A REVIEW OF MORTGAGE SERVICING PRACTICES AND FORECLOSURE MITIGATION

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A REVIEW OF MORTGAGE SERVICING PRACTICES AND FORECLOSURE MITIGATION

Friday, July 25, 2008

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

The committee met, pursuant to notice, at 10:03 a.m., in room 2128, Rayburn House Office Building, Hon. Barney Frank [chairman of the committee] presiding.

Members present: Representatives Frank, Waters, Watt, Sherman, Miller of North Carolina, Cleaver, and Speier.

The CHAIRMAN. This hearing of the Committee on Financial Services will come to order.

I must tell you that I think this is as important a public hearing as I have attended—much less presided over—in 28 years. We are in the midst—and, obviously, the time constraints are going to be relaxed both for us and for yourselves because we are talking very serious business here.

We are talking about something that is very important in terms of social fairness and the impact on all Americans, including predominantly lower-income Americans and the subset of people in the minority communities, because of the way these loans have gone forward. We are talking about the single most important thing we can do to help deal with the economic doldrums of this country.

I think if there were to be an announcement at some point that the number of foreclosures on residential property was going to substantially decline from what is going to be expected, that would be about as good a piece of economic news as the country could get, from the standpoint of both sides of the aisle.

Sometimes, we are told you have a conflict between social and economic equity and what is good for the overall economy. Today, we have a total reinforcement. Reducing foreclosures is an essential matter of justice, and it an essential matter of trying to deal with the economic situation.

Now the House, as you know, has passed a bill which we know that the Senate is going to pass promptly; and I believe that by next week, you will see the picture that I think many people had not expected to see in which—among the people standing behind George Bush will be myself and my colleague from California.

It is a very important issue for the country, and this hearing has one central purpose. We have passed a bill in consultation with people in the industry. Some seem to think that was a bad idea.

I am going to take a little time.

We had, I think, four potential choices in dealing with trying to reduce foreclosures.

The first choice was to do nothing. Some have advocated that. Let the market do it.

A second choice would have been an effort legislatively to say no. Some advocate that. I think it has constitutional problems. I think it also has problems of how you discriminate between which foreclosures should go forward and which don't.

A third choice would be substantial Federal funding to defray the costs that people could make. That has serious obstacles, given the deficit, and it couldn't get anywhere politically.

That left us with one option that we have chosen: Providing inducements to those who hold the loans, who have the ability to say that we are going to restructure or not, to, in fact, help diminish foreclosures by reducing the terms so that people can pay them. And it is obviously voluntary.

We have passed legislation that does that, we think, as well as we could. Actually, the House bill, I thought that it was somewhat better than the Senate bill, but we needed to get a bill passed.

I want to make two points:

First of all, because the Senate wanted to minimize the budgetary cost, they adopted some measures, and we were very happy that we finally got this done. But the Congressional Budget Office anticipated that under our House version, 500,000 foreclosures would have been avoided, and under the Senate version, 400,000 foreclosures would have been avoided. But we are not required to live up to that. If you are eager to participate, we can pump that up.

There is one particular thing I want to be very explicit about. I even asked my staff, which has done a magnificent job on this.

I think the legislation that was just passed was excellent legislation, and it was unusual in one sense: It was written by the staff of this committee and the subcommittees, and it was written by the staff of the Ways and Means Committee.

While we had some cooperation from the Administration, unlike most major pieces of legislation, it didn't come up from them to us. It was drafted by the people you know and have worked with, with your cooperation. And I am very proud of that. But I asked them to make it very clear.

The Hope for Homeowners program in our version of the House was going to be effective on enactment. For budgetary reasons, the Senate insisted that it be effective October 1st. Ironically, you heard Members of the Senate complaining of tactics that were holding this up, so many foreclosures happening every day, move quickly. But, in fact, given the way the Senate structured this technically, that didn't make any difference, because it doesn't take effect until October 1st.

But nobody requires those of you who are servicers to foreclose. You know, we talk about how no one wants to be the last person to die in a war, and no one wants to be the first person to die in a war. But there is a particular tragic irony if someone dies after the war has kind of formally ended. And I want to urge those of you here and other servicers not to let people be victims of a budgetary maneuver that we took here.

You know this is going to be the law. I would hope that no one would be foreclosed upon between now and October 1st who would have qualified for this program had the effective date been immediate, and that is within your power to do. You can show some forbearance.

October 1st is coming. Begin the planning. Begin talking with people. But I think it would be a shame and an embarrassment to all of us if people were to lose their homes and the neighborhood deterioration were to be advanced and the economy would suffer because, to satisfy CBO and other rules, we delayed this a couple of months. I earnestly hope we can have that kind of cooperation.

The other point is, and now we're here, we have done the best we could think of, the best anyone told us, to induce the holders of the loans, the servicers to take action to reduce foreclosures. We need you to tell us if you are going to take advantage of this. If you are not, why?

I do want to make this one point: I hope that there will be efforts to take advantage of it. I believe there will be. I know many institutions want to do this.

One of the things we have been told is look, there is this problem because the people who service the loans are not the people who own the loans. And there is this split between the people who have, we are told, the authority to make the decision to reduce, and the beneficial owners on whose behalf they are acting, or you can't expect the beneficial owners to do this, people who own pieces of pools.

I want to make something very clear, and this is something Ms. Waters and I have talked about a great deal, and she has addressed it in a separate piece of legislation that she has pending.

If it turns out that our having done the best we could in consultation with these servicers to provide a set of incentives to reduce foreclosure, if it turns out that the structure of the servicing industry, the split between the decisionmakers and the ultimate beneficiaries is a significant interference with our taking advantage of this, then I am determined to change that structure. If we cannot get significant participation here because the structure of the industry is such that the servicers can't do what they tell us they would like to do, then count on myself and other members of this committee—and I believe we will have a responsive Congress, we will change that situation.

If it is the case that the servicers cannot respond appropriately, then that institution of a servicer acting on behalf of ultimate investors but with the only one decisionmaker, then that can't continue.

I am not looking to make that kind of disruption, but that is one of the things that is at stake here. We could not, in good conscience, in our responsibilities, allow that structure to continue.

So we are going to proceed to the hearing after my two colleagues make their statements.

We want you to tell us—we really want you to tell us, those of you who represent servicers, that you are going to be able to take full advantage of this. I am not saying we are solving everything. There are no silver bullets. I am not the Lone Ranger. But we have done the best we could, based on conversations with you, to set this structure up.

If there are obstacles to your taking advantage of it, tell us, and we will do what we can to remove the obstacles. If people tell us that it is just inherent in the nature of this industry that servicers simply cannot, not being the ultimate owners, do what we ask them to do, then by next year we will have to work on abolishing that form and putting something that has an ability to respond to these important social and economic problems in its place.

I now recognize the gentlewoman from California, who has been a driving force in all this and who was one of the earliest to notice the centrality of the question of the servicers, the gentlewoman from California.

Ms. WATERS. Thank you very much, Mr. Chairman, for this hearing today. But I also want to thank you for paying so much attention to this particular aspect of the subprime crisis in which we are involved.

I cannot say enough, however, about the accomplishments that you are responsible for as we pass the tremendous legislation in this House that will go a long way toward helping the many American families who find themselves in foreclosure. It is absolutely amazing, when I think about it, that in that legislation not only did you have the Housing Trust Fund which you have worked so hard on that is going to go a long way toward expanding both ownership and opportunities for renters, but it is so timely in that it goes a long way toward helping to solve the problem of stopping this foreclosure meltdown.

In addition to that, all of the work that we had done strengthening FHA and the work that we had begun on reforming the GSEs, all of it came together in that legislation. And aside from the fact that FHA is now in the position of refinancing properties that families are holding onto and not knowing how they were going to maintain them can now get some help.

The other piece of legislation that had been just about ruled out or thought to be impossible also was successful in that we got not all that we wanted, but $4 billion that will help the cities deal with the boarded-up, foreclosed properties in their cities.

So I am very pleased and I continue to think about all of the work that went into that comprehensive piece of legislation; and I am very proud that, with your leadership, we have been able to figure out some things.

One of the things that I noticed in all of this was the servicing part of the industry. And I know I harangued a lot and talked a lot about that which I didn't know, except I knew enough to know that, as we talked about restructuring some of these loans, that all of the counselors that we were funding could talk all they want, but if, in fact, the servicers did not cooperate in the modifications and the restructuring that nothing was going to happen.

And the more I looked at the servicing part of the industry, the better I began to understand that we knew very little about them, about what their responsibilities are, who they are responsible to, all that they do; and I am convinced that not only must we learn more about them, we must be involved in regulating them.

So, having said that, now, if you don't mind, I am going to launch into this prepared part of this statement that I have this morning.

Again, I want to thank you for convening this hearing.

I have been focused on the mortgage servicing industry since this committee first began addressing the subprime meltdown and foreclosure crisis. Like many, I had not previously understood the critical role mortgage servicers play in the modern mortgage market, where few loans remain with the financial institution that made them.

Adding to the confusion is the fact that a number of large mortgage servicing industry players, including the financial institution formerly known as Countrywide, are both significant loan originators and loan servicers but not necessarily of the loans they originated.

After two subcommittee hearings in Los Angeles last November, and here on April 16th, and a lot of additional study, I am still finding out more that I don't yet know about this industry, but there are a few key things we have learned.

First, this industry was woefully underregulated during the boom years and woefully unprepared for the challenges it confronted when the subprime meltdown hit. Depending on the type of financial institution they are, banks, etc., mortgage servicers are subject to regulation by the alphabet soup of agencies and other entities like the Federal Reserve that currently oversee our financial markets, but there is no coherence, statutory and regulatory framework for them.

That is no surprise. The regulators failed to put together a decent body of law on making loans during the boom years. There is no reason to expect that they would think ahead to regulating the sector of the mortgage industry responsible for addressing those loans when things went south.

When the crisis hit, it rapidly became clear that the mortgage servicing muscle of the industry had largely atrophied. Nobody was sufficiently staffed-up or trained to do the kind of workouts and modifications needed. I think this has changed a bit but not as much as it should. And the capacity to do loss mitigation at scale in a down market should never have been allowed by regulators to wither or, perhaps more accurately, not to be put in place at all.

Most troubling to me is that, because of the underregulation, we have a near complete lack of transparency about what is going on with the servicers now. In contrast to loan origination, where data gives us a pretty clear and comprehensive picture of what is going on with loan origination, we are reliant in this crisis on industry provided data that I would agree is at best incomplete and somewhat opaque.

Second, I continue to be concerned that we have what is known as an agency problem here. While the industry repeatedly says that nobody wins in a foreclosure, there is some evidence that a mortgage servicer, ostensibly the agent of the investment trust, may do better in terms of fees when it forecloses or at least keeps a borrower in a state of prolonged delinquency than it does a sustainable loan workout, even where to do so would be in the best interest of the trust.

I don't pretend to have fully grasped yet the complex fee structure in mortgage servicing. I look forward to exploring that today. But a study by researchers from the University of Iowa and Stanford Law Schools which are described in a New York Times article—I ask unanimous consent to put that in the hearing record—showed that servicers generate sufficient revenues from late fees, delivery and fax charges, and other fees they can only charge if a borrower remains in distress and at foreclosure's doorstep.

Just a few days ago, in another article I would also ask unanimous consent to put into the record, New York Federal Home Loan Bank chief executive Alfred DelliBovi, not exactly an unsophisticated player in the market share market, was quoted as saying that servicers make more money on a foreclosure than when the loan is worked out.

The CHAIRMAN. Without objection, those articles will be made a part of the record.

Ms. WATERS. Let me just say that this is what I think we have to at least look carefully at; we have to know whether or not the incentives for servicers are really set up the way they ought to be to get us out of this crisis.

I say this in part because, even after all of these months, I continue to hear things that suggest servicers aren't acting as if they really want to help borrowers, rather than give them the run-around or squeeze them for late fees.

Witnesses at hearings and town hall attendees paint a different picture of the mortgage servicers response to the subprime crisis than industry press releases. Homeowners, homeownership counselors, legal aid attorneys, and local government officials all testified to the difficulties they encountered in getting prompt, reasonable action by mortgage servicers. Too often, individual borrowers and even their trained advocates find it difficult to even find an actual person to speak to about loss mitigation, much less one authorized to offer the kind of loan modifications that the borrowers need to remain in their home for the long term. I had exactly this experience when I called the HOPE NOW Alliance myself from a town hall meeting that I held in Los Angeles.

Finally, prior to the subprime crisis, the only Federal Reserve Governor to call attention to the growing problem, Ed Gramlich, asked why so many exotic loan products like the notorious 2/28 and 3/27 subprime ARMs are being provided to the households least likely to understand or to be able to handle them financially.

At this moment, in the midst of the greatest foreclosure crisis since the Great Depression, a variation of that question can be asked about loss mitigation by mortgage servicers: Why are the loans we know most likely to be worked out in a way that is affordable to the borrower, but the loan term, the safest loans in the market, while the most dangerous loans, Alt-A and subprime portfolios of the major servicers are the ones we know the least about when it comes to the affordability of loss mitigation offers that servicers are making to delinquent borrowers?

To explain why I say this, I want to turn to the 40 percent or more of the servicing market that is subject to a Fannie Mae, Freddie Mac, FHA, or VA loan guarantee. These entities issued clear guidance and set up compensation schemes to enforce affordability standards for their servicers' loss mitigation activities.

In Fannie's case, the benchmark is $200 in monthly residential income after all debt service and household expenses, including emergency expenses, are taken into account. In Freddie's case, there is a 20 percent residual income cushion, using a similar approach to assessing the borrower's income and expenses.

So we know what affordability standards govern the safest part of Wells Fargo's, Bank of America's, and other mortgage servicers' portfolios. After all, the strict underwriting standards of VA, FHA, and the GSEs knew these loans are the least likely to be no doc loans or subprime ARMs. Yet, as it stands now, we have no idea what affordability standard has been applied to the Alt-A and subprime components of these servicers' portfolios. Actually, we do have some idea: Ones that aren't working.

Moody's reports that 42 percent of loans that were modified in the first half of 2007 were 90 or more days delinquent as of March 31, 2008. This suggests that too many of the loan workouts being offered are simply kicking the can down the road, rather than making realistic assessments of what borrowers can afford for the long term. This clearly calls for Federal intervention.

I will conclude by saying that the fundamental problem is that the mortgage servicers have no legal obligation to engage in reasonable loss mitigation efforts to keep a borrower in delinquency in his or her home even when the borrower may have been the victim of a predatory, unaffordable loan. Absent a statutory duty of some kind, I am concerned that consumers have little leverage with mortgage servicers in the current crisis and will continue to lack it in the future.

The legislation I have introduced, H.R. 5679, the Foreclosure Prevention and Sound Mortgage Servicing Act of 2008, creates this enforceable legal duty. Although it has been mischaracterized in the industry press, I believe that H.R. 5679 is a prudent piece of legislation designed to balance the needs of lenders, investor servicers, and borrowers in an effort to reduce foreclosures. I also see it as an important first step in regulating what has been to date a largely below-the-radar-screen and underregulated sector of the mortgage industry.

I look forward to the testimony today and especially the question-and-answer period, Mr. Chairman.

And, Mr. Chairman, I may have kind of confused a little bit the mortgage servicing and the loss mitigation operations of these institutions. I am finding that they are two different things; and most of these institutions and many of the loss mitigation activities are offshore, not even within the United States; and I would like to have some clarification on that.

The CHAIRMAN. If the gentlewoman would yield.

Given that she is so well-informed on this because she made it as much a priority as anybody around, if there is any confusion in her mind, we can be sure it is also a very widespread confusion, and it is in our interest to clear it up. Because, yes, that is exactly the problem that we have.

I am about to recognize the gentleman from North Carolina, and I don't want to understate—I don't think I can understate this.

This is a challenge to our ability to govern and to our economy. I mean, it cannot be that so many people say we want to reduce foreclosures and we can't do that. So we just have a collective obligation to do better, or else I think some fundamental questions get raised.

And now the gentleman from North Carolina, who 4 years ago was one of the ones trying to get this Congress to act in ways that would have prevented this problem, and who has been very deeply engaged in it, Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman. I will be brief because I know the witnesses want to go and a lot of the members left because we don't have votes today, and that is unfortunate because this is an important hearing.

I want to just make two points. The first point is to praise the yeoman efforts of the chairman of this full committee and the chairwoman of the Subcommittee on Housing in the passage, in all of the work they did to pull all of these pieces together to pass this piece of legislation that we passed the day before yesterday. I don't think anybody could ever imagine the intricacies and the difficulty of the road that the Chair played in this process, so I want to congratulate him. That is the first point.

The second point is that those of us, particularly who came out of the private sector or even those of us who came out of State legislatures or out of pulpits or local elective bodies, understand that passing a law doesn't mean a thing if it is not applied in letter and spirit. And I think the Chair referred to this as a challenge. I really think it is an opportunity, particularly for servicers and lenders to take advantage of a framework which has now been set and sanctioned and funded and structured to take a lot of the uncertainties and difficulties out of this process that probably—HOPE NOW Alliance probably understands as much as anybody. I mean, they have a framework now and everybody has a framework that, if we just apply the letter and, more importantly, the spirit of what we have done, will just say magnitudes about the industry, about servicers, and it will pay tremendous dividends for our economy in getting us back on the right track.

So it is important that all the work that the Chair did and all of us did to pass the legislation, but what is more important now is what you all do, what the market does, what the players in this market do to apply this legislation both in letter and, more importantly, in spirit to make it work and I am just going to challenge you to do that.

I probably—once I hear the testimony, I may not even be able to stay for questions. I am just going to take it on faith that you all will use this important vehicle that has been provided to you to help our country move forward.

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

The CHAIRMAN. Finally—and I have to say it is a small member panel today. But in terms of understanding of and concern about the issue, it is about as solid as I think it could be. Our final opening statement comes from the former Mayor of Kansas City, who has been seeing this problem from all ends. The gentleman from Missouri, Mr. Cleaver.

Mr. CLEAVER. Thank you, Mr. Chairman. I will be very brief.

I had dinner last evening with a constituent here in Washington. He was here on business. And as the conversation progressed, he eventually told me that he was on the verge of losing his home. Of course, that made dinner go down with a little more difficulty.

But the thing that concerned me more than anything about the conversation was the unwillingness of the servicer to work with him. The servicer becomes Superman in this whole sordid mess. They are the ones who can leap tall buildings and are more powerful than locomotives. They are the ones that make the determination in here.

And in my State of Missouri, we had notification that servicers had begun foreclosures on 4,500 homes in April and May. Only one-half of them reported that the servicer was actually working with them on a repayment plan. We have 8,000 foreclosures a day in the United States right now,—8,000 a day. I want to make certain that something positive is happening.

HOPE NOW, I think—you know, I don't want to question anybody's motives. Maybe sometimes I do. But I do wonder, you know, there was a great fanfare when they talked about what they were going to do, and I am not quite sure that I see the benefit. I don't know if that was a preemptive move in hopes that we would not bring to the Floor some legislation that would be regulatory in nature over them. So I am interested in hearing what you have to say, more than I am interested in expressing outrage at what is going on.

I yield back the balance of my time.

The CHAIRMAN. I thank the gentleman.

At this point, I want to ask unanimous consent to insert into the record the testimony of Mary Harman, the Chair of the Community Services Committee of the California Association of Mortgage Brokers, in which they, among other things, express their gratitude for the legislation of the gentlewoman from California and focus on the problems they believe exist with the servicers.

Without objection, that will be made a part of the record.

We will now begin our statements with Mr. Hilary Shelton, who is the director of the Washington Bureau of the National Association for the Advancement of Colored People.

STATEMENT OF HILARY O. SHELTON, DIRECTOR, NAACP WASHINGTON BUREAU

Mr. SHELTON. Thank you, Mr. Chairman.

As you mentioned, my name is Hilary Shelton, and I am the director of the NAACP's Washington Bureau. The Washington Bureau is the Federal legislative and national public policy arm of our Nation's oldest and largest grassroots-based civil rights organization.

I would like to begin by thanking you, Chairman Frank, as well as Congresswoman Waters, Ranking Member Bachus, Congressman Watt, and Congressman Cleaver for the wonderful energy, time, and commitment to addressing these issues and addressing what faces our country in light of all these foreclosures.

I come before you today because the mortgage foreclosure crisis has reached even more staggering proportions all across the Nation. In the month of June, more than 250,000 homes were at some stage in the foreclosure process. This number is up by more than 53 percent over June of 2007.

Furthermore, African Americans and other racial and ethnic minority Americans are being disproportionately affected. Nobody disagrees that the foreclosure crisis is being driven by the high number of predatory loans made within the last few years; and according to the most recent study by the National Community Reinvestment Coalition, in 2005, African Americans of all income levels were more than twice as likely to receive a high-cost loan.

Last year, in 2007, the NAACP held its 98th annual convention in Detroit, Michigan, the City with our Nation's highest foreclosure rate. Earlier this month, we held our 99th annual convention in Cincinnati, Ohio, Ohio being the State with the highest foreclosure rate. Needless to say, for the last 2 years we have been hearing firsthand from people who are in one stage of foreclosure or another. These are real, hardworking people whose lives have been shattered; and the worst part is that are sadly only the beginning.

For as long as I can remember, African Americans have been viewed as the canary in the coal mine. This has certainly proven to be true when it comes to the mortgage foreclosure crisis.

For decades, predatory lenders targeted African Americans and other racial and ethnic minority Americans with their unscrupulous products. As study after study clearly demonstrated, and as I have previously stated in testimony before this committee, the African- American community in the United States has been and continues to be disproportionately devastated by predatory lenders. Thus, when the foreclosure problems began, it was African Americans who were again at the forefront of the crisis; and we continue to be disproportionately affected by what has already become a national catastrophe.

So we have come to Capitol Hill, to this very room, as a matter of fact, many times in the past couple of years sharing our concerns and working with you to aggressively help address a problem which is so large in scope it is almost inconceivable.

The purpose of today's hearing, to look at the role of mortgage servicers, is laudable as they clearly play a significant role in both the creation of a constructive and sustainable loan modification as well as the foreclosure process. Yet I hope that we will look at the bigger picture and examine the relationship between servicers and the homeowner/consumer who is facing foreclosure.

Currently, the servicer has most, if not all, of the power and control. There are several proposals currently before Congress to change that dynamic, proposals that the NAACP supports and views as necessary if we are going to offer real help to the millions of American families whose homes are at risk.

First, there is the proposal by Congresswoman Waters, H.R. 5679, the Foreclosure Prevention and Sound Mortgage Servicing Act of 2008. This legislation requires a homeowner or servicer to pursue specified priority loss mitigation activities such as waiving late fees and other charges, and establishing an affordable repayment plan or loan modification, forbearance, or a short refinancing before a home may become foreclosed upon.

The NAACP also supports H.R. 6076, the Home Retention and Economic Stabilization Act of 2008 introduced by Congresswoman

Matsui of California. This legislation places a moratorium on home foreclosures for 9 months to allow homeowners to find and take remedial action. It also requires home mortgage servicers to provide advance notice of any upcoming reset of the mortgage interest rate. I would note that this moratorium or deference is similar to the one that was called for by the NAACP and other civil rights organizations more than a year ago, in April of 2007.

Lastly, the NAACP strongly supports, as I know does the chairman and several members of this committee, H.R. 3609, the Emergency Home Ownership and Mortgage Equity Protection Act of 2007. This important, bipartisan legislation would allow courts to supervise loan modifications, effectively mediating between lenders and homeowners.

All three of these bills, taken together, will provide homeowners facing foreclosure with some much-needed tools, whether it be the requirement that mortgage servicers work with them to try to avoid foreclosure, or a cooling-out period to allow homeowners to try to modify their mortgages and stay in their homes, or allowing the courts to try to mediate a modification.

All three of these bills will require the financial services industry to do more to help avoid foreclosures. Heretofore, all successful attempts to address this crisis, while laudable, have been based on the holders of the loan acting on a purely voluntary basis to try to avoid foreclosures.

Furthermore, all three of these pending measures that the NAACP supports would not require a dime from the U.S. Treasury. No taxpayer money would be spent. So we would be helping homeowners facing foreclosure at no expense to the American public.

Finally, a few words specifically about the mortgage services industry. As I said earlier, mortgage services are an integral part of both the process of developing constructive and sustainable loan modification as well as the foreclosure process. That is why, given the huge number of Americans whose lives these people will touch, the NAACP would like to see more regulation and monitoring of this industry. Specifically, we would like to note that not only are they trying to save Americans' homes, but they are trying to save all Americans' homes, regardless of the borrowers' race or ethnic background or age, with the same vigor.

Given the history of disparate treatment of African Americans by the financial services industry in our Nation, one cannot blame us for wanting more information on the number of loans that are being modified, the race of the borrowers who have received the loan modifications, and if those modifications actually result in the homeowner staying in their homes, or if a disproportionate number of African Americans and other Americans of color receive loan modifications that last a year or less and only serve to drain more equity from the consumer.

In closing, I would like to again thank the chairman and all of the members of the committee for all that you have done to address the mortgage foreclosure crisis. I hope to continue to work with you to aggressively address this problem facing a growing number of Americans and, most importantly, to help keep our people and our families in their homes.

Thank you very much.

[The prepared statement of Mr. Shelton can be found on page 136 of the appendix.]

The CHAIRMAN. Thank you.

I just want to note again that this is a day when we don't have votes, and most members have left, so I do want to give a special acknowledgement to those members who probably altered their plans to be able to stay here.

We have been joined by one of our newer members, the gentlewoman from California, who has a great interest in this and comes from a State where it has been an issue. She has recently been a leader in the State legislature.

The gentlewoman, Ms. Speier, has joined us as well.

Next, we have Mr. David Kittle, who is the chairman-elect of the Mortgage Bankers Association. We very much appreciate your being here—having worked with the Mortgage Bankers Association as we passed the legislation—and we look forward to working with you as we take full advantage of it.

Please go ahead, Mr. Kittle.

STATEMENT OF DAVID G. KITTLE, CMB, CHAIRMAN-ELECT, MORTGAGE BANKERS ASSOCIATION (MBA)

Mr. KITTLE. Mr. Chairman, thank you for the opportunity to appear before you again. I am pleased to discuss solutions to the situation in the mortgage market and what servicers are doing to help keep families in their homes.

None of us wants a family to lose its home, and MBA members are devoting significant time and resources to finding ways to help borrowers keep their homes. The tools used to avoid foreclosure and retain a borrower's home include forbearance and repayment plans, advance claims, loan modifications, and refinances. Short sales and deeds in lieu of foreclosure are also used to avoid foreclosure in certain circumstances.

It makes good economic sense for mortgage servicers to help borrowers who are in trouble. The increase in mortgage delinquencies and foreclosures has brought significant attention to the cost of foreclosure to homeowners, communities, and mortgage industry participants. While the impact of foreclosure upon homeowners and communities is clear to everyone, statements by some advocates and government officials indicate that confusion still exists about the impact of foreclosure upon industry participants, particularly lenders, servicers, and investors.

Mortgage lenders and servicers do not profit from foreclosures. Every party to a foreclosure loses—the borrower, the community, the servicer, the mortgage insurer, and the investor. It is important to understand that profitability for the mortgage industry rests in keeping a loan current. As such, the interest of the borrower and the lender are mostly aligned.

As a recent CRS paper notes, foreclosure is a lengthy and extremely costly process for the industry and, generally, a losing financial proposition. While losses can vary significantly, several independent studies have found the losses to be quite significant: Over $50,000 per foreclosed home or as much as 30 to 60 percent of the outstanding loan balance.

If a homeowner misses a payment and becomes delinquent, the mortgage servicer will attempt multiple contacts with the homeowner in order to help that borrower work out the delinquency. Servicers have several foreclosure prevention options that can get a borrower back on his or her feet. Informal forbearance and repayment plans are the first tools servicers use to help borrowers.

Loan modifications are the next level of loss mitigation options. A loan modification is a change in the underlying loan document. It might extend the term of a loan, change the interest rate, change repayment terms, or make other alterations. Often features are combined, including rate reductions and term extensions.

Servicers also use refinancing to assist borrowers who are current on their loan but are at risk of defaulting in the future or borrowers who are in the early stages of delinquency.

FHASecure is one example of a program targeted to borrowers with adjustable rate mortgages who are unable to make payments due to an increase in rate.

The housing bill that just passed enhances FHA's products by creating the Hope for Homeowners program for delinquent borrowers who need to refinance their homes but find they owe more than their homes are worth.

Servicers want to assist borrowers who are having difficulty paying their mortgages. Servicers and investors have an economic incentive to avoid foreclosure. As a result, servicers are performing a growing number of workouts, including modifications as evidenced by the HOPE NOW Alliance data.

Servicers have increased staff, have funded new technology, and are sponsoring home retention workshops. They are using third parties to go to the borrower's home to facilitate the workout and are funding advertising to educate borrowers about foreclosure prevention options. They are paying for housing counseling and are working with regulators and others to resolve legal impediments to loss mitigation.

All of these efforts demonstrate the industry's dedication to avoiding foreclosure and helping delinquent borrowers to get back on their feet. The industry is working to keep pace with changes and seeking new and financially responsible ways to increase workouts. The incentives of the mortgage servicers are generally in line with the family who is in trouble.

Thank you for the opportunity to share our thoughts with the committee. I look forward to answering any questions that you may have. Thank you, Mr. Chairman.

[The prepared statement of Mr. Kittle can be found on page 93 of the appendix.]

The CHAIRMAN. Next, we have Mr. James Barber, who is the chairman and CEO of Acacia Federal Savings Bank. He is here on behalf of the American Bankers Association, another organization with whom we have worked closely in the preparation of this bill and with whom we hope to be able to continue cooperating.

Mr. Barber.

STATEMENT OF JAMES B. BARBER, CHAIRMAN AND CEO, ACACIA FEDERAL SAVINGS BANK, ON BEHALF OF THE AMERICAN BANKERS ASSOCIATION (ABA)

Mr. BARBER. Chairman Frank and members of the committee, my name is James Barber, and I am the chairman and CEO of Acacia Federal Savings Bank in Falls Church, Virginia.

Acacia Federal is a federally chartered savings bank with $1.5 billion in assets. We service 3,700 residential single family loans in the mid-Atlantic region that total about $1.1 billion. Most of these loans are owned by the bank.

We share your concern about rising foreclosures and the need to limit them wherever possible. Everyone suffers when a foreclosure occurs—borrowers, lenders, investors, and the neighborhood where the property is located. Thus, it is no surprise that banks are actively engaged in voluntary modification programs on an individual basis and as part of an industry-wide effort such as the HOPE NOW initiative.

Avoiding foreclosure is not a simple process. Many of the loans that we make look the same on paper, but, in my experience, each workout must be tailored to the borrower's unique experience. This process is complicated by the fact that phone calls or letters from lenders may not be warmly welcomed by anxious borrowers who are having financial difficulties. Often, there is a tendency to ignore the problem which, unfortunately, limits borrowers' options for finding solutions. It is no surprise then that 57 percent of the Nation's late-paying borrowers still do not know their lenders may offer alternatives to help avoid foreclosure.

Two other complications muddy the waters when considering if and how foreclosure can be avoided.

First, not all borrowers have the desire or financial wherewithal to keep their property. Some borrowers are investors, others have hyperextended their credit, and still others have lost jobs or seen dramatic changes in their financial situation.

Second, although Acacia Federal retains most of the mortgages we originate, often financial institutions choose instead to sell mortgages into the secondary market. This brings in other parties which adds time and complexity. Fortunately, these complications are being sorted out.

We do, however, believe things could be improved. Legislation crafted by you and this committee, Mr. Chairman, contains a key component which ABA believes will provide additional tools for assisting more troubled borrowers. That legislation will create a voluntary program through which troubled borrowers will be able to work with servicers to reduce their indebtedness, gain some equity in their homes, and stabilize their financial situation. Immediately after the bill is enacted, ABA will send educational material to all of our members followed by telephone briefings on the bill and how this program can be implemented.

The vast majority of banks, large and small, have long followed traditional, prudent underwriting models. Acacia Federal is no different. Our underwriting has been sound, so we have relatively few delinquencies and foreclosures. The few we had were the result of the usual things that destabilize borrowers, divorce and job loss, for example.

Since we declined to match the loose underwriting standards of many nonbank institutions, we lost market share. In today's environment, we are trying to build that market share back without sacrificing the prudent lending underwriting standards most banks have always employed.

Recent changes to regulations finalized by the Federal Reserve to implement the Home Ownership and Equity Protection Act emphasize the need for more prudent and traditional underwriting. ABA supports many of these changes, including regulations to strengthen the integrity of appraisals and prohibit deceptive advertising, changes that in some ways codify practices that most banks have employed.

The banking industry is working to avoid foreclosures and prepare for the future. We appreciate the work of this committee to provide additional tools and solutions to achieve that end.

I would be pleased to answer any questions.

[The prepared statement of Mr. Barber can be found on page 50 of the appendix.]

The CHAIRMAN. Representing another organization that has been an important resource for us is Janis Bowdler from the National Council of La Raza.

STATEMENT OF JANIS BOWDLER, ASSOCIATE DIRECTOR, WEALTH-BUILDING POLICY PROJECT, NATIONAL COUNCIL OF LA RAZA

Ms. BOWDLER. Good morning. Thank you, Chairman Frank. Good morning, Congresswoman Waters, Mr. Watt.

As you said, my name is Janis Bowdler. I oversee NCLR's policy, research and advocacy on issues related to helping Latino families build and maintain wealth.

I would like to thank you for holding this hearing; and I would like to thank you, Congresswoman Waters, specifically for your work on the servicing issue and for your leadership, because we really are convinced that this is one of the most important issues facing us now. As you will hear me say time and time again in my comments and in my written statement, it is not just timely. This issue is urgent.

As you know, NCLR runs a network of 50 housing counseling agencies across the country. Every day, we hear about their struggles with mortgage servicers to keep the working families in their homes. Their stories, along with our research and partnerships, have informed NCLR's views on the mortgage servicing industry.

I also want to offer my congratulations to all the members of this committee for the passage of your foreclosure package. I urge you to see servicing as the next step in addressing the foreclosure crisis. Based on what we have seen on the ground, it is clear that sound servicing practices are the linchpin in a national foreclosure prevention strategy.

This morning, I would like to share with you four major barriers built into the servicing system. These barriers prevent servicers from fully meeting the needs of families struggling to stay in their homes. Let me start by providing some background.

The Latino community was hit hard by foreclosures. Of all loans made to Hispanic borrowers in 2005 and 2006, 1 in 12 are predicted to end in foreclosure, whereas market indicators suggest that peak foreclosures amongst our community are still to come in 2009 and 2010 when option ARMs reset.

As the foreclosure crisis has unfolded over the last year, stakeholders across the country have stepped up efforts to work with at-risk borrowers. Unfortunately, these voluntary efforts are falling short. I am sure you know all the statistics by now. Subprime loans are twice as likely to be more than 90 days delinquent than a year ago, and 2 million loans are 60 days or more delinquent this month, a 43 percent increase over July 2007.

After listening to community leaders, counselors, and other stakeholders, NCLR has identified four characteristics of servicers that leave them struggling to meet the needs of delinquent borrowers.

First, servicers work for the investor. And this is where the obligations and duties lie, not with the borrower. Higher incentives exist to steer borrowers to short sale or foreclosure than engage in complex loss mitigation. This can be seen in the constant struggle between first and second lien holders.

Second, mortgage holders routinely refuse to negotiate on loan modifications, even when it means that the borrower is more likely to default on the overall package. The business model focuses on the short term. This is consistent with traditional loss mitigation focused on borrowers with short-term challenges such as job loss or an unexpected expense.

Despite the fact that today's delinquent borrowers have much different problems, short-term solutions are still much more common than permanent ones. In 2007, 3- to 6-month workouts were the norm. For the majority of those families, their loans will be just as unaffordable 6 months from now.

We have also seen that the mortgage servicing industry lacks capacity. Many of our housing counselors continue to have paperwork lost and wait for months to hear back on loan modification requests. In fact, two-thirds of loan modifications started are not completed inside the following month.

These delays have consequences. One agency, for example, worked for months to get a loan workout approved for their client. Meanwhile, the loan continued on the path to foreclosure. The approval for the modification came after the home went to auction.

Finally, loss mitigation efforts are not transparent. Servicers perform loss mitigation duties according to guidelines set by the investor. However, this information and the identity of the investor are often unavailable. The result is confusion and lack of accountability.

Servicers and investors are pointing fingers at each other when asked why modifications are not happening. A misunderstanding around the term "imminent default," for example, caused some servicers to mistakenly advise borrowers that they had to miss 2 months of payments before they would be eligible for assistance.

As demand continues to rise, we are concerned that these issues will become exacerbated. By one estimate, 7 out of 10 seriously delinquent borrowers haven't even started the loss mitigation process yet. As the millions of homeowners with option ARMs expect to reset over the next couple of years, it is clear that the problem isn't going way.

This also raises serious concerns about the potential for abuse. Forty-two percent of modifications—as Congresswoman Waters mentioned—made last year are already 90 days behind. These borrowers were not given an affordable, long-term solution. Unless something changes, this statistic will get worse. Frustrated borrowers will land in the hands of foreclosure rescue scam artists, and foreclosure prevention programs will suffer.

To address the problem, NAACP offers the following recommendations: Create a duty for servicers to provide loss mitigation services to struggling borrowers; and require that loan modifications are sustainable over the long term. I want to mention that both of those recommendations are already included in H.R. 5679 authored by Congresswoman Waters. And we would also recommend that servicers be required to disclose the investor upon request and that servicers be prohibited from moving forward with foreclosure if a case is still in the process of loss mitigation within their own company.

In many ways, servicers are the gatekeepers to decisions made on delinquent loans. Their ability to adequately serve struggling families should be a concern to us all.

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

[The prepared statement of Ms. Bowdler can be found on page 58 of the appendix.]

The CHAIRMAN. Thank you very much, Ms. Bowdler. That gets right to the heart of what we are going to be dealing with.

Next, Mr. Michael Gross, who is the managing director for loan administration/loss mitigation, at the Bank of America.

And I should note that earlier this year, I was approached by one of the high officials of the Bank of America informing me about the the intention to purchase Countrywide and, frankly, he wanted to make sure that we thought this was a good idea. I have been an advocate of that purchase and urged Federal regulators, in fact, to be supportive because it did seem to me that we would be in a better position. And I hope now that Bank of America is going to prove me correct in my confidence in having them instead of Countrywide, which is going to yield the kind of benefits we were hoping for in terms of diminution of foreclosure.

Mr. Gross.

STATEMENT OF MICHAEL GROSS, MANAGING DIRECTOR, LOAN ADMINISTRATION/LOSS MITIGATION, BANK OF AMERICA

Mr. GROSS. Good morning, Mr. Chairman, and committee members.

I am Michael Gross, Bank of America's managing director of loan administration/loss mitigation. Thank you for the opportunity to appear here today to discuss Bank of America's efforts to help families prevent avoidable foreclosures.

I would also like to congratulate the chairman and this committee for the vital Hope for Homeowners legislation that the House approved on Wednesday. This legislation will be important to the long-term viability of home financing and the short-term stability of the housing market. We believe that it will help both homeowners and potential homeowners alike. And yes, we are eager to implement this program.

Let me start by saying that our goal is to modify or work out at least $40 billion in mortgages by the end of 2009 and to keep all those families in their homes. As America's largest home loan provider, Bank of America will lead a new era of home lending built on transparent, fair, and easily understood practices. We are working to reduce the number of foreclosures, to help families and communities impacted by foreclosure, and to continue to make affordable mortgages available to low- and moderate-income and minority households.

The Countywide acquisition officially closed 3 weeks ago. Barbara Desoer, a 31-year veteran of Bank of America, has assumed the position of president of the combined mortgage, home equity, and insurance businesses. We understand that we now have the opportunity to renew America's confidence in homeownership with unmatched capabilities.

At the core of our combined operations are the substantial commitments we made to use responsible lending practices and home retention efforts. Bank of America is devoting substantial resources to modifying or working out loans for customers who are facing possible foreclosure. Many effective home retention practices are being improved and supplemented. We will continue to work with the investors, the GSEs, regulators, and community partners to reach customers with affordable home retention solutions.

We are tailoring our workout strategies to a customer's particular circumstance. Once we have been able to make contact, we work with distressed customers to match their repayment ability with the appropriate option, using tools such as loan modifications, lower rates, and repayment plans.

In response to the needs of our customers, we have added more staff and improved the experience, quality, and training of the professionals dedicated to home retention. Over the past year, the home retention staff has more than doubled, to 4,700 staff members, and we will maintain this staff or increase it, if necessary, to ensure that we meet our customers' needs.

Bank of America remains committed to helping our customers avoid foreclosure whenever they have a desire to remain in the property and have a reasonable source of income. A key component of successful home retention initiatives includes partnerships with financial counseling advocates and community-based organizations. The data we are sharing today is from the legacy Countywide portfolio. So far in 2008, we have participated in nearly 200 home retention outreach events around the Nation.

Early, open communication with customers is the most critical step in helping prevent foreclosures. For example, we reach out to customers who are delinquent an average of 17 times per month throughout the delinquency cycle to reach them to find a solution. In the first half of 2008, our Home Retention Division saved over 117,000 homeowners from foreclosure, nearly double the pace from the last 6 months of 2007. I would emphasize that these are workouts in which the borrower enters into a plan that allows the customers to keep their homes.

Comparing June 2008, with June 2007, our Home Retention Division workouts are up nearly 420 percent, with the primary cause of that increase a 958 percent jump in loan modification plans. Since we announced a series of home retention initiatives last autumn, loan modifications have become the predominant form of workout assistance.

Year to date, loan modifications have accounted for more than 70 percent of all home retention plans. These loan modifications generally result in reducing the loan's interest rate and are consequently reducing the borrower's monthly payment. These plans offer affordable solutions to the financial challenges facing many homeowners.

Interest rate relief modifications were extremely rare until late last year. Today, interest rate modifications account for 71 percent of all of the loan modifications in the second quarter of 2008.

We are committed to helping our customers avoid foreclosure whenever they have a desire to remain in the property and the ability to make a payment. Foreclosure is always the last resort for lenders, servicers, and for the investors in the mortgage securities we service. We will lead the industry in meeting the challenge of today's housing market with leading-edge foreclosure prevention technology, training programs, and partnerships.

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

[The prepared statement of Mr. Gross can be found on page 85 of the appendix.]

The CHAIRMAN. Next, we have Ms. Mary Coffin, who is the executive vice president of the Wells Fargo Home Mortgage Division. Ms. Coffin.

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

Ms. COFFIN. Chairman Frank, Ranking Member Bachus, and members of the Financial Services Committee, thank you for this opportunity to share Wells Fargo's perspective on our loan servicing practices in the current market conditions.

I am Mary Coffin, head of Wells Fargo's Mortgage Servicing Division.

Wells Fargo services one of every eight mortgage loans in America, or $1.5 trillion in loans that either we originated or were originated by others. Our national presence and the makeup of our portfolio provide a vantage point for critical insights that guide our company's actions, as well as the industry initiatives we have advocated.

Clearly, the foreclosure issue has expanded beyond its genesis with the subprime ARM resets to the full credit spectrum of customers, particularly in geographies facing the greatest market corrections. Declines in housing prices, rapidly rising costs of living, unemployment, and shifting consumer spending habits are driving the need for continued customized solutions.

Our work has included a high-level cooperation between servicers, Fannie Mae and Freddie Mac, and other investors, to produce streamlined processes for distressed consumers through reduced documentation, simplified communication, and fast-track loan modifications. Additionally, we have worked with not-for-profit counselors to help at-risk borrowers manage all of their debts. Working together on a comprehensive view of the borrower's obligations enables us to reach affordability that is lasting.

Because our company's vision has long been to help our customers succeed financially and build lifelong relationships, we hold ourselves accountable for working with customers through various methods to reach affordability. Yet, as I am sure you are aware, there are limits to what we can do. As a responsible servicer, we must make certain each customized decision is economically sound for customers and investors, such as pension plans and employee 401(k) owners.

Foreclosures are a measure of absolute last resort. They destabilize communities and are devastating for the families involved. Servicers are not incented to foreclose. The lengthy foreclosure process exposes servicers to potential risks associated with unrecoverable advances, fees, and penalties.

To further avert foreclosures, we have responded to the increased need to effectively help our customers manage their delinquencies by increasing our staffing. In 2005, the team dedicated to assisting at-risk borrowers consisted of 200 experts. Today, we have more than 1,000 and, I will add, in the United States. We monitor our volume of calls daily and shift experienced staff from one department to another in order to assist.

Now, to ensure our overall effectiveness, we conducted a study of our customers 60 or more days past due, not in bankruptcy or foreclosure. The study showed that we connected with 94 percent of our customers. Of every ten, seven worked with us to find a solution, two declined our help, and the remainder were either unreachable or a solution simply could not be found. And we do have solutions that work: Refinances; payment deductions; repayment plans; short sales; and others. Most importantly, 60 percent of these customers improved their delinquency status and averted foreclosure.

Mr. Chairman, and members of the committee, we want to thank you for your help in encouraging constituents to contact their servicers. Your efforts have played a critical role in our ability to assist more consumers in trouble.

In addition, your leadership has resulted in the Housing and Economic Recovery Act of 2008. This crucial legislation will help return stability to the mortgage markets. This measure, coupled with the Federal Reserve's new HOEPA rule, will ensure the continued availability of responsible, traditional mortgage products across the credit spectrum.

Since we cannot arbitrarily erase a debt for consumers that they simply cannot afford, we also ask for your continued work in developing policies that ensure the growth of responsible homeownership versus speculative housing investments.

In closing, Wells Fargo is firmly committed to continuing to lead the industry in advocating and conducting fair and responsible lending and servicing.

Mr. Chairman, thank you again. It would be my pleasure to answer questions.

[The prepared statement of Ms. Coffin can be found on page 65 of the appendix.]

The CHAIRMAN. Next, Faith Schwartz, who has been laboring on this issue for some time as the executive director of the HOPE NOW Alliance.

STATEMENT OF FAITH SCHWARTZ, EXECUTIVE DIRECTOR, HOPE NOW ALLIANCE

Ms. SCHWARTZ. Chairman Frank, committee members, thank you for the opportunity to testify today. HOPE NOW is an unprecedented, broad-based, private-industry collaboration among housing counselors, lenders, investors, and mortgage participants that is achieving real results. We have 26 servicers representing over 90 percent of the subprime market and over 70 percent of the prime market; and we have all HUD-approved intermediary counselors also as members of the HOPE NOW Alliance. Since last fall, we have been working aggressively to address the housing issues, and the goal of HOPE NOW is to keep more people in their homes.

The result of these efforts culminated in the recently announced servicer guidelines. The first part of those guidelines is around performance measures and accountability.

One of the most important components of the guidelines is that HOPE NOW servicers are committing to timelines to respond to homeowners and third-party housing counselors. These timelines represent a powerful commitment from servicers, and I will read them, as follows:

The servicers will respond to homeowners who have requested loan workout requests within 5 days;

The servicers will send homeowners an outline of key elements of the loss mitigation request to valuation process. The foreclosure prevention timeline and sample letters are submitted in my written testimony;

Servicers will status the homeowners every 30 days;

Servicers will make homeowners' affordability central to loss mitigation; and

Servicers will communicate with homeowners an approval or denial within 45 days.

HOPE NOW servicers have agreed to adopt these guidelines within 60 days of release, which was June 17th.

Also, we address subordination of second liens. In accordance with investor guidelines, HOPE NOW servicers servicing second liens should resubordinate their loans with respect to an existing first lien where the second lien-holder's position is not worsened as a result of a refinance or modification. This is to ensure that no homeowner loses the opportunity to keep his or her home when they experience hardship, when they submit information to stay in their home, and then they can afford their home.

The third area of the guidelines is around solutions for preventing foreclosures. HOPE NOW servicers are committing to assist homeowners through various foreclosure prevention options consistent with investor guidelines or approvals. Details of all relevant and available foreclosure options are included in these guidelines. This transparency around foreclosure prevention options is critical for homeowners, servicers, and third parties for understanding all options that are available.

Fourth, there is a commitment to reporting. HOPE NOW servicers agree to track and report performance to gauge industry progress towards reducing foreclosure and increasing options for distressed homeowners. From July 2007, through May 2008, nearly 1.7 million homeowners avoided foreclosure through loan workouts. Mortgage servicers helped approximately 170,000 homeowners in May 2008 alone.

Subprime modification workouts have increased significantly, as they now represent over half of all subprime workouts. In July, that same statistic reported by the same servicers was 18 percent. Reporting on our progress is critical, and we will continue to keep you abreast of these efforts, including more loan level reporting.

Fifth, the communication and outreach is an important component of these guidelines. Reaching homeowners in distress, servicers commit to early contact of subprime ARM borrowers at a minimum of 120 days prior to the ARM reset. Servicers have agreed to a comprehensive, nationwide outreach-letter campaign for all noncontact borrowers who are 60 days or more delinquent.

Servicers have a commitment to have 800 numbers, faxes, and e-mails for all housing counselors so they have better communications with the housing counselors, so there is better response.

Sixth, they support the local homeownership preservation workshops. These workshops put at-risk homeowners directly in contact with a servicer and housing counselors. In 120 days, we have partnered on 14 different events, reached over 5,700 borrowers.

This weekend, we are hosting events in New Jersey where Senator Menendez will join HOPE NOW and NeighborWorks America. In August, we are holding several events in Massachusetts and Florida.

I do want to thank you, Chairman Frank, for agreeing to participate in our event at the Gillette Stadium in Boston on August 12th.

The CHAIRMAN. Excuse me. In Foxboro.

Ms. SCHWARTZ. My apologizes. I wrote it down wrong.

The Federal Reserve Bank of Boston and NeighborWorks America are working with us on that, and we are very thankful.

Due to servicers and counselors being present at these events, many borrowers are offered solutions on the spot. The reactions of homeowners who have attended these events are overwhelmingly positive. We have hundreds and hundreds of surveys that we have taken, and we look forward to reaching even more homeowners.

Some survey results from the homeowners are as follows: “It gave me hope that I will survive;” “Without your help, we would have lost our home.”

Reaching noncontact borrowers remains a significant challenge. For example, our nationwide HOPE NOW letter campaign has mailed 1.5 million letters under the HOPE NOW letterhead, since November, to borrowers who have not answered those 17 attempts to reach them from a servicer shop; and 20 percent of those borrowers do respond to those letters. That does mean hundreds of thousands of borrowers are still very much at risk of foreclosure unless they talk to their servicers or a third-party housing counselor.

We ask this committee and all policymakers to encourage their constituents to respond to these letters by contacting their servicer, calling the homeowner HOPE hotline, 888–995–HOPE, or contacting any HUD-approved counseling agency. To ensure the free, nonprofit counseling will be available for homeowners in need, HOPE NOW is also committed to pay a fee for foreclosure-prevention counseling.

In conclusion, this is a serious and a severely committed effort, and it will continue until the problems in the housing mortgage market abate. It is neither a silver bullet nor a magic solution, but this effort will continue to complement the efforts of legislators and regulators as they work through the housing issues. We will also continue to be responsive to you and to offer continuous improvement.

Thank you for inviting HOPE NOW to participate. I am happy to answer your questions.

[The prepared statement of Ms. Schwartz can be found on page 107 of the appendix.]

The CHAIRMAN. Next, we will hear from Julia Gordon.

Let me say that all of the entities are representatives of entities that we have worked with closely and upon whose judgment we have relied to a considerable extent; and particularly through the work of our two colleagues from North Carolina, Mr. Watt and Mr. Miller, the Center for Responsible Lending has been a major source of information for us.

So Julia Gordon from the Center for Responsible Lending.

STATEMENT OF JULIA GORDON, POLICY COUNSEL, CENTER FOR RESPONSIBLE LENDING

Ms. GORDON. Good morning, Chairman Frank, and members of the committee, and thank you for the very kind introduction.

Please let me start by congratulating you and the other members of the committee on the passage of H.R. 3221. You have put in an extraordinary amount of work, and I believe that homeowners and the economy will be the better for it. But by calling today's hearing, you are recognizing that there is still a lot more work to do done, and I thank you for that.

I am policy counsel at the Center for Responsible Lending, a nonprofit, nonpartisan research and policy organization dedicated to protecting homeownership and family wealth. We are an affiliate of Self-Help, an organization which makes responsible, fixed rate home mortgage loans available to people with blemished or nontraditional credit.

My core message here today is that if we keep doing the same thing, we can't expect a different result. Voluntary efforts so far have not ramped up at a rate anywhere close to catching up with, let alone getting ahead of the foreclosure rate. So far, many of the voluntary efforts have consisted either of temporary workouts or modifications that just tack some arrearages and fees onto the end of the loan term.

It concerns me that so many of last year's modifications have already redefaulted. That is not a very good sign.

I want to flag one other concern about the loan modification process that hasn't been mentioned yet this morning, which is the practice of many of the major servicers to refuse to provide forbearances or loan modifications unless homeowners sign waivers giving up their claims related to all illegal acts by the creditor, including illegal acts that have not yet been committed, but may be committed in the future.

Sometimes the homeowners are even forced to waive State law claims that the State itself has deemed unwaivable.

In all cases, these waivers mean that if the loan modification turns out to be unaffordable, the homeowners are unable to pursue the legal defenses to foreclosure that they otherwise would have had.

I welcome Ms. Schwartz's new initiatives discussed today, and I hope that one of the things that the servicers participating in HOPE NOW can agree to do is to stop these waivers.

To help more families stay in their homes, we support several pending legislative initiatives that have already been discussed. First, of course, is H.R. 5679, the Foreclosure Prevention and Sound Mortgage Servicing Act of 2008, introduced by Chairwoman Waters, which requires servicers to pursue loss mitigation strategies before initiating foreclosure, but without dictating any particular result or outcome. Servicers who handle FHA and VA loans already work under this requirement. All we are asking is that it be extended to all servicers.

Through our work at Self-Help, where we specifically focus on a very vulnerable customer population with minimal resources, we know that if given a fair, affordable solution, homeowners will make every effort to hold on to their homes.

This bill also addresses the problems I have noted regarding waivers. It also addresses the issue of data reporting, and while again we very much welcome HOPE NOW's data reporting, in order for it to be very useful, particularly to an organization like ours that does very high-level data analysis, we really need loan level data reporting, and we need information on demographic characteristics. HMDA doesn't give us all that information that we need, and to plan for vulnerable populations, whether it is minority borrowers or one population that particularly concerns me, that we have very little information about, is the elderly. We really need better data on that.

We also support the Home Retention and Economic Stabilization Act of 2008, H.R. 6076, introduced by Representative Matsui. This plan enables homeowners to defer foreclosure sales as long as they continue to pay a reasonable monthly mortgage payment. Essentially, it provides a time-out, much like the time-out that Chairman Frank has suggested in the past day to allow servicers to catch up with their backlogs and allow the new FHA program to be implemented. Again, although the new legislation is effective on August 1st, the estimate I have heard from industry is that it will take at least 4 to 6 months to really ramp up that effort.

This legislation actually does something to help a problem that some folks have mentioned here today, which is homeowners who do not reply to inquiries from their servicers. Under this legislation, if homeowners avail themselves of the deferment, they are under an obligation to respond to reasonable inquiries from their servicer. The homeowner is also under an obligation to maintain the property, which is another problem we have seen in homes where the homeowners are behind.

Finally, the Center for Responsible Lending strongly supports H.R. 3609, the Emergency Home Ownership and Mortgage Equity Protection Act. In our view, court-supervised loan modifications are a necessary complement to any voluntary efforts, and in many cases will provide the only available solutions to some of the challenges faced.

Once again, I want to thank you for focusing on this national crisis and for the corrective steps you have already taken. It is ironic that it was so much easier for families to get into loans they couldn't afford than it is for them to get a modification that they can afford. But I believe it is within our power to change that situation. We urge you to implement these additional commonsense solutions to break the downward spiral of losses, help put a floor under market declines, and restore stability and liquidity to the housing and mortgage markets.

I look forward to your questions.

[The prepared statement of Ms. Gordon can be found on page 69 of the appendix.]

The CHAIRMAN. I am going to do 10-minute rounds. I think we will be able to do that.

Let me say, first, to the people who came, I appreciate your coming, but there is this disconnect. As I listen to the testimony from the financial institutions and HOPE NOW, if that is all I knew, I would wonder what we are all doing here on a Friday morning when we ordinarily wouldn't be, because it sounds better than it is.

I don't think anybody is being deceptive, but here is the problem. Inevitably, you are dealing with the successes. It is kind of the flip side of what they say about police officers, who have to resist having a negative view of humanity because they only see people when they are at their worst.

You are dealing with the successes. There are a great deal of problems out there. I understand you know the, but there needs to be a sense of urgency. Yes, I am glad you are doing what you are doing, but please don't take any comfort from it because we have problems.

I will tell you particularly, Ms. Coffin, I have heard specifically, as I told you, complaints about Wells Fargo. I was in Boston about a month ago, in the City, in the south end of Boston at Union Methodist Church, a center of activity for a long time; and they say we are having problems with Wells Fargo. Others have raised that. So I just want to begin with that.

Secondly, I just want to say this with regard to further legislation. I can pretty much guarantee you that if things don't—if the legislation we pass doesn't have a good impact, the bill that Ms. Waters has sponsored will be the bottom, and we will go from there. We will be marking that up early next year, and we will maybe be doing more because I have concerns about the whole servicer industry.

Let me begin with this to those who are familiar with it: Do the servicers have, under the existing arrangement they have with the investors, the legal authority and the assurance that they have legal authority to take full advantage of the bill we passed?

In other words, there was a reference to the fact that 71 percent of the homeowners got interest rate modifications. It is clear to many of us that interest rate modifications alone aren't going to solve the problem. We need reductions in principal. We have given inducements to reduce the principal.

And let me ask everybody, there were two suggestions, we have heard two points that have been made where there are obstacles where the loans have been securitized. The question is whether or not the servicers, who are separate from the beneficial owners, are constrained from reducing the principal because of fear that they will get sued by the owners and don't have the authority.

With regard to loans held in portfolios—and our colleague from North Carolina, Mr. Miller, was mentioning this because of an experience he had with a lawsuit—are there regulatory constraints? That is, is it the case that if you are a financial institution, a bank, and you hold these in your portfolio and you write them down, are the consequences of that then such, in terms of raising capital, etc., difficult? That is what I want.

Let's begin with the question of the investors, the servicers-investor relationship. Do servicers have sufficient authority to take advantage of what we have given them in the bill; that is, if I am the servicer, we all say, oh, foreclosure is not a good idea, and if it can be avoided, it can be avoided.

Do the servicers have enough legal authority to take full advantage of the incentives we have given them rather than to foreclose? Ms. Coffin.

Ms. COFFIN. Thank you, Chairman Frank. I will start with, absolutely.

For the last 18 months that we have been working through this crisis, we have not just stood by what we interpreted in those contracts. We have been working daily, weekly, and monthly with Fannie, Freddie—

The CHAIRMAN. Let me ask you specifically. Have you reduced the principal?

Ms. COFFIN. Yes, we have.

The CHAIRMAN. You are confident that if you do that on a reasonable economic analysis and they would be better off in foreclosure, there is no obstacle?

Ms. COFFIN. Absolutely.

The CHAIRMAN. Let me ask Bank of America.

Mr. GROSS. I am in agreement with that position, Chairman Frank. We believe that the contracts that we have with investors require that the option, the loss mitigation option that we choose, would present the least loss to that investor.

The CHAIRMAN. You both would anticipate being able to do more of this because of the bill and not be challenged by the investors; is that correct?

Ms. COFFIN. Correct, especially in those areas where we have already been given delegated authority because of the decline in the housing market.

The CHAIRMAN. Are there areas where you are the servicer and don't have delegated authority?

Ms. COFFIN. We work in some of those areas, yes.

But there are certainly ones—

The CHAIRMAN. I understand that.

From whom have you not gotten the delegated authority? From the investors?

Ms. COFFIN. It is not whom, it is where—the areas of the United States. Obviously, everyone is aware of certain areas where they have just taken a delegated authority down so that we know where the declining housing market is, and we can react faster.

The CHAIRMAN. Is this a legal concept, delegated authority?

Ms. COFFIN. No. It is making sure we understand the particulars of that—

The CHAIRMAN. So if it is within your power to do it, do you think it should be done?

Mr. WATT. Would the chairman yield for clarification?

The CHAIRMAN. Yes.

Mr. WATT. Mr. Gross said that you have the authority to do this if it is the least—if it is going to generate the least amount of loss, or some variation of that.

Mr. GROSS. That is correct, sir.

Mr. WATT. What kind of documentation is a servicer required to provide? That seems to me to create a whole gray area there. I mean, if you have to generate reams and reams of paper to generate that kind of documentation, that could be a never-ending battle.

Mr. GROSS. Not really, sir.

The challenge that we have there and the question before us with homeowners is generally to create a monthly payment that is affordable for them. That is the basic premise, that together we can create a monthly payment that will allow them to sustain homeownership.

Mr. WATT. But does the servicer have to provide some kind of documentation that this is the best available; I mean, that this is going to generate for a lender or somebody on up the line the least amount of loss?

To whom do you have to document that?

Mr. GROSS. That would be to the trustee and to the security holders.

Mr. WATT. What kind of documentation is that?

Mr. GROSS. They are not going to come and ask for this, but the fact that they aren't asking for it does not relieve us of the contractual responsibility.

If I could elaborate on that, if we have a choice between creating an affordable payment via reducing the interest rate for the borrower or reducing the principal balance, reducing the interest rate will generally result in a lower loss to the investor than reducing the principal balance.

They may end up with the same monthly payment, but for the investor who owns these mortgages, the reduced interest rate is the preferred option, and it is the one under accounting principles and regulatory guidelines that results in the least loss; and that is the option that we are contractually bound to offer.

The CHAIRMAN. Well, then, that is a serious problem because what we have found is that interest rate reductions haven't worked. And the bill, of course, was aimed—and we thought, frankly, Bank of America was interested in the ability to do principal reductions. So going forward, the bill having been passed, your institution had some input into that.

Do you anticipate that there will be more principal reductions?

Mr. GROSS. I absolutely do believe that there will be more principal reductions. This is a program—the bill that has been recently passed by the House opens up more refinancing abilities.

The CHAIRMAN. Let me follow up.

You are saying that you would be obligated—if you could get it to the point where the borrower could continue to pay by interest rate reduction, you are obligated to do that. But if interest rate reduction doesn't keep that borrower in his or her home, then you are fully free to go to principal reduction?

Mr. GROSS. Absolutely, sir.

The CHAIRMAN. Let me ask Ms. Schwartz.

You say you represent, or in HOPE NOW you have—I know you are not their formal representative—servicers amounting to over 90 percent of the subprime. Are there any servicers who disagree with what we have just heard from Ms. Coffin and Mr. Gross? Are there any servicers who tell you, oh, I'm sorry, I have investors to worry about, and I can't reduce the principal?

Ms. SCHWARTZ. I haven't spent a lot of time on the new legislation that has passed, but I have gotten informal feedback, such as from the people on the panel, that this will be very helpful and a useful tool.

The CHAIRMAN. Let me ask you to survey all of the servicers and ask them the kinds of questions we have just asked now. In fact, my staff will be glad to work with you, because you will be helpful in getting from all the servicers the answer to that question.

Let me just ask the ABA: Are there problems with loans held in portfolio, and are you constrained by regulatory consequences from writing down principal?

Mr. BARBER. No.

The CHAIRMAN. That is the best answer I have gotten in 28 years: "No."

I am serious. I like that. I am glad to hear that for this reason, because as you know, some people use that as, oh, we can't do it because of this and that.

So we appreciate that. That is very helpful, and we will work to make sure that is the case.

Mr. Kittle, from your standpoint?

Mr. KITTLE. I can't speak directly for all of our members because we have many—2,500 of them. But we congratulate you, first of all, for passing this bill. We were in support of that. We think our members are going to use this.

The CHAIRMAN. And you are not aware of regulatory constraints against writing down the principal if, in fact, that is what is economically justified?

Mr. KITTLE. I am not aware, but I am going to check.

The CHAIRMAN. I would appreciate that.

Let me turn to the gentlewoman from California.

Ms. WATERS. Thank you very much. There is so much here that we need to understand. I thank all of you for being here today.

I will start with Mr. Gross. You have been with us before, and I appreciate very much your attendance here again today.

Bank of America has acquired Countywide. Did you also acquire the servicing part of Countywide? Is Countywide still in existence, somehow servicing perhaps Bank of America's loans or its own loans? What is the business acquisition here? What happened?

Mr. GROSS. As of July 1st, Bank of America acquired Countywide Financial Corporation in its entirety, which includes the servicing portfolio and all roles and responsibilities that go with that.

There are still—the loans that Countywide has serviced in its own name are still being serviced under the name of Countywide until the transition plan is complete, at which point the majority of the portfolio would then be serviced under the name of Bank of America.

Ms. WATERS. In essence, Countywide is servicing its loans with the same personnel that they used prior to the acquisition, at this time; is that correct?

Mr. GROSS. That is correct.

Ms. WATERS. Who trains the servicers?

Mr. GROSS. The Home Retention Division and Loan Servicing Division for Countywide, now Bank of America, has an extensive training department contained within it that works regularly with insurance companies and all of the major investors to make sure that our practices are at or exceeding industry standards.

Ms. WATERS. Let me understand. With Bank of America, one of your clients that is in trouble, who anticipates that he or she will not be able to make their mortgage, would have an opportunity to call Bank of America and tell them they have problems, can they get some help, do they understand?

Mr. GROSS. There is an established escalation process.

Ms. WATERS. But you have a loss mitigation department that this person would go to or call to be connected to talk about the—that they are going to be late with their payment, they have some problems, they don't have the income. That is the first step; is that right?

Mr. GROSS. That is correct.

Ms. WATERS. To whom do they speak? Do they speak to the same person who would be considered a servicer, who could do a loan workout if they got into worse problems, or is this a different department and person?

Mr. GROSS. They would be talking with a home retention expert who, if they say, this is a long-term problem and I need help, that person is trained to help them with that problem.

Ms. WATERS. Is this person the same person who could eventually be in the position of doing a loan modification in this loss mitigation department?

Mr. GROSS. In most cases, it would not be.

Ms. WATERS. Why don't you just tell us how it works. I don't want to have to drag it out of you.

Mr. GROSS. Once the customer calls into our home retention area, they would speak with an initial staff member who would then be able to tell them what options are available. We would gather the financial information from the homeowner, and based upon the particular needs that they have, that staff member is authorized to make what we would call a "contingent offer."

Ms. WATERS. What is that staff member called? What is their title?

Mr. GROSS. I am sorry; I don't know the exact title of that person.

Ms. WATERS. Okay.

Mr. GROSS. But they are authorized to make what we would call a "contingent offer" of a workout that, based upon, again, the financial circumstances surrounding that homeowner's issues and provided that the homeowner provides us with minimal documentation that supports what they have told us, then that loan would—that case would then be transferred to a fulfillment area in our HOPE NOW department that would close that workout for us.

Ms. WATERS. Okay. That staff person who does not have a title, who would be involved in helping to determine whether it goes to your fulfillment area, could be offshore; is that right?

Mr. GROSS. No.

Ms. WATERS. Do you have any loan mitigation operations offshore?

Mr. GROSS. Yes, we do.

Ms. WATERS. Tell me what they do.

Mr. GROSS. The people offshore, those who are telephone-based, would handle more customer service-oriented calls on an overflow basis when our stateside call centers need assistance, to reduce hold times for the homeowner.

Ms. WATERS. So this customer who calls, who anticipates that they are going to get in trouble, but they are not yet at the point of having a foreclosure, they could be talking to someone in your loss mitigation department that is offshore.

Mr. GROSS. They could be, and they would be. And once we got to the point that you are describing—

Ms. WATERS. Describe your offshore operation to me. Who may we be talking to? Somebody in India?

Mr. GROSS. Yes.

Ms. WATERS. What do they do when Ms. Jones in America calls about her house in Detroit to this person in India? What do they do for them?

Mr. GROSS. The vast majority of calls that they would receive would be a homeowner who would be calling and saying, my payment was due on July 1st and I will be sending it to you on July 18th. We would record that information, and that would be the end of the call.

For those people who have more complicated transactions than what I just described, that call would be transferred back to a stateside representative in the home retention area.

Ms. WATERS. So this person that is offshore, could they determine whether or not this person has to pay late fees?

Mr. GROSS. Yes.

Ms. WATERS. So the person offshore would say, okay, Ms. Jones, your payment is going to be late, but that's going to cost you a late fee.

Mr. GROSS. They would make the homeowner aware of whatever late fee was associated.

Ms. WATERS. If Ms. Jones says, I can't pay it for 45 days, is this person offshore authorized to say that is okay, or do they have to transfer it to somebody else?

Mr. GROSS. If you are saying the monthly payment can't be paid for 45 days, that phone call would then be transferred to a stateside representative.

Ms. WATERS. Okay. This stateside representative then would do what?

Mr. GROSS. They would gather financial information from the homeowner as far as income goes. We would get their indebtedness and necessary information, and then we would be looking at it very quickly to determine if this is a short-term problem or a long-term issue. Is this a case of unemployment, medical issues, divorce; what is the underlying cause for the 45-day delay?

Ms. WATERS. If this is a person who works every day, they have an income, but they are in a loan that is a little bit more than they can afford, is this person now in a position where they can talk about, or be offered, a workout or a modification?

Mr. GROSS. Yes, they are. That person who is working with them would recognize the fact that the monthly payment that we are talking about is not sustainable. That would be supported by the income and expense information that we have now gathered from the homeowner, and we could make, based upon that information, a contingent offer of a modification to the homeowner that would then be supported by the documentation.

Ms. WATERS. Does the possibility of a modification include more than one way by which this person could retain their home?

For example, you talked about reduction in interest rates. Mr. Frank talked about reduction in principal. Could both things happen?

Mr. GROSS. We would first be looking at the modification of the interest rate because, as I earlier stated, that results in the least loss to the holders of these mortgages. If that does not, in fact, solve the problem, then we would absolutely consider the reduction in principal balance.

Ms. WATERS. Okay. As I understand it, there are some affordability standards that are used to judge whether a loan workout, be it a repayment plan or loan modification, would be affordable and sustainable for the bar—and I guess this happens with VA and FHA loans.

Do you have an affordability standard that your servicers work by?

Mr. GROSS. Yes, and it does vary in some cases by investor. You have just mentioned two. FHA and VA have their standards. Fannie Mae and Freddie Mac have their standards.

You would find that the investors for whom we service, that are not included in those groups, our affordability standards are very close to, if not the same as, those others.

Ms. WATERS. But investor standards could be different?

Mr. GROSS. The Fannie Mae and Freddie Mac standards, along with FHA and VA, are all looking to ensure that at the end of the month, there is net unencumbered income available for the household to take care of emergencies. That is the same thing that we use on all of our loans because we want to ensure that whatever workout plan we use, it is sustainable.

Ms. WATERS. We need to take a look at that.

You took over Countywide. Countywide probably has the largest number of foreclosures of any lender in this country.

Bank of America, you have your own foreclosures prior to the takeover, having merged all of this. How much did you expand your servicing divisions in order to accommodate this huge foreclosure problem that you have?

Mr. GROSS. I should clarify that the two servicing divisions have not yet been combined. That is part of the transition process. As I am sure you can imagine, when you are combining two rather massive corporations that now total approximately 250,000 employees, this is not a task that is easily accomplished—

Ms. WATERS. So they have not been combined, but certainly Bank of America feels a real sense of responsibility—

Mr. GROSS. We do.

Ms. WATERS. —to deal with the Countywide problem?

Mr. GROSS. Yes.

Ms. WATERS. So if the servicers have not been expanded, how are you doing all of this wonderful work in doing workouts and modifications?

Mr. GROSS. The staff within the Countywide servicing area that is devoted to home retention continues to grow on a monthly basis and will continue to grow on a monthly basis as more staff is needed, which is anticipated to deal with these issues and as I mentioned in my testimony.

Ms. WATERS. How much has it grown in the last 3 months?

Mr. GROSS. I believe it is in the neighborhood of 500 staff members—from 4,200 to about 4,700.

Ms. WATERS. Have you determined whether or not this is sufficient to deal with this awesome problem that you have acquired?

Mr. GROSS. The staffing that we currently have, we believe is sufficient to handle the volume of work that is before us today.

I would also state that we have very sophisticated models that we use in our staffing analysis to ensure that the staffing that we will need in October, November, and December will be in place at the time that their services are needed.

Ms. WATERS. Let me read something to you from today's paper:

"U.S. foreclosure filings more than doubled in the second quarter from a year earlier as failing home prices left borrowers owing more on mortgages than their properties were worth. One in every 171 households was foreclosed on, received a default notice, or was warned of a pending auction. That was an increase of 121 percent from a year earlier, and 14 percent from the first quarter.

"RealtyTrac, Inc., said today in a statement almost 740,000 properties were in some stage of foreclosure, the most since the Irvine, California-based data company began reporting in January, 2005."

I won't continue. The chairman has been extremely generous. I would have liked to explore with HOPE NOW—

The CHAIRMAN. Let me go to Mr. Watt, and then we can come back.

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

Mr. WATT. Thank you, Mr. Chairman. I had a whole series of questions, but I got caught up in the question that the chairman asked, and I am still not absolutely clear what happens in this scenario, Mr. Gross and Ms. Coffin.

You are a servicer. You have one entity, the finance people. Whomever, packagers, whomever owns the mortgage, they would benefit more from not writing down the interest or would—yes, would benefit more from writing down—not writing down the interest—or not writing down the principal. I'm sorry.

Mr. GROSS. Thank you.

Mr. WATT. And you have somebody else who would benefit more from writing down the principal. How do you resolve that conflict, I guess. You have a contractual imperative to do what is in the interest of both of those people, or just one of them?

Mr. GROSS. To start with, I think that the first obligation that we have and try to support is to try to keep the homeowner in their home. That will result in the best return and the least loss to all parties who are involved in this mortgage transaction.

Obviously, the homeowner is—

Mr. WATT. That actually poses my question even clearer then.

Suppose the homeowner is most likely to be retained in their home with a principal write-down, yet the investor is most likely, they think, to get the best return if you don't write down the principal; if you write down the interest.

How do you resolve that conflict? I thought I heard you say you had a contractual obligation.

Mr. GROSS. I do.

Mr. WATT. To the servicer?

Mr. GROSS. To the investors.

Mr. WATT. I am sorry, servicer not investor.

How do you resolve that conflict? That is what I am trying to figure out.

Mr. GROSS. Generally speaking, the homeowner's primary issue is how much is the monthly payment that I have to pay, and is that monthly payment sustainable. If the monthly payment is not sustainable, I can reduce that monthly payment in one of two methods, or possibly a combination of the two.

One, I can reduce the interest rate, which would reduce the monthly payment. If that does not resolve the issue and arrive at a sustainable monthly payment, then the next option to be considered would be extending the term of the loan possibly from 30 to 40 years, which would further reduce the monthly payment. Then the last option that I have is reducing the principal balance on the mortgage.

So it could be a combination of those, but I would generally approach those in that hierarchy.

Mr. WATT. That is fair. That is honest. Even if it might be in the long-term interest of the borrower to have the mortgage amount written down, that is not going to be your first driving force.

Your first driving force is to create a sustainable payment.

Mr. GROSS. That is correct.

Mr. WATT. That is what I heard you say. That is fine.

That is the same thing you would say, Ms. Coffin?

Ms. COFFIN. Thank you, Congressman. I was going to add a little more color to this. I don't think we should see it as an either/or.

Mr. WATT. But, you know, in a lot of cases it is an either/or, and that is the case I postulated to you, the long-term best interest of the borrower is to write down the principal balance on the loan, but the long-term best interest of the investor is to keep the interest rate. I don't know how you reconcile those things.

It's okay. You are saying your first obligation is to the people who put up the money.

Ms. COFFIN. No. I apologize. I misspoke. I didn't mean either/or, investor or customer, I mean either/or rate or principal reduction, meaning that whether it is rate, term, principal reduction, all three, we have all of these tools available to us. And as we reach each borrower, I think what might help here are some examples.

Where I believe the principal reduction, and especially the new bill that has been passed will help us is, take someone who has extenuating debt, a first and a second mortgage, because what you are going to see is that no matter how far we take the term or the rate reduction, we could not get to the affordability.

Mr. WATT. I am not cutting you off because I am not interested in what you are saying, I am cutting you off because I am going to run out of time.

The CHAIRMAN. Since he picked up from me and finished a question, he has more time. We are not in a rush here.

Mr. WATT. There are a lot of internal decisions being made by the servicer here that could have some really interesting implications for the people who put up the money and the borrower; and it seems to me these are some tough areas.

Let me extend what you all have said because one of the concerns some of my colleagues have posed about this bill that we passed out of the House—and we hope the Senate is going to pass at some point in the foreseeable future—is that we are going to end up with the worst loans being put into that program.

Talk to me about whether that is true. Because it sounds like, based on what you all have said, that might be the case.

Ms. COFFIN. I could not classify this as a worst loan. What we have already been doing, prior to the bill being passed, is, we have been analytically looking at our portfolio of those borrowers who are most likely going to be eligible for this.

We have many borrowers who are already in a position of 90 percent, but they cannot refinance today, and they don't have affordability. And so principal reduction, we have to look at the borrowers who are overextended and they need this principal reduction, they need the rate, they need the term, they need all the pieces of it. What is important is that willingness to remain in the home, the affordability, and the refinance should make it a good loan.

Mr. WATT. I might have mischaracterized when I said "worst." I mean the most distressed borrower, the people who are most likely to end up in this principal write-down situation.

Would that be an accurate characterization?

Mr. GROSS. I think a couple of things here. Number one, we also have been looking carefully at our portfolio on a preliminary basis trying to assess what portions of our portfolios might be eligible for this program. Until the oversight board publishes final regulations surrounding this, which will truly give us the detailed underlying guidelines that must be used in granting these refinance mortgages, we won't be able to do a final assessment.

Mr. WATT. But you have some preliminary estimates?

Mr. GROSS. I don't have those with me.

Ms. COFFIN. Congressman, there is another point I think that is an important part of the bill that was passed, and that is your debt-to-income ratio that you have put into the bill. That is going to protect you to make sure that there is a reasonableness that these borrowers will be able to sustain the payment.

Mr. WATT. I am less concerned about that than some of my conservative colleagues, to be honest with you. I just wanted to make sure that we have a record on it here. It is a concern obviously, because we don't want the absolute most distressed; we want this thing to work.

The CHAIRMAN. If the gentleman would yield, nothing in this bill requires the FHA to take it. In fact, that was one of the reasons that we rejected the auction mechanism, because of the fear they might be overwhelmed.

So the FHA, in any case, retains complete authority to say "no."

Mr. WATT. Now, the transition period you mentioned, Mr. Gross, the writing of these rules, I think that is something we wrote in some 60-day requirement on? Or is that what the industry was jumping up and down about needing a 60-day, at least, transition period during which FHASecure would remain? Tell me about that. Am I just missing the point here?

Mr. GROSS. Number one, I apologize. I am not familiar with what industry positions might have been. In terms of the transition period here prior to the first of October, once the board has published their final regulations it is our intent to immediately take those final regulations and analyze our at-risk portfolios. And any borrower who is in the foreclosure process that we believe will be eligible for this refinance program, we will be in touch with them immediately so that we can use this as a very effective tool to stop that foreclosure from happening.

Mr. WATT. Are you using FHASecure?

Mr. GROSS. Yes, we are.

Mr. WATT. Is there some transition period for it?

Mr. GROSS. FHASecure and this particular bill really, I think, are geared toward two different populations. I think that the bill that you have just recently passed is far more encompassing than what FHASecure might have been. And especially it was just very recently in the May, effective July, timeframe that FHASecure was expanded. So I think that they will remain both effective tools.

Mr. WATT. Even after October 1st?

Mr. GROSS. I believe so.

Mr. WATT. Let me just get a show of hands quickly on two issues so as not to belabor the point. There is a lot of controversy about whether—well, I shouldn't say a lot of controversy. I suspect there will be differences on this panel, depending on the various perspectives of the panel, about whether there is still an ongoing need for predatory lending legislation after passage of this bill and the regulations. Just show me who thinks there is still an ongoing need for predatory lending legislation.

Seven. That is not bad. Mr. Barber, you are the only one who didn't spring to the fore on that.

Mr. BARBER. I guess my experience is such that I am not dealing with those type of loans. I am really not very familiar with the issue.

Mr. WATT. So that is not an expression that it is not needed; it is an expression that you would rather not express an opinion about that?

Mr. BARBER. I would concur with that.

Mr. WATT. Okay. Ongoing need for servicer legislation. All who believe that there needs to be some legislation, whether Ms. Waters' bill or some other bill, related to servicers and their obligations, all in favor, raise your right hand.

Now, on the other side of that is the like of a right-hand then expression that it maybe is too early to say, or you are unalterably opposed to service legislation? Mr. Kittle first.

Mr. KITTLE. Yes, sir. We would like to see the HOEPA rules work at this point before we have any further legislation.

Mr. WATT. So your jury is still out?

Mr. KITTLE. Yes, sir, it is.

Mr. WATT. Okay. Mr. Barber.

Mr. BARBER. I guess I would just say that the devil is in the details, and we are very interested in working with the committee on this issue.

Mr. WATT. Who else didn't express an opinion? There were two others. You all don't have an opinion? Okay. All right. I thank you.

The CHAIRMAN. Let me go to Ms. Speier, and then to Mr. Miller.

Ms. SPEIER. Thank you, Mr. Chairman.

Our distinguished chairman at the outset made, I think, a very important point. What we heard today is very reassuring, but it is not consistent with what many of us are hearing in the field.

So this is a question to you, Mr. Barber, as the representative from the American Bankers Association. I think in the near term that the ABA would be well intended if it created an office of consumer services which Members of Congress could contact if we were having issues with particular constituents and their particular bank. We have done something very similar in California with the Department of Managed Health Care, where there is an office to which we can call, and they will negotiate with the health plans around particular questions that we have relative to constituents. Is that something that you would consider doing?

Mr. BARBER. It is not an issue that I am familiar with. It sounds very reasonable, and I am sure that staff would have no problem getting back with you on the issue.

Ms. SPEIER. Thank you. This question is to you, Mr. Barber, as well as to everyone else, but particularly to you because you made the point of saying that you didn't get engaged in these risky loans and you did what we would expect most prudent bankers to do: Make sure that the customer has the appropriate income to be able to make the loan payments. And you also said that you had lost market share because of it, and you are trying now to build up that market share. So you did the right thing and you lost, at least in the short term.

My question is, what do we do, and how do we go after the bad actors who for all intents and purposes are walking right now? Do you have any suggestions to the committee in that regard?

Mr. BARBER. I think in many cyclical financial businesses you have to walk away when price or risk does not make sense. And there are institutions that are aggressive and take other stances. Most of those entities are now out of business.

Fundamentally, the subprime market was funded for many years by FHA-type products. There was a tremendous boom in FHA. A series of events took place, probably the most important of which was somebody, a young person on Wall Street, made a model that didn't make any sense, many investors bought these things, and it blew up. Today that market share is being regained by the FHA product, and institutions like myself and people, others in the ABA, are using the FHA product to refinance people and use that product for low-income folks who have rather challenged credit scores. That is a great product for those people. It is a fixed-rate product, and it is much more appropriate.

Ms. SPEIER. I guess my question is somewhat different. I was at a counseling program that was hosted by the Speaker of the House a couple of months ago, and I was able to listen in on a couple of counseling sessions and I was astonished by what I saw—a woman making $2,000 a month holding a $500,000 loan. Now, there was fraud associated with that application. Someone should be held accountable for that, and yet we are not holding anybody accountable except maybe the taxpayers of this country in trying to fix this scenario.

So I guess I am asking you and others, do you have any ideas? It looks like Ms. Coffin does.

Ms. COFFIN. Yes. Regulate brokers. Let me answer the question first. Because we have loans in our portfolio that we did not originate, I see exactly what you have seen. And we know some of the practices that were out there. Those practices need to be regulated.

And, number two, some of them haven't just walked, we are thankful, they are gone. They are out of business. Their model was not sustainable. And as was mentioned down here, you have to begin with responsible lending practices. That is where this all begins, making sure the borrower knows what product they are getting into, making sure they understand about the payment. That is what has to be regulated.

Ms. BOWDLER. I would agree. NCLA has actually done a lot of work looking at the role of mortgage brokers and where that system broke down, and they definitely need more enforcement and accountability there. But that is not the only place where the system broke down. Those brokers originated loans for banks, and banks then approved those loans and took them in with the documentation that they had.

All up and down, across-the-board, we are seeing that not only did the underwriting standards become weakened, but the enforcement standards at the State and the Federal levels just completely broke down. In cases like fraud that you are mentioning, a lot of those cases are done at the State level, and either their authority has been undercut by positions that the national regulators have taken, or their enforcement bureaus are too small to go after all those cases, or the remedies are too insignificant to make it worth it for the borrower to pursue.

So as far as those folks who have gone out of business for this, there are many, but this doesn't mean that they are not going to come back. When the market rebounds, there is going to be another bad product out there, another company targeting our community trying to figure out how to make a buck off of them.

Ms. SPEIER. Mr. Kittle.

Mr. KITTLE. Yes, ma'am. Thank you. I am so happy that this bill passed, because for 10 years the Mortgage Bankers Association has wanted FHA reform. That is part of the issue. We are going to get that. We have been up here for the last 5 years asking for one national standard, one bill to fight predatory lending. That would include language to preempt the States, not 50 individual laws, but one that we could all follow and all have to adhere to. We want the brokers not only to be licensed, but we would like higher net worth requirements for brokers, educational requirements, and a national registry for all loan officers. By the way, both Bank of America and Wells agree to do that.

So you put all this together, along with RESPA reform. Last year, MBA gave to HUD a new HUD–1 settlement statement and a new good faith estimate where every single line on both of those matched.

You cannot have predatory lending until you lend, so it is at the closing where it takes place. And if all the lines match up perfectly between what is given at application and at closing, it is much more difficult for rates, closing costs, and other fees to be changed for the elderly, for Hispanics, for minorities, and for African Americans.

We believe all these things combined can help fight this.

Ms. SPEIER. Thank you.

Mr. Gross, in acquiring Countrywide, they had a requirement that they would have to waive all rights to claims in State and Federal provisions that exist. And I think Ms. Gordon had referenced that earlier, maybe Ms. Schwartz, on the waiver provision that many are imposing. So the question I have is, are you continuing with that waiver provision in dealing with these customers?

Mr. GROSS. I am not familiar with any waiver of a borrower's or homeowner's legal rights that has ever been associated with any workout transaction. The only waivers that I have seen that have been used have been in specific settlement of legal actions, where someone has brought a lawsuit, and as part of the settlement action that there could be a waiver. But I am not aware of any contractual waivers that are required as part of any workout processes.

Ms. GORDON. I have a Countrywide waiver right here. I will read it to you.

The CHAIRMAN. Let me ask, Mr. Gross, were you speaking for only the Bank of America, or are you commenting on Countrywide's practices before this, too?

Mr. GROSS. Countrywide's as well. I am not aware of the document.

The CHAIRMAN. Then, Ms. Gordon, please go ahead.

Ms. GORDON. I will try to read quickly. It is a little long:

"In consideration for Countrywide entering into this agreement, you agree to release and discharge Countrywide and all of its investors, employers, and related companies from any and all claims you have or may have against them concerning the loan. Although California law provides that 'a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which if known by him must have materially affected his settlement with the debtor' you agree to waive that provision or any similar provision under any other State or Federal law, so that this release shall include all and any claim whatsoever of every nature concerning the loan, regardless of whether you know about or suspect such claims, including but not limited to claims arising under the Mortgage Disclosure Act, Electronic Fund Transfer Act, Truth in Lending Act, Real Estate Settlement Procedures Act, Fair Credit Reporting Act, Fair Housing Act and Fair Debt Collection Practices Act. This release shall remain effective even if this agreement terminates for any reason."

And I also want to read you another line from an Option One agreement we have which forces the homeowner to admit, "The arrearage is the borrower's full responsibility and was produced solely by the actions or inactions of the borrower."

Mr. GROSS. I apologize to the committee. I was not aware of this release form. I can assure you that it will be under review by Bank of America very quickly. And I would assume that we will be adopting more industry standard practices such as what Fannie Mae or Freddie Mac might be using.

Ms. SPEIER. Thank you.

The CHAIRMAN. Let me just say, I am very glad the gentlewoman asked that question. I had made a note of it. And I appreciate the fact that you say it will be under review. I hope you will convey to Mr. Bulus and others that it is my expectation that it will soon be deeply underground, at least 6 feet, and that we won't hear of it again.

I thank the gentlewoman for raising the issue.

Ms. SPEIER. I have two last questions. We have heard this morning that modifications haven't worked, at least in a significant number of cases. So my question to you is, what are you going to be doing differently to make sure that these modifications do work?

Ms. COFFIN. One of the things we have already been doing in the last several months, as a matter of fact probably close to a year, is what we call a trial mod. This originally began called a special forbearance mod that HUD introduced, but we have actually expanded it to all of our borrowers. And in the trial mod, we look for the qualifications that will bring affordability. And then once we achieve it, we just tell the borrower: If you can make this payment for 3 months, we will automatically mod your loan. Because we want to see first that they actually can make the payment. And if they can, the loan will be modified.

This has been very successful, and it actually helps us in the back end of not seeing that redefault. Now, what we will see is more redefault in the actual trial period, but we will not see it on the back end. So then we are still working with the borrower. So we come right back in and we begin the work all over again to say, okay, we were not able to achieve it during that trial mod. What are we missing here? Let's look at your income and expenses again, and we rework it with the borrower once again.

Mr. GROSS. I would concur. I think our practices are almost identical. I would also add that for the borrowers that redefault within the first year of the modification, in many cases this is not due to the fact that the modification was not affordable at the time; it is due to the fact that life events continue to occur even after the modification. And if subsequent life events happen and a new default occurs, we will start the practice all over again to find a sustainable payment to help them stay in their home.

Ms. BOWDLER. Could I comment on that really quick? That hasn't necessarily been our experience of what we have seen on the ground. And I can't say it is the loans that we have heard from our counselors come from either one of your organizations. But the short-term loans that were defaulting were more like repayment plans or forbearance, which is a temporary fix. So, by nature, it was just sort of kicking the obligation down the road a little bit, and so it was very predictable that a lot of those were going to default because they were not actual modifications where they changed the terms of the loan, they were just temporary forbearance and repayment plans.

One problem with that that we have started to see in the counseling network is that once that temporary fix does not work, and one caution I have about the trial, I don't know if this is the case. But when the borrower goes back and says, whatever deal you gave me didn't work, the response that they are getting from the agent on a routine basis is, well, we already gave you one modification. There is nothing I can do for you now. You are not eligible a second time around.

The CHAIRMAN. Time is going to expire here, but let me just say this: We have gotten some very good answers. The question is practice. But what we are going to do, and the staff of the full committee and the subcommittee are here, we are going to be following up. And we will work with Ms. Schwartz, because she has these particular servicers, and we are going to say, look, this is what we were told. If this isn't true, then you had better tell us.

So I think everybody here—I don't doubt anybody's integrity here, but you don't always know what is going on out in the field. But we intend to follow up by taking all of these good answers that we have gotten and write to people and say, please reaffirm for us that this is your practice.

The gentleman from North Carolina, and then the gentleman from California.

Mr. MILLER OF NORTH CAROLINA. Thank you, Mr. Chairman. I apologize for waltzing into this hearing 2 hours into it without having heard any of the testimony and then asking questions.

The CHAIRMAN. I would say to the gentleman, I did raise the issue that you and I had discussed about regulatory constraints. I got an answer that, if you want to go further, but that question that you and I had discussed—

Mr. MILLER OF NORTH CAROLINA. Obviously, if redundancy were a sin in politics, we would all be going to hell.

Twenty years ago during the savings and loan debacle, I was a lawyer in practice in Raleigh, and I took a very modest commercial litigation case, Re: Savings and Loan, in Iowa, that arose out of the foreclosure of a mortgage that the savings and loan had not originated but had purchased. I sent them a copy of the complaint that I filed. It was a question, internally it was a modest claim, internally a question of law that was a 50/50 proposition because there really was no deciding case directly on point. I called up, I had a settlement to offer basically splitting the difference of the actual damages with another commercial entity, a bank, which was $15,000. And the guy I dealt with at the savings and loan in Iowa said that they were carrying the lawsuit that I had filed on their books as a $90,000 asset. My view was that $15,000 was $15,000 more than they had. Their view was that if they took $15,000 for the lawsuit to settle it, it would appear on their books as a $75,000 loss. That made absolutely no economic sense. Sure enough, a few months after—and I ultimately lost. Despite great advocacy on behalf of the savings and loan, the position that I had argued for lost in the court of appeals. It won at the trial level and lost at the court of appeals. A few months later, sure enough I got something from the Resolution Trust Corporation telling me the savings and loan was not in receivership and wanting me to fill out a lot of forms about the case I had represented them on.

We have heard wildly different things about how much modification is going on. We have heard from industry that they are modifying like crazy, left and right, modifying all over the place. And we have heard from consumer advocates that they are hardly modifying at all.

The Washington Post this morning said that it varies dramatically bank to bank. And we have also heard after the failure of IndyMac Bank that there may be 150 banks that are in danger of becoming insolvent. That made me wonder if foreclosure, if foreclosure avoidance modification appears to be obviously economically logical conduct, but a lot of lenders aren't doing it. It possibly has to do with how they are showing the mortgages on their books.

Can you tell me how mortgages are being shown on the books? The mortgages that every lender knows has a reset coming in 3 or 4 months or has already had a reset and is going to increase the monthly payment by 30 to 50 percent, which is apparently pretty typical of the subprime loans of 2005 and 2006, how are they being shown if there is some delinquency, some default, some slowness in payments? How are they being shown if they are modified?

Anyone can take that. Obviously those who are here with lenders might be the ones who could answer that first.

Ms. COFFIN. I heard lots of questions in there. The one question was on subprime loans. Correct?

Mr. MILLER OF NORTH CAROLINA. No. For purposes of regulation, for solvency and the appearance of solvency before the OTS, the OCC, FDIC, or whomever, how are mortgages being shown on the books of financial institutions?

Ms. COFFIN. That is a big question.

The CHAIRMAN. Let me—particularly what we need to know is, does the fear or the reality that the regulator will force you to raise more capital or otherwise constrain you if you write the loan down if it is in your portfolio, is that a constraint against making the kind of deals we are talking about?

Ms. COFFIN. I am going to say this upfront. There are a lot of accounting laws when you are holding loans in portfolio, which means you own the loan. So one thing about Wells Fargo is there is a very small portion of our portfolio that we actually own the loan. Most of ours are sold into the securitized market, Fannie, Freddie, FHA. We are the largest FHA holder of loans. So there is a very small portion. And I am not an expert at all in all the accounting laws that come with nonperforming laws when you actually own the loan. But I know this upfront; that in a large portfolio such as ours where you are going to get the impact in the Nation, where so much is securitized. No—I am going to answer the question as we did earlier. No, we are not incented to foreclose. As a matter of fact, as a servicer—and I don't want to go too deep in this. But if you actually move to the foreclosure, it costs the servicer more because we are advancing all of the funds throughout that foreclosure process and it lasts 12 to 18 months. To modify a loan, you are getting to a solution and get back to a paying and a performing loan very quickly.

So I just want to make sure, does that make sense?

Mr. MILLER OF NORTH CAROLINA. I would welcome hearing from others. I expected to hear different answers from different witnesses on this question.

Mr. GROSS. I am not aware of any regulatory or accounting constraints that would in any way disincent a servicer from modifying a loan.

Mr. BARBER. I would first say that, regarding a lawsuit, carrying lawsuits on the books as assets sounds imprudent to me. Regarding a loan—

Mr. MILLER OF NORTH CAROLINA. And I think it proved to be.

Mr. BARBER. So regarding a loan that we would own, that my institution would own that is delinquent, say 120 days, and let's say that the market value of the house is significantly below what the loan balance is. In general, what GAAP accounting would do is you would make a fair assessment of the asset, that being the house, and you would discount that somewhat. So it should be shown on the books after it moves through the loan loss allowance accounts at 90 or 80 percent of fair market value of the asset. So that is essentially my understanding of GAAP accounting if the loan was on the books as a whole loan.

Ms. COFFIN. I don't think any of us are aware of any regulator or capital loan requirements that keep us from loan modifying.

Mr. MILLER OF NORTH CAROLINA. Thank you.

The CHAIRMAN. The gentleman from California, Mr. Sherman.

Mr. SHERMAN. I will pick up where Mr. Miller left off. There may be some "see no evil" accounting, where you keep some loans on your books at a high level because you haven't yet modified them. But whatever the accounting rules are, if the owners of the loans don't tell the servicers about it, in some cases that may be another department of Wells Fargo or Bank of America. If these accounting rules skew things the wrong way but don't influence the behavior of servicers, then they shouldn't be a problem. And has every servicer said that as far as you know you have not been told by the owners of the loans, which could again be another department of your own bank, hey, don't work out a deal because that won't be so good for our balance sheet?

Hopefully, I could just get some "no's" from all those involved in servicing it.

Mr. GROSS. No, we have not.

Ms. COFFIN. No, we have not.

Mr. SHERMAN. Okay. Now, Congress has provided for $300 billion worth of FHA guaranteed loans. That is the goal, to use that. I don't think anybody claims that is too big, far in excess of what is needed to handle the problem. Without additional pressure from Congress, are we on target to see writedowns of an FHA guarantee of $300 billion worth of loans? And I realize you guys work on the individual trees rather than the whole forest, but can you give me some indication? Are we going to use this whole program?

Ms. COFFIN. Yes, we are going to use the program. And even prior to it being approved yesterday, we have been analyzing, working through our portfolio, trying to find the borrowers who look like they would qualify for the program.

The one step in the process that yet has to happen is we have to actually speak to the borrowers, because what is required is a new debt-to-income ratio to understand all their other debts to make sure they totally qualify for the program.

Mr. SHERMAN. Now, Wells Fargo services what percentage of the mortgages in the country?

Ms. COFFIN. One out of every eight.

Mr. SHERMAN. And do you think you will be using one out of every eight of those $300 billion? Do you have any guess? I know you are going to use the program. Any guess as to how much?

Ms. COFFIN. No, I do not have the number with me today. And I don't know that you can compare that, because what you have to see is the mix of your portfolio. Because if a portfolio is 100 percent prime, that is going to be different than a portfolio that has subprime and FHA in it.

Mr. SHERMAN. In any case, do you expect this program to help tens of thousands of borrowers that you service, or hundreds of thousands?

Ms. COFFIN. I don't know that I can give you a number today.

Mr. SHERMAN. Let's see if Bank of America can be any more specific.

Mr. GROSS. As I stated earlier, until the oversight board publishes its final rules, we will be unable to get you a specific answer as to how many loans in our portfolio we believe are eligible. But we do believe, my gut says that there are going to be tens of thousands of loans in our portfolio that should be eligible for refinance under this program.

Mr. SHERMAN. And do you plan to take full advantage of the program?

Mr. GROSS. Yes. We will be fully participating in the program.

Mr. SHERMAN. Do we have any other servicers? I know we have a representative of the Bankers Association, but I don't know if Mr. Kittle can speak for his members.

Mr. KITTLE. Congressman, I don't think I can speak specifically. I only know that we supported the bill, and we expect our members to look at it and to ramp it up as quickly as possible.

Mr. SHERMAN. Next issue: The politically correct view is that all of the fraud was done by mortgage brokers, some bad banks or lenders, and that every homeowner is as pure as the white driven snow. These are, however, people who paid a little bit more in interest in order to have the honor of not having to provide a W–2 form or a paycheck stub. And when somebody agrees to pay hundreds of dollars a month more in order to not provide you with a paycheck stub, it is probably because they don't want to give you the paycheck stub.

What percentage of the loans made last year were low doc or no doc? Do any of you have that kind of broad view?

Ms. COFFIN. I can only speak to our own portfolio, and that was none.

Mr. SHERMAN. You have no low doc or no doc loans?

Ms. COFFIN. You said in the last year. We actually came out of our subprime. We removed ourselves from the subprime markets.

Mr. SHERMAN. And when you say subprime, you got out of the Alt-A market as well?

Ms. COFFIN. We have some Alt-A. But one thing we never did, ever, not even just in the last year, was ever no doc or low doc below a 620 FICO score.

Mr. SHERMAN. Okay. Bank of America, tell me to the extent you can speak for the Countrywide portfolio. I realize you just got your hands on it recently, and congratulations.

Mr. GROSS. Thank you. I will have to qualify my answer a little bit. I am here. My primary focus is on home retention loan servicing issues. I do know that in the third quarter of 2007, that low doc, no doc underwriting standards and programs were very severely curtailed, all but eliminated, because, quite frankly, there was no investors who wanted to buy them. But as far as the actual dollar volumes or units, I do not have that information.

Mr. SHERMAN. Let me now ask a district question. Countrywide has a lot of employees in the Calabasas area. Are they going to keep—are they going to have a job? And are you planning to move servicing and other office activities from the Calabasas area?

Mr. GROSS. There are currently no plans to move any of the facilities or functions that are in California out of State.

Mr. SHERMAN. Are there any plans to move them from one part of California, particularly the most important part, to some other?

Mr. GROSS. No. We have very substantial infrastructure in Calabasas, West Lake, Thousand Oaks, Simi Valley, and those facilities are there to stay.

Mr. SHERMAN. Now, this whole effort is going to dramatically increase the amount of work to be done by servicers. I mean, it is one thing to hire some people in the good times to just cash the check; it is another thing to be reanalyzing these loans. That is a tremendous amount of work to deal with problem loans and then to implement this law that Congress has just passed.

Are you planning to add employment in order—you are going to need people to do all this. Will this work be done in the Calabasas area, the greater Calabasas area?

Mr. GROSS. Our staff has increased in the last year from about 2,300 or 2,400 to about 4,700 people. And, yes, the staff in Simi Valley, which is the location that is focused on servicing activities, has increased as well.

Ms. GORDON. Can I get back to your question about low doc loans?

Mr. SHERMAN. In just a second. Because the chairman didn't realize it, but for me that bill was a jobs bill. Actually, not the main reason. But let me get to the witness who just asked.

Ms. GORDON. First of all, I don't have the numbers right here, but I have them right on my desk at home and can get them to you.

In the second half of last year while subprime origination volume is way down, percentage of no doc loans is still I think somewhere in the 20s or 30s, and there may be staffers up there who have it at their fingertips. But the other—

The CHAIRMAN. But you don't impute that to Wells Fargo.

Ms. GORDON. No. No. That is from inside B&C—

The CHAIRMAN. I didn't want that to be a contradiction. That is our fault.

Ms. GORDON. Yes. And the other thing is something that happened with no doc loans is that Wall Street was paying more for them. And we can give you any number of instances, we can give you—

Mr. SHERMAN. Or Alt-A was better than A?

Ms. GORDON. No doc loans were more valuable to Wall Street. The riskier loans were more—that is what has driven this whole thing.

The CHAIRMAN. But in fairness, remember that a distinguished authority, the President of the United States, has pointed out that Wall Street was drunk during that period. I didn't want to quote the President.

Mr. SHERMAN. I think that is important. Also, when you say Wall Street was paying more, they were paying more because the yield was higher?

Ms. GORDON. Absolutely.

Mr. SHERMAN. They were paying more for a 6 percent loan versus a 6 percent loan. They were paying more for a no doc 7 percent loan as opposed to a documented 6 percent loan.

Ms. GORDON. Right. So banks were telling their originators to push no doc loans. And we can give you numerous instances where the borrower proffered the W–2 statement, and they were talked into putting that W–2 statement away, where people were told to cross the salary information off of the loan application, and that where the rate sheets of the banks say: Be careful. Don't look at any documentation whatsoever.

Mr. SHERMAN. Because if they did, they would have to give somebody a prime rate. What is the difference between a low doc and a no doc?

Ms. GORDON. I think it is like it sounds. I don't really know.

Mr. SHERMAN. Half a doc?

Ms. GORDON. We are basically talking about loans where you didn't look at documents.

The CHAIRMAN. If the gentleman would yield, my inference from this is that we had some irresponsible people, and that is why we have talked about more regulation, that the advantage of a no doc or a low doc loan was that you could report a fake income; and if it was documented, you had to have the real income. So to unaware investors, an undocumented higher income looked better than a documented lower income.

Ms. GORDON. And as one of the more politically correct on the panel here, while I am not going to subscribe to the fact that all borrowers were as pure as the driven snow, this was driven by the lenders and the originators. The Wall Street Journal, again, not a bastion of political correctness, found that 6 out of 10 borrowers who were steered into subprime loans could have qualified for a prime loan. And if you can think of a reason why an individual borrower would have preferred a subprime loan—

Mr. SHERMAN. Now, could they have qualified for a prime loan at the same? Take, we had the example of the woman who makes $2,000 a month. She might have qualified for an intelligent loan on a $100,000 house or a $150,000 house. I haven't worked out the numbers.

The CHAIRMAN. I assume we have now left your district, Mr. Sherman.

Mr. SHERMAN. We have left my State.

So, but if for some reason she is sold a $500,000 home or a $500,000 mortgage, I guess that is at least a $550,000 home, Wall Street is not going to lend the money to her. Wall Street would rather lend the money to somebody who won't state their income than lend $500,000 to somebody who states that their income is $2,000 a month. So Wall Street was, what should we say, like a blood alcohol blood level of 0.1 percent. But you have to be at like 0.4 percent, which is near death, in order to make a $500,000 loan to somebody whom you knew had a $2,000 income.

Ms. GORDON. Well, I am not sure what blood alcohol level you would need for this, but the fact is that Wall Street was buying loans where they just didn't want to know what was in them. And I think what we have learned from the New York Attorney General's investigation and what we have heard from the due diligence firms is Wall Street just was—they were doing "don't ask, don't tell" on these loans. And the fact is that the liability that would accrue if we prosecuted one of these originators for fraud or one of these lenders, that right now, for the most part, is very hard to reach the assignees of these loans. And in our view, any predatory lending legislation is going to have to make the liability go up the chain. Because Wall Street may be sobering up right now, but the folks who are going to be working there 5 years from now are not watching this right now. They are still at home playing Guitar Hero on their Wiis.

Mr. SHERMAN. I know my time has expired. I do want to put in a note for the bond rating agencies, because Wall Street was acting somewhat reasonably when they could sell the loan to some poor investor; and the investor was acting reasonably if they thought they were getting a nice 6 percent yield on a double A rated bond.

The rating agencies looked at liars' loans, looked at the second or third tranche of a package of liars' loans and gave it a double A or a single A.

I will ask Mr. Kittle to wrap up, and then my time has expired.

Mr. KITTLE. Just one point of reference: I think we really need to put some things into perspective here, and that is, every subprime loan that was made was not a bad loan. The loan instruments themselves were only bad when given inappropriately to the wrong people; 85 percent of the subprime loans are still paying on time. So if we line 100 people up here, are we going to tell 85 of them they shouldn't have gotten their loan? I don't think so.

I might go further to say that limited documentation loans are still good products, again, when used appropriately. Small business people. Okay? Small business owners like myself, limited documentation loans, used appropriately, still help people attain good quality loans.

Mr. SHERMAN. Are these people who don't have a copy of their tax returns?

Mr. KITTLE. No, I didn't say no doc; I said limited documentation loans. There is a distinct difference. No doc shows that you just put down an income. A limited doc means you just bring in limited documentation, like maybe a pay stub instead of sending out an employment verification, that type of thing.

I want to make one more point, if I may. If I brought up the term negative amortization today, everybody would shiver. Yet, if it wasn't for the FHA 245 neg am loan program in 1978, I would not have been able to buy my first house. A neg am loan used appropriately to the right borrower is a good loan in a certain situation. So to blanket say that all subprime loans are always bad—

Mr. SHERMAN. I am not saying that all subprime loans are bad; I said that people who could have qualified for a mortgage of equal amount with a prime and were steered into a subprime.

And I am not condemning every loan that doesn't involve four angels notarizing the income statement. But I am condemning those that do not involve a paycheck stub, a W–2 form, or a copy of the tax return. And I think that most people, if they saw one of those three documents, would call it a documented loan rather than a low doc loan. I guess you could always say it is not as documented as something else.

But when a small business owner says, I won't give you a copy of my tax return. Here's what my income is. Either they are lying to the IRS, they are lying to the mortgage company, or both.

Mr. KITTLE. Again, that is not what I said in my example.

Mr. SHERMAN. And that is why I am drawing the line. I am drawing the line between insufficiently documented loans and sufficiently documented loans.

I yield back.

The CHAIRMAN. I thank the gentleman. I am glad we didn't get into whether or not the borrower is documented.

Three issues that I want to raise just in closing. One, when we talk about the people who could have gotten regular loans and they got subprime loans, to a great extent that is racial and ethnic prejudice.

In the City of Boston, at the University of Massachusetts at Boston, a very good study was done there that showed that Black and to a lesser but still significant extent Hispanic borrowers who were middle- to upper-middle-income were getting subprime loans. So racism has not left America. That is why it is good that we have the data and want to go beyond that. So, yes, there were people put into subprime loans because of race or discrimination.

Secondly, to Ms. Gordon, we very much agree in terms of where the liability goes. Our view is that it goes best to the securitizer, because the investors are kind of passive. And we do in the bill that we passed, I would like to even increase it, because the activation here in assembling these packages obviously is the securitizer.

But we did agree that there should be some liability, and we thought that was the best place to put it, because the active agent in assembling these loans and selling them was the securitizer.

Finally, I would say with regard to Mr. Kittle, we don't want people who are entitled to own homes not to get them. Although we should be very clear, we have had a policy in this country of not building affordable rental housing and pushing some people into homeownership who shouldn't have been there for a variety of reasons. But to the extent they can be there, one of the most important parts of the bill we just passed, we agree with the Administration, is FHA modernization.

In 2002, the FHA issued something like 700,000 guarantees. In 2006, it was down to 290,000. One of the things we need to do is to put the FHA back as an alternative to subprime loans for people with limited income. That is one part of the bill that I think we all agreed to, and that will become law.

I want to thank you. We are going to follow up with some questions. Let me say, I have no doubt about the integrity of anyone here. We like the answers that we got, on the whole. We are going to be working, and make sure we will enlist your services. We just want to make sure that we hope we will get other people giving us the same good answers.

Also, I have to tell you that it is important we trust everybody, but this is such an important issue, both socially and macro-economically, that maybe not in your individual capacities but people, either yourselves or ones like you, we will see you in September. We will have a follow-up hearing.

This hearing is adjourned.

[Whereupon, at 12:48 p.m., the hearing was adjourned.]

A P P E N D I X

July 25, 2008

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Testimony of James B. Barber

On Behalf of the

AMERICAN **BANKERS** ASSOCIATION

Before the

House Committee on Financial Services

United States House of Representatives

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Chairman Frank and members of the Committee, my name is James B. Barber. I am Chairman and CEO of Acacia Federal Savings Bank, Fall Church, VA. Acacia Federal is a federally chartered savings bank, with approximately $1.5 billion in assets. We service approximately $1.1 billion in residential single family loans, 3,700 loans in the mid-Atlantic region. Most of these loans are serviced and owned by the bank. I am pleased to be here today on behalf of the American Bankers Association (ABA). ABA brings together banks of all sizes and charters into one association, and works to enhance the competitiveness of the nation's banking industry and to strengthen America's economy and communities. Its members – the majority of which are banks with less than $125 million in assets – represent over 95 percent of the industry's $13.3 trillion in assets and employ over 2 million men and women.

We share your concern, Mr. Chairman, about rising foreclosures and the need to limit such actions wherever possible in order to preserve homeownership. Everyone suffers – borrowers, lenders, investors, and the neighborhood where a property is located – when a foreclosure occurs. It is, therefore, in all our interests to find ways to avoid such an outcome. Thus, it is no surprise that banks are actively engaged in voluntary loan modifications and other loss mitigation programs both on an individual basis and as a part of broad industry efforts such as the HOPE NOW initiative. We believe that the legislation prepared by this committee and passed by the House of Representatives Wednesday will provide further tools to assist lenders and borrowers as they seek to avoid foreclosure.

I have three points I would like to make in my testimony today.

- Foreclosure is the last, worst option for both lenders and borrowers, and the industry is committed to avoiding foreclosures, when possible.

- Loan modification and workout efforts, like those being carried out by members of the HOPE NOW Alliance, are having some positive effects, and passage of the Hope for Homeowners provisions crafted by Chairman Frank and the House Financial Services Committee will provide more tools to help homeowners.
- A return to more prudent and traditional underwriting models will be the key to finding sustainable solutions to mortgage issues today and to avoiding problems in the future.

I. Foreclosure is the last, worst option

No one wants a foreclosure to occur. It's obviously devastating for the borrower and an expensive proposition for the financial institution, so it is a benefit to both lenders and borrowers to find ways for homeowners to stay in their homes. Independent studies found that losses from foreclosures amounted to over $50,000 per foreclosure or between 30 and 60 percent of the outstanding loan balance. But avoiding foreclosure is not a simple process, by any means, and it is complicated by the fact that a phone call or letter from a lender may not be warmly welcomed by a fearful borrower. For example, according to a recent policy paper by the Mortgage Bankers Association, borrowers in 21 percent of foreclosures initiated in the third quarter of 2007 either could not be located or would not respond to repeated attempts by lenders to contact them. Considering this fear, it is no surprise that 57 percent of the nation's late-paying borrowers still do not know that their lenders may offer alternatives to help avoid foreclosure, according to a report from Freddie Mac.

Two other complications exist that muddy the waters when considering if and how foreclosure can be avoided. First, not all borrowers have the desire or financial wherewithal to keep their property. Some borrowers are investors for whom the financial benefits of a particular property have changed, others have hyper-extended their credit, and still others have seen dramatic changes in their financial situation (loss of job, divorce, etc.). Second, although Acacia Federal retains most of the mortgages we originate in portfolio, often financial institutions sell mortgages into the secondary market rather than retain them. Fortunately, these complications can and are being sorted out. Although the process is slow, it is working.

Encouraged by the Department of the Treasury and the Department of Housing and Urban Development (HUD), counselors, investors, and other mortgage market participants formed an alliance to reach out to borrowers who may have or expect to have difficulty making their mortgage payments and to offer them workable options to avoid foreclosure. It is important to note that this alliance includes 27 loan servicers, as of April, who together represent more than 90 percent of subprime mortgages.

Contacting at-risk borrowers

The alliance is making significant strides in contacting borrowers who may be at risk. HOPE NOW servicers have mailed 1,200,000 letters to at-risk homeowners who have not been in contact with their mortgage servicer. On average, 20 percent of those receiving the letter contact their servicer, far more than the typical 2-3 percent response rate that servicers get when sending their own mailing. Other homeowners call the Homeownership Preservation Foundation's HOPE Hotline rather than their servicer. The Hotline reported in the first quarter that 11 percent of its callers knew about the hotline from a HOPE NOW letter they received.

Determining feasibility of workout or modification

Whether a homeowner contacts a lender through a HOPE NOW effort or through some other means, the first step is an evaluation process where the lender and the borrower seek to determine whether it makes the most sense to work out an alternative payment plan or modification, or simply get out of the property through some means other than foreclosure. Unfortunately, in some cases, foreclosure is the only option, and will help provide the borrower with a foundation for starting over. For example, loans originated with little documentation of income and to borrowers who still cannot document sufficient income to qualify under today's credit standards, are poor candidates for modification. When such loans are restructured, there is only a 60 to 65 percent chance for success, according to Fitch Ratings. That suggests that modified loans experience a 35-40 percent redefault rate over the subsequent two years – not a good resolution for either the borrower or the lender.

Choosing the best workout for the borrower and lender

When it is determined that some kind of workout or modification will work, there are several tools available to lenders. Informal forbearance and repayment plans are generally the first tool lenders and servicers employ to help borrowers. Mortgage borrowers may be allowed to miss a payment, with the explicit understanding the payment(s) will be made up in time. This is often used for people suffering a short-term cash crunch due to temporary unemployment or illness. A borrower may also be given a special forbearance plan, which will typically combine a period of postponed or reduced payments followed by repayment of the arrearage over an extended time frame, but within the original term of the loan.

Loan modifications are the next level of options. A loan modification is a change in the underlying loan agreement. A lender or servicer might extend the term of the loan, change the interest rate, change repayment terms or make other alterations such as writing down the principal. Similarly, a servicer may attempt to refinance the delinquent borrower into a new loan. Loan modifications are one solution for borrowers who have an ability to repay a loan, and have the desire to keep their home, but may need some help in meeting this goal because the current loan terms are not sustainable for that borrower.

Finally, if the financial situation is such that a workout or modification does not make sense, a borrower can turn to other options, such as a deed in lieu of foreclosure or a short sale. These options will avoid foreclosure in the case where a borrower no longer desires the property or is financially unable to continue owning it, even with a different payment plan.

Making solutions work with securitized mortgages

Many of these options can be made available for mortgages that are held at the bank (portfolio mortgages) and for mortgages that have been securitized and sold on the capital markets. Banks have been working with local customers to make loan modifications on loans held in portfolio for many years; it is part of standard practice. Now that most mortgages in recent years have been sold and securitized, there has been concern that the complicated set of rules and relationships intended to protect various classes of investors would make it hard for loan servicers to work with customers having difficulty. Because of this, many industry participants have gathered to create the HOPE NOW Alliance. Working with the American Securitization Forum (ASF), the industry created a process to better work with at-risk customers whose loans have been securitized. The process has been standardized so that servicers can create payment plans that can help customers keep their property, if it is financially viable.

II. Loan modification efforts are meeting with some success, but more can be done

Although many adjustable, subprime mortgages have yet to enter the reset process, progress has been made in the loan modification effort. HOPE NOW estimates that more than 1.7 million homeowners have avoided foreclosure since July 2007 because of industry efforts. In May alone, mortgage servicers provided loan workouts for approximately 170,000 at-risk borrowers, a sign that workouts are increasing.

Although other loan types can be troubled, one of the key concerns for the first part of 2007 has been subprime mortgages, which represent the bulk of resetting securitized mortgages right now. Of approximately 718,000 subprime loans scheduled to reset between January and May of this year, 37,700 (5.3 percent) have already been modified. An additional 323,000 (45 percent) of these were paid in full when the homeowner refinanced the loan or sold the property. Of the remainder, only 1,800 (0.5 percent) of the loans that were current at their date of reset have started the foreclosure process. Many of the remaining mortgages were already in the foreclosure process before the reset date had arrived. In some cases, this was due to a popular mortgage structure, the use of a second lien. In some cases, borrowers took out home equity loans or home equity lines of credit to purchase other goods or services or to make improvements on the home. In other cases, borrowers used second liens to avoid mortgage insurance. The holders of second liens in some cases have preferred the foreclosure process over developing a workout plan with the borrower. Fortunately, second liens may be less of an issue as the resetting process continues. Fitch noted in a recent report that in 2007, fewer mortgages were initiated with "piggyback" second loans. As 2007 mortgages reset, there may be fewer instances where a borrower is able to arrange a workout with one lender only to face foreclosure on a second.

Clearly, the targeted industry effort is having a positive effect, though we believe things could be improved. Legislation crafted by you and this committee, Mr. Chairman, has a key component which the ABA believes will provide additional tools for assisting more troubled borrowers. The Hope for Homeowners Act contained in that legislation will create a voluntary program through which troubled borrowers will be able to work with servicers to reduce their indebtedness, gain some equity in their homes, and stabilize their financial situation. While servicers and investors choosing to participate in the program will have to take a significant haircut as the existing loan is replaced with an FHA loan, we expect that many might choose to do so, rather than force a foreclosure. Just as with the current HOPE NOW efforts, there will be hurdles such as how to negotiate with second lien holders. The program will not be a silver bullet to solve all the problems in the mortgage markets, but it will give lenders, borrowers, and investors further options and will help to keep some borrowers in their homes.

III. More prudent and traditional underwriting models are key to solving the current and avoiding future problems

The vast majority of community banks – and most large banks as well – have long followed traditional, prudent underwriting models. By doing so, they have avoided troubled loans and prevented borrowers from getting into untenable financial situations. Much of the poorly underwritten lending was done by non-bank brokers, many of whom have gone out of business. In the case of Acacia Federal, we have had relatively few delinquencies and foreclosures. Our experience is no accident. Our underwriting has been sound. Most delinquencies and foreclosures have been the result of job loss, health issues, other family problems, or, in some cases, borrower misrepresentation. During 2007, we experienced two foreclosures, and delinquencies increased to 1.2 percent. This year we have had approximately 18 foreclosures and our single-family delinquencies have increased to 1.6 percent, which is directly related to our underwriting practices. We did not materially stretch our underwriting guidelines during the boom years to match those of many non-bank institutions, and consequently, we lost market share. In today's environment, we are trying to build that market share back, as are many other community banks.

Recent changes to Regulation Z finalized by the Federal Reserve to implement the Home Owners' Equity Protection and Truth in Lending Act emphasize the need for more prudent and traditional underwriting. ABA supports many of these changes including regulations to strengthen the integrity of appraisals and prohibit deceptive advertising. ABA also supports requirements that mortgage lenders properly consider a borrower's ability to repay the mortgage, whether it is a fixed or adjustable rate loan. In fact, we believe that some of the elements of these new rules codify the underwriting practices of many of our members. The use of these practices throughout the mortgage industry will help to ensure that future lending is done in a prudent and safe manner.

The standards set by the Federal Reserve in Regulation Z are tough. The challenge will be to apply the rules in a targeted manner that addresses the subprime problems without unnecessarily restricting credit. The ABA has embraced the Federal Reserve's approach, and we will continue to work with the Federal Reserve and other regulators to help ensure that only the intended results are achieved. For instance, the new regulation might unintentionally affect parts of the prime market rather than the high-cost mortgage market, as intended.

Similarly, ABA will work with the banking agencies to help ensure that other regulatory responses to past mortgage origination and underwriting practices do not unintentionally cause a credit crunch by impeding the offer of credit for good loans that consumers can repay and that will help communities grow and prosper. We want a return to universal underwriting practices like those maintained at most banks, and we want to codify and promote those practices for all lenders, but the prudent extension of credit cannot be restricted or we will face dire economic consequences. Therefore, we stand ready to assist in restoring housing and mortgage markets in which both borrowers and lenders have confidence.

In conclusion, ABA members agree that foreclosures are difficult processes that create a lose-lose situation. We strive, together with the rest of the mortgage industry, to work toward avoiding foreclosures, and we appreciate the work of this Committee to provide additional tools and solutions to achieve that end. We are committed to working with our borrowers who experience trouble to review their financial situation and try to find a win-win solution. This commitment is evidenced in the performance of loan portfolios at banks like mine, where significant problems have not occurred, even as markets turned down and housing prices have fallen. This commitment is also reflected in the numbers of foreclosures that have been avoided, although we think that more can be done. We support the work of this committee to provide more tools to help homeowners stay in their homes.

NCLR 40 YEARS A Stronger America Together

Improving Loan Servicing to Prevent Latino Foreclosures

Presented at:

A Review of Mortgage Servicing Practices and Foreclosure Mitigation

Submitted to:

U.S. House of Representatives Financial Services Committee

Submitted by:

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July 25, 2008

My name is Janis Bowdler, and I am Associate Director of the Wealth-Building Policy Project at the National Council of La Raza (NCLR). NCLR is the largest national Hispanic civil rights and advocacy organization in the United States, dedicated to improving opportunities for Hispanic Americans. I oversee our research and advocacy on issues related to increasing financial security and asset ownership for Hispanic families. While at NCLR, I have published on a number of issues important to the Latino community, including *Saving Homes, Saving Families: Hispanic Brokers Speak Out on Latino Homeownership* and *Jeopardizing Hispanic Homeownership: Predatory Practices in the Homebuying Market.* In addition, I have provided expert testimony before this committee on several occasions, as well as the U.S. Senate Committee on Banking, Housing, and Urban Affairs and the Board of Governors of the Federal Reserve. On behalf of NCLR, I would like to thank Chairman Frank and Ranking Member Bachus for inviting us to this hearing. Hispanic families are among the hardest-hit communities in this foreclosure crisis. By most indicators, conditions are projected to continue to decline. It is clear that a generation of Latino wealth and financial security is at stake. We hope to work with you to complete a comprehensive plan to address this issue.

For more than two decades, NCLR has actively engaged in relevant public policy issues such as preserving and strengthening the Community Reinvestment Act (CRA) and the Home Ownership and Equity Protection Act (HOEPA), supporting strong fair housing and fair lending laws, increasing access to financial services for low-income people, and promoting homeownership in the Latino community. For the last ten years, NCLR has been helping Latino families become homeowners by sponsoring housing counseling agencies. The NCLR Homeownership Network (NHN), a network of nearly 50 community-based counseling providers, works with more than 30,000 families annually. Our subsidiary, the Raza Development Fund (RDF), is the nation's largest Hispanic Community Development Financial Institution (CDFI). Since 1999, RDF has provided $400 million in financing to locally-based development projects throughout the country. These relationships have increased NCLR's institutional knowledge of how Latinos interact with the mortgage market and how well the government regulates financial services markets.

As foreclosure rates continue to rise in all loan categories, it is clear that current efforts are falling short of their goal to keep willing and able families in their homes. According to figures released in July 2008 by the Mortgage Bankers Association, 16% of subprime loans were more than 90 days delinquent at the end of the March 2008—double the number one year earlier. Moreover, the figures continue to point to a bleak future. According to data released this month by HOPE NOW,[1] nearly 2 million loans are 60 days or more delinquent, a 43% increase from July 2007. While there are reports that loss mitigation activity by servicers this quarter is up from previous quarters, these loan modifications continue to lag far behind market demand.[2]

As the party contracted by loan holders to carry out loan maintenance activities on their behalf, loan servicers play a pivotal role in the mortgage market. NCLR is concerned that if aspects of the servicing industry business model are not changed, new initiatives designed to aid struggling

[1] HOPE NOW is an alliance of counselors, servicers, investors, and other mortgage market participants. Their quarterly data and press releases can be found at www.hopenow.com.
[2] State Foreclosure Prevention Working Group, *Analysis of Subprime Mortgage Servicing Performance*. Washington, DC, April 2008.

homeowners will be hampered. Improving the servicing system is the linchpin to a successful foreclosure prevention strategy. In my remarks today, I will give some background on the importance of reform in the servicing industry. I will also discuss the major barriers built into the mortgage servicing industry that stymie broad loss-mitigation efforts. Finally, I will close by offering a set of recommendations.

Background

Mounting foreclosures is one of the most pressing civil rights issues facing the nation. For decades many of us have worked together to build wealth in Latino and other underserved communities. Like all Americans, Latinos rely on homeownership to build wealth for their long-term financial well-being. Research predicts that one in 12 loans to Latinos will end in foreclosure.[3] This threatens to leave millions of families without homes, access to credit, or a financial safety net. Since evidence suggests that Latino foreclosure rates have not yet peaked, systemic solutions are timely and urgently needed.

Responding to early warning signs, NCLR engaged in a number of efforts to better understand how to prevent foreclosures among Hispanic and immigrant households. Three years ago, NCLR seeded a pilot program to introduce foreclosure prevention counseling to NHN agencies. Today, the majority of our grantees operate bilingual foreclosure prevention programs and many receive foreclosure prevention training through a partnership with the National Consumer Law Center. In addition, NCLR recently launched the Home Rescue Campaign to help community-based organizations address the rising rates of foreclosures. The campaign features funding for foreclosure prevention counseling, a Home Rescue Fair pilot program, and a tool kit on foreclosure prevention for community-based organizations. These efforts are complimented and supported by sophisticated partnerships with mortgage servicers and other industry stakeholders.

Furthermore, NCLR has hosted three major convenings this year to identify the gaps in services available to families facing foreclosure, the needs of community-based organizations serving those families, and the experiences of Latino and immigrant families facing foreclosure. The first, "Effective Community-Based Responses to Foreclosure" (January 2008), focused on local efforts while the other two had a national focus: "Building Wealth in a Troubled Economy: A Symposium on Latino Wealth-Building Opportunities" (June 2008) and "Foreclosures and the Mortgage Mess: How to Save Latino Homeownership" (July 2008). At each of these events, community leaders expressed a strong concern that our national financial system lacked balance for many middle- and low-income and underserved families. In particular, participants expressed their frustration at what seemed to be plenty of help provided to Wall Street while their community-level efforts struggled to meet the ever-increasing demands of their constituents in foreclosure.

Through the services of NHN counselors and our Home Rescue Fairs, NCLR has helped thousands of families successfully avoid foreclosure. Through our research and convenings, NCLR has invested heavily in uncovering the root causes of foreclosure among Latino and immigrant households. It is through this unique vantage point that we have been able to

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[3] Ellen Schloemer, Wei Li, Keith Ernst, and Kathleen Keest, *Losing Ground: Foreclosures in the Subprime Market and Their Cost to Homeowners* (Washington, DC: Center for Responsible Lending, December 2006).

document major systemic barriers built into the servicing system that prevent it from appropriately serving troubled borrowers.

Systemic Barriers in the Mortgage Servicing System

While many in Congress and the media have been quick to blame greedy home loan borrowers for the mortgage crisis, NCLR has long pointed to systemic flaws in the mortgage market that put borrowers at serious risk of foreclosure.[4] Thus, as we have advocated, the solution must also be systemic in nature, such as through anti-predatory lending legislation and incentives for better product design. Similarly, certain characteristics of the mortgage servicing industry make it inherently difficult to reach the broad goal most of us share: to help working families keep their homes.

Loan servicers are vendors contracted by the owner of a loan to perform account management duties, such as processing payments and handling customer service. This includes managing loans that go into default and seeing the case through loan workouts, short sales, or foreclosure. In today's market, this relationship can become complex. In some instances, though it is increasingly rare, the original lender owns and services the loan itself. If this is the case, the lender and servicer are the same company and can exercise broad discretion when conducting loss mitigation activities. However, the majority of home loans are packaged and sold on the secondary market into loan pools, and single or multiple entities can own all or shares of a loan pool. A trustee packages the loans and contracts a servicer to work on behalf of the trust and loan pool owners, known as the investors.[5] The contract, which can vary by loan pool, gives the servicer guidelines on how to manage the loans. Despite the variability, servicers generally have the discretion necessary to conduct loss mitigation activities as necessary. If a case falls outside the authority granted to the servicer, the servicer must seek permission from the investors before approving a loan modification or other workout.

Several studies show that actual completed loan modifications fall well below market demand. Despite having the authority to do so, servicers are not executing enough loan modifications to combat rising foreclosure rates.[6] Yet the prominent solutions offered to the foreclosure crisis rely on the voluntary cooperation and initiative of the industry (investors and servicers). Unless we work together to craft sustainable, structural change in the mortgage servicing business model, other initiatives to address the foreclosure crisis, such as Insurance of Homeownership Retention Mortgages (included in H.R. 3221), will fall short or their benefits will fail to reach all intended recipients.

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[4] Latino and immigrant borrowers are more likely to have hard-to-serve characteristics, such as multiple sources of income or thin credit files, than other market segments. However, they are not necessarily less creditworthy. With automated loan processes, lenders had an incentive to push these borrowers into loans that were high-risk simply because it was a faster and more profitable process.

[5] Despite the fact that investors are often referred to as a collective group, they are actually quite fragmented. Various companies, investment firms, banks, and pension funds make up the collective "investors."

[6] California Reinvestment Coalition, *The Continuing Chasm Between Words and Deeds III* (San Francisco, CA: California Reinvestment Coalition, April 2008); State Foreclosure Prevention Working Group, *Analysis*. See also statements by Sheila Bair, Chairman, Federal Deposit Insurance Corporation, before the Committee on Financial Services, U.S. House of Representatives, April 9, 2008.

There are four major structural barriers in the servicing system:

- **Servicers work for the investor.** As vendors, the mortgage servicers' primary duty and obligation is to maintain the mortgage account for the loan investor or mortgage trust holder. The servicer also collects fees, most of which become a profitable source of revenue for the servicer. Servicers are not obligated to conduct loss mitigation activities or to grant loan modifications to qualified borrowers; in fact, incentives exist for them to avoid these activities. Processing a loan modification requires complex paperwork, while short sales and foreclosures are easier to process and earn servicers higher fees. NHN counselors routinely report having to send workout packages completed on behalf of their clients multiple times. This concern is echoed by the State Foreclosure Prevention Working Group and others. While industry stakeholders have claimed an increasing openness to loan modification, the on-the-ground reality is that few are being completed. One example of this conflict of interest can be seen in the constant battle over second mortgages. Often, borrowers with two different mortgages find that their loans are serviced and/or owned by two different entities. When a borrower has trouble paying its loans, it is often the second lien holder/servicer that will refuse to negotiate a loan workout, even when it means increasing the likelihood of default on both loans.

- **The business model focuses on the short term**. Most servicing guidelines and call centers are designed around the more "traditional" causes of foreclosure, such as major life events, medical emergencies, or unemployment. In these cases, many families only need a few months to get back on their feet; their challenges can be addressed through a variety of short term solutions or "workouts," such as repayment and forbearance plans. However, most would agree that the majority of families defaulting during the last year and into the near future face a different set of issues—many are working, their loans are permanently unaffordable, and their homes are losing value. Yet despite widespread acknowledgement of these conditions, most resolutions that are being approved by servicers are short-term. According to the HOPE NOW Alliance, many of the "workouts" approved in 2007, for example, were for short-term forbearances of 3-6 months. This only delays the inevitable for most families, as their situations will not change dramatically within this timeframe. Most at-risk borrowers need permanent loan modifications, and many will need a reduction in principal, to create a long-term sustainable situation.

- **The mortgage servicing industry lacks capacity**. Despite efforts to increase staff support, there are strong indicators that servicers are still struggling to meet the growing demand for loss mitigation services. It is not uncommon for NHN counselors to wait between three and six months to receive a response from servicers after submitting a loan modification request or a workout package. A report by the State Foreclosure Prevention Working Group shows that two-thirds of loan modifications started were not completed within the following month. The Working Group revealed that borrowers, often about 50% of them, never speak to their servicer/lender before the foreclosure. However, we are concerned with mounting reports of dropped calls and unreturned messages by servicers. These delays can have real consequences. For one client of Dalton Whitfield Community Development Corporation, it meant foreclosure. This family had a temporary reduction of income and had accrued late payments and several high legal fees. The housing counselor requested a loan modification that would include all the fees in the family's monthly mortgage payments over the life of the loan. It took four months for the servicer to respond to the request, during which the fees continued to accrue. When the servicer finally responded, it counter-offered with an unaffordable repayment plan. By the time an acceptable loan modification could be negotiated, the family had lost its home in a sheriff auction. NCLR is aware of the many initiatives industry leaders are setting in motion to address this issue. However, far too often we are seeing the system break down due to overload.

- **Loss mitigation efforts are not transparent.** Borrowers and housing counselors are often told that their loan modifications cannot be approved due to rules or guidelines set forth by the investor. However, when asked, servicers generally will not release information on the investor or loan holder. This prevents the borrower/counselor from verifying the information given to them by the servicer. This is a critical step in negotiating a loan modification. Our conversations with both investors and servicers reveal confusion and a lack of clarity on common servicing guidelines. For example, one investor has a rule that a loan cannot be modified unless it is in danger of "imminent default." In this case, imminent default could mean a foreseeable loan reset that the borrower knows it will not be able to afford. However, servicers point to this same guideline as the reason they cannot work on a loan until the borrower is more than 60 days delinquent. In fact, this reading of the rule has led some call center agents to advise borrowers to go delinquent on their loan so they can be assisted.

Furthermore, NCLR is concerned that as demand for loan modifications continues to rise, the impact of the barriers described above will be exasperated and result in a decline in the quality of the loan modifications. The system is already overburdened and overwhelmed with miscommunication and confusion. In fact, the State Foreclosure Working Group found that seven out of ten seriously delinquent borrowers have not even started the loan modification process. With the industry already focused on short-term solutions, we are concerned that the bottleneck in demand will create fertile ground for abuse. According to Moody's Investors Service, 42% of loans that were modified in the first half of 2007 were 90 days delinquent or more as of March 31, 2008. This is a sign that a significant number of those modifications were not made to be affordable over the long term. Should such a trend continue or grow, it will only intensify the foreclosure crisis. Moreover, as borrowers grow increasingly frustrated with their servicers, they are more likely to turn to predatory foreclosure rescue scams for help, unaware of the dangers. Foreclosure rescue scams target vulnerable, struggling borrowers with promises of saving their homes. Some scam borrowers for cash, while others walk away with the deeds to their homes.

NCLR's Recommendations

NCLR has supported a number of policies, best practices, and legislative proposals aimed at reducing foreclosures for all homeowners. Given the magnitude of the crisis we are facing, many tools are needed to address the problem. With that said, changes to the servicing industry are critical to ensuring the successful delivery of any foreclosure prevention strategies.

- **Create a duty for servicers to provide loss mitigation services to struggling borrowers.** In the current scenario, borrowers are at the mercy of their servicers, who work for the investor. To give the relationship balance, servicers must be given an incentive to provide loss mitigation services to delinquent borrowers before proceeding with a foreclosure action. Such a duty is included in the "Foreclosure Prevention and Sound Mortgage Servicing Act of 2008" (H.R. 5679).

- **Require that loan modifications are sustainable over the long term.** Most at-risk borrowers are in their current predicament because the original lender did not issue a loan that was sustainable over the long term. Servicers must use caution to ensure the same mistake does not happen again. NCLR calls for the use of rescue products, loan modifications, principal reductions, and other tools to modify the loan in a way that will remain affordable for the borrower over the long term. H.R. 5679 would require that servicers engage in an affordability analysis before granting a modification.

- **Require servicers to disclose the investor upon request.** Borrowers have a right to know who owns their loans and to verify their rules and guidelines regarding loan servicing. Disclosing the investor will shed more light on the negotiation process and borrowers and counselors will be better informed of their rights and opportunities.

- **Prohibit foreclosure during loss mitigation.** Due to the bottleneck of cases in the loss mitigation system, too many borrowers are slipping through the cracks. Servicers and investors should be prohibited from moving forward on a foreclosure while the case makes its way through the company's own loss mitigation system. Practically speaking, this means the servicer would be prohibited from moving a case to its internal legal department once a borrower submits a loan workout package to the loss mitigation department. This will improve the borrower's chances of understanding all its workout options before excess legal fees pile up or foreclosure proceedings begin.

Moreover, NCLR renews its support for large-scale, automated, streamlined loan modifications. As we have described throughout our testimony, without a broad, industry-wide plan to address the growing number of homeowners in need of loss mitigation services, our foreclosure prevention initiatives will fall short.

When NCLR joined other members of the Leadership Conference on Civil Rights Fair Housing Task Force in calling on the industry to institute a six-month moratorium on foreclosures for families with the riskiest subprime loans, we were assured that such action would not be necessary. Servicers and lenders assured Congress, borrowers, and advocates that the market would correct itself. Now valuable time has been lost and servicers and other industry stakeholders are struggling to make up for it. If foreclosures go unchecked, not only will wealth be lost, but large segments of our neighborhoods will lose their ability to send their children to college and plan for retirement.

I will be happy to answer any questions you may have. Thank you.

Testimony of

Mary Coffin
Executive Vice President
Wells Fargo Home Mortgage Servicing

Before the

Committee on Financial Services
United States House of Representatives

July 25, 2008

Chairman Frank, Ranking Member Bachus, and Members of the Financial Services Committee, thank you for the opportunity to share Wells Fargo's perspective on our loan servicing practices and current market conditions.

I'm Mary Coffin, head of Wells Fargo's mortgage servicing division. Wells Fargo services one of every 8 mortgage loans in America or $1.5 trillion in loans that either we originated or were originated by others. Our national presence and the makeup of our portfolio provide a vantage point for critical insights that guide our company's actions as well as the industry initiatives we have advocated.

Clearly, the foreclosure issue has expanded beyond its genesis with subprime ARM resets to the full credit spectrum of customers, particularly in geographies facing the greatest market corrections. Declines in housing prices, rapidly rising costs of living, unemployment, and shifting consumer spending habits are driving the need for continued customized solutions.

Our work has included creating a higher level of cooperation between servicers, Fannie and Freddie, and other investors to produce streamlined processes for distressed consumers through reduced documentation, simplified communication, and fast-track loan modifications. Additionally, we have worked with not-for-profit counselors who help at-risk borrowers manage all of their debts. Working together on a comprehensive view of the borrower's obligations enables us to reach affordability that is lasting.

Because our company's vision has long been to help our customers succeed financially and build lifelong relationships, we hold ourselves accountable for working with customers through various methods to reach affordability. Yet, as I am sure you are aware, there are limits to what we can do. As a responsible servicer, we must make sure each customized decision is economically sound for customers and investors such as pension plans and employee 401(k) owners.

Foreclosures are a measure of absolute last resort. They destabilize communities and are devastating for the families involved. Servicers are not incented to foreclose. The lengthy foreclosure process exposes servicers to potential risks associated with unrecoverable advances, fees, and penalties.

To further avert foreclosures, we have responded to the increased need to effectively help our customers manage their delinquencies by increasing staffing. In 2005, the team dedicated to assisting at-risk borrowers consisted of 200 experts. Today, we have more than 1,000. We monitor our volume of calls daily and shift experienced staff from one department within our company to another.

To ensure our overall effectiveness, we conducted a study of our customers 60 or more days past due, not in bankruptcy or foreclosure. The study showed that we connected with 94 percent of our customers. Of every 10, 7 worked with us to find a solution, 2 declined our help, and the remainder were either unreachable or a solution simply could not be found. And we do have solutions that work – refinances, payment reductions, repayment plans, short sales, and others. Most importantly, 60 percent of these customers improved their delinquency status and averted foreclosure.

Mr. Chairman and members of the Committee, we want to thank you for your help in encouraging constituents to contact their servicers. Your efforts have played a critical role in our ability to assist more consumers in trouble.

In addition, your leadership has resulted in the Housing and Economic Recovery Act of 2008. This crucial legislation will help return stability to the mortgage markets. This measure, coupled with the Federal Reserve's new HOEPA rule, will ensure the continued availability of responsible, traditional mortgage products across the credit spectrum.

Since we cannot arbitrarily erase a debt for consumers that they simply cannot afford, we also ask for your continued work in developing policies that ensure the growth of responsible homeownership versus speculative housing investments.

In closing, Wells Fargo is firmly committed to continuing to lead the industry in advocating and conducting fair and responsible lending and servicing.

Mr. Chairman, thank you again, and I would be pleased to answer questions.

Wells Fargo Home Mortgage is part of Wells Fargo Bank, N.A. and Wells Fargo & Company, a diversified financial services company with $609 billion in assets. Wells Fargo Bank, N.A. is the only bank in the U.S., and one of only two banks worldwide, to have the highest credit rating from both Moody's Investors Service, "Aaa," and Standard & Poor's Ratings Services, "AAA."

Testimony of Julia Gordon
Center for Responsible Lending

Before the U.S. House of Representatives
Committee on Financial Services

A Review of Mortgage Servicing Practices
and Foreclosure Mitigation

July 25, 2008

Chairman Frank, Ranking Member Bachus, and members of the committee, thank you for holding this hearing on mortgage servicing practices and foreclosure mitigation. We applaud the committee for focusing on the crucial issues of how we handle today's distressed home loans and how we can prevent further deterioration in the market.

The U.S. economy faces significant challenges today, as 20,000 foreclosures take place every single week.[1] It is not an overstatement to say that the way we choose to deal with these issues today has implications for nearly every American. The negative spillover effects from these foreclosures are substantial: a single foreclosure causes neighborhood property values to drop, collectively adding up to billions of dollars of losses. Empty homes lead to higher crime rates. Lost property tax revenue hurts cities and counties that are already strapped. Millions of Americans who depend on a robust housing market are losing jobs and income. As foreclosures accelerate during the next two years, these economic effects will be felt even more strongly.

In announcing the Federal Reserve Board's new rules governing mortgage origination, Federal Reserve Board Chairman Ben Bernanke acknowledged that unfair and deceptive practices by lenders have played a major role in the current housing crisis. According to Bernanke, too many loans were "inappropriate or misled the borrower."[2] As a result, the Federal Reserve will now require all lenders to verify a consumer's ability to afford a mortgage before selling it, and will prohibit a variety of abusive and dangerous practices.

While it is too late to stop the housing crisis that has been caused by reckless lending, it is not too late to minimize the massive damage ahead. Skillful loan servicing can convert distressed mortgages into stable loans that generate revenue for investors, build ownership for families, and contribute to stronger and more stable communities. Ineffective or abusive loan servicing, on the other hand, can produce the opposite results. That is why national policies governing loan servicing ultimately will have enormous implications -- not only for people facing foreclosure, but for the future prosperity of our country.

In short, abusive and inappropriate loans were mass-marketed for years, and now, to prevent further damage to the economy, these bad loans must be mass-repaired. The most effective way to repair distressed loans is through loan "modifications" that alter the loan's terms in a way that allows homeowners to continue paying their debt and building equity. Unfortunately, as I will discuss in more detail, today even the best-intentioned loan servicers face major obstacles to making loan modifications, and others lack the incentive or motivation to fix mortgages so that people can stay in their homes. To put it bluntly, it is far harder to obtain an affordable loan modification for an unsustainable loan than it was to take out the loan in the first place. As a result, voluntary efforts aimed at increasing loan modifications have done little to stem the overwhelming tide of foreclosures that are dragging down our economy.

The House took an important step in addressing the foreclosure crisis earlier this week by passing H.R. 3221, the American Housing Rescue and Foreclosure Prevention Act of 2008. If enacted, the new law will encourage more loan modifications and provide badly needed assistance to damaged communities. Even assuming the bill becomes law within the week, however, it will still take time to fully expand the FHA's capacities, and – although some lenders have indicated their readiness to use the expanded FHA program – it will still depend on the voluntary participation of lenders and servicers.

Therefore, it is important to consider other legislative initiatives that will either assist the FHA expansion in reaching its goals or provide complementary additional solutions. We believe that revitalizing the housing market requires improving mortgage servicing practices, allowing more time for servicers and homeowners to be successful; and empowering homeowners to seek loan modifications on their own behalf through the court system.

In these comments, I will discuss the following points:

- We face a severe foreclosure crisis with substantial negative effects on entire communities and the broader economy. This crisis will not pass within the next year or two; rather, it is likely to last at least another five years.

- Efforts to encourage voluntary loan modifications have failed to keep up with the increase in foreclosures. The most recent HOPE NOW report shows that almost four times as many families lost their home or are in the process of losing their home as received loan modifications from servicers. To the extent that voluntary efforts are being made, many of the resulting workouts or modifications are not sustainable. Some have left homeowners worse off than before, and many homeowners have already re-defaulted.

- Excessive junk fees charged upfront for modifications and workouts are preventing many modifications from succeeding because homeowners are already completely tapped out even before the modification begins.

- In many cases, homeowners are being asked to permanently sign away their rights to all past, present, and future legal claims, including foreclosure defenses, even when the modifications or workouts are temporary and/or unsustainable.

- We are hopeful that the FHA expansion program contained in HR 3221 will result in many more voluntary and sustainable modifications. However, this program will likely take months or even a year to implement, and, once implemented, it can only be used at the request of lenders, not homeowners, and will still require parties to solve the problem of junior liens on the property. Moreover, even under the best-case scenario, the Congressional Budget Office estimates that the FHA could help prevent between 400,000 and 500,000 foreclosures. Our nation is now experiencing 8,000 foreclosures *every single day*, and 6.5 million foreclosures are predicted over the next five years.

- We support H.R 5679, the Foreclosure Prevention and Sound Mortgage Servicing Act of 2008, introduced by Chairwoman Waters. This bill establishes a sound framework for requiring mortgage servicers to evaluate a homeowner's situation and provide appropriate loss mitigation. It contains provisions that would likely improve communication between homeowners and their servicers; assist in crucial data collection and reporting; and strengthen the Real Estate Settlement Procedures Act.

- We also support H.R. 6076, the Home Retention and Economic Stabilization Act. This bill, introduced by Representative Matsui, is a temporary deferment plan that provides a much-needed "timeout" for servicers to catch up with backlogs and for new federal and state programs – such as the FHA expansion program – to be implemented. Homeowners must continue to make monthly payments, must maintain the property, and must respond to servicer inquiries. Creditors may end the deferment period early by providing the homeowner with an affordable loan modification.

- We continue to support H.R. 3609, the Emergency Home Ownership and Mortgage Equity Protection Act of 2007. We believe that court-supervised loan modifications are a necessary complement to voluntary efforts. In many instances, court-supervised loan modifications provide the only available solution to some of the challenges servicers face, such as the presence of second mortgages, and the fear of lawsuits by investors.

Self-Help and Center for Responsible Lending

I am Policy Counsel at the Center For Responsible Lending (CRL), (www.responsiblelending.org), a not-for-profit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help (www.self-help.org), which consists of a credit union and a non-profit loan fund.

For close to thirty years, Self-Help has focused on creating ownership opportunities for low-wealth families, primarily through financing home loans to low-income and minority families who otherwise might not have been able to get home loans. In other words, we work to provide fair and sensible loans to the people most frequently targeted for predatory and abusive subprime mortgages. Self-Help has provided over $5 billion of financing to 55,000 low-wealth families, small businesses and nonprofit organizations in North Carolina and across America.

In addition to making direct loans, Self-Help encourages sustainable loans to borrowers with blemished credit through a secondary market operation. Self-Help buys these loans from banks, holds on to the credit risk, and resells them to Fannie Mae. Self-Help has used the secondary market to provide $4.5 billion of financing to 50,000 families across the country, loans that have performed well and increased these families' wealth.

Self-Help makes loans specifically to families and business with little borrowing experience and few external support resources. While our loans have had somewhat higher delinquency rates than the prime market, we have had extremely few loans end up in foreclosure. It has been our experience that while borrowers may fall behind temporarily on mortgage payments, they will make every effort to catch up and hold on to their home. By working closely with every delinquent customer and by providing affordable loan modifications aimed at keeping homeowners in their homes, Self-Help has successfully minimized foreclosures and has kept our loan losses to less than one percent per year.

I. We face a severe foreclosure crisis that will grow even worse without significant government action.

Just one year ago, some in the mortgage industry claimed that the number of coming foreclosures would be too small to have a significant impact on the overall economy.[3] No one makes that claim today. As foreclosures reach an all-time high and are projected to grow higher,[4] the "worst case is not a recession but a housing depression."[5] Projections by Fitch Ratings indicate that 43 percent of recent subprime loans will be lost to foreclosure,[6] and at least two million American families are expected to lose their homes to foreclosures initiated over the next two years.[7] What's more, industry projections forecast that by 2012, 1 in 8 mortgages – that's all mortgages, not just subprime mortgages – will fail.[8] Robert Schiller recently noted that the meltdown and resulting crisis has erased any gains in the homeownership rate made since 2001, and the rate stands to fall further yet.[9]

The negative effects of foreclosures are not confined to the families who lose their homes. Forty million of their neighbors – those who are paying their mortgages on time -- will see their property values decline as a result by over $350 billion.[10] Other ripple effects include a reduced tax base, increased crime, further downward pressure on housing prices, and loss of jobs in the industry. According to the IMF, direct economic losses stemming from this crisis will likely top $500 billion, and consequential costs will total close to a trillion dollars.[11]

Sadly, many of the families losing their homes to foreclosure today might not have found themselves in this position if they had been given the type of loan that they actually qualified for. Last December, the *Wall Street Journal* found that of the subprime loans originated in 2006 that were packaged into securities and sold to investors, 61 percent "went to people with credit scores high enough to often qualify for conventional [i.e., prime] loans with far better terms."[12] Even those borrowers who did not qualify for prime loans could have received sustainable, thirty-year, fixed-rate loans for -- at most -- 50 to 80 basis points above the "teaser rate" on the unsustainable exploding ARM loans they were given.[13]

Wall Street's appetite for risky loans incentivized mortgage brokers and lenders to aggressively market these highly risky ARM loans instead of the sustainable loans for which borrowers qualified. As former Federal Reserve Chair Alan Greenspan told Newsweek:

> The big demand was not so much on the part of the borrowers as it was on the part of the suppliers who were giving loans which really most people couldn't afford. We created something which was unsustainable. And it eventually broke. If it weren't for securitization, the subprime loan market would have been very significantly less than it is in size.[14]

Market participants readily admit that they were motivated by the increased profits offered by Wall Street in return for risky loans. After filing for bankruptcy, the CEO of one mortgage lender explained it this way to the New York Times, "The market is paying me to do a no-income-verification loan more than it is paying me to do the full documentation loans," he said. "What would you do?"[15] Even the chief economist of the Mortgage Bankers Association, when asked why lenders made so many loans that they knew were unsustainable, replied, "Because investors continued to buy the loans."[16]

Currently, 30 percent of families holding recent subprime mortgages owe more on their mortgage than their home is worth.[17] These families are at an increased risk of foreclosure because their negative equity (being "underwater") precludes the homeowner from selling, refinancing or getting a home equity loan or using any other mechanism for weathering short-term financial difficulty.[18] Regulators like the Chair of the Federal Reserve Board and other economists are increasingly cautioning that loan balances must be reduced to avoid unnecessary foreclosures that will further damage the economy.[19] Unnecessary foreclosures are those that could be avoided with an economically rational, sustainable loan modification that yields the creditor or investor pool at least as much as would be recovered in foreclosure.

II. Voluntary loan modifications have proven insufficient to prevent the foreclosure crisis from continuing to escalate.

To date, Congress and the regulatory agencies have responded to this crisis largely by encouraging voluntary efforts by servicers to reduce the number of foreclosures. Yet despite the loss mitigation encouragement by HOPE NOW, the federal banking agencies, and state agencies, voluntary efforts by lenders, servicers and investors have failed to stem the tide of foreclosures. Seriously delinquent loans are at a record high for both prime and subprime loans.[20] The number of families in danger of losing their homes continues to be near record highs: in May, an estimated 1,977,000 loans were 60 days or more delinquent or had entered foreclosure, the second highest number since the program began reporting data last July. This is an astonishing 43 percent increase since July of last year.[21]

There is an emerging consensus that half-measures in the private sector are not working. FDIC Chairman Sheila Bair recently said that the current economic situation calls for a stronger government response, since voluntary loan modifications are not sufficient.[22] The necessity of government action also is gaining recognition among Wall Street leaders. In April, a senior economic advisor at UBS Investment Bank stated that, "when markets fail, lenders and borrowers need some sort of regulatory and legislative framework within which to manage problems, rather than be forced to act in the chaos of the moment."[23] Moreover, as former Federal Reserve Board Vice Chairman Alan Blinder recently noted, the fact that most of the mortgages at issue have been securitized and sold to investors across the globe "bolsters the case for government intervention rather than undermining it. After all, how do you renegotiate terms of a mortgage when the borrower and the lender don't even know each other's names?"[24]

While the HOPE NOW initiative claims to be making significant progress, its most recent data report reveals that the current crisis in the housing market dwarfs the servicing industry's response. According to their most recent report, almost four times as many families lost their home or are in the process of losing their home as received loan modifications from servicers.[25] The State Foreclosure Prevention Working Group, made up of state Attorneys General and Banking Commissioners, found that seven out of ten seriously delinquent borrowers are *still* not on track for any loss mitigation outcome that could lead to preventing a foreclosure.[26]

There are a number of reasons for this lack of loss mitigation activity. One reason is that the way servicers are compensated by lenders creates a bias for moving forward with foreclosure rather than engaging in foreclosure prevention. As reported in *Inside B&C Lending*, "Servicers are generally dis-incented to do loan modifications because they don't get paid for them but they do get paid for foreclosures." In fact, "it costs servicers between $750 and $1,000 to complete a loan modification."[27] Even when a loan modification would better serve investors and homeowners, some loan servicers have an economic incentive to proceed as quickly as possible to foreclosure.

But even those servicers who want to engage in effective loss mitigation face significant obstacles. One such obstacle is the fear of investor lawsuits, because modifying loans typically affects various tranches of securities differently. Another obstacle is the existence of junior liens on many homes. When there is a second mortgage, the holder of the first mortgage has no incentive to provide modifications that would free up borrower resources to make payments on the second mortgage. At the same time, the holder of the second mortgage has no incentive to support an effective modification, which would likely cause it to face a 100 percent loss; rather, the holder of the second is better off waiting to see if a homeowner can make a few payments before foreclosure. A third to a half of the homes purchased in 2006 with subprime mortgages have second mortgages as well.[28]

It is also important to note the gap between rhetoric and reality about how easy it is to get a loan modification.[29] Servicers coming before Congress often excuse the paucity of loan modifications by claiming that their efforts to modify loans are stymied by homeowners' refusal to respond to servicers' calls and letters. While this no doubt happens in some cases, the bigger problem by far is the reverse. We repeatedly hear from homeowners and housing counselors that the numerous homeowners who actively reach out to their servicers face the same problem: despite repeated calls to the servicer and many hours of effort, they cannot get anyone on the phone with the authority or ability to help. Many professional housing counselors are demoralized by the servicers' practice of incessantly bouncing the caller around from one "on hold" line to another, such that desperate homeowners never reach a live person or one with decision-making authority.

III. When modifications and other workouts are made, they are frequently temporary or unsustainable, leading to re-default and placing homeowners in an even worse economic position than when they started.

More than a year ago, leading lenders and servicers publicly and unanimously endorsed a set of principles announced at the Homeownership Preservation Summit hosted by Senate Banking Committee Chairman Christopher Dodd, which called upon servicers to modify loans to "ensure that the loan is sustainable for the life of the loan, rather than, for example, deferring the reset period."[30]

Unfortunately, many of the modifications now being made have not adhered to this pledge. To date, neither HOPE NOW nor the Mortgage Bankers Association has been willing to disclose what proportion of the loan modifications entail reductions of principal or long-term reductions of interest rates, what proportion simply entail the capitalization of arrearages or short-term adjustments, and what proportion require the payment of fines and fees as a precondition to getting any modification at all. However, it is clear that most loan modifications or workouts have not fundamentally changed the unsustainable terms of the mortgage by reducing the principal or lowering the interest rate, but instead just add fees and interest to the loan balance and amortize them into the loan, add them to the end of the loan term, or provide a temporary forbearance.

Reduction in interest rates is a key way to provide relief for homeowners whose interest rates jumped significantly – far above market rates -- as a result of rate resets. Modification of principal is particularly important for the approximately 30 percent of recent subprime loans whose owners now owe more than the house is worth by reducing principal. In calling for more loan modifications that reduce principal, Chairman Bernanke recently noted that such loan modifications involving have been "quite rare."[31] The State Foreclosure Prevention Working Group agrees.[32]

Unsurprisingly, given the minimal relief these "modifications" frequently provide, a report just released by Moody's has found a high number of re-defaults among the modified loans. Of the servicing companies surveyed by Moody's (accounting for roughly 50 percent of the total US subprime servicing market), fully 42 percent of the loans modified in the first half of 2007 were at least 90 days delinquent as of March 31, 2008. The vice chair of Washington Mutual, who helps run HOPE NOW, admits that many of the homeowners who have sought their assistance "will not receive long-term relief and could ultimately face higher total costs."[33]

Another obstacle to sustainable modifications is the common servicer practice of charging exorbitant fines and "junk" fees. The reasonableness of most default fees is highly doubtful, with many of the "costs" unjustifiable and vastly exceeding the prevailing market rates in a community. Indeed, the fact that mortgage servicers systematically charge unreasonable fees is well-documented by courts.[34] A recent analysis of over 1,700 foreclosures across the country showed that questionable fees were added to borrowers' bills in almost half the loans.[35] Servicers often require that these fees be paid in full before the homeowner receives a loan modification or workout, thereby depleting whatever limited funds the financially strapped homeowner can scrape together and leaving no cushion for short-term cash-flow needs, which results in a much higher possibility of re-default.

Compounding the problem, servicers frequently misapply monthly mortgage payments first to the fees, rather than to the principal and interest owed. In this way, a homeowner who is timely repaying interest and principal nevertheless falls further behind on the mortgage and accumulates still more fees, continuing a vicious cycle.

IV. In many cases, voluntary loan modifications or workouts are further disadvantaging homeowners in trouble because the servicer forces homeowners to waive all their rights, even those unrelated to the workout.

As a precondition to modifications and workout, lenders have been requiring shockingly broad waivers that strip homeowners of fundamental legal rights. These waivers threaten almost all of the borrowers' legal defenses to a foreclosure if the modification is unsustainable. Thus, if the modification fails, the lender can argue the borrower waived all of his federal (such as Truth in Lending or HOEPA) and state law defenses to foreclosure. The waivers also could be read to prevent claims questioning the reasonableness of fees charged.

Indeed, some releases go so far as to waive future claims that have not arisen, including seeking a free pass for future violations of such important federal laws as the Fair Credit Reporting Act, the Fair Housing Act, and Fair Debt Collection Practices Act, and some even ask homeowners to waive rights that are deemed unwaivable under state law. For example, here is one such waiver required by Countrywide:

> In consideration for Countrywide entering into this Agreement, you agree to release and discharge Countrywide, and all of its investors, employees, and related companies, from any and all claims you have or may have against them concerning the Loan. Although California law (specifically Section 1542 of the California Civil Code) provides that "[a] general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor," you agree to waive that provision, or any similar provision under other state or federal laws, so that this release shall include all and any claim whatsoever of every nature concerning the Loan, regardless of whether you know about or suspect such claims including, but not limited to, claims arising under the Mortgage Disclosure Act, Electronic Fund Transfer Act, Truth in Lending Act, Real Estate Settlement Procedures Act, Fair Credit Reporting Act, Fair Housing Act, and Fair Debt Collection Practices Act. This release shall remain effective even if this Agreement terminates for any reason.[36]

Other institutions include similar clauses in their loan modification agreements.[37] One Option One agreement even forces the homeowner to "admit" that "the Arrearage is the Borrowers' full responsibility and was produced solely by the actions or inactions of the Borrowers."[38]

Given that these waivers are typically signed when a family's only other choice is to lose their home, and given that they are required not just for life-of-the-loan modifications but even for temporary forbearances, we believe they risk compounding the foreclosure crisis. A homeowner should not be coerced into giving up potential defenses if a foreclosure ultimately takes place. As noted below, HR 5679 would prohibit these waivers. However, in the absence of legislative action, we strongly recommend that servicers stop requiring such waivers as a condition of modification and that HOPE Now require its participating servicers to refrain from requiring such waivers. The servicers also should publicly state they will not seek to enforce the waiver clauses in the modifications they have made to date

V. HR 5679, the Foreclosure Prevention and Sound Mortgage Servicing Act of 2008 will help prevent foreclosures, improve servicing practices, and enhance data collection.

Earlier this year, Representative Maxine Waters introduced HR 5679, the Foreclosure Prevention and Sound Mortgage Servicing Act of 2008. This bill requires loan servicers to engage in loss mitigation efforts prior to foreclosure, although it does not mandate any particular outcome or result.

Legislation establishing minimal servicing standards is needed because loan servicing is not an industry subject to typical economic incentives. As Tara Twomey of the National Consumer Law Center notes, homeowners "cannot choose the servicer that handles their loan and cannot change servicers if they are dissatisfied."[39] Instead, servicers are driven by the desire to maximize their own profits and to maximize returns to the investors who now stand in the shoes of the original lender.[40]

By requiring loan servicers to engage in loss mitigation prior to foreclosure, this legislation will assist homeowners, lenders, investors, and communities. The bill prioritizes continued homeownership as the highest goal of servicers. It requires that homeowners be able to reach a live person with decision-making authority, and it prohibits the coercive waivers described in Section IV above.

Perhaps most important, the legislation requires that any agreement reached through loss mitigation be affordable by the homeowner. We think careful consideration of the borrower's income as well as any expenses, including debt and residual income left over for other living expenses, is critical in determining the affordability of any solution intended to keep homeowners in their home.

We are also supportive of the bill's efforts to require that servicers provide advance notice by telephone and in writing to homeowners with ARMs of upcoming payment increases; refer homeowners who are late on their mortgage payments to HUD-certified housing counselors; and respond to homeowner inquiries and requests for information in a timely way, providing payment histories, loan documents, and loss mitigation documents as requested.

Another important aspect of this legislation is its requirement that servicers report various loss mitigation efforts disaggregated by activity and geographical designation. This simple and important requirement will ensure that policymakers and stakeholders have an accurate understanding of the kinds of loss mitigation being provided, so that policy responses can be appropriately tailored to address current needs.

Finally, the bill provides a long overdue update to the Real Estate Settlement Procedures Act (RESPA) by allowing individuals to enforce violations of RESPA servicing provisions and by updating RESPA remedies. These changes will significantly enhance consumer protection and enforcement of the RESPA provisions.

If it is made applicable to existing loans, the Foreclosure Prevention and Sound Mortgage Servicing Act provides servicers with a mechanism for maximizing returns to the investors as a whole, while reducing the harm to the family and the community. Indeed, many of the bill's requirements – that the servicers contact borrowers, provide direct access to loss mitigation personnel, and refer delinquent borrowers to HUD-certified housing counselors – are measures that industry representatives have committed to undertake and claim to be doing now. Furthermore, it will enable policymakers to assess the extent to which these steps are occurring, so that they can properly evaluate the progress and effectiveness of solutions to date.

VI. H.R. 6076, the Home Retention and Economic Stabilization Act, will provide a necessary timeout for overburdened servicers and homeowners with unsustainable loans.

Given the extensive nature of the foreclosure crisis and the fact that servicers have been unable to reduce foreclosures sufficiently, more time is needed to develop and implement strategies to keep homeowners in their homes. H.R. 6076, the Home Retention and Economic Stabilization Act, is a temporary deferment plan that provides a much-needed "timeout" that will enable lenders and servicers to increase their capacities to meet current need, for credit markets to stabilize, and for legislative solutions, such as the FHA refinancing program under consideration in Congress, to take effect.

In short, H.R. 6706 allows struggling homeowners to delay a foreclosure sale of their principal residence by up to nine months when they continue to make specified payments and meet other requirements. During the nine-month period, homeowners must continue to make payments equal to the lower of the original minimum monthly payment, i.e., at the "teaser" rate, on an adjustable rate mortgage, or a payment based on a market interest rate plus a 1 percent risk premium applied to the principal owed. Any amounts owed beyond these payments will be amortized and paid over the life of the loan, beginning at the end of the deferment period (in other words, these payments are not forgiven).

To take advantage of this opportunity, homeowners must have an income below 200% of area median income and also must live in their home and certify that they will remain there. Furthermore, the proposed deferment only applies to subprime and negative amortization mortgages -- the type of products that banking regulators have identified as potentially dangerous.

The bill gives creditors and servicers a "safe harbor" from the deferment period if they negotiate an affordable modification plan with the homeowner. The bill further protects creditors by permitting them to end the deferment plan if the homeowner fails to make monthly payments, fails to maintain the property, or fails to respond to servicer outreach efforts.

We support this bill because we believe it will help encourage affordable loan modifications and prevent foreclosures. Avoiding unnecessary foreclosures is urgently needed not only for the sake of the families immediately impacted, but for the good of their neighbors, communities, state and local governments, the housing market and the economy nationwide.

VII. Court-supervised loan modifications are a necessary complement to any voluntary efforts.

Even if all of the legislation and other suggestions described above are enacted, a significant proportion of troubled homeowners will ultimately face foreclosure because the loan servicer cannot modify the loan due to a conflict between multiple lienholders or other constraints. In those cases, the failure to modify will be to the clear detriment of investors as a whole. It is critical, as a last alternative to foreclosure, to permit a bankruptcy court to adjust the mortgage if the borrower can afford a market rate loan that will be preferable to foreclosure for the creditor or investor pool and the homeowner alike.

Currently, bankruptcy courts can modify any type of loan, including mortgages on yachts and vacation homes, with the exception of one type: primary residences. Removing this exclusion would help homeowners (not speculators) who are committed to staying in their homes, without bailing out investors and without costing taxpayers a dime. The Emergency Home Ownership and Mortgage Equity Protection Act (HR3609) provides a narrow, time-limited mechanism for enabling court-supervised loan modifications to break the deadlock that is forcing families who can afford a market rate loan into foreclosure.[41] The bill has been marked up in both Chambers, and is an important part of any effective solution to the foreclosure crisis.

We believe that the court-supervised loan modifications bill is a necessary complement to the Foreclosure Prevention and Sound Mortgage Servicing Act because it provides an important backstop for families who cannot get a sustainable loan modification due to junior liens or for whatever other reason. Moreover, as loans get modified through the bankruptcy process, these modifications will effectively create a "template" for modification that will ease the process of loss mitigation for servicers, as all parties involved will have a better idea of how the courts would handle a particular situation.[42]

Together, the Foreclosure Prevention and Sound Mortgage Servicing Act and the Emergency Home Ownership and Mortgage Equity Protection Act will help stem the tide of coming foreclosures and provide urgently needed relief to struggling homeowners, the communities they live in, and the economy as a whole.

Conclusion

The foreclosure crisis is far from over. Already we have seen the tremendous costs imposed by this crisis. Yet it is not too late to take action to prevent many more foreclosures and a much higher cost. By moving homeowners from abusive loans into sustainable ones, we can keep families in their homes, ensure a continued stream of income to investors, and prevent the neighborhood and societal costs of mass foreclosures.

We applaud the committee for focusing on this national crisis and for the steps that this committee and this chamber have already taken to help ameliorate its impact. We urge the committee to implement additional common-sense solutions to prevent the problems from deepening even further. If timely implemented, these solutions will break the downward spiral of losses, help put a floor under market declines, and return stability and liquidity to the housing and mortgage markets.

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[1] *See Moody's Economy.com: Hearing before House Subcommittee on Commercial and Administrative Law* (January 28, 2008), (written testimony of Mark Zandi) *available at*

http://judiciary.house.gov/media/pdfs/Zandi080129.pdf; *See also* Center for Responsible Lending , *Subprime Spillover*, (Rev. Jan. 18, 2008) http://www.responsiblelending.org/issues/mortgage/research/subprime-spillover.html [hereinafter Subprime Spillover].

[2] Statement of Chairman Ben S. Bernanke, Federal Reserve Board, commenting on new FRB regulatory amendments on mortgage lending (July 14, 2008) at http://www.federalreserve.gov/newsevents/press/bcreg/bernankeregz20080714.htm.

[3] *See, e.g.*, Statement of John M. Robbins, CMB, Chairman, Mortgage Bankers Association at the National Press Club's Newsmakers Lunch – Washington, DC (May 22, 2007) (Speaking of predicted foreclosures, Mr. Robbins stated: "As we can clearly see, this is not a macro-economic event. No seismic financial occurrence is about to overwhelm the U.S. economy."); Julia A. Seymour, *Subprime Reporting, Networks blame lenders, not borrowers for foreclosure 'epidemic,'* Business & Media Institute, Mar. 28, 2007 ("[T]here are experts who say the subprime 'meltdown' is not the catastrophe reporters and legislators are making it out to be. 'We don't believe it will spill over into the prime market or the U.S. economy,' said [Laura] Armstrong [Vice President, Public Affairs] of the Mortgage Bankers Association.").

[4] Renae Merle, *Home Foreclosures Hit Record High*, Washington Post, March 6, 2008.

[5] David M. Herszenhorn and Vikas Bajaj, *Tricky Task of Offering Aid to Homeowners*, The New York Times, Apr. 6, 2008 (quoting Susan M. Wachter, a real estate finance professor at the Wharton School of the University of Pennsylvania. According to Professor Wachter, "In the market that we have in front of us, prices decline and supply increases, driving prices down further.").

[6] Fitch Ratings estimates total losses of 25.8 percent of original balance in Q4 2006 loans placed in MBS they rated, and that loss severity will be at 60 percent, which means that 43 percent of the loans are projected to be lost to foreclosure (25.8/60); lack of home price appreciation said to increase defaults. Glenn Costello, Update on U.S. RMBS: Performance, Expectations, Criteria, Fitch Ratings, at 17-18 (not dated, distributed week of February 25, 2008). According to Michael Bykhovsky, president of Applied Analytics, an estimated 40 percent of outstanding subprime mortgage loans could go into default over the next three years; the dire outlook due to declining home values (press briefing at the Mortgage Bankers Association's National Mortgage Servicing Conference, February 27, 2008).

[7] *See Moody's Economy.com Hearing before House Subcommittee on Commercial and Administrative Law* (January 28, 2008) (written testimony of Mark Zandi) *available at* http://judiciary.house.gov/media/pdfs/Zandi080129.pdf.

[8] Rod Dubitsky et al., *Foreclosure Trends – A Sobering Reality*, Credit Suisse, Fixed Income Research, Apr. 28, 2008.

[9] Robert J. Schiller, *The Scars of Losing a Home*, New York Times, May 18, 2008 (noting that the homeownership rate has fallen from 69.1 percent in 2005 to 67.8 percent in the first quarter of 2008, nearly the 67.5 percent rate at the beginning of 2001).

[10] See Center for Responsible Lending, *The Impact of Court-Supervised Modifications on Subprime Foreclosures*, (Feb. 25, 2008), *available at* http://www.responsiblelending.org/pdfs/us-info-with-fc-starts.pdf; for CRL's methodology for computing spillover, *see Subprime Spillover*, *supra* note 1 (Rev. Jan. 18, 2008), *available at* http://www.responsiblelending.org/issues/mortgage/research/subprime-spillover.html.

[11] Christopher Swann, *IMF Says Financial Losses May Swell to $945 Billion,* April 8, 2008, *available at* http://www.bloomberg.com/apps/news?pid=email_en&refer=home&sid=aK1zAj5FZ9lo.

[12] Rick Brooks and Ruth Simon, Subprime Debacle Traps Even Very Credit-Worthy As Housing Boomed, Industry Pushed Loans To a Broader Market, The Wall Street Journal at A1 (Dec. 3, 2007).

[13] Letter from CFAL to Ben S. Bernanke, Sheila C. Bair, John C. Dugan, John M. Reich, JoAnn Johnson, and Neil Milner (January 25, 2007) at 3.

[14] Jon Meacham and Daniel Gross, *The Oracle Reveals All*, NEWSWEEK, Sept. 24, 2007, at 32, 33.

[15] Vikas Bajaj and Christine Haughney, *Tremors At the Door -- More People with Weak Credit Are Defaulting on Mortgages*, The New York Times, Jan. 26, 2007, at C1, C4.

[16] Les Christie, *Subprime Loans Defaulting Even Before Resets*, CNNMoney.com, February 20, 2008, http://money.cnn.com/2008/02/20/real_estate/loans_failing_pre_resets/index.htm.

[17] Edmund Andrews, *Relief for Homeowners is Given to a Relative Few*, New York Times, March 4, 2008 (loans originated in 2005 and 2006).

[18] Kristopher Gerardi, Adam Hale Shapiro & Paul S. Willen, *Subprime Outcomes: Risky Mortgages, Homeownership Experiences, and Foreclosures*, 3-4 (Federal Reserve Bank of Boston, Working Paper No 07-15, Dec. 3, 2007) (this otherwise good article misses the fact that certain loans themselves can create the cash flow shortfall that causes underwater loans to fail, when they are structured with initial low payments that are scheduled to rise, such as subprime 2/28 hybrid ARMs, and that certain loan terms have been statistically demonstrated to increase foreclosures, such as prepayment penalties)

19 Federal Reserve Chairman Ben Bernanke recently said, "When the mortgage is 'underwater,' a reduction in [loan] principal may increase the expected payoff by reducing the risk of default and foreclosure." "Preventable foreclosures" could be reduced, he said, by enabling loan servicers to "accept a principal writedown by an amount at least sufficient to allow the borrower to refinance into a new loan from another source." This would "remove the downside risk to investors of additional writedowns or a re-default." See Chair Ben S. Bernanke, "Reducing Preventable Mortgage Foreclosures" (March 4, 2008), http://www.federalreserve.gov/newsevents/speech/bernanke20080304a.htm; see also, Edmund L. Andrews, Fed Chief Urges Breaks for Some Home Borrowers, The New York Times, Mar. 4, 2008; John Brinsley, Bernanke Call for Mortgage Forgiveness Puts Pressure on Paulson, Bloomberg.com, Mar. 5, 2008; Phil Izzo, Housing Market Has Further to Fall, The Wall Street Journal, Mar. 13, 2008 ("Last week, Federal Reserve Chairman Ben Bernanke suggested that lenders could aid struggling homeowners by reducing their principal — the sum of money they borrowed — to lessen the likelihood of foreclosure. Some 71 percent of respondents [i.e., economists surveyed by the NYT] agreed with the suggestion."").

[20] Press Release, Center for Responsible Lending, Statement on HOPE Now, (July 2, 2008), *available at* http://www.responsiblelending.org/press/releases/statement-hope-now-numbers-show-foreclosure-crisis-worsening.html.

[21] *Id.*

[22] FDIC Chairwoman Sheila Bair (stating ""We've got a real problem. And I do think we need to have more activist approaches. And I think it will be something we need to be honest with the American public about. We do need more intervention. It probably will cost some money."), Real Time Economics, The Wall St. Journal (April 7, 2008) available at: http://blogs.wsj.com/economics/2008/04/07/fdic-chairwoman-calls-for-activism/?mod=google_newsThe.

[23] George Magnus, *Large-scale action is needed to tackle the credit crisis*, Financial Times, Apr. 8, 2008.

[24] Alan S. Blinder, *From the New Deal, a Way Out of a Mess*, The New York Times, Feb. 24, 2008.

[25] Furthermore, the data provided by HOPE NOW understates the number of loans in foreclosure, as it only includes those homes that entered foreclosure and those that completed foreclosure during the month, not the total number currently in the foreclosure process. In fact, 1.1 million families were in foreclosure at the end of March.

[26] Conference of State Bank Supervisors, *Analysis of Subprime Servicing Performance, Data Report No. 2*, (April 2008), at 1 *available at* http://www.csbs.org/Content/NavigationMenu/Home/StateForeclosureApril2008.pdf [hereinafter *Analysis of Subprime Servicing*].

[27] Center for Responsible Lending, *Inside Mortgage Finance Reprints, Subprime Debt Outstanding Falls, Servicers Pushed on Loan Mods* (Nov. 16, 2007) *available at* http://www.responsiblelending.org/pdfs/paulson-brief-final.pdf (quoting Karen Weaver, a managing director and global head of securitization research at Deutsche Bank Securities).

[28] Credit Suisse Report, *Mortgage Liquidity du Jour: Underestimated No More* (March 12, 2007) at 5.

[29] *See generally*, Gretchen Morgenson, *Silence of the Lender: Is Anyone Listening?* New York Times, July 13, 2008.

[30] Homeownership Preservation Summit Statement of Principles (May 2, 2007), *available at* http://dodd.senate.gov/index.php?q=node/3870/print (The Principles were announced by Senator Dodd, and endorsed by the Mortgage Bankers Association, CitiGroup, Chase, Litton, HSBC, Countrywide, Wells, AFSA, Option One, Freddie Mac, and Fannie Mae).

[31] Statement of Federal Reserve Chairman Ben Bernanke on March 4, 2008, reprinted by Bloomberg.com and available at http://www.bloomberg.com/apps/news?pid=newsarchive&sid=apeU.0IaETdM ("Bernanke statement").

[32] *Analysis of Subprime Servicing*, *supra* note 26, at 9 (the majority of servicers are not reporting significant levels of modifications that reduce principal alone, although principal reductions may be combined with other modifications and therefore may not evidenced in our reporting).

[33] David Cho and Renae Merle, *Merits of New Mortgage Aid Are Debate – Critics Say Treasury Plan Won't Bring Long-Term Relief*, The Washington Post, Mar. 4, 2008 (citing remarks of Bill Longbrake, senior policy adviser for the Financial Services Roundtable and vice chair of Washington Mutual).

[34] Court have repeatedly found servicers' inspection fees, broker price opinions, forced place insurance, and legal fees either unreasonable or unjustifiable. See e.g., *In re Stewart*, 2008 WL 2676961, No. 07-11113 (Bankr. E.D. La. July 9, 2008) (Wells Fargo charging unnecessary inspection fees, unnecessary broker price opinions, and requiring excessively priced forced-place insurance); *In re Payne*, 387 B.R. 614, 628 (Bankr. D. Kan. 2008) (Everhome charging unjustified inspection fees, late fees, and foreclosure costs); *In re Jones*, 366 B.R. 584, 597-98 (Bankr. E.D. La. 2007) (Wells Fargo charging unreasonable inspection fees, unreasonable attorney's fees).

[35] Gretchen Morgenson & Jonathan D. Glater, *Foreclosure Machine Thrives on Woes*, The New York Times, Mar. 30, 2008 (citing Katherine Porter, Misbehavior and Mistake in Bankruptcy Mortgage Claims, University of Iowa College of Law Legal Studies Research Paper Series, *Misbehavior and Mistake in Bankruptcy Mortgage Claims*, (Nov. 7, 2007), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1027961.

[36] Countrywide, Repayment Plan Agreement (February 5, 2007) (on file with Center for Responsible Lending).

37 *Id*; Countrywide, Loan Modification Agreement (June 17, 2008); Homecomings Financial, Foreclosure Repayment Agreement, July 18, 2007; Ocwen Loan Servicing LLC, Forbearance Agreement (May 16, 2008); Ocwen Loan Servicing LLC, Proposed Modification Agreement (June 26, 2008); Option One Mortgage Corporate, Forbearance Agreement (August 24, 2007); NovaStar, Repayment Plan Agreement, (January 2008) (on file with Center for Responsible Lending).

Ocwen: By executing this modification, you forever irrevocably waive and relinquish any claims, action or causes of action, statute of limitation or other defense, counterclaims or setoffs of any kind which exist as of the date of this modification, whether known or unknown, which you may now or hereafter assert in connection with the making, closing, administration, collection or the enforcement by Ocwen of the loan documents, this modification or any other related agreements.
By executing this modification, you irrevocably waive all right to a trial by jury in any action, proceeding or counterclaim arising out of or relating to this modification and any related agreement or documents or transactions contemplated in this modification. Ocwen Loan Servicing LLC, Proposed Modification Agreement, June 26, 2008 (on file with Center for Responsible Lending).

Customer expressly relinquishes and waives any rights, claims, and defenses Customer may have under any of the Code of Civil Procedure Sections or under the Loan with regard to any whole or partial payment, whether current, pass or future. Homecomings Financial, Foreclosure Repayment Agreement, July 18, 2007 (on file with Center for Responsible Lending).

[38] Option One Mortgage Corporate, Forbearance Agreement (August 24, 2007). (on file with Center for Responsible Lending).

[39], *Hearing before the U.S. House of Representatives Subcommittee on Housing and Community Opportunity*, 8 (April 16, 2007) (testimony of Tara Twomey, National Consumer Law Center).

[40] *Id.* at 7 (Cutting costs is one reason for heavy reliance on often frustrating voicemail and touch tone menu options, as well as for the lack of adequate staff to handle requests for negotiation or information.).

[41] CRL Issue Brief, *Solution to Housing Crisis Requires Adjusting Loans to Fair Market Value through Court-Supervised Modifications*, (Apr. 1, 2008), *available at* http://www.responsiblelending.org/pdfs/senate-bankruptcy-support-brief-feb27.pdf.

[42],*Straightening Out the Mortgage Mess: How Can WE Protect Homeownership and Provide Relief to Consumers in Financial Distress: Hearing before the House Judiciary Committee, Subcommittee on Commercial and Administrative Law* 5 (Oct. 30, 2007) (Testimony of Richard Levin, Partner, Cravath, Swaine & Moore LLP, on behalf of the National Bankruptcy Conference) *available at* http://judiciary.house.gov/media/pdfs/Levin071030.pdf.

TESTIMONY OF

MICHAEL GROSS

MANAGING DIRECTOR, LOAN ADMINSTRATION/LOSS MITIGATION

BANK OF AMERICA

Before the

HOUSE FINANCIAL SERVICES COMMITTEE

UNITED STATES HOUSE OF REPRESENTATIVES

WASHINGTON, DC

JULY 25, 2008

Good morning, Mr. Chairman, Ranking Member Bachus and Committee Members. I am Michael Gross, Bank of America's Managing Director of Loan Administration/Loss Mitigation. Thank you for the opportunity to appear here today to discuss the efforts of servicers like Bank of America to help families prevent avoidable foreclosures. Let me start by saying that our goal is to modify and workout at least $40 billion in mortgages by the end of 2009, and keep all those families in their homes.

I also want to congratulate the Chairman and this committee on the vital housing legislation that the House approved on Wednesday. This legislation will be important to the long term viability of home financing and the short term stability of the housing market. We believe it will help both homeowners and potential homeowners alike.

As America's largest home loan provider, Bank of America will lead a new era of home lending built on secure, transparent and fair practices, easily understood and available to all who can afford to own a home. To accomplish this, we are improving the mortgage origination process through safer and simpler product offerings, enhanced sales and underwriting controls, and strengthened channels of distribution. We are working to reduce the number of foreclosures, to help families and communities impacted by foreclosure, and continuing to make affordable prime mortgages available to those traditionally underserved, including low- to moderate-income and minority households.

The Countrywide acquisition was officially closed on July 1st, barely three weeks ago. That day marked the beginning of a new direction for the mortgage lending business. Barbara Desoer, a 31-year veteran at Bank of America has assumed the position of President of the combined mortgage, home equity and insurance business. We understand that we now have the opportunity to renew America's confidence in homeownership with unmatched capabilities to deliver the products homebuyers need and understand and to give customers first class service.

We know that consumers who are experiencing financial challenges, but who ultimately have the ability to repay their loans, often need our help to stay in their homes. We are ready to help them. We do so because *no one* benefits from a foreclosed home. At the core of our combined operations are the substantial commitments we made to use responsible mortgage lending practices and to engage in aggressive loss mitigation efforts to help borrowers avoid foreclosures and remain in their homes. Bank of America is devoting substantial resources to modifying and working out loans for borrowers who are facing default and possible foreclosure. We are continuing many effective home retention practices *already in place*, improving and supplementing these practices where we can, including: 1) robust processes for identifying and contacting at risk customers in need of assistance; 2) special strategies for subprime borrowers holding hybrid adjustable rate mortgages; and 3) refinancing, loan modification and other restructuring tools that make the borrower's debt affordable. We will continue to work with investors, the GSEs, regulators and community partners to identify ways to improve our ability to reach customers with affordable home retention solutions.

We are devoting substantial human and financial resources to these important tasks. As previously noted, through focused effort and determination, by the end of 2009 Bank of America believes we can successfully modify or workout at least $40 billion in troubled mortgage loans – helping over a quarter million customers remain in their homes.

We are tailoring our workout strategies to a borrower's particular circumstance. Once we have been able to make customer contact, we work with distressed borrowers to match the customer's repayment ability with the appropriate option – using tools such as loan modifications, forbearances and repayment plans, lower rates and other loss mitigation methods. We are not assessing new late charges for customers in foreclosure and, in certain circumstances we are waiving prepayment fees.

In response to the needs of our customers, we have added more staff and improved the experience, quality and training of the professionals dedicated to loss mitigation. Over the past year, the combined home retention staffs have more than doubled, and the company has committed to maintaining no less than 3,900 home retention staff to assist borrowers, for at least one year from the date of the merger. I want to emphasize that is a floor and we currently have 4,700 home retention staff and will maintain staff to ensure that we are able to me our customers' needs.

We are continuing to be proactive in contacting customers with adjustable rate mortgages who are facing a significant rate reset to provide assistance before a problem hits. We are continuing to educate borrowers about risks, and the options available to them. Importantly, we will be tireless in our efforts to develop reasonable workout solutions for distressed borrowers who want to stay in their homes.

We clearly recognize that there is still much more to be done. Today's market conditions challenge us both to expand our existing home retention efforts as well as to develop new approaches which will mitigate losses for investors. This is a critically important balancing act that must be done right if we as an industry are going to preserve the flow of mortgage credit to support housing, and at the same time protect communities and neighborhoods from avoidable foreclosures.

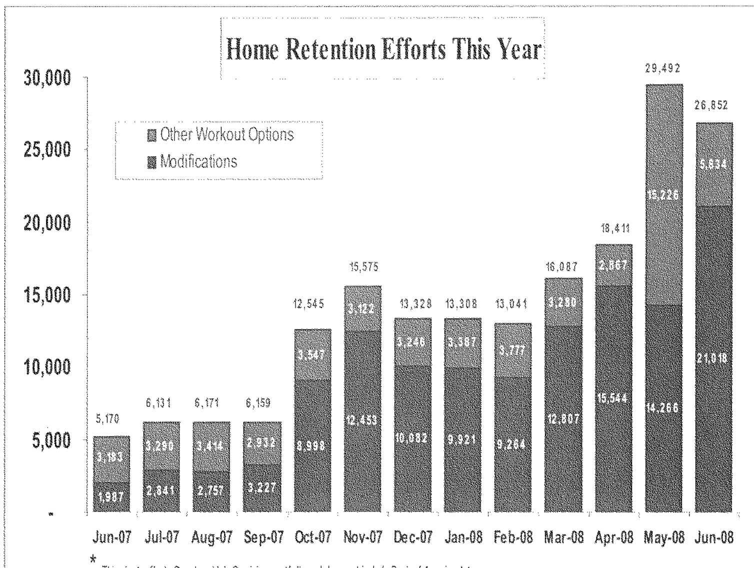
Bank of America remains committed to helping our customers avoid foreclosure whenever they have a reasonable source of income and a desire to remain in the property. A key component of successful loss mitigation initiatives undertaken by national servicers includes partnerships with financial counseling advocates and community based organizations such as NeighborWorks, ACORN, NACA and the Homeownership Preservation Foundation. At Bank of America, we are expanding our outreach to ensure that every customer that needs help and can make reasonable mortgage payments is reached. We are also actively engaged in foreclosure prevention outreach programs with both governmental and community organizations around the country. The data we are sharing today is from the legacy Countrywide portfolio, as systems integration has not yet occurred.

So far in 2008, we have participated in nearly 200 home retention outreach events around the country, including foreclosure prevention and "train the trainer" events.

Early and open communication with customers is the most critical step in helping prevent foreclosures. We are proactively reaching out to customers by:

- Making an average of 17 attempts per month to contact delinquent homeowners through phone, mail and other means.
- Reaching out to borrowers through outbound calls, including nearly 10 million calls in June.
- Mailing, on average, 900,000 personalized letters and cards each month that offer customers the choice to contact Bank of America, a HUD-approved housing agency, or a nonprofit housing organization.
- Sending counselors to offices all over the nation to meet directly with homeowners who need assistance.

In the first half of 2008, our Home Retention Division saved over 117,000 homeowners from foreclosure, nearly double the pace from the last 6 months of 2007. The pace continues to improve. In April, May, and June 2008, our most recent data, we completed almost 75,000 home retention workouts in these three months alone. I would emphasize here that these are workouts in which the borrower enters into a plan to *keep their homes*. It does *not* include deeds in lieu of foreclosures or short sales.

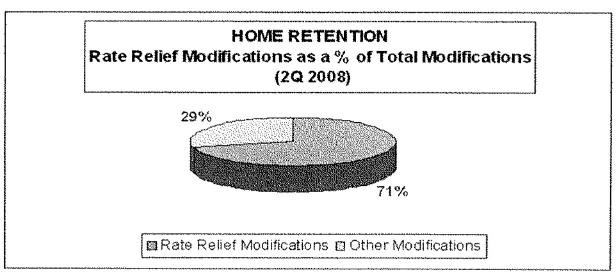


* This chart reflects Countrywide's Servicing portfolio and does not include Bank of America data

Comparing June 2008 with June 2007, our Home Retention Division workouts are up nearly 420%. The primary cause of that increase was a 958% jump in loan modification plans, from about 2,000 modifications in June of last year, to more than 21,000 in June 2008.

In addition to sharply increasing the pace of workouts, we have also become more aggressive in the types of workout plans completed. Since we announced a series of home retention initiatives last autumn, loan modifications have become the predominant form of workout assistance. Year to date, through June of 2008, loan modifications have accounted for more than 70% all home retention plans, while repayment plans accounted for 14% of home retention plans. Prior to the programs we, and the industry, announced last year, loan modifications accounted for less than a third of all home retentions. These loan modification plans generally result in reducing the loan's interest rate, and consequently reducing the borrower's monthly payment. These plans offer affordable solutions to the financial challenges facing many homeowners today.

Interest rate relief modifications – where the servicer freezes or reduces the borrower's interest rate – were extremely rare until late last year. Today, that is not the case. Interest rate modifications accounted for 71% of all the loan modifications Countrywide completed in the second quarter 2008. Importantly, the vast majority of these rate relief modifications have duration of at least 5 years.



Bank of America is committed to helping our borrowers avoid foreclosure whenever they have a desire to remain in the property and a reasonable source of income. Foreclosure is always a last resort for lenders, for servicers and for the investors in the mortgage securities we service. Please be assured that we are up to the task of meeting the challenges of today's housing market with leading-edge foreclosure prevention technology, training, programs and partnerships.

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

MORTGAGE BANKERS ASSOCIATION
Investing in communities

Statement of David G. Kittle, CMB

Chairman-Elect, Mortgage Bankers Association

before the

Committee on Financial Services

United States House of Representatives

Hearing Titled:

"A Review of Mortgage Servicing Practices and Foreclosure Mitigation"

July 25, 2008

Chairman Frank, Ranking Member Bachus, Members of the Committee, I am David G. Kittle, CMB, President and Chief Executive Officer of Principle Wholesale Lending, Inc. in Louisville, Kentucky and Chairman-Elect of the Mortgage Bankers Association (MBA).[1] I appreciate the opportunity to appear before you to discuss the progress of the mortgage industry in working out troubled loans.

MBA's members strive to keep borrowers in their homes and avoid foreclosures whenever possible. Such goals serve the interests not only of borrowers, but also of our members and of the communities in which they do business. We understand the urgency of borrowers seeking the industry's assistance and our members continue to step up their foreclosure prevention programs.

Avoiding Foreclosures

None of us wants a family to lose its home, and MBA members are devoting significant time and resources to finding ways to help borrowers keep their homes. The tools used to avoid foreclosure and retain a borrower's home include forbearance and repayment plans, loan modifications, refinances and partial and advance claims. Mortgage loan servicers use short sales and deeds in lieu of foreclosure to avoid foreclosure when the borrower does not want to or cannot retain the home.

It makes good economic sense for mortgage servicers to help borrowers who are in trouble. The recent increase in mortgage delinquencies and foreclosures has brought significant attention to the costs of foreclosure to homeowners, communities and mortgage industry participants. While the impact of foreclosure upon homeowners and communities is clear to everyone, statements by some advocates and government officials indicate that confusion still exists about the impact of foreclosures upon industry participants particularly lenders, servicers and investors.

Mortgage lenders and servicers do not profit from foreclosures. In reality, every party to a foreclosure loses – the borrower, the immediate community, the servicer, mortgage insurer and investor. It is important to understand that profitability for the mortgage industry rests in keeping a loan current and, as such, the interests of the borrower and lender are mostly aligned.

As a recent Congressional Research Service paper notes, for lenders and investors, foreclosure is a lengthy and extremely costly process and, generally, a losing financial

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[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 370,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

proposition.[2] While losses can vary significantly, several independent studies have found the losses to be quite significant: over $50,000 per foreclosed home[3] or as much as 30 to 60 percent of the outstanding loan balance.[4]

Risk of Loss

When a lender holds a loan in portfolio, it retains the credit risk on the loan and takes a direct loss if the loan goes to foreclosure sale. When a loan has been securitized, the investors in the mortgage securities hold the credit risk and take a direct loss to principal if the loan goes to foreclosure sale. The servicer, if different from the noteholder, also bears certain costs if the loan goes to foreclosure – most notably the loss of its servicing asset.

Once the borrower has obtained a mortgage and the originator has closed the mortgage, the main objective for the mortgage servicer is to keep the loan current. If a loan is terminated through foreclosure, the servicer does not continue to receive the servicing fee (the primary source of a mortgage company's income). The standard servicing fee for a fixed-rated Fannie Mae or Freddie Mac loan is 1/4 of 1 percent of the principal balance, or $250 per annum for a typical $100,000 loan. Subprime loans generally carry a higher servicing fee because of the increased delinquency risk and costs. Minimum servicing on subprime loans is ½ of 1 percent of the principal balance. Servicers of MBS, otherwise, do not retain the principal and interest (P&I) payment the borrower makes as those amounts are passed on to the ultimate investor.

In addition to losing the servicing income for the asset, servicers must pay out-of-pocket costs when the loan is delinquent. The servicer must:

- Advance interest and principal to the investors (despite not receiving payments from the borrower);

- Advance taxes and insurance payments;

- Pay for foreclosure attorneys fees, court costs and other fees;

- Pay for bankruptcy attorneys and court costs, if applicable;

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[2] See Darryl E. Getter, "Understanding Mortgage Foreclosure: Recent Events, the Process, and Costs," CRS Report for Congress (November 5, 2007), p. 9, 11.
[3] See Desiree Hatcher, "Foreclosure Alternatives: A Case for Preserving Homeownership," Profitwise News and Views (a publication of the Federal Reserve Bank of Chicago) (February 2006), p. 2 (citing a GMAC-RFC estimate); Craig Focardi, "Servicing Default Management: An Overview of the Process and Underlying Technology," TowerGroup Research Note, No. 033-13C (November 15, 2002). See also Congressional Budget Office (CBO), "Policy Options for the Housing and Financial Markets," (April 2008), p. 17.
[4] Karen M. Pence, "Foreclosing on Opportunity: State Laws and Mortgage Credit," Board of Governors of the Federal Reserve System (May 13, 2003), p. 1. See also CBO, p. 17; Community Affairs Department, Office of the Comptroller of the Currency (OCC), "Foreclosure Prevention: Improving Contact with Borrowers," Community Developments (June 2007), p. 3.

• Pay for property inspections and property preservation work (mowing the grass, boarding, rekeying, winterizing, etc.), as applicable;

• Pay for other costs including appraisals, title searches, publications, and other direct costs; and

• Pay for increased staff, contractors and other costs, such as technology costs.

To make principal, interest, tax and insurance advances, mortgage companies have to borrow the funds or use their own capital. These borrowing costs can reach into the millions of dollars per company, as many lenders experienced after Hurricane Katrina and are experiencing today.

State law dictates the foreclosure process and timeline. As a result, foreclosure costs vary significantly from state to state. In certain states, foreclosure requires court action. In these "judicial foreclosure" states, foreclosure takes longer and, consequently, is more costly. Even without a judicial foreclosure, the process is lengthy. The national average time between the first missed payment and the foreclosure sale is approximately one year.[5] After that, it may take additional time to gain possession of the property, clear the title and prepare and sell the real estate owned (REO) property.

If the loan goes to foreclosure sale, the servicer is generally not reimbursed for all its out-of-pocket, direct and indirect costs. For example, the Federal Housing Administration (FHA) only reimburses two-thirds of certain out-of-pocket expenses incurred by the servicer (e.g. foreclosure attorney fees) and sets maximums for foreclosure and bankruptcy costs and property preservation costs that often do not cover the actual expenses. In private label securities, pooling and servicing agreements (PSAs) often establish maximum payments for out-of-pocket costs incurred by the servicers. Moreover, in private label securities, servicers have higher unreimbursed carrying costs because the servicer does not receive reimbursement until it sells the REO property.

Conversely, if the loan is brought current through loss mitigation, out-of-pocket expenses generally are reimbursed through the workout plan or are separately collected by the servicer. Carrying costs are also usually reduced. Curing the delinquency allows the servicer to salvage its valuable servicing asset. Reinstatement, therefore, is far more desirable from an economic standpoint for servicers than foreclosure.

Additional Investor/Noteholder Expenses

Investors and portfolio lenders have added incentives to avoid foreclosure. They incur additional cost and losses as owners of the note or repossessed property. Post

[5] Amy Crews Cutts and William A. Merrill, "Interventions in Mortgage Default: Policies and Practices to Prevent Home Loss and Lower Costs," Freddie Mac Working Paper #08-01 (March 2008), p. 30 and Table 6.

foreclosure costs alone can account for over 40 percent of foreclosure-related gross losses.[6] The main expenses during this phase of the process are:

- ***Costs of restoring the property*** - Often homes of borrowers in financial distress fall into disrepair, requiring repairs and capital improvements to sell the property;

- ***Property Maintenance*** - REO properties must continue to be maintained (grass mowed, property winterized, etc.) and secured (boarded up and rekeyed to avoid break-ins, etc.) and removed of safety code violations (drain and cover pools, etc); and

- ***Real Estate Commissions and Closing Costs*** - Lenders typically use real estate agents, just as individuals do, to sell properties and must pay the real estate broker commissions.

The last step that creates a major expense for investors and portfolio lenders is the loss on the unpaid principal balance that occurs upon the sale of the REO property. While exceptions occur (mostly in appreciating markets), holders of REO properties do not sell them at a gain. REO properties generally do not attract top dollar, and once sale proceeds are netted against the various costs incurred during the delinquency period and foreclosure process, the investor and lender usually end up with losses.[7] These losses make up approximately 20 percent of the total costs of foreclosure. The current softness of the housing market could push this rate even higher. While private mortgage and government insurance and guarantees may offset some of these losses, coverage can be limited. Moreover, not all noteholders are protected by mortgage insurance. Subprime mortgages generally do not carry mortgage insurance.

Loss Mitigation

Mortgage companies and investors have recognized the impact of foreclosures on their bottom lines and over the last ten years have developed innovative techniques to help borrowers resume payments. These options have proven successful for the homeowner, the servicer and investor.

If a homeowner misses a payment and becomes delinquent, the mortgage servicer will attempt multiple contacts with the homeowner in order to help that borrower workout the delinquency. Servicers have several foreclosure prevention options that can get a borrower back on his or her feet, including those outlined below.

Forbearance Plan: Forbearance is a temporary agreement, which allows the homeowner to make partial or no payments for a period. The forbearance agreement is followed by a further evaluation of the loan and the homeowner's circumstance to identify if there are any permanent workout options such as a repayment plan or modification.

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[6] Cutts and Merrill, p. 32.
[7] CBO, p. 17; Getter, p. 9; Cutts and Merrill, p. 33.

Repayment Plan: A repayment plan is a verbal or written agreement where a delinquent homeowner resumes making regular monthly payments in addition to a portion of the past due payments to reinstate the loan to "current" status.

Loan Modifications: Loan modifications are the next level of loss mitigation options. A loan modification is a change in the underlying loan document. It might extend the term of the loan, change the interest rate, change repayment terms or make other alterations. Often features are combined to include rate reductions and term extensions. Modifications often provide for the capitalization of arrearages, which means the amount of overdue payments are added to the balance of the loan and the debt is re-amortized. The benefit of this feature is that it brings the loan current, giving the borrower a fresh start.

Loan modifications are one solution for borrowers who have an ability to repay a loan, and have the desire to keep their home, but may need some help in meeting this goal because they cannot meet the original terms of the loan.

Partial and Advance Claims: Servicers are also using partial or advance claims on government and conventional products (i.e., Fannie Mae's HomeSaver Advanced program). In a partial or advance claim, a junior lien is created in the amount of the arrearage. The loan proceeds from the newly created junior lien are used to pay the arrearage on the first mortgage, thus bringing the borrower current. Usually the insurer (FHA or private mortgage insurer) or investor or servicer will hold the junior lien and may defer or forgo interest and may defer principal payments.

Refinances: Servicers also use refinances to assist borrowers who are current, but are at risk of defaulting on the loans in the future or borrowers who are in the early stages of delinquency. FHASecure is one example of a program targeted at borrowers with adjustable rate mortgages who are unable to make payments due to an increase in rate.[8] H.R. 3221, the omnibus housing legislation, enhances FHA's product line by creating the "HOPE for Homeowners" program that creates a refinance program for current and delinquent borrowers who seek to refinance their homes, but find they owe more than their homes are worth.

Short Sales and Deeds in Lieu of Foreclosure: Not all borrowers want to or can stay in their homes. Some have decided to stop making mortgage payments because to do so no longer suits their economic interests.[9] Others face divorce or relocations for which the current home is no longer viable.

Borrowers who cannot maintain their home for whatever reason may still avoid foreclosure through a short sale or deed in lieu of foreclosure. In both cases, the

[8] Mortgagee Letter 2008-13 (May 7, 2008)
[9] See, for example, Said, Carolyn: "More in Foreclosure Choose to Walk Away," San Francisco *Chronicle*: March 16, 2008 (http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/03/16/MNFFVI036.DTL)

borrower is usually relieved of the debt despite selling the house for less than the debt or delivering an asset that is worth less than the debt.

All of these loss mitigation options benefit the borrower in varying ways and servicers strive to help as many borrowers as is prudently possible.

Loss Mitigation is Working

Our servicing members have worked aggressively to make the available tools as efficient as possible. The industry formed the HOPE NOW Alliance in an effort to approach foreclosure prevention in a coordinated fashion and to enhance communication efforts about loss mitigation opportunities with borrowers.

Servicers' actions are clearly working. HOPE NOW estimates that more than 1.7 million homeowners have avoided foreclosure because of industry efforts since July of 2007. In May 2008 alone, servicers provided approximately 170,000 at risk borrowers with repayment and modification plans. Early indications show that servicers are maintaining this pace for June.[10] Of the workout plans offered in May, approximately 100,000 were repayment plans and 70,000 were loan modifications.

Workouts are clearly outpacing foreclosures. In the first quarter of 2008, the number of repayment plans and modifications alone equaled 482,996 as compared with 198,172 foreclosure sales in the same timeframe. Servicers are also engaged in partial or advance claims, delinquent refinances, short sales and deeds in lieu of foreclosure that are not captured currently in the survey. We believe the industry has demonstrated its willingness and commitment to help borrowers avoid foreclosure.

Let me repeat this: despite assertions to the contrary, the numbers are clear. In the first three months of this year, 482,996 families received workouts, more than twice the number of people who experienced foreclosure sales: 198,172. The industry is engaged in an historic effort to assist people in trouble, despite an unending stream of criticism that somehow our efforts are inadequate.

Obviously, the sooner a borrower in trouble can get a workout plan, the greater the chance the borrower has to avoid foreclosure and the less impact there is on the surrounding community. However, servicers cannot forgo due diligence for speed. As some have suggested, granting every borrower a loan modification simply because the borrower requests one is unwise and contrary to the servicer's contractual responsibility to investors or duty to shareholders. As prudent businesses, servicers must review the specific circumstances of the request and tailor the response to the borrower's unique circumstances. Failure to do so would also harm the borrower, as each borrower's financial situation is different, which calls for different solutions.

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[10] "Mortgage Loss Mitigation Statistics" HOPE NOW issued July 2008. See http://www.hopenow.com/site_tools/data.php for HOPE NOW data.

Lenders continue to explore ways to improve execution and responsiveness. We recognize that we can do better, and we are working to improve even more. Servicers are increasing staff, sending special mailings, making phone calls, developing Web sites, going door-to-door and using other creative means to reach out to distressed homeowners. As a normal course, servicers send numerous letters to delinquent homeowners notifying them about loss mitigation. Additionally, HOPE NOW launched an additional nationwide campaign to reach at-risk homeowners. So far, HOPE NOW members have sent approximately 1.3 million special letters. About 18 to 20 percent of homeowners receiving the HOPE NOW-coordinated letters have contacted their servicer, a 6- to 9-fold increase over the standard 2-3 percent response rate servicers have historically received.

Industry Action

Servicers have also advanced or promoted several other beneficial programs:

HOPE Hotline: The industry, through the HOPE NOW Alliance, continues to promote the Homeownership Preservation Foundation's HOPE Hotline (888-995-HOPE) which is available 24 hours a day, 7 days a weeks, and 365 days a year. There is no cost to homeowners for using the HOPE Hotline. Part of the explosive increase in calls to the Hotline is the result of the industry's efforts to educate borrowers and to encourage their calls. TV and radio advertisements, billboards and other media are being used to reach distressed borrowers who may be unaware of the existence of loss mitigation options. Borrowers who are in trouble need to contact their servicers, the HOPE Hotline or a trusted advisor. The HOPE Hotline currently has approximately 450 HUD-approved housing counselors available to assist and advise borrowers on mortgages and other debts. However, borrowers must take action. The longer the borrower waits to seek help, the less likely he or she will qualify for loss mitigation.

Streamlined Modifications: Lenders and servicers of HOPE NOW worked with the American Securitization Forum (ASF) to create a framework to more readily modify certain at-risk subprime loans securitized in the secondary market. [11] The focus of the effort has been to identify categories of borrowers with subprime hybrid adjustable rate mortgages (ARM) who can be streamlined into refinancings or modifications. The ASF-established framework is adding to existing efforts to assist distressed borrowers. The key is to find solutions that help borrowers, but do not violate the agreements with investors who now own the securities containing these loans.

Foreclosure Prevention Workshops: Members are working with government agencies, federal and state legislative offices and consumer groups to host foreclosure prevention workshops, where borrowers can meet servicers face-to-face to discuss and execute workout options. These efforts, while worthwhile, are extremely labor intensive,

[11] "Streamlined Foreclosure and Loss Avoidance Framework for Securitized Subprime Adjustable Rate Mortgage Loans," American Securitization Forum, December 6, 2007 and updated July 8, 2008. See,http://www.americansecuritization.com/uploadedFiles/FinalASFStatementonStreamlinedServicingProcedures.pdf and http://www.americansecuritization.com/uploadedFiles/ASFStreamlinedFramework7.8.08.pdf

requiring servicing personnel to travel extensively and work long hours and weekends. HOPE NOW has also launched a series of workshops. In the past four months, HOPE NOW alone has connected almost 6,000 homeowners with their lender and/or a HUD-certified housing counselor at workshops in 14 different cities in California, Georgia, Illinois, Pennsylvania, Ohio, Nevada, Texas, Wisconsin, Tennessee, Florida and Indiana.

Use of Third Parties: In addition to the successful use of housing counselors, servicers are also piloting the use of other third parties, such as foreclosure attorneys, to discuss foreclosure prevention alternatives with borrowers. In many cases, the borrower's first communication with the servicer is through the foreclosure attorney. Demand letters and acceleration letters often prompt borrowers to contact the attorney as they recognize the seriousness of the situation. As a result, servicers are seeking ways to use foreclosure attorneys in an efficient and ethical manner to gather information and seek out loss mitigation opportunities. Servicers are also employing third parties to make personal contacts with borrowers at their homes to execute loss mitigation packages.

Innovations with Counselors: The industry, through HOPE NOW and the technology provider Computer Sciences Corporation, have crafted a Web-based tool which housing counselors can use to capture critical borrower information needed to complete a workout by the servicer. The software, called Early Resolution Counseling Portal, is based on technology servicers use in loss mitigation, but it has been adapted for use by counselors to streamline the data collection and transfer of information to servicers. The software can generate a workout recommendation that is based on a particular servicer's or investor's rules and the specific borrower information.

Servicer Best Practices: Servicers working through the HOPE NOW Alliance issued guidelines last month that provide greater clarity and uniformity to the workout process. Of note, the guidelines establish procedures by which mortgage servicers will keep homeowners and authorized third party housing counselors informed about the status of the borrower's requests for assistance. The agreement also establishes a uniform, streamlined timetable for reaching a decision on workout requests. Finally, the agreement creates guidelines for dealing with subordinations and short sales by second lienholders, which have been very challenging issues.

Web Sites: Servicers have also created Web sites that allow borrowers at any time of the day to learn about the loss mitigation process, educate themselves on the requirements, and download or print the financial forms and other documents necessary to initiate the workout process. In some cases, these Web sites are interactive and allow the borrower to fill out the information and submit a request for foreclosure mitigation on-line. The borrower can also mail or fax the forms and request for assistance to the servicer.

Servicer Challenges

The Committee has inquired whether impediments exist that inhibit increased execution of workouts. We would like to take this opportunity to explore some of the more common reasons modifications and other workout strategies fail or are slow to complete.

Investment Properties: The options for helping borrowers who purchased homes as investments are limited. During the housing boom of the last several years, there were many speculators and investors looking to profit from price appreciation. The strength of our economy relies on the willingness of people to take risks, but risk means one does not always get his or her rewards. During this time, a majority of these properties were purchased to try to capitalize on appreciating home values or to use rents as a source of investment income, or some combination of both. With the downturn in the housing market, a number of these investors are walking away from their properties and defaulting on their loans. In the third quarter of 2007, 18 percent of foreclosure actions started were on non-owner occupied properties. Foreclosure starts for the same period for non-owner occupied properties in Arizona, Florida, Nevada and Ohio were at 22 percent.[12]

We understand that this sometimes negatively affects renters who, through no fault of their own, end up impacted by a foreclosure. MBA believes that while the ultimate owners of REO properties should treat renters humanely and ensure sufficient notice, we oppose proposals requiring that any "successor" in interest of a foreclosed property permit a tenant to continue to reside at the property for lengthy periods. Such a requirement hampers the sale of foreclosed properties – the effect of which will be to increase costs for all loans. Further, it may extend the blight on the very communities that are harmed by foreclosures.

Junior Liens: Many borrowers have second and third liens. If the first lienholder seeks to modify the mortgage by adding the arrearage to the balance of the loan – which is common practice to bring the loan current – or seeks to extend the maturity date, the first lienholder must get the junior lienholders to resubordinate their interests to the first lienholder. Failure to get that subordination would jeopardize the first lienholder's priority position and would likely violate the trust and pooling and servicing agreements.

The process of obtaining a junior lienholder's subordination is time consuming. Not all second lienholders are willing or permitted by contract to resubordinate their mortgages because doing so erodes their "equity" position. A similar concern arises for junior lienholders when asked to agree to a short sale. In some cases, the short sale will completely wipe out the junior lienholder making this an unattractive option. This does not mean that the borrower is without alternatives. Other loss mitigation approaches can be taken, including repayment plans combined with rate reduction modifications.

[12] Jay Brinkmann, Ph.D., "An Examination of Mortgage Foreclosures, Modifications, Repayment Plans, And Other Loss Mitigation Activities In The Third Quarter Of 2007," Mortgage Bankers Association (January 2008)

The June HOPE NOW Servicing Guidelines identify these limitations, but also indicate that junior lienholders who are not restricted by servicing agreements to the contrary will resubordinate their interest when:

- a refinancing does not increase the first lien principal amount by more than a reasonable closing costs and arrearages and no cash is extracted by the homeowner; and

- A loan modification that lowers or maintains the monthly payment of the first lien via term extension, rate reduction and or principal write down and no cash is extracted by the homeowner.

Recidivism: Recidivists or serial defaulters are costly to servicers and can create a barrier to repeat offers of loss mitigation. While the industry will consider revising previous modifications or repayment plans based upon true hardship, requests for multiple modifications with no intentions of honoring the terms will – and should – be rejected. Workouts are not free of charge for the servicer. Servicers and investors often incur costs associated with delinquency and foreclosure initiation and those costs mount the longer the delinquency remains outstanding. Servicers also use up valuable resources and incur costs to perform loss mitigation. Borrowers who redefault repeatedly drive up these costs making loss mitigation not viable or financially sound.

One way the industry is attempting to reduce the recidivism problem is to engage in "stipulated payment to modification plans." These "stip to mods" require the borrower to make timely payments according to the proposed revised terms of the mortgage for three or four months. Upon successful completion of the stipulated payment plan, the servicer will execute a modification that formalizes these changes. If the borrower fails to make payments timely during the stipulated payment period, the servicer has the opportunity to determine whether the terms of the plan need to be revised or if the borrower is operating in bad faith and foreclosure is more appropriate. We believe this approach is responsive to the borrower and avoids the incidence of inappropriate modification plans that borrowers cannot keep and that duplicate costs.

Contractual Requirements: Despite many efforts to relieve some of the legal barriers to executing modifications, servicers are under a contractual duty to follow the requirements of their pooling and servicing agreement and to maximize the recovery to the trust. As we have explored in the past, many PSAs permit workouts that are "consistent with industry practice." This poses a challenge to define common industry practice, especially when new approaches such as streamline modifications are undertaken. Others, albeit a minority, prohibit modifications altogether or limit the length of repayment plans. Yet others have conflicting provisions, for example, permitting servicers to follow standard industry practices for delinquent borrowers, but prohibiting changes to the interest rate in other sections of the document. These legal issues are difficult to manage and servicers are reluctant to err against the investor for fear of liability.

While we are certain these limitations or conflicts would be resolved if investors could get together and agree, many MBS are widely held and getting the necessary number of investors together to change the PSA terms has proven impossible. Servicers are not remaining idle, however. Servicers are advancing new concepts by creating industry standards through coordinated approaches led by industry groups and seeking approval of actions by the American Securitization Forum, the SEC and IRS. The industry is working as a whole to obtain favorable results for homeowners while not violating their contracts.

Consumer advocates have placed considerable focus on ensuring that modifications are affordable for the borrower and often request significant concessions from the servicer and investor. Unfortunately, they fail to recognize the servicer's and investor's side of the equation. Servicers are contractually obligated to operate in the best interests of MBS investors. ASF's Streamlined Foreclosure and Loss Avoidance Framework indicates that when evaluating a loan modification, the servicer should compare the anticipated recovery under the loan modification with the anticipated recovery through foreclosure on a net present value basis, and whichever action maximizes recovery should be deemed in the best interests of all investors in aggregate. While servicers consider affordability, if the modification is too rich to the borrower, as some advocates have demanded, the NPV calculation will force a denial. Servicers structure workouts that balance both the borrower and investors' interests and make modifications that do not violate the NPV calculation.

One issue that may inhibit the speed of workouts in the future is H.R. 3221's provision that imposes a fiduciary duty on servicers to maximize the net present value of the pooled mortgage in an investment. Today, servicers have a contractual duty as stated above. By imposing a fiduciary duty on servicers in their execution of loss mitigation, servicers are forced to meet a much higher degree of care toward investors than what may be the case today. We are concerned that a fiduciary standard may slow down workout activity due to the need for even greater due diligence when executing a workout. In some cases, this standard may affect a homeowner's ability to qualify for a workout.

Security Requirements: In some cases, a modification cannot be executed until the borrower is delinquent. For example, Ginnie Mae does not permit a loan to be modified and remain in the security. To modify a loan, it must be repurchased from the pool. Servicers, however, are prohibited from repurchasing a loan from the pool until the borrower is 90 days delinquent. This policy has merit to curb run-off at the security level. Unfortunately, in today's environment, it also inhibits the servicer's ability to execute modifications when a borrower is current -- but default is imminent -- or when the borrower is delinquent by a month or two.

Failure to Respond: While the rate of borrower response has improved dramatically since last year, still far too many borrowers are unresponsive or fail to follow through on workout offers. Some borrowers will request loss mitigation assistance, but when asked to provide necessary documentation, such as income verification or letters describing their financial hardship, the borrowers do not respond. Servicers have also seen borrowers get approved for a modification, but then fail to sign and return a modification agreement that executes the deal. Despite follow up efforts, no action is taken and the servicer is forced to consider the request abandoned. We do not know for certain why these situations are happening. We presume several things. In some cases, the borrower cannot demonstrate a financial hardship. We also believe that the borrower may get overwhelmed with notices and collection calls from other creditors and, therefore, stops opening mail and taking calls. We also believe that some borrowers become suspicious of signing an agreement despite communicating with the servicer. We are sure there are many other reasons. Unfortunately, they are all speculation since servicers are unable to reach these borrowers.

Changing Behavior: Servicers are finding in many cases that borrowers' expenses exceed their income. While income may be sufficient to afford the home and reasonable household expenses, other spending habits and debts incurred by the borrower are draining surplus funds. To retain the home, borrowers must change their spending habits and address their other debts. Servicers are willing to provide assistance by modifying terms of the loan to clear the delinquency and provide more affordable terms. However, borrowers may still also have to negotiate with unsecured creditors to reduce credit card balances in order to continue to afford the home. Servicers are not forcing borrowers to bring down these balances before executing a workout. Servicers will give the borrower the benefit of the doubt and will execute a plan, stop the foreclosure if applicable, and trust that the borrower will take action to reduce their expenses and other debts.

Housing counselors can offer help in this area, by assisting the borrowers with their overall budgets and financial situation. As stated above, servicers are also using more "stip to mods" as a means to ensure the modified payments are affordable and to create better incentives for the borrower to budget their finances. Mortgage lenders, however, cannot be expected to reduce the principal balance on their loans so that their customers can more easily pay unsecured loans, such as credit cards.

Secondary Marketing Risk: Servicers of FHA and VA loans are subject to secondary marketing risk when modifying loans. As stated previously, in order to modify an FHA or VA loan, the servicer must repurchase the loan from the pool. The servicer generally borrows funds from a bank to make the repurchase at the unpaid principal balance. The repurchase obligation creates risk for the servicer. Servicers who repurchase mortgages out of Ginnie Mae securities incur interest rate risk associated with these modifications. Interest rate risk is the risk that the new modified rate offered to the borrower will be below the prevailing market interest rate (par) and the servicer will incur a principal loss for delivering a less valuable asset. Historically the interest rate risk has been far less than the loss from foreclosure. Servicers do not incur redelivery risk with most private label securities because modified loans do not have to be repurchased from pools to be modified.

Conclusion

Servicers want to assist borrowers who are having difficulty paying their mortgages. Not only do servicers want to preserve the client relationship, but servicers and investors have an economic incentive to avoid foreclosure. As a result, servicers are performing a growing number of workouts, including modifications, as evidenced by the HOPE NOW data. Servicers have increased staff, have funded new technology, are sponsoring homeownership workshops and are funding advertising to educate borrowers about foreclosure prevention options. They are paying for housing counseling sessions so that they remain free to homeowners and are working with regulators and others to resolve legal impediments to performing loss mitigation. Servicers are using third parties in innovative ways, even going door-to-door to reach borrowers, and are paying incentives to staff and third parties for successful workouts. All these efforts demonstrate the industry's dedication to avoiding foreclosure and helping delinquent borrowers get back on their feet. The industry is working to keep pace with changes. We are not standing idle, but seeking new and financial responsible ways to increase workouts.

The incentives of the mortgage servicer are generally in line with the borrower who is in trouble. We are doing our part. Thank you for the opportunity to share our thoughts with the Committee. I look forward to answering any questions you may have.

HOPENOW

Support & Guidance For Homeowners

Statement of

Faith Schwartz

Executive Director, HOPE NOW Alliance

before the

Committee on Financial Services

United States House of Representatives

July 25, 2008, 10:00 a.m.

Hearing on

"A Review of Mortgage Servicing Practices

and Foreclosure Mitigation"

2128 Rayburn House Office Building

Chairman Frank, Ranking Member Bachus, and Members of the Committee, I am Faith Schwartz, Executive Director of the HOPE NOW Alliance. I appreciate the opportunity to appear before you today on behalf of HOPE NOW to talk about the efforts to help at-risk homeowners stay in their homes during this time of serious challenges in the housing market. In particular, I will discuss the steps that the HOPE NOW mortgage servicers are taking to strengthen their ability to respond to at-risk homeowners and non-profit housing counselors.

The HOPE NOW Alliance is a broad-based collaboration between credit and homeownership counselors, lenders, investors, mortgage market participants and trade associations. Since last October, the HOPE NOW Alliance has worked to dramatically expand and coordinate the efforts that individual companies and non-profits are making to help homeowners in difficulty. HOPE NOW builds on efforts that individual companies were making to reach borrowers and it is also an expansion of an industry partnership with NeighborWorks and the Homeownership Preservation Foundation to reach at-risk borrowers and provide counseling to them. Currently, we have 26 servicer members which account for over ninety percent of the subprime market and nearly seventy percent of the prime market. A full list of HOPE NOW members is attached for your reference.

HOPE NOW is a private sector and non-profit alliance, but we have greatly benefited from the encouragement of the President, Treasury Secretary Paulson and by Members of Congress and other leaders. Chairman Frank and Members of this Committee have stressed the need for this type of effort, we are responding to that direction and we continue to seek your comments and guidance.

HOPE NOW is a coordinated, national approach among servicers, investors, non-profit housing counselors and other industry participants to enhance our ability to reach out to borrowers who may have or expect to have difficulty making their mortgage payments and to offer them workable options to avoid foreclosure. While HOPE NOW can not prevent all foreclosures, the HOPE NOW Alliance is achieving real results in reaching more at-risk borrowers and in providing positive solutions that avoid foreclosure.

HOPE NOW has a three-pronged approach to reach our goals of helping homeowners avoid foreclosure: 1) Reaching Homeowners In Need; 2) Counseling Homeowners in Need; 3) Assisting Homeowners in Need.

We are reaching homeowners in need through a national letter campaign and outreach events across the country. We are counseling homeowners in need through the Homeownership Preservation Foundation's hotline, 888-995-HOPE, in-person counseling at NeighborWorks America and all HUD-approved counseling agencies. We are helping borrowers through providing more loan workouts, including loan modifications and repayment plans.

The members of the HOPE NOW Alliance recognize the urgency of this issue, and we are working to reach and assist more homeowners every day. HOPE NOW is an ongoing effort and we have been working hard too address pressing issues such as servicer capacity and responsiveness. I am pleased to have the opportunity to share our progress with you in establishing servicing guidelines and I can also discuss the most recent data on our results in helping at-risk homeowners.

Servicer Guidelines

This hearing is very timely because as of June 17, all HOPE NOW servicers committed to strong guidelines to speed help to struggling homeowners. All HOPE NOW servicers have agreed to a uniform set of procedures and guidelines intended to improve responsiveness and provide clarity and guidance on how servicers are working to respond to homeowners and counselors. These guidelines significantly enhance the likelihood that homeowners will be able to receive the help they need in a timely manner, that the assistance process is respectful of homeowners and that the support will be as understandable and transparent as possible. Our servicers are working to make their operations consistent with these guidelines over the next sixty days.

These servicing guidelines do four critically important things that will benefit homeowners:

- **Expedite:** The HOPE NOW servicing agreement establishes a uniform, streamlined timetable for action by each mortgage servicer when dealing with a homeowner. This will provide every homeowner who contacts their servicer with deadlines by which action is likely to be taken and a better understanding about their particular situation.

- **Inform:** The HOPE NOW agreement includes extensive procedures by which mortgage servicers will keep homeowners informed about the status of their request for assistance. It also includes access to objective, independent, and no-cost-to-the-homeowner counseling for homeowners who want information about their options. It also puts in place detailed procedures that servicers will use to reach out to homeowners who may be in danger of losing their home.

- **Protect:** The HOPE NOW agreement establishes an extensive set of options that our mortgage servicers agree to use to help homeowners avoid foreclosure, including loan modifications, repayment plans, partial claims, and temporarily suspending the need to make monthly payments. The agreement also calls on mortgage servicers to delay foreclosure proceedings that are about to begin or have already begun when there is a possibility that other options will allow the homeowner to stay in their home.

- **Remedy:** The HOPE NOW agreement includes guidelines for dealing with what up until now have been two of the most difficult foreclosure-related issues – second mortgages and short sales. Because of the guidelines established in this agreement, neither of these should be as difficult for homeowners as they have been in the past.

Because of the complicated legal issues involved and the different procedures used by each of the servicers, the agreement was carefully developed between April and June 2008. Although many of the HOPE NOW mortgage servicers had been implementing their own version of some of these guidelines for some time, they are now committing to fully implementing these uniform principles and standards within 60 days. By establishing these guidelines, HOPE NOW members are improving the infrastructure needed to help more borrowers on a much larger scale. In addition to improving lender/servicer systems for working with counselors and borrowers, we are redoubling our efforts to reach out to at-risk borrowers. The full guidelines are attached for your information, but I want to highlight the critical elements of the guidelines.

1) Communication and Outreach

HOPE NOW servicers are committed to reaching out to all their borrowers who are having difficulty paying their mortgage or are otherwise at-risk of foreclosure. Servicers are participating in a variety of outreach efforts to reach the most borrowers, including a national letter campaign and local homeownership preservation workshops. In addition, HOPE NOW servicers are committed to contacting all borrowers with subprime adjustable rate mortgages 120 days in advance of reset. Also, servicers are establishing toll-free hotlines, faxes, and emails for counselors to reach them directly thus providing for a more efficient process for struggling borrowers.

Consistently, one of the largest issues facing lenders is achieving contact with their borrower. In late 2007, Freddie Mac retained Roper Public Affairs and Media to conduct research on the behavior of borrowers to understand why borrowers do not contact their lenders. This study is an update to their original research done in 2005. When asked, the majority of homeowners say they are not aware of options that mortgage lenders can offer to a person having trouble with their mortgage (57% of delinquent borrowers and 65% of good standing owners). This is only slightly better than the results from 2005 (61% of delinquent borrowers and 73% of good standing owners).[1]

HOPE NOW continues to work to overcome this contact barrier but it is still a very serious challenge. For example, since November 2007, HOPE NOW servicers have mailed almost 1.5 million letters to borrowers who are 60 days or greater past due. The average monthly response rate is 20 percent. While that is far better than the typical 2-3 percent response rate which servicers get when sending their own mailing, it is not nearly enough; the vast majority of no-contact delinquent borrowers still have no contact with their servicer. We urge you to continue help get the message to your constituents and all at-risk homeowners who receive a letter to call their lender or the Homeowner's HOPE Hotline, 888-995-HOPE.

It is also important to call attention to the problem of scams in the market which offer to save your home for a fee. Everything HOPE NOW is doing is free to the borrower. There should be no third party requirement to pay for modifications fees or other fees. We continue to work to limit confusion to borrowers and stop copycat websites. We urge homeowners to seek help directly from their servicer or a HUD-approved non-profit counselor. They should avoid promises to help that come with a fee when that help is available for free from HOPE NOW Alliance members, which includes all HUD-approved non-profit counseling agencies.

HOPE NOW Homeownership Preservation Workshops

In addition to the early contact, direct mail campaign and promotion of the HOPE Hotline to reach at-risk borrowers, HOPE NOW is conducting a series of in-person workshops for

[1] Freddie Mac. "Foreclosure Avoidance Research II." Available at: http://www.freddiemac.com/service/msp/pdf/foreclosure_avoidance_dec2007.pdf.

homeowners. These workshops are held across the country, providing at-risk borrowers an opportunity to meet directly and talk with their loan servicer or a local HUD-approved counselor. Counseling agencies affiliated with HUD intermediaries, such as ACORN, NeighborWorks, NID, NFCC, and others, have played an active role.

Since the first week of March, more than 5,700 homeowners have attended HOPE NOW workshops. HOPE NOW mortgage servicers participate in these events and provide workout solutions on site, and non-profit counselors provide in-depth debt and credit management assistance. These collaborative workshops are enabling more homeowners to meet with their mortgage company representative and develop workout solutions that help them stay in their home.

The reactions of homeowners who have attended these events are overwhelmingly positive and we look forward to reaching even more borrowers. Homeowners have shared with us the following comments: "It gave me hope that I will survive," "We received a reduction in our payment and were not meant to feel belittled or intimidated," "Without your help, we would have lost our home," and "I am too choked up to talk." Attached to this testimony are more examples of homeowner responses to our homeownership events.

In the coming weeks and months, HOPE NOW is hosting more outreach events. Today and tomorrow, July 25 and 26, there are HOPE NOW events in Newark and Mt. Laurel, New Jersey respectively. On August 12, we are co-hosting a large homeownership event in Boston at the Gillette Stadium with the Federal Reserve of Boston and NeighborWorks America. On behalf of HOPE NOW, I would like to personally thank Chairman Frank for agreeing to participate in this important event. A full list of upcoming HOPE NOW outreach events for homeowners is attached.

Counseling Data

The Homeownership Preservation Foundation's Homeowner's HOPE™ Hotline (888-995-HOPE), a key component of the outreach and assistance effort for at-risk homeowners, continues to have a dramatic and positive impact for distressed homeowners.

The hotline directly connects homeowners with trained counselors at non-profit counseling agencies that have been certified by the Department of Housing and Urban Development (HUD). This counseling service is completely free to borrowers and is offered in English and Spanish. The counselors have direct access to the lender/servicers through improved single points of entry that all HOPE NOW Alliance members agreed to create. Providing this direct point of contact for non-profit counselors to loan servicers represents real and important progress by HOPE NOW members.

- To date, the Homeownership Preservation Foundation Homeowner's HOPE™ Hotline has received 830,571 calls, and counseled 282,283 homeowners.
- In the second quarter 2008, the Foundation received 198,450 calls and counseled 68,899 borrowers.
- Over 20 percent of the borrowers counseled were from California and an additional 12 percent were from Florida.

- The Counseling sessions produce results. In the second quarter of 2008, one third of homeowners counseled were referred to their lender for a recommended workout.
- The HOPE Hotline is currently receiving an average of 2,700 calls a day.

Members of Congress have played an important role in helping promote counseling and the hotline. Members of Congress and other community leaders can continue to assist in this critical effort to help people stay out of foreclosure by urging homeowners to seek help and publicize HOPE NOW efforts, particularly the Homeowner's HOPE Hotline, 888-995-HOPE. We would like to continue to work with the members of the Financial Services Committee to ensure that more homeowners are aware of the HOPE hotline and other assistance from the HOPE NOW Alliance. We also encourage the homeowners to reach out to HUD counseling intermediaries, all of which are Alliance partners, for foreclosure prevention counseling. The list of counseling agencies is also included in our attachments.

Funding Counseling through Fee for Service Model

As part of a sustainable effort to help at-risk homeowners through free, non-profit counseling, HOPE NOW servicers have committed to a system for funding this counseling through a "fee for service" model for foreclosure prevention counseling. Servicers and investors have agreed to a system for funding counseling for their customers who benefit from non-profit counseling to avoid foreclosures. The American Securitization Forum, Fannie Mae, and Freddie Mac have agreed to pay "fee for service" on behalf of investors for loans they own in which the homeowner is counseled. The vision of HOPE NOW is to create a long-term model to support payment of foreclosure prevention counseling. Obviously, government support for non-profits is also greatly needed, but a sustainable private sector funding model for counseling will help provide help for homeowners going forward. In addition to paying for the counseling, this HOPE NOW vision also includes free access to technology for counselors, single port of entry for all housing counselors, and increased communication and working relationships with servicers and third party housing counselors to work with borrowers at risk.

This "fee for service" funding model is innovative and has never been done before at this scale or in foreclosure prevention counseling. Counseling agencies, servicers, and investors are continuing to work together to reach, counsel, and assist all homeowners in need.

2) Reporting:

HOPE NOW servicers agree to track and report on performance to gauge industry progress towards reducing foreclosures and increasing options for distressed homeowners.

Measuring HOPE NOW's Results

The members of HOPE NOW recognize that results are the key to this national effort to assist at-risk homeowners. We are voluntarily collecting data on a regular basis and updating our results on the efforts to help homeowners. I am pleased to share with you the latest results from HOPE NOW servicers on their efforts. This latest HOPE NOW data shows that additional homeowners are continuing to receive assistance to avoid foreclosure and remain in their homes.

- From July 2007 to May 2008, nearly 1.7 million borrowers avoided foreclosure through loan workouts.
- In May 2008, mortgage servicers helped approximately 170,000 homeowners avoid foreclosure: 100,000 were placed on repayment plans and 70,000 were given loan modifications.
- If this monthly rate continues through June, in the second quarter of 2008, the mortgage lending industry will help approximately 519,000 homeowners avoid foreclosure and stay in their homes, the largest number of workouts in any quarter since HOPE NOW began in July 2007.

A Note on Differences in HOPE NOW, OCC and OTS Data

As you know, there have been press reports and discussions on how the numbers reported by HOPE NOW differ from those recently reported by the Office of the Comptroller of the Currency (OCC) and those reported by the Office of Thrift Supervision (OTS). The differences are the result of several factors. For example, the OCC collects information from 9 nationally chartered banks, the OTS collects information from 5 federally chartered thrifts, and HOPE NOW collects data from 22 companies with a variety of charters and regulators. HOPE NOW members report approximately 38 million loans, substantially more than the number included in either the OCC or OTS reports. The purpose of the HOPE NOW survey is to estimate the full mortgage lending industry's effort to help homeowners avoid foreclosures. That is why HOPE NOW extrapolates its results to estimates of total industry activity. By contrast, OCC and OTS only provide data from the largest chartered institutions within their respective jurisdictions. Such differences do not invalidate the information in any one of the reports. HOPE NOW, OCC, and OTS are working to develop a more uniform reporting framework and set of data definitions so that, together, they maximize the value of the information provided to the public and policymakers.

Data on Hybrid ARM Resets

We now have more data results on modifications for subprime hybrid ARMs. On December 6, the American Securitization Forum announced a plan to fast-track solutions for subprime ARM borrowers who could afford their starter rate but could not afford the reset rate. This plan has minimized foreclosures for borrowers who could afford their starter rate. With recent reductions in short-term interest rates, the threat of payment shock has become much smaller than it was in December, so far fewer homeowners need modifications to avoid unaffordable resets.

The data, reported by 9 companies representing approximately 60% of subprime loans, are as follows:

- Approximately 718,000 subprime loans were scheduled to reset between January and May 2008.
- 37,700 (5.3 percent) of these subprime loans have already been modified. Nearly 64 percent of these modifications are for 5 years or longer.
- 323,000 (45 percent) of the subprime adjustable rate loans that were originally scheduled to reset were paid in full when the homeowner refinanced the loan or sold the property.

- A limited amount – 1,800 (0.5 percent) – of the loans that were current at their date of reset have started the foreclosure process.
- Data suggests that in July 2007, 17 percent of subprime workouts were modifications, as compared to over 50 percent in May 2008. This is more evidence of the dramatic growth in the use of loan modifications to help homeowners avoid foreclosure and stay in their homes.

The number of hybrid ARMS receiving fast-track resets have been significantly affected by lower interest rates. That is good news. With short-term interest rates declining dramatically in the last few months, many homeowners are receiving new fixed rates much like the rates prior to any potential reset. These homeowners' monthly payments are holding steady and there is no payment shock. All remaining loans are still eligible for a loan by loan review.

Data Efforts Will Continue

We are tracking and measuring outcomes through HOPE NOW and other efforts. In addition to the data reported here, we are measuring trends in delinquencies and resolution outcomes (i.e. reinstatement, repayment plans, modifications, short sales, deeds in lieu of foreclosure, partial claims and foreclosure). We want to provide consistent and informative data reports based on common definitions and to provide information that provides insights into the nature and extent of the current mortgage crisis that will help in the development of workable solutions that avoid foreclosure whenever possible.

As our data collection efforts continue and the data are validated, we will provide more detailed information nationally and on a state by state basis. Our participating servicers have been engaged in developing standard definitions for key loss mitigation data. The data collection effort is an enormous undertaking, which will take time to develop fully and perfectly. We are confident, however, that we will be able to deliver systematic information at the state level that will help measure what servicers are doing to resolve difficult situations and to assist homeowners.

3) Loss Mitigation Options / Solutions for Preventing Foreclosure

HOPE NOW servicers are committing to assisting homeowners through various loss mitigation options consistent with investor guidelines or approvals including forbearance, repayment plan, modification, partial claim, short sale, and deed in lieu of foreclosure.

The HOPE NOW mortgage servicers recognize that it also makes good economic sense to help borrowers who are in trouble. Borrowers who are not able to stay current on their loans are very costly to the servicer, who must forward principal and interest payments to investors as well as remit taxes and insurance payments, even if borrowers are not paying them. In addition, loan servicers must expend significant staff resources to contact the borrower, assess the situation, work on repayment plans and other loss mitigation solutions, and if these efforts do not resolve the situation, initiate and manage the foreclosure process.

Informal forbearance and repayment plans are generally the first tool servicers employ to help borrowers. Servicers allow mortgage borrowers to miss a payment, with the explicit understanding the payment(s) will be made up some time soon. If the situation is more involved than a short- term cash crunch due to temporary unemployment or illness, a servicer may turn to a special forbearance plan, which will typically combine a period of postponed or reduced payments followed by repayment of the arrearage over an extended time frame, but within the original term of the loan.

Loan modifications are the next level of loss mitigation options. A loan modification is a change in the underlying loan agreement. It might extend the term of the loan, change the interest rate, change repayment terms or make other alterations such as having a principal write down. Similarly, a servicer may attempt to refinance the delinquent borrower into a new loan. Loan modifications are one solution for borrowers who have an ability to repay a loan, and have the desire to keep their home, but may need some help in meeting this goal because the current loan terms are not sustainable for that borrower.

HOPE NOW members have worked aggressively to make all of the available tools as efficient as possible. To provide as many options as possible, HOPE NOW servicers are adopting and implementing a streamlined loan modification process consistent with the American Securitization Forum guidance dated December 6, 2007 as related to loans held in securitization trusts. In addition, for homeowners who are 90 days or greater past due and in imminent danger of losing their home to foreclosure, servicers should consider pausing the foreclosure process, when appropriate, for up to 30 days (or longer if necessary) to pursue a loss mitigation option where such an option may result in foreclosure prevention. This is illustrated by the Project Lifeline program announced by HOPE NOW members in February 2008. If rates rise going forward, there is a mechanism in place to measure and monitor streamline modifications.

4) Performance Measures

HOPE NOW servicers are committing to a variety of guidelines that will greatly enhance the process used to assist the borrower. These timelines represent a powerful commitment on behalf of servicers to responds and reach out to borrowers and third party housing counselors in a timely manner. This is in direct response to requests from borrowers on the status of their loans that are being reviewed for options to avoid foreclosure.

HOPE NOW servicers commit to respond to a request from a homeowner or authorized third party housing counselor seeking consideration or application for a loss mitigation option within five business days or less from receipt of request. In a timely and appropriate manner, servicers shall provide homeowners an outline of key elements of the loss mitigation request evaluation process. For loans pending loss mitigation review, servicers agree to communicate with the homeowner explaining the status of the review process if there has been no communicated during the prior 30 days.

All loss mitigation decisions will be based on affordability. Member Servicers should conduct an affordability analysis to determine what type of loss mitigation solution would result in a monthly payment that would be sustainable for the homeowner.

Finally, HOPE NOW servicers agree to advise the homeowner, and if applicable, the authorized third party housing counselor, of their approval or denial for most loss mitigation options within 45 days from receipt of the application and required documentation.

5) Subordination of Second Liens

Subject to applicable servicing agreement limitations, HOPE NOW servicers servicing second liens should re-subordinate their loans with respect to an existing first lien where the second lien holder's position is not worsened as a result of a refinance or loan modification.

The guidelines are designed to attempt to ensure that no homeowner loses the opportunity to keep his or her home, when the homeowner experiences financial hardship; the homeowner has applied for and submitted information necessary to be considered and potentially approved for a loss mitigation option; and the homeowner has the basic financial ability to afford their home.

Conclusion

The HOPE NOW Alliance and those working with it are committed to enhanced and on-going efforts to contact at-risk homeowners and to offer workable solutions. Our top priority is to keep people in their homes and to avoid foreclosures whenever possible. As I reported today, close to 1.7 million homeowners were helped through modifications or work-outs since July 2007 and the rate of loan modifications continues to increase. We are working to help many more at-risk homeowners.

We continue to need the active involvement of all Members of Congress and other leaders to alert constituents that help is available when they contact either their lender/servicers or a non-profit counselor through the Homeowner's HOPE Hotline, 888-995-HOPE.

The HOPE NOW Alliance will continue its work until the problems in the housing and mortgage markets abate. My testimony today includes results that show a significant increase in the number of homeowners who have been helped. It is not a perfect solution, but it is very significant that over a million homeowners have been helped to avoid foreclosure.

We understand this effort must continue and be expanded and we will provide updates on our progress to Congress and other concerned policymakers in the coming weeks and months.

We want to work with the Committee to ensure that homeowners are aware of and can take advantage of the assistance offered by HOPE NOW. Thank you for this opportunity to share this information on our efforts with the Committee.

HOPENOW Support & Guidance For Homeowners

HOPE NOW Membership

Counselors

- ACORN Housing Corporation
- Catholic Charities USA
- Citizens' Housing and Planning Association, Inc.
- Consumer Credit Counseling Service of Atlanta
- HomeFree- USA
- Homeownership Preservation Foundation
- Housing Partnership Network
- Mission of Peace
- Mississippi Homebuyer Education Center- Initiative
- Mon Valley Initiative
- Money Management International, Inc.
- National Association of Real Estate Brokers- Investment Division, Inc.
- National Community Reinvestment Coalition
- National Council of La Raza
- National Credit Union Foundation
- National Foundation for Credit Counseling, Inc.
- National Urban League
- NeighborWorks America
- Rural Community Assistance Co.
- Structured Employment Economic Development Co.
- West Tennessee Legal Services, Inc.

Servicers/Lenders/Mortgage Market Participants

- American Home Loan Servicing, Inc.
- Assurant, Inc.
- Aurora Loan Services
- Bank of America
- Carrington Mortgage Services
- Chase
- Citigroup, Inc.
- Countrywide Financial Corporation
- EMC Mortgage Corporation
- Fannie Mae
- First Horizon Home Loans and First Tennessee Home Loans
- Freddie Mac
- GMAC ResCap
- Home Loan Services, Inc. (d/b/a First Franklin Loan Services & NationPoint Loan Services)
- HomEq Servicing
- HSBC Finance
- IndyMac Federal Bank
- LandAmerica Financial Group, Inc./LoanCare Servicing Center
- Litton Loan Servicing
- MERS
- National City Mortgage Corporation
- Nationstar Mortgage, LLC.
- Ocwen Loan Servicing, LLC.
- PMI Mortgage Insurance Co.
- Saxon Mortgage Services
- Select Portfolio Servicing, Inc.
- State Farm Insurance Companies
- SunTrust Mortgage, Inc.
- Washington Mutual, Inc.
- Wells Fargo & Company
- Wilshire Credit Corporation

Trade Associations

- American Bankers Association
- American Financial Services Association
- American Securitization Forum
- Consumer Bankers Association
- Consumer Mortgage Coalition
- The Financial Services Roundtable
- The Housing Policy Council
- Mortgage Bankers Association
- Securities Industry and Financial Markets Association

Current as of 7-23-08

HOPE NOW
Mortgage Servicing Guidelines
June 9, 2008

HOPE NOW Participation

Servicers that participate as active members of the HOPE NOW alliance are expected to and should support the following activities and principles, subject to their contractual, fiduciary and legal obligations with loan owners, master servicers, mortgage insurers and others. Nothing herein shall constitute an agreement enforceable against any Member Servicer, and there shall be no third party beneficiaries hereof.

Communication / Outreach

Member Servicers should send HOPE NOW outreach letters (on a monthly basis) using agreed upon criteria in accordance with the November 30, 2007 HOPE NOW criteria to troubled homeowners 60 days or greater past due, informing them of the option to seek counseling through a non profit agency (888-995-HOPE) and/or to contact their respective Member Servicer via a dedicated toll free number, to engage in a potential loss mitigation solution.

Member Servicers should attempt to contact homeowners with subprime adjustable rate mortgages (ARM) and other homeowners with ARMs that have a probable risk of default 120 days in advance of reset.

Member Servicers should participate in HOPE NOW sponsored local, state or regional 'face to face' events, based on market presence and size of loan portfolio, to offer loss mitigation options to distressed or troubled homeowners. Member Servicers with sizable market portfolios, who are not present or sufficiently staffed, should offer phone bank solutions and other communication innovations for homeowners to ensure reasonable wait times.

Member Servicers agree to establish toll free hotlines, fax, and, subject to reasonable confidentiality encryption systems, email as direct ports of entry available to all HUD-certified housing counseling agencies and their counselors.

Member Servicers should strive to maintain appropriate levels of staffing and other resources to accommodate reasonably anticipated volumes of inbound calls and loss mitigation requests from homeowners and authorized third party housing counseling agencies so that each Member Servicer's self-determined abandonment rate is less than 5%.

Reporting

Member Servicers agree to track and report on performance (to a designated data aggregator) for the purposes of gauging industry progress towards reducing foreclosure volume and increasing loss mitigation options to distressed homeowners. Member Servicers remain committed to this process subject to appropriate confidentiality agreements being in place.

Loss Mitigation Options / Solutions for Preventing Foreclosure

Member Servicers should adopt and implement a streamlined loan modification process consistent with the American Securitization Forum (ASF) guidance dated December 6, 2007 as related to loans held in securitization trusts.

Upon contact with homeowners who are 90 days or greater past due, and in imminent danger of losing their home to foreclosure, Member Servicers should consider pausing the foreclosure process, when appropriate, for up to 30 days (or longer if necessary) to pursue a loss mitigation option where such an option may result in foreclosure prevention. An example of this pause process is the Project Lifeline program announced by HOPE NOW members in February, 2008.

Member Servicers should engage in the use of various loss mitigation options consistent with investor guidelines or approvals, or accepted servicing practices that may include:

Forbearance – A temporary agreement which allows the homeowner to make partial or no payments for a period of time. The forbearance agreement is followed by a further evaluation of the loan and the homeowner's circumstances to identify if there are any permanent workout options (i.e., repayment plan or modification). A forbearance agreement is commonly used when the homeowner is willing to pay, but is unable to do so because of a temporary and finite hardship.

(2) Repayment Plan - A verbal or written agreement where a delinquent homeowner resumes making regular monthly payments in addition to a portion of the past due payments to reinstate the loan to current status. If the homeowner is in bankruptcy, a repayment plan must be approved by the court.

(3) Modification – A written change to the terms of a homeowner's mortgage to restructure monthly payments temporarily or permanently involving one or more of the following:

(i) reducing the interest rate temporarily or permanently;

(ii) on ARM loans, fixing the interest rate temporarily or permanently;

(iii) extending the term of the loan;

(iv) deferring past due amounts;

(v) capitalizing past due amounts;

(vi) deferring principal causing a balloon payment to be due at maturity or some other date:

(vii) conditionally forgiving a portion of the debt; and

(viii) forgiving a portion of the debt.

(4) Partial Claim -

(i) HUD Partial Claim – A second mortgage, interest free, that is paid off at the time homeowner's loan is paid off. This option allows up to 12 months of past due accrued mortgage payments to be included in the second mortgage. Available on FHA loans only.

(ii) Advance Claim – A loan provided by primary mortgage insurers to bring an insured homeowner's mortgage current. The homeowner is obligated to repay this "advance claim" loan to the primary mortgage insurer directly or through the insurer's designated servicer. In some instances, the mortgage insurer may not require repayment of advances.

(iii) Fannie Mae HomeSaver Advance -- A low interest rate loan provided by the first lien loan servicer to bring current a homeowner's delinquent first lien loan. The loan is repaid over a 15 year term, with payment and interest accrual deferral during the first six months after the advance. Available only on most Fannie Mae-owned loans.

Short Sale – The Member Servicer or investor accommodates the homeowner's sale of the property for less than the amount owed. Commonly used when a homeowner is experiencing a hardship and he or she obtains a bonafide and reasonably timed offer for current fair market value. Member Servicers may suspend foreclosure action for a reasonable period of time to allow the homeowner to review and close an approved transaction

Deed in Lieu of Foreclosure – The transfer of title to the property from the homeowner to the servicer as an alternative to foreclosure. Commonly used after a homeowner has attempted to sell his or her property for fair market value for a period of time. Title must be clear and property must be in good condition.

Performance Measures

Member Servicers should transmit an acknowledgement of a request from a homeowner or authorized third party housing counselor seeking consideration or application for a loss mitigation option within 5 business days or less from receipt of request.

Either in the initial acknowledgement or through other timely and appropriate means, Member Servicers should provide homeowners, and if applicable, the authorized third party housing counselor, an outline of key elements of the loss mitigation request evaluation process including, as appropriate, the following:

The information that the homeowner may be asked to provide to facilitate evaluation of the loss mitigation request;

The third party approvals that could potentially be required in order to complete certain types of loss mitigation options;

A notification that during the loss mitigation evaluation process, the homeowner may continue to receive collection letters or notices from retained foreclosure attorneys or other representatives in the homeowner's state of residence;

A notification that the foreclosure process may still proceed during the period in which the loss mitigation option is being evaluated, but that the homeowner should continue to work with the Member Servicer to explore the requested loss mitigation option.

See attached exhibit A, sample communication.

For loans pending loss mitigation review, Member Servicers should communicate with the homeowner explaining the status of the review process if Member Servicers have not otherwise communicated with the homeowner during the prior 30 days. Status letters, emails or calls should communicate the current stage of the process to the homeowner.

Member Servicers should advise the homeowner, and if applicable, the authorized third party housing counselor, of their approval or denial for most loss mitigation options within 45 days from receipt of the application and required documentation from the homeowner and necessary third parties as described in exhibit B. Required documentation may include, without limitation, financial statements, tax returns, pay stubs, pay verifications, appraisals, and third party consents. Denials for loss mitigation to the homeowner should include a reason for denial.

Loans receiving loss mitigation approval should provide for affordability. Member Servicers should conduct an affordability analysis to determine what type of loss mitigation solution would result in a monthly payment that would be sustainable for the homeowner.

The affordability analysis should first consider the total monthly housing expense of the homeowner relative to income and whether an affordable monthly payment can be achieved to provide a reasonable amount of residual income for routine living expenses. Total current monthly obligations for non-housing debt (e.g., credit cards, auto loans) should also be reviewed. To the extent non-housing debt, when combined with the modified monthly housing expense, results in an unacceptable ratio of total debt relative to income, the homeowner will be required to make reasonable adjustments to non-housing expenses to qualify for a loan modification.

Member Servicers should monitor their loss mitigation inventory:

to facilitate the application process of all required documentation requested by the Member Servicers;

to prioritize and close applications for loss mitigation within the_allotted time period specified by Member Servicers; and

where necessary, withdraw loss mitigation considerations and loss mitigation offers if the homeowner does not provide necessary responses within reasonable time periods specified by the Member Servicer.

Subordination of Second Liens:

Subject to applicable servicing agreement limitations, Member Servicers servicing second liens should re-subordinate their loans with respect to an existing first lien where the second lien holder's position is not worsened as a result of a refinance or loan modification. "Not worsened" should be understood to include the following transactions:

a) A refinancing where the new loan does not increase the first lien principal amount by more than reasonable closing costs and arrearages, and no cash is extracted by the homeowner.

b) A loan modification that lowers or maintains the monthly payment of the first lien via a term extension, rate reduction and/or principal write-down, and no cash is extracted by the homeowner.

Most securitization servicing agreements, however, will not permit subordination under a) and b) above if:

(1) The resulting combined loan-to-value ratio of the new or revised mortgage loan is higher than the combined loan-to-value ratio prior to such transaction;

(2) The interest rate on the new or revised loan is more than 2% (or other limitation specified by the servicing contract) higher than the existing interest rate; or

(3) The new or revised loan is subject to negative amortization.

The aforementioned guidelines are designed to attempt to ensure that no homeowner loses the opportunity to keep his or her home, when

- the homeowner experiences financial hardship;
- the homeowner has applied for and submitted information necessary to be considered and potentially approved for a loss mitigation option; and
- the homeowner has the basic financial ability to afford his or her home.

These loss mitigation options offer balanced mortgage solutions that are affordable payment alternatives and in the best interest of the homeowner and the investor. Member Servicers should engage in these measures through teams of trained servicing staff which provide timely and professional responses to their customers.

Exhibit A
(Sample 1)

John Doe
123 Street
Anywhere, USA

Dear Homeowner,

Congratulations! You have taken the first step necessary to save your home. Our records show you have applied for assistance with your monthly mortgage payments. We are here to help you review your personal financial situation to determine if a loan modification could provide the long term-sustainable solution you need to make your monthly mortgage payments. A loan modification helps you by extending the term of the loan and/or adjusting the interest rate to reduce the monthly payment due.

We know how important your home is to you, and that's why it is important to quickly find a solution. We ask that you work with us in providing the necessary documentation and that you fully understand the step-by-step process. Provided below are the steps and actions required to expedite the process.

Step 1 – Getting started – begins with requested documents. Once we receive the documentation requested (see below) you can expect to receive a final decision within 30 to 45 days.

This is the most important part of the process – because we can't begin the process of helping you without the documents and information necessary. The documents required are checked below:

- ☐ Proof of income: This could include W2's, pay stubs, or bank statements
- ☐ Hardship letter (including what happened that made you fall behind)
- ☐ Monthly Expenses
  - ☐ Utilities – heating, phone, gas/electric
  - ☐ Food expenses
  - ☐ Other debt – credit cards, personal loans, car payment, other mortgages
  - ☐ Medical expenses
  - ☐ Insurance

We ask that you immediately forward copies of the documentation requested above to the following:
Attention of: XXXXX

Address: XXXXX
Address: XXXXX

Step 2 – We have the documents, now what?

We will review the information you submitted, and, if necessary, contact you to discuss any questions or clarifications needed. The total time to process information and review your application can take up to 45 days.

IMPORTANT: We want you to know that during the time your application is in review you will still receive letters and/or calls asking for your delinquent payments – this is normal. You should be aware that while you are applying for assistance, your loan is still considered late or past due and reported to credit bureaus as delinquent. This is why it is so important for you to provide the necessary documentation and answers needed as quickly as possible.

Step 3 – Completing your application...

If your request is approved a final modification document will be mailed to you for your signature. The letter will detail the following:

- Terms of the modification
- The next payment date
- The new payment amount
- Any contribution required from the borrower (where applicable)

Please read the terms of the modification carefully and sign and return the agreement. Remember, we can't offer you a new payment amount until you've signed and returned the agreement.

We're here to help you so call us at anytime during the process if you have any questions. Remember, this is an easy process that starts and ends with you! Make sure you send your documents in on time and return any agreement right away so the modification can be completed.

Thank You!

Susie Smith
Loss Mit Rep

1-800-123-4567

Exhibit A
(Sample 2)

John Homeowner
123 Street
Anywhere, USA

Dear Homeowner,

We are pleased you have contacted us requesting assistance on your loan. While we cannot promise you assistance, we hope to find a solution that will help you, while still protecting the interests of the owner of the loan.

Following is the process that we intend to follow to consider your request.

Step 1 - We need you to provide us with the following documents. You should send us all of these documents at one time to the following address:

____
____
____

[Insert documents required by each servicer]

- Proof of income: This could include current W2's, pay stubs, or bank statements.
- An explanation of the reason for your request for assistance. If you can provide documentation of this reason, please send that as well.
- The period of time you believe you will not be able to make your regular monthly payments.
- Completed financial statement which is enclosed ***[OR*** A list of your monthly expenses:]
  - Utilities – heating, phone, gas/electric
  - Food
  - Car payment
  - Additional mortgages or other secured debt
  - Unsecured debt – credit cards and personal loans
  - Medical expenses
  - Insurance (i.e., medical, life, auto, homeowners/renters)
  - Transportation expenses (i.e., gasoline, mass transit)

We must receive ALL of this information before we can proceed with the next step. If we do not receive all of this information within 35 days from the date of this letter, we will remove your request from our process, and you then will have to start the whole process over again.

Step 2 - Review/Analysis

We will review the information you submitted. When necessary, we will obtain property appraisals, discuss the terms of a proposal with investors or mortgage insurance companies that have an interest in your mortgage, and obtain other third party documents. This may take _____ to ______ additional days.

Step 3 - Approval/Denial

After we obtain all information from you and the third parties, we will make a decision as to whether we are able to provide you with assistance. We hope to advise you of our decision within 45 days AFTER we receive all of your information and the information from the third parties. We will tell you whether or not we can propose a solution and if so, the terms of our proposal.

Step 4 - Execution

If our proposal requires you to sign new documents, we will send you the documents and request that you sign and return them with any payment required within a specified number of days. If you do not return the documents and payment by that date, our proposal will be void, and you will need to re-start the entire process again.

Please be aware that we are continuing our efforts to collect the amounts owing on your loan. Therefore, unless we have previously refused your payments, you should continue to make your monthly payments when they become due. You likely will continue to receive collection letters or notices from us or our attorneys. In addition, we may commence a foreclosure proceeding against the property that secures this loan. If we already have commenced a foreclosure proceeding, this proceeding will not be postponed unless we advise you in writing of such postponement.

Therefore, we urge you to send us all of the documents described above as soon as possible.

Very truly yours,

Exhibit B

SAMPLE LETTER TO HOMEOWNER FOR
STATUS OF DEFAULT RESOLUTION

Dear Homeowner,

We are reviewing your request for assistance regarding your loan.

INSERT IF MORE DATA REQUIRED (Choose those which are applicable):

We still need you to provide the following documents:
(List Documents)

We encourage you to provide these documents as soon as possible. If we do not receive these documents within ____ days from the date of this letter, we will remove your request from our process and you will need to start the process over if you want assistance.

We are waiting for third parties to provide us with additional information or consents.

Until we receive this information we are not able to make a decision regarding your request. Accordingly, please be aware that we are continuing our efforts to collect the amounts owed on your loan. You therefore may continue to receive collection letters or notices from us or our attorneys. In addition, we may commence a foreclosure proceeding against the property that secures this loan. If we already have commenced a foreclosure proceeding, this proceeding will not be postponed unless we advise you in writing of such postponement.

INSERT IF ALL DATA RECEIVED.

We have received all information that we believe we need at this time and we hope to make a decision within 45 days from the date we received all of the information. If we determine that we will need more information we will contact you. If you have not heard from us within the next 30 days please give us a call at the number below and refer to this letter.

[CHOOSE APPLICABLE PARAGRAPH:]

Please be aware that we are continuing our efforts to collect the amounts owed on your loan. You therefore may continue to receive collection letters or notices from us or our attorneys. In addition, we may commence a foreclosure proceeding against the property that secures this loan. If we already have commenced a foreclosure proceeding, this proceeding will not be postponed unless we advise you in writing of such postponement.

During this period you may continue to receive collection letters or notices from us or our attorneys. You may disregard those letters and notices. In addition, we have decided to postpone any foreclosure sale date on your property until _________*(or do not provide date and explain that a new notice of the foreclosure sale date will be sent to them).* Therefore, if we have not completed a new agreement by that date we will proceed with the sale of the property on that date.

Very truly yours,

Exhibit C

Foreclosure Prevention Timeline

	Segment 1	Segment 2		Segment 3
	Customer Responsibility	Servicer Responsibility		Customer Responsibility
	Intake	Review / Analysis	Approval / Denial	Execution
Process	At the time of delinquency or when default is imminent communication between the servicer and borrower is initiated. During this initial conversation the following information is gathered: • Proof of income: This could include W2's, pay stubs, or bank statements • Reason for default • Monthly expenses: • Utilities – heating, phone, gas/electric • Food • Unsecured debt – credit cards, personal loans, car payment, additional mortgages • Medical expenses • Insurance	The file is reviewed internally and approval or additional data is sought from: • GSE's • Mortgage Insurers • Investors • Trust Funds • Appraisers	Once approval is obtained for the modification a letter is sent to the borrower that includes the following information: • Terms of the proposal modification • Next payment due date • The new payment amount • Any contribution required from the borrower where applicable	Once a signed / executed modification agreement is received by the servicer it processes the documents, and notifies the investor of the modification, and the loan is reinstated.
Running Time		30 – 45 days		
Customer Experience	At the first sign of default or trouble in paying your mortgage, you are encouraged to call your servicer. During this phone call your servicer will gather information regarding monthly income and expenses. It is a good idea to have this information on hand when the phone call is made. Some documents to assist in this would be: bank statements, pay stubs, W2's, utility bills, credit card statements, etc. It is critical that all requested documents be submitted to the servicer as quickly as possible to make this process go smoothly.	Your servicer will review the information you submitted, and, when necessary, discuss the terms of a proposal with investors or mortgage insurance companies that have an interest in your mortgage and obtain additional data from third parties. The combined process of information gathering and review can take up to 60 days. The combined process of information gathering and review can take up to 60-75 days or more as it is dependent on you providing the servicer with all necessary information and the servicer obtaining additional information from third parties.	If you qualify for a modification, your servicer will receive approval from the necessary parties and modify the terms of the loan. Once this process is completed, a letter will be sent to you. This letter will include all the terms of the modification, the next payment date, the new payment amount, and notify you if any contribution is needed.	Congratulations! You have successfully completed the loss mitigation modification process. Please remember, should your circumstances change and you need additional assistance you should call your servicer.

Servicers should advise the homeowner of its approval or denial for most loss mitigation options within 45 days from receipt of the required documentation from the homeowner and third parties.

HOPENOW Support & Guidance For Homeowners

HOPE NOW 2008 Homeownership Preservation Workshops

What are Homeowners Saying?

The HOPE NOW Alliance has received positive feedback from numerous borrowers who've attended and met with their mortgage servicer and local counseling organizations. Though HOPE NOW has hundreds of comments from borrowers across the country, attached below are a few from real borrowers who've found these homeownership preservation workshops beneficial.

- We just saved $538.00 just by participating today to assist us with making our mortgage current.
  - ***Sharron*, Philadelphia**
- We received a reduction in our payment and were not meant to feel belittled or intimidated.
  - ***Karen*, Philadelphia**
- We appreciated the opportunity to speak to the lender face to face. - ***Ryan*, Philadelphia**
- Extremely knowledgeable, suggested things we hadn't heard of. - ***Rachell*, Philadelphia**
- I am breathing a little easier and I thank each and every one of you! - ***Sally*, Columbus**
- Having someone from the lender here made all the difference. - ***Shawn*, Columbus**
- It was fully staffed. Everyone was very helpful. - ***Pauline*, Atlanta**
- This was a great program for the community. People could receive information and understanding about mortgages and correct their situation and find a way to keep their home. Great event!
  - ***Fronita*, Atlanta**
- Nice selection of lenders and a good quantity of counselors. - ***Jennifer*, California**
- The non-profit counselors were very friendly and helpful in setting up takes with the bank representatives. The system was understandable and organized. ***Kristle*, California**
- I 'm just sending you this e-mail to let you know I REALLY,REALLY, appreciate what you have done for our family I honestly thought that we wasn't going to get anything accomplished. But you have made me a true believer and I can't thank you enough for what you have done for our family. You are a true BLESSING. May GOD CONTINUE to BLESS you and YOUR FAMILY as you have done ours. - ***Robert*, Milwaukee**
- This relieves me of the stress on me to know that after working to have a home that some one cares that I may be able to keep it during hard times. –*Marilyn*, **Dallas**
- I'm glad that options are available to help people stay in their homes. –*Tim*, **Dallas**
- My loan counselor was great, good knowledge and explained all the options to us and were able to work out a solution. –*Rodolfo*, **Las Vegas**
- This amazing event really enlightened me. I saw the number of people attending and I suddenly realized that I was not alone…-*Denise*, **Las Vegas**

HOPENOW Support & Guidance For Homeowners

HOPE NOW Alliance
2008 Homeownership Preservation Forum
July-December

More borrowers will obtain assistance as we continue our efforts. The Alliance has an assertive schedule targeting approximately 21 local markets in the fall and winter of 2008. The Alliance is also exploring new innovative ways to reach larger numbers of borrowers that require less resources from Alliance partners and more flexible for borrowers to access assistance. Attached below is a list of workshops planned throughout the remainder of 2008.

Month	Date	Type of Event	Status	City	State
July	25	Face	Firm	Newark	NJ
	26	Face	Firm	Mt. Laurel	NJ
August	12	Face	Firm	Boston	MA
	21	Face	In progress	Orlando	FL
	22	Face	In progress	Fort Myers, Naples and Sarasota	FL
	23	Face	In progress	Fort Lauderdale and Miami	FL
Sept	4	Phone	Not Started	Toledo	OH
	13	Face	Firm	Fairfax County	VA
	20	Face	Firm	Prince Georges County	MD
Oct	2	Face	Not Started	Pima County	AZ
	15	Phone	Not Started	Stockton	CA
	23	Face	Not Started	Detroit	MI
Nov	1	Face	Not Started	Los Angeles	CA
	6	Face	Not Started	Cleveland	OH
	15	Face	Not Started	Houston	TX
Dec	4	Face	Not Started	Denver	CO
	13	Face	Not Started	Sacramento	CA
	18	Phone	Not Started	Tulsa	OK

For more information on Homeownership Preservation Workshops, contact Larry Gilmore at (202) 589-2444.

HOMEOWNER'S HOPE HOTLINE:

888-995-HOPE

HOPENOW

Support & Guidance For Homeowners

Servicer Contact Numbers for Homeowners

Below are the customer contact telephone numbers of HOPE NOW servicer members. If you are a homeowner having trouble with your mortgage, please call your servicer's hotline for assistance (please have your account number ready when calling).

If you would like to talk to a HUD-approved homeownership counselor, please call the Homeowner's HOPE Hotline, 888-995-HOPE, operated by the Homeownership Preservation Foundation. **Free** counseling is available 24 hours a day, 7 days a week. You can also visit www.995hope.com for more assistance.

Servicer	Hotline
American Home Mortgage Servicing (formerly Option One Mortgage Corporation)	888-275-2648
Acqura Loan Services	866-660-5804
Aurora Loan Services	800-550-0509
Bank of America	800-846-2222
Carrington Mortgage Services	800-790-9502
CitiMortgage/ Citi Residential	866-915-9417
Countrywide Home Loans	800-669-6650
EMC Mortgage, Inc.	877-362-6631
First Horizon Home Loans	800-364-7662
GMAC/Homecomings/ResCap	800-799-9250
Home Loan Services, Inc. (d/b/a First Franklin Loan Services and NationPoint Loan Services)	800-500-5022
HomEq Servicing	888-867-7378
HSBC Consumer Lending	800-333-5848
HSBC Mortgage Services	800-365-6730
HSBC Mortgage Corporation	888-648-3124
IndyMac Federal Bank	866-335-7273
JPMorgan Chase Prime Loans	800-446-8939
JPMorgan Chase Non-Prime	877-838-1882
JPMorgan Chase Home Equity	866-582-5208
LandAmerica Lender Services	800-909-9525 or 800-274-6600
Litton Loan Servicing	800-999-8501
National City Mortgage Corporation	800-523-8654

Servicer	**Hotline**
Nationstar Mortgage, LLC.	888-480-2432
Ocwen Loan Servicing, LLC.	877-596-8580
Saxon Mortgage Services	888-325-3502
Select Portfolio Servicing	800-258-8602
SunTrust Mortgage, Inc.	800-443-1032
Washington Mutual, Inc.	866-926-8937
Wells Fargo Home Mortgage	877-216-8448
Wells Fargo Financial	800-275-9254
Wilshire Credit Corporation	888-917-1050

WASHINGTON BUREAU · NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
1156 15TH STREET, NW SUITE 915 · WASHINGTON, DC 20005 · P (202) 463-2940 · F (202) 463-2953
E-MAIL: WASHINGTONBUREAU@NAACPNET.ORG · WEB ADDRESS WWW.NAACP.ORG

STATEMENT OF MR. HILARY O. SHELTON
DIRECTOR
NAACP WASHINGTON BUREAU
ON MORTGAGE SERVICING PRACTICES
BEFORE THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON FINANCIAL SERVICES

July 25, 2008

Good morning. My name is Hilary Shelton and I am the Director of the Washington Bureau of the NAACP, our Nation's oldest, largest and most widely-recognized grassroots civil rights organization. We currently have more than 2,200 membership units in every state across the country; the Washington Bureau is the legislative and public policy arm of the NAACP.

I would like to begin by thanking you, Chairman Frank, as well as Congresswoman Waters and Ranking Member Bachus for all the time and energy you have spent, and continue to exert, trying to help homeowners across our country who are facing foreclosure.

I come before you today because the mortgage foreclosure crisis is reaching staggering proportions all across the Nation. In the month of June, more than 250,000 homes were at some stage in the foreclosure process; this number is up by more than 53% over June of 2007[1].

Furthermore, African Americans and other racial and ethnic minority Americans are being disproportionately affected. Nobody disagrees that the foreclosure crisis is being driven by the high number of predatory loans made within the last few years, and according to the most recent study by the National Community Reinvestment Coalition, in 2005 African Americans of all income levels were twice as likely or more than twice as likely to receive high cost loans[2].

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[1] Realty Trac, www.realtytrac.com

[2] National Community Reinvestment Coalition, *Income is No Shield Against Racial Differences in Lending*, July 2007.

Last year, in 2007, the NAACP held its 98th annual convention in Detroit, Michigan, the city with the highest foreclosure rate. Earlier this month, we held our 99th annual convention in Cincinnati Ohio, the state with the highest foreclosure rate. Needless to say, for the last two years we have been hearing first-hand from people who are in one stage of foreclosure or another. These are real, hardworking people whose lives are being shattered and the worst part is that we know that they are, sadly, only the beginning.

For over a year now I have likened African Americans to the canary in a coalmine when it comes to the foreclosure crisis. For decades predatory lenders targeted African Americans and other racial and ethnic minority Americans with their unscrupulous products. As study after study clearly demonstrated, and as I have previously stated in testimony before this committee, the African American community in the United States has been and continues to be disproportionately devastated by predatory lenders. Thus, when the foreclosure problems began it was African Americans who were again at the forefront of the crisis and we continue to be disproportionately effected by what is quickly becoming a national catastrophe.

So I have come up to Capitol Hill, to this very room as a matter of fact, many times in the past couple of years sharing our concerns and working with you to aggressively help address a problem which is so large in scope it is almost inconceivable.

The purpose of today's hearing, to look at the role of mortgage servicers, is laudable as they clearly play a significant role in both the creation of a constructive and sustainable loan modification as well as the foreclosure process. Yet I hope that we will look at the big picture, and examine the relationship between servicers and the homeowner / consumer who is facing foreclosure.

Currently, the servicer has almost, if not all, of the power and control. There are several proposals currently before Congress to change that dynamic; proposals that the NAACP supports and views as necessary if we are going to offer real help to the millions of American families whose homes are at risk.

First, there is the proposal by Congresswoman Waters, H.R. 5679, the *Foreclosure Prevention and Sound Mortgage Servicing Act of 2008*. This legislation requires a homeowner or servicer to pursue specified priority loss mitigation activities such as waiving late fees and other charges, establishing an affordable repayment plan or loan modification, forbearance or a short refinancing before a home may be foreclosed.

The NAACP also supports H.R. 6076, the *Home Retention and Economic Stabilization Act of 2008* introduced by Congresswoman Matsui of California. This legislation places a moratorium on home foreclosures for 9 months to allow homeowners to find and take remedial action. It also requires home mortgage servicers to provide advance notice of any upcoming reset of the mortgage interest rate. I would note that this moratorium is similar to the one that was called for by the NAACP and other civil rights groups more than a year ago, in April of 2007.

Lastly, the NAACP strongly supports, as I know does the Chairman and several members of this committee, H.R. 3609, the *Emergency Home Ownership and Mortgage Equity Protection Act of 2007*. This important, bi-partisan legislation would allow courts to supervise loan modifications, effectively mediating between lenders and homeowners.

All three of these bills would provide consumers / homeowners facing foreclosure with some much-needed tools, whether it be the requirement that mortgage servicers work with them to try to avoid foreclosure, or a cooling out period to allow homeowners time to try to modify their mortgages and stay in their homes or allowing the courts to try to mediate a modification. All three of these bills would require the financial services industry to do more to help avoid foreclosures; heretofore all successful attempts to address this crisis, while laudable, have been based on the holders of the loan acting on a purely voluntary basis to try to avoid foreclosures.

Furthermore, all three of these pending measures that the NAACP supports would not require a dime from the U.S. Treasury; no taxpayer money would be spent. So we would be helping homeowners facing foreclosure at no expense to the American public.

Finally, a few words specifically about the mortgage servicers industry. As I said earlier, mortgage services are an integral part of both the process of developing constructive and sustainable loan modifications as well as the foreclosure process. That is why, given the huge number of Americans whose lives these people will touch, the NAACP would like to see more regulation and monitoring of the industry. Specifically, we would like to know that not only are they trying to save Americans' homes, but that they are trying to save all Americans' homes, regardless of the borrowers' race or ethnic background with the same vigor.

Given the history of disparate treatment of African Americans by the financial services industry in our Nation, one cannot blame us for wanting more information on the number of loans that are modified, the race of the borrowers who receive loan modifications, and if those modifications actually result in the homeowner staying in their home, or if a disproportionate number of African Americans and other Americans of color receive loan modifications that last a year or less and only serve to drain more equity from the consumer.

In closing, I would like to again thank the Chairman and all of your colleagues again for all you have done to address the mortgage foreclosure crisis. I hope to continue to work with you to aggressively address the problems facing a growing number of Americans, and most importantly to keep people and families in their homes.

Prepared Testimony of
Mary Harman, Chair, Community Services Committee

California Association of Mortgage Brokers

Hearing on:
"Review of Mortgage Servicing Practices and Foreclosure Mitigation"

Before the

House Financial Services Committee

United States House of Representatives

July 25, 2008

Thank you for holding a hearing to focus on the role of mortgage servicers in helping at-risk homeowners to avoid foreclosures. As the Community Services Chair for the California Association of Mortgage Brokers (CAMB), I respectfully submit this statement to the Financial Services Committee to share our observations and experiences about the challenges consumers face as they seek assistance from servicers to avoid the tragedy of foreclosure.

The California Association of Mortgage Brokers (CAMB) is a non-profit professional trade association composed of licensed real estate brokers, salespersons, and affiliated lenders whose primary business is assisting consumers in obtaining residential and commercial real estate financing, and brokering conventional and government mortgage loans. CAMB members have been reaching out to community leaders in an effort to provide assistance to homeowners who are facing foreclosure through CAMB's Foundation, which is a 501(c)(3) non-profit organization.

Through its Preserving Home Ownership Initiative Program (PHOI), the CAMB Foundation provides free, community based forums that allow existing homeowners a one-on-one mortgage counseling session with a CAMB advisor. The PHOI program began initially as a program to help homeowners to understand their loan documents and to answer any questions regarding financing, credit and homeownership. Due to current market needs, PHOI has evolved into a program that offers counseling to homeowners about the loan modification process.

PHOI events take place at community locations and often in partnership with other local organizations and elected officials. The California Department of Consumer Affairs and Business, Transportation and Housing Agency have partnered with the CAMB Foundation to offer the PHOI program in a town hall setting. In addition, the PHOI program has been facilitated by local television networks through a telethon format, allowing us to reach thousands of consumers. Since January 2008, we have convened more than 40 PHOI events across the state of California, as part of the Governor's Task Force. In addition, in the last ten months, we have held eight telethons and have two more scheduled for the near future.

PHOI advisors are experienced volunteers that are members of CAMB. The counseling services provided at PHOI events are absolutely free of charge and CAMB volunteers are prohibited from engaging in self promotion or soliciting business from event participants. We are dedicated to ensuring that PHOI remain an educational event for consumers, as opposed to a forum for advisors to generate business leads. With that in mind, rules of conduct for advisors at PHOI events are strictly enforced.

I would like to take this opportunity to share with the Committee what we have learned through our PHOI events about the problems many in danger of foreclosure are facing in seeking assistance from servicers to find a solution that would allow them to remain in their homes. Families at risk of foreclosure can be helped tremendously when competent professionals are there to assist them in understanding their options and navigating the mortgage servicing labyrinth. Unfortunately, it is all too often that individuals feel they have nowhere to turn as a result of the responses they receive from loan servicers when they call the toll-free phone number that is printed on their monthly mortgage statements.

While PHOI has been very successful, it is apparent with the rising foreclosure rates that more must be done to reach all who are in need of assistance in avoiding foreclosure. From the telethons that we have done, we have learned that consumers are confused and they do not know where to go for help. The misinformation they have received is unbelievable. The first logical step for any consumer is to call the toll-free phone number on their mortgage statement to request assistance. However, for far too many homeowners, this call only leads to frustration and confusion.

I would like to share with you our experience from the most recent PHOI telethon, which was held on July 17, 2008 in San Diego, California. We partnered with Channel 10, an ABC affiliate, from 11:00 a.m. to 7:30 p.m. to offer information and advice to individuals who called our hotline. The telephones were manned by six PHOI counselors and two individuals from our local Department of Housing and Urban Development (HUD) office. There were also two PHOI counselors available to answer questions by e-mail. We arranged for Countrywide and Wells Fargo to establish a hot line for the day and a person from GMAC was there to handle specific calls related to GMAC mortgages. The investigative team of the television station was there to record accounts of suspected mortgage fraud. During the course of the day, we received 1,297 calls and 491 e-mails from consumers in need of assistance. We are still receiving a number of e-mails from this event.

I cannot overemphasize to you that the volume of individuals who are in need of assistance is overwhelming. In addition, what has happened to so many of our fellow Americans to get them into this situation is abhorrent. The calls that we received during the telethon were heart wrenching, and also as mortgage professionals we found them to be infuriating. Not only are we hearing about high incidences of mortgage fraud, but also the majority of the time callers are learning about their options for the first time and have been misinformed or misdirected by their servicer.

PHOI counselors provide advice to consumers about the process and how to have a successful interaction with a servicer. We provide phone numbers for their lender. We offer advice about what materials they should have in front of them before they call their servicer and we offer strategies for them to be successful in their call. For example, we advise consumers to immediately ask for the Loss Mitigation Department when they call their servicers. We also provide advice about how to complete the loan modification form. Further, we counsel consumers on what to expect in terms of how long they might be placed on hold, and acceptable time frames they might have to wait to receive an answer regarding their modification. The bottom line is that PHOI counselors try to provide callers with as much information as we can so that they can advocate for themselves when they contact their loan servicers. Rather than provide this advice one person at a time, we feel that more of an impact could be made if servicers just changed their processes to become part of the solution as opposed to part of the problem.

Based on our experiences with the consumers we have met seeking assistance through the PHOI program, we would like to offer the following observations about problems with the servicers that need to be corrected:

Lack of Experience. We have found that the departments for servicing and loss mitigation are not prepared to handle the volume of inquiries or the types of issues that are being raised by homeowners. While we commend servicers for responding to the foreclosure crisis by hiring more loan modification staff, the problem is that many of these individuals are not fully trained or appropriately qualified to assist consumers with the loan modification process.

Inconsistency in Information. Time and again, we have been told by consumers that they have received different information, instructions, or advice each time that they call and speak to a different person at their servicer. Because consumers are not always working with the same person, the terms or requirements for loan modification frequently change. For example, one consumer we worked with was told that they could not be helped until they missed two payments. After missing two payments, they called back and were told that they could not have their loan modified because they were delinquent on their payments. Essentially, servicers are advising people to harm their credit and become late on their payments and then penalizing them for doing so after the fact.

Lack of Coordination in Servicing Departments. We have found a total lack of coordination among the loan servicing departments. Departments do not talk to one another or share information about a specific account. As a result, a consumer could be working very hard with the Loss Mitigation Department for a loan modification, but because the Default or Trustee department is not aware of this, the person's house can be sold at a trustee sale in the middle of the loan modification process. Further, if the consumer is directed to the Collections Department, the focus is on collecting late payments rather than working on the loan modification.

Time Delays. Most of the servicers take between 90 and 120 days to let a consumer know if they are approved for a loan modification. Some take even longer. With some of the lenders, the consumer might send in their loan modification materials but it takes so long to process it that the package will expire and the lender will tell the consumer that they have to start over.

Lack of Consideration of Individual Hardship Circumstances. Most servicers require a hardship letter to be included in the loan modification package. Unfortunately, it appears to us that these hardship letters are largely ignored. Instead, decisions are made by formulas as opposed to the individual's circumstances that have caused the difficulty in making payments. Most people we see at our events have two or three years of excellent payment history. The problem for many arose when their minimum mortgage payment reset. If servicers would consider leaving payment where it was prior to the reset, this would help many avoid foreclosure.

The number of homes across the country in danger of foreclosure has more than doubled since last year. Just this morning, RealtyTrac released the *U.S. Foreclosure Market Report*, indicating that foreclosure filings were up 14 percent more for the second quarter of 2008. For the past eight quarters, foreclosures have been on a steep rise. In California, foreclosures were up 19 percent, with one in every 65 California households receiving a foreclosure filing during the second quarter of 2008. Foreclosure filings in California are up 198 percent from last year. New foreclosures in the Los Angeles area have almost quadrupled in the second quarter of 2008, with the number of homes scheduled for auction in Los Angeles also rising dramatically. These numbers reflect our experience on the ground in California. Despite some reports to the contrary, we are seeing the situation getting worse, not better. While lenders are reporting high levels of loan modifications, their efforts are clearly not enough given the long lines of people coming to us for help and given the confusion and frustration about their servicers that consumers express to us.

We believe that in order to stem this tide of foreclosures, it will be absolutely critical for servicers to make significant improvements to their loan modification processes and to offer clear instructions and competent, trained, and compassionate individuals to work with their customers. Counseling entities do not have the ability to address the sheer volume of all of those who need help. Without improvements to the servicers' operations, we will continue to see the high volume of people in need of assistance in getting the information and results from the servicers that they need. Servicers must be mindful of the economic repercussions of their decisions and actions that cause people to foreclose. They also need to ensure that their employees are sensitive to the fact that these are real people who are facing the loss of their homes. It is our hope that with your attention to this matter, these problems can be addressed quickly so that the American dream is sustained and so our nation can get on the path of economic recovery.

Thank you for the opportunity to offer our observations to the Committee today as you explore ways to improve servicers' loan modification processes. We commend Housing Subcommittee Chairwoman Waters for proposing reforms to servicers' operations through H.R. 5679, the Foreclosure Prevention and Sound Mortgage Servicing Act of 2008. We look forward to working with the committee to solve this problem as quickly as possible so that servicers can become part of the solution to stemming rising foreclosures in our country. We hope that the committee will also work to ensure that regulators and law enforcement officials can effectively combat mortgage fraud, and commend you for your work thus far to eradicate predatory lenders from our communities. We would also like to thank you for including language proposed by Congressman Baca in H.R. 3221 to prioritize housing counselors that provide in-person, one-on-one housing counseling services to those at risk of foreclosure. In addition to improving the assistance offered by loan servicers, in-person, one-on-one counseling is the optimal way to offer foreclosure avoidance assistance, based on the unique and specific circumstances of a family facing the potential loss of their home. In closing, we share your dedication to sustaining homeownership in America and stand ready to work with you as the legislative process moves forward.

The New York Times
nytimes.com

November 6, 2007

Dubious Fees Hit Borrowers in Foreclosures

By GRETCHEN MORGENSON

As record numbers of homeowners default on their mortgages, questionable practices among lenders are coming to light in bankruptcy courts, leading some legal specialists to contend that companies instigating foreclosures may be taking advantage of imperiled borrowers.

Because there is little oversight of foreclosure practices and the fees that are charged, bankruptcy specialists fear that some consumers may be losing their homes unnecessarily or that mortgage servicers, who collect loan payments, are profiting from foreclosures.

Bankruptcy specialists say lenders and loan servicers often do not comply with even the most basic legal requirements, like correctly computing the amount a borrower owes on a foreclosed loan or providing proof of holding the mortgage note in question.

"Regulators need to look beyond their current, myopic focus on loan origination and consider how servicers' calculation and collection practices leave families vulnerable to foreclosure," said Katherine M. Porter, associate professor of law at the University of Iowa.

In an analysis of foreclosures in Chapter 13 bankruptcy, the program intended to help troubled borrowers save their homes, Ms. Porter found that questionable fees had been added to almost half of the loans she examined, and many of the charges were identified only vaguely. Most of the fees were less than $200 each, but collectively they could raise millions of dollars for loan servicers at a time when the other side of the business, mortgage origination, has faltered.

In one example, Ms. Porter found that a lender had filed a claim stating that the borrower owed more than $1 million. But after the loan history was scrutinized, the balance turned out to be $60,000. And a judge in Louisiana is considering an award for sanctions against Wells Fargo in a case in which the bank assessed improper fees and charges that added more than $24,000 to a borrower's loan.

Ms. Porter's analysis comes as more homeowners face foreclosure. Testifying before Congress on Tuesday, Mark Zandi, the chief economist at Moody's Economy.com, estimated that two million families would lose their homes by the end of the current mortgage crisis.

Questionable practices by loan servicers appear to be enough of a problem that the Office of the United States Trustee, a division of the Justice Department that monitors the bankruptcy system, is getting involved. Last month, It announced plans to move against mortgage servicing companies that file false or inaccurate claims, assess unreasonable fees or fail to account properly for loan payments after a bankruptcy has been discharged.

On Oct. 9, the Chapter 13 trustee in Pittsburgh asked the court to sanction Countrywide, the nation's largest loan servicer, saying that the company had lost or destroyed more than $500,000 in checks paid by homeowners in foreclosure from December 2005 to April 2007.

The trustee, Ronda J. Winnecour, said in court filings that she was concerned that even as Countrywide misplaced or destroyed the checks, it levied charges on the borrowers, including late fees and legal costs.

"The integrity of the bankruptcy process is threatened when a single creditor dishonors its obligation to provide a truthful and accurate account of the funds it has received," Ms. Winnecour said in requesting sanctions.

A Countrywide spokesman disputed the accusations about the lost checks, saying the company had no record of having received the payments the trustee said had been sent. It is Countrywide's practice not to charge late fees to borrowers in bankruptcy, he said, adding that the company also does not charge fees or costs relating to its own mistakes.

Loan servicing is extremely lucrative. Servicers, which collect payments from borrowers and pass them on to investors who own the loans, generally receive a percentage of income from a loan, often 0.25 percent on a prime mortgage and 0.50 percent on a subprime loan. Servicers typically generate profit margins of about 20 percent.

Now that big lenders are originating fewer mortgages, servicing revenues make up a greater percentage of earnings. Because servicers typically keep late fees and certain other charges assessed on delinquent or defaulted loans, "a borrower's default can present a servicer with an opportunity for additional profit," Ms. Porter said.

The amounts can be significant. Late fees accounted for 11.5 percent of servicing revenues in 2006 at Ocwen Financial, a big servicing company. At Countrywide, $285 million came from late fees last year, up 20 percent from 2005. Late fees accounted for 7.5 percent of Countrywide's servicing revenue last year.

But these are not the only charges borrowers face. Others include $145 in something called "demand fees," $137 in overnight delivery fees, fax fees of $50 and payoff statement charges of $60. Property inspection fees can be levied every month or so, and fees can be imposed every two months to cover assessments of a home's worth.

"We're talking about millions and millions of dollars that mortgage servicers are extracting from debtors that I think are totally unlawful and illegal," said O. Max Gardner III, a lawyer in Shelby, N.C., specializing in consumer bankruptcies. "Somebody files a Chapter 13 bankruptcy, they make all their payments, get their discharge and then three months later, they get a statement from their servicer for $7,000 in fees and charges incurred in bankruptcy but that were never applied for in court and never approved."

Some fees levied by loan servicers in foreclosure run afoul of state laws. In 2003, for example, a New York appeals court disallowed a $100 payoff statement fee sought by North Fork Bank.

Fees for legal services in foreclosure are also under scrutiny.

A class-action lawsuit filed in September in Federal District Court in Delaware accused the Mortgage Electronic Registration System, a home loan registration system owned by Fannie Mae, Countrywide Financial and other large lenders, of overcharging borrowers for legal services in foreclosures. The system, known as MERS, oversees more than 20 million mortgage loans.

The complaint was filed on behalf of Jose Treviño and Lorry S. Trevino of University City, Mo., whose Washington Mutual loan went into foreclosure in 2006 after the couple became ill and fell behind on payments.

Jeffrey M. Norton, a lawyer who represents the Trevinos, said that although MERS pays a flat rate of $400 or $500 to its lawyers during a foreclosure, the legal fees that it demands from borrowers are three or four times that.

A spokeswoman for MERS declined to comment.

Typically, consumers who are behind on their mortgages but hoping to stay in their homes invoke Chapter 13 bankruptcy because it puts creditors on hold, giving borrowers time to put together a repayment plan.

Given that a Chapter 13 bankruptcy involves the oversight of a court, the findings in Ms. Porter's study are especially troubling. In July, she presented her paper to the United States trustee, and on Oct. 12 she outlined her data for the National Conference of Bankruptcy Judges in Orlando, Fla.

With Tara Twomey, who is a lecturer at Stanford Law School and a consultant for the National Association of Consumer Bankruptcy Attorneys, Ms. Porter analyzed 1,733 Chapter 13 filings made in April 2006. The data were drawn from public court records and include schedules filed under penalty of perjury by borrowers listing debts, assets and income.

Though bankruptcy laws require documentation that a creditor has a claim on the property, 4 out of 10 claims in Ms. Porter's study did not attach such a promissory note. And one in six claims was not supported by the itemization of charges required by law.

Without proper documentation, families must choose between the costs of filing an objection or the risk of overpayment, Ms. Porter concluded.

She also found that some creditors ask for fees, like fax charges and payoff statement fees, that would probably be considered "unreasonable" by the courts.

Not surprisingly, these fees may contribute to the other problem identified by her study: a discrepancy between what debtors think they owe and what creditors say they are owed.

In 96 percent of the claims Ms. Porter studied, the borrower and the lender disagreed on the amount of the mortgage debt. In about a quarter of the cases, borrowers thought they owed more than the creditors claimed, but in about 70 percent, the creditors asserted that the debt owed was greater than the amounts specified by borrowers.

The median difference between the amounts the creditor and the borrower submitted was $1,366; the average was $3,533, Ms. Porter said. In 30 percent of the cases in which creditors' claims were higher, the discrepancy was greater than 5 percent of the homeowners' figure.

Based on the study, mortgage creditors in the 1,733 cases put in claims for almost $6 million more than the loan debts listed by borrowers in the bankruptcy filings. The discrepancies are too big, Ms. Porter said, to be simple record-keeping errors.

Michael L. Jones, a homeowner going through a Chapter 13 bankruptcy in Louisiana, experienced such a discrepancy with Wells Fargo Home Mortgage. After being told that he owed $231,463.97 on his mortgage, he disputed the amount and ultimately sued Wells Fargo.

In April, Elizabeth W. Magner, a federal bankruptcy judge in Louisiana, ruled that Wells Fargo overcharged Mr. Jones by $24,450.65, or 12 percent more than what the court said he actually owed. The court attributed some of that to arithmetic errors but found that Wells Fargo had improperly added charges, including $6,741.67 in commissions to the sheriff's office that were not owed, almost $13,000 in additional interest and fees for 16 unnecessary inspections of the borrowers' property in the 29 months the case was pending.

"Incredibly, Wells Fargo also argues that it was debtor's burden to verify that its accounting was correct," the judge wrote, "even though Wells Fargo failed to disclose the details of that accounting until it was sued."

A Wells Fargo spokesman, Kevin Waetke, said the bank would not comment on the details of the case as the bank is appealing a motion by Mr. Jones for sanctions. "All of our practices and procedures in the handling of bankruptcy cases follow applicable laws, and we stand behind our actions in this case," he said.

In Texas, a United States trustee has asked for sanctions against Barrett Burke Wilson Castle Daffin & Frappier, a Houston law firm that sues borrowers on behalf of the lenders, for providing inaccurate information to the court about mortgage payments made by homeowners who sought refuge in Chapter 13.

Michael C. Barrett, a partner at the firm, said he did not expect the firm to be sanctioned.

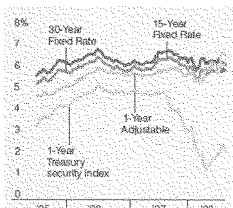
"We certainly believe we have not misbehaved in any way," he said, saying the trustee's office became involved because it is trying to persuade Congress to increase its budget. "It is trying to portray itself as an organ to pursue mortgage bankers."

Closing arguments in the case are scheduled for Dec. 12.

Real Estate

MORTGAGES

Struggling, but Staying in a Home



	Week ended:	N.Y.	N.Y. CO-OPS	N.J.	CONN.
30-YEAR	July 11	6.72%	6.48%	6.55%	6.68%
	July 3	6.80	6.68	6.58	6.80
15-YEAR		6.27%	6.05%	5.99%	6.18%
		6.36	6.28	6.08	6.25
ADJUSTABLE		6.03%	N.A.	5.39%	5.23%
		6.01	N.A.	5.48	5.25

INDEX FOR ADJUSTABLE RATE MORTGAGES	Week ended	
1-year Treasury rate	July 11	2.25%
	July 3	2.35

Rates shown are for the New York region.

Source: HSH Associates

Rates on most adjustable mortgages are set 2 or 3 percentage points above this index.

The New York Times

By BOB TEDESCHI
Published: July 20, 2008

AS the foreclosure crisis worsens, government officials and industry executives seem to be growing more creative in addressing the problem. Two recent initiatives allow struggling homeowners who lose their mortgages to stay in their homes and work their way back to financial solvency.

More Mortgage Columns

A program in Detroit created this month by the federal Department of Housing and Urban Development is for borrowers with loans insured by the Federal Housing Administration, which typically deals with first-time home buyers.

Under this initiative, the F.H.A. will allow a lender to submit an insurance claim on a mortgage when it is in arrears but before it fails. HUD, which oversees the F.H.A., then transfers the mortgage to a company to service the loan and work with the borrower to restructure the loan to make it more affordable.

In announcing the program, the HUD secretary, Steven C. Preston, said it would not only help individual homeowners, but also diminish the impact that foreclosures tend to have on neighborhoods. Studies have shown that a single foreclosure can depress neighborhood housing values, because a foreclosed house usually sells at a discount, and empty homes can invite crime and diminish a neighborhood's perceived value.

A second initiative, in New Jersey, is spearheaded by the Federal Home Loan Bank of New York, which lends money to roughly 300 local banks in New York, New Jersey, Puerto Rico and the United States Virgin Islands to finance mortgages.

Under this new initiative, called the Housing Assistance and Recovery Program, or HARP, the Home Loan Bank lent $6 million to Magyar Bank, based in New Brunswick, N.J.

The First Baptist Church of Lincoln Gardens, in Somerset, N.J., which provides counseling services through its First Baptist Community Development Corporation, identifies homeowners who are in danger of foreclosure, then negotiates with the lender to buy out the loan.

Using proceeds from the Federal Home Loan Bank, Magyar Bank puts up 70 percent of the remaining balance. HARP representatives expect that lenders who hold the distressed mortgages will write off much of the remaining 30 percent, rather than incur a foreclosure.

After the loan has been transferred, the homeowners become renters of their home, making payments to First Baptist, which holds the new mortgage from Magyar Bank. The rent level depends in part on what the family can afford.

First Baptist then offers financial counseling to tenants, with hopes of helping them rebuild their credit scores so they may eventually qualify for a new mortgage on the same home.

According to Alfred A. DelliBovi, chief executive of the Federal Home Loan Bank of New York, one family has completed the transition from homeowner to tenant, and four more families are soon to follow.

One obstacle for HARP in some cases, Mr. DelliBovi said, is finding the current lender. Loans are typically sold to investors, sometimes repeatedly.

Meanwhile, servicers, whom investors pay to collect mortgage payments from borrowers, often have no incentive to help borrowers find the ultimate holder of a loan, Mr. DelliBovi said. "Servicers make more money on a foreclosure than when the loan is worked out," he said.

Despite the slow going, Mr. DelliBovi said his company is already negotiating with other banks and community organizations in New York and New Jersey to set up similar programs.

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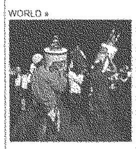

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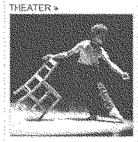

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