitoring and evaluating risk.
- Use compliance testing on a regular basis.

Implementation of risk management plans is expected to be in effect during the first quarter of 2012. Assessment and monitoring will be an ongoing servicer activity.

Compliance Committees, Compliance Programs

The Orders require a number of actions to ensure compliance with the Orders and with applicable laws and regulations. As a result, during the third quarter of 2011, the servicers set up compliance committees responsible for the development and implementation of compliance programs, action plans, policies and procedures, and strengthened operating processes to correct the deficiencies cited by the enforcement actions. At a minimum, each committee includes three members of the institution's boards of directors. The compliance committees are also responsible for reporting actions required by the Orders, and for taking corrective action for any ongoing or repeated non-compliance.

The Orders required comprehensive action plans to address compliance. Servicers submitted those plans in July, and work is under way to implement the plans. Plans addressed financial and personnel resources, organizational structure, and specific controls to ensure the affidavit, declarations, and notarization processes comply with applicable laws and regulations.

Actions vary by servicers and include:

- Changed management and leadership to ensure accountability and clarify responsibilities for mortgage servicing, foreclosure, and loss mitigation.

- Changed reporting structures to centralize oversight of mortgage servicing, foreclosure, and loss mitigation functions.

- Increased number of personnel responsible for conducting audits and dedicated to ensuring compliance, as well as for mortgage servicing, foreclosure, loss mitigation, and information technology supporting these functions.

- Implemented training programs for signers of sworn documents and notaries to emphasize the personal knowledge required and specific requirements of state law.

- Increased training requirements for customer assistance specialists, single points of contact, and compliance personnel.

- Brought previously outsourced preparation of sworn documents in-house.

- Created or revised templates for sworn documents to conform more closely with state and local laws in judicial and non-judicial foreclosure states.

- Implemented quality control processes to ensure proper completion of sworn documents, including, at some servicers, real-time monitoring by dedicated quality assurance staff.

- Established foreclosure referral checklists to verify loss mitigation efforts, bankruptcy status, and the borrower's status related to the SCRA.

- Established dedicated units to specialize in SCRA and to correct SCRA-related issues.

- Established testing of loan modification denials, sworn document completion, and regulatory compliance, as part of quality control initiatives to verify compliance with loan modification program requirements, GSE loan servicing guidelines, and federal laws including SCRA and bankruptcy.

- Established periodic evaluations by senior managers of policies, staffing, and functional performance related to mortgage servicing, foreclosure, and loss mitigation.

As work continues to improve compliance controls across the servicers, the OCC expects the servicers to complete the implementation of new processes, policies, and enhanced controls during the first part of 2012.

IV. Other Activities and Initiatives Affecting Mortgage Servicing and Foreclosure Standards

It is important to view the significant reforms and remediation resulting from our Orders in the context of other measures that have been or are in process to improve mortgage servicing standards and practices and enhance borrower protections.

Since late 2010, the OCC has been in regular communication with the U.S. Department of Justice (DOJ) and other federal agencies regarding our foreclosure-related enforcement actions and how federal and state actions pursuant to the National Mortgage Settlement relate to the types of activities covered by our Orders. For example, we adjusted certain timing requirements in the processes under our Orders at the request of DOJ, and we have continuously discussed how the detailed action plans submitted by servicers pursuant to the OCC's Orders will need to reflect any higher standards that may be required of those same mortgage servicers under that National Mortgage Settlement, particularly for mortgage servicing and foreclosure procedures. We will continue to collaborate with DOJ and other federal and state agencies to ensure that such standards are met, and that borrowers who have been harmed are appropriately and fairly remediated.

In addition to the National Mortgage Settlement standards discussed above, applicable to those four national bank servicers that participated in the settlement, it is also contemplated that, going forward, the standards of the servicers subject to the OCC's Orders will need to reflect any future uniform national mortgage servicing standards, as well as new requirements imposed by the GSEs, as applicable. The OCC also expects the servicers to comply with applicable dual track standards required under the Making Home Affordable program, as well as other applicable GSE and investor standards. The interplay of requirements from various sources can be quite complicated, and it is important to recognize that contractual requirements with investors also may determine crucial servicer actions and timing in processing foreclosures.

Development of uniform national mortgage servicing standards is an initiative that can set an improved standard for practices of all mortgage servicers, regardless of whether they are depository institutions (or affiliates) subject to federal regulation. The OCC and other federal agencies are continuing work on this project. This effort is in early stages and is strongly supported by the OCC. There is much work still to be done but it is important not to lose sight of the fact that important new standards are already being applied to the largest federally-regulated servicers as a result of the OCC's and the FRB's Orders.

As noted above, standards set by the GSEs can have important influences on mortgage servicing and foreclosure practices and timing for a substantial portion of the mortgage market today. For example, last June, Fannie Mae and Freddie Mac announced an initiative to develop uniform policies for servicing delinquent loans that will enhance and streamline outreach to delinquent borrowers and establish performance-based monetary incentives for compliance. Under these guidelines, which largely took effect October 1, 2011, a foreclosure will not be permitted on a mortgage owned or guaranteed by Fannie Mae or Freddie Mac until the servicer has conducted a formal review of the borrower's eligibility under all available foreclosure alternatives, including loan modifications, short sales, and deeds in lieu of foreclosure. Servicers will be expected to continue to help these borrowers qualify for a foreclosure alternative. Given the significance of the GSEs to the mortgage market, these new standards will be a strong influence for changes nationwide.

The FHFA's recently released 2012 "Conservatorship Scorecard" also reflects initiatives that will affect market practices and expectations in connection with loans serviced on behalf of

Fannie Mae and Freddie Mac, if not more broadly. The "Scorecard" envisions, among other things, development of a model pooling and servicing agreement, uniform servicing data collection requirements that support enhanced loan level disclosures for mortgage-backed securities, and increased transparency of servicer requirements around foreclosure timelines. One of our challenges is to coordinate these initiatives with related rulemaking initiatives of the broader group of agencies concerning uniform mortgage servicing standards.

V. Conclusion

The Orders issued by the OCC, the FRB, and the OTS last April were significant steps toward ensuring this country's mortgage servicing industry operates in a safe and sound manner and borrowers are treated fairly. As a result of these actions, more than four million borrowers involved in the foreclosure process in 2009 and 2010 have the opportunity to receive free, independent reviews of their cases. Where wrongful financial injury is identified, our Orders require remediation. In addition to the Independent Foreclosure Review, other efforts required by our Orders are well under way to correct deficiencies in mortgage servicing and foreclosure processing that our examiners identified in their reviews during the fourth quarter of 2010. Much of the work to correct identified weaknesses in policies, operating procedures, control functions, and audit processes will be substantially complete in the first part of 2012; other initiatives will continue through the balance of 2012. On November 22, 2011, the OCC released its first interim report that described the status of these other efforts, and we expect to release another interim report in the near term. OCC examiners provide ongoing oversight to this process and will continue to monitor efforts to ensure compliance with our Orders.

I appreciate the opportunity to appear before the Committee today, and will be happy to respond to your questions.

Chairman ISSA. Thank you. Ms. Killian? I am afraid you will have to pass the mics back and forth. Thank you.

STATEMENT OF SUZANNE G. KILLIAN

Ms. KILLIAN. Thanks. Chairman Issa, Ranking Member Cummings, Congressman Towns, and members of the Committee. Thank you for the opportunity to appear today to discuss the Federal Reserve's progress in implementing both the foreclosure review process as well as its progress in implementing the requirements of the enforcement actions.

Those actions were taken against 10 financial institutions in response to the patterns of misconduct and negligence related to deficient practices in residential mortgage loan servicing and foreclosure processing.

The Federal Reserve is strongly committed to ensure that past harms were mediated and proper action was taken. The Federal Reserve's enforcement actions require the servicers to retain one or more independent consultants acceptable to the Federal Reserve to conduct a foreclosure review to determine whether borrowers suffered financial injury as a result of errors, misrepresentations, or other deficiencies in the foreclosure process. Where financial injury is found, the servicers must compensate the injured borrowers. We are requiring the independent consultants to include in the review all files for particular categories of borrowers who we have determined present a significant risk of being financially injured in the foreclosure process.

To supplement the file review the enforcement actions require that the servicers implement a process for the receipt and review of borrower claims and complaints. Consequently, the servicers developed a borrowers outreach program which is intended to make eligible borrowers aware of the opportunity they have to have their foreclosures independently reviewed. Borrowers are eligible to request that their files be reviewed if their primary residence was in the foreclosure process in 2009 or 2010, whether or not the foreclosure was completed and even if they previously filed a complaint with their servicer about their foreclosure.

Additionally, to allow an adequate period to submit claims for review and redress, on February 15, 2012, the Board and the OCC extended the April 30th deadline to July 31st.

The Federal Reserve, working with the OCC, sponsored webinars to explain the process for submitting a request for review. The Board and the OCC will soon release joint guidance on how the servicers should provide remediation to borrowers for financial injury caused by the servicers' deficiencies. The guidance will illustrate the kinds of payments and other corrective measures a servicer must undertake to address specific types of financial injuries suffered by borrowers as a result of errors by the servicer. We believe that there should be transparency for the process of borrowers' remediation and a correct way to process deficiency.

On February 27 and March 8, 2012, the Board publicly released the approved engagement letters nationally. The engagement letters describe how the independent control centers will conduct the foreclosure relief. The action plans and engagement letters are appropriate because of the compelling interest in assuring the public that the pervasive and serious deficiencies found in the servicing and foreclosure processes of these institutions are being vigorously and fully remedied. We will continue to monitor on an ongoing basis the results of the independent reviewer corrective measures that are being taken by the servicers and bank holding companies it supervises.

On February 9, 2012, the Board announced monetary sanctions against 5 banking organizations totaling $766.5 million for engaging in unsafe and unsound practices in their mortgage loan servicing and foreclosure processing. The amount of the sanctions takes into account the maximum amount prescribed for unsafe and unsound practices under applicable statutory limits. In an effort to facilitate a broad settlement of related state and Federal claims, and to maximize the effectiveness of assistance provided through an integrated set of remedial programs, the board decided to act in conjunction with the comprehensive settlement between those five firms, the U.S. Department of Justice, and the state attorney general.

The Federal Reserve takes seriously its responsibility to oversee the implementation and execution of the requirements of its April 2011 enforcement actions, including the foreclosure review and other requirements described. We understand that implementing and executing those requirements effectively is critical to ensuring that the identifying deficiencies are corrected, that future abuses in the loan modification and foreclosure process are prevented, and that borrowers are compensated for financial injury they suffered as a result of errors, misrepresentations, or other deficiencies in the foreclosure process.

Thank you for the opportunity to appear before you today. I will be happy to answer any questions you may have.

[Prepared statement of Ms. Killian follows:]

Chairman Issa, Ranking Member Cummings, Congressman Towns, and members of the Committee, thank you for the opportunity to appear before you today to update the Committee on the Federal Reserve's progress in implementing both the foreclosure review process as well as its progress in implementing the requirements of the enforcement actions that the Board issued in April 2011 against 10 banking organizations. Those actions were taken in response to patterns of misconduct and negligence related to deficient practices in residential mortgage loan servicing and foreclosure processing.[1] The deficiencies were identified by examiners during reviews conducted from November 2010 to January 2011 and represented significant and pervasive failures as well as unsafe and unsound practices at those 10 institutions. Corrective actions and other measures were required by the formal enforcement actions.

My testimony focuses on the most significant requirements of these orders and on the implementation and execution of the requirements. More specifically, the testimony addresses the implementation of the requirements in the Federal Reserve's enforcement actions that each banking organization with servicing operations supervised by the Federal Reserve (a) retain one or more independent consultants acceptable to the Federal Reserve to conduct an independent review of residential mortgage foreclosure actions (the "Foreclosure Review") to determine whether borrowers suffered financial injury as a result of errors, misrepresentations, or other deficiencies in the foreclosure process; (b) submit an engagement letter acceptable to the Federal Reserve that describes how each independent consultant retained by the institution and approved by the Federal Reserve will conduct the Foreclosure Review; (c) establish, in connection with the Foreclosure Review, a process for the receipt and review of borrower claims and complaints (the "Borrower Outreach Program"); and (d) submit specific plans acceptable to the Federal Reserve

[1] The 10 banking organizations included four organizations with residential mortgage servicing operations supervised by the Federal Reserve, as well as the parent holding companies of banks with servicing operations supervised by the Office of the Comptroller of the Currency.

designed to correct practices that resulted in servicer errors and to prevent future abuses in the loan modification and foreclosure processes.

This testimony also addresses the requirements in the Federal Reserve's enforcement actions that parent holding companies submit plans acceptable to the Federal Reserve to improve holding company oversight of residential mortgage loan servicing and foreclosure processing conducted by bank and nonbank subsidiaries.

The Foreclosure Review and Independent Consultants

The Federal Reserve's enforcement actions require the servicers to retain one or more independent consultants acceptable to the Federal Reserve to conduct the Foreclosure Review to determine whether borrowers suffered financial injury as a result of errors, misrepresentations, or other deficiencies in the foreclosure process. Where financial injury is found, the servicers must compensate the injured borrowers pursuant to a remediation plan that is acceptable to the Federal Reserve.

In determining the acceptability of consultants, the Federal Reserve closely scrutinized their independence. Importantly, the Federal Reserve reviewed whether the consultant currently provides or had previously provided advice to the banking organization regarding its foreclosure practices, opinions, or actions that may have contributed to the deficiencies identified by examiners during their reviews conducted from November 2010 to January 2011. This determination was made to ensure that the consultant would not review any action or opinion previously recommended by the consultant to the banking organization. We will continue to monitor the Foreclosure Review process to make sure that the consultants who were accepted act independently.

The Federal Reserve orders require the servicers to review the files of borrowers whose primary residence was in the foreclosure process of the servicer in 2009 or 2010, whether or not the foreclosure was completed.

At this time, we are requiring the independent consultants to include in the review all files for particular categories of borrowers who we have determined present a significant risk of being financially injured in the foreclosure process. Any borrower who falls into any one of those categories must receive an independent foreclosure review. The categories for mandatory review include all mortgages in the mortgage foreclosure process in 2009 or 2010 involving members of the military who were covered by the Servicemembers Civil Relief Act. It also includes all borrowers who had previously filed complaints with the servicers about foreclosure actions that were pending during 2009 or 2010. High-risk files involving borrowers in bankruptcy will also be reviewed. We are also requiring review of all files where a foreclosure went forward when the borrower was current on a trial or permanent modification and when the borrower's completed application for a modification had not been acted on. Other files outside of these categories must be reviewed on a sampling basis to detect if errors, misrepresentations, or deficiencies occurred. Going forward, we may determine that additional file reviews are appropriate.

The Borrower Outreach Program

The Federal Reserve's enforcement actions require that each banking organization with servicing operations supervised by the Federal Reserve implement, in connection with the Foreclosure Review, a process for the receipt and review of borrower claims and complaints. We view this Borrower Outreach Program and the submission by borrowers of requests for review as critical to ensuring that borrowers who suffered financial injury are identified and compensated for financial injury they suffered as a result of errors, misrepresentations, or other deficiencies in the foreclosure process.

The Borrower Outreach Program was first announced on November 1, 2011, and is intended to make eligible borrowers aware of the opportunity they have to have their foreclosures independently reviewed as part of the Foreclosure Review. Borrowers are eligible to request that their files be reviewed if their primary residence was in the foreclosure process in 2009 or 2010, whether or not the foreclosure was completed. Borrowers are eligible to request a review even if they previously filed a complaint with their servicer about their foreclosure.

Information about the review process, including how to request a review as part of the Foreclosure Review, has been provided in mailings to borrowers who may be eligible for a review. The servicers have completed mailings to all 4.3 million borrowers eligible to request a review. By using required measures, such as skip tracing (collecting information about an individual from various sources to determine the individual's location), to identify borrowers who may have moved, these mailings have reached an estimated 95 percent of eligible borrowers.

The servicers also have established a toll-free number that borrowers can call to get more information about the review as well as a website that borrowers can access for information and use to submit a request for review of their foreclosure.[2]

Additionally, servicers have conducted an advertising campaign to make borrowers aware of the opportunity to request reviews of their foreclosures as part of the Foreclosure Review. The Federal Reserve is monitoring the servicers it supervises to make sure they are

[2] To apply for a review, individuals may call 888-952-9105, Monday through Friday from 8 a.m. to 10 p.m. (ET) and Saturday from 8 a.m. to 5 p.m. The servicers' website is www.IndependentForeclosureReview.com.

effectively doing everything they can to find borrowers who are potentially eligible for the Foreclosure Review.

The Federal Reserve is working with the Office of the Comptroller of the Currency (OCC) in overseeing the development and operation of the Borrower Outreach Program. The regulators have also considered input from the independent consultants, servicers, and consumer advocacy groups on ways to increase borrowers' awareness of and participation in the Foreclosure Review process.

To help ensure that borrowers who have experienced financial injury have an adequate period to submit claims for review and redress, on February 15, 2012, the Board and the OCC extended the April 30 deadline for requesting a foreclosure review to July 31, 2012.[3] In addition, on February 29 and March 6 of this year, the Federal Reserve, working with the OCC, sponsored webinars for housing counselors to explain the process for submitting a request for review under the Borrower Outreach Program, so that the counselors can more effectively assist borrowers who want to request a review. Other efforts aimed at improving participation by injured borrowers are also being considered.

We emphasize that *any borrower whose primary residence was in the foreclosure process in 2009 or 2010 can have his or her file included in the Foreclosure Review simply by submitting a claim or complaint pursuant to that program.*

Guidance for Providing Remediation

The Board and the OCC will soon release joint guidance on how the servicers subject to the foreclosure enforcement actions should provide remediation to borrowers for any financial injury caused by the servicers' deficiencies in their servicing and foreclosure processes. Under

[3] The extension of the deadline for requesting a foreclosure review does not change the timing of the review and remediation of requests for review that have already been received, which is occurring on an ongoing basis.

these enforcement actions, servicers are required to prepare and implement an acceptable plan to remediate or otherwise correct any financial injuries identified in the course of the Foreclosure Review. The guidance to be released by the Board and the OCC will illustrate the kinds of payments and other corrective measures a servicer must undertake to address specific types of financial injuries suffered by borrowers as a result of errors by the servicer.

The Engagement Letters

The Federal Reserve's enforcement actions require the servicers to each submit an engagement letter to the Federal Reserve for approval that describes how the independent consultants retained by the servicer and approved by the Federal Reserve will conduct the Foreclosure Review. The Federal Reserve has approved all but one of those engagement letters. Because our review of the letters contemplates more extensive criteria for conducting the Foreclosure Review than those that apply to the national bank servicers, finalization of the engagement letters has required more time to complete. The engagement letter of the remaining servicer is expected to be approved shortly.

The Action Plans

The Federal Reserve's enforcement actions require that each banking organization with servicing operations supervised by the Federal Reserve submit specific plans acceptable to the Federal Reserve designed to correct practices that resulted in servicer errors and prevent future abuses in the loan modification and foreclosure process. Each servicer regulated by the Federal Reserve must, among other things, submit specific plans that:

- ensure there is adequate staff to carry out residential mortgage loan servicing, loss mitigation, and foreclosure activities, and conduct periodic reviews of the adequacy of staffing levels to ensure that levels remain adequate;

- improve training of staff involved in residential mortgage loan servicing, including by requiring that training be conducted at least annually;
- strengthen coordination of communications with borrowers throughout the loss mitigation and foreclosure processes by providing such borrowers the name of the person at the servicer who is their primary point of contact;
- require that the primary point of contact has access to current information and personnel sufficient to timely, accurately, and adequately inform the borrower about loss mitigation and foreclosure activities;
- address dual tracking by ensuring that foreclosures are not pursued once a mortgage has been approved for modification, unless repayments under the modified loan are not made;
- consider loan modification or other loss mitigation activities with respect to junior-lien loans owned by the servicer, where the servicer services the associated first-lien mortgage and becomes aware that the first-lien mortgage is delinquent or has been modified;
- establish robust controls and oversight over the activities of third-party vendors that provide to the servicers various residential mortgage loan servicing, loss mitigation, or foreclosure-related support, including local counsel in foreclosure or bankruptcy proceedings; and
- strengthen programs to ensure compliance with state and federal laws regarding servicing, generally, and foreclosures, in particular.

In addition, the enforcement actions issued in April 2011 require the parent holding companies to submit plans acceptable to the Federal Reserve to improve holding company oversight of residential mortgage loan servicing and foreclosure processing conducted by bank and nonbank subsidiaries.

The action plans required by the April 2011 enforcement actions have been approved.

Public Release of Approved Engagement Letters and Action Plans

On February 27 and March 8, 2012, the Board publicly released the approved engagement letters and action plans.[4] We believe that release of the action plans and engagement letters is appropriate because of the compelling interest in assuring the public that the pervasive and serious deficiencies found in the servicing and foreclosure processes of these institutions are being vigorously and fully remedied. Release of this information will increase accountability and public confidence in the actions being taken by the institutions to correct the deficiencies in past practices.[5]

The Federal Reserve will continue to monitor, on an ongoing basis, the corrective measures that are being taken by the servicers and bank holding companies it supervises, as required by the orders. Additionally, each institution is required to submit quarterly reports to the Federal Reserve detailing the measures it has taken to comply with the enforcement action and the results and progress toward meeting those measures. The Federal Reserve will closely review the servicers' and bank holding companies' progress reports and will also conduct examinations to ensure that the plans are implemented as approved and that the changes are effective. The Federal Reserve will take appropriate supervisory action including a possible

[4] These action plans and engagement letters are available on the Board's website at www.federalreserve.gov/newsevents/press/enforcement/20120227aletters.htm and www.federalreserve.gov/newsevents/press/enforcement/20120308b.htm, respectively.

[5] A small amount of information in the action plans and engagement letters has not been disclosed to protect confidential proprietary information of the institutions involved, the personal privacy of their personnel, and limited information about previous examinations and reviews.

cease and desist order or monetary penalties to address any inadequacies or violations of the enforcement actions.

Monetary Sanctions

On February 9, 2012, the Board announced monetary sanctions against five banking organizations totaling $766.5 million for engaging in unsafe and unsound practices in their mortgage loan servicing and processing.[6] These monetary sanctions are based on the same deficiencies that the servicers were required to correct through the action plans under the April 2011 enforcement actions. The amount of the sanctions takes into account the maximum amount prescribed for unsafe and unsound practices under applicable statutory limits, the comparative severity of each institution's misconduct, and the comparative size of each institution's foreclosure activities.[7]

In an effort to facilitate a broad settlement of related state and federal claims, and to obtain an agreement that will maximize the effectiveness of assistance provided through an integrated set of remedial programs, the Board decided to act in conjunction with the comprehensive settlement between those five firms, the U.S. Department of Justice, and the state attorneys general announced on February 9. The total settlement amount includes the Board's

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[6] The Board assessed monetary sanctions against the parent holding companies of the five largest mortgage servicers supervised by federal banking regulators for failure to appropriately oversee their subsidiaries' mortgage loan servicing and foreclosure processing operations. Those parent holding companies are Ally Financial, Inc.; Bank of America Corp.; Citigroup Inc.; JPMorgan Chase & Co.; and Wells Fargo & Co. The Board also assessed monetary sanctions against the two mortgage servicers owned by Ally Financial and JPMorgan Chase that are subject to the Board's jurisdiction for the servicers' failures. Those servicers are GMAC Mortgage, LLC, a subsidiary of Ally Financial, Inc., and EMC Mortgage Corporation, a subsidiary of JPMorgan Chase & Co.

[7] The amounts of the monetary sanctions assessed by the Board against these institutions are as follows:

Institution	**BHC Penalty**	**Servicer Penalty**	**Total**
Bank of America	$175.5 million		$175.5 million
Wells Fargo	$87 million		$87 million
JPMorgan Chase	$106.5 million	$168.5 million	$275 million
Citigroup	$22 million		$22 million
Ally Financial	$17 million	$190 million	$207 million

monetary sanctions. Under the terms of the Board's monetary sanctions against these firms, each firm must pay to the Board, for remittance to the U.S. Treasury, the amount imposed by the Board on the firm that the firm has not expended within the next two years in providing borrower assistance or remediation in compliance with the federal-state settlement agreement or on a program acceptable to the Federal Reserve. This approach also accomplishes the purpose of civil money penalties -- by ensuring that each firm will pay a fine to the Board, for remittance to Treasury, in the event that the firm does not fully satisfy the fine through a program acceptable to the Board or under the federal-state settlement agreement. The Federal Reserve will closely monitor these firms' expenditures on assistance and remediation as well as their compliance with the requirements of the monetary sanctions issued by the Board.

Although the Federal Reserve has not issued monetary sanctions at this time against the other eight institutions that it supervises and that are also subject to enforcement actions for unsafe and unsound practices in their loan servicing and foreclosure processing, the Federal Reserve believes that monetary sanctions in those cases are appropriate and plans to announce monetary penalties against them.

Conclusion

The Federal Reserve takes seriously its responsibility to oversee the implementation and execution of the requirements of its April 2011 enforcement actions, including the Foreclosure Review and other requirements described above. We understand that implementing and executing those requirements effectively is critical to ensuring that the deficiencies identified by examiners during reviews conducted from November 2010 to January 2011 are corrected; that future abuses in the loan modification and foreclosure process are prevented; and that borrowers are compensated for financial injury they suffered as a result of errors, misrepresentations, or other deficiencies in the foreclosure process.

Thank you for inviting me to appear before you today. I would be happy to answer any questions you may have.

Chairman ISSA. Thank you. Mr. Pollard.

STATEMENT OF ALFRED M. POLLARD

Mr. POLLARD. Mr. Chairman, Ranking Member Cummings, Mr. Towns, and Mr. Platt, thank you for the opportunity to address a very, very serious and critical problem. The Federal Housing Finance Agency oversees Fannie Mae, Freddie Mac, and the Federal Home Loan banks. These firms collectively have nearly $6 trillion in mortgage-related business. Since the onset of the financial crisis these institutions have maintained operations and provided stability in financing to the vast majority of homeowners. This is an ongoing, important and often un-talked about fact.

At the same time, it is altogether appropriate that we focus on those of our citizens who are distressed. Fannie Mae and Freddie Mac have been very active in loss mitigation efforts at the same time that they are operating the conservatorships with the support of taxpayers. The goal has been to avoid foreclosures and to keep homeowners in their homes. While the portfolios that I will describe from Fannie and Freddie were performing better than many large institutions, we remain vigilant in those efforts. I will briefly describe who they are in line.

As to loan modifications on a nationwide basis, Fannie and Freddie own or guarantee 60 percent of the mortgages outstanding, but they account for a much lower proportion of serious delinquent loans, roughly 29 percent. Data from the Office of the Comptroller of the Currency show that in the 2 years ending in the third quarter of 2011, modifications on Fannie and Freddie loans accounted for 40 percent of all loan modifications.

The Home Affordable Refinance Program, Fannie Mae, and Freddie Mac are at the forefront of refinance activity for current borrowers. They have completed more than 10 million refinances, accounting for 63 percent of refinance originations over that period.

With respect to underwater borrowers, Fannie and Freddie account for less than half of underwater borrowers compared to their 60 percent share of total mortgages services. But they were the only institutions that currently operate a large-scale refinancing program for underwater borrowers. We have completed over 1 million refinances of the Home Affordable Refinance Program and 1.9 million streamlined refinances. In October 2011, we announced additional changes to the program.

I do note a very significant development, which is the Servicing Alignment Initiative crafted by Fannie and Freddie under FHFA direction. This established new borrower communication requirements for servicers to ensure that borrower outreach occurs at the earliest stage of delinquency when foreclosure prevention measures are most effective. Under the SAI, servicers are expected to evaluate borrowers contemporaneous for the full range of loss mitigation options simultaneously. They are obligated to collect information, access their eligibility for a modification before a loan is referred for foreclosure, and foreclosure referrals may only occur after an independent review of the case to ensure that the borrower was, in fact, considered for an alternative to foreclosure.

There are significant and substantial incentive payments to servicers to motivate and to meet the aggressive timelines in offering loan applications, and the Treasury Department has acknowledged the benefit of the standard modification approach and amalgamating this approach. We are also taking initiatives on real estate loans.

Mr. Chairman and members of the committee, I do want to highlight another issue, however, today, and that is an emerging problem as we look out over the past 5 years.

States and localities face significant challenges from the housing crisis: homeowners losing their homes, erosion of the tax base, and curtailment of local services and, in many areas, blighted neighborhoods. The response, however, to this has been a rash of local laws and ordinances that while intended to assist homeowners, result in unintended consequences and fail, in many instances, to achieve their goals. Laws that stretch out the period for legitimate foreclosures after legitimate efforts have been made to avoid foreclosure and keep homeowners in their homes result in no added benefit for the homeowners and produce harm to the very housing finance on which those homeowners acquired their loans.

Simply put, stretching the time period 5-, 600 here in the State of New York is the longest in the Nation's by 1,019 days to undertake a foreclosure has a consequence of separating a continuing relationship.

This is my testimony and I stop at this point, Mr. Chairman.

[Prepared statement of Mr. Pollard follows:]

Mr. Chairman, Ranking Member Cummings, Mr. Towns and committee members, the Federal Housing Finance Agency (FHFA) appreciates this opportunity to participate in this field hearing on a pressing matter of local and national consequence—handling of defaulted and foreclosed properties. Brooklyn and New York City have not been immune to the impact of the housing crisis and the opportunity to meet here with you and with local government and civic leaders is important for FHFA.

I. Federal Housing Finance Agency

The Federal Housing Finance Agency oversees Fannie Mae, Freddie Mac and the Federal Home Loan Banks. These firms collectively have nearly $6 trillion in mortgage-related business. Fannie Mae and Freddie Mac have been placed into conservatorships and are run as going concerns for the limited purposes as set forth in federal statute.

The secondary market infrastructure they represent has been the topic of great discussion, but the focus today is on efforts to assist homeowners. That has been a more active area for Fannie Mae and Freddie Mac (the Enterprises) than the Federal Home Loan Banks given the role of the Enterprises as credit guarantors.

II. Enterprise Actions on Foreclosure Prevention

FHFA has been active in supporting loss mitigation efforts by the Enterprises as they operate in conservatorships with the support of taxpayers. Key to those efforts have been initiatives to avoid foreclosure and the loss of homes. Additionally, Enterprise efforts have focused increasingly on the inventory of foreclosed properties and the pressure these units place on markets. While Enterprise portfolios are performing better than those of large national banks, the Enterprises and FHFA remain vigilant in pursuing foreclosure prevention devices.

1. Loan Modifications. The Enterprises have been leading the effort on foreclosure prevention since they entered conservatorships. On a nationwide basis, Fannie Mae and Freddie Mac own or guarantee 60 percent of the mortgages outstanding, but they account for a much lower proportion of seriously delinquent loans, roughly 29 percent. While the Enterprises take a leadership role in foreclosure prevention, similar actions from the holders of the other 70 percent of seriously delinquent loans are crucial to a successful outcome.

The Enterprises account for about half of all Home Affordable Modification Program (HAMP) permanent modifications. Data from the Office of the Comptroller of the Currency (OCC) show that in the two years ending in the third quarter of 2011, modifications on Fannie Mae and Freddie Mac loans accounted for 40 percent of all loan modifications. Between HAMP modifications and their own proprietary loan modifications, Fannie Mae and Freddie Mac have completed over one million loan modifications since the fourth quarter of 2008. These modifications typically lowered borrower payments by substantial amounts and have yielded positive results for homeowners.

The performance of Enterprise modified loans has improved relative to Enterprise loan modifications before HAMP was fully implemented and is better relative to contemporaneous modifications of Federal Housing Administration (FHA) or Veterans' Administration (VA) loans and loans held by private investors. For Enterprise loans modified throughout 2010, fewer than 20 percent of the loans had missed two or more payments after nine months.

Some observers have cited declines in the number of loan modifications completed by Fannie Mae and Freddie Mac over the past year or so as evidence of a lack of support for foreclosure prevention. In fact, this trend is applicable to all investors in mortgages as illustrated by the OCC's report. The quarterly number of loan modifications peaked in the second and third quarters of 2010 for all investors in mortgages. A contributing factor to this trend may be that the initial backlog of eligible borrowers in 2009 has been addressed to some extent.

2. Moving Up the Time Frame for Assistance—Servicing Alignment Initiative. The Servicing Alignment Initiative (SAI), crafted by Fannie Mae and Freddie Mac under FHFA direction, established new borrower communication requirements for servicers to ensure that borrower outreach occurs at the earliest stage of delinquency, when foreclosure prevention measures are most effective. Furthermore, under SAI, Fannie Mae and Freddie Mac made clear that servicers are expected to evaluate borrowers for the full range of loss mitigation options simultaneously. This allows the borrower and servicer to pursue and lock in an alternative to foreclosure as quickly as possible. Servicers are obligated to collect information from borrowers and assess their eligibility for a modification well before a loan is referred for foreclosure, and foreclosure referrals may only occur after an independent review of the case to ensure that the borrower was, in fact, considered for an alternative to foreclosure.

To encourage loan modifications, the Enterprises offer substantial incentive payments to servicers to motivate them to meet the aggressive timelines for offering loan modifications, be they HAMP or Enterprise standard modifications. The payments cover costs for engaging in more borrower outreach, such as "door-knocking" and other face-to-face techniques. The SAI improvements represent a highly targeted approach, the goal of which is to refocus the servicer resources and attention on moving all borrowers into alternatives to foreclosure, quickly, efficiently and aggressively.

Furthermore, under the SAI, the Fannie Mae standard modification program was adopted by Freddie Mac, again, to ensure that borrowers had easy access to a simple and straightforward modification option. The Treasury Department acknowledged the benefit of this approach, creating a Tier 2 program under the HAMP that is modeled on the Enterprise program. Data reflects that more borrowers benefited from Enterprise modification programs than from HAMP, so the HAMP program change should likewise assist more households access a modification.

3. Home Affordable Refinance Program (HARP). Fannie Mae and Freddie Mac are at the forefront of refinance activity for current borrowers. Since April 1, 2009, the Enterprises have completed more than 10 million refinances, accounting for 63 percent of refinance originations over that period. With respect to underwater borrowers, Fannie Mae and Freddie Mac account for less than half of underwater borrowers compared to their 60 percent share of total mortgages serviced. However, Fannie Mae and Freddie Mac are the only institutions that currently operate a large-scale refinancing program for underwater borrowers. Since the inception of the Home Affordable Refinance Program (HARP), the Enterprises have completed over one million refinances. Further, since inception of HARP, Fannie Mae and Freddie Mac have completed 1.9 million streamlined refinances that expedited the refinance process for borrowers.

HARP was designed in 2009 to allow borrowers with loans backed by Fannie Mae and Freddie Mac, whose loan-to-value (LTV) ratios had increased as a result of declining home values, a refinancing option that did not require new or additional mortgage insurance coverage. In October 2011, FHFA announced a set of changes to HARP meant to enhance access to the program.

The original program allows lenders to qualify borrowers using a very streamlined underwriting process, relying on the borrower's payment history as an indication of capacity and willingness to repay the new loan. While this streamlined underwriting approach is available for most borrowers with loans backed by Fannie Mae and Freddie Mac, those with the highest LTV ratios stand to benefit most because they have fewer or no other refinance options available to them. HARP focuses on these borrowers with home LTV ratios greater than 80 percent.

To enhance further borrower participation in the program, FHFA and the Enterprises engaged with market participants to assess and streamline program operations. The research showed that a variety of operational and risk mitigation measures put in place by program participants to control for and limit a transfer of risk from one party to another could be revised. By working through the issues with a cross-section of market participants, FHFA and the Enterprises were able to create an environment where all parties were willing to accept some degree of risk and to streamline program requirements and operations in a way that was mutually beneficial.

In the end, the set of policy changes announced by FHFA in October of last year were fairly simple– a) extend the program sunset date to December 31, 2013, to provide lenders with more time to execute against the more liberal program terms; b) provide lenders with additional relief from representations and warranties to provide comfort that the Enterprises would not pursue repurchases for defects in original loan files; c) transmit property value data to lenders to use when originating the new loans, limiting the need for appraisals; d) reduce the loan-level pricing adjustments for all borrowers and eliminate them altogether for borrowers who choose mortgage terms of 20 years or less, a product option that reduces risk to the Enterprises and helps a borrower build equity faster; and e) remove the loan-to-value cap, previously set at 125 percent. The program modifications took effect on December 1, 2011 for those lenders who were able to update and implement quickly; for most in the industry, including the Enterprises, implementation will continue through the next few months.

In exchange for these program changes, lenders and mortgage insurance companies agreed to remove their own restrictions and overlays, to offer the program in a manner that is consistent with the parameters set out by the Enterprises. This agreement across the industry was unprecedented and the participation and support of the industry is most valuable. Already many of the largest lenders are seeing tremendous borrower interest and an increase in HARP volume in the upcoming reports is expected.

4. Real Estate Owned Initiative. At the other end of the foreclosure process is addressing real estate owned following foreclosures. A backlog of these properties can affect the housing market. The Enterprises are evaluating alternative methods for selling Real Estate Owned (REO) in ways that produce value for taxpayers and contribute to improved housing market stability. FHFA has announced the first transaction in its REO Initiative pilot program. This transaction includes approximately 2,500 properties, divided into eight sub-pools by geographic area. Information on the initial group of properties in each location is available on FHFA's web site.

Prequalified investors submit applications to demonstrate their financial capacity, relevant market experience, and specific plans for purchasing pools of foreclosed properties with the requirement to rent the purchased properties for a specified number of years. Future transactions will also be targeted to these types of markets, where the supply of homes for sale is greater than the demand from homebuyers and where demand for rental housing is strong. The pilot is not intended to be a national bulk sale program. This is a targeted effort focused on markets with a large number of foreclosed properties and where local market conditions suggest a possible benefit from this approach.

The number of properties available for sale by Fannie Mae and Freddie Mac represents only a fraction of the total supply that depresses home values in certain affected markets. The existing retail sales strategy at both companies works well for moving properties into the hands of new owner-occupants at close to market values. However, the REO Initiative tests to see if the broader set of market conditions can be assisted with pilot programs that could serve as models to be replicated by other market players and in differing market environments.

In addition to this pilot work, which focuses on moving groups of properties, both companies are looking for ways to enhance their existing retail sales strategies, re-examining the programs available for homebuyers and for small investors. The Enterprise retail execution has been very successful to date. FHFA's primary goal will continue to be selling properties first to homebuyers who will use them as their primary residences or non-profits that include homes in mission-oriented activities. FHFA also seeks to enhance the opportunity for smaller-scale investors to bid on properties and obtain financing, should initial efforts to market the properties to owner-occupants fail.

5. Actions in New York. The regulated entities have been active here in New York. Let me detail just a few of their efforts to support homeowners and to avoid foreclosures.

The Federal Home Loan Bank of New York works to support the financial institutions that serve Brooklyn communities. Brooklyn itself is home to seven bank members and 32 bank members operate 163 branches here in Brooklyn. The New York Bank has supported first time homebuyers through its First Home Club, which provides down payment and closing costs assistance through a matching program for those with incomes at below 80% of the median. Participants must complete homeownership counseling with local counselors. Over 133 new homeowners have come through the program and foreclosures on program loans are at a low .54%. The New York Home Loan Bank's Affordable Housing Program has been very active in Kings County with grants creating or preserving 2446 affordable homes and generating an estimated $521 million in total development funds for neighborhoods across Brooklyn. One of these grants in 2009 was to Concern for

Independent Living, a program that included conversion of a vacant lot into a 65 unit supportive housing residence.

Fannie Mae and Freddie Mac have been steady supporters of the New York City housing market and have made strong foreclosure prevention efforts. Since 2009, over 60,000 modifications have occurred in the metropolitan area, with several thousands of these here in Brooklyn. Short sales or deed in lieu transactions have been in the range of 5500 during this time period, again helping to avoid foreclosures. Freddie Mac refinanced 160,000 loans since 2009 with 9500 being made in Brooklyn. Fannie Mae refinanced 385,000 mortgages in the New York area, with 23,000 being in Brooklyn. Freddie Mac has been active in borrower outreach programs, participating from 2007 through March of this year in over sixty consumer events, two military events and fifteen industry events to educate and assist homeowners, military personnel and industry professionals on working with foreclosure avoidance programs. Fannie Mae's First Look Program provides potential owner-occupants and non-profits an exclusive 15 day period to bid and purchase foreclosed properties before they are made available to investors. The Enterprise has worked with Restoring Urban Homes in the five boroughs to maintain affordable housing for working class families.

As to multifamily housing, Fannie Mae has some $2.4 billion in funding for almost 57,000 units in Brooklyn with the vast majority, 85 percent, providing housing for borrowers at or below the 80 percent area median income; the 2012 transaction for 55 Pierrepont provided 189 units for families at or below 60 percent of area median income. Fannie Mae works with the NYC Department of Housing Preservation and Development to monitor the physical and financial health of multifamily units and to assure proper maintenance. Fannie Mae and Freddie Mac have participated in the Treasury Department's New Issue Bond Program that helps provide financing for new construction and housing preservation. In Brooklyn, the Enterprises helped provide financing for development by the NYC Housing Development Corporation, adding or preserving 1065 rental housing units since 2010. These include Gateway Elton Street and Navy Green RI, the Green Avenue Senior Citizens, CABS Housing and Kent Village.

III. Needed Review— State and Local Regulation of Defaults and Foreclosures

Clearly, states and localities face significant challenges from the housing crisis—homeowners losing their homes, erosion of the tax base and resulting curtailment of local services and, in many areas, blighted neighborhoods. The response to this has been a rash of local laws and ordinances that while intended to assist homeowners, result in unintended consequences and fail, in many instances, to achieve their goals. In short, many state laws that stretch out the period for legitimate foreclosures—after every effort is made to avoid foreclosure and to keep homeowners in their homes—result in no added benefit for the homeowner and produce harm to the housing finance system and to neighborhoods.

It would be very valuable for states and localities to pause in their passage of rules that may create impediments to smooth foreclosures and to review the balance between homeowner protections and the movement to efficient and professionally-undertaken foreclosures. Simply permitting homeowners to stay in their homes for five or six hundred days or longer while not paying their mortgages, costs neighborhoods, costs lenders and, ultimately, costs taxpayers and future borrowers.

1. State and Local Actions. Fundamentally, real estate law remains local in nature. There are exceptions where federal statutes exist, but much of the time state laws address defaults on mortgages and the foreclosure process.

Two concepts are central to foreclosures— mortgage or deed of trust and judicial or non-judicial state processes. In a deed of trust, the homeowner agrees to the right of a creditor to act against the property and this predominates in non-judicial states. With a mortgage, the creditor must proceed against the property and this usually requires a judicial process.

Laws vary in non-judicial states and in judicial states. In judicial foreclosure states, the variances may be larger as each judge (even judges in the same jurisdiction) may determine to interpret the terms of state law and of procedural rules differently.

In non-judicial foreclosure states, the actual time period from foreclosure referral to foreclosure sale (assuming the four month default period already has passed) averages nationally somewhere over 250 days; in judicial foreclosure states, the time period is closer to 350 days. After foreclosure, the servicer must sell the home, which can add another four to six months to the process if no eviction is required. In short, foreclosures may represent nearly five hundred days of losses and, in some states, the numbers are higher, dramatically higher— well over a 1000 days in some situations. During all of this time, a homeowner may provide no payments to the creditor and no payments of other housing-related obligations. In the case of the Enterprises, losses flow to the taxpayer.

Most servicers do not act on foreclosure until after a homeowner is 120 days in default. Under the Servicing Alignment Initiative mentioned earlier, servicers of Enterprise loans must demonstrate efforts to assist troubled borrowers in the first 120 days and, after that point, must have those efforts independently reviewed within the servicer's organization before a loan may be referred for foreclosure. Once the foreclosure process begins, the Enterprises require the servicer to continue to provide an opportunity to cure; this aligns with the preferred option of servicers and lenders to keep the homeowner in the home. In the end, there must be some likelihood that the homeowner can renew meeting their obligations, if necessary with a loan modification or to avoid foreclosure through a short sale or other avoidance of a foreclosure; if not, then foreclosure is appropriate.

Core state laws on foreclosure center on the process of moving title to a property from a homeowner to another party who has a claim on the property, such as a mortgagee or other lienholder, including a city. At the end of process, the home in almost all instances is sold. Throughout the process, homeowners are protected against improper actions by lienholders and, in some states, even have the right to redeem properties if they can pay off outstanding debts after foreclosure is completed.

State and local officials have been very active in adding to or amending laws related to foreclosures or servicing of mortgages. By one estimate, since 2009, state legislators have introduced over 550 bills in the servicing arena; other estimates run higher. For example, state legislatures have considered bills that would create new or higher foreclosure-filing fees, extend foreclosure timelines, require registration of mortgage assignments and mandate foreclosure mediation. Legislation in these areas can have detrimental consequences for the mortgage finance system, housing markets and for borrowers.

As a result of these changes, various types of delays and problems have emerged in the foreclosure process, including the following:

-- differences between judicial and non-judicial states, differences between judicial states, differences between non-judicial states and even differences within a state (as well as use of bankruptcy filings) raise problems for carrying out foreclosures;

-- states have added new procedures, such as mediation programs, in many cases without appropriate safeguards that mandate good faith participation and maintaining the overall foreclosure timeline should mediation fail; such mediation programs appear to ignore the accelerated efforts to provide homeowners relief provided by the Servicing Alignment Initiative;

-- states have additional types of priority liens that must be paid out of any foreclosure sale to a state or locality and thereby affect the return to the lender and investor; these additions are not prospective to mortgages made after enactment, but apply to existing mortgages, thereby altering the contract returns that investors and lenders relied upon at the time of their credit extension or investment;

-- state and localities have expanded their vacant property ordinances with new requirements and fees that encumber and delay foreclosures as well as add to the costs borne by investors and lenders and, in many cases, other taxpayers; and,

-- states have added bonding and other requirements and charges to undertake foreclosures that are far in excess of any benefits provided to the lender or investors.

In sum, both the substance of laws and the volume and layering of legal requirements contribute to the problems for orderly and less costly foreclosures.

Some examples are in order.

In the area of mediation, Washington, D.C. has provided a mediation program prior to foreclosure that can extend up to 132 days; it involves two 120 minute mediation sessions over that time frame. If a homeowner was considered for modifications or short sale, the value of the mediation, including its costs, is questionable as to any different outcome.

Similarly, New York requires settlement conferences for foreclosures to proceed. Because of frequent postponements, each with an average 45 day time frame, these conferences have added to delays that may approach six months or a year. In some instances, the conferences have proceeded over such a long time that information brought forward by borrowers is simply stale and the process must begin again. Where conferences have been completed, the backlog of cases and limited judicial resources are creating delays in obtaining Orders of Reference and Judgments of Foreclosure and Sale. In part, these problems reflect that many state-mandated requirements, such as mediation, may lack adequate processes, procedures and staffing. On February 14, 2012, the Chief Judge of the State of New York, the Honorable Jonathan Lippman, who supports settlement conferences, reported reforms were underway to reform the process with "no more excuses, no more delays" and that this would "improve the outcomes for lenders as well as borrowers."

In the area of new charges, Chicago, Illinois has an ordinance creating a $500 registration fee for vacant properties for which mortgagees do not have the right of ownership. Thus, the mortgagee could face legal liabilities to a returning homeowner and a registration fee that is in reality a tax.

In the area of bonding, Worchester, Massachusetts has an ordinance requiring a $5,000 bond be posted at the time of a foreclosure to assure property maintenance. If the property is maintained by the servicer, then the bond is returned, minus an administrative charge, anticipated to be a $500 fee, used to fund expenses for inspecting "other such buildings." Albany has an ordinance to require a minimum $10,000 bond for vacant buildings.

In the area of priority liens, the state of Nevada has adopted a law that increased the required advancement of unpaid homeowner association fees by a mortgagee from six months to nine months. Added to the law, however, was a priority lien for "fees." This means that legal fees to collect unpaid dues from a homeowner would be placed upon the mortgagee even if no dues were recovered and the legal fees exceeded unpaid dues.

In the area of extraneous charges, news reports described the Southern Nevada Water Authority as floating the idea of placing a lien on all foreclosed properties to collect an infrastructure fee for water hookups; a purchaser would have to pay the back fees to maintain water service.

In the area of timelines and delays, according to RealtyTrac's 2011 year-end foreclosure report, the average foreclosure process in New York has increased 37 percent from the third quarter of 2010 to the fourth quarter of 2011. The process took an average of 1019 days to complete, the longest of any state. This does not include the time a property is in default or the time required to sell a property that has concluded foreclosure; that can easily add another 240 days. These delays, as noted below, may not benefit homeowners, but do increase costs for all borrowers and for cities and neighbors having to deal with vacant or poorly maintained properties.

2. Few Benefits to Homeowners from Extended Foreclosures. As noted earlier, it is in the interest of all parties, including lenders and investors, that homeowners remain in their homes and meet their obligations. Likewise, state and local governments and neighbors benefit from foreclosure avoidance. However, foreclosure delays— after full efforts have been made to modify loans or move to a foreclosure alternative such as a short sale or deed in lieu (as permitted by law)— simply add to the cost for neighborhoods and communities and losses to lenders and investors. State directed delays in such circumstances harm the very groups that are intended as beneficiaries. The cost of credit will increase if creditors cannot act on their collateral. Again, once a bona fide and robust effort is made to avoid foreclosure, then foreclosure must be undertaken and undertaken as provided by law.

In a recent study by the National Bureau of Economic Research, authors from the Federal Reserve Bank of Atlanta, the Federal Reserve Bank of Boston and the Massachusetts Institute of Technology Department of Urban Studies reviewed various foreclosure regimes and the outcomes for homeowners. For the most part, the study found that the result of many of the laws aimed to protect borrowers from foreclosure was delay in, but not prevention of, foreclosures. The delays contribute to an overhang in the market without borrowers finding relief during these excessive delay periods. Many borrowers neither cure their deficiency nor gain relief, but simply remain in delinquency for greater lengths of time. A key finding of the study was that most parties able to cure or benefit from loss mitigation do so in the first 60 to 90 days of delinquency, which has been the focus of FHFA and the Enterprises. Laws and ordinances that add to the overhang of properties simply depress values for other homeowners and increases losses for creditors and investors.

Clearly, every effort should be made to help homeowners stay in their homes. State actions that increase costs, create new liabilities for mortgagees and delay foreclosures where most borrowers are unable to cure do not benefit the majority of homeowners. At the same time, should a borrower be treated improperly, the law has always provided protection for them for fraud or deceptive practices. Adding new charges before and during foreclosures, new procedures that fuel delays and otherwise encumber foreclosures in the long run will only increase costs for everyone.

IV. Summary

The Federal Housing Finance Agency has as its central mission the administration of the conservatorships of Fannie Mae and Freddie Mac in line with the statutory mandate of conserving assets and protecting taxpayers while assisting the housing market. To that end, the Agency has worked and continues to work to maintain a cost-effective environment at the Enterprises and to effectively oversee the operations of the Enterprises and the Federal Home Loan Banks. At the same time, the Agency continues to work with the Enterprises to deploy effective tools to assist homeowners and support the housing market.

There is value in states considering carefully actions taken to address the foreclosure crisis in light of new federal programs and in light of unintended consequences of some of these actions. FHFA stands ready to work with the states and localities on positive steps that maintain homeowner protections while not adversely affecting housing finance.

Chairman ISSA. Thank you. Mr. Schuppenhauer.

STATEMENT OF ERIC J. SCHUPPENHAUER

Mr. SCHUPPENHAUER. Chairman Issa, Ranking Member Cummings, and members of the committee, thank you for inviting me to appear before you today. It is an honor to join you in Congressman Towns' district to talk about Chase's foreclosure prevention efforts.

My name is Eric Schuppenhauer, and I am the senior vice president for mortgage banking core servicing and borrower assistance at JPMorgan Chase & Co. Since taking over the borrower assistance program, I found the single most important factor in defending the foreclosure is whether the borrower is able to be contacted. For that reason we have invested heavily in personnel, bringing more locations and technology to help us reach the borrowers. Nationwide we have over 3,000 customer assistance specialists ready to help borrowers. We have opened 82 Chase homeowner centers around the Nation where we can work with our borrowers face-to-face to prevent foreclosures. These centers are located in about 28 states and in the District of Columbia and within driving distance of 70 percent of Chase borrowers. In fact, in New York City and Long Island, we have 28 trained counselors at 4 centers, including here in Brooklyn as well as in the Bronx, Queens, and Hauppauge.

To address the special circumstances of our military customers we have opened six military homeowners centers in cities near major military basis. In these centers all of are specially trained counselors are either former military or their spouses.

We also rely on our community and nonprofit partners. We do critically important foreclosure prevention work. We are in partnership with nearly 800 HUD-approved housing counseling, state housing agencies, and local nonprofit organizations. In partnership with them we have helped over 88,000 customers in 1,800 local multiday outreach events around the country.

In addition, we host our own outreach events where we work side-by-side with borrowers and community partners. In fact, we have an event here at the Brooklyn Marriott at the Brooklyn Bridge April 12th to the 15th, where we have invited about 200 of our community partners and we expect to help over 1,500 customers. We can only succeed in preventing foreclosures if we are in touch and in tune with what borrowers are experiencing.

Every day we listen to our customer services calls to make sure borrowers are getting good, clear information. Every week we meet to review complaints, spot trends, identify root causes, and find solutions.

I receive copies of every single complaint when it is filed and when it is closed. Each borrower is unique, which is why we offer a wide range of foreclosure prevention programs. We are currently preventing foreclosures at a rate of two to one nationwide. Twice as many modifications are made outside of the government programs as through them.

Over the last 2 years we have prevented over 775,000 foreclosures nationwide. Over the last 3 years we have made close to half a million permit modifications and we have approved and closed over 165,000 short sales to borrowers. Our investments in personnel and systems have helped us to reach borrowers early. Most people hear from us by the time they are 15 days late. When an account is delinquent, we make repeated attempts to contact the borrower by letter and by phone so we can understand their situation and talk about foreclosure prevention options.

We will not complete a foreclosure until we have made, on average, over 100 attempts to contact the borrowers. Helping borrowers understand their options is absolutely critical. We want to make foreclosure the last resort. We also understand that the loss of every home affects the committee at large.

Homes that go through foreclosure can bring down property value in the neighborhood and contribute to community downgrading.

To combat this troubling trend we have established the Chase Community Revitalization Program, which helps turn Chase Real Estate-owned properties into owner-occupied homes nonprofit partners. And Chase understands that keeping people in their homes is good for everyone: the borrower, their family, the investor, the neighborhood, the housing market and our economy. We are committed to ensure that every borrower is treated fairly and we live up to the high standards we set for ourselves.

Chairman ISSA. Thank you, Mr. Schuppenhauer.

[Prepared statement of Mr. Schuppenhauer follows:]

Testimony of Eric J. Schuppenhauer
JPMorgan Chase & Co.
Committee on Oversight and Government Reform
United States House of Representatives
March 19, 2012

Introduction

Chairman Issa, Ranking Member Cummings, and Members of the Committee, thank you for inviting me to appear before you today—it's a pleasure to join you in Congressman Towns' district. My name is Eric Schuppenhauer, and I am the Senior Vice President for Mortgage Banking Core Servicing and Borrower Assistance at JPMorgan Chase & Co. I am thankful for the opportunity to discuss Chase's activities over the last two years to enhance our foreclosure prevention efforts.

We understand the challenges Americans continue to face in the current economic climate. That's why we are committed to doing all we can to help keep families in their homes and to work with borrowers in need. We have expanded our foreclosure prevention programs and significantly increased the number of borrowers who benefit from loan modifications and other forms of borrower assistance. These efforts have yielded results—we are currently preventing foreclosures at a rate of two to one nationwide. While we have seen promising results, there is still much more work to do.

Chase services approximately 8 million mortgages nationwide totaling $1.1 trillion in outstanding mortgages to American homeowners. We have a large footprint in New York State, servicing nearly 600,000 mortgages in the state and close to a million in the tri-state area. As a mortgage servicer, we are responsible for administering loans – for example, we send monthly statements to borrowers, collect payments, and pay property taxes. We service loans on behalf of the owner of the loan, which sometimes is Chase itself, but more often is someone else – a government-sponsored enterprise (GSE) (such as Fannie Mae or Freddie Mac), a government agency (such as the Federal Housing Administration (FHA) or the Department of Veterans Affairs (VA)), a securitized trust, or another private investor.

In my testimony, I will discuss enhancements Chase has made in our foreclosure prevention efforts.

Chase's Investment in Foreclosure Prevention

Even as the economy recovers, we understand that many American homeowners continue to face economic hardship, and we are committed to working with borrowers in need to prevent foreclosures and keep families in their homes. As part of that commitment, we offer several foreclosure prevention programs designed to provide sustainable solutions to borrowers.

From January 2009 through December 2011, we prevented over 775,000 foreclosures nationwide. Our efforts over the last three years have resulted in over 450,000 permanent modifications for homeowners under the Home Affordable Modification Program (HAMP), Chase's own proprietary modification programs, and modification programs offered by Fannie Mae, Freddie Mac, FHA, and the VA. We also have approved and closed over 165,000 short sales to borrowers.

We have made significant investments in personnel and resources to make sure we are able to communicate with homeowners early in a delinquency to come up with the right solutions. We have added more than 10,000 employees to our Borrower Assistance operations, which is nearly double the staff we had in 2008, and we have restructured our operations to ensure that borrowers are able to work with our employees to find the right alternative to foreclosure.

Proactively reaching out and connecting with borrowers and helping them evaluate their foreclosure prevention options has been the key to successful borrower assistance. Most borrowers will hear from us by the time they are 15 days late on their mortgage payment. When an account is delinquent, we make repeated attempts to contact the borrower by letter and phone to talk about the borrower's situation, identify solutions and provide information about foreclosure prevention options. During these outreach efforts, we provide borrowers with information in plain language that describes HAMP and other available options to help get their loan back on track and keep them in their homes or, if continuing to own a home is simply not sustainable, leave through a process other than foreclosure.

When a borrower responds to our outreach efforts and seeks assistance, he or she is assigned to a dedicated Customer Assistance Specialist, who serves as the "single point of contact" for the borrower throughout the delinquency, borrower assistance and foreclosure processes. We have over 3,000 Customer Assistance Specialists ready to help borrowers avoid foreclosure.

We also now have 82 Chase Homeownership Centers, which are located across 28 states and within driving distance of 70% of Chase borrowers who have missed a payment. We have 28 trained counselors at four Centers in New York City, including here in Brooklyn, as well as in the Bronx, Queens and Hauppauge. Through these Centers, we are able to meet face-to-face with homeowners and offer assistance. We staff all Homeownership Centers with employees trained to help borrowers understand their options, evaluate their eligibility under our various foreclosure prevention programs, and finalize and submit modification applications. Since 2009, our trained advisors have met with over 185,000 borrowers at our Homeownership Centers across the nation.

To supplement the personalized approach of the Homeownership Centers, our Homeownership Preservation Office has partnered with nearly 800 HUD-approved housing counseling groups like HOPE NOW, NACA, NeighborWorks, state housing agencies and local non-profit organizations across the country to host more than 1,800 local multi-day outreach events nationwide, where we have additionally provided assistance to over 88,000 customers. In addition, we host our own outreach events where we work side-by-side with borrowers and community partners. In fact, we have an event scheduled at the Brooklyn Bridge Marriott April 12 through April 15.

Homeownership Assistance Solutions

Chase has an extensive and growing portfolio of modification options designed to help borrowers stay in their homes by making their monthly mortgage payments more affordable.

One of the modification options available to borrowers is HAMP. To date, we have offered HAMP trial plans to more than 350,000 borrowers and have over 125,000 borrowers in active permanent HAMP modification plans through January 2012, which places us second among all servicers. In addition, we have successfully transitioned over half of all borrowers who started a HAMP trial modification plan into a permanent modification, a success rate that is consistent with other major servicers. Borrowers who are not eligible for HAMP are evaluated for other modification options. In fact, we have helped almost twice as many families avoid foreclosure through modifications outside of government programs, including Chase-developed modification programs.

One of the biggest issues affecting borrowers today is the high rate of unemployment and underemployment. For unemployed homeowners suffering a short-term financial setback, we offer a number of short-term relief options while they get back on their feet. One of those options is the Home Affordable Unemployment Program, which provides temporary relief to homeowners who have lost their jobs. Chase offers our own forbearance plans for borrowers who experience a short-term financial hardship due to a medical condition, disability, death or divorce.

We also are helping borrowers in need of relief on their second lien mortgages obtain assistance as part of the Treasury Department's Making Home Affordable program as well as through Chase's own programs. Under the Second Lien Modification Program (2MP), Chase agrees to modify or reduce principal on qualified second lien mortgages if the borrower has received a permanent modification of their first lien mortgage under HAMP. Chase has modified or reduced principal on over 15,000 second mortgages through 2MP.

Chase is an active participant in the Treasury Department's Hardest Hit Fund (HHF), which provides mortgage payment relief to eligible borrowers in the 18 states (as well as Washington, D.C.) with the highest foreclosure rates. HHF helps borrowers catch up on their missed payments and reinstate their accounts, and provides up to 36 months' worth of monthly mortgage payments for qualified unemployed borrowers. State housing agencies responsible for administering the funds have provided close to 5,000 referrals to Chase as part of their HHF programs.

Chase also participates in HUD's Emergency Homeowners Loan Program (EHLP), which supplements the HHF by assisting borrowers in the 32 states that have not received HHF funding. The program provides mortgage payment relief to qualified borrowers who have experienced short-term financial hardship due to adverse economic or medical conditions. Chase has received over 1,300 EHLP referrals from state housing agencies as part of the program.

To help those borrowers who are current on their payments take advantage of historically low interest rates, we also offer a number of refinance programs that help lower monthly payments. These programs include the Home Affordable Refinance Program (HARP) for loans owned by Fannie Mae or Freddie Mac.

Alternative Solutions

For a variety of reasons, loan modifications are not always a feasible solution. Borrowers who cannot afford their homes, even if their monthly payments are substantially reduced, need other solutions. So in addition to loan modifications, Chase offers borrowers other options to avoid foreclosure.

A short sale is one option for borrowers who do not qualify for a loan modification but who still are interested in avoiding foreclosure. In April 2010, Chase created a program called "List Assist" to reduce the amount of time it takes to approve a short sale. We proactively reach out to delinquent borrowers who have already listed their homes for sale or who have been denied a loan modification, in order to initiate a streamlined short sale evaluation process with them. Under List Assist, our aim is to approve a short sale offer in under 30 days, thus avoiding many of the delays that have frustrated homeowners in the past.

Chase also created the Short Sale Accelerator program, which is an ongoing borrower solicitation campaign that offers cash incentives to borrowers whose home values have declined and who agree to a short sale of their property. The program offers borrowers who complete a short sale a cash payment of between $3,000 and $45,000 designed to help the borrower relocate to new housing.

Chase also participates in the Treasury Department's Home Affordable Foreclosure Alternative (HAFA) program. Chase is a leading HAFA participant – according to the Treasury's most recent Making Home Affordable Program Performance Report, Chase has initiated and completed 37% of all HAFA short sales, more than any other mortgage servicer.

In February 2012, Chase and four other mortgage servicers reached an agreement-in-principle with state Attorneys General and federal agencies relating to the servicing and origination of loans. As part of the settlement, Chase agreed to provide over $3.5 billion in relief to borrowers, including first and second lien principal reduction modifications for borrowers in default, and over $500 million in refinancing to underwater borrowers who are current on their loans. The programs established under the settlement will supplement our existing loan modification and other foreclosure alternative programs, and provide additional opportunities to give relief to borrowers struggling to make their mortgage payments.

We are committed to implementing the settlement provisions in a rapid manner and we will continue to develop and implement innovative programs to help borrowers.

The Last Resort

At Chase, we understand that keeping people in their homes is good for everyone – the borrower, the investor, the neighborhood, the housing market and the economy. That's why we go to great lengths to help our customers who are struggling with their mortgage payments. Chase has substantial safeguards in place to ensure that foreclosures are truly a last resort and instituted fairly and only in appropriate cases. A loan gets referred to foreclosure only after we have made substantial attempts to provide the borrower with foreclosure alternatives. In the average case where we must foreclose, we make over 100 attempts to reach out to the borrower and communicate alternatives to foreclosure.

To try to ensure that a loan has exhausted all alternatives before it is referred to foreclosure, an independent foreclosure review is undertaken prior to foreclosure referral. The review is designed to ensure that the borrower is in fact in default and that Chase has complied with its own pre-referral policies. Another independent foreclosure review is completed three to four weeks before any scheduled foreclosure sale, and a final check is conducted 72 hours prior to the sale. We recognize that homes that go through foreclosure can bring down property values in a neighborhood and can contribute to community blight. To combat this troubling trend, we established the Chase Community Revitalization Program (CCRP), which helps turn Chase real estate owned (REO) properties into owner-occupied homes. Partnering with local non-profit organizations, municipalities, and the National Community Stabilization Trust, we have donated or sold at a discount close to 3,000 homes nationwide to non-profit organizations for community reinvestment.

Military Borrowers

Lastly, I would like to address a number of proactive steps Chase has taken over the last two years to better support our servicemember customers. We have strived to institute programs that meet the unique needs of servicemembers.

Chase is providing mortgage payment relief to our active-duty servicemember borrowers beyond what is required under the Servicemembers Civil Relief Act (SCRA). We have proactively lowered the effective mortgage rate for SCRA-eligible borrowers to 4% for the duration of the borrower's active duty status and for one year afterwards. This rate is 2% lower than the 6% rate currently required by the SCRA.

Chase also has implemented a special modification program for members of the military, under which they receive a 1% interest rate for the first 36 months of the modified loan after completing a trial payment plan. If the servicemember also has a second mortgage with us, that loan will receive the same interest rate reduction – 1% for 36 months. And for servicemembers who have already completed a loan modification with Chase prior to this program, we are lowering their interest rate automatically to 1% for 36 months as well.

We will not foreclose on any active duty, deployed military borrower and have enhanced our processes for ensuring that SCRA-eligible borrowers are protected from foreclosure.

We also believe it is critical to ensure that our servicemember customers have access to customer service representatives who understand their unique issues and can provide top quality service. Therefore, we have created a 24-hour hotline that is staffed by over 30 Chase employees who are trained on SCRA protections (60% of the supervisors are former military). We have also trained two employees in each of our existing 82 Chase Homeownership Centers on SCRA matters so that servicemembers and their families can have an opportunity to speak to a Chase representative face-to-face. In addition, six of our Homeownership Centers are specialized Military Homeownership Centers in cities near major military bases, offering convenient access to one of our specially-trained employees for servicemembers in need of assistance. At these Centers, **all** of our employees are either former servicemembers or spouses of military personnel. In 2011, we hosted 10 additional outreach events near military bases in partnership with local non-profit organizations.

Chase understands that many servicemembers who return home after serving their country find it hard to pay their mortgages because they have a difficult time finding jobs while the economy is recovering. We have teamed up with over 30 corporate partners to launch the 100,000 Jobs Mission in March 2011, pledging to hire 100,000 transitioning military members and veterans by the end of 2020. We are currently hiring about 10 veterans every day, building on the 3,000 veterans we hired in 2011.

We are adopting additional safeguards for military personnel that go beyond SCRA protections, including special programs for servicemembers who receive Permanent Change of Station orders, regardless of whether they qualify for protection under the SCRA.

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Chase has worked hard over the last few years to enhance our servicing and borrower assistance programs to ensure that borrowers are given every opportunity to stay in their homes. We believe we have made progress, but there is much more work to do. Chase is committed to ensuring that every borrower is treated fairly and that we live up to the high standards we have set for ourselves. I would be happy to answer questions from the Committee.

Chairman ISSA. I would like to thank all of you for being the best witnesses so far when it comes to the 5-minutes.

STATEMENT OF JOE OHAYON

Mr. OHAYON. Chairman Issa, Ranking Member Cummings, members of the committee, I am Joe Ohayon and I manage national community outreach for Wells Fargo Home Mortgage's servicing business. Today I would like to outline four broad areas where we have focused our efforts to manage the challenges that our housing market continues to face.

First, we engage with our customers in innovative ways to understand their unique circumstances. In 2009, we began hosting large-scale Home Preservation Workshops. At that event our customers have the opportunity to meet face-to-face with a Wells Fargo home preservation specialist who has the authority to make decisions on the spot in many cases, providing loan modifications and other payment relief options. We have found these types of face-to-face meetings with our customers to be very successful. We are typically able to provide a workout to about two out of three customers who attend a Wells Fargo Home Preservation Workshop.

To date, Wells Fargo has conducted 57 Home Preservation Workshops nationally, meeting with more than 31,000 customers since late 2009. Wells Fargo is scheduling dozens of these Home Preservation Workshops in 2012 across the country to help homeowners who may be facing difficulty with their mortgage payments.

I have personally attended at least 50 of our Home Preservation events, including one right here in Brooklyn in January 2011, where we met with nearly 1,000 of our customers. We are coming back to Brooklyn in July of this year.

I sat down with customers, listened to the stories told by families, and have a better understanding of what brought them to the point of possibly losing their homes. It is not just about the numbers and their finances, it is about understanding what put their homes at risk. We have learned a lot at these events and we have applied what we found at our outreach events and to the way we serve our customers every day.

Second, we collaborate with local leaders, community groups, and housing advocates to develop initiatives to address unique housing needs in their communities. There is great value in the strong relationships we have formed with groups such as NACA, HopeNow, HomeFree USA, and Neighborworks, who serve as another portal to reach customers individually.

Our customer outreach and work with the communities have led to success in assisting customers that work with us by using a combination of our own refinance and modification programs along with the programs that have been made available through making homeS affordable, the hardest hit funds and other government programs.

Our third area of focus is the recent announcement of a settlement by 5 of the Nation's largest servicers with 49 state attorneys general and various agencies of the Federal Government. While the settlement is not final until it is approved by a Federal District Court judge in the District of Columbia, we believe that the various components of the pending settlement collectively represent very important steps toward restoring confidence in mortgage services and stability in the housing market.

Wells Fargo's financial commitment toward the overall $25 billion agreement is $5.3 billion. It is comprised of programs that build on the significant refinance and consumer relief efforts we have made to date.

Starting on March 1st, despite the fact that the settlement is still pending, we began actively communicating with borrowers who might qualify for consumer relief under the terms of the settlement. Also as of March 1st, we let customers know, upon request, if they may be eligible for the expanded first lien refinance program. And beginning in April, mailings will go out to customers who are current on their payments, have little or negative equity in their homes, but may qualify for the new refinance program.

We are working diligently to finalize plans to quickly provide consumer relief to as many customers as possible. At this early date, it is premature to project which forms of relief will be provided to which customers.

Our fourth area of focus as the Nation's leading mortgage lender and servicer reflects our deep commitment to homeownership in America. Despite the challenges of recent years, we know that homeownership is still highly valued and desired by the American public. In February, Wells Fargo launched a pilot program called NeighborhoodLIFT, an initiative that includes down payment assistance, locally designed programs to address housing priorities, and local outreach events focused on home buying, education, and support. More than 2,000 prospective homebuyers attended the first NeighborhoodLIFT events in Los Angeles and Atlanta, and of those, 647 made reservations for down payment assistance grants.

Another program we have launched is My Home Roadmap, a first of its kind service for customers who have met with one of our home mortgage consultants and were either turned down for credit or elected not to apply at the time. This program offers a referral for up to 2 hours of pre-purchase counseling with a certified national credit counselor paid for by Wells Fargo to provide them with options and support as they proceed down the path to homeownership.

In conclusion, we remain fully committed to doing what we can to help stabilize the housing industry for the benefit of homeowners, individual communities, and the overall economy.

Thank you for your time. We look forward to your questions.

Chairman ISSA. Thank you.

[Prepared statement of Mr. Ohayon follows:]

Chairman Issa, Ranking Member Cummings, and Members of the Committee, I am Joe Ohayon and I manage national community outreach for Wells Fargo Home Mortgage's servicing business. I appreciate the opportunity to appear before you today to discuss Wells Fargo's efforts to respond to the demanding housing crisis and our efforts to keep American families in their homes.

Today, I would like to outline four broad areas where we have focused our efforts to manage the challenges that our housing market continues to face.

First, we engage with our customers in innovative ways to understand their unique circumstances. Traditional means of connecting with customers do not always result in success, even though we are able to find solutions for 7 out of every 10 customers who work with us. As a result, in 2009, we began hosting large-scale Home Preservation Workshops (HPW). At an HPW, our customers have the opportunity to meet face-to-face with a Wells Fargo home preservation specialist who has the authority to make decisions on the spot, in many cases, providing loan modifications and other payment relief options. Local nonprofit housing counselors are also available to provide holistic counseling and act as a trusted advisor. We have found these types of face to face meetings with our customers to be very successful. We are typically able to provide a workout to about 2 out of 3 customers who attend a Wells Fargo Home Preservation Workshop. The vast majority of those workouts are loan modifications.

To date, Wells Fargo has conducted 57 Home Preservation Workshops nationally, meeting with more than 31,000 customers since late 2009. Wells Fargo is scheduling dozens of these Home Preservation Workshops in 2012 in hard hit communities across the country to help homeowners who may be facing difficulty with their mortgage payments. And through our 28 neighborhood-based home preservation centers, we have met face-to-face with an additional 40,000 customers.

I have personally attended at least 50 of our home preservation events— including one right here in Brooklyn in January 2011 where we met with over 1,000 of our customers.

I have sat down with our customers, listened to the stories told by families, and have a better understanding of what brought them to the point of possibly losing their homes. It is not about just the numbers and their finances; it is about understanding what put their homes at-risk. We have learned a lot at these events and we have applied what we found at our outreach events and to the way we serve our customers.

One important lesson we have learned is that the home preservation and foreclosure process is complex and intimidating and can be difficult for customers to fully understand. We needed to provide more consistent and predictable service to our customers so they can be realistic about their options. We had to improve communication. Understanding this, Wells Fargo adopted a Single Point of Contact model for customers who are pursuing a loan modification or working with us to sell their home and avoid foreclosure. Almost two years ago, in June 2010, we began assigning one home preservation specialist to work with a customer on a modification from beginning to end. The Single Point of Contact model has reaped significant benefits for our customers and Wells Fargo by building a one-to-one relationship with customers in default.

Second, we collaborate with local leaders, community groups, and housing advocates to develop initiatives to address unique housing needs in their communities. There is great value in the strong relationships we have formed with groups such as NACA, HopeNow, HomeFree USA, and Neighborworks—who serve as another portal for to reach customers individually.

Our customer outreach and work with communities have led to success in assisting customers that work with us by using a combination of our own refinance and modification programs along with the programs that have been made available through Making Home Affordable, the Hardest Hit Funds, and other government programs.

I know that there have been many of questions raised about the success of HAMP. And while the number of borrowers helped through the program has not met the government's initial projections, HAMP paved the way for large investors – such as Fannie Mae and Freddie Mac – to implement standardized guidelines instead of requiring servicers to call for authorization on every individual modification. In addition, because of HAMP, many more borrowers are now aware that modifications and other options to help them stay in their homes are available, and that has improved our success in getting borrowers engaged.

On the modification side, Wells Fargo had more than 733,000 active trial or completed mortgage modifications in place as of January 31, 2012, of which 85 percent are our own proprietary programs. HAMP loan modifications represent 15 percent of the mortgage modifications we do.

It is important to note that Wells Fargo's modification activity has included extending more than $4.1 billion in principal forgiveness and another $900 million in forgiveness borrowers can earn through on-time payments over 3 years—primarily on Wells Fargo-owned loans that we service—and an additional $2.2 billion of deferred principal on modified investor- and Wells Fargo-owned loans. We utilized principal forgiveneness together with repayment plans, interest rate reductions, and other tools as part of a customized approach to our customers' circumstances – all with the goal of determining each customer's level of payment affordability.

To achieve this, we have invested heavily in hiring and training more than 10,600 additional home preservation staff since the beginning of 2009 – for a current total of more than 15,700 people.

In addition, from January 2009 through January 2012, for example, we helped more than 3.4 million customers obtain a refinance to take advantage of historically low interest rates. That activity includes more than 326,000 refinances for borrowers with loan-to-value ratios greater than 80 percent through the *Home Affordable Refinance Program*. Wells Fargo recently rolled out many of the latest expansions to HARP and we have seen strong interest in that expanded program.

Refinancing helps borrowers who are current on their payments take advantage of today's low interest rates, but it can also be a critical tool in helping those facing financial challenges to avoid falling behind on their payments. For example, we recently worked with one of our customers who was living on a fixed income in Racine, Wisconsin, who has kept up with her mortgage payments, but was facing financial challenges related to her mounting medical bills. A refinance under HARP was able to save her nearly $2,000 a year that she could use for these critical needs. Or a couple dealing with the husband's inability to work after suffering a stroke; they saved more than $5,000 a year as a result of a HARP refinance.

We believe it is in our customers' and the country's best interests to help customers maintain homeownership whenever possible. And, it is our goal to exhaust all options before moving a home to foreclosure sale.

Our third area of focus is the recent announcement of a settlement by five of the nation's largest servicers with 49 state Attorneys General and various agencies of the federal government. While the settlement is not final until it is approved by a federal district court judge in the District of Columbia, we believe that the various components of the pending settlement collectively represent very important steps toward restoring confidence in mortgage servicers and stability in the housing market.

Wells Fargo's financial commitment toward the overall $25 billion agreement is $5.3 billion. It is comprised of programs that build on the significant refinance and consumer relief efforts we have made to date. The expanded refinance, modification, and other options are primarily available to customers with Wells Fargo-owned loans that we service. The national servicing standards we developed will apply to all of the first mortgage loans we service.

The pending national servicing settlement will result in a substantial expansion of our use of principal forgiveness on portfolio first and second mortgages that we service. Starting on March 1, despite the fact that the settlement is still pending, we began actively communicating with borrowers who might qualify for consumer relief under the terms of the settlement.

Also as of March 1, we can let customers know, upon request, if they may be eligible for the expanded first-lien refinance program. Beginning in April, mailings will go out to customers who are current on their payments, have little or negative equity in their homes, but may qualify for the new refinance program.

We are working diligently to finalize plans to quickly provide consumer relief to as many customers as possible. As part of our work with the monitor appointed as part of the settlement, the public will be able to judge our success in satisfying the consumer relief, refinance commitments we made as part of the settlement. Our success in implementing the national servicing standards will also be carefully scrutinized by the monitor. At this early date, it is premature to project which forms of relief will be provided to which customers.

Mr. Chairman, I know that you, Ranking Member Cummings, and other members of the committee are also interested in what we are doing to address the needs of our customers who are serving our country in our military. So, let me address the steps we have taken and additional actions we will take in the future, with respect to our customers who serve in the Armed Forces.

At Wells Fargo we believe it is an honor to serve those who serve our country. As such, we take very seriously our responsibility to comply with SCRA and have made several enhancements to better support servicemembers who may be experiencing financial stress. These enhancements include:

- A 4 percent interest rate cap for first mortgage consumer real estate loans that we own and that otherwise qualify for protection under SCRA Section 527. This is 2 percent lower than the interest rate provided by law.
- An enhanced loan modification program—including principal reduction, when appropriate—for borrowers who qualify under SCRA Section 533 and have loans that we own.
- A 12-month foreclosure grace period following an SCRA-eligible servicemember's return from active duty. This better aligns with the statutory grace period for interest rate protection.

- Second-level review and escalated approval for all foreclosure and repossession activities on all real estate-secured loans made to SCRA-eligible borrowers whose grace period has expired, and for all spouses and partners to whom we have extended SCRA-type benefits.

In addition to those enhancements, we also have made a number of commitments with respect to our servicemember customers as part of the regulatory consent orders that Wells Fargo and 13 other servicers entered into with the OCC and Federal Reserve. The national servicing settlement expands by two years our review of our records to determine if we have made a mistake in connection with an SCRA-eligible loan. If we find a mistake, we will make things right with our servicemember customers.

Our fourth area of focus, as the nation's leading mortgage lender and servicer, reflects our deep commitment to homeownership in America. Despite the challenges of recent years, we know that homeownership is still highly valued and desired by the American public. We believe that sustainable homeownership is a cornerstone for building generational wealth and is critically important to the economic health of our country. I would like to outline a few of the things we are doing to help reinforce and strengthen the foundation for the future of homeownership.

In February Wells Fargo launched a pilot program called *Neighborhood LIFT*SM, an initiative that includes down payment assistance, locally designed programs to address housing priorities, and local outreach events focused on home-buying education and support. The pilot, in partnership with NeighborWorks America, includes a five-year purchase mortgage lending goal of $10.5 billion in Los Angeles and $1.3 billion in Atlanta; along with grants and program funds in 2012 in those communities of $15 million and $8 million, respectively, and will be expanded next into Phoenix.

More than 2,000 prospective homebuyers attended the first NeighborhoodLIFT events in Los Angeles and Atlanta and, of those, 647 made reservations for down payment assistance grants. Each of these prospective homebuyers then has a 60-day window to purchase and close on a home. If the pilot program works as expected, we will be providing nearly $13 million in down payment assistance in Los Angeles, with individual grants ranging up to $30,000, and more than $6 million in down payment assistance in Atlanta, with individual grants up to $15,000.

Another program we have launched is *My Home Roadmap*^{sm}, a first-of-its-kind service for customers who have met with one of our home mortgage consultants and were either turned down for credit or elected not to apply at the time. This program offers a referral for up to 2 hours of pre-purchase counseling with a certified national credit counselor—paid for by Wells Fargo—to provide them with options and support as they proceed down the path to homeownership.

My Home Roadmap is just one of the programs we are rolling out through our *Leading Forward for Homeownership*^{sm} initiatives designed to help new borrowers better prepare for homeownership, make fully informed borrowing choices, and effectively manage their finances after they have purchased a home. And that is just one part of a broader commitment to helping move the housing markets into the future and ensure that the value of homeownership can be recognized by future generations.

In conclusion, we remain fully committed to doing what we can to help stabilize the housing industry for the benefit of homeowners, individual communities and the overall economy. We continue to work hard helping people to stay in their homes whenever realistically possible. And, as a standard business practice, we constantly review our policies and procedures to improve the quality of service we give to customers facing financial challenges.

Thank you for your time, and I look forward to your questions.

Chairman ISSA. Mr. Jaffee.

STATEMENT OF JEFF JAFFEE

Mr. JAFFEE. Good morning, Chairman Issa, Ranking Member Cummings, Congressman Towns, and Congressman Platts. My name is Jeff Jaffee. I am the chief regulatory affairs officer and I am a director of CitiMortgage. I am pleased to speak with you today about Citi's efforts to assist homeowners. And on behalf of all of Citi's employees I want to welcome you to our home town.

At Citi, we are dedicated to helping families stay in their homes and devoted a number of resources to achieve its goal. Since 2007, we have nearly tripled the amount of our specially trained staff dedicated to working with at-risk homeowners. And we are pleased to note that since 2007, we have been able to help more than 1.1 million distressed borrowers in their efforts to avoid potential foreclosure.

Last year CitiMortgage launched a Road to Recovery tour, visiting 25 cities nationwide that were hard hit by the financial crisis to connect directly with distressed homeowners. During these events, CitiMortgage customers, some of whom we have previously not been able to reach, spoke face-to-face with representatives to get much needed relief.

We kicked off our Road to Recovery program in Baltimore. In building on these successful efforts, the 2012 Road to Recovery tour is expected to begin in the coming weeks.

Citi engages in multiple outreach programs designed to ensure that borrowers are aware of Citi's loss mitigation solutions, working with numerous nonprofit organizations to help us reach borrowers at risk. These events are in schools, community centers, hotels, gymnasiums, personally anywhere that accommodate our borrowers and our associates. In fact, one of the first events that Citi sponsored was at the House of the Lord Pentecostal Church on Atlantic Avenue here in Brooklyn.

Recently we have partnered with Hope Now, the Treasury, and Defense Department to sponsor borrower outreach events on military bases. Our first event was at Camp Pendleton. Citi fully supports HAMP and other Federal programs designed to help homeowners.

CitiMortgage has also participated in the HAMP Principal Reduction Alternative Program since October 2010. Since being announced late last year, the Home Affordable Refinance Program, Version 2, has also generated significant interests from borrowers and applicants. Other programs are still in development to support the National Mortgage Servicing Settlement which was recently announced and is currently awaiting approval.

For those customers who do not qualify for Federal assistance programs, Citi has developed its own programs to assist customers with specific challenges such as unemployment and other life events. For those borrowers who simply cannot sustain homeownership, Citi has programs customized to meet their needs, including dedicated short sale and deed foreclosure solutions.

Foreclosure should always be a last resort. Citi recognizes the hardship that can be suffered by a family losing its home and we do everything we can to make the transition for our customers as smooth as possible.

In 2009, Citi self-identified opportunities to include its foreclosure processes and proactively took action to enhance its policy and controls, including centralizing our foreclosure operations into one unit, adding staff, and enhancing training through greater compliance and control.

We were also deeply committed to working with our Nation's veterans and military families whose loved ones are serving our country abroad. Citi has extensive policies and procedures on SCRA compliance, and maintains qualified staff to help service members dealing with mortgage issues. In addition, we have implemented robust internal controls that involve check loans against the Department of Defense's manpower data center data base. We are committed to doing all we can to help service members and their families facing mortgage hardships.

Citi recognizes that we have a responsibility to help navigate Americans through their financial troubles, especially in these challenging times. As part of this effort we will continually strive to provide homeowner assistance and keep families in their homes. We know we have more work ahead of us and are committed to partnering with Congress and other stakeholders.

Thank you for your time and I look forward to your questions.

Chairman ISSA. Thank you.

[Prepared statement of Mr. Jaffee follows:]

Embargoed Until 9:30 am EST
March 19, 2012

Testimony of Jeff Jaffee
Director, CitiMortgage
Before the Committee on Oversight and Government Reform

Chairman Issa, Ranking Member Cummings, Congressman Towns and members of the Committee, my name is Jeff Jaffee, and I am a Director of CitiMortgage and the Chief Regulatory Affairs Officer. Thank you for the opportunity to speak with you today about Citi's efforts to help families stay in their homes and to address the questions you have asked.

CitiMortgage services approximately 3.5 million loans with an aggregate unpaid principal balance of nearly $500 billion. Approximately two thirds of our portfolio is serviced for the government sponsored entities, Fannie Mae and Freddie Mac.

We share the concerns you have raised with respect to the housing crisis and we have devoted considerable resources to helping our customers who are facing financial challenges. We have a specially trained and dedicated staff of approximately 5,200 employees, who work with at-risk homeowners to help them find workable solutions to avoid potential foreclosure. To further these efforts, we partner with national, regional and local community organizations across the country. For example, on the national level, partnerships include NeighborWorks America, National Council of La Raza, Homeownership Preservation Foundation, National Foundation for Credit Counseling, National Urban League, National Coalition for Asian Pacific Islanders, and Housing Partnership Network. At the local level, we work with Community Housing Works in San Diego, Brooklyn Legal Services, Center for New York City Neighborhoods, Cypress Hills Local Development Corp., and St. Ambrose Housing Aid Center, among others.

All of us at Citi recognize the hardship that can be suffered by a family losing a home. This is why foreclosure should always be a last resort. In the event that a foreclosure cannot be avoided, however, we have processes in place that are designed to make sure that foreclosures comply with all relevant state and federal laws, and that we do everything we can to make the transition process for our customers fair and understandable.

Since 2007, we have helped more than 1.1 million distressed borrowers in their efforts to avoid potential foreclosure. Further, as the volume of foreclosures increased in 2009, Citi self-identified opportunities to improve its foreclosure processes and proactively undertook actions to enhance its policies and controls. As part of these improvements, Citi centralized its foreclosure operations into one unit, added staff and enhanced training for greater efficiency and control. Citi limited the volume of documents that staff processed and required annual certification of its employees' understanding of the proper procedures. Also, we enhanced and strengthened manager oversight. These improvements were fully implemented nationwide at our St. Louis processing center in February of 2010. Since then, we have continued to monitor our foreclosure affidavit processes; strengthened training for our staff preparing, executing and notarizing affidavits; communicated with external foreclosure counsel with respect to our expectations regarding document execution practices and monitor their practices under our third party oversight program; and, looked for opportunities to further strengthen and streamline our practices and controls. Under Citi's existing procedures, affidavits are prepared by outside counsel to ensure compliance with each state's foreclosure laws, and each package is reviewed by a Citi employee who verifies the information and signs the foreclosure affidavit in the presence of a notary. When errors are found, the documents are returned to the attorney, who revises the package and resubmits the documents for review. Foreclosures are monitored to make certain that staffing is adequate to review the affidavits properly.

Over the past year, Citi has significantly enhanced its oversight of mortgage foreclosure law firms. These enhancements include strengthening policies and procedures, hiring dedicated resources to oversee law firm performance, and increasing the frequency and scope of Citi's onsite law firm audit program. Citi chooses foreclosure law firms based upon their qualifications, expertise, reputation and capacity. Prior to engaging a new firm, we conduct an onsite review of the law firm to assess its ability to represent Citi in foreclosure actions. If the firm passes the onsite audit, its qualifications are then presented to a senior oversight committee for review. If approved, the law firm becomes subject to Citi's standard supervision program, including at least one onsite audit of the firm's practices in a twelve month period of time, as well as ongoing oversight and supervision. Firms which do not meet Citi standards are terminated.

When it comes to assisting customers, Citi's proprietary programs offer a variety of solutions, addressing challenges such as unemployment and imminent risk of default, and utilizing a variety of strategies to solve for affordability of payments. We believe the issue of affordability is the most important consideration in modifications and do not believe there is a "one size fits all" approach. The proof of this is in our low redefault rates. Since October 2010, we have offered principal reduction to eligible borrowers as part of the Home Affordable Modification Program ("HAMP") and we will continue to offer targeted principal reduction consistent with requirements in the National Mortgage Settlement, which is currently under judicial review.

CitiMortgage has been consistently supportive of HAMP. CitiMortgage was one of the first six mortgage servicing companies to sign up for HAMP and 2MP. We think HAMP provided a baseline for the industry to follow that has been invaluable. These programs enable borrowers to avoid potential foreclosure and allow them to retain their homes while lowering their monthly payments to a more manageable amount.

CitiMortgage also participates in the Home Affordable Refinance Program ("HARP") 2. We are seeing a great deal of interest in the program from homeowners and applications have been strong. Although the program is relatively new, we are seeing success helping borrowers to lower their mortgage payments. We believe this program has already added value by opening up refinance opportunities for borrowers whose homes had declined in value.

After we implement these programs, we will evaluate the states Hardest Hit Fund (HHF) programs to determine if we will be adding their principal reduction programs to our offerings. We are currently utilizing their mortgage assistance programs for unemployed borrowers and will be adding their short sale/transition programs in Q2. All principal reduction programs will be on our held portfolio since the GSEs and FHA do not participate in principal reduction. Approximately 68% of the loans Citi services for others are not eligible for principal reduction due to investor guidelines.

Citi has a comprehensive outreach strategy to reach Citi borrowers unable to meet their monthly mortgage obligation. In 2007, Citi created the Office of Homeownership Preservation ("OHP"), to work with nonprofit partners and other third parties representing Citi borrowers at risk who prefer to contact and work with us through a third party. OHP's goal is to increase outreach and responsiveness to homeowners in default or in danger of imminent default directly, as well as indirectly through collaborating with the housing counselors representing them. OHP provides counselors with resources, and works with them to find the best possible option for a borrower experiencing a hardship. Furthermore, Citi also engages in multiple outreach programs designed to ensure that borrowers are aware of Citi's loss mitigation solutions. Beginning from very early delinquency, we partner with numerous non-profit organizations, as well as other stakeholders such as you, other elected or appointed officials and Treasury that help us to reach out to borrowers at risk of foreclosure. In addition, CitiMortgage's own Road to Recovery – an initiative designed to reach out and provide assistance to homeowners in distress which was launched in 2011, completed 25 events across the country and served to enable us to meet and offer assistance to many Citi customers who had never been in contact with us before. Plans are currently underway for our 2012 Road to Recovery tour which we expect to begin in the coming weeks.

In 2011, the Citi homeowners assistance travel team participated in a total of 168 events – including in New York, Brooklyn, San Diego, and the Baltimore metro area – and met with approximately 11,000 homeowners in need of assistance. Citi OHP has a dedicated team that manages Hope Loan Port, a web driven tool designed by the housing counseling industry and managed by a national nonprofit of the same name, which allows non-profit housing counselors to seamlessly submit modification applications to our Homeowners Support team.

For those borrowers who face severe hardship, Citi introduced dedicated Short Sale and Deed-in-Lieu teams in 2009, which offer a number of customizable solutions. To approve a short sale, there are two key decision points for the servicer. First, is whether the borrower has a hardship that prevents him or her from paying the gap between the offer and the pay-off balance. Second, is whether the offer is better for the investor than foreclosing. If an offer comes in before the servicer has determined the value of the property or documented the hardship condition of the borrower, then both of these actions must occur before a decision can made. The key is to get this work done before the offer arrives.

In 2011, Citi took immediate action to comply with the OCC/Fed Consent Order which set a new standard for servicing requirements above and beyond what is required by law or regulation. Among other things, we implemented a Single Point of Contact ("SPOC") in August of 2011, changed the routing of phone calls, improved our document tracking process, implemented additional controls around mortgage assignment processes, implemented a formal third party oversight program, and streamlined the oversight and governance of our servicing operation. Having a single person to reach out to helps a customer navigate a difficult time.

A SPOC is assigned real time when a borrower expresses interest in a modification and is potentially eligible. SPOCs are available for all borrowers who may be eligible for and have expressed interest in a Loss Mitigation or loan modification program, and are responsible for all communications between Citi and the borrower, including monitoring and updating the borrower on the status of the borrower's Loss Mitigation or loan modification efforts and foreclosure proceedings. SPOCs are available through phone calls, email, or by appointment.

In response to the OCC Consent Order, we enhanced our quality control and assurance programs with respect to documentation. We now do 100% quality control reviews on all foreclosure affidavits before submitting them to the court. Foreclosure counsel is required to upload all documents in a timely manner and CitiMortgage maintains the "living file" containing all documents related to foreclosure, thereby improving the communication between foreclosure counsel and CitiMortgage. Additionally, in connection with the National Mortgage Settlement, the borrower will be provided with a notice, before the account is referred to foreclosure counsel, which identifies the holder of the mortgage note and why CitiMortgage has the legal authority to file the foreclosure action.

CitiMortgage also created an independent Quality Assurance Unit to perform reviews of key processes within the foreclosure area. These monthly reviews are completed on a random sample basis to validate the accuracy of the work completed by the servicing unit and monitor the effectiveness of existing controls within the business. The Quality Assurance Unit reports into Operational Risk, which is independent from the Servicing Unit where the work is completed.

In accordance with the OCC's "look back" process we have engaged the independent consultant PricewaterhouseCoopers ("PwC"), and they are in process of their review. At the OCC's request, Citi and the other servicers utilized the same outreach approach to borrowers which included direct mail and was followed by a media campaign that included People Magazine and TV Guide. Borrowers work with a third party to ensure they were treated uniformly and could pursue reviews without fear about how the servicer would handle their claim. The decision on where to advertise was made in conjunction with the regulators based on demographics.

Additionally, every customer that experienced any foreclosure activity from January 1, 2009 through December 31, 2010 was sent a letter directing them to apply for review if they met certain criteria. If the borrower had relocated, efforts, in the form of skip tracing, were made to find his or her current location. Between letters and national advertising, borrower awareness has been high. Citi's current return mail rate is 9.3%, and total undeliverable mail after all skip tracing exhausted is 5.7%. The industry return mail is currently at 9.8%. Any borrower who requests a file review and has appropriately filed a request will also be reviewed.

CitiMortgage has been preparing for months to implement the National Mortgage Settlement agreement, which is currently pending approval before the Court. In fact, we have not been waiting and have been taking calls from customers since March 1. We have an analytics tool in place we are using to determine whether or not we believe a borrower may qualify for the program, and we have already moved a few hundred cases into the pipeline.

As part of the OCC Consent Order and the National Mortgage settlement, foreclosure files will be reviewed to determine whether any borrower eligible for SCRA protection was foreclosed on. In the event that such an action occurred, the OCC Consent Order and National Mortgage Settlement lay out guidance for remediation that we will follow.

Citi supports and appreciates the efforts of our servicemembers, and is committed to complying with the SCRA and ensuring that eligible servicemembers are not wrongfully foreclosed upon. As part of our commitment, we have policies and procedures on SCRA compliance and also deliver training to certain staff involved in mortgage servicing. In addition, we have implemented internal controls, as well as enhanced external controls, that involve checking loans against the Department of Defense's Defense Manpower Data Center database at multiple times throughout the foreclosure process. We will continue to look for opportunities to further improve and enhance SCRA policies, procedures and controls in order to ensure compliance.

We understand there is work to be done. Citi remains focused on achieving affordability and helping families stay in their homes in a responsible manner, and we support and actively participate in the Treasury's programs to help consumers. We undertook significant measures to implement enhanced servicing standards required by the Consent Order and have a dedicated team focused on implementation of servicing standards as required by the National Mortgage Settlement. We are committed to remaining focused on meeting our objectives and fully complying with the enhanced servicing standards in our industry.

Thank you for the opportunity to address the Committee. I would be happy to answer any questions you might have.

Chairman ISSA. Ms. Sellers.

STATEMENT OF SHEILA SELLERS

Ms. SELLERS. Good morning, Chairman Issa, Ranking Member Cummings, Congressman Towns and Platts, members of the committee. Thank you for the opportunity to appear today. My name is Sheila Sellers, and as senior vice president for National Mortgage Outreach at Bank of America I work directly with families struggling to keep up with their mortgage payments. I do this at borrower outreach events across the country in some of the hardest hit communities, including right here in Brooklyn, and we have recently served the community of Brooklyn.

While there have been challenges in responding to the unprecedented number of people seeking assistance, I need to share with you today that Bank of America is committed to doing the right thing for our customers and for our neighborhood. At Bank of America we have increased our staff nearly tenfold over the last 3 years and today have 45,000 people dedicated to assisting our customers. We are also at the forefront of key issues such as targeted principal reduction and special assistance to military service members and to veterans.

Here in the Greater New York Area, we are partnering with local leaders, like Christie Peel at the Center for New York City Neighborhoods, to make assistance more easily accessible and understandable and to invest in the future of the region. Our goal is to help customers stay in their homes whenever possible. When that is not possible, we offer short sale foreclosure options. Each allows customers to avoid foreclosure.

At Bank of America foreclosure is the last option and we do everything to assist our customers before that happens. We do many things to help customers more easily understand their options and pursue what is best for their specific circumstances, including providing a single point of contact to work with them through resolutions.

We hold events that bring a full loan modification process under one roof. We participate in events hosted by local organizations like the center. We also have a network of over 50 brick-and-mortar assistance centers across the country where customers receive face-to-face assistance.

Here in Brooklyn, we have a center near the Atlantic train station where 10 of my teammates provide multicultural support to customers in the area. The manager of that Brooklyn center is here in the audience today, Nick Condo, and he is available if you have questions later.

Additionally, we work hard to ensure the services we will provide our military customers and their families reflect the sacrifices that they have made. At Bank of America we believe the servicers expand support for military and their families, including providing more options for customers with a permanent change of station and greater access to financial education for those coming off of active duty.

I know Chairman Issa, Ranking Member Cummings, and the committee have taken a leadership role in working for our military families, and I personally thank you for doing that. At Bank of

America we have an obligation to treat all of our customers fairly. When and where that has not happened we have accepted responsibility and have taken extensive steps to improve our service level.

The completion of the settlement with Federal and state officials is another important step forward. It will allow us to build on the programs and services already in place and will result in additional support for homeowners. And at the same time, we will be able to continue to pursue additional ways to help those who are not eligible for modification to avoid foreclosure.

The long-term health of the housing market and the economy begins by stabilizing our community and putting them on the path to recovery. One key is helping customers who are transitioning out of their home. Over a year ago, together with the United Way, Bank of America introduced a home transition guide. I have a couple of copies and I believe that we have provided you with materials as well. We produced this guide, so I think that you do have that.

Chairman ISSA. I ask that unanimous consent that the entire guide be placed on the record. Without objection, so ordered. We have it all.

Ms. SELLERS. Thank you, sir. And the guide provides educational information and access to community resources like counseling services.

Through participation and partnership with cities, community groups, and nonprofits, we also help stabilize hard-hit communities by actively addressing our real estate owned properties. This includes rehabilitation and preservation programs and a donation in sales of property in discounted prices to those who are in need.

I think my pages are sweating so they are kind of stuck together. I apologize. Along with all of this———

Chairman ISSA. Wait until summer in Brooklyn. [Laughter.]

Ms. SELLERS. Along with all of this we continue to extend credit and invest in our neighborhoods in order to build for the future.

At Bank of America our commitment to helping customers avoid foreclosure and doing what is best for our community is strongly enduring. There is no single solutions. But with the completion of the global mortgage settlement we have the opportunity to further strengthen our focus on helping homeowners and the housing market get back on track.

I thank you for your time today and I look forward to your questions.

Chairman ISSA. Thank you.

[Prepared statement of Ms. Sellers follows:]

Introduction

Chairman Issa, Ranking Member Cummings, Congressman Towns and other Members of the Committee, thank you for the invitation to appear before you today to discuss how Bank of America is helping our customers avoid foreclosure and how we are contributing to the recovery of our communities.

My name is Sheila Sellers, and as a Senior Vice President for National Mortgage Outreach executive at Bank of America, I have seen firsthand the impact the housing crisis has had on American homeowners and our neighborhoods. I support many of our borrower outreach events – and work closely with the staff at our customer assistance centers – in some of the hardest hit communities across the country, including here in Brooklyn, in Baltimore and throughout the state of California.

In doing so, I have personally worked with families struggling with issues such as unemployment, underemployment and medical problems that are making it difficult for them to keep up with their mortgage payments. And, I have seen the relief on their faces when they find a solution that brings them peace of mind and security for their families.

While we, and others in the industry, have experienced challenges in responding to the unprecedented surge of people seeking assistance, we are committed to doing the right thing for our customers, and for the neighborhoods whose health and vitality is so essential to the recovery of the housing market and economy. We fully appreciate and take very seriously our responsibility to help homeowners avoid foreclosure whenever possible.

Since 2008, we have strived to provide our customers with solutions that have helped prevent nearly 1.5 million foreclosures, including more than one million loan modifications. Today, we have approximately 45,000 people fully dedicated to assisting customers who are struggling with their mortgage payment; we work with more than 2,000 non-profit organizations focused on foreclosure prevention; and we are at the forefront of key issues such as providing targeted principal reduction and offering special assistance to military servicemembers and veterans.

We recognize the significant challenges facing homeowners in the greater New York area, and partner with state and local government and community leaders to make mortgage assistance more easily accessible and understandable, and to invest in the future of neighborhoods across the region. To date, we have provided customers in the State of New York nearly 40,000 loan modifications or other foreclosure avoidance solutions, and, among other things, we have:

- Opened two Customer Assistance Centers in Brooklyn and West Hempstead that provide New York City homeowners access to face-to-face, end-to-end assistance from specially trained associates.
- Held six borrower outreach events solely for Bank of America customers in the New York area, including two events hosted in Brooklyn, and participated in more than 40 borrower outreach events in the greater New York region over the past several years.
- Become the largest corporate supporter of the Center for New York City Neighborhoods, a consortium of non-profit organizations serving New Yorkers having difficulty paying their mortgages.
- Provided more than $9 million in grants in support of neighborhood preservation, education, arts and culture in the New York City area last year alone, with nearly half of our contributions going to those organizations specifically focused on serving low and moderate income New Yorkers.
- Extended additional support to non-profits serving Brooklyn, including the Pratt Area Community Council, Heart of Brooklyn, Bedford Stuyvesant Restoration, Fifth Avenue Committee and Cypress Hill LDC.

In addition to the programs and services already in place, the recent settlement between mortgage servicers, the State Attorneys General and the federal government will result in additional support to homeowners across the country. This assistance will benefit customers in states like New York, Maryland and California, among others.

The settlement is still under review by the courts and, because of that, I hope you understand I cannot speak to it in detail. But I can tell you that what the State Attorneys General, federal agencies, and major servicers have agreed to will be an important step forward in collective efforts to restore our housing market to a healthy condition.

Helping customers avoid foreclosure

With those points in mind, let me provide specific details about our efforts to help customers avoid foreclosure.

Our primary goal is to help customers into affordable mortgage payments so they can stay in their home. We were among the first servicers to implement the Home Affordable Mortgage Program (HAMP), and lead the industry in modifications completed through both the first and second lien programs. For customers who do not qualify for HAMP, we offer a number of alternative modification solutions, including forbearance, payment deferment, interest rate changes and targeted principal reduction designed to help customers achieve a more affordable payment.

In cases where a borrower is unable to afford their loan or is no longer interested in remaining in their home, we facilitate short sale and deed-in-lieu of foreclosure options that allow customers to avoid foreclosure, reduce the impact on their credit and make a smooth transition to alternative housing. This also helps reduce the number of foreclosed properties that impact our communities. As more customers exhaust loan modification options, we are seeing a growing number interested in these transition solutions.

Through our experience, the opportunity to receive personalized one-on-one service or meet with a mortgage specialist face-to-face enhances borrower response rates and facilitates the process of moving towards a successful resolution. We have dramatically expanded our ability to deliver this level of service for our customers.

- Every borrower who seeks assistance is now provided a single point of contact who can work with them through resolution of their issue. Today, more than 675,000 customers have a relationship manager, which has reduced confusion and increased customer understanding of the process.
- Customers behind on their mortgage are invited to bank sponsored events where we bring the full loan modification process – including underwriting and financial counseling – under one roof, giving us the ability to provide eligible customers with decisions onsite.
- We also participate in hundreds of third-party events with organizations such as the Neighborhood Assistance Corporation of America, Alliance for Stabilizing Our Communities and HOPE NOW.
- We now have a network of 50 customer assistance centers where customers can meet face-to-face with specially trained associates who work with them through the entire process and assist with foreclosure prevention solutions if a modification is not possible.

Additionally, we work hard to ensure the service we provide our military servicemembers reflects the sacrifices they have made. We have created a dedicated mortgage servicing unit, loan modification program and special mortgage interest rates that go beyond the requirements of the Servicemembers Civil Relief Act (SCRA). We believe all mortgage servicers should expand support for military customers and their families, including more options for servicemembers who have experienced a permanent change of station and greater access to financial education for those coming off of active duty.

We currently serve as co-chair of the leading trade group focused on this issue and are collaborating with the Consumer Financial Protection Bureau and Department of Defense, among others, to explore ways to expand beyond the requirements of the SCRA and help ensure we meet the mortgage needs of active and veteran servicemembers.

I especially want to thank Chairman Issa and Ranking Member Cummings for their personal leadership and efforts to help us provide additional support for our servicemembers.

Moving forward following the global mortgage settlement

We recognize that as an industry we did not always achieve the high standards we should have. We have taken extensive steps to improve our service levels and give our customers confidence that they are being treated fairly and reacting appropriately when that is not the case. And while the circumstances that led the industry to this point are regrettable, the recent completion of the year-long investigation by federal and state officials into the past practices of the largest mortgage servicers is an important step forward for the industry.

The settlement, once finalized, will enable us to proceed with greater certainty, build on the progress we have made thus far, and provide additional support for homeowners. Under terms of the agreements, Bank of America will deliver new or enhanced programs designed to assist mortgage customers, including:

- Loan modifications: Targeted principal reductions for customers who are 60-days delinquent on their mortgage as of January 31, 2012 and owe more on their mortgage than the current value of their home.

- Refinancing: Lower interest rates for homeowners with mortgages owned by Bank of America who are current on their payments and owe more than the current value of their homes.
- Home transition assistance: Transitional funds and assistance for borrowers transitioning out of their home through short sale or deed-in-lieu of foreclosure.

Going beyond what is required as part of the agreements, we will extend additional relief to our customers. We will proactively reach out to eligible borrowers who may receive targeted principal reductions that could reduce their mortgage balance as low as the current market value of their home. We will defer foreclosure sales for many of these borrowers until they can be considered for this relief.

As the settlement is implemented, borrowers interested in remaining in their home will have greater clarity about the options available and can move forward with the solution that is best for them. At the same time, we continue to pursue additional ways to help those who will not be eligible for a modification or prefer not to stay in their home to avoid foreclosure, including:

- Continuing to educate about and promote our short sale and deed in lieu of foreclosure programs.
- Adding short sale specialists at borrower outreach events and customer assistance centers to provide face-to-face counseling.
- Increasing financial incentives and relocation assistance for borrowers who want to leave their home to help them transition to new housing.

We all agree that foreclosure must be a last resort. However, despite our best efforts, there are some customers who simply cannot afford to stay in their home, do not respond to our offers for assistance, or have already left their home. When all other options are exhausted, we must move forward responsibly. Particularly with regard to vacant properties, moving through the process and getting the home sold and reoccupied can dramatically help a neighborhood recover lost vitality. Of the foreclosure sales we completed in the fourth quarter, nearly 40% were already vacant.

To truly ensure all options have been exhausted, we continue to reach out to customers through a series of letters, outbound calling and invitations to meet face-to-face at events or assistance centers throughout the foreclosure process. We have explored other options as well. Still, making that critical connection remains a perplexing challenge for the industry, and we welcome suggestions for increasing customer response rates.

Stabilizing and rebuilding our communities

The long-term health of the housing market, and the broader economy, begins by stabilizing our communities and putting them on a path to recovery.

The support we offer homeowners does not end when they leave their home; we continue to work with our customers as they transition into their new housing situation. Together with the United Way and other community partners, we have developed a Home Transition Guide that provides customers with educational information and access to community resources like credit counseling services designed to help them develop a solid financial plan for the future. To date, more than 250,000 customers have received the guide in the mail or at homeowner events, or viewed it online.

We recognize the impact that foreclosed and vacant properties can have on our communities and are committed to effectively preserve properties, address neighborhood issues and help maintain property values. Our goal is to be a good neighbor by maintaining properties and returning homes to the market for another potential homeowner in a timely manner.

Through partnerships with cities, community groups and non-profits, we actively donate and offer discounted sale prices on our real estate owned (REO) properties to help provide stability to hard-hit communities.

- We have announced programs in several major cities that will result in the demolition and donation of low-value properties for redevelopment, donation or to create green space. We are currently exploring the potential for a similar partnership in New York City.
- We support the Neighborhood Stabilization Program, which allows community and non-profit groups access to the bank's REO inventory before cash buyers and investors. In New York, we work closely with Neighborhood Restore, which rehabilitates properties for the city's Department of Housing Preservation and Development.

- Additional properties have been donated to military servicemembers and veterans, police officers and other first responders, and in support of disaster relief efforts and community development. In particular, through a partnership with the Military Warriors Support Foundation, we donate homes to servicemembers critically injured in combat.

Along with all we do to address the current challenges in the housing market, we have continued to actively extend credit and invest in our neighborhoods in order to build for the future. In New York alone last year, we provided individuals and families more than $5.3 billion in mortgage financing, including $1.1 billion to low-to-moderate income borrowers. In addition, another $400 million was provided to small business owners in the state and another $16 million invested in local nonprofit community organizations.

Through our support of the Center for New York City Neighborhoods, we provide legal services, housing counseling, and consumer education to those at risk of losing their homes to foreclosure. Beginning this month, the Center's housing counselor representatives will join our employees and provide assistance to customers face-to-face in our Brooklyn Customer Assistance Center. The goal is to expand this to include West Hempstead in the future. We also continue to support the Center's Rise Up & Stay Put! foreclosure prevention events through the Alliance for Stabilizing our Communities, an initiative funded by Bank of America and targeted to multicultural communities in distress.

In addition, among other commitments in Brooklyn, we awarded $200,000 each to help support the general operations of three neighborhood builders: Cypress Hills LDC, Fifth Avenue Committee and Bedford Stuyvesant Restoration. We also provide these organizations specially designed programs to help their leaders develop skills in organizational and strategic management, forging alliances, and building communities.

These investments are making a difference. Here are two recent examples:

- We worked with community leaders, city officials, and the New York City Housing Development Corporation to provide an investment that allowed The Hudson Companies to build the Dumont Green development, which now provides 176 energy-efficient apartments to low-income families in Brooklyn.

- We provided funding to the Gateway Elton Street 1 Development Project – a new, green, affordable-housing complex in Brooklyn. Once complete, this complex will offer more than 650 affordable apartments with approximately 60,000-square-feet of community space.

Conclusion

Our commitment to helping customers avoid foreclosure and to doing what is best for our communities across the country is strong and enduring. With the completion of a global mortgage settlement, we have the opportunity to move forward and unite to focus on getting the housing market back on track. There is no single solution to the challenges we face, but we strive to:

- Provide our customers timely and accurate decisions so they can move forward with their lives – Our goal will be to help them stay in their home whenever possible; where that is not possible, we will explore all other options available to help them avoid foreclosure

- When every alternative is exhausted, help support the recovery of our housing market by moving forward with foreclosures responsibly, with a focus on minimizing the impact on customers and our communities.

- Continue to invest in the stabilization and revitalization of our neighborhoods to put us in a position to grow and strive as the job market and broader economy recover.

Thank you and I look forward to your questions.

Chairman ISSA. I want to thank our entire panel. There was a lot of witnesses and very well done.

Before I recognize myself, I will announce our intention is to do one full pass through the questioning and then a short second round.

Additionally, I would ask can all of you stay while our second panel testifies? I think you will find that—okay, because obviously they are not going to agree with everything you say here, and I would like to make sure you hear it for all of us.

Okay, I recognize myself for 5 minutes now. I am going to hold you accountable, Ms. Sellers, with only one question. When you said you tripled the staff is some of that the fact that you brought Countrywide or is that staff tripling the result of new hires at both the Countrywide unit and the Bank of America unit?

Ms. SELLERS. That staff is the result of the need, and that is post-Countrywide acquisition.

Chairman ISSA. So essentially both parts of B of A, now one company, have increased by that amount?

Ms. SELLERS. Correct. And those 45,000 are focused on servicing our portfolio customers.

Chairman ISSA. Well, I'm particularly sensitive, Mr. Ohayon, some people earlier mentioned that perhaps under 1 percent, not the 99 percent—before I came to Congress, Wells Fargo was one of my tenants in one of our units and I watched the mortgage unit close down exactly at the time in which you should have been staffing up, exactly at the time in which instead of processing new mortgages, essentially you had an increase in trouble mortgages. Is that something that in your role you are seeing as a lessen learned that all banks need to know for the next time, that it is no time to reduce the size of your mortgage unit at a time when mortgage origination and servicing exactly at the time in which you are likely to have a huge amount of mortgages in trouble?

Mr. OHAYON. Mr. Chairman, we have learned a lot throughout the experience of the mortgage crises. Like Bank of America, we actually increased the staffing in mortgage servicing as well.

Chairman ISSA. And when did that begin for you, from 2009, 2010?

Mr. OHAYON. Yes, it began in 2009. We increased staff by over 10,000 team members. We now have had over 15,000 team members that are working every day with customers who are struggling on their mortgage payments.

Chairman ISSA. I am not going to necessarily call on all of the banks because we have limited amount of time.

Mr. Pollard, you and your boss are the subject of a lot of questions about Freddie and Fannie. Would you explain to me how I get the most for the taxpayer and the most for the consumer or public that finds themselves upside down? And before you answer, I understand that if you do mortgage modification, reduce principal, principal reduction, people will owe less. I understand that the programs in which this abatement is temporary, and ultimately we would like to receive the full amount, has not been universally embraced by those who still owe the whole amount.

And I understand that if we allow somebody to refinance to today's lower rates, by definition the income to Freddie and Fannie would go down. So there are losses in all three ways, at least for the short run.

Can you justify to me, one, which is the best solution cost effectively and why, and what your sources were?

And second, if it is not across the board widespread resetting of rates to today's prevailing rate, tell me if, in fact, the Federal Government is now telling people that they can walk away from a home and get out of it, but they cannot refinance if they are simply underwater, and on what basis, even if it costs the American people through taxes and money on what basis I can say no?

Mr. POLLARD. I think your first question is about the process for us testing or trying these various programs. It is also important that we are transparent. We published a monthly and quarterly report of results so that people can see not only have we modified the loan, but has that loan re-defaulted or has it continued to perform?

I think that has been probably the best way of looking what we are doing from the taxpayers' perspective. And the three methods that we used has been to reduce interest rates at about 31 percent, which we believe is critical. We have looked at extension of various timeframes and at principal forbearance where the principal is———

Chairman ISSA. Principal reduction has never been chosen———

Mr. POLLARD. That is correct.

Chairman ISSA. Okay. For the banks, and I would like to play a little bit off of each other, I asked the last question which was, I know it is your money, I know it is the taxpayers' money, but how is it that we should not tell people who are willing to keep paying their loans, who have become "upside down in equity," how is it we say to those people, you can walk away from your loan, but we will not refinance it if you have negative equity? How is that fair? How is that not inherently the first step?

And I know that Freddie and Fannie have been leading it. But some of your banks have been trailing in willingness to refinance without additional equity. Why is it that those people find themselves adversely affected when, in fact, home affordability will increase if you did it?

And anyone who would like to answer all four?

Well, Bank of America will probably tell me how much you are doing. [Laughter.] I am Californian, so they used to be Californian.

Ms. SELLERS. We are a little bit everywhere.

Chairman ISSA. You are a little bit everywhere.

Ms. SELLERS. For Bank of America and Bank of America-owned assets we offer a myriad of solutions that are designed specifically for the customer's situation.

Chairman ISSA. My question is much more narrow and we are out of time, so I only want the answer to the narrow one and probably catch you on the second round. The narrow question is, how is it that the consumer should not expect that they should be treated as well as the person who chooses not to pay their mortgage if they choose to pay their mortgage in the sense of being able to refinance at today's lower rates?

That is one of the things that—and I know all of us have constituents, but it is one of the things I hear constantly is that I am doing the right thing. I am underwater. I do not want to walk away from my loan, but why am I paying 7½ percent for something that I can go out and get a lower rate today? So briefly, either what you do or how you justify not doing it today?

Mr. POLLARD. Mr. Chairman, I think we will be doing more in terms of refinancing. We will be doing more, so we will be refinancing. And if you really look at the statistics, if you look at it nationwide, approximately 70 percent of underwater borrowers are actually paying their mortgages. So it is critically important that we get them refinance alternatives and get them to lower rates.

I know this is part of the consumer benefits under the settlement agreement. We will be doing more for those that are in our own book. That combined with HARP, which has 60 percent of the mortgages in the United States under the GSE control, that should get to a broad range, and then what you are left with happens to be mortgages and private label securities.

Chairman ISSA. Okay, I will catch the rest on the second round. I want to be respectful of time. Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. I am hoping that you all will follow up on that question on the second round because it is a very important question and I would encourage you all to find ways to get that done.

Mr. Pollard every single bank on this panel has done some form of principal reduction for mortgages they own. In addition, under the $25 billion settlement with the 49 states the banks have agreed to do additional principal reductions. The chairman of the Federal Reserve, the president of New York Fed, countless economists, and even the former special inspector general for TARP have all called for principal reduction as the best way to end the housing crisis, help homeowners, and save taxpayers money.

Right now, your boss, Ed DeMarco, is the acting head of FHFA and he seems to be the only one who disagrees with this approach. As a result, any loan guaranteed by Fannie Mae or Freddie Mac is ineligible for principal reduction and modifications.

When Mr. DeMarco appeared before this committee last fall, he said he lacked the authority for principal reductions, but that is not true. In 2008, Congress passed the Emergency Economic Stabilization Act and redirected FHFA to, "Maximize assistance for homeowners."

We explicitly authorized the use of principal reductions. So as the chief counsel of FHFA have you now abandoned the legal argument that FHFA lacks the authority to do principal reduction?

Mr. POLLARD. I think the position that the director took at the time in explaining that fully was that we have several legal obligations, one of which is to also monitor carefully the expenses and to preserve and conserve the assets of Fannie and Freddie which are supported by the taxpayer. Therefore, Mr. Cummings, we take very seriously your inquiries, absolutely.

And this principal reduction that has been talked about, there is no debate about that. We have studied it. We have looked at the methods we currently use. We have looked at—and I think this HARP 2 that the banks have mentioned that is a new program is being widely looked to.

The difference is, is the portfolios of the GSCs are different from those of the banks in terms of both performance and the number of borrowers underwater. The taxpayer in principal forgiveness, the taxpayer that we deal with, not shareholders, gives up the upside if there is principal forgiveness rather that forbearance. I think the chairman was referencing that.

There has also been indications that the acceptance rate is not necessarily higher for forbearance. Customers are looking to lower the interest rate. It requires more complex calculations than simply forbearing where you simply move principal to try and figure out who is eligible, who is not eligible, who should or should not be eligible. Where does it stop and how much should be done makes it much more complex———

Mr. CUMMINGS. But that does not mean we should not try to do it because it is hard to figure out, right?

Mr. POLLARD. Well, and let me add one thing and I want to answer that point. And I think there are also operational deployment issues of deploying these programs. One thing that has been criticized of all the programs, be it HAMP or any program, has been the actual deployments. What does it take to restructure your departments? What I would say———

Mr. CUMMINGS. Well, let me ask you this because I have a limited amount of time. But let me just ask you. Do you have the authority? I guess that is what I—do you—are you saying that you do not have the authority or you do?

Mr. POLLARD. What I think we have been trying to say is that we have broad authority, but in looking to what our authorities are, we are driven to do the most cost-effective method.

Mr. CUMMINGS. So you do have the authority but—so you—but based upon the circumstances, you chose not to?

Mr. POLLARD. We operate under several requirements under HARE and VISA, but I do want to conclude because you asked something I do want to answer, I do not want to leave today.

One, is that, you know, we have conveyed the reports that we have done to the committee.

Mr. TOWNS. Could you talk into the mic? I am having trouble hearing you.

Mr. POLLARD. I am sorry, Mr. Towns. We have conveyed the analysis we have done and we are undertaking another review per your request and that work is moving apace.

Mr. CUMMINGS. And how soon do you think we will have that response?

Mr. POLLARD. I hope we would have that by the end of the month.

Mr. CUMMINGS. By the end of week?

Mr. POLLARD. End of the month.

Mr. CUMMINGS. End of the month? So, let me be real clear. Do you have the—you do have the authority for principal reduction?

Mr. POLLARD. Well, I do not want to obfuscate or make it more complex.

Mr. CUMMINGS. I am not trying to attack you. I just want to make sure———

Mr. POLLARD. I think we have authority to undertake a broad range of activities, but those are circumscribed by other requirements about how we undertake our activities.

Mr. CUMMINGS. I see.

Mr. POLLARD. So putting the two together leads us to be somewhat constrained to take the most cost-effective approach.

Mr. CUMMINGS. Mr. Chairman, I do not know how much time we have. I do not know———

Chairman ISSA. Well, I would ask unanimous consent the gentleman have additional 30 seconds, please.

Mr. CUMMINGS. Thank you. Thank you. So to the banks, we see, you know, some of these people suffering and I have heard, you know, what you all are doing. I just want you to—I want to just pick up where the chairman left off, that whole issue. People should be able to get now lower interest rates and people should have—I hope you do not mind, Mr. Chairman?

Chairman ISSA. No, go ahead.

Mr. CUMMINGS. And people should—it seemed like they should have an opportunity to take advantage of those rates, it might be a difference of as many of 4 points. That is a lot of money, and would keep somebody in their houses. So we should just pick up—I think you tried to answer and then the others if you do not mind.

Mr. OHAYON. Yeah, Congressman, we certainly support giving customers the opportunity to refinance and part of the expanded relief options, specifically the refinance option under the settlement, will provide that opportunity for customers who have little or no equity in their home to refinance.

In addition, Wells Fargo is working on a portfolio product that would create additional opportunities to refinance for those that are in our books, in our portfolio. We also participate fully with HARP and HARP 2 on investor owned——

Mr. JAFFEE. Yes, Mr. Cummings, at Citi we do participate in HARP 2. We also have portfolio products. To take Chairman Issa's example, for someone that was at 7½ percent interest rate and was underwater, up until a few months ago we did not have a solution for them. Now under HARP 2 we can, we can say thank you for doing the right thing. Thank you for making your payments. We are able to give you a lower rate. And we can do that regardless of the loan and the value.

Ms. SELLERS. Mr. Chairman, from the Bank of America perspective, we have participated in the Federal programs both HARP and now HARP 2. Underneath the proposed settlement we have opportunity to institute additional options, and that is for our current performing customers.

And then for our delinquent customers we can adjust the interest rate as part of the modification agreement.

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

Chairman ISSA. Thank you. Mr. Platts. And by the way, Mr. Platts, I want to thank you for driving up here. The rest of us took the train, but you braved the morning commute. So thank you.

Mr. PLATTS. Mr. Chairman, thank you. Thanks for hosting this or holding this hearing and, Mr. Towns, I appreciate your bringing us here to Brooklyn. Good to be back in Brooklyn with you as well as the ranking member, Mr. Cummings. And appreciate everyone's interest in this.

I want to start by associating myself, Mr. Chairman, with you and the ranking member's comments about the importance of us doing better with those individuals who are paying their bills, they are meeting their obligations, but are underwater and they are trying to refinance. To say we are going to help those who have walked away from their obligations, but not do a better job to helping those who are accepting their responsibilities, is just wrongful policy. So the importance of us getting that right I think is very important and that means a greater opportunity to refinance for those who have not walked away from their responsibilities.

I want to start here and get through as much as I can, starting with Mr. Morgan. In your testimony, and I appreciate the written testimony and the detail you have given, but you talk about that 4.3 million letters have gone out. You say that you anticipate a quarter of a million reviews of which about 210,000 have been done so far between the independent requested—or the independent look-back and those requested.

You referenced 121,000 that have been requested and about 90,000 independent.

How do you first come up with that 250,000 number in your testimony that you expect that number of reviews to be conducted?

Mr. MORGAN. The 250,000 number is comprised of two components, the first of which is the current sample size that is the part of the file review. There is about 130,000 borrowers that are part of that file review.

And then to date, I believe the testimony says that approximately 116,000 requests for review has been received. And so we were putting those two together to make up the current slate of 250,000 slated for review.

Mr. PLATTS. So you do not have a—that 250 is not what you anticipate, just where we are not knowing where we will end up?

Mr. MORGAN. Correct. That is where we are today. We have till July 31st for additional requests for reviews to come in.

Mr. PLATTS. And this refers to the enforcement actions of 2009, 2010. Anybody who may have been improperly foreclosed on during that time period is the relevant scope of borrowers we are talking about, right?

Mr. MORGAN. The scope is actually a little broader than that. It does not require that people were foreclosed on during that time period, just if they were in the foreclosure process at any time during that time period.

Mr. PLATTS. Right. Can you talk how you set that timeframe, January 1, 2009, December 31, 2010? What if somebody is out there that believe they are treated the same in, you know, February 2011? How did, you know, OCC and the Feds settle on December 31, 2010? And are you still willing to consider those who believed they have been treated wrongly beyond that date? Is that still an option?

Mr. MORGAN. Yes. The timeframe in our consent orders are matched to the timeframe of our examinations that occurred in the fall of 2010. And the timeframe that was the scope of our examinations we thought was set to match the period of time in which the greatest operational strains were on the system due to the high volume of delinquencies and the extreme ramp up in the foreclosure processes.

I would note that our review will pick up borrowers who were in the process of foreclosure prior to 2009 because of the length of time foreclosure takes. For those, to your other questions, for those that entered the foreclosure process after our timeframe, we are encouraging those borrowers to, you know, file their complaints, if you will, with their servicers and also with our consumer assistance group.

Mr. PLATTS. My concern here is probably an obvious one, is that, you know, we do not arbitrarily treat somebody who is treated the same wrongly in January 2011, you know, from somebody who is in 2009 or 2010, so that we get equity that we are trying to make right and do right by everybody.

A quick follow-up, in your testimony and also with the Feds, the discussion about later this month or in a month guidance about what type of compensation should be paid. If I understand the testimony correctly, it relates to where the independent, you know, look-back is done, that if they find—that independent entity finds wrongdoing, they can then recommend certain compensation. And that is what the guidance is going to relate to.

Will that guidance also, or something similar, be given to where the borrower requested the review and then there is wrongdoing found? You know, what type, if any, guidance are we giving where there is wrongdoing in those circumstances?

Mr. MORGAN. Yes, the joint guidance for remediation will apply to both borrowers that are in the file review and those that have requested an independent foreclosure review.

Chairman ISSA. Thirty additional seconds.

Mr. PLATTS. Any appeal process if—based on that independent look back there is a recommendation of certain amount of compensation to the borrower. If the borrower thinks that that is not acceptable, what is their ability to contest it as not being adequate or appeal it in a formal manner?

Mr. MORGAN. Our consent orders do not contain a specific appeal process. Obviously borrowers would have a choice to accept the offer or to pursue their interests through other means. And additionally, they would be able to file complaints with the servicer or our consumer assistance group, but there is not a formal appeal process as part of the consent order.

Mr. PLATTS. Okay, thank you. Thank you, Mr. Chairman.

Chairman ISSA. Thank you. Former chairman of the full committee, Mr. Towns.

Mr. TOWNS. Thank you very much, Mr. Chairman. Let me begin by saying every mortgage servicer testified today has talked about how great an effort they have made to work with the delinquent borrowers on modifications as a method of foreclosure prevention.

However, every single day I get calls in my offices, and of course people coming in and visiting, talking about how difficult the process is, and that almost making it impossible for them to obtain a modification. I hear from the legal community also that are working with services toward a solution, even when the foreclosure case has been pending in court for a while, it is extremely difficult.

I have in my hand right here now the loan modification paperwork for Mr. Nathaniel Barton, who lives in the 10th Congressional District which I represent. The letter from the attorney to Mr. Barton starts out encouragingly enough because he is, and I quote, "informed that the borrower has been approved for a loan modification."

Here is the problem: the good news falls apart very quickly. For this reason Mr. Barton is about $79,000 delinquent in his mortgage and owes another $11,000 in late charges and attorney fees. According to the letter he can make 3 months of trial payments totaling about $10,000 a month. However, once the trial period is over, Mr. Barton has to pay the remaining balance of $80,000. What kind of modification is that? [Applause]

If he does not pay the balance, he must sell his home. I am told by the community that this is a rising trend among servicers. The situation is bad to begin with and impossible to work out. Let me begin with you, Mr. Jaffee.

If Mr. Barton did not have $80,000 to pay when he became delinquent, but now has a job and can make his mortgage payments, why is he being expected to pay the $80,000 as a condition for his modification when he probably makes 50,000 or $40,000 a year? Tell me. If he had $80,000 he probably would not have be in—would not even have the problem. [Laughter.]

Mr. JAFFEE. Congressman Towns, I am not personally familiar with that particular transaction, but I would say that generally we try and sell for affordability. The first thing we do is look and see how much money someone makes and then we try and solve it using the 31 percent ratio that is in the HAMP guidelines. And if that does not work, then we look for city proprietary products.

I am happy to chat with your staff about specific transactions. But what we are trying to do is find affordable solutions that allow people to remain in their homes.

Mr. TOWNS. But do you agree that that is not affordable solution? You agree with that, right? Because if he had $80,000 he probably would not have the problem.

Mr. JAFFEE. I would say probably.

Mr. POLLARD. Mr. Towns? Can I weigh in just as someone who is not—even though I work with the Federal Government here. Part of the servicing alignment—the letter you just read I find very troubling.

Mr. TOWNS. I did not hear you.

Mr. POLLARD. I said the letter you just read I find very troubling.

Mr. TOWNS. Yes.

Mr. POLLARD. Part of the servicer alignment was to make uniform those forms that are used for people, some of them are three pages long, and include models for letters for law firms that are to be followed.

So what I want to convey is I think what Mr. Jaffee is saying is when you see some of these items and they are referred to us as an agency that we pass along to Fannie and Freddie or to one of these institutions, I would tell you we spend a lot of work on mortgage fraud in our agency. We spend a lot of time on mortgage scams in our agency. And we are committed to making sure that the initiative that we have put in place is followed by the servicers.

I would note that the consent orders of the bank regulators recognize this alignment initiative, that there needs to be early action. There needs to be uniformity in the forms and even in the model letters that lawyers send out.

So I have not seen this letter in particular, but I just want to give you some background that that is what this effort is about, is to get in early, to do it clear and concise to get the modification done.

Now, I would way one final thing. We also recognize that under every scenario there is a possibility, and even under all the ones, including the ones Mr. Cummings has talked about today, there may be scenarios where people do not qualify and that is a reality. But I think what you have described to me gives me some concern.

Chairman ISSA. I ask the gentleman have an additional minute.

Mr. TOWNS. Thank you. Thank you very much. You know, based on, you know, what I am getting from my staff and what I am getting when I go to churches and when I talk to people in the community, this is a common practice. This is not a modification that is going to help people. And it is a modification that is suppose to help. I mean, this does not get us there???????

Thank you, Mr. Chairman. Thank you very much, Mr. Chairman, for the extension.

Chairman ISSA. Yeah, I would like—if the gentleman would yield.

Mr. TOWNS. I would be delighted to.

Chairman ISSA. If I could ask each of four banks, and Allied who is not here we will reach out to in a letter, would you agree to deliver to us a full sampling of the letters going forward, format that you intend to offer?

I think Mr. Towns has hit on a very important point. That is, this is a historic letter from one of your banks. But if you are not giving either your first offer being a fair offer designed to be reasonable by comparison to this or if you are giving one like Mr. Towns showed, it does not seem to have, it does not have, on the bottom some sort of although this is a first offer we stand ready to negotiate a payment scheme. If you do not either give a better offer that is likely to be affordable or let the borrower know that, in fact, there is an opportunity to work out an affordable scheme to get caught up, if you do not do that, then to a certain extent we are going to be back in court, we are going to be back in Congress looking at what you are doing going forward, not just because it was a lot of crowd pleasing on Mr. Towns' part, but because I am concerned and Mr. Towns is concerned. Would you all agree to deliver us, and we will give you, you know, 30 days, I realize this is still ongoing, to deliver us a go forward sample of this unified and consistent set of letters so the committee can have that for the record?

[A chorus of yeses.]

Chairman ISSA. Thank you. I got all yeses. And I will contact the one major handler that is not here by letter.

And with that we have done well. So we are going to do a second round. Now I will recognize myself for 5 minutes.

Mr. Pollard, I am talking advantage of your being here representing 60 percent of mortgages and between the rest of you we are up in the 75, 80 percent. Your organization is resisting principal reduction. But let me ask you the question, what is your effective borrowing rate as an agency and conservatorship, your agencies and conservatorship? Is your effective borrowing rate today less than 1 percent? Is that roughly what it costs Freddie and Fannie to borrow money?

Now, the Fed is next to you, so they will probably quickly tell us how cheap they are borrowing money. I realize that is the short-term cost, but do you not have a cost that is, even in the midterm, below 2 percent cost of money?

Mr. POLLARD. Mr. Chairman, I do not want to speculate on a precise number.

Chairman ISSA. You got to really get closer.

Mr. POLLARD. I am not going to speculate on the number because I do not want to give you a misinformed number.

Chairman ISSA. Ms. Killian———

Mr. POLLARD. Let me get that for you.

Chairman ISSA [continuing]. The Fed notoriously borrows at an incredibly low rate today, do they not?

Ms. KILLIAN. Again, I am sorry, that is not my area of expertise at the Fed, so I do not know.

Chairman ISSA. Okay. Well, let me just say as somebody who was described as the 1 percent, I look at these things. And between LIBOR and the Fed you are borrowing money at an incredibly low rate. So if you borrow at that rate, why would it not be—assuming you forget about future going forward profits.

But if you got, if you got a mortgage that is at 7, 6, 6–1/2, even 5 percent, is it not true that you can go to the Fed window, you can get the money, you could refinance and still make a profit on that mortgage with your current cost of money? [Applause]

We will assume that I am correct that your cost of money is well below 3 percent.

Mr. POLLARD. Well, first I note that Fannie Mae and Freddie Mac do not originate mortgages. That is a market function of the banks that do the origination.

Chairman ISSA. Yeah, please get as close as you can. There is nothing worst than a mild-mannered lawyer. It throws us off. [Laughter.]

Mr. POLLARD. I know. I would note Fannie and Freddie do not originate mortgages. They purchase mortgages and guarantee them. So the rates that are set in the market and how that is calculated I am just not going———

[Disturbance in the hearing room.]

Chairman ISSA. Yeah. Okay. No, I understand, Mr. Pollard, but, you know, you knew this was not going to be necessarily the easiest day when you got your invitation———

Mr. POLLARD. That is right.

Chairman ISSA [continuing]. And a repeat invitation from Mr. Towns, Mr. Cummings, and myself.

The fact is you own these mortgages now. You have the right to write them down. I think Mr. Cummings made that pretty clear. You are choosing not to write them down because it is not in the best interest of the other part of your requirements, which is to minimize the loss to the taxpayer.

On the other hand, if your entire portfolio, if every one of these mortgages that you currently—it is been sold to you, many of them by Countrywide—our investigation has not finished, Ms. Sellers, on to Countrywide, before you brought them—but the fact is that you own them. You could refinance every one of them to a new rate and you would own a lower paying rate. So that is within what you can do. The only question is what would it cost, right?

Mr. POLLARD. I think that is correct.

Chairman ISSA. Okay. Now, I understand that the estimates of principal reduction would be north of $100 billion of loss if you did that. Is that your estimate today?

Mr. POLLARD. I think the estimate, that is the range that we have———

Chairman ISSA. What is your estimate to mark to market, if you will, the interests rates of the entire portfolio? If everybody were able to get a close to market, current market rate from your portfolio, that entire $6 trillion?

Mr. POLLARD. I would want to get that number for you.

Chairman ISSA. Would you please get that for us?

Now, for the rest of you, you know, Citi and all of you, your cost of money is higher, there is no question at all. But is there any reason that it is not in the best interest for people to be able to exercise both in and out of what will soon become a court settlement?

If you run out of court settlement money, are you going to continue to allow people to refinance even if it has a short-term loss to your bank but a long-term benefit to your community, or we would expect that when you run out of this different figures, we will call it $17 billion initially, that when you run out of that or a 5.3 each of your sections, that this will stop?

My biggest question today is, I see there is a sunny side to a 49-state lawsuit, I want to know what the other side is. Are you going to do the things you talked about today when you run out of that money or are you going to use it until you are done with it and then say the program is over? And I will go right down the line.

And I realize you are not the CEOs, but we chose to have you all here today because you were the best qualified to answer current questions. This committee, no matter who is sitting at the dais, will have your CEOs back subject to what you answer today if it does not happen, so no pressure. [Laughter.]

Mr. SCHUPPENHAUER. Mr. Chairman, even with the pressure, I will go ahead and answer. So we have actually refinanced millions and I think you know that. There has been a massive refinance boom and so the one population has been that underwater borrower, particularly in areas where you live, for instance.

Chairman ISSA. Or in Stockton, California.

Mr. SCHUPPENHAUER. Or in Stockton or Modesto or wherever, as well as here in Brooklyn. And we are firmly committed to a refinance program for underwater borrowers on our own book and we are firmly committed to following through with HARP and HARP 2.0 programs and we actually lead at JPMorgan Chase the statistics in HARP refinances. And we will continue to do so as we go forward.

Chairman ISSA. Right down the aisle. Mr. Ohayon.

Mr. OHAYON. Mr. Chairman, I mentioned earlier that we are implementing the expanded relief program, specifically the refinance program, under the terms of the settlement.

In addition, to complement that, we are utilizing HARP, HARP 2, and then on our own portfolio developing a refinance program for borrowers who have little to no equity in their home.

On the loan modification side, because I think you asked the question earlier, we have been utilizing principal forgiveness on our owned assets for customers who are experiencing financial hardship as a means to create affordability. Typically it is done in conjunction with reduction of rate or term extension. But the key for us is try to find an affordable payment and utilizing all those different items is important.

Chairman ISSA. Mr. Jaffee.

Mr. JAFFEE. Yes, Chairman Issa, we are spending significant resources now ramping up our staff. We have started taking applications, since March 1st, in relations to the then proposed settlement.

We are working to get that rolling. One thing we have learned through the crisis is it is a very big organization and it is hard to turn around. Our objective is not just to turn it around, to spend our money, and then be done with it. That is going to be the way we will move going forward.

Chairman ISSA. Ms. Sellers.

Ms. SELLERS. Mr. Chairman, Bank of America has announced since the global settlement additional provisions that it will take on both principal reduction and its commitment to refinance on our own portfolio and those situations where we act as delegated authority, as servicer, for our investor customers.

Chairman ISSA. So as we go to Mr. Cummings it is fair to say that whether it is on the Federal Government side or the private sector side, if somebody has a mortgage, they are currently underwater, this is the time they should—and they are making or not making their payments, this is the time to go in and begin the process of asking to refinance to today's lower rates, correct?

I got all yeses. Mr. Cummings.

Mr. CUMMINGS. And I just wanted to say we are going to hold you to that. Mr. Chairman, is there some kind of way we can get some kind of report, a follow-up, as to them doing what they just said they would do?

Chairman ISSA. Oh, absolutely. Like I say, we have operatives, good high-ranking operatives, in lieu of their CEOs. Their CEOs have been before our committee before. If we do not get satisfaction, we will invite them back.

Mr. CUMMINGS. Thank you very much. Let me just ask you something, a very practical question. A lot of people—we have a person in our office, all she does is helping people with foreclosure. But there is something that used to happen, and I hope it is not still happening, where people would go to the library, fax their papers in to you all, and then they check on them and they get no response, and then come to find out you never received them. [Applause] And then they send them again, they send them again, and send them again. And then they come to my office and we send them for them, and then the company still claims they never got them. And I mean, we had so much of that.

And I am wondering have you all resolved that issue because it is almost like there was something, a big machine eating up the papers. [Laughter.] And I am very serious about this.

I mean, and we got disgusted.

I mean, have you all been able to resolve that? Because a lot of the things that we are talking about, you know, these people do not have a lot of money because they take off from work, they do not have a fax machine at home. And so they are trying to get this stuff done. And then they are disgusted because they find that it is like a deep hole on the end of their fax machine.

So, what is going on here? I mean, can you all—has that issue been resolved? It sounds like a little issue, Mr. Chairman, but this is a major issue. Have you all been able to resolve that? I know you have heard the complaints. We will start with you, very quickly.

Ms. SELLERS. We have definitely taken steps to resolve that, sir. One of the challenges for our customers is to understand what they need to be sending in and making sure that they have full packages when they send that in. At our customer assistant centers and at our outreach event, one of my personal biggest challenges is to get customers to provide the information as requested. So we have taken a lot of steps to reduce that type of situation that occurred in the past.

Mr. CUMMINGS. The others of you just yes or no, you have heard about it, but have you tried to resolve that?

Mr. JAFFEE. I think we have made significant progress there and I think that is why we do a lot of outreach events we do. That is why we participate with Hope Loan Port, which allows electronic transmittal of documents. We are trying everything we do.

And, in fact, the complaints we have on missing documents have reduced dramatically. What we see now is you got the documents, they may not like the answer they get from us, but it is not that we have lost the documents.

Mr. CUMMINGS. And just very quickly.

Mr. MORGAN. Congressman, we have done a number of things to mitigate the chances of lost documents, including the implementation of single point of contact. So the customer knows who the point of contact is, what the phone number is, and who to direct all correspondence to.

Mr. POLLARD. And I would say the same thing. From a JPMorgan Chase standpoint, looked at it and believed we fixed it. We would love to hear any inquiries that are coming into your office and we will deal with them effectively.

And furthermore, we will actually, as part of the settlement, be further developing a borrower portal that should help with that issue as well.

Mr. CUMMINGS. Now, Mr. Pollard, just one quick question. In answer to the chairman's question about the statement that Mr. DeMarco made when he said it would cost $100 billion if you all were to do principal reduction. The question is, is what would it cost if we allow people to just be foreclosed upon? I mean, you have not done an estimate on that because you are destroying communities. [Applause]

I mean, the communities—I mean, people are put out of their houses and, and the tax base goes down. It is just a whole list of things that happen as a result of foreclosure. And I am just wondering, that is $100 billion in one instance, but what about, you know, what it cost, the price of foreclosure?

Mr. POLLARD. The price of foreclosure is high. And we believe that the programs that we have undertaken have proven to be the most———

Mr. CUMMINGS. Keep your voice up. I cannot hear you, I am sorry.

Mr. POLLARD. We believe that the price of foreclosure is high. No thoughtful person wants to foreclose. No lender, no investor wants to foreclose, okay. So every effort made to avoid that is in the best interests of those parties. But we have to look at what is the most cost-effective method and the methods that we are using are having results. They have been proven and tested. We have this principal forbearance that seems to work. We are getting people to the 31 percent. We have done this HARP 2, which I think the banks are seeing a quick uptake in acceptance. And I think that is what has been driving it.

Mr. CUMMINGS. And last by not least, how do you define success so that we can hold you accountable? I mean———

Mr. POLLARD. Well, can I make———

Mr. CUMMINGS. And really, I want to applaud the chairman, because one of things I have noticed throughout this hearing is he has been trying to make sure that you do not come here and make some nice statements and then just go away and then the people are still suffering with no accountability. And I do, I do want to thank you, Mr. Chairman.

And I am just trying to figure out how can we hold you all accountable if you make these kind of statements? You follow me? Because other than that———

Mr. POLLARD. Yes, sir. Let me just say today, later today I believe, we will be announcing———

Mr. CUMMINGS. Nice and loud. You are going to make an announcement.

Mr. POLLARD. We will be making an expansion of our quarterly Foreclosure Prevention and Refinance Report. This is our report to you required by law that provides detailed analysis. We are expanding that analysis. It will show the numbers of loans owned or guaranteed by Fannie and Freddie, delinquencies, foreclosure prevention activities, success rate, REO properties, and refinancings in each state. It will have delinquent loans by state for the first time and profiles of key states. And New York is one of the key states, and California and Florida are the ones we all know about.

It will enhance our disclosure to you of the activities that we are taking. We already do this report, but today it will be—and I hope this will happen today after I said it, but it is planned for today, that you will be able to have. We do a conservator's report that details all of this.

I would like to make sure you have that. I would like to make sure it is in the form that you find digestible and usable. And so I would be happy to follow up on that with your staff after this hearing. But this is coming out later today that we will have this in hand———

Mr. CUMMINGS. So this is hot off the press?

Mr. POLLARD. I hope it gets to the press as quickly as I am releasing it.

Mr. CUMMINGS. All right.

Chairman ISSA. We will hold the record open in order to make sure it is included in today's record. With that we will go to the gentleman of Pennsylvania, Mr. Platts.

Please see report at the following site: *http://www.fhfa.gov/webfiles/23522/4q11*__fpr finalv2i.pdf

Mr. PLATTS. Thank you, Mr. Chairman. I want to echo the words of the chairman, the full committee ranking member, and Mr. Towns as the subcommittee and financial management ranking member, which I had the privilege to chair, that Mr. Towns is bringing us here today is not to have a 1-day focus on this, but to make sure we have a long term permanent solution. And I think what you are hearing from all of us is that is what we are looking for from our colleagues in the Federal Government as well as our witnesses here today in the private sector, that the commitments you are making are followed through on and that we do right by your customers, our constituents, and in the end have a good resolution for all in good faith.

And I would emphasize, to me, as we have discussed issues here, Mr. Towns' focused on good faith modification efforts. It is one thing to say we are willing to do modification, but it has got to be good faith and it has got to be legitimate.

And as the example he highlighted, that clear was not a good faith modification effort. At least from what we know here today, that was one that was just put out there with a knowledge when it was put out that it was not going to be able to be achieved, so I would not consider that to be good faith. So we want to see good faith modification.

And I would emphasize, again, the refinance issue. As the chairman well documented to Fannie Mae and Freddie Mac the ability to borrow today, minimal cost, and even to the private sector that, you know, these are people who want to pay and meet their obligations if we can help them refinance.

And if we go that route, which I will contend should be the first and most important route ahead of any write-down, we not only do right by those who are refinanced, but we do right by all American taxpayers, including those who are not looking to refinance, who are making their obligations.

Because I will tell you, in my district one of the concerns that has been raised to me is while we help those who have been wrongly harmed by bad faith in the lending industry, we do so in a way that does not unfairly hurt those who have been paying their bills all along. And why I say that is a constituent came to me and says if my neighbor is struggling, I want them to get help, but I want them to get help in a way that is not punishing me.

And the concern is, on the write-down issue, that their neighbors will be written down and they will pay—and they may have bought the identical house in a development for the same price, and the guy who is always paying his bills is still paying a mortgage on the full amount and the neighbor got a write-down as paying a mortgage on a lower amount, you know, even though same house, same value, everything.

So I, I think the emphasis by Mr. Towns—and Mr. Towns and I have had the privilege to work as chair and ranking member. He has been chairman in the past and I have been ranking member of the Subcommittee Financial Accountability. I am now chairman he is now ranking member because of the shift in the overall majority in the House. But our focus as with the chairman and the ranking member of the Full Committee is we do not want just words, we want results.

And I think that is what you have committed to here today; private sector as well as public sector. And we want to work with you to make sure that happens. Because in the end it is good for business, it is good for government doing right by our constituents, and everybody gets a win, especially the American people. So I appreciate that.

I want to add one other issue and it has been referenced here again by Federal partners as well as private sector, and that is the issue of focus on service men and women. You know, I have not worn the uniform. What I do pales in comparison to those who wear the uniform past and present. And the fact that we have men and women who are in harm's way defending this great Nation while their families were being improperly, you know, provided for regarding their home mortgages is outrageous.

And that 100 percent review of those who were—you know, related to the service personnel is outstanding. We need that across the board, whether it is public, private, you know, that we make a commitment that no man, no woman, or their families, because the families have sacrificed on the home front while their loved ones are in harm's way, that we do right by every one of them to make them whole. Because all individuals who have earned our greatest respect and absolute gratitude is those who defend us. And the fact that we have those individuals in this category of those who were wrongly treated is outrageous.

So I commend the 100 percent review of the regulatory approach and the commitment to make sure we do that in the private sector as well. But we need to do right by these men and women and their families.

So, Mr. Chairman, I yield back.

Chairman ISSA. I thank the gentleman. We now recognize Mr. Towns for his second round.

Mr. TOWNS. Thank you very much, Mr. Chairman. Let me direct this to you, Mr. Pollard, the chairman of the———

Chairman ISSA. Ed, now we need you to get the mic closer.

Mr. TOWNS. Okay. Thank you very much. The chairman of the Federal Reserve, the president of the New York Feds, countless economists, and even the former special inspector general for TARP have all called for the principal reduction as the best way to end the housing crisis and to help homeowners and save taxpayers money.

Right now your boss, Mr. DeMarco, is the acting head of FHFA and he seems to be the only one who disagrees with this approach. As a result, any loan guaranteed by Fannie Mae, Freddie Mac is ineligible for principal reduction modification. When Mr. DeMarco appeared before this committee last fall, he said he had lacked authority for principal reductions.

Now, and I know that this was raised by the gentleman from Maryland, but I did not quite get your answer. But that is not true. In 2008 Congress passed the Emergency Economic Stabilization Act and redirected FHFA to maximize assistance for homeowners. We explicitly authorized the use of principal reductions.

As the chief counsel of FHFA, have you now abandoned the legal argument that FHFA lacks authority to do principal reductions?

Chairman ISSA. Will the gentleman yield for a second?

Mr. TOWNS. I would be delighted to yield.

Chairman ISSA. You know, as you hear the same question again and again it is because we are not getting the answer of do you have the authority, not do you have the authority and there are some other areas in which your judgment is that you would be missing some other part. So if you could answer for the former chairman the explicit question of—assuming for a moment that the best avenue for the taxpayer was loan modification by reducing principal, do you have the authority? Because the chairman is asking this for the third time, along with all of us on the bench, because they want that narrow answer not the broader answer of are their conflicts?

I thank the gentleman for yielding.

Mr. TOWNS. Thank you very much. I appreciate that.

Mr. POLLARD. Clearly, EESA provided for a number of alternatives, including principal reduction, as a vehicle for assisting homeowners.

Chairman ISSA. So that is a yes? That is a yes you have the authority?

Mr. POLLARD. We have authority to take these various actions.

Chairman ISSA. You got the question.

Mr. TOWNS. So your answer to that question is yes?

Mr. POLLARD. Yes, we have authority to take a different range of actions, that is correct. [Laughter.] But I just have to put it back in the context.

Mr. TOWNS. I am afraid you might be asked again. That is the reason—I know the gentleman from Maryland asked the question, too, and that is the reason I am raising it again. Is it a yes or no that you have the authority to do this?

Mr. POLLARD. It is a yes that we have authority to take the range of actions in EESA, yes, sir. [Laughter.]

Chairman ISSA. Okay, folks———

Mr. TOWNS. Let the record reflect I tried.

Chairman ISSA. The chair will stipulate, if the gentleman will yield, the chair will stipulate that it is within the congressional action and authority granted and that it has been answered in the affirmative.

Now you can follow up with other questions Mr. Chairman and I appreciate that but we are stipulating at this point.

Mr. TOWNS. Thank you very much. Mr. Pollard, if your agency could be saving the American taxpayers $500 million right now, today, by doing principal reductions, why are you contradicting the Federal statue and refusing to do so?

Mr. POLLARD. The calculations we have made today, as I stated earlier, do not show that benefit and did show actual problems with adopting such a program, and that is the best I can tell you in terms of why we have not adopted it.

Mr. TOWNS. I did not hear the first part.

Mr. POLLARD. I said the problems with deploying it, the potential benefits we see from the tried-and-true methods that we have employed so far give us comfort in these as fitting with in our mandate to do this in the most cost-effective fashion.

Mr. TOWNS. Let me close with this question. Mr. DeMarco wrote in his January 20th letter to Representative Tierney, of course, and I was on that letter as well, that we would've consider principal reduction if other funds became available.

So, Mr. Chairman, on that note I yield.

Chairman ISSA. I thank the gentleman. I thank all of our witnesses. I will ask just one last indulgence besides that you remain for the second panel. Would you agree to take additional questions? Because I think—and not that same question again, although we would like a more clearly answer, but additional questions that we place in writing within the next 5 days?

[A chorus of yeses.]

Chairman ISSA. I get a yes from everyone. I thank our first panel. We are going to take a short recess while they set up for the second panel.

[Recess]

Chairman ISSA. We will now recognize our second panel. The chair will now recognize the Honorable Arthur Schack. He is a Justice of the Supreme Court of the State of New York. Ms. Meghan Faux is deputy director of South Brooklyn Legal Services. Mr. Edward Pinto is a resident fellow at the American Enterprise Institute.

Chairman ISSA. Pursuant to the rules, if you would please rise to take the oath.

[Witnesses sworn.]

Chairman ISSA. Let the record indicate all members of the panel answered in the affirmative. Please take your seats.

Again, as the first panel, there is a set of lights in front of you. And as my predecessor Mr. Towns says, everywhere in American we know that green means go, yellow means it is going to change to red, and red means stop. So do not be long overdue, as my predecessor also would say to people who went past red.

Your entire statements will be placed in the record so that not a word will be missed by the transcribers.

And with that, Justice, you are recognized for 5 minutes.

STATEMENT OF THE HONORABLE ARTHUR M. SCHACK

Judge SCHACK. Good morning. Thank you, Chairman Issa. I want to thank Ranking Member Cummings, Congressman Towns whose home district we are in, and Congressman Platts for this opportunity to speak.

At the present time we are here in the Borough of Brooklyn, which is also known as Kings County, so I will use those terms interchangeably.

And as a sitting Justice in the Supreme Court of Kings County, we have right now pending about 14,000 foreclosure cases. Of these about 4– to 500 approximately right now are assigned to me.

Starting about 2007, I started to observe the bursting of the housing bubble and the growth in foreclosure filings. We went from about 3,000 to 3,500 foreclosures per year in this county to more than 7,000 filings per year. New York is a judicial foreclosure state and the power to order a judgment of foreclosure is vested in the Supreme Court by the State of New York, which despite it is lofty title is actually the court of general jurisdiction in this particular state.

I am one of about 300 Supreme Court justices about 15 percent of the Supreme Court justices in our state are in this county because we have about 15 percent of the population. And my experience in dealing with residential foreclosures has given me a unique perspective on what is happening with the housing market.

I am not going to discuss any specific cases, lenders, or homeowners, but I observed many problems, including but not limited to the shoddy paperwork executed by lenders or their mortgage services, determining the actual owners of mortgages and notes, and the disproportionate impact of foreclosures upon minorities and neighborhoods that have predominant minority population.

As a judge I am the neutral. My role is to apply the law equally to all parties so we have a level playing field. And for a lender to receive a judgment of foreclosure, similar to any other type of judgment, due process of law must be followed. I have taken an oath to uphold this. And my job is to apply justice to each individual case no matter how the chips fall.

Now, for a plaintiff to receive a judgment of foreclosure, it must demonstrate three things to the court: the existence of a mortgage and note, the plaintiff's ownership of the mortgage and note, and the default of the defendant. This might sound relatively simple, but in this age of mortgage securitization and numerous assignments of mortgages and notes, it is not easy in many cases to demonstrate the plaintiff's ownership of the mortgage and note.

Further, the plaintiff must demonstrate standing. That means that it or its predecessor of interest own the mortgage and note when the foreclosure case commenced.

I have been confronted many times with the problem of determining who actually owns a particular mortgage and note. I have seen a plethora of cases with defective assignments of mortgages and notes by robo-signers. And I continue to see conflicts of interest. Numerous cases I will see that an individual might have signed a mortgage and note as an officer of entity A and then days, weeks, or months later sign an affidavit on behalf of mortgage entity B. So I have also noticed defects in the notarization of assignments and affidavits missing powers of attorney, defective powers of attorney for mortgage services who submit affidavits on behalf of alleged plaintiffs, attempts to retroactively assign mortgages and notes to attempt to legitimatize foreclosure actions, and a failure to produce pooling and servicing agreements that detail the powers that are allegedly given to mortgage services.

One of the things that I found to be quite amusing at times, but certainly a major problem, that I try to conduct conferences to try to modify mortgages and we come up with some numbers. I propose numbers to bank lawyers. I am told it has to be—they have to check with the lender. And that always piques my curiously—I am sorry, the investor, my mistake. My mistake.

And then I say, who is the investor? And many times the bank lawyers look very puzzled at me and say, I do not know. So we have this problem determining what happens.

A lot of it is also related to the fact we have the MERS system, which I think the committee is familiar with. And we have major problems as MERS move mortgages around without recording them. We have major problems because mortgage assignment as well as mortgages are not necessarily recorded because they do not have to be.

So I want to propose to the committee that we have some kind of legislation in this country which would reduce the abuse, also increase the fees received by localities and counties with reporting that to be enforceable in court that all mortgages and assignments have to be recorded. The localities would receive payments to improve their bottom line for the fees and it will add up to billions of dollars, the bank's the MERS system, that localities have not gotten in this country.

So I see the amount of time. I will be very happy to answer any questions that the committee has.

Chairman ISSA. Thank you, your Honor.

[Prepared statement of Judge Schack follows:]

Statement of Hon. Arthur M. Schack,

New York State Supreme Court

"Failure to Recover: The State of Housing Markets, Mortgage Servicing Practices and Foreclosures" Hearing

March 19, 2012

The United States House of Representatives

Committee on Oversight and Government Reform

Good morning. I thank Chairman Issa, Ranking Minority Member Cummings, Member Edolphus Towns, whose District we are physically located in, and all the other Members of the Committee for the invitation and opportunity to speak about foreclosure issues from my perspective as a judge, dealing with foreclosures on a house by house basis. At the present time, here in the Borough of Brooklyn, which is also Kings County, there are pending across the park in the Supreme Court, Kings County about 14,000 foreclosure cases. About 400 to 500 of these cases are assigned to me.

In 2007, before the recession, I observed the bursting of the housing bubble and the growth in foreclosure filings. In Supreme Court, Kings County, we went from about 3,000 to 3,500 foreclosure filings per year to more 7,000 foreclosure filings per year.

New York is a judicial foreclosure state and the power to order a judgement of foreclosure is vested in the New York State Supreme Court, which, despite its lofty title, is the Court of general jurisdiction in this state and equivalent to Superior Court or Circuit Court in other states. The Court of Appeals is the highest court in New York. There are more than 300 Supreme Court Justices in New York State, allocated by population to each county. Since Kings County has about 15% of the New York State's population, it has about 15% of the Supreme Court Justices.

My experience dealing with residential foreclosures has given me a unique perspective on what is happening with the housing market. While I will not discuss any specific cases, lenders or homeowners, I have observed many foreclosure problems, including, but not limited to: shoddy paperwork by lenders and/or mortgage servicers; determining the actual owners of mortgages and notes; and, the disproportionate impact of foreclosures upon minorities and neighborhoods that have a predominant minority population.

As a judge I am neutral. My role is to apply the law equally to all parties, on a level playing field. For a lender to receive a judgment of foreclosure, like any other type of judgment, due process of law must be followed. When taking office, I took an oath to uphold the Constitution, which, as we know, states in the XIVth Amendment "nor any State shall deprive any person of . . . property, without due process of law nor deny to any person within its jurisdiction the equal protection of the laws." The Honorable John Leventhal of the New York Appellate Division, Second Department, last June, in his decision for a unanimous court, in *Bank of New York v Silverberg*, 86 AD3d 274, 283, holding that an assignee of a lender who was never the actual holder or assignee of the underlying note lacked standing to commence a foreclosure action, stated that "the law must not must not yield to expediency and the convenience of lending institutions. Proper procedures must be followed to ensure the reliability of the chain of ownership, to secure the dependable transfer of property, and the assure the enforcement of the rules that govern real property."

For a plaintiff to receive a judgment of foreclosure it must demonstrate three things to the Court: (1) the existence of a mortgage and note; (2) plaintiff's ownership of the mortgage and note; and (3) defendant's default. This might sound relatively simple, but in this age of mortgage securitization and numerous assignments of mortgages and notes, it is not easy in many cases to demonstrate plaintiff's ownership of the mortgage and note. Further, the plaintiff must demonstrate standing, that it or a predecessor in interest owned the mortgage and note when the foreclosure case commenced.

Judges, with the proliferation of mortgage securitization and assignments of mortgages and notes, are confronted in many instances to examine a lengthy chain of title to determine how the purported plaintiffs secured ownership of the mortgages and notes that they sue upon. I have seen a plethora of cases with: defective assignments of mortgages and notes by "robosigners." Robosigners are individuals who sign thousands of mortgage documents and wear numerous corporate hats. Further, I continue to see conflicts of interests, in which a robosigner might assign a mortgage and note as an officer of assignor entity A and then days, weeks or months later sign affidavits on behalf of assignee entity B. Additionally, I have observed: defective notarials of assignments and affidavits; missing powers of attorney or defective powers of attorney to mortgage servicers who submit affidavits on behalf of alleged plaintiffs; retroactive assignments of mortgages and notes to attempt to legitimatize foreclosures that are commenced prior to the plaintiff owning a mortgage and note; and, the failure to produce pooling and servicing agreements that detail the powers allegedly given to mortgage servicers.

I have had foreclosure cases in which in I have held conferences with bank lawyers and defendants attempting to achieve a modification and settlement. When a change in interest rates or mortgage length was proposed, bank lawyers informed me that they had to check on the modification terms with "the investor," the actual owner of the mortgage and note, which is part of a securitization. This piqued my curiosity and I inquired who is "the investor?" Too many times I would receive the bank lawyer's puzzled response, "I don't know."

Too many times this lack of knowledge of the actual ownership is caused by Mortgage Electronic Registrations Systems, Inc. (MERS). Probably, more than half of the mortgages in the country are recorded by MERS, as the nominee of the lender. MERS in many cases assigned the mortgage and note many times within the MERS system, but did not record the assignments with the local recording authority. Thus, it cannot be determined who owns the mortgage and note. Therefore, the MERS system lends itself to cases of fraud with respect to home ownership, because, in New York State, for mortgages and assignments to be enforceable they do not have to be recorded. Plaintiffs in New York only have to prove that they possessed the mortgage and note when the foreclosure action commenced.

MERS, created in the early 1990's, has cost localities, usually counties, several billion dollars in unpaid recording fees. To paraphrase the late Senator Everett Dirksen of Illinois, who allegedly said something to the effect of "a billion here, a billion there, and pretty soon you're talking about real money," "fifty dollars in recording fees here, fifty dollars in recording fees there, and pretty soon you're talking about real money for counties and localities."

To alleviate problems in determining who owns mortgages and notes, reduce mortgage fraud and to improve the finances of counties or other recording localities, I propose that legislation is enacted requiring that all mortgages and assignments, to be enforceable in a foreclosure, must be recorded with the appropriate local recording authority. Mandatory recording of mortgages and assignments will go a long way to determine the actual ownership of mortgages and notes, reduce fraud and improve local treasuries with the payment of recording fees.

Also, we have in New York State a logjam in moving forward foreclosures. In October 2010, to address the abuses of robosigning, the New York court system, by administrative order, required an affirmation in foreclosures by plaintiff's counsel that counsel communicated with a named representative of the plaintiff, who informed counsel that he or she personally reviewed plaintiff's documents and records for factual accuracy and confirmed the factual accuracy of the allegations set forth in the complaint, and any supporting affidavits or affirmations, as well as the accuracy of the notarizations contained in the supporting documents. Then, plaintiff's counsel, based upon counsel's communication with plaintiff's representative, must inspect the documents and affirm under the penalty of perjury that all the papers filed with the Court contain no false statements of fact or law.

In announcing this affirmation requirement, New York's Chief Judge Jonathan Lippman, in his October 20, 2010 press release, stated, "We cannot allow the courts in New York State to stand by idly and be party to what we now know is a deeply flawed process, especially when that process involves basic human needs – such as a family home – during this period of economic crisis. This new filing requirement will play a vital role in ensuring that the documents judges rely on will be thoroughly examined, accurate, and error-free before any judge is asked to take the drastic step of foreclosure." However, this laudatory requirement, as a practical matter, slowed up the foreclosure process. Many bank lawyers are reluctant to file the required affirmations under the penalty of perjury. Bank lawyers are afraid of being sanctioned by the courts for filing false statements. This logjam is something else that our courts have to must deal with, despite our limited resources.

In conclusion, I thank the Committee for the opportunity to share these observations and thoughts with you. I will be glad to answer any questions.

HON. ARTHUR M. SCHACK

Chairman ISSA. Ms. Faux.

STATEMENT OF MEGHAN FAUX

Ms. FAUX. Thank you, Mr. Chairman. I would like to thank the committee for holding this hearing; Chairman Issa, Ranking Member Cummings, Representative Towns for extending an invitation to us and Representative Platts.

Legal Services, I will be testifying today on behalf of Legal Services NYC and I prepared this testimony in collaboration with our Bedford-Stuyvesant Community Legal Services Office and our Brooklyn Legal Services Corporation A Office. And together we have been addressing the foreclosure crisis in Brooklyn for more than a decade.

Our Legal Services NYC now operate six dedicated units, foreclosure prevention units, across the city. We have more than 45 attorneys and paralegals working with homeowners. And we have assisted more than 6,000 homeowners in the past years. Our Bedford-Stuyvesant office alone has helped almost 300 homeowners in Congressmen Towns district.

But yet still, with all of our efforts and with the many investigations and regulations that have been implemented, communities in Brooklyn are struggling more now than ever. Our neighborhoods continue to endure catastrophe as record numbers of families face foreclosure. And in New York City the economic down turn and rising unemployment have deepened a crisis that was caused by abusive subprime lending. For years, low-income communities of color were aggressively targeted for abusive unaffordable mortgages, including adjustable rate mortgages, stated income loans, and payment options adjustable rate mortgages.

As the foreclosure crisis deepened and the economy declined, more homeowners fell into foreclosure due to unemployment and underemployment. These are not homeowners who are walking away from their responsibilities. These are homeowners who are trying to make ends meet. These are homeowners who need our assistance.

For most of our clients, approximate cause of the default is the economic hardship, but the fundamental problem was this mortgage was never affordable from its inception. And so today, we face in Brooklyn alone more than 27,000 mortgages that have gone into default in 2011, on top of the 14,000 pending foreclosure cases that Judge Schack testified. That means in some Brooklyn and Queens neighborhoods one in three homes is in foreclosure. One in three homes is at risk of being vacant and deteriorating. One in three families are going to lose their long-time home and their long-time community.

And the map that I attached to my testimony really depicts very clearly the neighborhoods that are hardest hit: Canarsie, Brownsville, Bushwick, Bedford-Stuyvesant, and Flatbush.

Every day our advocates see the terrible impact the foreclosures have on individual families, the stress, the terror, the fear. Yet vacant and deteriorating houses, increased crime, drastic home depreciation, and disappearing affordable rental housing threaten our community at the core. If continued vigilance and aggressive reform are not implemented and implemented now, communities like Bedford-Stuyvesant and Canarsie will take decades to rebuild.

Our clients and our communities, as I just said, are trying to work with servicers. They are trying to meet their obligations. They are trying to obtain affordable housing. That is all they want, is a mortgage they can afford to repay. And yet many of our clients who come to us have been trying to work with their servicer for more than a year, denied more than once for a mortgage modification. Over 80 percent of our clients came to us after trying to work with their servicer for many, many years.

And while there is lots of talk about HARP and there is lots of talk about refinancing programs, the reality is that most of our clients, not some, but most of our clients, have no hope of refinancing. There is not access to fair credit in the low-income communities of color in Brooklyn. There is not. And there is not from the banks that were sitting here today and there is not from most of the other banks who are not here today. And deed the hardest hit areas of Brooklyn, the only hope they have is an affordable modification, and that is what they deserve.

Now more than 4 years into the foreclosure crisis, deliberate delays and improper denials remain the servicers' primary response. And I am going very briefly outline the barriers that we see that most prevent our clients from getting modification.

First, is unnecessary delays. It does take a long time to get through the foreclosure process in Brooklyn, but almost 2 years of that is spent in settlement conferences, and the bulk of that delay is because of servicers failing to respond to repeated loan modification applications and properly reviewing clients for modifications.

Unexplained and excessive fees continue to remain a huge problem. Improper denials and failure to look at the applications before them remain a huge problem.

And I know I am out of time, but I would just ask your indulgence for one more moment. What we need is an aggressive enforcement of strong servicing standards for everyone. Servicers should not be above the law and they need to be enforced and held accountable for their actions.

And as the committee members have talked about earlier, we need principal reduction. It needs to be mandatory when it is in the best interest of the investors. Voluntary programs are not enough. Servicers coming here and saying that they will abide by the law is not enough. Our communities and our economy need more.

Thank you. [Applause]

Chairman ISSA. Thank you.

[Prepared statement of Ms. Faux follows:]

Congress of the United States
Committee on Oversight and Government Reform

Failure to Recover: The State of the Housing Markets, Mortgage Servicing Practices, and Foreclosures

Monday, March 19, 2012
Brooklyn, New York

TESTIMONY OF LEGAL SERVICES NYC

Good morning. My name is Meghan Faux and I am the Deputy Director of South Brooklyn Legal Services. In collaboration with Bedford-Stuyvesant Legal Services and Brooklyn Legal Services Corporation A, I have prepared this testimony on behalf of Legal Services NYC.

First, we would like to thank the Committee on Oversight and Government Reform for holding this hearing and, in particular, Congressman Towns for this invitation to testify and his leadership in addressing the foreclosure crisis. We have many challenges now and ahead of us, and we thank you for your partnership in the pursuit of justice.

Legal Services NYC (LS-NYC) is the nation's largest provider of free civil legal services to the poor. For more than 40 years, we have provided expert legal assistance and advocacy to low-income residents of New York City. Each year, our 19 neighborhood offices together serve tens of thousands of New Yorkers—including homeowners, tenants, the disabled, immigrants, the elderly and children.

LSNYC is also the oldest and largest provider of foreclosure prevention legal services in New York. For more than a decade, we have challenged abusive lending and home sale schemes—from redlining to subprime lending to loan mod scams. Starting in 2008, with support from state and federal funding programs, LS-NYC significantly expanded our homeowner rights programs. We now operate six dedicated foreclosure prevention projects with more than 45 attorneys and paralegals working in some of the hardest hit neighborhoods across Brooklyn, Queens, Staten Island and the Bronx. To date, we have assisted more than 6,000 families at risk of losing their homes.

We are honored to be here today to testify about the critical issues facing low-income homeowners in New York. In this testimony, we will be discussing three issues: (1) the current impact of foreclosures in the communities we serve; (2) servicer practices that have exacerbated and prolonged the foreclosure crisis and increased the likelihood of wrongful foreclosures; and (3) reforms we believe will shape a healthier and more just economic recovery for homeowners and all of New York State.

I. THE FORECLOSURE CRISIS CONTINUES TO JEOPARDIZE THE SAFETY AND STABILITY OF COMMUNITIES ACROSS OUR CITY AND STATE.

New York City neighborhoods continue to endure a catastrophe as record numbers of families face losing their homes. In NYC, the economic downturn and rising unemployment have deepened a crisis initially caused by subprime lending. For years, low-income and communities of color were aggressively targeted for abusive, unaffordable mortgages, including adjustable-rate mortgages, stated-income loans, payment-option adjustable rate mortgages and equity-based lending with exorbitant default rates. These abusive loans have significantly higher default rates than prime loans, putting minority homeowners at a substantially increased risk of losing their homes. As the foreclosure crisis deepened, and the economy declined, record numbers of homeowners fell into foreclosure due to unemployment and underemployment. For most of our clients, **the proximate cause of default is an economic hardship, but the more**

fundamental problem is often a high-cost mortgage loan that leaves little to no room for even a temporary setback. We now face a new wave of new foreclosures as the full impact of predatory loans made during the subprime boom of the last decade hits, just as families struggle with less income, higher debt and smaller safety nets.

The Federal Reserve Bank recently reported that New York City had among the highest foreclosure rates in the United States, with 10% of all mortgages in foreclosure or seriously delinquent and an additional 4% between 30 and 90 days past due. In 2011, more than **69,000 pre-foreclosure** notices were sent out to New York City homeowners; more than two-thirds of these notices were sent to homeowners in communities of color.

In Brooklyn alone more than **27,000 mortgages defaulted** last year while tens of thousands of foreclosures were still pending. **In some Brooklyn and Queens communities we serve, 1 in 3 homeowners are in default.** The areas most decimated by foreclosure filings are the predominantly African-American and Hispanic communities that suffered from a predominance of subprime and predatory lending: Canarsie, East New York, Flatlands, Brownsville, Bushwick, Crown Heights, Bedford Stuyvesant, and Flatbush. (See map of pre-foreclosure filings in New York City created by the Neighborhood Economic Development Advocacy Project).

Our advocates see both the terrible individual impact of foreclosures, as well as the disastrous consequences for the neighborhoods affected. **Over 90% of our clients are people of color, and many are elderly or single heads of household.** More often than not, multiple generations live within the home, as do tenants, for whom foreclosures mean the loss of affordable rental housing. Even one foreclosure—let alone thousands—creates a costly ripple effect. Walking through the beautiful tree-lined streets of Brooklyn neighborhoods like Bedford

Stuyvesant —a community where families once bought homes and stayed for their whole lives—we now see vacant, deteriorating houses, increased crime, drastic home value loss and disappearing affordable rental housing.

While it is difficult to quantify the full cost of foreclosure, we know that foreclosed homes sell for about 25% or more below fair market value, negatively affecting neighboring property values. These lowered property values lead to significant losses to the tax base of counties, towns and cities. Our colleagues from the Empire Justice Center recently reported that, if foreclosures are not prevented, New York City will sustain a $7 billion decline in property values—and more than $133 million reduced tax revenues—in the coming years.

This crisis is far from over; its impacts are startling; and the need for continued vigilance and aggressive government response is as acute as it has ever been.

II. SERVICERS MUST BE ACCOUNTABLE FOR FAIRLY AND PROMPTLY NEGOTIATING AFFORDABLE AND SUSTAINABLE LOAN MODIFICATIONS WITH HOMEOWNERS.

Our economic recovery and neighborhood stability continue to be jeopardized by the unscrupulous practices of lenders and their servicing agents. As homeowners struggle with debt that often far exceeds the value of their properties, lenders are refusing to negotiate affordable modifications. The consequences of these refusals are severe. Homeowners are being unfairly denied long-term sustainable modifications, tenants are losing affordable rental housing and neighborhoods are falling further into decline. While we are encouraged by the pending settlement among the states' attorneys general, the federal government and five major national servicers which provides some relief to underwater homeowners and, if enforced, will curb many of the systemic servicing abuses, that settlement does not address FHA, Fannie Mae or Freddie

Mac loans, leaving the vast majority of the country's distressed homeowners at the mercy of the wrongful foreclosure and servicing practices that prompted the national mortgage investigation in the first place. We believe that the federal government must continue to play a constructive role in ensuring that the abuses addressed by that settlement are not allowed to remain the norm for these mortgages. Aggressive monitoring and enforcement of the agreements and regulations governing mortgage servicing are essential to our economic recovery.

Now, more than four years into the foreclosure crisis, deliberate delays and improper denials, despite violating clear regulations, remain the servicers' primary response. Below I outline the most problematic servicing practices that increase the likelihood of wrongful, unnecessary foreclosures and forestall any hope of stabilizing our economy and rebuilding our communities. For the most part, these practices are the same problems that homeowners have been encountering for years. Despite countless investigations, regulations, and initiatives, our offices have seen little change in the day-to-day practices of servicers. Servicers' refusal, whether intentional or not, to implement systems to fairly and properly evaluate homeowners for home retention options have been exceptionally costly to both individual families and to the broader community when avoidable foreclosures are not prevented.

Unnecessary Delay. The largest part of our foreclosure defense work is representing homeowners in settlement conferences mandated by New York's judicial foreclosure process. New York courts are required to hold settlement conferences in all residential foreclosure cases to determine "whether the parties can reach a mutually agreeable resolution to help the [homeowner] avoid losing his or her home."

Remarkably, even in the context of court-supervised mandatory settlement conferences governed by a statutory duty of good faith, mortgage servicers routinely delay the process and effectively refuse to negotiate loan modifications or other home saving solutions, imposing a substantial drain on judicial, advocate, and homeowner resources. Banks and lenders still routinely violate federal and state regulations as well as the provisions set forth in the settlement conference procedures, often without consequence. Conferences require an extraordinary commitment of time and resources for each case; our offices average between 6 and 8 appearances across twice as many months before a resolution can be reached. During the negotiation process, lenders repeatedly ask for additional or updated documentation that has already been provided or is not required under the modification guidelines. Lenders rarely review the application within the timeframes required under the HAMP guidelines or New York State's servicing regulations and often fail to provide a complete explanation when denying a loan modification. These delays, and plaintiffs' refusal to provide accurate, complete information to the borrower, make it difficult to negotiate effectively at the conferences and ensure that homeowners' applications are properly reviewed. In addition, the ubiquitous, long delays are costly to homeowners who continue to accrue interest and fees on their loans, making it more difficult to structure an affordable modification.

Unexplained and Excessive Fees. Payment histories are almost universally incomprehensible and servicing fees are rarely explained. Homeowners routinely get statements assessing hundreds, if not thousands, of dollars in fees to their account labeled "other" or "miscellaneous" fees. When our advocates request clarification of the fees, it often takes months to obtain an adequate explanation. Homeowners without an advocate have little hope of obtaining any justification of the fees. Our offices have uncovered unreasonable or inaccurate fees charged to homeowners accounts ranging from a few thousand dollars to tens of thousands of dollars.

Improper Denials. Despite clear federal and state regulations, servicers continue to send homeowners inaccurate and confusing modification denial letters. Servicers still fail to state the primary reason for the denial or fail to provide the inputs used in evaluating the application. Many of our clients receive multiple and often inconsistent letters within days of each other – one client received six letters in a 48 hour period – making it virtually impossible to determine if they were properly reviewed for a home retention option. Servicer error is often the root cause of the initial denial: they frequently miscalculate income or the amount owed or use inaccurate home value data. While our advocates can often get such errors corrected, these protracted delays are costly to homeowners and can make it impossible to negotiate an affordable modification because of the increased debt adding up with each month of delay. And of course most homeowners do not have access to an advocate who can insist on getting such errors corrected.

Investor Restrictions. Servicers also continue to deny homeowners for modifications because of supposed investor restrictions—claiming that the pooling and servicing agreement or other investor guidelines for the loan prohibit the requested modification—and do not take any meaningful steps to seek a waiver of legitimate investor restrictions, as federal guidelines obligate them to do. Often these investor restrictions do not come to light until months into negotiations, after homeowners have repeatedly provided income documentation and sometimes even completed a trial period modification. When challenged, servicers often cannot provide documentation of the restriction or produce investor guidelines that clearly indicate the modification is permissible.

III. WE NEED AGGRESSIVE ENFORECEMENT OF STRONG SERVICING STANDARDS FOR *ALL* SERVICERS.

We applaud the recent national settlement with the major banks and look forward to aggressive enforcement of the agreement. While many of the servicing standards in the agreement are commonsensical, servicer compliance would eliminate many of the barriers currently preventing homeowners from obtaining sustainable modifications. More must be done, however, to fully address the foreclosure crisis and stabilize our housing markets. National mortgage servicing standards which apply to *all* banks, not just a select few, are essential to stopping unnecessary foreclosures and re-stabilizing our communities.

National standards must include the following key elements:

- Eliminate the two-track system. Homeowners should be evaluated for a loan modification before a foreclosure is initiated or continued, and that evaluation should be completed before any foreclosure fees are incurred.
- The failure to offer loan modifications to homeowners must be made a defense to foreclosure.
- Net Present Value tests for modifications should be standardized and made available to the public.
- Loan modifications for qualified homeowners facing hardship must be permanent, affordable over the life of the loan, and available without any waiver of a homeowner's legal rights.
- Homeowners denied a loan modification must receive a written notice documenting the NPV inputs, any relevant investor restrictions and efforts to seek a waiver of such restrictions, and explaining the process for seeking review of erroneous determinations. Foreclosure should not commence or continue until such an appeal process has been resolved.
- Homeowners should be provided with access to full documentation of any investor restrictions, as well as all servicer attempts to procure a waiver, upon any denial based on investor guidelines.
- Servicers must be required to seek, and investors should be encouraged to grant, waivers of any restrictions prohibiting modifications.
- Fees to servicers must be limited to those both reasonable and necessary for them to carry out their legitimate activities.

- o Force-placed insurance should be replaced by a default reliance on replacing or continuing the existing coverage at a reasonable price.
- o Transfer notices and periodic statements should be used to increase servicing transparency.
- o Application of payments and use of suspense accounts should be fair and reasonable.

These standards are a necessary step in ending the abusive servicing practices that have exacerbated the foreclosure crisis, but must serve as a floor rather than a ceiling, and must not prevent states from implementing additional protections to address the unique needs of their homeowners and communities.

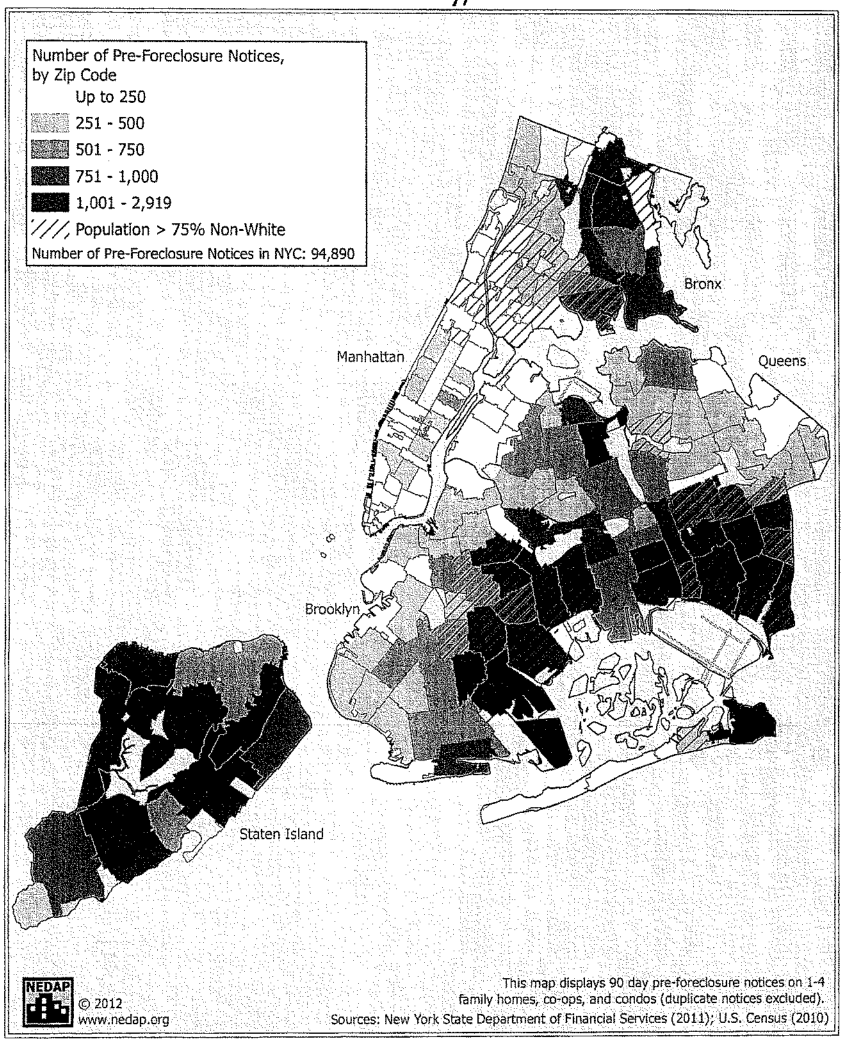
IV. PRINCIPAL REDUCTION IS A NECESSARY TOOL TO RESTABILZING OUR HOUSING MARKET.

Principal reduction is a critical loss-mitigation tool that must be embraced if we are to be serious about stabilizing our housing market. Many of our clients have mortgage loans that far exceed the actual value of their homes, some because of rampant over-appraisal during the subprime lending boom and others because of the more recent declines in home value. Yet, in our experience, servicers rarely consider principal reduction in evaluating homeowners for modifications even though it is in the economic interests of the loan investors to do so. As a consequence, many homeowners are left with new principal balances on their mortgages that are tens—if not hundreds—of thousands of dollars in excess of the actual value of their homes and payments that continue to strain their budget.

Principal reduction is in the best interest of investors and homeowners. Existing data on loan modifications show that modifications with principal reductions have lower re-default rates. Principal reduction modifications are more affordable to homeowners who are then better able to navigate a future economic hardship. These modifications also allow families to sell their homes if they need to move for a job, family or other reason. However, despite the logic and benefit to providing this relief to homeowners, most services refuse. Principal reduction must be mandated for all loans – including those owned by Freddie Mac and Fannie Mae – when it is in the best interest of the investor. Our economic recovery cannot wait any longer.

Thank you for the opportunity to present this testimony.

90-Day Pre-Foreclosure Notices
New York City, 2011



Chairman ISSA. Mr. Pinto. And please pull the mic as close as you can.

STATEMENT OF EDWARD PINTO

Mr. PINTO. Chairman Issa and Ranking Member Cummings, thank you for the opportunity to testify today.

The failure of the housing market to recover is the result of two errant policy initiatives. The first was pushing broad affordable housing mandates that started in the early 1990's, which along with other government policies drove an unsustainable home price boom. Second, once the housing market collapsed many of the supporters of these policies effortlessly switched gears and undertook a multiyear effort to prolong the market clearing process.

Ominously, the FHA has already announced plans to expand lending practices destructive to borrowers and neighborhoods alike. Additionally, the Fed recently approved Capital One Financial Corporation's acquisition of ING Direct. Capital One committed to a $180 billion Community Reinvestment Act commitment. This included an agreement to originate FHA loans to borrowers with FICO scores as low as 580. Loans with a 580 to 599 FICO score have an estimated claim rate of 30 percent. A failure rate that in good times would be 30 percent. Rather than protecting consumers and neighborhood by avoiding such destructive lending, FHA is planning a major expansion.

Here are my four simple principles to guide FHA reform. Step back from markets that can be served by the private sector. Two, stop knowingly lending to people who cannot afford to repay their loans. Three, help homeowners establish meaningful equity in their homes. And four, concentrate on homebuyers who truly need help.

We are now 6 years into the housing bust. what should we do? First, do no harm. After the national mortgage settlement was announced HUD Secretary Donavan sat down with the Wall Street Journal. He was asked, how many borrowers current in their mortgage were booted out of their homes? He could not provide a number, but estimated it would be a tiny fraction of the robo-signed foreclosures. That is a remarkable admission.

Worst of all, the settlement and other misguided policies have harmed those who have done the right thing. They did not overleverage their homes. They paid their mortgages on time. They did not borrow more than they could afford. They saved all their lives. They are now being punished by near zero interest rates. They were not friends of Angelo and they were not Fannie Mae crony capitalists.

The housing recovery has been stymied for three reasons: policies preventing the market from clearing, inadequate demand relative to supply, and too much leverage. In my written testimony I note numerous initiatives that have contributed to preventing the market from clearing.

I propose two steps that would have a huge upside potential and minimal downside potential. First, promote the conversion to rental of properties resulting from short sales, REOs, and foreclosures by expanding Fannie's and Freddie's individual investor loan limit. Fannie currently limits to a single investor of 10 loans from any source and Freddie to 4. Why not increase the limit to 30 with a maximum loan to value of 65 percent? Hundreds of thousands of investors will be instantly mobilized to action the day this change is announced. If only 15 percent of the some 3 million individual investor property owners were able to purchase an average of 4 more properties each, 1.8 million properties would be absorbed.

Second, what to do about refinances. This was a topic earlier in the first panel. HARP, FHA, and GSA-assisted refinances have done almost nothing to reduce leverage. They have cut a stagnant economic pie into smaller pieces and then the savings are called stimulus. This presents four problems.

One, it is an extremely weak form of stimulus. The administration estimate annualized savings of $27 billion from 14 million refinances. That is less than two-tenths of 1 percent of the GDP. To paraphrase Winston Churchill, that is like standing in a bucket trying to lift one's self up by the handle.

Compare this to any number of sound private sector job growth ideas that have been rejected by the administration. These new jobs, if they were undertaken, would grow the economic pie while refinance is merely distributed.

Last, underwater HARP borrowers who have generally left even more underwater than when they started. The solution is a simple one: help underwater borrowers who have done the right thing and made loan payments for the last five-plus years get the benefit of a lower rate, but let them keep or require them to keep the same monthly payment. This way the loan will amortize much faster, helping the homeowner get himself out from underwater very quickly.

For homeowners who are 20 percent or more underwater, Fannie and Freddie could modify these loans on their own initiative today to a rate of, say, 3.75 percent and a resulting term of about 17 years, keep the payment the same, and put the loans on track to get out from underwater. The day that program is announced it would start solving the problem rather than kicking the can down the road.

I will be happy to answer questions at the appropriate time. Thank you.

Chairman ISSA. Thank you.

[Prepared statement of Mr. Pinto follows:]

Hearing before Committee on Oversight and Government Reform
U.S. House of Representatives

Submitted testimony by Edward Pinto, resident fellow of the American Enterprise Institute.

Chairman Issa and Ranking Member Cummings, thank you for the opportunity to testify today.

Allow me to cut through the alphabet soup of the dozens of government programs created to address perceived problems in the housing market.

The failure of the housing market to recover is the direct result of two errant policy initiatives.

First, broad affordable housing mandates that started in the early 1990s along with other government policies drove an unsustainable home price boom. This was due to an unprecedented loosening of loan underwriting standards—a core goal established under HUD's 1995 National Homeownership Strategy.

Once the housing market collapsed, many of these same supporters of loose lending effortlessly switched gears and undertook a multi-year effort to delay and prolong the market clearing process. Much of this effort has focused on rewarding millions of borrowers who overleveraged their homes. Neither massive amounts of government spending nor innumerable government interventions have led to robust economic growth or hastened a housing market recovery. In fact evidence is mounting that a recovery has been impeded.

While the failure of these twin initiatives should be a cautionary tale, beware. Their supporters are now moving on to promote the view that housing finance is a civil right requiring equal outcomes and therefore loan underwriting standards are inappropriate. Many inside HUD and the Justice Department share this view. This will turn housing finance into yet another entitlement, this time controlled by the Government Mortgage Complex.[1] While purporting to help low- and moderate-income borrowers and minorities build wealth through home ownership, it will instead place them in harm's way. The FHA wants to expand its lending practices that are so destructive to borrowers and neighborhoods alike. Later in my testimony I will outline the principles necessary to achieve sustainable homeownership consistent with the FHA's mission.

Politicized Lending Phase 1: Affordable Housing Mandates and the National Homeownership Strategy

The first policy—the decades' long effort to loosen underwriting standards—fomented the crisis and immeasurably deepened it. The following testimony from 1991 before the Senate Banking Committee is revealing:

> Lenders will respond to the most conservative standards unless [Fannie Mae and Freddie Mac] are aggressive and convincing in their efforts to expand historically narrow underwriting.

[1] The Government Mortgage Complex has five divisions (Fannie Mae, Freddie Mac, the FHA/Ginnie Mae, the USDA/Ginnie Mae, and the VA/Ginnie Mae) and today accounts for guaranteeing 90% of all new mortgage originations.

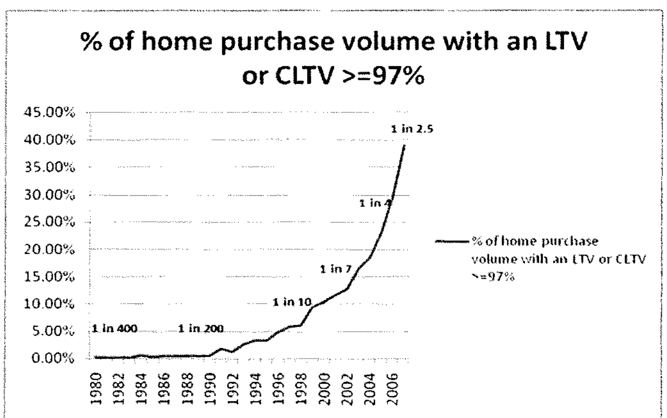
Testimony of Ms. Gale Cincotta representing National People's Action before the U.S. Senate Committee on Banking, Housing, and Urban Affairs on February 28, 1991.

About five years before this testimony, I was an executive at Fannie and met with Ms. Cincotta. I advised against asking Fannie to undertake a broad national program of expanded underwriting standards and warned that it would be no more successful than the failed efforts by the FHA that Ms. Cincotta was complaining about.

Think for a moment about the full import of this testimony. First, that Fannie, Freddie and lenders generally had conservative standards in 1991. Second, Fannie and Freddie would need to be aggressive and convincing in loosening their standards. The very next year, Congress passed the misleadingly named "Federal Housing Enterprises Financial Safety and Soundness Act of 1992". The race to aggressively loosen lending standards was on. In the years following, numerous others policies promoting so called "flexible and innovative" underwriting standards were adopted, led principally by HUD. These include the National Homeownership Strategy, expansion of CRA, and HUD's Best Practices Initiative.

The result was first created a boom in and then the collapse of the housing market. Excessive leverage as evidenced by reduced down payments as shown in Chart 1 was a leading factor in the boom.

Chart 1: Estimated Percentage of Home Purchase Volume with an LTV or CLTV >=97% (Includes FHA and Conventional Loans*)



Sources: FHA 2009 Actuarial Study, and HUD"s Office of Policy Development and Research - Profiles of GSE Mortgage Purchases in 1999 and 2000, in 2001-2004, and in 2005-2007, and Fannie's 2007 10-K. Compiled by Edward Pinto
*Fannie's percentage of home purchase loans with an LTV or CLTV >=97% used as the proxy for conventional loans.

Politicized Lending Phase 2: Keep Markets from Clearing

The second policy failure has been the concerted effort to prevent the real estate market from clearing. You are familiar with the acronyms—H4H, HBTC 1 & 2, HARP 1 & 2, HAMP 1 & 2, HAFA, QE1 & QE2, PRA, MFA, HAUP, EHLP, FHA HARP and now the NMS.[2]

This policy failure is typified by the following observation made by Eric Belsky, Managing Director of Harvard's Joint Center for Housing Studies before the FDIC's Committee on Economic Inclusion in March 2011:

> And I compare [a down payment of $3000] to any other use that [a low-income individual] could've put that $3000 in terms of a risk reward framework and if they end up losing that $3000, they lose their job [and as a renter] they might lose first and last month's rent, they lose their security deposit.... In the case of owning, it's just more complicated. The likelihood of them being booted out quickly in many states is very low so they are going to have a period of free payments that they wouldn't benefit from as renters--there are a lot of reasons why homeownership actually still makes sense.... [t]here is an asymmetric risk. You can lose your $3000 or have a huge upside on a $100k asset, for every percent it's a $1000 that it goes up, and if you're there for any period of time that it goes up you are in good shape and if it goes down you've lose your $3000.[3]

Again, please stop and think about the full import of this statement. First, the leverage gained from small down payments provides huge upside potential in a rising market and free rent courtesy of a lengthy foreclosure process protects on the downside. Second, amazingly no one on the advisory committee objected to this statement, which is certainly counter to the best interests of the FDIC and bank deposits. Mr. Belsky's "head's I win, tails you lose" approach will only guarantee that the housing finance market remains tightly in grip of the Government Mortgage Complex.

For proof we need look no further than the Fed's approval of the recent acquisition of ING Direct by Capital One Financial Corporation. It is well known that mega-bank deals require "concessions to win the support of consumer groups and community activists and the Cap One-ING deal was no exception."[4] Capital One committed to a $180 billion CRA commitment. This included an agreement

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[2] Help for Homeowners, Home Buyer Tax Credit 1 and 2, Home Affordable Refinance Program, Home Affordable Modification Program, Home Affordable Foreclosure Alternatives, Quantitative Easing 1 and 2, Principal Reduction Alternative, Making Homes Affordable, Homes Affordable Unemployment Program, Emergency Homeowners Loan Program, FHA Home Affordable Refinance Program, and National Mortgage Settlement.

[3] FDIC Advisory Committee on Economic Inclusion, March 2, 2011 http://events.vcall.com/VCall/EventReplayLaunch.aspx?IID=e4e00e7c-5825-43db-a37b22b7957a1832&BID=1&VID=fb044647-d2c1-4f88-845ca7640095c9e2&SID=2933&ln=3%2f12%2f2012+3%3a44%3a06+PM&fn=AnonViewer&OID=2643&Email=N%2fA&Title=FDIC+Advisory+Committee+for+Economic+Inclusion%3a+March+2%2c+2011%3a+Part+3&bgcolor=CCCCCC&st=149&et=7330&dur=7181

[4] Kate Berry, "Capital One Still Not Accepting FHA Loans with Low Credit Scores," American Banker, February 16, 2012, http://www.americanbanker.com/issues/177_33/Capital-One-FHA-loans-Fico-credit-scores-1046769-1.html?zkPrintable=true (accessed March 13, 2012)

to originate FHA loans to borrowers with FICO scores as low 580.[5] My estimates are that the FHA's recent loans with a FICO score of 580–599 have an estimated claim rate of nearly 30 percent.

Rather than avoiding such destructive lending, the FHA is planning a major expansion. It is projecting that by FY 2015 about 44 percent of its 30-year term purchase loans will have a FICO below 660, nearly double the rate in FY2011. This policy has the potential to be dangerous for both borrowers and neighborhoods. Most of these loans, in addition to their low FICOs and slowly amortizing 30-year terms, will also have one or more additional layers of risk such as low down payment, high total debt ratio, and high seller concessions.[6] Expected claim rates for FHA loans with various FICO scores is set forth in Table 1 below. Loans with FICOs below 660 have a projected claim rate ranging from 15 to 29. HUD is already taking steps to implement this policy initiative.[7]

Table 1. Serious Delinquency for FHA's FY 2009 Lending and Projected Claim Rates for the FHA's 2009-2011 Lending

FICO	Serious Delinquency*	Expected Claim Rate
580–599	21.18%	29
600–619	17.15%	23
620–659	11.18%	15
660–679	6.58%	9
680–720	4.20%	6
>720	1.92%	3

Source: Derived from the FHA's claim rate projection for 2009 contained in the FHA's 2011 Actuarial Study and data tabulations on FHA's seriously delinquent loans provided upon request by Genworth Financial.
Note: *Includes loans that have gone to claim.

This initiative will be needlessly destructive to Brooklyn, the rest of New York State and the entire country. As of this January 31, the FHA was experiencing a thirty-day plus delinquency rate of 22 percent, 18 percent, and 17.5 percent in the New York metropolitan area, New York State, and the entire country respectively. Unfortunately there are many metro areas that are facing even higher default rates than New York City—Detroit (29 percent current 30-day plus delinquency rate), Atlanta (26%), and Chicago (25%) to name but a few.

Government lending should not require a warning: **Government lending may dangerous to your financial health.** HUD must follow its own admonition:

> "Given FHA's mission, allowing the continuation of practices that result in . . . a high proportion of families losing their homes represents a disservice to American families and communities."[8]

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[5] Ibid.
[6] US Department of Housing and Urban Development, *Actuarial Review of the Federal Housing Administration*, Appendix C-4.
[7] Brian Collins, "FHA Wants Lenders to Relax Credit Scores," National Mortgage News, January 12, 2012, www.nationalmortgagenews.com/nmn_features/fha-relax-credit-scores-1028259-1.html (accessed January 23, 2012)
[8] US Housing and Urban Development Department, "Federal Housing Administration Risk Management Initiatives: Reduction of Seller Concessions and New Loan-to-Value and Credit Score Requirements" (notice of proposed rulemaking),

The FHA must be held to the same standard HUD Secretary Shaun Donovan applies to the private sector. At the recent announcement of the "robo" signing settlement, Donovan said banks had wronged families and neighborhoods with "the origination and securitization of these horrendous products."[9]

I call upon Secretary Donovan to add to HUD's proposed FHA Homeowner Bill of Rights a pledge not to insure loans where a borrower is exposed to claim rates of 10, 20, or even 30 percent.

See Appendix 1 for detailed suggestions on ending the FHA's reliance on destructive lending and moving forward with meaningful FHA reform.

The road ahead:

We are 6 years into the housing bust. What should we do now?

First, do no harm.

After the National Mortgage Settlement (NMS) was announced, HUD Secretary Donovan sat down with the editorial board of the Wall Street Journal and was asked:

> But how many borrowers current on their mortgage were booted out of their homes? Mr. Donovan couldn't provide a number but estimated it would be a "tiny fraction" of robo-signed foreclosures.
>
> That's a remarkable admission given that HUD, the Department of Justice, state attorneys general and others spent 18 months pressuring banks to strike a deal. What the HUD secretary revealed is that the government did all that work -- which delayed foreclosures and prevented the market from clearing -- largely to protect homeowners who weren't even paying their bills.[10]

HUD Secretary Donovan was unable to articulate the harms the NMS is meant to redress. This raises fundamental doubts as to its legal basis.

The NMS represents the next step along a treadmill from politicized lending to politicized settlements, back to politicized lending. This is combined with the politicized regulatory regime under Dodd-Frank, which set onerous rules applicable to the private sector while giving a pass to the Government Mortgage Complex.
Worst of all, the NMS and other similar misguided policies have harmed those who have done the right thing—those who:

1. Didn't overleverage their homes.

July 15, 2010, www.federalregister.gov/articles/2010/07/15/2010-17326/federal-housing-administration-risk-management-initiatives-reduction-of-seller-concessions-and-new#p-31 (accessed January 18, 2012).

[9] Hugh Son and Dawn Kopecki, "Banks Not off Hook with $25B Mortgage Deal," Bloomberg, February 9, 2012, www.bloomberg.com/news/2012-02-09/u-s-banks-face-more-costs-after-25-billion-mortgage-foreclosure-accord.html (accessed February 17, 2012).

[10] Mary Kissel, Wall Street Journal, Political Diary – The HUD Pitch, February 17, 2012, http://online.wsj.com/article/SB10001424052970204792404577229161362235978.html, accessed March 13, 2012

2. Paid their mortgages on time.
3. Didn't borrow more than they could afford.
4. Saved all their lives, but are now punished with near zero interest rates.
5. Weren't Friends of Angelo.
6. Weren't Fannie-crony capitalists.

These are the individuals who are required to bailout the crony capitalists and borrowers who have lived payment free for one, two, or even five years.

Promoting a sound market recovery:

The recovery has been stymied for three reasons:

1. Policies preventing the market from clearing.
2. Inadequate demand relative to supply
3. Too much leverage

Preventing the market from clearing:

Numerous policy initiatives have contributed to this result. Just last week the Wall Street Journal had a front page article entitled: "Rise in Phoenix Housing Shows Path for Other Cities."[11]

> U.S. home prices fell another 2% in the fourth quarter on a seasonally adjusted basis, according to the Standard & Poor's/Case-Shiller index tracking 20 cities. But prices rose by 2% in Phoenix, the biggest increase of any metro area in the country. Over the past year, prices in Phoenix are down by 1.2%, the smallest drop since its prices started falling in 2006.

The article goes on to add:[12]

> Arizona makes it easier for banks to take back properties through foreclosure without going to court. The state saw the largest decline in the share of loans that were seriously delinquent or in foreclosure during 2011, according to Lender Processing Services. So-called judicial states such as Florida, where banks must process foreclosures by going through court, have seen growing backlogs, which some fear could eventually drag down Florida markets again in the future.

Two weeks ago the Washington Post had a front page article about Maryland borrowers who for five years have never made a payment on their million-dollar home.[13] A companion article highlighted the vastly different results in two similar counties, one in Maryland (a judicial foreclosure state with a

[11] Nick Timiraos, "Rise in Phoenix Housing Shows Path for Other Cities", Wall Street Journal, March 13, 2012, http://online.wsj.com/article/SB10001424052970204653604577251232717986316.html, accessed 3.14.12
12 Ibid.
13 Annys Shin, "A million-dollar mortgage goes unpaid for years while couple fights foreclosure", Washington Post, March 3, 2012, http://www.washingtonpost.com/local/million-dollar-house-in-foreclosure-for-years/2012/03/03/gIQAU2zBpR_gallery.html, accessed March 14, 2012

13.4% non-current loan rate) and one in Virginia (a non-judicial foreclosure state with an 8.3% non-current loan rate). Similar to the Phoenix case, the market recoveries have been vastly different.[14]

The differing impact of non-judicial vs. judicial foreclosures on non-current (delinquency) rates is displayed in Table 2. It lists the twelve judicial and twelve non-judicial states with the highest non-current loan rates. The non-judicial ones have an in foreclosure rate that is half that for the judicial, a lower average non-current percentage, and a non-current percentage that has declined nearly 10% over the past year compared to no drop in judicial states.[15] At the same time, the average non-judicial foreclosure goes to sale after being 20 months delinquent compared to 30 months for a judicial one.[16]

14 Annys Shin, "Maryland vs. Virginia: Two different approaches to foreclosure," Washington Post, March 3, 2012, http://www.washingtonpost.com/local/maryland-vs-virginia-two-different-approaches-to-foreclosure/2012/03/02/gIQAD5hBpR_story.html, accessed March 14, 2012

15 LPS Applied Analytics, "Mortgage Monitor," n.d., www.lpsvcs.com/LPSCorporateInformation/CommunicationCenter/PressResources/Pages/MortgageMonitor.aspx (accessed March 14, 2012).

16 Ibid.

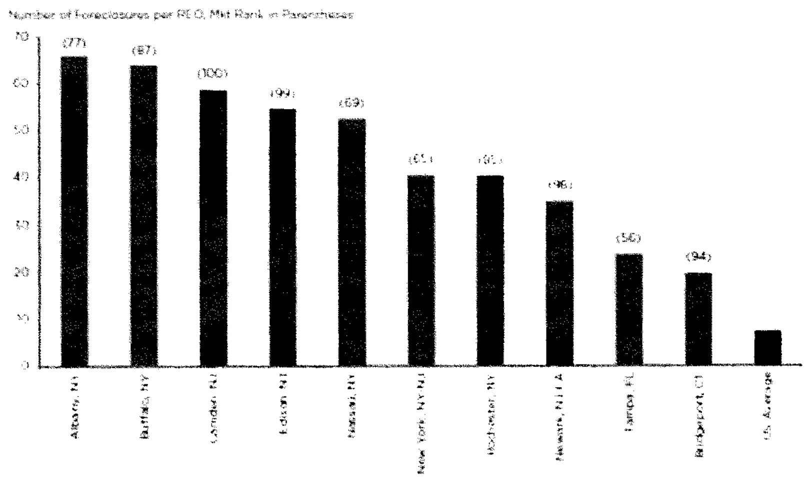
Table 2: In foreclosure percentage, non-current percentage, and year over year change for judicial and non-judicial foreclosure states

		Judicial/ Non-Judicial	In foreclosure %	Non-current %	Year/Year change in non-current %
National			4.2	12.1	-7.2
FL		Judicial	14.1	22.4	-4.2
NJ		Judicial	5.7	15.9	5.8
IL		Judicial	7.1	14.8	1.8
Ohio		Judicial	5.1	14.4	-1.8
IN		Judicial	4.9	14.4	-1.7
LA		Judicial	3.3	13.8	-5.0
NY		Judicial	5.8	13.4	1.9
MD		Judicial	3.6	13.4	-0.3
SC		Judicial	4.7	13.2	-2.1
ME		Judicial	5.5	12.8	2.6
CT		Judicial	5.4	12.7	2.1
KY		Judicial	3.9	21.1	2.0
Judicial average			5.8	15.2	0.1
MS		Non-judicial	4.0	18.7	-4.2
NV		Non-judicial	5.7	16.2	-20.4
GA		Non-judicial	2.8	14.2	-8.7
RI		Non-judicial	3.8	12.9	-9.7
TN		Non-judicial	2.4	12.9	-6.1
AL		Non-judicial	1.7	12.6	-5.2
WV		Non-judicial	2.5	12.1	-7.2
NC		Non-judicial	3.4	12.1	-1.4
AR		Non-judicial	1.9	11.9	4.5
MI		Non-judicial	2.5	11.5	-16.3
TX		Non-judicial	1.7	10.2	-5.1
AZ		Non-judicial	3.0	10.1	-25.8
Non-judicial average			3.0	13.0	-8.8
Difference Non-judicial minus judicial			-2.8	-2.2	-8.9

The recovery killing impact of these misguided policies is having a severe negative impact on New York and New Jersey. Recent research by CoreLogic found that they had the dubious distinction of accounting for all eight of the most clogged markets in the US (out of 100 markets).[17]

[17] The Market Pulse, CoreLogic, Volume 1, Issue 3, March 8, 2012, http://www.corelogic.com/about-us/researchtrends/the-marketpulse.aspx#, assessed March 16. 2012

Chart 2: Top Clogged Foreclosure Pipeline Markets:



Source: CoreLogic Dec 2011

CoreLogic added that it was no coincidence that these same eight markets were also laggards when it came to recovering from the housing downturn. Camden ranked last out of 100 areas, Edison 99th, Newark 98th, Buffalo 87th, Rochester 85th, Albany 77th, Nassau 69th, and New York City 65th. The top three recovering markets were Detroit, Denver, and Miami.[18]

These needless delays are not only slowing a recovery, they directly impact taxpayers who are responsible for paying for the GSEs' bailouts.

Inadequate demand relative to supply

1. This policy failure can be described in three words: jobs, jobs, and jobs.

    - Start by repealing the two biggest job killers – ObamaCare and Dodd-Frank.
    - Seriously consider dozens of other sound ideas have be suggested, but ignored.

2. Next, promote the conversion to rental of properties resulting from short sales, REOs and foreclosures by expanding the GSEs' individual investor loan limit.[19]

    - Fannie currently limits a single investor to ten loans (from any source) with a maximum LTV of 70% and Freddie limits to four loans (from any source).

[18] Ibid.
[19] This idea originally proposed by Lewis Ranieri.

Solution: Increase the loan limit per investor to 30 (from any source) with a maximum LTV of 65%.

- Hundreds of thousands of investors will be mobilized to action the day this change is announced.

Why this route would be more effective than bulk sales?

- By definition selling in bulk requires pricing at a discount and usually requires providing financing. The discount might be as much as 25-30%.
    - Managing a national bulk rental program leaves the GSEs open to downside and counter-party risk.
- Individual investors buying at retail will result in a much higher price for the GSEs.
- There is a huge pool of potential buyers most of whom currently pay cash. For example, in Las Vegas, over half of homes were purchased with cash.
- This pool may be sized as follows:
    - As of 2009 single-family rentals (comprised of both 1-unit and 2-4 unit dwellings) accounted for 22 million out of 39 million rental units in the U.S.
    - These 22 million units were in an estimated 17 million properties with a conservatively estimated 3 million unique owners.
    - If 15% or 450,000 of these owners were able to purchase an average of 4 more properties each, 1.8 million properties would be absorbed.
        - This approach requires no pilots, no centralized bureaucracy, or no phase-in period.
        - It adds significant competition to the retail REO sales process.
        - Risk is dispersed with minimal downside risk.
    - These investors could use these GSE financed loans to buy REO, short sales, and foreclosure sales.
        - Loans would not need to be from GSE REOs or short sales.
        - These investors are local and likely have superior knowledge about local market conditions, property conditions and the renter market.
            - Local buyers are boots on the ground with local intelligence. The Wall Street Journal noted a "local [Phoenix] real-estate agent who has bought nearly a dozen foreclosures as rentals, [who] knocked on the door of a homeowner whose home was slated for a bank foreclosure auction. After introducing himself and informing the occupant about the imminent foreclosure sale, he popped the question: 'If you're not able to keep your house, would you be interested in renting it?'"[20]

Too much leverage

HARP, FHA, and GSE-assisted refinances have done almost nothing to reduce leverage. They are all focused on cutting a stagnant economic pie into smaller slices.

[20] Supra, Timiraos, "Rise in Phoenix Housing"

The Fed has kept rates abnormally low and promises to continue through 2014. While addressing the advisability of this policy is beyond the scope of this hearing, I must point out that borrowing short to finance our national debt and lending long by having the Government Mortgage Complex guarantee 30-year mortgages appears to be a recipe for disaster. Further, it is inappropriate for the Fed to become a policy advocate for more expansive refinance efforts just because its own moves have not led to a robust recovery.

It is within the scope of this hearing to examine how these low rates are being utilized by the administration. Rather than directly addressing the problem of overleverage through faster loan amortization, these policies have promoted the use of lower payments as so called stimulus. This presents four problems:

- It is an extremely weak form of stimulus. The administration estimated annualized savings of $27 billion from all refinances done since 2009.[21] This is less than two-tenths of one percent of our annual GDP.
    - To paraphrase Winston Churchill, this is like standing in a bucket and trying to lift oneself up by the handle.
- Compare this to any number of sound private sector job growth ideas rejected by the administration. To offset the stimulus of 14 million refinances, one would need to implement policies that generate just 270,000 new jobs. At $100,000 additional GDP per job, the nominal impact is the same, but which would you rather have?
    - Multiply by four and we would be talking about a real recovery.
- Even better, these new jobs would grow the economic pie while refinances merely redistribute it. Every dollar of interest savings given to a borrower is a dollar taken from a saver. Thus the effective stimulus is really much less than the $27 billion claimed by the administration.
- Underwater HARP borrowers are generally left even more under water after refinancing. Most have fees and closing costs added to the loan balance and usually extend the term 30-years.

The alternative is to help underwater borrowers who have done the right thing and made loan payments for the last 5 plus years get the benefit of a lower rate but keeping the same monthly payment. This way the loan would amortize much faster, helping the homeowner get himself out from under water.

Example:

- Existing 6.0% 30-year loan from Jan. 2007 with a $839 monthly principal and interest payment, an original balance of $140,000, a current balance of $130,000 and a current home value of $100,000 for a 130% current LTV. Do nothing and after 5 additional years, the LTV would be **117%** (assumes no nominal house price change).
    - **Typical HARP**: refinance into a **4.0% 30 year loan** with a $132,000 balance and a $630 monthly principal and interest payment. After 5 additional years, the LTV would be **119%** (assumes zero nominal house price change).
    - **Constant payment alternative**: modify[22] into a **3.375% 17 year loan**: with a $130,000 balance and an $838 monthly principal and interest payment. After 5 years, the LTV loan would be **99%** (assumes zero nominal house price change).

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[21] "The Obama Administration's Efforts to Stabilize the Housing Market and Help American Homeowners", p. 4, February 2012, http://portal.hud.gov/hudportal/HUD?src=/initiatives/Housing_Scorecard

Winding down the Government Mortgage Complex

I have already addressed steps that need to be taken with respect to the FHA and the Dodd-Frank Act.

With regard to winding down Fannie Mae and Freddie Mac ("the GSEs"), the solution is straightforward:

- Adopt legislation to dramatically reduce their conforming loan limits over a period of 5-7 years.
- Continue recent steps to increase the guarantee fees charged by the GSEs.

Further details may be found in the AEI White Paper entitled: Taking the government out of housing finance: principles for reforming the housing finance market.

[22] For borrowers substantially under water the fees would be near zero since this could be done as a modification.

Appendix 1:

Principles to Guide FHA Reform to Achieve Sustainable Homeownership Consistent with FHA's Low- and Moderate-Income Mission

1. Step back from markets that can be served by the private sector by taking steps to return to a traditional 10 percent home purchase market share.
2. Stop knowingly lending to people who cannot afford to repay their loans.
3. Help homeowners establish meaningful equity in their homes.
4. Concentrate on homebuyers who truly need help purchasing their first home.

Table 2: FHA Program Reform

Suggested Reforms to Implement Program Reform Principles 1-4
Set loan limits equal to the county's current median house price.
Serve first-time homebuyers with incomes below the area median.
Serve repeat homebuyers below < 80 percent of area median.
Set maximum FICO at 675.
Limit rate reduction refinances to term reduction only, payment remains the same.
Eliminate cash-out refinances.
Eliminate specific risks that are difficult to offset with lower risk features: 1. FICO scores below 580 2. Adjustable rate mortgages (ARMs) 3. Seller concessions greater than 3%
Limit/adjust risk layering to meet target projected average claim rates of 5 per 100 insured loans under normal circumstances and 10 per 100 insured loans under stress circumstances. See Table 3 below.
1. Until the above are implemented, levy a 0.25 percent, 0.50 percent, and 0.75 percent per year government subsidy reduction fee on any Ginnie/FHA or Ginnie/USDA insured loan with an initial LTV of > 90 percent and <= 95 percent, with an initial LTV of > 80 percent and <= 90 percent and with an initial LTV of <= 80 percent, respectively. Revenue would be paid directly to the Treasury and not benefit Ginnie, the FHA, or the USDA. 2. Until the above are implemented, require FHA to cause to be disclosed in both the Good Faith Estimate and HUD 1 Settlement Statement an

Table 3: Underwriting standards that help homeowners establish meaningful equity in their homes

FICO	Maximum LTV limit**	Maximum loan term	Maximum total DTI	Equity after 4 years*	Estimated claim rate
660-675	95.75%***	30 years	<50%	11%	5
620-659	95.75%/ 89.75%***	20/30 years	<50%/40%	17%	5
580-619	91.75%/ 83.75%***	15/20 years	<45%/40%	27%	5

* Earned equity is the sum of initial equity plus scheduled amortization based upon an interest rate of 4.5%
** FHA annual premium payable until (i) the amortized loan balance is equal to 70% of the lesser of original sales price or original appraised value or (ii) the sum of upfront premium plus annual premium of 0.50% exceeds a cumulative 4.5%.
*** Maximum LTV inclusive of financing up to a 1.75% upfront mortgage insurance premium

Chairman ISSA. And reserving time so that I will both use my last 5 minutes to close and for my questions, I would like to go to the ranking members, Mr. Cummings, for his round. The gentleman is recognized.

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

Ms. Faux, let me just go back to some of the things that you said. You know, some people have the impression that folks got into these loans and found themselves in trouble because they were people who simply took advantage of a system of no docs and whatever. But it seems to me that when you look at someone who is underwater, in many instances it is probably no fault of their own. Because if you have a situation, like in the block that I live in, I often say where The Wire is filmed in Baltimore, where across the street from me out of 15 houses, 6 of them are in foreclosure, and the property value has gone down 50 percent in the last 3 or 4 years, it is no fault of my own that I could be underwater. Am I right, is it?

Ms. FAUX. There are a lot of homeowners who are now underwater because of declining home values. And there are many who are underwater because of over appraisals, but there are many who are now underwater because of the foreclosure crisis and bringing home prices down.

Mr. CUMMINGS. But a lot of these people, they are not looking for somebody just to give them a gift. They are trying to figure out how to stay in that house, is that right?

Ms. FAUX. Yes.

Mr. CUMMINGS. I mean, and they do not mind trying to pay what they can, am I right?

Ms. FAUX. I mean, all of my clients that we represent want to pay a mortgage. They want to pay a mortgage they can afford and that fits within their monthly budget.

And, you know, the principal reduction, I think, makes sense as a public policy, but many of our clients are accepting mortgages—I mean, modifications that are hundreds of thousands of dollars, you know, the principal balances are hundreds and thousand of dollars over the actual value of the home because they want to stay in their house and they want to stay in their community. And, you know, what principal reduction will allow are bringing those modifications to a more affordable level and then allow people the freedom to move if they need to sell their house because of family or a job they got somewhere else. It is good public policy, but it is not even what our clients asked for in the first instance.

Mr. CUMMINGS. I think there is something that people often forget, too, is when a house is underwater several things happen: one, you cannot sell it; two, you cannot go and buy another house; and three, the neighborhood goes down; four, you are losing municipal and state taxes. I mean, just a whole range of things.

And I think you, Judge, I think it was you, who said that—I think you were talking about—it was one of you talking about how we lose tax dollars. Was that you, Judge?

Judge SCHACK. This is with the subject of assignments———

Mr. CUMMINGS. Oh, the MERS thing. Because, I mean, that is very significant.

Judge SCHACK. Because we have lost about $3 billion for all the counties or whatever the local recording authority is around the country, so this is a national issue. It is not only New York.

Mr. CUMMINGS. Right.

Judge SCHACK. Florida, California, Pennsylvania, Maryland, wherever. And our counties and the localities are hurting, and this could help them besides trying to end abuses with fraud as well.

Mr. CUMMINGS. And Judge, if you had to—if you were—if you could—you know, just based upon what you have seen, and you said that you see that there are certain communities that are affected disproportionally than others, I mean, what would you like to see to try to—I mean, if you could figure out a way to kind of correct this situation?

Judge SCHACK. If I can do that, I would be making a lot more money than what I make now. [Laughter.] All of us would. But on a serious vein, in this particular county—because, you know, I am dealing with foreclosures throughout Brooklyn, Brooklyn is approximately 2½ to 2–3/4 million people. But I say that probably 90 percent of those 14,000 foreclosures are in predominantly minority communities.

And some of the speakers have named the neighborhoods: East New York, Canarsie, Brownsville, Bushwick, Bedstuy, Crown Heights, et cetera. And then there is other parts of Brooklyn, like Bay Ridge, I will pick on Bay Ridge, very rare.

I mean, you see foreclosures there. Some people fall into problems. But predominantly the majority of the community it is very rare to see foreclosures. So there is an impact on a minority community.

There is a variety of reasons I think that are more economic than anything else with more families taking two and three jobs because they want to achieve that American dream of owning their own house. They want to be in the house. People lost jobs. People fell on hard times. People signed these adjustable rate mortgages, the rates went up. A whole variety of reasons that caused these problems. And we are faced to deal with it, at least I know lawyers already deal with this, the court system. And, you know, we cannot escape from it.

I mean, I like to—well, I will use an analogy in a way. I used to use this when I sat on the criminal side. I am like the doctor in the emergency room: there is a problem, I have to deal with it. I cannot duck. I cannot hide. It is what it is and it comes before me and I got to do something, and so do the other judges. And we face the society and we face this as the ills of society in our courtroom. So this is one of these we have to deal with one way or another.

Mr. CUMMINGS. Thank you very much.

Chairman ISSA. Thank you. Mr. Platts.

Mr. PLATTS. Thank you, Mr. Chairman and certainly thank each of you for your testimony. And is it Folk?

Ms. FAUX. Faux.

Mr. PLATTS. Faux. Okay. I want to especially thank you for your work with Legal Services. As an attorney by training I know that for our judicial process to work well the parties that come before the system need to basically try to be on a level playing field to make sure the system works as we intend. So the work of you and your agency is most appreciated.

One of the most historic statements in your written testimony that just kind of undercuts our first panel about how we are changing things was you say, "Despite countless investigations, regulations and initiatives, our offices have seen little change in the day-to-day practices of servicers." And that is why we are here, as Mr. Towns in Brooklyn and on the broader issue as a committee trying to look at this issue because it has to change.

Ms. FAUX. Right.

Mr. PLATTS. You referenced that despite the attention that there continues to be routine violations of Federal and state regulations. Could you identify what would be the most common violation of am actual law, state or Federal, or Federal or state regulations, that is most routine that you see?

Ms. FAUX. The regulations I was speaking to are the HAMP guidelines and the state servicing regulations. And what we still see routinely is despite, you know, a complete modification package put in, many months delays before we receive an answer; we see denial responses that do not relate to the reason the homeowner was actually denied; and we see servicers who, you know, are, you know, making mistakes in the review process. But that is many, many months later that we realize why the homeowner was denied, and it is very costly to our clients in terms of interests and fees. And then, you know, putting forth a denial because of an investor restriction. And then, you know, while this is not—we wish this was a violation, but failing to disclose the investigator restriction to us, and then once we investigate they are not actually being an investor restriction.

And, you know, I should say I have worked with many of the panelists who were on the first panel for years, and many of the lender representatives in this room. And we can come to an agreement about what a lot of these problems are, but then when we get back to the frontline staff and in the community, we see the same problems over and over and over again. And I do think that is because the enforcement of the regulations has been minimal.

Mr. PLATTS. Yes, and that actually touches on two follow-ups.

One, have you ever seen a consequence to a lender or servicer for failure to comply, a penalty not through this global agreement, but, you know, on an individual case where there was a violation and there was a consequence to the person or the entity that failed to comply?

Ms. FAUX. Yes, when we are in court. We have the judges in Brooklyn will consider totaling interests and fees if the servicers are not negotiating in good faith in the contacts of settlement conferences, but outside that, no.

Mr. PLATTS. And I guess, Your Honor, how common would you say that is the case, you know, that you are able to impose those type—because to me for this to change there has to be consequences.

Ms. FAUX. Yes.

Judge SCHACK. Funny you should ask me, you know, because of my reputation, but I have sanctioned banks. As I said, I do not want to talk about specific cases. You want to go Westlaw, feel free to read what I have written and that is a matter of public record. But I really do not want to comment because there also pending cases that are on appeal. But there are unique cases.

You know, every case is unique, obviously. And that is one of the—you know, it is great to hear the first panel talk in broad generalities about what they would like to do, but I have to deal with—you know, I have a case in front of me, this is a real homeowner, a real property, and that person or their family have to deal with it on a case-by-case basis.

And I also have to say there are other homeowners where I have signed judgments of foreclosure and people have been evicted and moved out. So every case is unique. But there are cases where I have had to sanction lenders for some of their practices.

Mr. PLATTS. But by your testimony and, Ms. Faux, your statements in line with the previous panel that there seems to be a breakdown in communication you referenced with working with some of those individuals, but when you get to the front lines. And so I know most, if not all, of the previous panel members are here, is I would encourage each of you to make sure that Ms. Faux has not just your contact information, but who is the troubleshooter in your entity, you know, within your bank. Who should she talk to to make sure that the front line is dealing what we heard pledged to us today because that seems to be the issue. We have the senior management making the commitment, but unless the guys on the front lines are actually delivering on it, they are going to keep coming before the judge, you are going to continue to devote, you know, months and months and months of, you know, effort that means you are also taking from other important legal services.

So for those witnesses here from the first panel, I would encourage you to make sure that Ms. Faux and her colleagues have a direct line to whoever can troubleshoot to make sure that we line up front line service with the commitments we heard today. Mr. Chairman, thank you.

Chairman ISSA. Thank you. I now ask unanimous consent that the then minority report from February 25, 2010, entitled Treasury Department's Mortgage Modification Program, be entered into the record. Without objection, so ordered.

We now recognize Chairman Towns for his round of questions.

Mr. TOWNS. Thank you very much, Mr. Chairman. Let me just recognize, because I want you to know that I am really impressed with the fact that we have some judges, you know, in the room and I want you to know that that to me is very, very important. Aside from Judge Schack we have others that are here. We have Judge Slyvia Hines Reddick, supervising Justice of the Civil Term Brooklyn Supreme Court is in the room. [Applause]

Chairman ISSA. How often do you hear judges get applause? [Laughter.]

Mr. TOWNS. Is that not something? Yes. We also have former Family Court Judge Betty Staton is also in the room. Judge Staton, Family Court, is also in the room as well. [Applause] And I want to thank you for being here.

And, of course,the person that has done so much of this, Cathy Asobiey, it is always—you know, who has done so much of this kind of work on behalf of the people in Brooklyn. [Applause]

Let me just move forward by, first of all, Judge Schack, you talked about conflict of interest and fraud. What are some of the most frequent kinds of conflicts you see? What? I am sorry.

Chairman ISSA. These are really great mics. They are just—you got to get up close and personal with them.

Judge SCHACK. I know that. Thank you.

Mr. TOWNS. What are some of the most obvious conflicts of interest and fraud that you see in your court?

Judge SCHACK. Well, we will come back to the MERS system for a moment. Many times you will see someone sign a document, particularly an assignment of a mortgage from MERS to whoever becomes the plaintiff in a foreclosure, and they will sign it as an officer of MERS. And that conflict would be as an assistant—usually an assistant secretary to assistant treasurer in court. But then you find out they are not an employee of MERS. In some cases I found out they do not even know what MERS is, they just signed the thing with the robo-signers. And then a month, 2 months, 3 months, whatever it is later on, then the present owner of the mortgage will file with their papers for a foreclosure what we call an affidavit of merit. Typically that is on a default case because the plaintiff has to attest to the facts in the filing. And it will be the same person with a different title. Now they are the vice president of bank X or mortgage servicer X. So now they wear two hats. I have had cases where they wear three hats, or I have had cases with some particular law firms where a lawyer who works for that particular law firm signs as an officer of MERS and then that is the assignor who signs the mortgage, and then suddenly that law firm is now the lawyer for the lender who is the assignee. So, that is a conflict.

So those are some of the typical conflicts that not only have I seen, but I continue to see despite everyone is talking about doing these wonderful things, but I continually see this day-in and day-out.

Mr. TOWNS. Thank you very much. Ms. Faux, you mentioned that servicers should not be above the law. Could you sort of expound on that a little bit?

Ms. FAUX. I mean, it is the HAMP guidelines and, you know, the New York State servicing regulations, which are some of the strongest in the country, you know, even if only those regulations were followed, we would be well further along in resolving the foreclosure crisis.

And I think that the AG settlement, you know, the servicing standards there are, you know, very commonsensical. Yet, you know, what we need, they are going to have to be aggressively enforced. You know, it takes us months to litigate a case, you know, in the courts about whether the servicer and the plaintiff, you know, failed to negotiate in good faith. There are dozens, if not hundreds, of other cases pending where those homeowners do not have that same type of relief, and all homeowners should be treated fairly. Servicing should be transparent and they should get prompt review of modification packages.

Mr. TOWNS. Right. Sitting right next to you is Mr. Pinto, who has stated during an interview last month, and I quote, “There are not any damages that have been demonstrated.” A few days later, he stated that the settlement, and I quote again, “Really is not based on damage that was actually done that was proven.” He said, the settlements, and I quote, “Deals with some nebulous claims that were made by state attorney generals and regulators.”

Do you still stand by that?

Mr. PINTO. Not only do I stand by it, but Secretary Donovan said the same thing. I quoted him in my testimony.

Mr. TOWNS. Judge Schack and Ms. Faux, what do you say to that? I do not want to start a fight up here, but I sure want to get to the point.

Chairman ISSA. We just need a bench ruling.

Judge SCHACK. I know you want that, Mr. Chairman. But on a serious vein on this, you folks have more First Amendment rights than I have since I am a neutral. As a judge I really cannot talk publicly about a lot of things, but I will just leave it that the abuses that we have read about in the media or heard about, they continue on a day-to-day basis. So I will leave it at that.

Ms. FAUX. The abuses continue and, I think, homeowners are the one who are harmed the most. You know, they—while during the delays or the, you know, improper foreclosure filings and the refusal to negotiate in good faith, homeowners get hundreds of thousand of dollars of accrued additional debt, and that means it is just that much more difficult for them to save their home.

And we still see, you know, questionable assignments and affidavits. We still see foreclosures being filed where it is unclear whether the plaintiff owns the debt. And we have no idea who to negotiate with.

And all of those actions, all of that fraud, and the deception that underlie origination, and then throughout the foreclosure process is incredibly costly to the community.

Mr. TOWNS. Two years in settlement, that seems to be a long, long time in settlement conference?

Ms. FAUX. Yes.

Mr. TOWNS. What do you think we can do to sort of shorten that?

Ms. FAUX. I mean, there is a number of recommendations that we have to streamline the process, and we are working with the Office of Court Administration to implement those procedures. But what the bulk of these conferences, you know, six to eight appearances per case over twice as many months, you know, are about, you know, servers who say the package is complete and then come back 2 months later having not reviewed it asking for more documentation at the conference instead of in between and asking for unnecessary documents or documents that we provided over and over and over again. And they need to be held accountable for failing to review in a timely fashion. And they need to just know what they need up front and then not change their mind later.

And, you know, homeowners are perfectly willing to document their income to provide complete modification applications. They should not have to do it four and five times before they are able to obtain a mortgage modification.

Mr. TOWNS. Thank you very much. Mr. Chairman, thank you. Let me thank you for bringing the hearing to Brooklyn. I want to thank the witnesses for their participation. And we look forward to working very close with you in the days and months ahead to try to bring about a solution to this very serious problem. Thank you.

Chairman ISSA. Thank you, Mr. Towns. And this is the second time you have brought me to this beautiful, ornate, and historic building on this subject, so I thank you for inviting us back to Brooklyn.

I will now recognize myself. And there is a number of things. First, Justice, you have, at least on a preliminary basis, looked at the settlement. Do you think it is going to change the behavior of the banks that you see before you and other mortgage owners?

Judge SCHACK. I hate to say it but probably not. I mean, you know, I said Brooklyn, maybe I should be in Missouri because they are going to have to show me. I do not know. Time will tell.

Chairman ISSA. Ms. Faux, how about you? Do you think that the behavior, what you are describing, sounds not like they do not have the tools or that they have not successfully done—and if we counted up all the banks we would have several million modifications, successful refinancing, and, of course, you add Freddie and Fannie you get several million more. But the 5- or 6 million successes that were spoken of in the first panel, you do not see the successes, you see the failures for the most part, do you not? Do you think this is going to change with tens of billions of dollars committed to the process?

Ms. FAUX. I guess I have slightly more hope. But it will depend if the attorney generals are willing to aggressively enforce this. Obviously it would help if homeowners could enforce the agreement themselves, if there was a private right of action, if there was a defense to foreclosure for violating these agreements. But, you know, we are also looking forward to partnering with the attorney generals, with the CFPB, and the other enforcement agencies to ensure that servicers, now that they have again agreed to this, actually follow through.

Chairman ISSA. Now, you are an economist, Mr. Pinto. The two of you are obviously attorneys. Have you looked at the 1978 Reform Act? Are you familiar with it?

Mr. PINTO. No, I am not.

Chairman ISSA. It is perplexing to me. And this is not to say that I am not trying to find solutions that are outside historic. 1978, Democrat President, Democratic House, Democratic Senate, the reform specifically eliminated cram-down or principal reduction even in bankruptcy.

As we try to find the right way—and I am going to get to Mr. Pinto on a number of his proposals, but as we try to find the right way—do you know of any statutory history of what used to be called cram down because it did exist in bankruptcy, but specifically excluded in order to make mortgages more desirable essentially and more reliable? Do you know of any statutory basis, either as a Justice or as a consumer attorney, do you have any basis for us to order that in the private sector notwithstanding a settlement where they have agreed to it or the 60 percent that is controlled by Congress?

Judge SCHACK. As far as I know, and I do not—without doing any kind of legal research, I am not familiar with any statute that would require that.

Chairman ISSA. Ms. Faux, you do not know of any either?

Ms. FAUX. I do not, but it would be great if there could be bankruptcy reform that allow it.

Chairman ISSA. Well, and it is one of the questions. I serve on Judiciary. It is one of the questions of do we relook at the 1978 act? And if we do, Mr. Pinto, I now close with you.

First of all, as an economist, what would that change do? In other words, the anticipation that there could be if the market goes up, the consumer takes the profit; if the market goes down, the principal is reduced on a relatively consistent basis and yet the owner keeps it. What is that going to do to the cost of a mortgage in your estimate as an economist? And you obviously served in that capacity at high level.

Mr. PINTO. My estimate would be it would raise the cost of financing. In my testimony I talked about a slightly different Catch–22, which is having low down payments, virtually no down payments, that was proposed by Mr. Belsky, who is the head of the Joint Center for Housing at Harvard. And he was speaking before the FDIC and he said while the advantage to getting a home with a very small down payment is you have a tremendous upside potential, as you have just indicated, and your downside potential is also advantageous because it takes so long to foreclose. And if you added cram down to that, I think you would just be creating additional problems.

Chairman ISSA. Well, leverage always works hard. It just sometimes works hard for you and sometimes against you.

In closing though, if your principal concept that you had, which was that basically we should refinance people to today's lower rates, keep the payment, if they can make it, the same, thus they get out a hole or if they stop being upside down and go right side up quicker, I found it interesting only for one reason. In virtually every mortgage these days, modern mortgage, and all of you can weigh in, they almost all have an absolute right to, in a relatively short period of time, refinance, close out with little or no penalty, right?

Judge SCHACK. That is correct.

Chairman ISSA. So home mortgages start off with the presumption of an absolute right by the homeowner to go out and refinance them.

So my closing question to all of you is—and by the way, I will talk a little more about the questions afterwards, but is not what we should have looked at from day one, all the way back when the mortgage rates started going down in 2008, the ensuring that people, even if they are underwater, could take advantage of the affordability that was coming and reasonably expected within their mortgages through refinancing to prevailing rates that were lower?

My closing question for each of you, because you did not agree in your opening statements. Can we agree in the closing statements that that would have dramatically made homes more affordable and reduce the amount of blighted communities?

Mr. Pinto.

Mr. PINTO. What I actually suggested was that loans be modified that are underwater 20 percent or more. There are restrictions on

Fannie and Freddie and I specifically talked about Fannie and Freddie.

Chairman ISSA. Well, no, my question is very limited, and you can answer further what you think I asked for the record. But my question was if we in the government had alleviated any limitations on Freddie and Fannie, if we in the government had encouraged from day one and encouraged from day two, being today, banks to, in fact, allow people to exercise the reasonable expectation they had, which was that they could refinance with a point or two, whatever the normal refinancing was, if, in fact, rates went down, they had that expectation, it was explicitly in their contracts that they could do in virtually every home mortgage, would that not, as an economist, have dramatically reduced the problem of people not being able to afford their homes and the blighted communities?

Mr. PINTO. It is not that simple. Sorry.

Chairman ISSA. Okay, perhaps for a lawyer it is simpler.

Ms. FAUX. I think access to, you know, that kind of affordable credit would have helped a number of people prevent—who are now going into foreclosures. And just I think you need to ensure that really every community has access to that fair and affordable credit.

Chairman ISSA. Judge.

Judge SCHACK. I am going to agree partially with Mr. Pinto that it is not as simple as———

Chairman ISSA. It does not take care of everyone is what you are saying?

Judge SCHACK. Right. Because there are people who have individual credit problems. So assuming people are working, they have the correct credit rating, that might be the way to go if it is high enough.

Chairman ISSA. My question was not that simple, you know. My question, and I asked it to the first panel was, in fact, yes, their credit in some case diminished, yes, they were behind in their payments or barely keeping up. The fact is there was a reasonable expectation within the contract that they could refinance. If we said, if we encouraged—let us just take—and I have got Mr. Pollard still patiently here.

If we said to Freddie and Fannie thou shall refinance since you are getting your money cheaper with Fed paper, we want you to refinance to that 3½ percent from the 7 percent, if we had done that, it certainly would have had an adverse effect. All of us understand there was a revenue loss. But would it not have dramatically reduced the amount of people in front of you?

Let us just assume they are 525, they did a no docs loan, all the other things that I talked about, but it is in Mr. Pollard's, the companies he represents, it is in their hands. And they are making a decision, oh, you are underwater—and I hope you do not mind me going over just a little—you are underwater and you got a 525 FICO score, so we are not going to refinance you. As a result they end up turning in the home because they cannot afford it at 7 percent. The fact is in your court would that not have dramatically reduced the amount of people that would have been in front of you simply because they could have refinanced?

Judge SCHACK. Well, a certain percentage of people you are correct. Obviously there are people because of the credit problems they would not do it for. But certainly, I do not know what the numbers would be, but I believe you are correct, Mr. Issa.

Chairman ISSA. Okay. Now, I am going to ask something of the two panels, because I asked you to remain and the first panel remained.

I know that the three of you, probably particularly two of you, Justice, you may not want to ask questions, but you may have questions that you did not feel we asked on the first panel. If you do, and you submit them to us, we will forward them to the first panel.

Vice versa, anyone on the first panel, if there is something that would complete the record by either a comment or a question to the second panel, I want to make sure our record today is full and complete.

We have been doing this since 2007. The intention of this committee is to publish a record of the many hearings held under both majorities and minorities. And Chairman Towns was very helpful when I was the ranking member in minority.

We want, we want to come out with something because, quite frankly, between the failures of HAMP, and today the good word we are hearing about, you know, HARP 2, you know, we want to make sure that we spell the record out so that future—if this happens in the future, some of these fixes, some of the upsides and downsides are better understood.

My greatest concern is that, in fact, if we were to have 10 years of good times and go back into bad times, we would all be back in this beautiful building with very little changed other than who was sitting in our seats.

So the first panel has been very kind. I extend it to you so that, in fact, you can have answers to questions you could not ask. We will make the record complete. We will hold it open, at least the question portion, for 5 days, and then the answers a reasonable time thereafter.

I want to thank all of our panelists for remaining. And for all of you in the audience, the remaining people who sat patiently and attentively, I want to thank you. This is what democracy is suppose to be about. This is the reason Chairman Towns asked me to come here and that I came here a second time.

With that we stand adjourned.

[Whereupon, at 12:34 p.m., the Committee was adjourned.]