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HELPING RESPONSIBLE HOMEOWNERS SAVE MONEY THROUGH REFINANCING

HEARING

BEFORE THE

SUBCOMMITTEE ON
HOUSING, TRANSPORTATION, AND COMMUNITY DEVELOPMENT

OF THE

COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

ON

EXAMINING WAYS TO HELP HOMEOWNERS SAVE MONEY THROUGH REFINANCING

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C O N T E N T S

WEDNESDAY, APRIL 25, 2012

WITNESSES

Additional Material Supplied for the Record

HELPING RESPONSIBLE HOMEOWNERS SAVE MONEY THROUGH REFINANCING

WEDNESDAY, APRIL 25, 2012

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SUBCOMMITTEE ON HOUSING, TRANSPORTATION, AND COMMUNITY DEVELOPMENT
Washington, DC.

The Subcommittee met at 10:06 a.m., in room SD–538, Dirksen Senate Office Building, Senator Robert Menendez, Chairman of the Subcommittee, presiding.

OPENING STATEMENT OF CHAIRMAN ROBERT MENENDEZ

Chairman MENENDEZ. Good morning. This hearing will come to order. Thank you for being here today.

This hearing of the Banking Subcommittee on Housing, Transportation, and Community Development will focus on helping responsible homeowners save money through refinancing.

As I have said many times, we need to fix the housing market now to get the broader economy moving again and create jobs. And an important part of fixing the housing market is to remove barriers, some of them Government created, to homeowners refinancing. Allowing a homeowner to refinance from a loan at 6 percent interest to a loan that is 4 percent interest, for example, would save them hundreds of dollars a month, putting more money in their pockets and reducing defaults and foreclosures.

We are going to hear testimony today that there are 17.5 million loans guaranteed by Fannie Mae and Freddie Mac, paying interest above 5 percent, that could benefit from a refinance, and millions of these homeowners are trapped in higher interest rate loans because of barriers to refinancing. Some, but not all, of these barriers were addressed in FHFA's Home Affordable Refinance Program, or HARP, and its expansion called HARP 2.

For example, HARP 2 removed loan-to-value caps for underwater homeowners but does not apply to borrowers under 80 percent loan-to-value ratio who, theoretically, should be able to refinance but, in practice, sometimes cannot.

FHFA scaled back lender liability for representations and warranties, which lenders cite as an obstacle to encouraging them to extend refinance loans for same servicer refinances in HARP 2, but FHFA did not scale back representations and warranties liability for cases when server was refinancing a loan, which has led to a lack of competition among lenders that has resulted in much higher interest rates for borrowers. We need to inject competition and market forces into this market where servicers have an unfair monopoly on refinancing certain borrowers who effectively have no choice but to use their original lender.

Another obstacle is that the second mortgage holders and mortgage insurers do not always allow their interest to be transferred to a new refinanced loan even though they are generally better off when the first mortgage refinances to a lower payment since that makes the loan less likely to default and the homeowner more likely to be able to pay the second mortgage as well.

Another obstacle is up-front fees and appraisal costs that homeowners without savings cannot afford, keeping them trapped in high interest loans.

Another barrier is verification of income tax returns and other paperwork, which is needed for new loans but not necessary for refinanced loans where the borrower is already making payments on time.

The important thing to keep in mind here is that for these Fannie and Freddie loans, taxpayers already own the risk of these homeowners' default, regardless of whether we allow the homeowner to refinance or not. So stopping homeowners from refinancing into lower cost loans, where they are less likely to default, harms both homeowners, taxpayers, and is crazy in my view as a policy. FHFA needs to change this.

Other challenges also remain such as how to increase homeowner awareness of refinance actions.

I have been working with Senator Barbara Boxer on a discussion draft bill that I have asked witnesses at these hearings today to comment on. I would like to thank her for her great work on behalf of the people of California as well as everyone in this country. The Senator has shown some great interest in this.

I appreciate summaries of the Menendez-Boxer discussion draft are available for the press in the back of the room.

I would also like to thank Senator Al Franken for working with me on the put-back risk provision of the discussion draft, which is similar to a provision he introduced in another bill.

I am going to look forward to hearing from the witnesses.

And there are several colleagues on the Committee who have been very much engaged in refinancing, and I would be happy to recognize any of them at this time if they wish to be recognized.

If not, let me introduce the witnesses.

Dr. Chris Mayer is the Paul Milstein Professor of Real Estate, Finance and Economics and Co-Director of the Richard Paul Richman Center for Business Law and Public Policy at Columbia Business School. His research explores a variety of topics in real estate and financial markets, especially refinancing. And he has appeared before Congress, and certainly this Committee, several times. We welcome him back.

Ms. Debra Still is the President and Chief Executive Officer of Pulte Mortgage which is located in Englewood, Colorado, and she is the Chairwoman-Elect of the Mortgage Bankers Association. Congratulations. She has been an active MBA member for over 10 years, has more than 3 decades of experience in the mortgage industry.

And so, we thank you for traveling all the way from Washington State today.

Dr. Laurie Goodman is a Senior Managing Director of Amherst Securities, responsible for research and business development. Before joining the firm, she was the head of Global Fixed Income Research and Manager of U.S. Securitized Products Research at UBS and their predecessor firm. She has appeared before our Subcommittee numerous times before, and her tremendous knowledge of the market and investors is always welcome.

So, welcome back.

Dr. Anthony Sanders is a Professor of Finance in the School of Management at George Mason University. He has a long history of academic research into financial institutions, capital markets, real estate finance and investments. He has testified before the Subcommittee numerous times.

You must all be good because we keep bringing you back. And as a Garden State native, he is always welcome here.

Mr. Michael Calhoun is President of the Center for Responsible Lending, which is a nonprofit, nonpartisan research and policy organization dedicated to protecting home ownership and family wealth by promoting access to fair terms of credit for low income families. He has testified also numerous times before the Congress and currently serves as the Chair of the Federal Reserve Board's Consumer Advisory Council.

Thank you all for agreeing to come and share your expertise on this subject. I would ask you to summarize your statements in about 5 minutes. All of your full statements will be included in the record.

And with that, we will start with you, Dr. Mayer.

STATEMENT OF CHRISTOPHER J. MAYER, PROFESSOR OF REAL ESTATE, FINANCE AND ECONOMICS, COLUMBIA BUSINESS SCHOOL

Mr. MAYER. Thank you, Senator Menendez and fellow Senators.

Good afternoon. Thank you for the opportunity to be here today.

My name is Chris Mayer. I am the Milstein Professor of Real Estate at Columbia Business School.

This is the sixth time I have been called to testify, equally called by both Democrats and Republicans. Each time, I have advocated for what is seemingly straightforward and simple policy: Allow millions of Americans to refinance their GSE mortgages at low current rates.

The failure to do so over the last 3 years has resulted in at least 300,000 unnecessary defaults, $10 billion in higher taxpayer costs from excess foreclosures and a less stable housing market. Bond holders have received $60 billion over the last 3 years in excess mortgage payments from homeowners trapped in high interest rate loans.

Last year, the FHFA announced changes to HARP with the stated goal of increasing eligibility for streamlined refinancing. Yet, these changes are inadequate.

The most serious problem under HARP 2 is the lack of competition, as I know some of our other witnesses will testify to. Lenders are strongly discouraged from refinancing a mortgage they did not originate because they must take on legal liability for the original mortgage.

Existing servicers are taking full advantage of the situation, earning profits of $7,000 to $13,000 when an underwater borrower with a $200,000 mortgage wants to refinance. This is an unprecedented and inexplicable profit.

Some servicers, such as MetLife, do not even originate new mortgages, leaving their borrowers locked out altogether.

Freddie Mac, the target of an NPR–ProPublica investigation for supposedly betting against household refinancing, continues to implement further additional hurdles to refinancing relative to Fannie Mae.

Under the law, the FHFA must preserve and conserve the GSE assets, ensure liquid, efficient and competitive mortgage markets, minimize foreclosures and operate the GSEs in a manner consistent with the public interest. Yet, the activities I described appear to directly violate these congressional mandates.

Giving existing servicers preferential legal treatment reduces competition. Imposing unnecessary and opaque credit restrictions makes the market less transparent and efficient. Limiting access to a program that lowers borrowing costs results in more foreclosures and is seemingly against the public interest.

Some argue that restricting refinancing is justified to protect the value of the GSEs' investment portfolio. Of course, Acting Director DeMarco has stated that there is no conflict because the GSEs were not supposed to consider their portfolio in implementing HARP 2. But if not protecting their portfolios, why else impose onerous refinancing restrictions?

I was asked to assess the economic impact of the Menendez-Boxer discussion draft legislation, which would remove key barriers to refinancing. My research with co-authors, including Glenn Hubbard, James Witkin, and Alan Boyce, suggests the bill might result in as many as 11.6 million new refinancings and prevent 400,000 unnecessary defaults based on current interest rates.

A recent CBO working paper suggests that a refinancing program would earn the GSEs about $700 million, even taking into account portfolio losses, because more refinancings lead to fewer defaults and lower insurance costs.

Even if the CBO is wrong and refinancing does impose net portfolio costs, or the GSEs must somehow give up valuable legal rights, the GSEs could charge a slightly higher annual refinancing fee. Our analysis suggests that adding a seven basis point annual fee to the insurance premium plus covering the existing costs, a total premium of about 29 basis points would lead to a profit for the GSEs of more than $23.6 billion.

Even considering portfolio losses to the Federal Reserve, this program is profitable for taxpayers on a standalone basis. The FHFA should be held accountable for failure to implement a program that would save taxpayers billions of dollars in lower bailout costs.

I believe the Congress should act as called for by the President, as proposed under this existing legislation. Although obviously this bill is very different than that proposed by the President, I think the draft bill is very, very close to what we have been proposing for over 3 years. So I think it is a wonderful piece of legislation.

Two enhancements that I would suggest: One, all current GSE mortgages should be eligible for any refinancing program regardless of origination date, and two, the legislation should mandate that an independent trustee be appointed to wind down the GSEs' maintained, retained portfolio of MBS. Conservatorship, as it stands now, is laden with conflicts of interest and holds back the reintroduction of private capital.

Removing barriers to refinancing will help the effectiveness of monetary policy, allowing the Federal Reserve to more quickly reduce its efforts in quantitative easing. These steps can occur now even without a consensus on what the future of the U.S. housing finance system would look like.

Thank you very much for inviting me.

Chairman MENENDEZ. Thank you.

Ms. Still.

STATEMENT OF DEBRA STILL, CHAIRMAN-ELECT, MORTGAGE BANKERS ASSOCIATION

Ms. STILL. Thank you, Chairman Menendez and other Members of the Subcommittee, for the opportunity to testify today. As the President and CEO of Pulte Mortgage and the Chairman-Elect of the Mortgage Bankers Association, I am pleased to offer MBA's perspective on the Responsible Homeowner Refinancing Act of 2012 as currently being drafted by you, Mr. Chairman, and Senator Boxer.

As we work toward a recovery for housing, MBA appreciates all efforts directed at helping homeowners and making sure that qualified, deserving borrowers have access to mortgage credit. We believe this bill aims to address these goals, and we agree with the intent and objectives of this draft legislation.

The MBA believes that a number of provisions contained within the bill will help overcome certain remaining barriers that have prevented responsible homeowners, who have remained current on their mortgages, from reaping the benefits of historically low interest rates and existing mortgage assistance programs.

MBA particularly appreciates the provisions that would standardize and therefore simplify Fannie Mae and Freddie Mac's borrower eligibility requirements.

We also support the bill's provision to lower borrowing costs by prohibiting the GSEs from establishing pricing differences based on loan-to-value ratios, borrower income or employment status.

We appreciate that all lenders, not just the existing servicer, can participate in the program's streamlined underwriting program.

These provisions are all improvements to the current version of HARP. It is in the best interest of borrowers, the GSEs and taxpayers to incorporate these concepts for loans held by the GSEs since both agencies already hold that risk.

For lenders interested in helping borrowers refinance, MBA is pleased that the bill addresses the exposure of a new lender's representation in warranty obligations to Fannie and Freddie. Lenders have faced an unprecedented volume of repurchase demands and are understandably hesitant to take further incremental risk on streamlined refinances. Therefore, by clarifying their rep and warrant obligations, many more lenders can help existing homeowners while interest rates are low.

While MBA supports the concept I have just discussed, we would like to offer commentary on a few of the provisions that we believe need enhancement.

The bill addresses two important and complex pieces of the refinancing process, but MBA would offer a different approach to both subordination of second liens and mortgage insurance. MBA believes the penalties proposed for subordinate lien holders and mortgage insurers are severe and unnecessary. While some second lien holders may have originally been slow to respond to subordination requests, the industry has seen significant traction in this area. In regards to mortgage insurance, as evidenced by the existing HARP program, most mortgage insurance companies have already agreed to participate.

It is imperative we support market liquidity for consumers. Limiting competition amongst lenders and insurers is contrary to the goals and objectives of this legislation. We find these provisions prohibitive and would be glad to work with you on alternative solutions.

Finally, we recommend that the bill be modified to expand the types of loans eligible for refinancing under the HARP 2 program. In particular, loans owned by the GSEs that exceed the current loan limit should be eligible for refinancing under the program.

It is critical that future housing policy be developed with thoughtful, well balanced, incremental steps that progressively eliminate the current uncertainties faced by our industry and by homeowners. We appreciate that the bill is meant to build upon the momentum we have seen in the HARP 2 program, and we are convinced it addresses the appropriate enhancements to the existing program. It is simple, easy to understand and mirrors the parallel FHA streamlined refinance program that has been in existence for 30 years.

We have reason to be optimistic about the Nation's housing markets, beginning with record home affordability, some signs of job growth and a recovering stock market. In my business, I have personally witnessed green shoots appearing in many markets around the country, where we are seeing the first notable spring buying season in several years and our borrowers appear to be more confident in their buying decisions.

More needs to be done, however, to continue the housing recovery, including for borrowers who are locked into higher rate mortgages, and your legislation builds upon that effort. MBA stands ready to work with you to refine this legislation and achieve our common goal.

Thank you very much. I would be happy to take questions at the appropriate time.

Chairman MENENDEZ. Thank you.

Dr. Goodman.

STATEMENT OF LAURIE S. GOODMAN, SENIOR MANAGING DIRECTOR, AMHERST SECURITIES

Ms. GOODMAN. Chairman Menendez and Members of the Subcommittee, I thank you for the opportunity to testify today.

My name is Laurie Goodman, and I am a Senior Managing Director of Amherst Securities Group, a leading broker-dealer specializing in the trading of residential and commercial mortgage-backed securities. We are a market maker in these securities, dealing with an institutional account base—financial institutions, money managers, insurance companies and hedge funds.

In my testimony today, I will discuss actions that can be taken to help responsible homeowners save money through refinancing without disrupting the very well functioning agency mortgage market. I will limit my comments to the refinancing of GSE mortgages.

My number one suggestion would be to allow for competition by permitting a different servicer to refinance a borrower on the same terms as the current servicer. This will result in a much better rate to borrowers and much more refinancing of the targeted HARP population.

The HARP program, applicable to borrowers with a current LTV ratio of greater than 80 and an origination date of the old loan prior to June 1, 2009, was rolled out in April of 2009. The program was expected to help four to five million borrowers. Since the program has been in existence, it has helped 1.12 million borrowers. Other streamlined programs using the HARP infrastructure have helped another two million borrowers. It is important to realize that over this period there have been 10.7 million refinancings. Thus, 71 percent of the refinancings over this period was neither HARPed nor streamlined.

In assessing what should be done to HARP going forward, there are two separable issues: What can be done to increase the penetration of the HARP borrower base, and what can be done to increase the scope of the HARP program?

We believe that a series of definitive steps can be taken to increase the penetration of the existing HARP universe. There are 3.3 million borrowers who have loans taken out before the cutoff date, have an ability to take advantage of HARP as measured by pay history, have an incentive to refinance and have LTVs of 80 to 125. There are another 700,000 borrowers who are over 125 LTV. These four million borrowers are the ones that create the most risk for the GSEs, and a refinancing would benefit both the affected individuals and the taxpayers the most.

In addition, there are 10.9 million borrowers who are eligible for HARP-like refinance programs. We have more mixed feelings on increasing the scope of the HARP program in a capacity-constrained environment.

Currently, on a same-servicer refi, the servicer need only prove that the borrower has no delinquencies in the past 6 months and no more than one in the past year, has a source of income and is aided by the refinance. If the refinance meets these conditions, the servicer is released from the rep and warrant risk on the old loan and the new loan. If the borrower goes to a different servicer, that servicer must collect more information about the borrower and has the rep and warrant risk on the new loan; different servicers are not eager to take rep and warrant risk on higher LTV loans.

Thus, the current servicer, which is one of the three largest banks well over 50 percent of the time, has a huge advantage and tends to charge the borrower more for these loans. In many cases, the lender-servicer is making 7 to 8 points on the refinancing, or about $15,000 on a $200,000 mortgage versus an average of 1 to 2 percent or $3,000 on refinancings over the past decade.

This problem can be elegantly eliminated by allowing different servicers to do the refinance on the same terms as the current servicer, most importantly, including the elimination of the rep and warrant risk on the new loan. The Menendez-Boxer discussion draft does exactly this, and we endorse it.

Loan level pricing adjustments and appraisal costs should be eliminated, but they are small, less than 1.5 percent of the loan amount on a $200,000 loan, and are dwarfed by the monopoly profits being earned by the largest banks.

Similarly, requiring resubordination of second liens and portability of all insurance policies are nice features but will only help at the margin. It is in the economic interest of second lien holders to resubordinate, and as Debbie pointed out, most mortgage insurers have agreed to full portability.

We are very much in favor of a consistent set of guidelines for Fannie and Freddie in order to ease lender compliance. In particular, we would like to see pre-cutoff Freddie loans with LTVs less than 80 receive rep and warrant risk consistent with pre-cutoff higher LTV Freddie loans and all pre-cutoff Fannie loans.

We would also like to see consistency on the financing of closing costs.

We believe the first goal of the refinancing initiatives should be better penetration of the existing HARP-eligible borrower base. This is best done by promoting competition and making borrowers more aware of their refinancing options. In a capacity-constrained environment, these actions should be taken before expanding eligibility by moving the cutoff date forward 1 year.

If the cutoff date were to be changed, it can be most easily done for borrowers with LTVs less 80 as there is never a covenant with investors on these loans. If it is to be done on HARP loans, we would suggest doing it only on purchase loans. Allowing re-HARPing would be very detrimental to the well functioning agency mortgage market.

Thank you very much for the opportunity to testify on this important set of issues.

Chairman MENENDEZ. Thank you.

Dr. Sanders.

STATEMENT OF ANTHONY B. SANDERS, PROFESSOR OF FINANCE, GEORGE MASON UNIVERSITY SCHOOL OF MANAGEMENT

Mr. SANDERS. Chairman Menendez and distinguished Members of the Committee, my name is Dr. Anthony B. Sanders, and I am Distinguished Professor of Finance at George Mason University and a Senior Scholar at the Mercatus Center. It is an honor to testify before the Committee today.

The proposal to be discussed at this hearing is the expansion of the affordable refinancing of mortgages held by Fannie Mae and Freddie Mac.

It can be argued that Fannie Mae and Freddie Mac are resisting loan modifications to protect their retained portfolios. Hence, fewer borrowers are able to refinance their mortgages. This proposal would remove the safeguards from HARP and encourage more refinancing by borrowers.

Even so, I would encourage a detailed examination of the projected benefits to the consumers and costs to the American taxpayers of these proposed changes by FHFA, the Congressional Budget Office and the Federal Reserve Board before you proceed. Administrations and Congress have undertaken large policy changes in housing and housing finance, particularly since 1995, and these changes have had unintended consequences. Removing the safeguards may be appropriate, but we need detailed studies of the 14 Federal Government loan modification programs and how they interact with each other and the Federal Reserve's monetary easing strategy.

Now the U.S. Department of Treasury provides us with a limited summary of the magnitude and effectiveness of HAMP and other programs, but the number that stands out is approximately 25 percent of modified mortgages to into redefault after 1 year. True, that data are from 2010, but the trend for the most recent modifications shows the same daunting trend.

According to the Mortgage Bankers Association Refinancing Index, we have seen refinancing applications expanding since the beginning of 2011. Bank of America, for example, has received 30,000 HARP 2 applications since mid-January, and they have added nearly 1,000 new fulfillment associates in order to add capacity to handle the strong volume.

But with historically low interest rates, unprecedented intervention by the Federal Reserve and the continued European debt crisis that is driving investors into the U.S. Treasury market, we must be careful. We are in uncharted territory in intervention and mortgage rates, and we have to be careful not to create more unintended consequences that could devastate American taxpayers.

Now Section 4 requires that Freddie Mac and Fannie Mae contact borrowers directly about the possibility of benefits of a mortgage modification. In addition, Fannie Mae and Freddie Mac must post relevant refinancing information on the Web. Of course, this is an unprecedented change from current procedures.

Given the plethora of media and links on bank Web sites—which I document in my appendix—and Government Web sites concerning loan modifications, I cannot say how any borrower interested in loan modifications could possibly be unaware of the possibilities.

And again, bear in mind large changes in Government policy can produce unintended effects, particularly when we consider the alternative of programs on principal reductions that are being considered by the Administration and Congress and, again, how HARP 2 changes may impact everything.

So I am on record about saying a careful analysis of the joint impact of all 14 programs should be undertaken before any other changes should be made.

So my answer is at least no, at this point, until appropriate studies are performed. In fact, I would recommend Debbie Lucas work with the CBO and score this as soon as possible.

At some point, the collective impact of these programs could drive our banks into bankruptcy. The possibility of this also must be included in analysis of any further steps taken.

Another reason I am opposed to removing the loan modification safeguards is the banks and investors are private market concerns, not private market concerns in conservatorship. So, in other words, these are private firms, and I am not really very approving of interfering in the private sector. Once again, this could be a Jurassic Park moment where we signal to the world that the U.S. will pass laws to alter contracts and dramatically change investor expectations.

In summary, I encourage the Senate to request detailed studies of the impact of the legislation. I strongly suggest:

One, the cost of each proposed change to taxpayers and the expected decline in default and redefault rates;

Two, how these changes will interact with the 14 existing programs from the Federal Government and the proposed principal write-downs for Freddie Mac and Fannie Mae;

And three, ignore private market estimates of the costs and benefits of the analysis if it comes from any firms or organization that benefits from proposed changes or has ties to the Federal Government.

Let us be wary of another major policy change that might have untended consequences. Again, we are in unchartered water for housing finance and Federal Reserve policies, and any further changes should be enacted with extreme caution.

Thank you for the opportunity to testify.

Chairman MENENDEZ. Thank you.

Mr. Calhoun.

STATEMENT OF MICHAEL CALHOUN, PRESIDENT, CENTER FOR RESPONSIBLE LENDING

Mr. CALHOUN. Thank you, Chairman Menendez, Senator Corker and Senator Merkley.

I am Mike Calhoun, the President of the Center for Responsible Lending, which is the policy affiliate of Self-Help, which is the Nation's largest community development lender. In the nonprofit sphere, we have provided over 6 billion of financing for American home families.

The topic of today's hearing addresses one of the most critical challenges our country faces, and that is how to strengthen the housing market that remains perhaps the largest drag on our recovering economy.

The HARP program, including the reforms that were implemented last fall and the additional administrative and legislative reforms that are the topic of this hearing, can significantly aid homeowners and the overall housing market. We urge the regulatory agencies and the Congress to immediately enact these further improvements of the HARP program.

The current housing crisis is actually the third major national housing price correction of the last 30 years. Several factors, though, set it apart from the previous downturns.

First, reckless lending sustained and enabled this housing bubble to expand far beyond the price appreciation of the previous bubbles to over 80 percent in real price appreciation that we saw in the last decade, and that compares to previous appreciation bubbles in the 80s and 90s of the mid-teens.

Second, the leverage of securitization and derivatives greatly magnified the resulting losses when the bubble crashed and triggered a deep, general economic decline.

And third, and most important for today's hearing, this bubble left many homeowners underwater while in the previous bubbles the real value of houses declined but this was hidden by inflation so that nominal values, while failing to keep up with inflation, did not actually decline and did not lead borrowers underwater so that they were unable to refinance.

These circumstances today make a housing recovery more important, and it makes it critical to assist underwater borrowers to aid this recovery. One of the most important tools in this are the historically low mortgage credit rates so that refinancing can save borrowers hundreds of dollars a month on their mortgages.

While HARP does not assist underwater borrowers who, due to the economic crisis, are not current on the mortgage. There is testimony today that millions of other underwater borrowers can be helped.

In addition, as set out in our testimony, it is important to remember that there was widespread steering during this housing bubble of overpriced credit to African American and Hispanic households. And furthermore, the data show that these households are having the most trouble refinancing and are the most likely to be trapped in higher interest mortgages.

The HARP reforms implemented last fall removed significant frictions in the program, and early reports indicate increasing numbers of underwater borrowers are now benefiting from the program.

We support the additional reforms that are set out in both the Menendez-Boxer draft and further reforms set out by the Administration. Included in these are the limits on LTVs should be removed so that borrowers who are below 80 percent can benefit from the relief from the reps and warranties issues that have been discussed today. In addition, the additional incentives for second lien subordination in the Menendez-Boxer draft would speed refinancings, especially those with smaller lenders who have not joined the consortium who are facilitating subordination of second liens; those are largely the major lenders.

Additional outreach is needed. FHFA has conducted some outreach, but more outreach conducted and coordinated with other agencies would help because many borrowers have tried to refinance and been rebuffed and should now be made aware of these improvements in the programs.

Finally, Congress should enact the proposals for refinancing of non-GSE mortgages through FHA, as proposed by the Administration, to assist those homeowners and provide equal treatment to all homeowners so one program is not available for GSE borrowers while others are shut out simply based on who happened to purchase their loans.

And we also support the assistance for refinancing in the shorter-term mortgages through support for reducing closing costs as those put borrowers into equity and reduce credit risk at the same time.

There are no silver bullets is one of the lessons of this crisis, and indeed, more efforts beyond those discussed today are needed. Nonetheless, the reforms proposed today benefit not only homeowners who find themselves underwater or trapped in high interest rates; they help all homeowners by stabilizing home values, by reducing the dilution of home prices that has been caused by the flood of preventable foreclosures.

In conclusion, most important, these reforms put more dollars each month into the hands of working families, and they aid the overall housing market, both of which create jobs and boost the whole economy and benefit all Americans.

I would be happy to answer any questions that you have today.

Chairman MENENDEZ. Thank you very much. Thank you all for your testimony.

Let me start off with a question period with Dr. Mayer. Your testimony goes through what I think are several compelling reasons why the discussion draft from myself and Senator Boxer is in the best interest of the GSEs, but I want to focus on their financial interest and not just their best interest, which has been the subject of much debate here in the Congress.

As I get it—and you correct me if I am wrong—by your calculations, you believe that 11.6 million new refinances would take place and it would result in GSE profits of as much as $23.7 billion primarily through preventing defaults, and your testimony cites a CBO study that every thousand refinances result in 38 fewer defaults.

And the statistic we have previously used is that foreclosure brings anywhere between a $50,000 and $65,000 loss to a lender.

So can you walk us through the calculations because every time we broach this subject in hearings, and particularly when we have Mr. DeMarco and others, if at the end of the day the trustees' job is to obviously preserve largely the corpus, then it seems that your calculations do a good job of that and mirror what a lot of the private sector is doing, where over 25 percent of their portfolios are being refinanced?

So there is a reason the private sector does that. It does it to not lose money, right, Dr. Sanders?

So why don't you try to walk us through that calculation?

Mr. MAYER. Sure. The intuition for this is pretty straightforward, which is suppose you have somebody sitting with a 6 percent mortgage and current rates are 4 percent.

The GSEs own some bonds. Let's say they own 10 percent of the bonds. So you are going to save a homeowner 2 percent a year in the cost of borrowing on their mortgage.

If the GSEs lose 10 percent of that—let's say that it costs their portfolio two-tenths of a percent a year—they can basically just charge a little bit more for the refinancing. So instead of that refinancing costing 4 percent, maybe it costs 4.2 percent. The homeowner still saves a large amount of money, and the GSEs have covered whatever their costs are associated with the program.

So intuitively, given the very large savings associated with refinancings, there is enough money in there for the GSEs to actually earn a profit.

And that calculation, by the way, assumes no offset whatsoever in foreclosures.

Then if you sort of think, well, gee, every time we do 100 of those almost 4 of them prevent a foreclosure, and the foreclosures cost $60,000 apiece, all of a sudden, you do not have to charge 2/10ths of a percent more; you only have to charge a little bit more, in order to do the refinancing and break even.

So it is sort of the argument that some people have had that this does not earn a profit really cannot make sense because you understand every time you lower people's payments there is some spread there.

Obviously, the losers here are investors, but the investors have had an enormous windfall associated with this program. They have had an enormous windfall associated with the Fed buying $2 trillion of long-dated MBS. It seems the investors—when we put an explicit guarantee on the GSEs, all of these things have benefited the investors. I think it is starting to be time to benefit not only the homeowners but taxpayers who have had to pay for all of this.

Chairman MENENDEZ. Are you familiar with the CBO study that said that a widespread refinancing program such as we are proposing here would result in higher profits for the GSEs?

Mr. MAYER. Yes, I am.

Chairman MENENDEZ. And as you note, in our discussion draft, the GSEs would be charging additional fees to cover the cost of the program.

So I am trying to figure out, having had that as the basis, Dr. Sanders, you made a comment that sort of like struck me, that my proposal would drive banks into bankruptcy. How do you figure that out?

Mr. SANDERS. I have to reread my testimony because that is not what I said.

What I was saying was the combined nature of the 14 programs plus the Attorney General settlement plus the big push from the Administration to have big principal write-downs—all those together could put the banks, not your legislation in particular.

Chairman MENENDEZ. Oh, oh, oh, OK. I did not quite hear it that way.

Mr. SANDERS. My theme was the joint effect.

Chairman MENENDEZ. I wanted to make sure because the last thing I want to do after having to save their backsides in 2008 is to drive them into bankruptcy again. So I do not want to do that.

Let me ask Ms. Goodman; based on your testimony, you believe that the current HARP 2 policies, some implemented by the GSEs and some by the servicers themselves, are severely reducing competition among banks and ultimately decreasing the effectiveness of HARP 2 and robbing homeowners' savings through lower interest rates. Do you think that we address that problem in our discussion draft?

Ms. GOODMAN. Yes, I think you do a very good job of that in your discussion draft.

Chairman MENENDEZ. OK. Let me recognize Senator Corker.

Senator CORKER. Thank you, Mr. Chairman, and thanks for calling the hearing and to all of you for your testimony.

I want to start with, you know, to be in the Senate is to be inconsistent. That is kind of a definitional thing. And I know that so many of my friends, who I think do care deeply about people being able to refinance on one hand, on the other hand, end up using guaranty fees not to increase sort of the insurance pool, if you will, for the GSEs; use G-fees to pay for other programs in the Federal Government.

I am just wondering if there are any of you that think that is a good policy as it relates to housing finance. If so, please tell me.

Ms. STILL. Well, MBA would certainly not support raising G-fees for the use of other programs.

I think one of the advantages or components of this proposal, though, is to pay for the streamlined refinance with a very targeted G-fee on the consumers that would choose to use the program. So I think that is well done in this bill, certainly not though in support of outside of that, say.

Senator CORKER. And I understand if anybody objected to that.

If we were working on some legislation, I guess, to reframe the GSEs, I assume that all of you would support us having conditions in there that say they cannot use G-fees to pay for things other than actual insurance for the GSEs. I assume that would be unanimous.

One of the other things that are occurring right now in the financing market is that the Consumer Protection Bureau is looking at using rebuttable presumption on financings. I assume that maybe Mr. Calhoun would disagree. I am not sure.

But are there any of you that think that helps future financing of residential mortgages, and would we not be better off to have a safe harbor of some kind so that people know if they did appropriate due diligences and checked all the boxes that they would be free from future lawsuits by people who are very aggressive in that regard? Is there anybody that disagrees with that?

And I assume Mr. Calhoun might disagree.

Mr. CALHOUN. Yes, Senator Corker, and I would note for the record that we submitted a joint comment to the CFPB that was joined in by the clearinghouse which includes the largest lenders which originate well in excess of 80 percent of all the mortgages in the U.S.

And that joint letter called for clear standards for the QM, but it also called for a rebuttable presumption because there is a tradeoff between those. If you want to create that safe harbor, you have to really tighten down the QM standards to make sure that an abusive loan does not get through, but doing so really throttles access to credit.

The experience with other litigation in North Carolina—we have had our predatory lending law on the books for well over a decade. Without even rebuttable presumption, there has been near zero litigation because individual cases are very hard to bring.

The clear standards address the greater risk which we are talking about today, which is the reps and warranty risk, which is what is really driving what credit lenders are offering today.

And so, I would just add that to the record, that there is a lot of consensus out there that the better approach is relatively generous standards for the QM, what is a QM loan, so that you provide broad access to credit and support the overall economy and use a rebuttable presumption as a backstop for what should be very rare cases where abusive loans are made.

Senator CORKER. Is there any disagreement with that?

Ms. STILL. Yes, MBA would strongly support a safe harbor. We believe the industry desperately needs certainty. Lenders need certainty and clear guidelines with a brightline safe harbor, very much in the best interest of consumers and housing.

As it relates to some of the definition that the clearinghouse document would otherwise suggest, MBA also believes that inside of the current QM ruling, where the law prohibits certain loan types and then requires full documentation loan, that will limit the market appropriately in a responsible way.

So inside of that, a broad definition of QM is very important to consumers. We are very concerned that lenders will not lend outside the QM box.

Senator CORKER. I would like to follow on both of you all.

I mean, I think we would like to get this right. We think where the CFPB is heading right now is not a good place for the industry, and I think all of you agree with that, but I think we would like to figure out the best way going forward.

And Ms. Goodman, I think you disagreed also with other testimony regarding, I think, Mr. Calhoun talked about the need to take high leverage loans and put them on the Government's balance sheet. Many of the refinancings that we have had in the past programs have been good for homeowners but also good for the Federal Government because we are not shifting risk this way.

One of the most recent proposals, I think, coming from the Administration talks about taking high leverage loans and shifting them onto FHA. And I think you would think that would be not a good thing for us to do; is that correct?

Ms. GOODMAN. I think it is not a good thing. On the GSE mortgages, clearly, the GSEs already own the risk. So, refinancing makes a lot of sense.

A broader refinancing plan which allows the transfer of risk on higher LTV mortgages, where the mortgages are owned by bank portfolios or investors in the private label securities to the Government, would basically be a taxpayer bailout for both bank portfolios and for private label investors and, hence, a very poor use of taxpayer money.

Senator CORKER. Yes, I could not agree more.

Mr. Chairman, I know my time is up. I will say that—and I say I really enjoy working with the Chairman on so many. We are actually on numbers of committees together.

I know that Ed DeMarco and the FHFA has been a great punching bag for all, and people seem to have enjoyed it a great deal.

I will say that this Subcommittee's jurisdiction would allow us to actually deal with GSE reform, and instead of maybe punching DeMarco all the time, what we could actually do is craft legislation to redesign the GSEs so we do not have these problems. And I would just say that possibly that is a more fruitful use of time.

But anyway, I thank you very much.

Chairman MENENDEZ. I thank the Senator.

I take no joy out of what you describe as punching, using Mr. DeMarco as a punching bag. However, I think that when there is a different view as to what is the right public policy that can preserve the corpus and do a better job of it, those of us who believe that are obviously not only entitled but believe the responsibility to pursue it.

And that is the way I look at the challenge of trying to effect policy with Mr. DeMarco in a way that I would just want him to broaden his view as how does he pursue his fiduciary duty at the end of the day.

Senator Reed.

Senator REED. Thank you, Mr. Chairman, and I thank the witnesses for their excellent testimony.

Dr. Mayer, I am going to commend you for your work with your colleague, Dr. Hubbard, and others up at Columbia.

One of the things you said in response to the Chairman's question is that the economics itself sort of argues for the changes that you have been talking about and the Chairman is proposing. This is not some kind of esoteric request. This is that you have looked at the numbers and you think those numbers make sense to do the type of refinancing of the proposal; that is correct?

Mr. MAYER. Yes, I do.

Senator REED. And one of the other factors, it would seem to me too because from the perspective of a very small institution it would make sense. But the sheer size, the volume of the loans that are controlled indirectly and directly by FHA, Fannie and Freddie basically, is 80 percent of the market. So there will be a market effect if they do these things.

I mean, there will be an effect beyond just simple individual portfolios. Is that something you have looked at?

Mr. MAYER. It is. This would involve buying—basically, paying off—one set of bonds and reissuing another.

The first thing to realize about all refinancing programs is they do not affect the overall supply of credit into the market. So the kind of concerns you might have about doing something that has a really challenging effect would be an issue.

I think the other real concern might be one—and I think this is a place where taking a page from the Federal Reserve if very important. The fact the Federal Reserve owns $1.25 trillion of these bonds and is constantly kind of making a market in this, so to speak, combined with the real liquidity in this market in general, significantly diminishes the concerns that some might have that a program like this would really roil the markets.

The other thing I would point to is in 2002 and 2003 we refinanced 25 million mortgages in the United States with no Government intervention whatsoever, and the credit markets responded perfectly fine to that. So I think any concerns that this would somehow cause investors to not buy bonds, that people would be concerned, I think those are much overstated.

Senator REED. I am told, just for the record, it is closer to 60 percent of the market that they directly or indirectly control.

But also to your point, in 2003 and 2004, because the housing market was in a much healthier position, refinancing was available, and I think billions of dollars essentially flowed to the benefit of households——

Mr. MAYER. Right.

Senator REED. ——through refinancing without roiling the credit markets, *et cetera.*

Our problem is given the value of homes relative to the loans they cannot access this refinancing market. If they could, it could be a powerful stimulus for recovery, literally putting billions of dollars into the households for education, health care, discretionary spending, *et cetera.*

There is another issue that comes up perennially, and that is—and you looked at it closely. Is it your view that the FHFA has the authority to do all these things right now?

Mr. MAYER. Yes.

Senator REED. Thank you.

And in fact—I will go to Dr. Goodman—one of the points in your testimony is that you have seen these frictions and you have recognized that large banks have been given the opportunity to extract monopoly profits. And one of the responsibilities of FHFA statutorily is to provide for efficient competition. So it would seem that not only do they have the authority if you follow Dr. Mayer's logic, but they seem not to be performing one of their obligations, which is to provide for efficient markets; is that fair?

Ms. GOODMAN. I think that is very fair. Rates would certainly be a lot lower to these refinancing borrowers if there was competition.

Senator REED. And the other point that I would note to Dr. Sanders is that looking at some of the most successful private financial institutions, they seem to be doing very well, and one of the things is refinancing their own paper. In fact, as I talked to individual bank companies, the paper that they control, many times they have already gone through and written down a sizable portion, not all of it because some of it clearly cannot be sustained even with lower payments.

And yet, this model seems to be one that the FHFA will not embrace with Fannie and Freddie. There is a disconnect between what the private bankers, the folks who are paid by their shareholders to make money, and what FHFA is telling Fannie and Freddie to do.

Mr. SANDERS. Well, first of all, Senator Reed, let me comment on two things.

First of all, both Laurie and I have done mortgage prepayment models and default models for a living, and we are—maybe Laurie is not, but I was always constantly surprised by what we thought would make as a perfectly sensible model. And it turns out the market tricks us. The market has a mind of its own.

So again, when I see these forecasts of how much this will save taxpayers and consumers, I kind of take it with a grain of salt because, again, there are too many conflicting variables in there. And I do not know if that is what is motivating Mr. DeMarco from being resistant.

But I think the bigger issue, Senator Reed, is that, as I said, 14 programs plus the Administration is pushing for principal write-downs. We have all these things. It is like we have opened not war, but we are firing everything we have got at this problem, and we are only looking incrementally at one bullet.

What happens if they all hit at once and then Europe blows up further and rates end up dropping another 1 percent?

Supposing we overcook it.

I am not referring to this legislation per se because the legislation, again, I agree with many parts of it. I am just saying, can we get a joint assessment? That is it. And even the banks have not done that one.

Senator REED. Well, I mean, you could also presume there would be a cataclysmic hurricane destroying thousands of homes.

I mean, frankly, you can justify doing nothing.

I think you have got to try it. You have got to try these things. And the idea that if something, the cumulative effect, was not producing results, that you could not stop doing things, what we have seen in my impression at least is an unwillingness to try.

And frankly, in the crisis—and I go back to 2008—the Federal Reserve particularly tried several different options. Some worked. Some did not. But if they sat back and said, oh, jeepers creepers, things could be so terrible if we do this and this and this—paralysis, I think, is the worst situation at the moment.

Mr. SANDERS. May I follow up on that?

Senator REED. Let me get to Ms. Still.

Ms. STILL. I was going to follow up on the comment as well. I think if you look at the rationale behind HARP 1, the rationale behind HARP 2, in my mind, one of the strengths of the draft bill is the fact that it is not a major sea change. It is not a new program. It is a very sensible next step to plug some holes, if you will, or create some opportunity to help just an incremental set of more buyers. And so, that is one of the beauties of it is it is very logical and incremental.

Senator REED. My time has expired. I do not want to impose, and I know the Chairman will have a second round. So I think he will be able to make——

Chairman MENENDEZ. Senator Merkley.

Senator MERKLEY. Thank you, Mr. Chair and thank you for holding this hearing. And I appreciate the series of adjustments that are proposed in the Menendez-Boxer legislation to try to make HARP 2 work better.

I, quite frankly, was shocked by the numbers that you presented, that the monopoly strategy in HARP 2 results in the difference between—I think it was between $15,000 and $4,000 in refinancing. Did I catch those numbers correctly?

Was that—Laurie, was that yours?

Ms. GOODMAN. The $4,000 was more of a decade average. Even on non-HARPed loans, it is a little bit more profitable than that now, but there is a huge difference—it is at least an $8,000 difference.

Senator MERKLEY. Yes. So here, we have homeowners who saw the Government respond vigorously and generously on helping major financial institutions, and little tweaks in the law could save a family $8,000. And let's get moving. I really applaud holding this hearing and thank you all for your testimony.

Mr. Calhoun, I wanted to turn to a comment in your testimony where you support the Administration's proposal to pay the closing costs of borrowers who refinance into shorter-term mortgages under the theory that shorter-term mortgages encourage a principal reduction through quicker amortization. Can you just expand on that a little bit?

Mr. CALHOUN. Yes, specifically, two things—that there is benefit to investors by reduced risk in that you get people into positive equity more quickly and that that lowers, as we have heard the testimony today, significantly lowers default risk. So it is a worthwhile intervention there.

And I would state quickly, more broadly, that I think it is important for us to remember the context here. We issued a report at the end of last year. We are less than halfway through the foreclosure crisis. We are not coming down to the fourth quarter or the running out of the clock. We have got more of this to chew on than we have had to digest so far. And so, the idea that we have been too aggressive at addressing this problem now 4 years into the crisis seems hard to support with the data.

Senator MERKLEY. So, thank you.

By basically paying the closing costs you create—you eliminate a hurdle to get more people into that financing stream, and by reducing the foreclosures you then have broader positive effects for the entire housing market, entire community.

Mr. CALHOUN. Yes, Senator.

Senator MERKLEY. So one of the things that I have puzzled over is a situation where you are thinking about whether you want to encourage someone to keep their payments higher but a shorter term so that they pay down their principal faster and get out from underwater faster or whether you really want to encourage them to keep a longer term and benefit from the lower interest rates, reducing their monthly payment and, thereby, making it less likely that they will financially default and less likely that they will strategically default because the comparison to rental rates is ameliorated.

So has there been any modeling of those two different approaches in terms of their impact on risk of foreclosure?

Mr. CALHOUN. Well, usually, the borrower has the option there of how they want to do that tradeoff and normally will not take the lower payments unless they can afford that.

The risk—they sort of self-select for that. If the risk of default is highest because they cannot meet their monthly expenses, they are going to tend to take the lowest monthly payment. If, for them, the need is to get out of their underwater situation, they are more likely, I believe, the shorter term.

Senator MERKLEY. I see your point. In this case, we are thinking about whether to subsidize one of those two options, and so it creates some interesting issues.

I am going to continue with a different question because I will be running out of time, and that is all of our conversation here has been about refinancing for folks who have GSE-backed mortgages, so half the world out there. Folks come into my casework team, and they say what is possible? And we say, well, we have got to look and see if your mortgage is a GSE-backed mortgage or not.

And often, it is just luck of the draw whether it was purchased in part of that GSE pool.

So, any insights or suggestions on how we help the other half of the home mortgage world that are in non-GSE loans?

Debra, I see you are shaking your head. Do you want to jump in there?

Ms. STILL. Yes. I am not sure that I have recommendations to offer. MBA's position, though, would be to probably look holistically at GSE reform as it tried to answer that question or make recommendations.

I think depending on how large a role you want the Federal Government in housing in the future would certainly determine whether or not some of the programs to help the private label market right now would need to be wrapped up in that discussion. There is no private label market, and so in all likelihood help for homeowners in private label mortgages would need to come from the Government.

Mr. CALHOUN. And if I could note——

Senator MERKLEY. Yes.

Mr. CALHOUN. ——Senator, for the record, that the Administration's proposal is that the costs of that program be paid for by the banks and other financial entities that received assistance from the taxpayers in 2008 to keep them alive. It is not passed on to the general taxpaying population.

Senator MERKLEY. Yes.

Mr. MAYER. I would point out a couple of things.

One of them is that there are also mortgages in the FHA and VA. In the FHA, there are barriers there with the FHA program, including insurance premiums and other things that could be improved and to further streamline within the FHA. So I think that is one place to help.

The other is just recognizing how tight credit is even in the Government sector, for which, again, I can read no mandate in the law that suggests this. The average rejected application has been recently reported to have a 719 FICO and about an 18 percent downpayment. So if we opened up credit a little bit into the markets, to normal standards, the GSEs could do a fair bit in terms of helping some of these folks without subsidies or other kinds of things.

There is a group of people who are underwater that would require additional assistance, but again, I think the GSEs' just general view that we are going to tighten everything has really had a negative effect in all parts of the market.

Senator MERKLEY. Thank you all.

Thank you, Mr. Chairman.

Chairman MENENDEZ. Before I call Senator Warner, I just want to follow up on that comment on FHA. Those would have been normal standards for underwriting at a different time, would they not?

Mr. MAYER. Yes, they would have been.

Chairman MENENDEZ. Senator Warner.

Senator WARNER. I think it was a good point, Mr. Chairman.

I also want to thank you for doing this. I have been intrigued with your legislation and the idea that Dr. Mayer and Mr. Hubbard have had floated for some time out there.

A couple of general comments, then I am going to try for a question.

I tend to agree with Mr. Calhoun that we are not through this crisis yet although I do think—thinking back to when we first kind of jumped in—for whatever reason it seemed, Mr. Chairman, that we kind of punted on the housing piece. We dealt with the financial institutions, we punted, and we kind of went into a period of at least do no harm.

And we ended up, as I think Mr. Sanders pointed out, creating a lot of efforts, most of them that missed the mark.

I do wonder whether, Mr. Sanders, you would be more inclined to be supportive of what the Chair has put forward if perhaps we limited those 14 programs and got rid of the ones which just are not working, which are most of them, and got that down to a more manageable series of options so there would be more clarity to the market, more clarity to the regulators and to investors. Would that make some sense?

Mr. SANDERS. Well, thank you, Senator Warner, for making my case for me. I agree with you 100 percent. That is, in fact, what I was saying.

In fact, again, I have no problems with the proposal that Senator Menendez has at all, and I agree that unification of the pricing and some of the other components is exactly right.

My issue, one more time, is that we have so many programs. And I agree if we could sit here today and say we are going to exclude 10 of these and we are going to prohibit principal write-downs, so we would make it more predictable and very clear, I would back the Menendez proposal sitting right here. I would raise my hand.

But again, it is just too many moving parts. That is my only concern.

Senator WARNER. I guess I might take one exception with that. Since we do see our non-GSE institutions using principal write-down as one of their tools, I am not sure I would—I share, along with the Chair, the notion that we at least ought to have Mr. DeMarco and FHFA look at that and do a more thorough analysis so we can make a policy evaluation. I tend to think there may be some bucket around principal write-down.

I still have been hearing for a year-plus lots of conversations about rental programs, rent-to-own, other variations, lots of capital sitting on the sidelines. That does not seem to ever kind of get off the sidelines into other than incremental, small experiments in that way.

And then, I would take this third bucket—I want to give you another bite, but I want to come to Dr. Mayer first—which is this kind of more massive general refi.

It seems like those are the three major buckets.

And this would build upon—your proposal, I believe, would build upon the perhaps less than successful HARP variations, but at least we have got a couple years of investment in starting those. Maybe we could wind down a couple of those and do this more of a major refi approach.

I guess what I would ask Dr. Mayer is that at what point, understanding, as Mr. Calhoun has said, that we are not through this.

But at some point along the way I think we had the sense of, at least at first, this notion of do no harm.

We got a lot of indirect counsel: This will pass. This will pass through the snake. Just do not screw it up anymore, politicians.

It has not passed through, but at some point this will move along far enough that perhaps further intervention will do harm.

Do you have any kind of sense on that, Dr. Mayer? How much more of a window do we have?

And our concern, which is it sure would make a lot more sense if we could do this administratively rather than working through the cumbersome legislative process, but what are our time lines?

Mr. MAYER. I mean, I think the first thing is as you pointed out; we have been advocating for this program since 2008, and I think we have lost a lot of ground for not doing it.

My sort of sense is that the role of Government in a crisis, first and foremost, is supposed to try and restore normal operating market conditions, particularly during a financial crisis. And I think that has been a place where we could have done a lot more than we have done, and we are still not doing it.

So my comments earlier about restoring normal credit standards to the markets, I think the first step is to try and bring back the credit side, and that is why financial crises tend to be so painful relative to a normal recession—because people cannot borrow.

Senator WARNER. I have got 12 seconds, and I want to make sure everybody gets a quick bite. Will you just give me—you know, do we have—perhaps because, as Mr. Calhoun said, we still are only halfway through.

Mr. MAYER. Right.

Senator WARNER. But if we do not take, whether administratively or legislatively, some either consolidation or some action, what is our window because I do not think we can get to GSE reform in a major way——

Mr. MAYER. Right.

Senator WARNER. ——until at least we kind of—as long as we have got this overhang.

Mr. MAYER. Our window is when rates go up. And we do not know when that is going to happen, but the window for this refinancing is when rates start rising.

Senator WARNER. Can I hear from everybody?

Again, I do not want—my time is expired, but if everybody could at least give their two cents.

Mr. MAYER. Sorry.

Senator WARNER. Should we be concerned about at some point, whatever well intentioned proposal, we may have missed the window?

Ms. STILL. Yes, I certainly agree that the window is between now and when rates would preclude any value to the consumer.

My comment, though, is the notion that all of this takes time and we do have programs in place. HARP 2 would be a good example. We are just now getting statistics to show that the HARP 2 program is getting some traction. It takes time for lenders to build their infrastructure. It takes time for them to train their employees. It takes time for them to solicit their customers.

And so, I would be very hesitant. It is one of the reasons why we believe that small, incremental improvements are better than a major change that could cause more unintended consequences, particularly since we are seeing some encouraging signs of stabilization.

Wiping out existing programs or consolidating? I think the answer would be to more simplify, standardize and make sure that both lenders and consumers understand how to help the housing environment.

Senator WARNER. Not had a great track record on that so far.

Ms. GOODMAN. Let me just make a couple quick comments.

First, one reason we have a lot of programs is that there is absolutely no silver bullet to help the housing market. It takes a little bit of this and a little bit of that. And I think there has to be a realization of that.

Second, I agree with Chris's comment that in trying to sort of combat some of the loose credit standards that created the last crisis we are sowing the seeds of another crisis by so limiting credit availability at this juncture. And QM and QRM, once they are eventually realized, will probably aggravate the problem, not help solve it.

Mr. SANDERS. And, Senator Warner——

Senator WARNER. My time is expired, so if you can——

Mr. SANDERS. I am not against principal reductions per se. What I am just saying is it is sort of the menu at a Chinese restaurant. We have to calculate the cost of each one and sum them up. That might be what is driving Mr. DeMarco's fears.

But again—and I do not even disagree with Laurie—I think all these programs have a place. But we need to have, again, simplification, which I think, by the way, Senator Menendez's bill does. It standardizes things across servicers and across the banks. So I think that is a great idea.

But again, can we get a bigger picture of whether—because we do not know the Attorney General's settlement costs yet. We do not know about whether they will actually do—go to Reuters. They have a mortgage write-down calculator on there.

Take a look at that. It shows you the variation of what this could be. It could be 2.8 billion, which I think Mr. DeMarco quoted, but it can go as high as about 333 billion, depending on how much they open the door.

That is all I am saying.

Mr. CALHOUN. Just very quickly, the housing market needed to correct. It was overpriced. But now what we see is the flood of foreclosures is causing overcorrection and tremendous uncertainty.

As I indicated, CRL is an affiliated lender. That is what 90 percent of our folks do. It is just lending. It is very hard to lend when the housing market is this uncertain, and it will remain that way with this flood of foreclosures.

So there is going to be a bunch of them that nothing can be done about, but it makes it essential to prevent the preventable ones and to process through the other ones so that we get to that resolution because the uncertainty kills markets more than almost anything else.

Senator WARNER. Thank you, Mr. Chairman.

Chairman MENENDEZ. Let me go through—since I observed the 5-minute time limit on myself and have been liberal with everybody else, let me go through one last round of questions.

Senator WARNER. That is why he is such a great Chairman.

Chairman MENENDEZ. You are such a charmer.

Anyhow, I just want to go. Since this is going to be a very important foundation for how we move forward here, I want to get some key questions that I would like to see you answer for the record.

Given that taxpayers own the risk as it is right now—if we do nothing, taxpayers own the risk on these loans—do you think documentation of employment, credit checks, tax returns and other underwriting requirements that are typically required on new loans are needed in the refi context, particularly when what we are looking at is individuals who are timely and performing?

I need verbal responses.

Mr. MAYER. No, we do not need to verify any of that information.

Chairman MENENDEZ. Anyone?

Ms. STILL. No, we do not. The GSEs already own the risk.

Ms. GOODMAN. I agree.

Mr. SANDERS. I completely disagree with the whole tenet of the GSEs own the risk, but again, I do not see any real problem with it.

Mr. CALHOUN. I agree. It is a particular friction when people have nontraditional income. It is not as much a burden when you just have to call the employer, but when someone, for example, is a business owner or something like that, it is a significant hurdle and obstacle to the refinancings. And so, yes, we should eliminate that requirement.

Chairman MENENDEZ. Ms. Still, lenders cite representation and warranty liability as obstacles to encouraging them to extend refinanced loans. FHFA scaled back the liability for same-servicer refinancing in HARP 2 but not for cases where a different servicer was refinancing the loan. To me, that is somewhat of a strange policy that has led to a lack of competition among lenders that may result in higher interest rates for borrowers by treating these two types of lenders differently.

Do you agree that that should be fixed?

Ms. STILL. MBA would agree that all lenders should have the same level playing field and the same servicer-to-servicer treatment.

And we talked about competition, which is very valid. I would also add it may be a capacity issue as well. I think you have many lenders in the industry that would like to help borrowers refinance, and we can get to our borrowers sooner if more players can help. So it also solves capacity and time.

Mr. MAYER. I agree with the proposition.

I would also say that increasing every time you verify anything and every time you require any more paperwork you slow the capacity problem. So it is not that we cannot do employers and everything else. Not only is it unnecessary, it actually harms the process and slows it down appreciably.

Ms. STILL. And the same would apply for borrowers at 80 percent loan-to-value or less.

Chairman MENENDEZ. I have a real concern. Years ago, in this Committee, before we had the housing foreclosure crisis, we had members of the previous Administration, and I said, we are on the verge of a tsunami of foreclosures. And I was told by the witness at the time for the Administration that with all due respect Senator, that is an exaggeration.

I wish they had been right and I had been wrong.

The problem is I still do not think we have seen the full crest of that tsunami. And there is an opportunity to stem some of, not all of it, but a lot of it, and to do it in a way that not only helps individuals and American families be responsible borrowers but, at the same time, deal with a major challenge to our economy.

We have never had an economic recovery in which housing was not a driver of that recovery. And this is the one part; while we have focused on the financial institutions, we have really not succeeded at finding the right set of circumstances for that housing market.

So that is why I am concerned. And I do think that in some respects in this regard, as it relates to refinancing, time is of the essence at the end of the day.

I want to ask two last questions, and then we will wrap up.

Ms. Still, your testimony brings up the good point that borrower eligibility may be further broadened by allowing borrowers whose mortgages are greater than the conforming loan limits to refinance if their loans are already owned by the GSEs. Do you have any sense of how many additional borrowers would be captured by that?

Ms. STILL. Yes, we do. If we allowed the GSE jumbo loans to be included, we would add about $70 billion worth of loans to the opportunity. If you also included Alt-A loans that the GSEs already own, it would be another $276 billion worth of loans. And so, you have got about $350 billion worth of loans that would be incrementally included if you lifted the restrictions on products and loan-to-value, or loan amount.

Chairman MENENDEZ. Finally, Senator Reed offered me a question that he would like to have asked had he been able to stay, and it is to you, Dr. Mayer. If FHFA makes no further changes and does not act on your refinancing recommendations, who are the real winners, who are the real losers?

Mr. MAYER. It is very clear that the existing system benefits the largest servicers, it benefits investors, and it harms homeowners and taxpayers if we were to leave the existing structure of HARP 2 in place.

Chairman MENENDEZ. Well, I want to thank all of you for laying some very good foundation of testimony and thoughts as we move forward and for sharing your experience. I think that the testimony here has been very helpful in exploring the problems that we have and homeowners face in refinancing their loans and then ways that would save them money, reduce foreclosures, increase job growth, as well as I believe end furtherance of responsibility to the taxpayers who are ultimately on the hook here.

I believe that we can come together to solve some of these different issues, and I look forward to working with everyone intended to solve these important problems and help homeowners, the housing market and our economy.

I would like to submit for the record a statement from the National Association of Realtors and a statement from the National Association of Home Builders that has endorsed the draft, and without objection, it shall be so included.

I will also be submitting other statements in the record for the coming week.

The record will remain open until 1 week from today if any Senators wish to submit questions for the record.

And with the thanks of the Subcommittee to all of you, this hearing is adjourned.

[Whereupon, at 11:24 a.m., the hearing was adjourned.]

[Prepared statements and additional material supplied for the record follow:]

PREPARED STATEMENT OF CHRISTOPHER J. MAYER

PROFESSOR OF REAL ESTATE, FINANCE AND ECONOMICS, COLUMBIA BUSINESS SCHOOL

APRIL 25, 2012

Good afternoon Chairman Menendez, Ranking Member DeMint, and Members of the Subcommittee. Thank you for inviting me to speak today. It is my honor to be here. My name is Christopher J. Mayer. I am the Paul Milstein Professor of Real Estate at Columbia Business School. I have spent the last 19 years studying housing markets and credit while working at the Federal Reserve Bank of Boston and serving on the faculties of Columbia Business School, the University of Michigan Business School, and the Wharton School of the University of Pennsylvania. I also serve as Visiting Scholar at the Federal Reserve Bank of New York.

This is the sixth time I have been called to testify at a Congressional Committee or Subcommittee hearing, dating back to November 2008, with three of those at the request of Republicans and three from Democratic requests. At all six of those hearings I have advocated for what is a seemingly straightforward and simple policy; allow millions of Americans who are trapped in high interest rate mortgages to refinance their mortgages at low current rates. Tens of millions of American homeowners with mortgages guaranteed by Fannie Mae or Freddie Mac would have been eligible for such a program.[1] Had the Federal Housing Finance Agency (the GSE's regulator) adopted such a policy at that time, conservative estimates suggest that it likely would have prevented over 300,000 defaults, saved taxpayers and GSEs $10 billion in insurance costs from excess foreclosures, helped stabilize the housing market, and saved homeowners about $20 billion annually in mortgage payments. (*See,* Appendix 1 for supporting calculations.)

Today the housing market is being hobbled by excessively tight credit, continuing foreclosures, and lack of consumer confidence, as described by the recent Federal Reserve White Paper. This is not only result of the economic downturn; housing is in much worse shape than the rest of the economy. Auto lending has grown for each of the last 2 years, while new bank card credit is up 30 percent from its trough. With credit available at more favorable terms than 2 years ago, consumer spending and auto sales have grown. By comparison, the National Association of Realtors reports that about 30 percent of existing homebuyers do not obtain a mortgage. The Mortgage Bankers Association Index of Applications for Home Purchase is at its 1996 levels. Consumers are forced to pay almost 0.75 percent more in higher spreads on mortgages relative to before the GSEs were taken over by the FHFA. In other words, many existing borrowers and potential homebuyers have been locked out from the benefits of low interest rates. Excessively tight credit is not just a market outcome; it is a result of policy choices made by Government regulators at the FHFA. Without Congressional action, such conditions are likely to continue. As noted below, tight mortgage credit is hampering the recovery and costing taxpayers billions of dollars.

It Is Not Too Late To Act!

Policy makers can still take important steps to help struggling homeowners, while benefiting taxpayers and helping the housing market. I have been asked to assess the "Menendez-Boxer Discussion Draft", which summarizes legislation that would remove key barriers to refinancing that continue to exist due to policies perpetuated by the Government Sponsored Entities (GSEs—Fannie Mae and Freddie Mac) and their regulator, the Federal Housing Finance Agency (FHFA). This draft legislation sets conditions similar to those proposed by Boyce, Hubbard, Mayer, and Witkin.[2] Under such a program, we estimate that as many as 11.6 million new refinancings would take place. The GSEs would earn additional profits of as much as $23.7 bil-

[1] Numerous other analysts, investors, or policy makers have called for a widespread refinancing program including, for example, Alan Boyce, David Greenlaw, Bill Gross, Glenn Hubbard, and Mark Zandi. The recent Federal Reserve White Paper pointed out the merits of widespread refinancing, as have Federal Reserve officials and columnists Ezra Klein, David Wessel, and Allan Sloan, and the *New York Times* editorial page.

[2] *See, http://www4.gsb.columbia.edu/realestate/research/housingcrisis/*. One small difference between the draft legislation and our policy simulations is that we do not exempt any mortgages from a widespread refinancing program, while the draft legislation limits the program to mortgages originated prior to June, 2010. This might result in a reduction of as many as 1–2 million mortgages from our policy estimates, but the overall conclusion remains unchanged.

lion, predominantly through preventing 400,000 defaults.[3] The GSEs can charge a higher guarantee fee to pay for any losses to their portfolio. Even considering portfolio losses to the Federal Reserve, we estimate the program is profitable for taxpayers. Our conclusion that widespread refinancing earns profits for the GSEs is quite similar to those in the CBO working paper, although we believe that there will be a much higher take-up rate than that used in the CBO paper.[4]

Of course, there are some tradeoffs. The gains in this proposal come at the partial expense of bondholders, who lose higher interest payments they would otherwise receive if homeowners remain locked in to mortgages at above market rates. Of course, the owners of these bonds knew that mortgage bonds could be prepaid at any time and earned a healthy financial premium over other Government guaranteed bonds to accept this prepayment risk. In a normally functioning mortgage market, most homeowners would have refinanced a long time ago, and bondholders would not have received an additional financial windfall over the last several years. Our policy proposal, cited above, discusses the winners and losers of a widespread refinancing program in much more detail, with financial estimates of the gains and losses to all major stakeholders.

HARP 2.0: Some Positives, But Many More Problems

In late October 2011, the FHFA announced changes to the HARP program with the stated goal of increasing eligibility to allow more borrowers to benefit from record low mortgage rates. These adjustments were supposed to be focused on aiding underwater borrowers and increasing competition between servicers, but the results so far have failed to live up to this promise. Although the GSEs already own the default risk on existing mortgages, they continue to put in place hurdles that limit access to refinancing. Thus only a relatively small group of borrowers—estimates range between 2–3 million—will be able to refinance under HARP 2 and even these borrowers are likely to pay rates well above what a new borrower would pay.

The most serious problem is that existing rules continue to reduce competition, resulting in higher profit margins for large banks and scarce options for struggling borrowers. Representations and warranties risk, the legal obligation for originators to repurchase certain mortgages that become delinquent, remains a huge constraint. For same-servicer refinancings, the lender must only verify that the loan will benefit the borrower, that the borrower has a source of income, and that there have been no late payments in the past 6 months and no more than one in the past year. Conversely, cross-servicer refinancings with either GSE require no payments more than 60 days late in the past year, as well as more detailed employment and income verification (Fannie Mae imposes a maximum DTI ratio and Freddie Mac requires a full underwrite).[5] The new servicer will then be responsible for the borrower representation and warranties risk on the mortgage. This increases the lender's legal risk, discourages competition, and results in refinancings for only the safest borrowers, yet this does nothing to help the position of the GSEs, who already guarantee the original mortgage.

The risk on the property value is waived only if Fannie Mae or Freddie Mac grants an appraisal waiver on the property. In the presence of either borrower or property value representations and warranties risk, up front profits come with uncertain and potentially large future liabilities. As such, large servicers like Wells Fargo, Citi, and Chase have implemented much stricter underwriting guidelines for mortgages they do not already service, capping LTVs at 105 percent (in certain cases, the maximum LTV is as low as 80 percent).[6] In other words, the high LTV borrowers that are supposedly the target of HARP 2 are often locked out from refinancing from all but their existing servicer. Other non-LTV restrictions also remain, such as Chase's "more stringent FICO, LTV, documentation, debt-to-income (DTI),

[3] For comparison, the GSEs currently have about 1.1 million mortgages that are 90 days or more delinquent. We estimate that about 1.2 million borrowers with a GSEs mortgage have lost their home due to a foreclosure, a short sale, or giving a deed-in-lieu of foreclosure after 2008. Preventing 400,000 defaults would represent almost 20 percent of all current defaults or homes lost in the crisis with a GSE mortgage.

[4] *See,* D. Lucas, D. Moore, and M. Remy, 2011, "An Evaluation of Large-Scale Mortgage Refinancing Programs", CBO Working Paper 2011-4, Washington, DC. See also our response: *http://www4.gsb.columbia.edu/null/download?&exclusive=filemgr.download&file_id=7219077.*

[5] Laurie Goodman, "Amherst Mortgage Insight: HARP 2.0—And The Winner Is . . . The Largest Banks", Amherst Securities Group LP. 21 March 2012.

[6] Paul Muolo, "Wells Caps HARP LTVs From Third-Party Lenders", Origination News. 16 April 2012. *http://www.originationnews.com/nmn_features/wells-caps-harp-ltvs-1029946-1.html*

and payment history requirements."[7] Effectively, borrowers run into obstacles and greater costs in obtaining a mortgage from any lender besides their current servicer.

It is also difficult for other servicers to identify and solicit eligible borrowers without knowing who has a GSE loan or the loan's payment history. The GSEs could address this problem by providing a list of all borrowers who are eligible for HARP to approved servicers or notifying borrowers that they are eligible, but have chosen not to.

Of course, existing servicers are taking full advantage of limited competition. Same-servicer refinancings have been enormously profitable, with a recent Amherst Securities report finding profit margins on these refinancings of 3.5 to 6.6 percent, an unheard of profit margin in this business.[8] Without competition, borrowers cannot choose a new servicer if they do not like the quality of service or the loan offer their existing servicer presents.

Some high LTV borrowers cannot access same-servicer originations at any price. Citi has a maximum LTV/CLTV/HCLTV of 125 percent for FRMs and 105 percent for ARMs.[9] Given the cross-servicer restrictions mentioned above, a high LTV borrower serviced by Citi is effectively unable to refinance to take advantage of today's low rates. Even worse, some large servicers such as MetLife no longer originate new mortgages, so existing MetLife borrowers have nowhere to go for a same-servicer refinancing.

Some Evidence That Freddie Mac Tightens Credit More Than Fannie Mae

Freddie Mac appears to impose greater restrictions on HARP 2 refinancings than Fannie Mae. National Public Radio and ProPublica reported that Freddie Mac created risky securities called Inverse IO Floaters that had the appearance of betting against household refinancing. These securities involve creating a concentrated risk position that pays off only as long as the underlying mortgages continue making payments. Freddie Mac has limited HARP 2 refinancings to borrowers with an LTV above 80 percent and locked out borrowers with a CLTV over 105 percent, rules not imposed by Fannie Mae.

Even if a borrower appears to meet the rules for a HARP 2 refinancing, the loan approval process may be derailed by additional underwriting restrictions that are not disclosed. According to reports from loan officers, " . . . aside from the current mortgage not having any late [payment]s within the last 6 months and only one 30 day late within the last 12 months, according to Freddie Mac any revolving or installment late within the last 12 months could kill the deal. Lastly, it is rumored that revolving debt that is over 50 percent of the credit limit, in spite of good credit scores, will cause Freddie Mac to deny/decline the application. And considering most equity lines are coded as revolving accounts and are typically over 50 percent of their credit limit, most Freddie Mac loans will not be refinanced."[10] HARP's unclear guidelines and implementations inevitably lead to additional costs for borrowers: Bridgeview Bank Mortgage Co. reports that just 1 of about 100 borrowers applying for a HARP refinancing have been approved; elsewhere a borrower was rejected because he had originally begun applying for a refinancing at a different bank.[11]

Freddie Mac has announced that it would be "fine-tuning" its standards. However, "specifics of how the automated underwriting models will be altered aren't being disclosed, even to lenders, but some homeowners who have been turned down for the program may now qualify."[12] For a refinancing program to have success, the rules and eligibility requirements should be fully disclosed to both lenders and borrowers. This opaqueness serves no clear purpose other than to give the appearance that Freddie Mac is a reluctant participant in HARP 2 refinancings.

Finally it is unclear why any existing loans should be ineligible for HARP 2, which locks out mortgages originated after May of 2009. Over $880 billion of outstanding GSE MBS has been issued in 2009 or later with a coupon of 4.5 percent

[7] Wei-Ang Lee and Nicholas Strand, "Prepayment Commentary: Speeds Underwhelm", *Barclays*. 13 April 2012.

[8] *See,* Goodman, above.

[9] Rob Chrisman, "GMAC 'Significantly Scales Back'; Citi's HARP 2.0; Lots of Investor, Agency, MI, and Conference Updates", *Mortgage News Daily*. 14 April 2012. *http://www.mortgagenewsdaily.com/channels/pipelinepress/04142012-citimortgage-harp-2-0.aspx*

[10] *See,* Lee and Strand, above.

[11] Mary Ellen Podmolik, "Freddie Mac To Ease Refinancing Program's Guidelines for Borrowers", *Chicago Tribune.* 15 April 2012. *http://articles.chicagotribune.com/2012-04-15/business/ct-biz-0416-freddie-harp-20120414_1_freddie-mac-refinancing-program-largest-servicers*

[12] *See,* Podmolik, above.

or higher (mortgage rates are typically roughly 50 basis points above the coupon).[13] A borrower receiving a 5.25 percent mortgage in 2010 due to the tightening of credit and lack of competition in the mortgage market is no better off than a borrower who obtained an identical loan in 2007.

HARP 2 Restrictions Appear To Violate FHFA's Mandate

As I noted in my testimony before the full Committee on February 9, 2012, the FHFA appears to be in violation of its Congressional mandates. In 2008, Congress passed the Housing and Economic Recovery Act (HERA). Under HERA, the Director of the FHFA must ensure that the GSEs meet a number of conditions, including:[14] "each regulated entity operates in a safe and sound manner . . . "; "the operations and activities of each regulated entity foster liquid, efficient, competitive, and resilient national housing finance markets . . . "; "the activities of each regulated entity and the manner in which such regulated entity is operated are consistent with the public interest." As well, under conservatorship, the FHFA must "preserve and conserve the assets and property of the regulated entities . . . " Finally, the Emergency Economic Stabilization Act of 2008 (EESA) specifies that the FHFA " . . . has a statutory responsibility to maximize assistance for homeowners to minimize foreclosures."[15]

Many commentators focus on the requirement to preserve and conserve assets in explaining the GSE's behavior towards refinancing. According to this line of reasoning, the fact that the FHFA and the GSEs have taken active steps to restrict refinancing might be justified in order to protect the value of its retained portfolio of mortgage-backed securities. Many of these mortgage-backed securities were acquired at a time when mortgage rates were much higher than today and thus prepayments due to refinancing could cause appreciable portfolio losses.

These policies under HARP 2 described above may at first pass seem consistent with the strategic goal of preserving and conserving assets, even if the policies violate the mandate to "foster liquid, efficient, competitive, and resilient national housing finance markets" and to operate in a manner "consistent with the public interest." As noted above, policies that restrict refinancing include limiting competition by giving existing servicers preferential legal treatment for "Reps and Warranties" relative to new servicers, imposing opaque credit restrictions that make the market less transparent (and thus less efficient), and limiting access to a program that lowers borrowing costs and reduces foreclosures (seemingly against the public interest). Each of these restrictions under HARP 2 violates a specific provision of HERA and/or EESA. Nonetheless, following this line of reasoning, and in the face of conflicting mandates, the FHFA must choose one mandate over another.

Of course, Acting Director DeMarco has said that there is no conflict because the GSEs were not supposed to consider their portfolio in implementing HARP 2. When responding the NPR/ProPublica report listed above, the FHFA stated, "In evaluating changes to HARP, FHFA specifically directed both Enterprises not to consider changes in their own investment income as part of the HARP evaluation process."[16]

Absent such conflicts, independent analysis by the Congressional Budget Office undermines the argument that refinancing restrictions serve even the single goal of conserving assets. According to the CBO Working Paper, cited above, a widespread refinancing program would result in higher profits for the GSEs, even taking into account portfolio losses, because more refinancings lead to fewer defaults and lower insurance costs. The CBO estimates a $2.5 billion "reduction in subsidy cost on GSE guarantees" and $1.8 billion "lost portfolio value to GSEs" for a net impact of $0.7 billion in profit for the GSEs.

My own analysis with co-authors, also cited above, takes the CBO case one step further. Suppose that refinancing did impose net portfolio costs, or suppose that the GSEs must give up valuable legal rights to sue for reps and warranties violations (a case that most independent analysts doubt); in either circumstance, the GSEs could just charge a slightly higher annual fee to pay for any incremental costs. Our analysis suggests that a streamlined proposal could achieve healthy profitability for the GSEs simply by increasing the annual guarantee fee by 15 basis points and adding a 7 basis point annual fee to cover losses from waived representations and warranty liabilities. In their analysis, the CBO found that "potential recoveries from

[13] Data courtesy of Knowledge Decision Services LLC. Based on pool-level data on Fannie Mae and Freddie Mac MBS. Current as of March 2012.

[14] *See,* H.R. 3221-11. I have abbreviated the rules to focus on the relevant parts of the legislation for this testimony. This is not a complete list of all legislative requirements.

[15] *See,* FHFA letter to Congressman Cummings: *http://www.fhfa.gov/webfiles/23056/PrincipalForgivenessltr12312.pdf.*

[16] Federal Housing Finance Agency, "FHFA Statement on Freddie Mac Refinance Story", 30 January 2012. *www.fhfa.gov/webfiles/23178/ProPublicaNPRFHFAStmt13012.pdf*

put-backs on mortgages refinanced under the program that would not have been refinanced without the program appear to be relatively small," suggesting that our 7 basis point annuity will be more than sufficient to compensate the GSEs for relieving lenders of this risk. In net, we find that our proposed program would lead to a profit for the GSEs of more than $23.6 billion. Thus there really is no trade-off between conserving assets and supporting a competitive and efficient mortgage market.

Finally, it is possible that a widespread refinancing program might lower the price of mortgage bonds in the future because investors would require a large premium to cover refinancing risk. The fact that managers at Pimco, Morgan Stanley, and Moody's Analytics have argued in favor of widespread refinancing makes it less likely that a revolt by bond buyers is a serious concern. Counter to such a suggestion, securities backed by these refinancings have turned out to be quite appealing to investors given their low prepayment risk. An article examining MBS backed by HARP 2.0 refinancings found that "recent trades show that demand for the >125 percent LTV pools is strong . . . Investors are apparently willing to accept the reduced liquidity of the securities and still pay through the TBA market for glacial prepayment speeds and the resulting boost in carry."[17] As well, about 25 million borrowers refinanced their mortgages in 2002 and 2003, much larger than is envisioned by even the most optimistic projections. So a high rate of refinancing is far from unprecedented.

Conclusion

It is not too late to achieve a win–win scenario. The FHFA has the authority to pursue a widespread refinancing plan, and such a program seems to be called for by existing mandates. However, the FHFA has chosen not to do so and appears unlikely to change course without outside intervention. As a result, Congress should act to reinforce the mandate of conservatorship with regard to refinancing and credit availability. The "Menendez-Boxer Discussion Draft" addresses the key problems listed above.

Nonetheless, I have two additional suggestions. First, all mortgages originated prior to the date of passage should be eligible for the refinancing program as long as they are current at the time of application. Existing FHFA rules have limited competition, so most borrowers are paying higher mortgage rates than would prevail in a more competitive mortgage market as envisioned under this draft legislation. All of these borrowers deserve relief. Second, I believe that legislation should mandate that an independent trustee be appointed to wind down the GSE's retained portfolio of MBS. The GSEs could continue to retain nonperforming loans that they have bought back from securitizations as is necessary to perform their mortgage guarantee business. Independent management of the retained portfolio will make the eventual privatization or replacement of the GSEs considerably easier.

Finally, I would make one other argument in favor of a legislative solution. The Federal Reserve has often pointed to the housing market as a key justification for its controversial policy of quantitative easing. Yet low interest rates benefit relatively few borrowers under existing FHFA policies. Repairing large flaws in the mortgage market will help ease pressure on the housing market. Under these circumstances, the Federal Reserve may feel comfortable reducing the amount of quantitative easing, leaving it room to exit more quickly from existing bond holdings.

Until we fix the housing market, it will be hard for the economy to fully recover. I believe that immediate action is necessary to address fundamental flaws in the structure of the GSEs. Conservatorship as it now stands is laden with conflicts of interest between lending and portfolio management and holds back the reintroduction of private capital. These steps can occur now, even without a consensus on what the future of the U.S. housing finance system will look like.

I appreciate the opportunity to address you today and look forward to answering any questions that you might have.

Appendix 1: Estimating Losses From Failing To Adopt a Widespread Refinancing Plan

Below I present simple calculations to get an order of magnitude of losses from the failure to adopt a widespread refinancing program. These estimates are intended to be a conservative, but reflect rough calculations and not a detailed study.

[17] Bill Berliner, "Trading in MBS Pools Backed by HARP Loans", *Mortgage News Daily.* 18 April 2012. *http://www.mortgagenewsdaily.com/channels/secondary__markets/04182012-trading-pools-harp-loans.aspx*

In an earlier analysis, Boyce, Hubbard, and Mayer summarize various studies of the take-up of an appropriately structured widespread refinancing program.[18] Moody's Analytics and Morgan Stanley estimates from 2010 suggest that such a program would have resulted in about 18 million mortgages that would be refinanced, saving homeowners $46–56 billion annually in lower mortgage payments. These estimates include FHA and VA loans, which at the time represented a distinct minority of all outstanding mortgages. For these calculations, I assume that about 14 million of the 18 million refinancings would be for GSE mortgages.

Instead, the GSEs accomplished about 10 million refinancings, of which a significant share are either multiple refinancings for the same borrowers or refinancings of mortgages originated after April 1, 2009. Assuming about 40 percent of the refinancings are for mortgages that were originated after 4/1/2009 or to borrowers that refinanced more than once, this suggests that about 6 million legacy mortgages were refinanced instead of 14 million as might have happened with a widespread refinancing program. So, policy resulted in about 8 million "lost" refinancings.

Next, I compute the economic outcomes associated with the lack of appropriate refinancing activity. According to a Congressional Budget Office study,[19] every 1,000 refinancings result in 38 fewer defaults (3.8 percent). So 8 million "lost" refinancings resulted in about 304,000 unnecessary defaults. Using CBO estimates of the cost per default, these additional defaults have cost taxpayers about $10.75 billion in higher insurance costs for the GSEs. As well, Moody's Analytics, Morgan Stanley, and the CBO estimate that each refinancing saves homeowners between $2,500 and $3,000 per year. Using $2,600 from the CBO, these lost refinancings "cost" homeowners an additional $20.8 billion annually in higher mortgage costs.

I believe these estimates are quite conservative. By comparison, Boyce, Hubbard, Mayer, and Witkin currently believe that about 11.6 million new borrowers would take-up an appropriately structured refinancing program today.[20] Assuming the GSEs charge a higher annual guarantee fee, they can earn a profit for taxpayers of about $23 billion, taking into account an estimate of losses to their portfolio of mortgage-backed securities as well as savings from fewer defaults. These refinancings would save homeowners about $123 billion over 10 years and prevent about 440,800 defaults.

PREPARED STATEMENT OF DEBRA STILL

CHAIRMAN-ELECT, MORTGAGE BANKERS ASSOCIATION

APRIL 25, 2012

Introduction

Chairman Menendez, Ranking Member DeMint and Members of the Senate Subcommittee on Housing, Transportation and Community Development, I appreciate the opportunity to offer remarks on behalf of the Mortgage Bankers Association[1] (MBA) at this hearing on "Helping Homeowners Save Money Through Refinancing." My name is Debra Still and I am Chair-Elect of MBA. My remarks will focus on the "Responsible Homeowner Refinancing Act of 2012" currently being drafted by Chairman Menendez and Senator Boxer.

At the outset, let me state that MBA strongly supports the intent and major objectives of this legislation: to address obstacles that have prevented borrowers who have conscientiously made their mortgage payments from reaping the benefits of historically low interest rates and other assistance programs. We are particularly intrigued by the sections of the bill that would remove existing restrictions of the Home Affordable Refinance Program (HARP) based on arbitrary requirements such

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[18] *http://www4.gsb.columbia.edu/null/download?&exclusive=filemgr.download&file_id=7219077*

[19] D. Lucas, D. Moore, and M. Remy, 2011, "An Evaluation of Large-Scale Mortgage Refinancing Programs", CBO Working Paper 2011-4, Washington, DC.

[20] *See, http://www4.gsb.columbia.edu/realestate/research/housingcrisis/.*

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, DC, the association works to ensure the continued strength of the Nation's residential and commercial real estate markets; to expand home ownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: *www.mortgagebankers.org.*

as who services the loan, whether the borrower's loan-to-value ratio is above or below 80 percent, and which Government-sponsored enterprise owns the current loan. Such features only serve to increase borrower and lender confusion, and reduce the number of qualified borrowers who could benefit from the program. MBA looks forward to working with the authors of this draft legislation, Members of this Subcommittee, the Administration, and other key stakeholders as a resource to help resolve whatever issues or differences may arise as a result of this dialogue.

Before addressing specific aspects of the bill, I believe it would help to provide some analytics regarding the housing market's recovery thus far, and the policy considerations MBA used to assess the merits of the bill.

Economic Context

Notwithstanding this widespread uncertainty, we are starting to see signs of recovery and growth. Optimism is beginning to emerge with record home affordability, some signs of job formation, and a slowly recovering stock market. Recent economic indicators also point to sustained, albeit slow, growth for 2012.

I have personally witnessed other "green shoots" appearing in local markets around the country. For example, I can say with some optimism that I anticipate the first true spring buying season we have had in a few years. Even more telling is the fact that some former homeowners who exited the market through short sales or "deed-in-lieu" transactions are now asking how they can return.

Chart 1 provides an overall perspective of homes for sale on the market today with overlays of delinquent loans and loans in foreclosure. Although the volume is still at historically high levels, we are seeing consistently lower numbers in all key statistics. In fact, MBA expects existing home sales to increase slightly in 2012 followed by more significant growth in 2013.

Chart 1

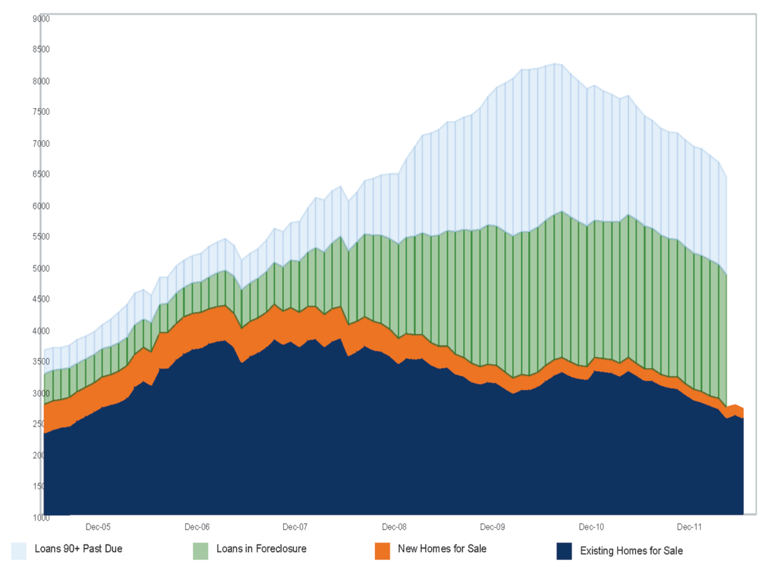


Chart 2 shows the ratio of refinancings to purchase mortgages also is reverting to normal trends. MBA expects purchase originations to be a little over the $400 billion level in 2012, similar to 2011, before increasing to $680 billion in 2013, as home prices turn upward more definitively, and home sales increase. Refinance originations were strong in 2011 as rates were at historical lows, and have remained relatively strong thus far in 2012. The expanded HARP effort is currently contributing roughly 30 percent of refinance application volume.

Chart 2

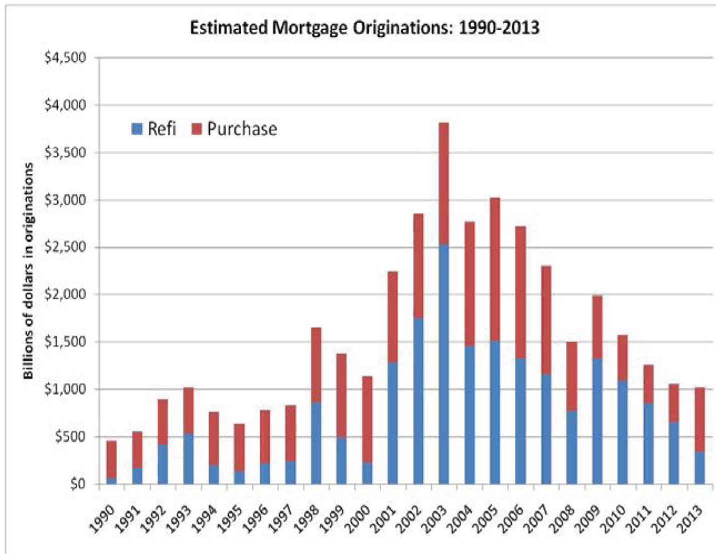
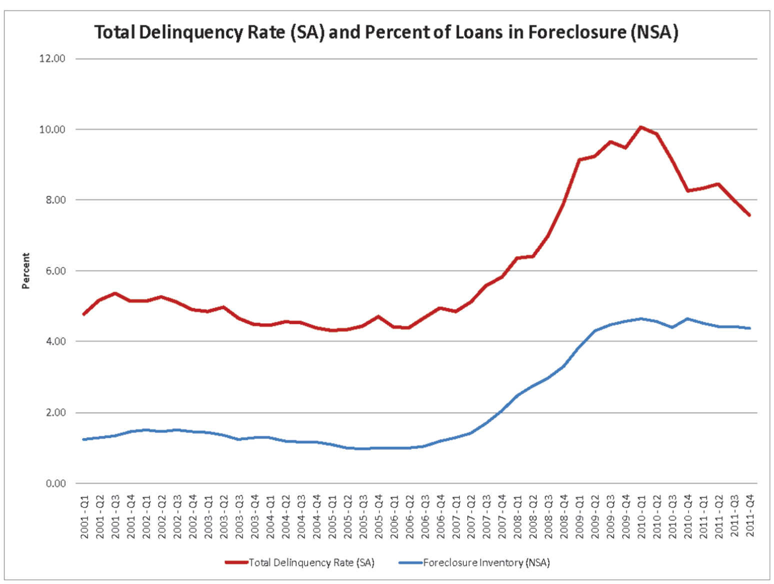


Chart 3 shows the trend in delinquency and foreclosure rates remains disturbingly high. But on a positive note, we are clearly over the hump in both measures. Closer analysis shows that we are back to where we were before the crash in 2008.

Chart 3



Reaction to Bill

Turning now to the draft legislation, MBA fully supports its goal of reducing operational inconsistencies and economic obstacles impeding the ability of on-time borrowers to refinance their mortgages. We also support the bill's provisions clarifying the post-sale obligations of lenders for loans they sell to the Government-sponsored enterprises (GSEs), Fannie Mae and Freddie Mac. It is likely that if many of the provisions in this bill were included in the first version of HARP, we probably would be much further along in the recovery. In reality, however, this bill effectively would represent the third iteration of HARP and is being introduced at a time when HARP 2 is just beginning to show signs of progress. Therefore we believe it would be useful to monitor HARP 2's effectiveness as you continue the deliberations regarding this draft legislation to assess the tradeoffs between the benefits the bill provides to borrowers and the operational costs to the GSEs, lenders, and taxpayers. Following additional comments about specific provisions of the bill, MBA suggests additional initiatives for consideration.

Borrower Eligibility

MBA is particularly appreciative of the draft legislation's provisions that reduce the complexity of HARP's eligibility and compliance. For example, the ability of borrowers to lower their mortgage payments by refinancing their loan through HARP should not hinge on who services their loan. Additionally, the existing distinction regarding whether a borrower's LTV is above or below 80 percent is subject to manipulation by mischaracterizing the value of a borrower's collateral.

The bill also would prohibit the GSEs from establishing pricing differences based on loan to value (LTV) ratios, income or employment status. The rationale for this provision is that reducing the re-underwriting requirements for loans already held by the GSEs is appropriate because the GSEs already hold the risk. Moreover, reducing a borrower's payments reduces the risk that a borrower will not repay the loan. As a general rule, MBA believes strong underwriting requirements including full documentation and verification are critical to safe and sound lending practices.

However, MBA supports the concept of streamlining underwriting requirements where the borrower is current and the loan being refinanced is currently owned by Fannie Mae or Freddie Mac.

MBA also requests consideration of whether the provisions to streamline HARP's eligibility requirements for conscientious borrowers make it easier for unscrupulous borrowers to abuse the program. For example, one of the primary tools lenders use to detect and prevent fraud is to verify the employment, assets, and liabilities of borrowers.

Additionally, MBA believes a refinancing is not always in the best interest of a borrower, and that a modification is sometimes a better alternative. For example, a loan modification is likely the better option for the borrower in situations where the borrower is no longer employed. Allowing origination of loans without any verification of a borrower's income source effectively allows unemployed borrowers to refinance their loans when other alternatives may be a better option.

Another concern is that the bill's reduced underwriting requirements could be interpreted to interfere with a lender's ability to comply with the requirements in the Dodd-Frank Act to verify whether the borrower has a "reasonable ability to repay the loan." Although regulations are currently in the proposed stage, final regulations are likely to be issued before the end of the year. Streamlined refinances by the GSEs are not exempt from the statutory requirement and reliance solely on pay history (as is currently permitted for manual refinances) fails to meet the statutory standard for determining a reasonable ability to repay under the Dodd-Frank Act. Furthermore, eliminating any employment verification raises the concern that an assessment has not been conducted of the borrower's ability to repay the loan.

MBA suggests the limitations on the types of loans eligible for refinancing under HARP also restricts otherwise qualified borrowers from lowering their monthly payments by refinancing into a lower interest rate loan. For example, high balance loans owned by the GSEs are ineligible to be refinanced under HARP if they are above the existing conforming loan limit. MBA believes that if a borrower meets HARP's eligibility requirements, and the GSE owns the existing mortgage, the mortgage should be able to be refinanced.

For these reasons, MBA believes this section of the bill would benefit from further refinement to ease implementation.

Repurchases

MBA is pleased that the bill attempts to reduce the existing disparity between a lender's representation and warranty (rep and warrant) obligations to Fannie Mae and Freddie Mac. MBA believes this would encourage competition by allowing different servicers to refinance a borrower on the same terms on which the current servicer is able. This would create many more refinances of the targeted HARP-eligible population, and those refinances would be at a considerably better rate to the borrower. In our remarks below, we offer additional considerations regarding rep and warrant obligations because MBA believes this issue transcends the HARP context.

Collateral Valuation

The bill also would require collateral valuations to be estimated through the GSEs' automated valuation models (AVMs). In locations where AVM modeling data is nonexistent, such as rural areas, an actual appraisal can be used, at no cost to the borrower.

MBA believes this is a prudent attempt to use technological efficiencies to reduce the up front refinancing costs for eligible borrowers. It should be noted, however, that appraisals are an invaluable tool for protecting against fraud. Therefore, to the extent that the bill conflicts with lenders' fraud prevention measures, we request a commensurate adjustment in a lender's repurchase obligation. We believe this will enable lenders to be able to maximize the cost savings to borrowers.

Re-Subordinating Second Liens

The bill provides that if a servicer or creditor refuses to re-subordinate certain second liens when the first lien is refinanced under HARP, such servicer or creditor will be ineligible to deliver or sell any future loans to Fannie Mae or Freddie Mac. It is unclear whether such a bar would expire with HARP or continue in perpetuity.

Most junior lien holders today will subordinate their liens provided the borrower finances only closing costs, such closing costs are not excessive, the borrower derives a benefit from the refinance, and the borrower does not receive cash out (other than to settle small calculation discrepancies). This policy is also followed in most cases even if the borrower's combined LTV is above 100 percent.

For these reasons, MBA believes this provision imposes harsh penalties for a situation that seems to be resolving itself. When a borrower's LTV exceeds 100 percent, second lien holders are rightly concerned with an increase in the first lien debt because it imposes additional risk of loss, by the amount financed, if the loan fails. We are concerned that the harsh penalty will actually impair the recovery of the real estate market by making junior liens extremely costly and unattractive to originate and service.

We also question whether the penalties imposed by the bill are worse than the problem it seeks to address. In theory, a single mistake could render a significant market player or number of players unable to do business with Fannie Mae and Freddie Mac. This does not appear to be a positive result for borrowers or the GSEs as it could affect competition, price, and the GSEs' future revenue opportunities.

In addition, it appears that the servicer would be held responsible if the owner of the junior loan does not permit a subordination. In many instances servicers are mere loan administrators and thus cannot impose a requirement of this nature on the lien holder. Servicers, therefore, should not be penalized for decisions outside of their control.

While most second liens are held in portfolio as whole loans, there are instances in which such loans are securitized. If trust documents prohibit the servicer from impacting the security interest of the notes, it would not be appropriate to penalize the servicer for complying. The law would, in this instance, put servicers in an unfortunate position; either they face litigation or get barred from delivering loans to the GSEs.

There are also valid situations where the servicer should not be required to subordinate. One example is where the borrower sold the property without the lien holder's consent thus violating the due on sale clause in the mortgage contract. Another example is where a first lien holder provided a cash-out refinance without getting a subordination agreement from the second lien holder. Had the request been made, the second lien holder would not have approved the subordination due to the cash-out feature. The second lien holder should not be required to re-subordinate simply because the borrower now seeks to refinance again under HARP when the subordination wouldn't have been granted in the first instance. The examples given are not an exhaustive list. Moreover, servicers cannot predict situations that might arise in the future that support denying a subordination request.

For the reasons described above, we believe the re-subordination requirement provisions are a well-intentioned attempt to streamline the refinancing process for borrowers, but the operational and practical consequences could negate the benefits they were intended to provide. MBA would have strong concerns regarding these provisions if this bill were to move forward.

Mortgage Insurance

A similar provision imposes a bar on mortgage insurers who refuse to transfer coverage to the new HARP refinanced mortgage. Such insurers would be ineligible to insure new mortgages purchased or guaranteed by the enterprises. We are concerned that this penalty may create an unintended outcome. Lenders must obtain mortgage insurance (MI) on higher-LTV loans in order to deliver such loans to the GSEs. If one or more insurers were barred from doing business with the GSEs, it could severely strain the availability and cost of MI. Likewise, it would increase the GSEs' counterparty risk.

It also is not clear whether the GSEs have the technological capacity to monitor and track whether an MI refused to transfer coverage and then to automatically terminate new deliveries of loans insured by such an MI. If the operational framework is not in place already, developing it could be costly and time-consuming.

It also is unclear whether the bill would apply to situations where lenders or investors place MI on the loan after it was originated to make it eligible for an enterprise to purchase (back-end MI) and in cases for certain lenders where the lender has purchased mortgage insurance (traditionally called LPMI). In these circumstances, special processes need to be put in place by the GSEs, the MI companies and lenders to ensure that coverage remains in place. These operational challenges could be time-consuming and costly, which could ultimately offset any potential consumer benefit.

MBA therefore requests this provision be reevaluated in light of these considerations.

Credit Risk Guarantee Fees

The bill would be funded by a ten basis point increase in the credit risk guarantee fees (g-fees) charged by Fannie Mae and Freddie Mac, but only for those loans refinanced under the provisions of the bill. MBA strongly believes that g-fees should be calculated as a function of the costs of guaranteeing the securities they issue, *i.e.,* the risk of underlying loans.

In this situation, MBA would prefer that the GSEs themselves be authorized to adjust their g-fees in accordance with their increased risk profile and with the strict oversight of their regulator. Given Federal budgetary scoring constraints, however, we recognize that g-fees must be deposited into an account at the Department of the Treasury.

Because g-fees directly impact consumer borrowing costs, we ask that Congress establish sufficient statutory firewalls so that these funds can only be used to offset credit risk exposure by the GSEs.

Additional Recommendations

The timing of this hearing is fortuitous because MBA members were in Washington, DC, just last week as part of our association's annual advocacy conference. MBA met with leadership in the House, Senate, several regulatory agencies, and President Obama's housing policy team. The threshold question that we were asked in virtually every meeting was what could be done to restore access to credit for all eligible borrowers in a safe and sound manner.

MBA's response to this question is that a long-term recovery hinges on restoring certainty and providing clear standards regarding the rights and responsibilities of all market participants. Heightened levels of uncertainty are pervasive throughout the housing market. Borrowers are unsure of their job stability, are afraid of buying when home prices may still be falling or are concerned about how they will be treated by their lender or loan servicer.

Lenders face uncertainty not just because of the cascading effect of new rules and regulations but also because existing, longstanding agreements between counterparties are being reinterpreted and applied retroactively. And private investors that could provide much needed capital also are skittish; they don't know which way the market is headed or what new policy may come next that will impact their position. This overall uncertainty results in reduced access to affordable housing finance options for qualified borrowers. MBA supports provisions in the draft legislation that would address this widespread uncertainty.

MBA also recognizes there are other challenges that need to be resolved before a sense of vibrancy returns to the housing market. Therefore, we offer the following additional recommendations to help restore access to credit for qualified borrowers.

Foreclosure Inventory

While the draft legislation would do much to stem the tide of new delinquencies and foreclosures, it is not directly focused on the overhang of distressed properties. Addressing that overhang would spur further economic recovery and stabilize neighborhoods and long-term home prices. A reduction in the current "real estate owned" (REO) inventory will provide for the swiftest and most efficient return to market stability. As the country moves to correct the supply and demand imbalance, it is critical that policy makers balance taxpayer interests, investor interests, and consumer protections to ensure responsible asset disposition.

Local investors understand their particular markets and have a long-term stake in the stabilization of their neighborhoods. Providing affordable, responsible financing options to investors not only eliminates REO properties, but also empowers neighborhoods by giving local residents an increased stake in its success. These tools would be especially beneficial in urban neighborhoods that face the challenges of older housing stock and neighborhood blight.

MBA believes the Federal Housing Administration (FHA) should introduce an investor program—specifically one that includes a renovation option. One solution would be to temporarily lift the moratorium on investors participating in FHA's Section 203(k) Rehabilitation Loan Program. The Section 203(k) program helps buyers of properties in need of repairs reduce financing costs, thereby encouraging rehabilitation of existing housing. With a Section 203(k) loan, the buyer obtains one FHA-insured, market-rate mortgage to finance both the purchase and rehabilitation of a home. Loan amounts are based on the lesser of the sum of the purchase price and the estimated cost of the improvements or 110 percent of the projected appraised value of the property, up to the standard FHA loan limit.

HUD began promoting Section 203(k) to homeowners, private investors, and nonprofit organizations in 1993. Private investors were often able to find undervalued properties, renovate them and sell them for more than the purchase price plus the cost of improvements, or provide much needed rental housing. Motivated by this profit potential, many investors successfully renovated and sold properties ranging from individual homes to entire blocks, thereby expanding home ownership opportunities, revitalizing neighborhoods, creating jobs, and spurring additional investment in once blighted areas.

In 1996, however, following a report by HUD's Inspector General describing improprieties concentrated in New York and insufficient departmental oversight, HUD placed a moratorium on all Section 203(k) loans to private investors. The Inspector General noted rampant fraudulent activity that resulted in financial gain for the participants and unrehabilitated houses in the neighborhoods.

MBA agrees that safeguards in any program are necessary to prevent abuse and to ensure that the program meets its intended purpose. MBA recommends that FHA lift the moratorium on investors participating in the 203(k) and reinstate it as a pilot to facilitate the purchasing and rehabilitating of REO properties by local investors. In recognition of the historical abuses of the program, MBA also recommends that the program be modified to ensure responsible lending and minimize fraudulent activity. MBA's members welcome the opportunity to work with FHA to develop a program that meets these criteria.

Ability To Repay Regulations

MBA also believes proper implementation of the Dodd-Frank Act's ability to repay (ATR) and Qualified Mortgage (QM) requirements, now pending before the Bureau of Consumer Financial Protection (CFPB), is crucial to homeowners and those seeking home ownership. Under the proposal, there are three major issues: (1) whether the QM is structured broadly; (2) whether the QM is structured with clear bright line standards as a safe harbor; and (3) whether the three percent limit on points and fees is overly inclusive and has the effect of limiting the availability of credit, particularly for loans under $150,000.

Failure to comply with the ATR requirements risks very significant liability including actual damages, up to 3 years of finance charges, attorney fees, as well as a claim for offset at foreclosure for the life of the mortgage. In light of these liability considerations, it is anticipated that virtually all mortgages made will be QMs; those that are not, if available at all, will be costlier and are not required to offer borrowers QM protections. For these reasons, it is crucial that the QM standards be established broadly so they offer affordable credit and protect as many borrowers as possible.

The proposed rule offers alternative approaches to the construction of a QM, only one of which will be adopted in a final rule—a safe harbor or a rebuttable presumption of compliance. Specific standards are contained in both, and under both borrowers may seek court review of whether the lender complied.

The principal difference between the two approaches is that under a safe harbor litigation is more predictable and addresses only whether the standards set forth in the safe harbor have been met. Structuring the QM as a safe harbor is the best means of ensuring that the largest number of borrowers possible will enjoy the safest and most affordable options for sustainable mortgage credit. A presumption of compliance does not generally provide the same degree of predictability. Consequently, if provided for in a final rule, a rebuttable presumption structure will result in more conservative lending standards, and less available and affordable credit.

The proposal also would apply the statutory requirement of a three percent limit on points and fees for the QM so that it would appear to include: (1) third party fees such as title services when the service provider is an affiliate of the lender; (2) loan originator compensation; and (3) escrows for taxes and insurance. The limit is only adjusted up to 5 percent for loans under $75,000.

All third-party fees should be excluded from the three percent limit. Any other outcome undermines competition and borrower choice. The inclusion of payments from lenders (*i.e.,* loan officer compensation) has no place in a formula governing payments to lenders. Likewise, escrows not retained by the lender have no place in a calculation of points and fees. Additionally, consumers should continue to have the option of using a lender with affiliated settlement services providers. Finally, since the average loan size is closer to $150,000, upward adjustment of the three percent limit for smaller loans should commence for loans below that amount. Considering the effects of the proposal on smaller loans, both revision of the small loan requirements and revision of the formula's ingredients are essential to ensure the availability of credit to low-and moderate-income families with smaller loans.

How the QM is defined and structured is crucial to determining who will benefit from affordable, sustainable mortgage financing. Loans that fail the QM test will be costlier, if they are available at all. MBA urges the Members of this Subcommittee to encourage the CFPB to adopt a broad QM and a safe harbor for QM loans. MBA also encourages Members of this Subcommittee to consider the introduction of Senate legislation similar to that proposed in the House by Reps. Bill Huizenga (R-MI) and David Scott (D-GA) that would make important technical changes to the QM points and fees definition. The Consumer Mortgage Choice Act (H.R. 4323) would exclude affiliate fees, loan originator compensation and escrows.

GSE Repurchase Requirements

As mentioned above, MBA believes much more needs to be done to clarify the rights and responsibilities of lenders with respect to repurchase requirements. Leadership at the Department of Housing and Urban Development (HUD), Federal Housing Finance Agency (FHFA), and the Board of Governors of the Federal Reserve System all recognize that a key driver of this tight credit environment is the unprecedented number of loan repurchase demands by the GSEs to lenders, based on representations and warranties made by lenders when they sell loans to the GSEs.

We recognize the importance of these reps and warrants in holding mortgage originators accountable for the loans they sell into the secondary market. These contractual provisions are critical to the securitization process, and a successful and liquid secondary market. Reps and warrants appropriately allocate risk and align the incentives of all parties in the direction of sustainable, responsible mortgage lending. Unfortunately, lenders are now facing an unprecedented volume of repurchase demands from investors looking to recoup losses. A portion of these are legitimate requests and are being honored, as they should be. However, lenders are finding more and more loans being sent back for repurchase for minor, technical mistakes that had no impact on loan performance.

Take, for example, a loan where the borrower had been paying his or her mortgage on time for several years, lost a job, couldn't pay the mortgage and went into default. Investors will sometimes scrutinize loan documents to find a minor, immaterial infraction, like a forgotten signature, and force the loan back to the originator for repurchase. This is not why the process was put into place.

Lenders do have means to contest and defend repurchase requests, but they are time-consuming and expensive. Instead of underwriting and funding new loans for qualified borrowers, lenders have to go back through old loan files and prepare a defense against the repurchase claims. Even when the lenders prevail, they are forced to dedicate scarce capital and staff time to adjudicate these cases. This is disproportionally hurting smaller, independent community lenders who simply don't have the resources to research, respond to and contest the flood of repurchase demands they are facing.

Consumers are paying the ultimate price because buyback requests for such minor mistakes only serve to make lenders even more cautious when making new loans. The knowledge that every loan that defaults, no matter how well it is documented and underwritten, could result in a costly repurchase request, is forcing lenders to qualify only borrowers with the most pristine credit histories, highest incomes and significant cash reserves. Again, the impact is magnified for smaller lenders with more limited resources to handle repurchase requests.

Lenders, regulators, the GSEs and other investors need to coalesce in order to develop guidelines for the type of loan defects that are and are not eligible to be put back on lenders. Loans that have been performing for several years, and default with no signs of lender fraud or underwriting deficiencies, should not be pushed back on the lender. If a loan defaults and a flaw in the loan documents is found, the investor should be required to demonstrate that the defect was material to the default. Such flaws also should be based on objective criteria, not a subjective opinion rendered after the fact.

MBA notes that correspondent lenders add their own credit overlays to loans they purchase from other lenders in order to limit their repurchase risk exposure. These "downstream lenders" tend to be local, community or independent mortgage banks that do not have the volume or corporate structure to deal directly with the GSEs. MBA believes consumer access to credit would be greatly enhanced if GSE repurchase requests also were addressed in the correspondent lending channel.

MBA also notes an unfortunate conflict arising between HARP provisions and State law. Some State laws impose specific underwriting requirements on high-LTV loans, such as requiring a physical appraisal and determining a borrower's ability to repay based on consideration of specific statutory information. One of the GSEs' HARP rep and warrant provisions is that lenders must stipulate the HARP loan complies with all laws. Therefore, a lender would be required to repurchase a loan that violated a State law high-LTV loan requirement even if they were otherwise compliant with this bill, or existing HARP 2 provisions. We strongly urge you to resolve this matter.

Future of the GSEs

MBA is firmly aligned with the Subcommittee's desire to attract private capital to fund loans for a broad spectrum of qualified borrowers, not just to help in the economic recovery, but for the long-term. The current mortgage market relies far too heavily on Government support, edging out private investment. This is neither desirable nor sustainable. MBA believes the long-term stability of the real estate market requires a vibrant secondary mortgage market that relies, first and foremost, on private capital. However, the status quo of overwhelming involvement by FHA, Fannie Mae and Freddie Mac has helped to create insufficient private liquidity. It is time for the future of the GSEs and the role of the Federal Government in housing finance to be addressed in a comprehensive manner. MBA believes there is a need for a clear definition of the Government's role in the mortgage market—an explicit, limited guarantee of the securities, but not the entities—paid for by actuarially sound, risk based fees, with the entities tightly regulated as to their activities, risk-based capital and the types of mortgages they can guarantee.

Conclusion

In conclusion, let me reiterate that MBA strongly supports the intent and objectives of this proposed legislation. We believe the Responsible Homeowner Refinancing Act of 2012 is a commendable effort to reduce the costs and other barriers on-time borrowers face in benefiting from today's historically low interest rates. We further believe the bill's rep and warrant provisions are a welcome attempt to solidify the allocation of responsibilities between the GSEs and their lender business partners. Given the balance of multiple considerations this bill poses, we urge this Subcommittee and the Congress to continue to work with all engaged stakeholders as this dialogue moves forward. In particular, we urge the Subcommittee to revisit the provisions regarding subordinate liens and mortgage insurance.

All stakeholders in our housing finance system have an interest in seeing the market rebound, and only together can we establish a housing finance system that provides affordable housing finance options to as many qualified borrowers as possible in a safe and sound manner. MBA stands ready to serve as a resource to help you evaluate the economic and policy tradeoffs to these various approaches.

PREPARED STATEMENT OF LAURIE S. GOODMAN

SENIOR MANAGING DIRECTOR, AMHERST SECURITIES

APRIL 25, 2012

Chairman Menendez, Ranking Member DeMint, and Members of the Subcommittee, I thank you for your invitation to testify today. My name is Laurie Goodman and I am a Senior Managing Director at Amherst Securities Group, L.P., a leading broker/dealer specializing in the trading of residential and commercial mortgage-backed securities. We are a market maker in these securities, dealing with an institutional account base: financial institutions, money managers, insurance companies, and hedge funds. I am in charge of the Strategy area; we perform extensive, data-intensive studies as part of our efforts to keep ourselves and our customers informed of critical trends in the residential mortgage-backed securities market.

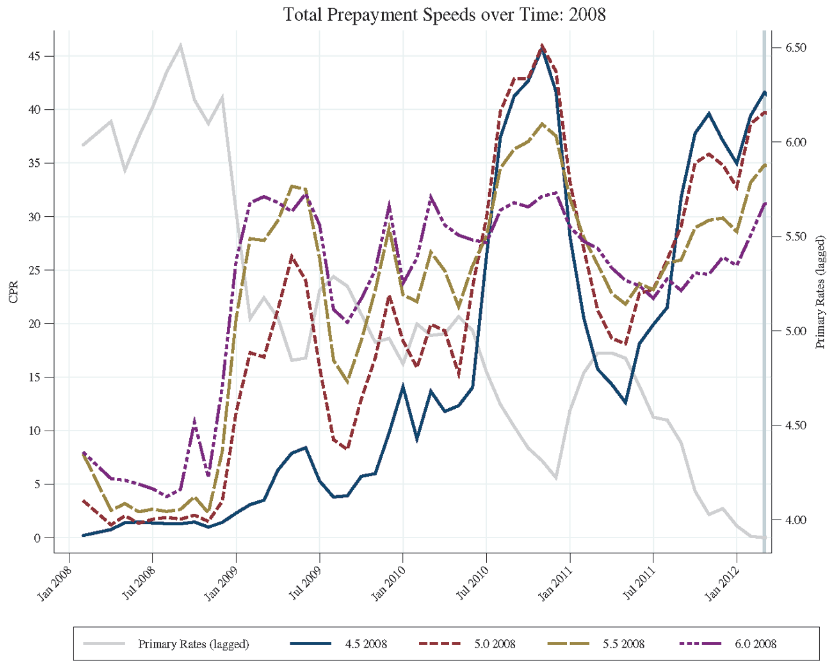
In my testimony today, I will discuss actions that can be taken to help responsible homeowners save money through refinancing, without disrupting the very well functioning Agency mortgage market. I will limit my comments to the refinancings of GSE mortgages, which are the mortgages in which the GSEs already bear the risk. My number one suggestion will be to allow for competition by permitting a different servicer to refinance a borrower on the same terms that apply to the current servicer. This will result in much better rates to the borrower, and much more refinancing of the targeted Home Affordable Refinance Program (HARP) population.

It is very clear that responsible borrowers with high loan-to-value ratios (many of whom are underwater) or low FICO scores, who do not hold a GSE or FHA/VA loan—have no or very limited refinancing opportunities. Their counterparts, with higher FICO scores and lower LTVs, can refinance through the GSEs; if such loans exceed the maximum loan size limits, then bank portfolios are willing to take the risk. We believe that a broader refinancing plan which allows the transfer of risk on higher loan-to-value ratio (*i.e.,* underwater) mortgages owned by bank portfolios or investors in private label securities, to the Government, would basically be a taxpayer bailout for both bank portfolios and private label investors. We believe this would be a very inefficient application of taxpayer money.

Sizing the Refinancing Opportunity

The Home Affordable Refinancing Program was initially rolled out on April 1, 2009. This program was designed to help GSE borrowers who have LTVs (loan to value ratios) greater than 80 refinance into another GSE mortgage. At the outset, the program was referred to by the industry as HARP 1.0, and included borrowers with LTV ratios of 80–125 who took out loans prior to June 1, 2009. It was initially hoped that this program would help 4–5 million borrowers. However, from April 1, 2009–February 28, 2012, only 1.12 million borrowers, a disappointingly low number, were aided by the program. As Government officials and market participants scrutinized the data, it became very clear that higher LTV, lower FICO borrowers were still refinancing much more slowly than their more creditworthy (lower LTV, higher FICO) counterparts. This is best illustrated by looking at the prepayment speeds on 2008-issued FNMA and FHLMC 4.5, 5.0, 5.5, and 6.0 passthrus during the period of low rates in late 2010, as shown on the left side of Exhibit 1 (next page). The lower coupon borrowers—the 4.0s and 5.0s—prepaid more rapidly than the higher coupons—5.5s and 6.0s. This counter-intuitive behavior, where mortgages with less incentive to refinance (less potential savings) were prepaying more rapidly, clearly reflected the difference in credit-worthiness between the coupons. *I.e.,* if two borrowers took out a mortgage at the same time, the less credit-worthy borrower would have had to pay more (a higher interest rate, translating into a higher coupon) for the mortgage. These differentials in borrower quality can be seen on the right side of Exhibit 1. For example, for the 2008 4.5s, 44 percent of borrowers are in the highest quality bucket—they have mark-to-market LTVs of =80 and a FICO of =750. However, only 14 percent of borrowers among the 2008 6.0s are in the highest quality bucket. By contrast, only 14 percent of the 2008 4.5s have an LTV >80 and a FICO <750, while the representation is 38 percent for the 6 percent coupon. In short—the higher coupon, more credit-impaired borrowers, who are more apt to default, were prepaying far less quickly than their non- credit impaired counterparts. The salient fact to bear in mind is that the borrowers that create the most risk for the GSEs, would benefit the most from a refinancing, and would benefit the taxpayers the most from a refinancing, were actually the least likely to get a refinance opportunity!

Exhibit 1: 2008 Vintage Snapshot



2008 Vintage Composition

		% Balance, by MTM LTV			
Cohort	**Orig. FICO**	**≤80**	**80 to 105**	**>105**	**Total**
4.5 2008	≥750 FICO	44	23	3	70
	<750 FICO	16	12	2	30
	Total	60	35	6	100
5.0 2008	≥750 FICO	32	25	5	62
	<750 FICO	17	17	4	38
	Total	49	42	10	100
5.5 2008	≥750 FICO	22	25	7	54
	<750 FICO	17	22	7	46
	Total	39	46	14	100
6.0 2008	≥750 FICO	14	23	8	46
	<750 FICO	16	27	11	54
	Total	30	50	19	100

Source: CoreLogic Prime Servicing Database, Fannie Mae, Freddie Mac, 1010Data, Amherst Securities

Armed with this information, the FHFA, Fannie Mae, and Freddie Mac were determined to “correct” the situation. On October 24, 2011, the FHFA, Fannie Mae, and Freddie Mac announced a series of HARP changes to allow the program to reach more borrowers. Effective December 1, 2011, the 125 LTV cap was lifted for new fixed rate loans, some “rep and warrant” features were relaxed (which also served to bring Fannie and Freddie more into line), and the program was extended for one more year to year-end 2013 to encourage banks to invest more in personnel and systems to ensure program success. For program eligibility HARP 1.0 required mortgages to be issued prior to the June 1, 2009; this cutoff date remained firmly intact. This revised program is often referred to as HARP 2.0.

It is useful at this point to take a step back and look at aggregate refinancing activity since HARP was introduced in April 2009. The FHFA, in their February 2012 Foreclosure Prevention and Refinance Report, noted that as of February 2012 the HARP program had cumulatively aided 1.12 million borrowers. (This refers only to refinances on mortgages with a mark-to-market (MTM) LTV >80, where the initial mortgage was issued before the 6/1/2009 cut-off date). In addition, another 1.98 million borrowers have taken advantage of streamlined refinance programs. These streamlined refinance programs essentially follow the HARP framework, and are targeted for borrowers with mark-to market LTVs =80, where the initial mortgage was issued before the 6/1/2009 cut-off date. (Both Fannie and Freddie had streamlined programs in place prior to the introduction of HARP. Fannie replaced theirs with a HARP look-alike when the HARP program was implemented in 2009. Freddie kept their streamlined program in place until early 2011.) In addition to the 1.12 million HARP refinances, and the 1.98 million streamline refis, there have been another 7.63 million refis, raising total activity from 4/1/2009 to 12/31/2011 to a total of 10.73 million borrowers.

Now let’s look forward. Exhibit 2 (below) sorts the universe of borrowers into groups. We classify borrowers first by whether they meet the HARP eligibility date (before June 1, 2009), then we sort according to mark-to-market LTV (the loan-to-value ratio based on valuing a home at today’s actual, realistic current market price). We then sort each group by whether the pay history would conform to that required by the GSEs to be eligible for a HARP refi (*i.e.,* no delinquencies in the past 6 months; no more than 1 delinquency in the past year). Finally, we sorted by whether the borrower is refinanceable or not. For simplicity, we assume a cut-off mortgage rate of 4.75 percent or higher for a 30-year fixed rate loan; 4.25 percent on a 20-year; 4 percent for a 15-year; and 3.5 percent for an ARM. Essentially, we assume the borrower needs to have an incentive of 50–75 bps to be considered in-the-money (for a refinancing); we use this to determine willingness to refinance. (Our results should be regarded as an upper bound; we do not account for borrowers or loans that may be ineligible as the property was always used as an investor property).

The numbers are quite interesting. There are currently 10.9 million borrowers who took out loans before the June 1, 2009, cut-off date, are eligible for a streamline refinancing based on pay history (no delinquencies in the past 6 months, no more than 1 in the past year) and have an incentive to refinance. There are another 3.3 million borrowers who are eligible for HARP 1.0 and HARP 2.0, and have an incentive to refinance. In addition, due to the expansion of the 125 LTV ceiling, HARP 2.0 allowed for another almost 700,000 eligible and incented borrowers.

Exhibit 2: HARP Eligibility—Dimensioning the Market

2009 Cutoff/LTV

HARP Cutoff	MTM LTV	Pay History	In-the-Money?	Count	Balance ($mm)	% Count	% Balance	
Pre-Cutoff	≤80	Poor History	OOTM	6,960	1,231	0	0	
			ITM	525,126	58,007	2	1	
		Good History	OOTM	317,711	70,846	1	2	
			ITM	10,897,863	1,130,254	41	27	Streamlined Refis
	80 to 125	Poor History	OOTM	5,823	1,086	0	0	
			ITM	282,173	46,613	1	1	
		Good History	OOTM	92,748	19,853	0	0	
			ITM	3,302,502	545,412	12	13	HARP 1.0/2.0
	>125	Poor History	OOTM	2,354	415	0	0	
			ITM	73,391	12,370	0	0	
		Good History	OOTM	9,197	1,653	0	0	
			ITM	690,957	114,135	3	3	HARP 2.0 with >125 LTV Eligiblity
Post-Cutoff	≤80	Poor History	OOTM	22,128	5,278	0	0	
			ITM	78,118	14,821	0	0	
		Good History	OOTM	2,664,985	607,812	10	15	
			ITM	4,788,185	877,881	18	21	Possible Expansion of Streamlined Refi
	80 to 125	Poor History	OOTM	6,567	1,538	0	0	
			ITM	51,519	10,971	0	0	
		Good History	OOTM	671,407	157,449	3	4	
			ITM	2,052,185	429,480	8	10	Possible Expansion of HARP 2.0
	>125	Poor History	OOTM	39	7	0	0	
			ITM	1,418	282	0	0	
		Good History	OOTM	1,190	180	0	0	
			ITM	28,539	5,455	0	0	Possible Expansion of HARP 2.0

Source: CoreLogic Prime Servicing Database, Fannie Mae, Freddie Mac, 1010Data, Amherst Securities

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If we look after the cut-off date, there are another 4.8 million borrowers who have LTVs less than 80, a good credit history and are incented to refinance. These borrowers are not eligible for any streamlined program. However, given that 71.1 percent of the refinancings during the 4/1/2009–12/31/2011 period came from this borrower group (7.63 million nonstreamlined refis/10.73 million total refis), it is clear that many of these borrowers will be able to refinance anyway. There are 2.1 million post cut-off borrowers with strong pay histories who are between 80–125 LTV and another 29K borrower who are over 125 LTV.

There are two separable issues. The first is what can be done to increase the penetration of the borrowers that HARP is meant to reach. The second is whether the scope of the HARP program should be increased. We feel that there are a number of definitive steps that should be taken to increase the penetration of the HARP program, and our feelings are much more mixed on increasing the scope of the program.

Allowing Different Servicers To Refinance on the Same Conditions as Same Servicers

We have long argued that the single most effective change that can be made to the HARP program is to encourage competition by allowing different servicers to refinance a borrower on the same terms as the current servicer is able to do. We believe this would create many more refinances for the targeted HARP-eligible population, and those refinances would be done at a considerably better rate to the borrower.

Under HARP 2.0, for both Fannie and Freddie, the current servicer is released from all borrower representations and warrantees on both the old loan and the new loan if three conditions are met:

- The borrower has been current for the past 6 months and has no more than one delinquency in the past year.
- Employment (or a source of nonemployment income) must be verified. Note that this is not a verification of income, just a verification that there is a source of income.
- The borrower must meet the net benefit provisions of a refinance (it must reduce his payment, term, or move him into a more stable product).

By contrast, different servicers are required to gather more information on the borrower and are required to take the rep and warrant risk on the new loan. For Fannie, there is a maximum debt-to-income ratio in Desktop Underwriter (Fannie's automated underwriting program) and there are requirements for the servicer to gather income information. For self-employed borrowers, a Federal tax return is required. For Freddie Mac, a different servicer refi requires that the borrower have no delinquencies in the past year (a same servicer refi allows one). In addition, the servicer must do a full underwrite, including a current pay stub, W-2 forms for the last 2 years, verbal verification of employment, as well as verification of assets to show the funds are available to close. Since the servicer is taking the rep and warrant risk on the new loan, most of the servicers we have talked to require the full underwrite on Fannie loans as well as Freddie loans.

To summarize the comparison between same and different servicer refis under HARP 2.0—different servicer refis require servicers to gather more information about the HARP 2.0 borrower than would be the case under a same servicer refinance. Moreover, under different servicer refis, the servicer is not released from borrower reps and warrants on the new loans. We also believe same servicers have greater access to Freddie Mac's Home Value Explorer and Fannie Mae's Automated Valuation Model, which entitles the servicer to greater relief from the property reps and warrants. Thus, same servicers have a huge advantage in doing refinancings. Essentially, HARP has a design flaw that eliminates put-back risks, to the detriment of the GSEs, while simultaneously prevents the borrower from obtaining a competitive rate.

The Menendez-Boxer Discussion Draft contains a much smarter method to handle the rep and warrant risk—allow different lenders/servicers to enjoy the same rep and warrant relief as is currently enjoyed by the current lender/servicer. Under that discussion draft, it does not matter who does the refinance—neither the current nor a different lender/servicer would have any put-back risk on the new loan, and the put-back risk on the old loan is waived. Thus, the GSEs are in the same position they are in now, but the borrower is able to obtain a competitive rate as there is competition to extend the new loan.

We have noted that as the program is currently structured, a same servicer refinancing is hugely advantaged, allowing the servicers to charge the borrowers a higher rate. The benefits of this accrue disproportionately to the top 3 servicers, who service well over 50 percent of the eligible loans. In actuality, a same servicer refinancing of a HARP loan should actually be less costly to the borrower than a non-advantaged refinancing because: (1) the servicer has less put-back risk, (2) less information collection is necessary, and (3) investors are willing to pay more to obtain these so called "Making Home Affordable" (MHA) loans, as these loans have limited ability to refinance again. Thus, the servicer is able to capture a specified pool pay-up on these loans. (The borrower has limited ability to refinance again; if his LTV is >95 he would be unable to refinance even with mortgage insurance. If his LTV is 80–95, he would need to take out mortgage insurance at current market levels, and the costs of this insurance would be high.) The lack of competition has also exacerbated the capacity constraints in the system, as the most capacity constrained lenders are the only ones that can effectively refinance borrowers with LTV >80.

To give a hypothetical illustration of how profitable this operation is to a same servicer, let us assume the same servicer originates a 4.5 percent loan to a borrower with a 95–100 LTV. (This rate is about 35 basis points above the Freddie Survey Rate, and is typical of the rate charged to a borrower in this LTV bucket). The loan would typically have a 25 bps guarantee fee (ignoring loan level pricing adjustments), and the servicer would generally retain 25 bps of servicing. This retained servicing is worth $1.25 per $100 par to the servicer. Thus, this loan could be sold into a Fannie Mae pool, bearing a 4.0 percent coupon. This would command a price of $105.58 per $100 par in the secondary market. In addition, the investor would pay another $1.15 for a pool consisting of refinance loans in the 95–100 LTV bucket, as the investor is betting that it is more difficult for these loans to refinance. Thus, the proceeds to the servicer are $107.98 ($105.58 +$1.25 +$1.15) for $100 in debt; assuming a $0.50 origination charge, the servicer is making $7.48 on this loan. Thus, on a $200,000 loan, the total profitability to the servicer is $14,960. To put this into perspective, the profitability of mortgage originations over the past decade (taking into account variable but not fixed costs) has averaged in the neighborhood of 1–2 points or $2,000–$4,000 on a $200,000 loan.

Loan Level Pricing Adjustments, Appraisal Fees, Bank Costs

Thus far in our example, we have ignored the loan level pricing adjustments charged by Fannie Mae and Freddie Mac. These are capped at 0.75 points (0.75 percent of the loan amount), or $1,500 on a $200,000 loan under HARP 2.0. (The loan level pricing adjustments are capped at 2.0 points for 30-year non-HARP, streamlined refis and uncapped for refis of loans originated post 6/1/2009). And if the loan had needed an appraisal this would cost another $500–$750. Compare this to the $14,960 the originator/servicer is making because the borrower is paying above market rates. Yes, we are in favor of eliminating loan level pricing adjustments and all appraisals in situations where Fannie and Freddie already have the risk on the mortgage, but we believe the elimination of these items would result in a very marginally lower rate to the borrower. To significantly reduce the frictions in the system, it is necessary to recognize the fact that the largest banks have been given the opportunity to extract monopoly profits on HARP refis, and they have taken advantage of this. If you want to lower the cost of a refinancing to the borrower, allow different servicers to refinance on the same terms as the same servicer.

Program Inconsistencies Between Fannie and Freddie

The Menendez-Boxer Discussion Draft would require FHFA to issue guidelines requiring that Fannie and Freddie make their refinancing programs consistent to ease lender compliance (especially with respect to loans below 80 LTV and to closing cost policies). We think this is a good idea.

The HARP program only covers loans with LTV >80, issued before the cut-off date. Fannie and Freddie were entitled to promulgate their own rules for loans with LTVs =80. Fannie and Freddie both decided to allow the same streamlined refinancing procedure for loans =80 LTV issued before the cut-off date as applies to HARP loans. However, Fannie opted to waive the lenders' rep and warrant risk on same servicer refinances, whereas Freddie opted not to do so. Thus, for Freddie loans =80 LTV, there is no same servicer rep and warrant relief on the new loan. We have hypothesized that Freddie servicers would be incented to refinance the HARP 2.0 borrowers first, before their lower LTV counterparts, as they are able to shed the rep and warrant risk on the old and new loan. In any case, this is illogical and confusing to lenders.

There is also a small difference in the treatment of closing costs that should be made uniform. Fannie refinancings allow for the pay-off of the first lien mortgage, the financing of closing costs and no more than $250 cash to the borrower. Freddie refinancings on >80 LTV loans are slightly less generous, capping closing costs at 4 percent of the current unpaid principal balance of the loan or $5,000, whichever is less, and limiting the cash to the borrower to $250. Freddie refinancing on =80 LTV loans are slightly more generous than Fannie, allowing for all closing costs to be financed (as with Fannie); while permitting up to 2 percent of the loan amount or $2,000, whichever is less, to be taken as cash to the borrower.

Automatic Transfer of Mortgage Insurance and Second Liens

The Menendez-Boxer Discussion Draft provides for the automatic transfer of mortgage insurance and second liens. More precisely, it requires that second liens and mortgage insurance be automatically portable under the same terms to a newly refinanced loan if the second lien holder or mortgage insurer wants to sell loans to the GSEs. While we are in favor of these items, we do not believe the second lien issue has been a major obstacle to refinancing. We also believe that most of the mortgage insurers have voluntarily agreed to make the policies fully portable; it is our understanding that United Guaranty is the only hold-out.

It is important to realize that a refinancing on a first mortgage makes the second lien more valuable, as it makes the costs of home ownership more affordable, and hence makes the borrower less likely to default. Thus, the second lien holder is generally happy to resubordinate his interest. And the first lien holder rarely has a problem locating the second lien holder. In fact, our work has shown that, controlling for other factors, there was only a marginal difference in the prepayment speeds between borrowers who had a second lien and those that did not. Nonetheless, requiring subordination to assure continued GSE access seems reasonable, and would help at the margin.

Mortgage insurers will generally treat a refinance as a modification of the existing policy in order to port the policy to the new loan. In a same servicer refinancing, the reps and warrants made by the originator of the original loan to the MI provider remain in effect. However, this is only possible when the existing servicer refinances the loans; in a different servicer refi the risk to the MI provider is increased, as the MI provider loses the reps and warrants on the original loan. Under HARP 1.0, if there was a servicer change, some MIs required a new MI certificate at market rates, others charged a surcharged or imposed other costs, and others required increased documentation. During the negotiations for HARP 2.0, most of the major mortgage insurers voluntarily agreed to allow the insurance policies to be fully portable, in spite of the fact that it is not in their economic interest to do so. We are told there was only one hold out, United Guaranty, an AIG subsidiary, which imposes a surcharge on a different servicer refis. We believe that all mortgage insurers should allow for full portability, even in the event of a servicer change.

Moving the Cut-Off Date Until 6/1/2010

The Menendez-Boxer Discussion Draft requires the cut-off date be moved from 6/1/2009 to 6/1/2010. This move was suggested because the latter date was approximately when 30-year fixed rates loans dropped below 5 percent, and would allow borrowers whose loans were originated at higher rates to take advantage of refinancing.

If we use the same framework as in Exhibit 2, it would raise the number of pre-cut off borrowers (=80, 80–125, >125) who have good pay history and are in-the-money (have an economic incentive to refinance) from (10.9 million, 3.3 million and 700 thousand) to (13.0 million, 4.2 million and 700 thousand). Therefore the number of post-cut off borrowers (=80, 80–125, >125) who have a good pay history and are in-the-money drops from (4.8 million, 2.1 million, 30 thousand) to (2.6 million, 1.1 million, 18 thousand).

We believe that the streamlined refinance program should be expanded for borrowers with LTVs =80, with or without rep and warrant relief. (Providing rep and warrant relief is expensive for the GSEs.) This action alone would increase the number of eligible borrowers by 2.1 million. However, these are borrowers who most likely would have been able to refinance anyway, this just makes the refinancing process easier. Would these borrowers be “crowding out” the pre-cutoff borrowers who need the help more? The answer to this is unclear. It might divert some resources, at the margin, but would allow for many more refinances.

For HARP loans, it is a much harder call; we have very mixed feelings about the proposal and are on balance negative. We recognize that it will give an extra 900 thousand borrowers the opportunity to refinance, and these are borrowers who would otherwise not be able to. This benefit has to be weighed against the “covenant with investors.” The FHFA has repeatedly reiterated the importance of the cut-off date. The date was also used as the FHA cut-off; the FHA decided to roll-back the Mortgage Insurance Premium for refinancing loans originated before the cut-off date. Investors have relied upon that date and developed a series of pay-ups on mortgages with this refinance friction. Changing the date would be very disruptive to this covenant. The Agency mortgage market is wide and deep, regarded as the second most liquid market in the world behind the U.S. Treasury market. We believe that "breaking the covenant" with investors would be very damaging to the health of this market; if the date is moved once, market participants (investors, borrowers, and originators/servicers) will assume it will be moved again.

This could, in turn, create a set of adverse incentives. If originators/servicers believe that an expansion of HARP 2.0 could allow reps and warrants to be stripped off future loans, it could entice originators to make more questionable loans, and then, a few months later, target those loans to get rep and warrant relief.

We believe there is a continuum. Changing the cut-off date for streamlined refinancings of loans with LTV =80 would be minimally disruptive. If there is a groundswell of support to move the HARP date forward by 1 year, we would suggest that it be done for purchase loans only. Since allowing re-HARPing, and changing the dynamics of specified pool trading would be extremely disruptive.

Increasing Homeowner Awareness

The Menendez-Boxer Discussion Draft would require the GSEs to send eligible borrowers an official notice that they are eligible for refinancing at a lower rate, with an indication as to how much they would save each month. The notice would include referrals to Internet portals where the borrower could determine the type of loan they have, and get quotes from competing lenders. This is simply a notice to increase homeowner awareness. It is hard not be in favor of this type of action.

Conclusion

HARP 1.0 clearly fell short of expectations. The verdict on HARP 2.0 is still out. However, we believe that HARP 2.0 (for borrowers >80 LTV, loans made before the cut-off date) and current streamlined refinancing programs (for borrowers less than 80 LTV, loans made before the cut-off date) could be much more effective if different servicer refinances were to be permitted on the same terms as the current servicer. We believe that promoting competition is the single most important action that can be taken to increase the impact of the program. It is also the single most powerful action that can be taken to decrease the mortgage rates and fees paid by the borrower.

We are very much in favor of a consistent set of guidelines for Fannie and Freddie in order to ease lender compliance. We would like to see pre-cut off Freddie loans with LTVs =80 LTV receive rep and warrant relief, consistent with pre-cut off Freddie loans with LTVs >80 and all pre-cut off Fannie loans. We would also like to see consistency on the financing of closing costs.

Other actions, such as eliminating loan level pricing adjustments and appraisals, are relatively minor. Borrowers are paying high fees because the banks are making oligopoly profits. These costs can be lowered by promoting competition. Similarly, requiring resubordination of second liens and portability of all mortgage insurance policies are nice features, but will only help at the margin. It is in the economic interest of second lien holders to resubordinate. Most mortgage insurers have already agreed to full portability.

We would like to see more penetration of the existing HARP program by promoting competition and making borrowers aware of their refinancing options before expanding the eligibility by moving the cut-off date forward by 1 year. If the cut-off date were to be changed, it can most easily be done for borrowers with LTVs =80, as there was never a "covenant with investors" on these loans. If it is to be done on HARP loans, we would suggest doing it on purchase only loans. Allowing re-HARPing would be very detrimental to a well functioning market.

Thank you very much for the opportunity to testify on this important set of issues.

PREPARED STATEMENT OF ANTHONY B. SANDERS

PROFESSOR OF FINANCE, GEORGE MASON UNIVERSITY SCHOOL OF MANAGEMENT

APRIL 25, 2012

Senator Menendez and distinguished Members of the Subcommittee, my name is Dr. Anthony B. Sanders and I am the Distinguished Professor of Finance at George Mason and a Senior Scholar at the Mercatus Center. It is an honor to testify before this Subcommittee today.

The proposal to be discussed at this hearing is the expansion of affordable refinancing of mortgages held by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation. The expansion represents changes in HARP that eliminates Loan Level Price Adjustments (LLPAs), eliminates representations and warrants for cross servicer refinancing and appraisal streamlining and orders Fannie Mae and Freddie Mac to contact borrowers directly about HARP opportunities.

It can be argued that Fannie Mae and Freddie Mac are resisting loan modification to protect their retained portfolios. Hence, fewer borrowers are able to refinance their mortgages. This proposal would remove the safeguards from HARP and encourage more refinancing by borrowers.

Even so, I would encourage a detailed examination of the projected benefits to consumers and costs to American taxpayers of these proposed changes by FHFA, the Congressional Budget Office and The Federal Reserve Board before you proceed. Administrations and Congress have undertaken large policy changes in housing and housing finance (particularly since 1995) and these changes had unintended consequences. Removing the safeguards may be appropriate, but we need detailed studies of the 14 Federal Government loan modification programs and how they interact with each other and The Federal Reserves' monetary easing strategy.

Lessons From Jurassic Park

The Clinton Administration embarked on a well-intended strategy of increasing the home ownership through the expansion of credit to lower-income households. The first leg in the "housing finance trifecta" was the *National Home Ownership Strategy: Partners in the American Dream* (1995).[1]

> The partnership should support efforts to increase local lender awareness and use of the flexible underwriting criteria established by the secondary market, FHA, and VA.

The result was

- A focused effort to target the "low income" borrower through extensive outreach
- The drastic reduction of minimum downpayment levels from 20 percent to 0 percent

And the "partners" for this "Great Leap Forward" in home ownership included Fannie Mae and Freddie Mac who are now in Government conservatorship under the Federal Housing Finance Administration.

The second leg in the "housing finance trifecta" was President Clinton's desire to set capital gains tax on housing to zero (1997).

> Tonight, I propose a new tax cut for home ownership that says to every middle-income working family in this country, if you sell your home, you will not have to pay a capital gains tax on it ever—not ever. —*President Bill Clinton, at the 1996 Democratic National Convention*

With the first two legs of the housing finance trifecta, the Clinton Administration was encouraging riskier low downpayment mortgages coupled with no capital gains tax on housing, a recipe for a massive increase in housing prices. This coincided with an explosion of GSE debt (mostly Fannie Mae and Freddie Mac) to fund the required mortgage debt expansion (*see,* Figure 1).

The third leg of housing finance trifecta was the repeal of the Glass-Steagall Act of 1933. Deregulation per se is not damaging to the economy (and is often beneficial), but the shock of such a major regulatory change in conjunction with two large shocks in housing policy make it extremely difficult to predict the outcomes and unintended consequences. This is especially true when the Clinton Administration insisted that no merger may proceed if any of the financial holding institutions, or affiliates thereof, received a "less than satisfactory *[sic]* rating at its most recent Community Reinvestment Act exam," essentially meaning that any merger may only go ahead with the strict approval of the regulatory bodies responsible for the CRA. The Clinton Administration stressed that it "would veto any legislation that would scale back minority-lending requirements."[2]

Taken together, the trifecta clearly was a major policy change to an extremely complex economy. I am unaware of any research at HUD from their Policy, Development and Research group examining how the three legs would work together and what the joint intended and unintended consequences would be. This type of major policy shift can have Jurassic Park type of unintended consequences for the housing market, the mortgage market and borrowers. The Clinton trifecta ultimately resulted in the taxpayers being eaten by the monster that was created (as in $7.4 trillion in household equity being lost and millions of borrowers in default or foreclosure).

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[1] *http://confoundedinterest.wordpress.com/2012/04/20/parsons-blames-glass-steagall-repeal-for-crisis-but-glass-steagall-was-only-13rd-of-clintons-housing-trifecta/*

[2] *See, http://partners.nytimes.com/library/financial/102399banks-congress.html.*

In summary, I strongly believe that any change in policy for the housing and mortgage market must be accompanied by sound theory and econometric models of the policy impact. If we don't have the appropriate theory or data, we shouldn't do it. It will simply unleash more taxpayer-eating dinosaurs on the economy.

The 14 Federal Government Loan Modification Programs

There are currently 14 Federal Government loan modification programs:

- Home Affordable Modification Program (HAMP)
- Principal Reduction Alternative (PRA)
- Second Lien Modification Program (2MP)
- FHA Home Affordable Modification Program (FHA–HAMP)
- USDA's Special Loan Servicing
- Veteran's Affairs Home Affordable Modification (VA–HAMP)
- Home Affordable Unemployment Program (UP)
- Second Lien Modification Program (2MP)
- Home Affordable Refinance Program (HARP)
- FHA Refinance for Borrowers in Negative Equity (FHA Short Refinance)
- Treasury/FHA Second Lien Program (FHA2LP)
- Home Affordable Foreclosure Alternatives (HAFA)
- Housing Finance Agency Innovation Fund for the Hardest Hit Housing Markets (HHF)
- Attorneys General Settlement for Mortgage Servicers (AGS)

We anxiously await the results on HARP 2.0 and the Attorneys General Settlement has yet to kick in. In addition, there is pressure from the Administration and Congress on having FHFA approve principal reductions for the GSEs.

The Evidence so Far

The U.S. Department of Treasury provides us with a limited summary of the magnitude and effectiveness of HAMP and other programs.[3] But the number that stands out is that approximately 25 percent of modified mortgages go into redefault after 1 year.[4] True, the data is from 2010, but the trend for most recent modifications shows the same daunting trend.

According to the Mortgage Bankers Association (MBA) Mortgage Refinancing Index, mortgage refinancing applications have been increasing since the beginning of 2011 (*see,* Figure 2).[5] With historically low mortgage rates, unprecedented intervention by the Federal Reserve, and the continued European debt crisis that is driving investors into the U.S. Treasury market.[6] We are in unchartered territory on Fed intervention and mortgage rates and we have to be careful not to create more unintended consequences that could devastate American taxpayers.

While this proposed expansion of HARP does not include principal write downs, bear in mind that it is virtually impossible to accurately predict the outcomes of HAMP and HARP if FHFA agrees to principal reductions AND the Attorneys General Settlement (which includes principal reductions). Before proceeding, I suggest a study from the Congressional Budget Office, FHFA and The Federal Reserve on the joint effects of all programs kicking in together.

I appreciate the difficulties faced by FHFA and others about predicting the success rates for HAMP and HARP. We simply do not have adequate data to make a sensible recommendation, particularly with regard to principal write downs. Reuters made an attempt to model principal reductions from Fannie Mae and Freddie Mac and estimated they could cost taxpayers $128 billion.[7] This is a much bigger number than FHFA has indicated ($2.1 billion) and far more than the available TARP funds ($41.7 billion). Likewise, we can only guess at the final success of HARP and the Attorneys General Settlement. And there is the moral hazard of principal reduc-

[3] *See, http://www.occ.treas.gov/publications/publications-by-type/other-publications-reports/index-mortgage-metrics.html.*

[4] *See,* Table 25 of the most recent OCC Mortgage Metrics Report. *http://www.occ.treas.gov/publications/publications-by-type/other-publications-reports/mortgage-metrics-2011/mortgage-metrics-q4-2011.pdf*

[5] In the short run, HARP 2.0 is improving bank gain-on-sale margins *http://www.housingwire.com/news/harp-20-improving-bank-gain-sales.*

[6] *See, http://confoundedinterest.wordpress.com/2012/04/18/mba-refinance-applications-up-13-5-purchase-applications-down-11-2-harp-at-32-of-refi-volume/.*

[7] *See, http://confoundedinterest.wordpress.com/2012/04/18/reuters-uber-cool-mortgage-write-down-calculator-loss-to-taxpayers-of-128-billion/.*

tions that must be considered in any analysis (that is, will borrowers fall behind in their payments simply to qualify for a mortgage write down?).

Please exercise extreme caution and wait until we have more data as to the effectiveness of the collected efforts of the 14 loan modification programs AND the principal reduction proposals for FHFA. And bear in mind that we only have data on loan modifications since 2008 and virtually no data over a long period (4 years) on principal reductions.

Section 4: Having Fannie Mae and Freddie Mac Contact Borrowers Directly

Section 4 requires that Fannie Mae and Freddie Mac contact borrowers directly about the possibility and benefits of a mortgage modification. In addition, Fannie Mae and Freddie Mac must post relevant refinancing information on their Web sites (*see,* Table 1 for examples of existing Web sites).

Of course, this is an unprecedented change from current procedures. Given the plethora of media and links on bank Web sites and Government Web sites concerning loan modifications, I can't see how any borrower interested in a loan modification could possibly not be aware of the possibilities. And again, the lessons from Jurassic Park teach us that large changes in Government policy can produce unintended consequences (14 Government mortgage modification programs PLUS individual bank/servicer/investor private mortgage modification programs). We must be careful to avoid a firestorm of unintended consequences.

Should We Have Non-GSE Banks/Servicers Remove the Safeguards as Well?

I am on record above stating that careful analysis of the joint impact of the 14 Federal Government loan modification programs should be undertaken before any more changes are made (or new programs are created). So, my answer is no, at least until the appropriate studies are performed.

At some point, the collective impact of these programs could drive our banks into bankruptcy. This possibility must be included in the analysis before any further steps are taken.

Another reason that I am opposed to removing the loan modification safeguards is that the banks and investors are private market concerns, not private market concerns in conservatorship. Once again, this could be a Jurassic Park moment where we signal to the world that the U.S. will pass laws at will to alter contracts and dramatically change investor expectations.

In summary, I encourage the Senate to request detailed studies on the impact of this legislation before proceeding further. I strongly suggest:

1. The cost of each proposed change to taxpayers and the expected decline in default and redefault rates.
2. How these changes will interact the 14 existing loan modification programs from the Federal Government and the proposed principal write down proposals for Fannie Mae and Freddie Mac.
3. Ignore private market estimates of the costs and benefits if the analysis comes from a firm that benefits from any of these proposed changes or has ties to the Federal Government.

Let us be wary of creating another Jurassic Park policy change. We are in unchartered waters for housing finance and Federal Reserve policies and any further changes should be enacted with extreme caution.

Thank you for the opportunity to testify.

Figure 1. Agency and GSE Debt Growth

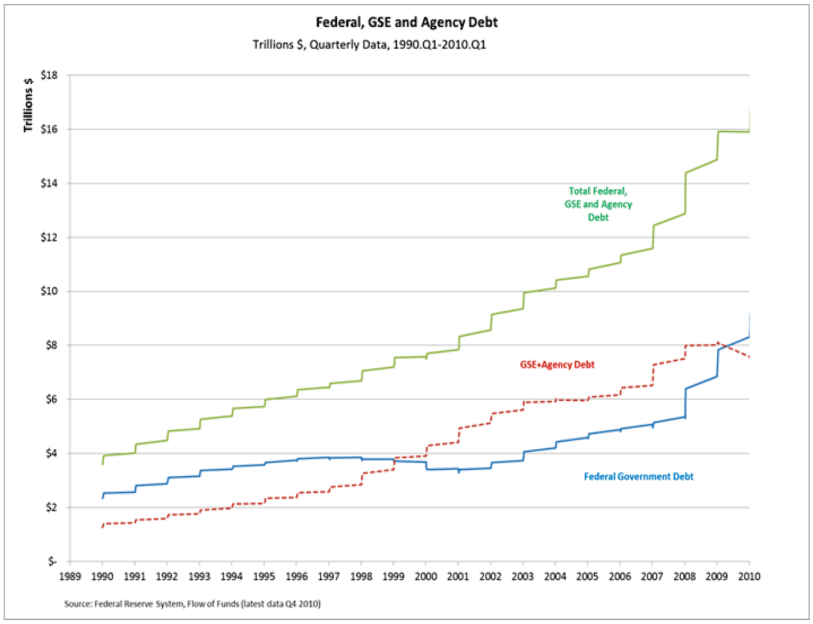

Figure 2. Recent Mortgage Refinancing Applications Index (Source: Mortgage Bankers Association)

Table 1. Examples of Web-based HAMP and HARP Information

Treasury and HUD
http://www.makinghomeaffordable.gov/pages/default.aspx

Bank of America
http://homeloanhelp.bankofamerica.com/en/home-affordable-modification.html?cm_mmc=Cre-ForeclosureAlternative-_-Google-PS-_-bank%20of%20america%20loan%20modification-_-Loan%20Modification

Wells Fargo
https://www.wellsfargo.com/mortgage/loan-programs/special-loans

Fannie Mae
http://www.fanniemae.com/loanlookup/

Freddie Mac
http://www.freddiemac.com/singlefamily/makinghomeaffordable.html

Office of the Comptroller of the Currency
http://www.occ.gov/news-issuances/consumer-advisories/2011/consumer-advisory-2011-1a.pdf

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PREPARED STATEMENT OF MICHAEL CALHOUN

President, Center for Responsible Lending

April 25, 2012

Good morning Chairman Menendez, Ranking Member DeMint, and Members of the Subcommittee. Thank you for inviting me to testify at today's hearing on efforts to help homeowners refinance their mortgages through responsible streamlined refinance policies.

I am President of the Center for Responsible Lending (CRL), a nonprofit, nonpartisan research and policy organization dedicated to protecting home ownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, a nonprofit community development financial institution. For 30 years, Self-Help has focused on creating asset-building opportunities for low-income, rural, women-headed, and minority families, primarily through financing safe, affordable home loans. In total, Self-Help has provided over $6 billion of financing to almost 70,000 low-wealth families, small businesses and nonprofit organizations in North Carolina and across America.

In my comments today, I will highlight the following points:

- First, time is still of the essence to improve the housing market and prevent foreclosures, because the foreclosure crisis is far from being over. Research completed by CRL shows that the foreclosure crisis is around the halfway point for borrowers with loans originated during 2004–2008.
- Second, foreclosure prevention efforts, including initiatives to help homeowners refinance their mortgage, are necessary and still needed. Access to the Home Affordable Refinance Program (HARP) is particularly important for underwater homeowners and those homeowners still in a mortgage with harmful features—including hybrid adjustable rate mortgages (ARMs) and mortgages with high interest rates. Opening up the refinance market to millions of American families paying above market interest rates and currently prevented from refinancing is a commonsense step that will prevent foreclosures, improve homeowners' financial situation and help the economy.

- Third, while the improvements made in HARP 2 are significant, more should still be done to increase refinancing access to underwater borrowers and homeowners with mortgages that have harmful features. This includes taking steps to increase lender competition, further streamline the refinance process and coordinate HARP outreach with other foreclosure prevention programs. Additionally, CRL supports Congressional action to expand refinancing opportunities through FHA for borrowers with mortgages that are not owned or guaranteed by the GSEs or FHA.

The U.S. Is Not Yet Halfway Through the Foreclosure Crisis

I'd like to begin my comments today by putting the current status of the housing market in context. Last year, the Center for Responsible Lending published research showing that the Nation is not yet halfway through the foreclosure crisis. CRL's research, which is detailed in our *Lost Ground* report, shows that for mortgages made during the height of the lending boom that occurred between 2004 and 2008, 8.3 percent of these loans were at least 60 days delinquent or in the foreclosure process as of February 2011. This represents another 3.6 million households that could possibly lose their homes. This is on top of the 6.4 percent of mortgages—totaling 2.7 million households—identified in CRL's study that have already gone through foreclosure. Because our research focused only on 2004-2008 originations, these estimates are likely to be on the conservative side. For example, Moody's has reported the completion of 5 million foreclosures or short sales.

In addition to highlighting the scope of the ongoing foreclosure crisis, CRL's research also makes important findings about who is likely to be affected by foreclosure. Our *Lost Ground* research confirms that higher foreclosure rates and serious delinquency rates are linked to mortgages with one of the following characteristics: having been originated by a mortgage broker, containing hybrid or option ARMs, having prepayment penalties, and featuring high interest rates (subprime loans). Homeowners with mortgages that have one of these features are much more likely to be seriously delinquent and at risk of foreclosure than homeowners in a 30-year fixed-rate mortgage without a prepayment penalty.

CRL's analysis in *Lost Ground* also confirms that foreclosures and mortgage delinquencies continue to have a disproportionate impact on African American and Latino borrowers. This disparity persists when comparing borrowers with higher incomes. CRL's research also demonstrates that African American and Latino borrowers were much more likely to receive mortgages with harmful features as described above. For example, African American and Latino borrowers with FICO scores above 660 were three times as likely to have a high interest rate mortgage than white borrowers in the same credit range.

The research published in *Lost Ground* is CRL's latest effort to document the harmful impact of predatory and subprime lending. In fact, this research builds on and updates CRL's 2006 study entitled Losing Ground, which estimated that predatory lending would lead to approximately 2.2 million foreclosures of subprime mortgages. While CRL correctly predicted a likely foreclosure crisis, the number of foreclosures has unfortunately been much larger than forecast, in part because the crisis spread beyond the subprime market and into the broader housing market.

As homeowners and communities struggle with ongoing foreclosures, we encourage Members of this Subcommittee to continue all efforts to find solutions that help families stay in their homes and prevent as many foreclosures as possible.

Supporting Mortgage Refinancing Is a Needed Policy Tool To Avoid Foreclosures and Help Homeowners Obtain Less Expensive and More Stable Mortgages

Interest rates are currently at historic lows, but many homeowners who stand to benefit from these low rates have not refinanced their existing, higher-rate mortgage. Making refinancing more accessible for underwater homeowners and those homeowners in mortgages with harmful features should be an essential component of preventing foreclosures.

Millions of families across the country have seen the value of their homes plummet over the last 5 years. According to the Fiserv Case-Shiller house price index, housing prices have fallen by one-third since the first quarter of 2006, and the statistics released yesterday show that the housing market is still struggling. In the years leading up to the housing market collapse, homeowners took out mortgages while home prices were increasing. Unsustainable lending driven by Wall Street investment bank demand for risky mortgages regardless of whether borrowers could afford the loans fueled the housing bubble. The subsequent drop in housing prices is a market price correction of the housing bubble that has harmed current homeowners through no fault of their own.

Decreased home prices have created complications for many homeowners trying to refinance their mortgage. Homeowners have lost over $7 trillion in home equity since the housing market collapse, and approximately 11 million homeowners are now estimated to be underwater on their mortgage, meaning that their mortgage balance is greater than the value of their home. As a result, many of these homeowners have been unable to refinance their mortgage because they now have a high loan-to-volume (LTV) ratio well above standard underwriting requirements.

Racial and ethnic differences in refinancing rates are a less-discussed aspect of this issue, but an important one to examine. Home Mortgage Disclosure Act (HMDA) data show that while the number of refinance applications for Asian and non-Hispanic white borrowers increased between 2008 and 2010, the number of refinance applications for African American and Latino borrowers actually decreased. In addition, CRL analysis shows that among borrowers current on mortgage payments through February 2011, African American and Latino borrowers remained more likely to be paying toward a high-interest (subprime) loan than Asian and non-Hispanic white borrowers. While not conclusive, these data suggest that many African American and Latino borrowers would benefit from refinancing at today's historically low interest rates, but that there remains significant frictions in the refinance market that have prevented them from doing so.

The Federal Housing Finance Agency's announcement last year to expand HARP to all underwater borrowers was a strong step in the right direction. The initial HARP program was limited to borrowers with a maximum LTV of 125 percent, and the revisions made in "HARP 2" have removed this high-LTV restriction. HARP 2 program changes went into effect on December 1, 2011.

The changes in HARP 2 have the potential to help underwater borrowers and borrowers in mortgages with harmful features gain better access to refinancing opportunities. To date, the majority of borrowers entering into a HARP refinance fall between 80–105 percent LTV. Since its inception in 2009 through February 2012, more borrowers with an LTV between 80–105 percent benefited from HARP refinances (1.01 million) than underwater borrowers with an LTV above 105 percent (110,000). However, progress is being made with the improvements in HARP 2: more borrowers with an LTV above 105 percent refinanced under HARP in January and February 2012 than in any prior month.

Further Improvements to HARP 2 Should Be Designed To Maximize Participation by Underwater Homeowners and Those Homeowners Still in a Mortgage With Harmful Features

While the changes implemented in HARP 2 are very positive, we believe that FHFA should take additional steps to expand access to streamlined refinances of mortgages owned or guaranteed by Fannie Mae or Freddie Mac. There is an urgent need to prevent as many foreclosures as possible, and CRL supports changes that will maximize the participation of underwater borrowers and those with mortgages that have harmful features. Expanded access to streamlined refinances—along with principal reduction in certain circumstances, principal forbearance, and mortgage modifications—is an important part of the solution.

Although FHFA has the authority to implement most of the suggestions detailed below, in the meantime we also believe that the Menendez-Boxer Discussion Draft would go a long way to further improving borrower access to streamlined refinances.

First, CRL supports efforts to increase competition in offering HARP refinances, which would result in better pricing and greater access to refinancing opportunities. One way to accomplish this goal is by putting servicers on par with one another regarding the waiver of representations and warranties liability. Frequently called "reps and warranties," these statements require servicers to buy back a mortgage if it later falls short of the characteristics promised when it was originated. As Laurie Goodman has highlighted in her research, servicers participating in HARP currently have reduced reps and warrants liability if they are refinancing a mortgage already in their servicing portfolio. However, servicers taking on a new mortgage to refinance maintain full reps and warranties liability. Ms. Goodman and her colleagues have persuasively argued that this differential treatment reduces competition and, therefore, increases the cost of HARP refinances.

Second, expanding HARP to all borrowers—regardless of LTV ratio—would likely have several benefits. One benefit would be further streamlining the refinance process by eliminating differences between Fannie Mae and Freddie Mac's versions of HARP. It also would allow borrowers who don't reach 80 percent LTV on their first mortgage but have a combined LTV above 80 percent when factoring in a second mortgage to qualify for HAMP refinances. This would put these borrowers on par with borrowers over 80 percent LTV on a first mortgage alone. Lastly, it would allow lower LTV borrowers who are unable to access this market to actually obtain a refinance and at a lower cost.

Third, the Menendez-Boxer Discussion Draft language concerning resubordination of second liens would also contribute to streamlining the refinance process for these borrowers.

In addition to the Menendez-Boxer Discussion Draft language concerning outreach to eligible borrowers, CRL encourages Fannie Mae, Freddie Mac and FHFA to make every effort to coordinate their HARP outreach efforts with other Federal agencies administering housing initiatives. HARP is one part of a broader list of foreclosure prevention initiatives, including the Independent Foreclosure Review tied to the April 2011 Consent Orders between the banking regulators and mortgage servicers; the Attorneys Generals and Administration settlement involving refinancing and principal reduction; FHA refinancing initiatives; and mortgage modifications through HAMP. Coordinated outreach will help reach borrowers possibly eligible for HARP or another program.

Finally, we support the Administration's proposal to pay the closing costs of borrowers who refinance into shorter-term mortgages in order to encourage principal reduction through quicker amortization. The debt overhang facing borrowers needs to be addressed through various means, and this is an important approach.

Given capacity constraints that would be further heightened by some of these proposals, we do have concerns about opening up HARP to investment properties. While investors would benefit from lower rates and tenants are harmed when their landlords are foreclosed upon, we believe the needs facing owner-occupants are so significant that servicer capacity should continue to be focused on this group.

On top of the HARP improvements outlined above, CRL believes several additional points merit further thought and consideration. One is paying attention to whether lenders are adding overlays that limit HARP's reach to underwater borrowers. It is especially important for the refinancing market to serve underwater borrowers while also serving those borrowers with a lower LTV ratio. Additionally, in developing HARP outreach materials for eligible borrowers, we believe that refinancing costs and fees should be included in these materials in addition to the estimated monthly savings.

I want to end on a final point that also merits additional Congressional action, which is expanding streamlined refinances to borrowers in mortgages that are not owned or guaranteed by the GSEs or FHA. The Administration's proposal to provide these borrowers with streamlined refinancing opportunities through FHA would help both underwater borrowers and those borrowers currently in mortgages with harmful features, such as subprime mortgages. Every effort should be made to reach these borrowers with responsible refinancing opportunities.

Thank you for the opportunity to present this testimony before the Subcommittee today, and I look forward to your questions.

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

WRITTEN STATEMENT SUBMITTED BY BILL EMERSON, CHIEF EXECUTIVE OFFICER, QUICKEN LOANS

Chairman Menendez, Ranking Member DeMint, and Members of the Senate Subcommittee on Housing, Transportation, and Community Development, I thank you for your invitation to submit written testimony for today's hearing, "Helping Responsible Homeowners Save Money Through Refinancing." My name is Bill Emerson and I am the CEO of Quicken Loans, an independent Detroit, Michigan-based conventional, FHA, and VA retail residential mortgage lender.

As a bit of background, Quicken Loans has been in business since 1985, and has approximately 5,000 employees, most of them working in the city of Detroit. We do business in all 50 States and are the Nation's largest online lender, one of the four largest retail mortgage lenders, one of the three largest FHA lenders, and a top five VA mortgage lender. We closed over $30 billion in mortgage loans in 2011, helping almost 150,000 homeowners.

JD Power and Associates has ranked Quicken Loans highest in Customer Satisfaction for Primary Mortgage Origination in the U.S. for years 2010 and 2011.

My testimony will mainly address the issues with HARP, HARP 2.0, and "The Responsible Homeowner Refinancing Act of 2012," currently being drafted by Chairman Menendez and Senator Boxer.

HARP 1.0

Has HARP 1.0 been a success? According to the FHFA's Web site, HARP 1.0, which was introduced in 2009, has assisted about 900,000 homeowners through October 2011. On the surface, that seems like a big number. But upon closer examination, it appears there was a missed opportunity to help those who faithfully make their mortgage payment each month, but find themselves unable to take advantage of today's historically low rates simply because they owe more than their home is worth.

Of the 900,000 HARP refinances, only about 200,000 have been to homeowners who owe more than their homes are worth. The rest were "coded" by the GSE's as HARP loans, but were to consumers who still had equity in their homes. Further, estimates show that there are about four million underwater homeowners who are in a mortgage backed by the GSE's, current on such mortgage and employed. These homeowners could be eligible for a HARP refinance but for their mortgage being underwater. In other words, only about 200,000 eligible homeowners have been helped out of a population of roughly four million. By this key measure, HARP has been less than successful. More should be done to help these homeowners.

HARP 2.0

HARP 2.0 is definitely positioned to help more homeowners than HARP 1.0, and we applaud the Administration, the FHFA, the GSE's, and the mortgage industry for working together to improve the HARP product by rolling out HARP 2.0. However, HARP 2.0 still is not designed to help enough underwater homeowners and as a result we do not think enough of the four million homeowners who are eligible for HARP 2.0 will actually be helped.

Why will HARP 2.0 fail to help many of the four million homeowners?

The answer lies in the difference between the risk the homeowner's existing servicer (same servicer) must bear under the HARP 2.0 program versus the risk any other mortgage originator (new originator) must bear under the program.

The risks born by same servicers and new originators under HARP 2.0 are different because the underwriting guidelines that a same servicer must follow, as compared to the underwriting guidelines that a new originator must follow are very different.

To refinance a borrower into a HARP 2.0 loan, a same servicer is not required to verify (i) debt-to-income ratio calculations (ii) the borrower's income or (iii) the borrower's assets. The same servicer only needs to verify that the borrower has a viable source of income. The new originator on the other hand, must calculate a debt-to-income ratio, and verify income and assets. Both the same servicer and new originator have the same clean title requirements and same appraisal guidelines (if an appraisal is required).

Both new originators and same servicers are required to represent and warrant to the GSE's that they are originating and underwriting loans according to GSE guidelines. If the originator is found to be in violation of a representation and warranty, the originator is required to repurchase the loan. The GSE's routinely challenge the appraisals on loans. In many such cases, the demands are predicated on simple differences of opinion on the values that third party, licensed appraisers provided. It is almost impossible for a lender to defend themselves in such situations, and they wind up having to repurchase many loans. In addition, the GSE's often require repurchases based on other flaws (however minor) in the origination and underwriting process. Sometimes such flaws are extraordinarily difficult to prevent (example: a borrower who takes out a credit card or auto loan one day before the loan closes), and originators are required to repurchase loans, even though they acted diligently. Data models show that as a loan's loan-to-value ratio (LTV) rises beyond 100 percent, default rates begin to rise precipitously. When the LTV exceeds 125 percent and beyond, default rates skyrocket. Because many HARP 2.0 loans are deeply underwater, there is great risk of default and losses on any loan that goes into default can be substantial. It's not uncommon for a minor flaw on an underwater loan to cost $100,000 or more.

Because the new originators have more difficult underwriting requirements than same servicers, the new originators' representations and warranties are more stringent and the likelihood that they will have to repurchase more loans and incur more losses is much higher. Accordingly, most prudent new originators stay clear of any HARP 2.0 loan where the borrower is underwater, and for the most part HARP 2.0 loans are originated by same servicers, who bear less risk.

The reluctance of new originators to fully participate in HARP 2.0 has limited HARP 2.0's success. Roughly 70 percent of all GSE mortgages are being serviced by the largest servicing firms. Because these same servicers can originate HARP 2.0 refinances with reduced risk, these servicers must carry the load of trying to administer the HARP 2.0 program. Notwithstanding the good intentions of the large servicers, they will simply not be able to help all HARP 2.0 eligible borrowers. Given all the other duties these larger servicers must perform aside from originating HARP 2.0 loans, they simply can't ramp up their platforms and hire and train people fast enough to help these millions of homeowners. Additionally, some of the large servicers have greatly reduced or eliminated their origination platforms, thereby significantly reducing access to credit for the HARP 2.0 borrowers being serviced by these large firms.

Because we are from the Motor City, we will provide a car-related analogy.

The current HARP 2.0 program which funnels all underwater borrowers to their current loan servicer for their new HARP loan is analogous to a car recall program which requires all car owners whose car has been recalled to return their cars to the factory for the needed repairs, as opposed to visiting one of the many dealers in the nationwide network that are capable of fixing the problem. Such a recall system would never work, and yet that is exactly how HARP 2.0 is set up today.

The GSE's already bear the risk on these loans regardless of who is originating the loans. So there is no viable reason to create artificial barriers that effectively block new originators from using the HARP 2.0 program to assist homeowners and to enable the GSE's to improve their risk position. Because HARP 2.0 is being utilized mostly by a small number of firms, the demand for HARP 2.0 originations is dramatically exceeding the supply of firms who fully offer the program. The imbalance between supply and demand has caused the price of the new HARP 2.0 mortgage to be higher than it normally would be if competition existed. Same servicer HARP 2.0 has created an oligopoly and, by any measure, oligopoly pricing is in play.

Solutions

"The Responsible Homeowner Refinancing Act of 2012" (the "Act"), currently being drafted by Chairman Menendez and Senator Boxer goes a long way toward addressing many of the underlying problems. We have the following suggestions for improvement to the Act:

Eligibility

Allowing a new originator to operate under same servicer guidelines resolves almost all of the issues we've addressed above. The current draft of the Act requires that the GSE's allow all originators to originate loans under same servicer guidelines. This alone would be a major breakthrough. It would enable every loan originator in the country the opportunity to help the four million HARP eligible borrowers.

We strongly support the intentions of the ACT to instruct the GSE's to allow all mortgage originators to use the same servicer guidelines.

Appraisals

On roughly 80 percent of HARP 2.0 loans, the GSE's will provide originators an automated valuation that can be used in lieu of an appraisal. Because this valuation comes from the GSE's, the originator does not represent or warrant the value, marketability, condition, or property type of the home that collateralizes the HARP 2.0 mortgage.

On the remaining 20 percent of HARP 2.0 loans that require an appraisal to be completed by a licensed appraiser, there is great, and unquantifiable, risk to originators. It is very common for the GSE's to require that an originator repurchase a loan if, many years after the loan was closed, the GSE's decide to challenge the value the independent 3rd party appraiser provided at time of origination. Insuring a 3rd party appraiser's opinion is always risky, but it is downright irresponsible on a loan that is deeply underwater. This reality has led most originators to put restrictions or overlays on the HARP 2.0 appraisal and LTV guidelines.

We support the language in the Act that states—On HARP 2.0 loans, the originator should only be required to comply with the GSE's methods and standards for properly, ordering the appraisal and choosing the appraiser. The lender should not be required to warrant the value, marketability, condition or the property type that is evidenced by the appraisal or any allowable alternative valuation methods.

Resubordination of Second Liens

We support the spirit of the ACT requiring that lenders subordinate to HARP loans. However, we recommend that you carefully consider the Mortgage Banker Association's testimony on the possibility of unintended consequences that this requirement may cause.

Mortgage Insurance

We support the spirit of the ACT of requiring that all mortgage insurers transfer mortgage insurance on all HARP 2.0 eligible loans. However, we recommend, that you carefully consider the Mortgage Banker Association's testimony on the possibility of unintended consequences that this requirement may cause.

Consistency

We also agree with the language in the Act suggesting that the FHFA issue guidance to require the GSEs to make their refinancing guidelines under the HARP program consistent with each other to ease originator compliance requirements.

Remove Barriers That Make Borrowers Ineligible for a HARP Loan

There are barriers which may cause a borrower to be ineligible for a HARP 2.0 loan, such as:

- Credit enhancements
- Repurchase request outstanding
- Loan was previously an alt A or subprime loan

We suggest the Act remove these barriers.

Automated Underwriting

We think the Act should address the use of automated underwriting systems—Desktop Underwriter (Fannie) and Loan Prospector (Freddie). These systems should provide insight into key data required to determine eligibility for a HARP program as well as data necessary for the refinance.

The systems should confirm:

- The loan is eligible for a HARP refinance via confirmation of all guideline requirements, identity of borrower(s), and property address
- The estimate value of the property when/if an appraisal is not required
- Provide all mortgage insurance data applicable to perform a HARP MI Modification

Conclusion

If the Helping Responsible Homeowners Act were to be refined as discussed above then the new version of HARP 2.0 could help millions of underwater borrowers in short order. Therefore, we support the Act, with the changes and enhancements that we have proposed.

Thank you for allowing me to testify on this very important topic.

WRITTEN STATEMENT SUBMITTED BY NATIONAL ASSOCIATION Of REALTORS®

Introduction

On behalf of more than 1.1 million REALTORS® who are involved in residential and commercial real estate as brokers, sales people, property managers, appraisers, counselors, and others engaged in all aspects of the real estate industry, thank you for giving us an opportunity to share our thoughts on how to help responsible homeowners save money through refinancing.

It's no secret our Nation's housing markets remain in a tenuous state. While no one thought the crisis would carry on so long, markets are slowly recovering, but remain in need of immediate policy solutions to address the myriad challenges in order to stabilize housing and support an economic recovery. REALTORS® have long maintained that the key to the Nation's economic strength is a robust housing industry. And, we remain steadfast in our belief that swift action is needed to directly stimulate a housing recovery. In particular, bringing relief to the millions of homeowners who have remained current on their mortgages in the face of declining home values and rising inflationary pressures will go a long way to kick starting not just the housing sector, but the overall economy.

The Responsible Homeowner Refinancing Act

The National Association of REALTORS® supports the "Responsible Homeowner Refinancing Act" because it offers relief to homeowners who continue to meet their mortgage obligation during this ongoing period of economic unrest. Many homeowners have maintained their mortgage payments even as the economy stalled and prices of other consumer goods rose, squeezing their discretionary income. Unfortunately, these same consumers have not been able to take advantage of the low mortgage interest rates fostered by policy aimed at stimulating the economy because of constraints embedded in the Government-sponsored enterprises (GSEs) mortgage refinance guidelines.

The "Responsible Homeowner Refinancing Act" removes those impediments and allows "current borrowers" to take advantage of record low interest rates. Effectively, this places more money into their pockets and gives them the confidence they need to participate in our Nation's economy. Moreover, helping these responsible homeowners lower their payments reduces their risk of default and aids the recovery of the GSEs, Fannie Mae, and Freddie Mac. Finally, the economic activity spurred on by these consumers' ability to meet an affordable loan payment will act as a mechanism to begin moving our Nation out of recovery.

The GSEs, under the guidance of the Federal Housing Finance Agency (FHFA), have recently made improvements to their refinance guidelines. This legislation codifies many of those improvements, and offers enhancements to others in an effort to ensure that hard-working, diligent mortgage payers, who are "current," have options available to them to relieve some of their economic burden during this tumultuous period.

The proposed legislation does a number of things that REALTORS® believe are necessary to entice both consumers and lenders to pursue refinancing in this environment. First, it eliminates unnecessary consumer costs associated with a refinance that tend to keep homeowners who need a refi on the sidelines. These would be the up-front risk-based fees charged by the GSEs that could cost consumers up to $4,000 on a $200,000 loan, as well as costs associated with the appraisal. Also, underwriting guidelines that restrict eligibility due to loan-to-value (LTV) ratios would be waived for existing, performing GSE loans in order to ensure all "current" borrowers have access to affordable refinancing rates. In our present economic environment, many consumers may not have the discretionary capital required to close a refinance. However, many of these same consumers are current on their mortgage indicating their ability, and desire, to observe their obligation. The removal of these barriers will help reward those diligent mortgage payers by allowing them to achieve a reduced mortgage payment.

Second, the legislation improves competition for lenders looking to compete with the existing mortgage servicer. The proposed legislation directs the GSEs to require the same streamlined underwriting and associated representations and warranties for the new servicer that are in place for the existing servicer. This will level the playing field in a manner that yields increased competition for the consumer's business. Ultimately, this competition will lower the cost of refinancing for the consumer, again benefiting the stability of the GSEs and the overall economy.

An additional lender concern is addressed in the provision that directs FHFA to align the refinance guidance of Fannie Mae and Freddie Mac. Confusion over the standards applied by each GSE has caused lenders to remain on the refinance sideline out of concern for misunderstanding the guidance offered by the appropriate organization and being subject to "repurchase" risk.

Finally, the legislation establishes penalties for servicers of second liens and mortgage insurers who thwart the refinance process. Establishing the ability for consumers to overcome the obstacles of second liens and mortgage insurance will increase the number of households that can take advantage of the Administration's, Regulators', and Congress' efforts to help alleviate existing housing costs pressures, and stimulate the economy.

Utilization of GSE Guarantee Fee as "Pay-for" for Nonhousing Programs

A final issue that has the ability to prevent consumers from refinancing, or to keep potential homebuyers on the sideline, is the use of GSE guarantee fees (g-fees) as a means to "pay-for" nonhousing programs. Just as the proposed legislation will make refinances more attractive by removing some cost barriers associated with the refinance process, the potential for Congress to increase the GSEs' g-fees for nonhousing purposes effectively re-erects a cost barrier.

Our members were deeply troubled by the use of a 10 basis-point increase over the 2011 average g-fee to pay for a 2-month extension of the payroll tax relief. That increase will impact homebuyers and consumers looking to refinance their mortgages for the next 10 years. Therefore, when Congress began negotiating the 10-month extension of the payroll tax relief and the potential use of the g-fees to cover that expense, you can understand why our members emphatically let Congress know that housing cannot, and will not, be used as the Nation's piggy bank. Though they are only rumors about the potential use of g-fees to cover another non-housing expenditure, we would like to use this opportunity to indicate the counter-productivity of such an increase in the face of the proposed legislation, "the Responsible Homeowner Refinancing Act".

The Nation's housing sector remains in a precarious state. Though we are seeing signs of improvement, we are cautious of taking any steps that may retard that recovery and ultimately send our overall economy into another tailspin. Increasing the g-fee, even just extending the current fee increase, effectively taxes potential homebuyers and consumers looking to refinance their mortgages, at a time when the housing sector can least afford it. The unintended impact of any proposed fee increase would be to keep housing consumers on the sideline, preventing the absorption of our Nation's large real-estate owned (REO) inventory, as well as curtailing refinance activity that is needed to keep responsible consumers in their homes.

Lastly, please note that g-fees currently are calculated by the Enterprises as a function of the costs of guaranteeing the securities they issue, *i.e.*, the risk of underlying loans. We strongly believe that fees charged by the Enterprises to manage risk and enhance capital should not be diverted for purposes unrelated to the safety and soundness of the housing finance system.

Conclusion

Home ownership matters. Either fostering new home purchases or helping consumers remain in their homes must be a priority if we are going to move our Nation from tenuous recovery to prosperity. Home ownership represents the single largest expenditure for most American families and the single largest source of wealth for most homeowners. The development of home ownership has a major impact on the national economy and the economic growth and health of regions and communities. Home ownership is inextricably linked to job access and healthy communities and the social behavior of the families who occupy it.

The National Association of REALTORS® sees a bright future for the housing market and the overall economy. However, our members are well aware that the future we see rests on the industry's and the economy's ability to successfully navigate some continuing and persistent obstacles. Congress and the housing industry must maintain a positive, aggressive, forward looking partnership if we are to ensure that housing and national economic recoveries are sustained. The National Association of REALTORS® believes that the proposed legislation will foster and encourage steps in that direction.

LETTER SUBMITTED BY MAURICE VEISSI, PRESIDENT, NATIONAL ASSOCIATION Of REALTORS®

April 23, 2012

The Honorable Robert Menendez
United States Senate
528 Hart Senate Office Building
Washington, DC 20510

The Honorable Barbara Boxer
United States Senate
112 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Menendez and Senator Boxer:

On behalf of the 1.1 million members of the National Association of REALTORS® (NAR) and our affiliates, thank you for your efforts to streamline and align the refinance processes of Fannie Mae and Freddie Mac, as well as make these improvements available to homeowners who have remained current on their mortgages as they watched their home's value and their equity dissipate.

The National Association of REALTORS® supports the "Responsible Homeowner Refinancing Act" because it offers relief to homeowners who continue to meet their mortgage obligation during this on-going period of economic unrest. Many homeowners have maintained their mortgage payments even as the economy stalled and prices of other consumer goods rose, squeezing their discretionary income. Unfortunately, these same consumers have not been able to take advantage of the low mortgage interest rates fostered by policy aimed at stimulating the economy because of constraints embedded in the government-sponsored enterprises (GSEs) mortgage refinance guidelines.

The "Responsible Homeowner Refinancing Act" removes those impediments and allows "current borrowers" to take advantage of record low interest rates. Effectively, this places more money into their pockets and gives them the confidence they need to participate in our nation's economy. Moreover, helping these responsible homeowners lower their payments reduces their risk of default and aids the recovery of the GSEs, Fannie Mae and Freddie Mac. Finally, the economic activity spurred on by these consumers' ability to meet an affordable loan payment will act as a mechanism to begin moving our nation out of recovery.

Again, REALTORS® thank you for your efforts to help offer much needed relief to homeowners who continue to struggle, but meet their mortgage obligation. As always, NAR stands ready to collaborate with you and Congress to enact comprehensive and effective housing focused legislation.

Sincerely,

Maurice "Moe" Veissi
2012 President, National Association of REALTORS®

LETTER SUBMITTED BY JAMES W. TOBIN III, SENIOR VICE PRESIDENT AND CHIEF LOBBYIST, NATIONAL ASSOCIATION OF HOME BUILDERS

National Association of Home Builders

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Government Affairs

James W. Tobin III
Senior Vice President & Chief Lobbyist

April 24, 2012

The Honorable Robert Menendez
Chairman
Subcommittee on Housing
Senate Banking Committee
Washington DC 20510

Dear Chairman Menendez:

On behalf of the 140,000 members of the National Association of Home Builders (NAHB), I am writing to support your efforts to improve the Home Affordable Refinance Program (HARP). NAHB believes that your draft bill, the *Responsible Homeowner Refinancing Act of 2012*, will go a long way to address the obstacles preventing many individuals from taking advantage of government efforts to mitigate foreclosures through refinance, and allow borrowers to take advantage of the historically low interest rates that have been beneficial to many American homeowners and home buyers.

Home mortgage foreclosures continue to have a significant negative impact on the housing market and contribute to the lag in the nation's economic recovery. While government efforts to reduce foreclosures have had limited success to date, NAHB believes that your legislation will help reduce foreclosures and stabilize home values ultimately aiding the financial recovery of our nation.

In particular, NAHB supports the provisions of the draft legislation that will allow the program to reach more eligible borrowers, including extending the cutoff date to May 31, 2010, requiring consistent Fannie Mae and Freddie Mac refinancing guidelines and establishing consistent treatment of representations and warranties for all servicers.

NAHB strongly believes that the recovery of the housing market, and the overall economy, is dependent on a stable housing sector. We look forward to working with you as the *Responsible Homeowner Refinancing Act of 2012* moves forward to ensure that responsible homeowners who are in financial need avoid foreclosure.

Sincerely,

James W. Tobin III