

July 30, 2009

Chairman Whitehouse, Ranking Member Sessions and members of the Subcommittee, the undersigned organizations thank you for the opportunity to submit this statement for the record for the July 23, 2009, Senate Judiciary Subcommittee on Administrative Oversight and the Courts hearing entitled, "The Worsening Foreclosure Crisis: Is it Time to Reconsider Bankruptcy Reform?"

Modifying the bankruptcy laws to permit the cram down of mortgages on principal residences is simply not an effective way to save American's homes. Turning secured debt into unsecured debt will harm, not help, the housing market. As the experience with Chapter 12 has shown, allowing cram down on mortgages increases borrowing costs for all borrowers. Raising borrowing costs is exactly the wrong thing to do in the current recession. This is why the Senate has wisely rejected cram down proposals on a bi-partisan basis.

In addition, as the testimony at this hearing demonstrated, cram down is only appropriate where the borrower can repay the full amount during the course of a Chapter 13 plan, typically five years. In fact, under current law, if a loan secured by a second home or a vacation home is to be bifurcated into separate secured and unsecured portions, the full amount of the secured portion must be paid in full during the repayment plan. The cram down proposals voted down in the Senate, in contrast, abandon this important limitation and would permit borrowers to repay the secured portion over 30 years.

Everybody loses when a home goes into foreclosure. A homeowner loses his or her home, the mortgage company loses a customer, the lien holder loses money by taking back the home, and the American economy loses. In most cases, it is more beneficial for the mortgagee to keep the borrower in their home. However, there are situations where the borrower's situation may require foreclosure, a short sale or deed-in-lieu of foreclosure. The Obama Administration has recognized this fact and is working to modify the Making Home Affordable plan to facilitate short sales and deeds-in-lieu where the borrower chooses to leave the property rather than seek a modification but still avoid foreclosure.

Over the last two years as foreclosures have increased, we have seen historic efforts by the government, the financial services industry and consumer groups to help millions of borrowers stay in their homes. This positive collaboration has come with a number of challenges and there remain a number of obstacles that must be overcome to achieve maximum success.

The industry continues to receive sharp criticism that it has not helped enough borrowers. Before we discuss the obstacles that still remain, we think it is important to inform the Subcommittee of some of the results to date. HOPE NOW, which is an alliance of counselors, mortgage companies, investors and mortgage market participants, has been collecting data since the third quarter of 2007 to help monitor industry efforts. According to the HOPE NOW June 2009 data (chart attached), since mid-2007, the mortgage industry has provided approximately **4.7 million workout solutions** to help homeowners avoid foreclosure through repayment plans and loan

modifications. In the first half of 2009, more than 1.5 million homeowners have been helped through mortgage workout plans.

In fact, in June, mortgage servicers industry helped 310,000 homeowners complete workout solutions to stay in their homes – a 25 percent increase over May. HOPE NOW members and other mortgage servicers modified 96,000 mortgages in June and initiated 214,000 repayment plans. While completed foreclosure sales increased from 83,000 in May to 94,000 in June, it is important to note that foreclosures for the first 6 months of 2009 were flat when compared with the first six months of 2008.

At a July 16 Senate Banking Committee hearing on homeownership preservation, Wells Fargo indicated that it has refinanced three-quarters-of-a-million customers through various programs. These results are impressive and the industry will continue to address current requests for assistance. However, there are two major challenges that mortgage servicers continue to face on a daily basis: call volume and government program implementation challenges.

As a number of government programs have been announced, borrowers eager for assistance are reaching out for help at staggering numbers. For example, at the July 16 Senate Banking Committee hearing, Bank of America indicated that it receives over 1.8 million calls per month – or 80,000 per day. That in itself presents a huge challenge.

Oftentimes, government programs are announced well before servicers have the necessary details and essential guidelines to implement the programs. This creates significant consumer interest and increases the call volume to mortgage servicers. For example, on February 18, 2009, the administration announced the Making Home Affordable (MHA) program. While the announcement indicated the program would begin in April, troubled homeowners began calling their servicers almost immediately. In addition, mortgage servicers were not given detailed guidance on the MHA program until April 6th. This did not give servicers the necessary lead time to change their computer systems and handle additional changes to their processes before they began receiving inquiries about the program.

At a July 16th Senate Banking Committee hearing on homeownership preservation, Bank of America highlighted this point:

“The current method of publicly announcing new guidelines or changes concurrently with their effective dates creates immediate demand with insufficient lead time for operational readiness. This can lead to negative customer experience, and ultimately, public backlash against the programs.”

The mortgage industry is optimistic about the MHA program. Mortgage servicers and Treasury have had to work through several challenges that were resolved in the last month. According to administration statements, to date, over 350,000 trial modification offers have been extended and approximately 200,000 HAMP trial modifications are already underway. This is a very positive start. It is a significant task to implement these programs and, as we have seen with the MHA program, it takes several months before they begin to run as intended. We believe the HAMP program will have a very

significant impact in assisting homeowners, in addition to the other options servicers offer to at-risk borrowers who may not qualify for a HAMP modification.

Another recent criticism of mortgage servicers is the lack of initial use of the Hope for Homeowners (H4H) refinance program. The H4H program, which was initially authorized in 2008, required several legislative changes to increase its usefulness and availability to borrowers. Some of these changes were made as part of the “Helping Families Save Their Homes Act” which President Obama signed into law in May of 2009. These changes will provide mortgage servicers with another tool for assisting troubled borrowers.

While mortgage servicers continue to receive criticism for not utilizing the H4H program, it is important for this Subcommittee to recognize that mortgage servicers are still awaiting final guidance from the Department of Housing and Urban Development (HUD) on implementing the new program. However, the H4H program will never have the same level of volume as other types of modifications due to the permanent write down or reduction of principal. In almost all cases, a servicer will be able to structure a modification to achieve the same or better payment for the borrower without incurring a permanent write down.

Additionally, we note that beginning on August 4, 2009, Treasury will begin publishing servicer-specific results on a monthly basis – detailing the number of trial modification offers extended, the number of trial modifications under way and the number of official modifications offered and the long term success of each modification. Also, Treasury has asked Freddie Mac (acting as compliance agent for the program) to develop a “second look” process to audit a sample of MHA modifications which have been declined in an effort to ensure that borrower applications are not overlooked or inadvertently declined. These two additions to the program will increase transparency and help to ensure that all applications are given the review and attention required to ensure as many modifications are made as is possible.

There are many reasons why troubled borrowers are not qualifying for loan modifications under MHA and refinances under H4H.

Any successful modification relies on borrower income and, as we have seen unemployment rise to 9.5 percent, a large number of troubled borrowers simply cannot qualify for these government programs because they have lost their source of income. Also, a number of borrowers are not owner occupants, fail to complete the necessary documentation or have sufficient income or assets to pay their current debts. In addition, mortgage servicers continue to face difficulties in contacting borrowers and are finding that roughly 30-40 percent of delinquent loans are on vacant homes.

In light of these challenges, mortgage servicers participating in MHA’s Home Affordable Mortgage Program (HAMP) have made the following recommendations for strengthening and accelerating the implementation of the program:

- 1) Standardize and simplify documentation and definitions for the Fannie Mae, Freddie Mac and Treasury programs. Uniform and simplified documents would improve servicers’ ability to best match the programs for particular borrowers.

2) The government should work with industry to create a central Web portal that would allow borrowers to enter their information for pre-qualification purposes. This would also increase transparency for borrowers and third-party counselors by allowing status checks on applications.

3) Improve the current process for program changes prior to announcing them to the public. As indicated above, when program changes are announced, there becomes an increased demand and expectation from borrowers before servicers are given the necessary guidance for implementation. Servicers should be given 30-60 days notice prior to public announcements. Changes should be consistent and provide servicers with appropriate time to review and understand them.

4) HUD should issue guidelines for the H4H program so that servicers can begin implementation. H4H can be another tool to help avoid foreclosure, but it should be recognized that the structure of the program, which requires principal write down or extinguishment, will always hamper the program as compared to modification and other borrower assistance alternatives.

5) HUD should issue guidance implementing its new authority to permit partial claims on FHA loans in the amount of 30 percent of the outstanding principal. Today, FHA loans are not part of the MHA program. The new authority, however, would allow FHA loans to participate.

We would like to emphasize servicers continue to increase their capacity to deal with the large volumes of borrowers seeking assistance and are working closely with a number of government agencies as the new programs are being implemented. These new programs are dealing with very complex transactions and have thus caused the need for a number of adjustments by Treasury, HUD, Fannie Mae and Freddie Mac. These programs became operational just a few months ago, and we are still awaiting final guidance on the H4H program. There is no question that more can be done and will be done.

Again, we appreciate the opportunity to inform the committee on mortgage servicers' efforts and the current obstacles to helping some borrowers.

American Bankers Association
Consumer Bankers Association
The Financial Services Roundtable
The Housing Policy Council
Mortgage Bankers Association
Securities Industry and Financial Markets Association
U.S. Chamber of Commerce

HOPE NOW June 2009 Data Release

BORROWER LOAN WORKOUT PLANS

	2007 Q3	2007 Q4	2008 Q1	2008 Q2	2008 Q3	2008 Q4	2009 Q1	2009 Q2	Jun-09	Jul 2007-Jun 2009 ("Life to Date") Totals
Repayment Plans	357,900	348,531	314,453	302,565	335,152	345,078	340,384	502,595	214,756	2,846,658
Prime	154,383	160,127	148,814	141,840	179,864	203,752	215,778	342,534	143,587	1,547,091
Subprime	203,517	188,404	165,639	160,725	155,288	141,327	124,606	160,061	71,170	1,299,567
Modifications	72,773	133,467	170,216	220,349	256,188	314,602	370,436	318,044	96,046	1,856,076
Prime	29,714	36,634	48,148	56,202	70,503	92,125	121,011	128,093	40,316	582,429
Subprime	43,058	96,833	122,068	164,147	185,685	222,477	249,425	189,951	55,730	1,273,646
Workout Plans	430,673	481,998	484,669	522,914	591,340	659,680	710,820	820,639	310,803	4,702,733
Prime	184,097	196,761	196,961	198,042	250,367	295,877	336,788	470,627	183,903	2,129,521
Subprime	246,575	285,237	287,708	324,872	340,973	363,803	374,032	350,012	126,900	2,573,213

FORECLOSURE SALES

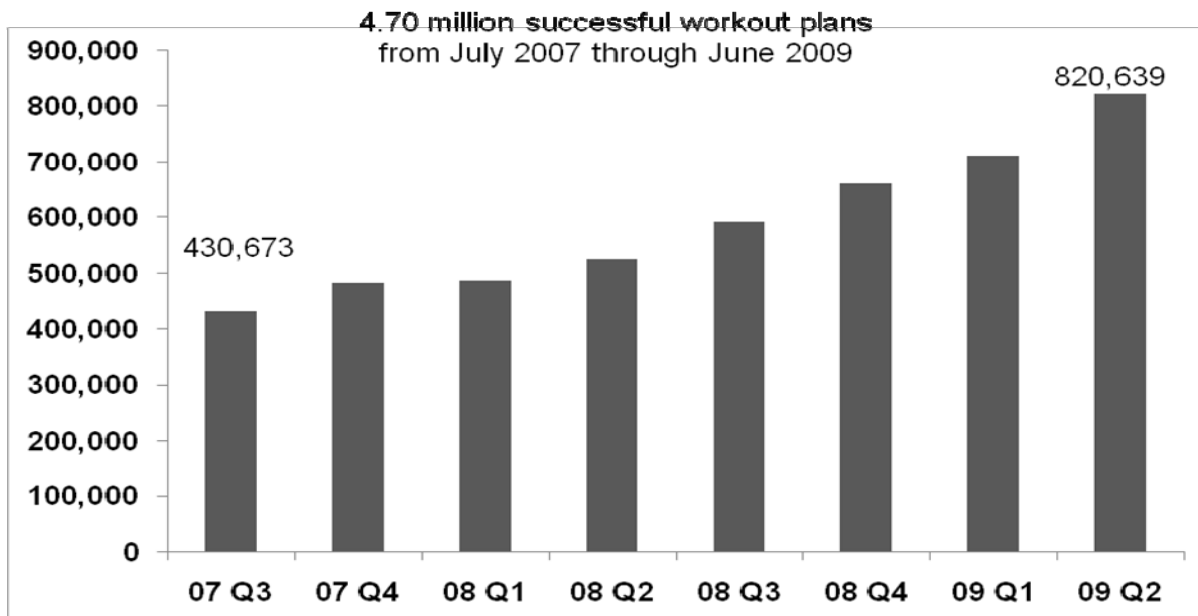
	2007 Q3	2007 Q4	2008 Q1	2008 Q2	2008 Q3	2008 Q4	2009 Q1	2009 Q2	Jun-09	Jul 2007-Jun 2009 ("Life to Date") Totals
Foreclosure Sales	153,408	168,213	203,503	246,192	263,326	201,603	201,314	239,303	93,924	1,676,862
Prime	60,699	64,958	83,352	108,202	130,700	101,519	113,309	154,108	62,603	816,849
Subprime	92,709	103,255	120,151	137,990	132,626	100,084	88,005	85,196	31,321	860,014

(Workout Plans = Repayment Plans + Modifications)

Repayment Plans: A plan that allows the borrower to become current and catch up on missed payments that are appropriate to the borrower's circumstances, which involves deferring or rescheduling payments but the full amount of the loan is expected ultimately to be paid.

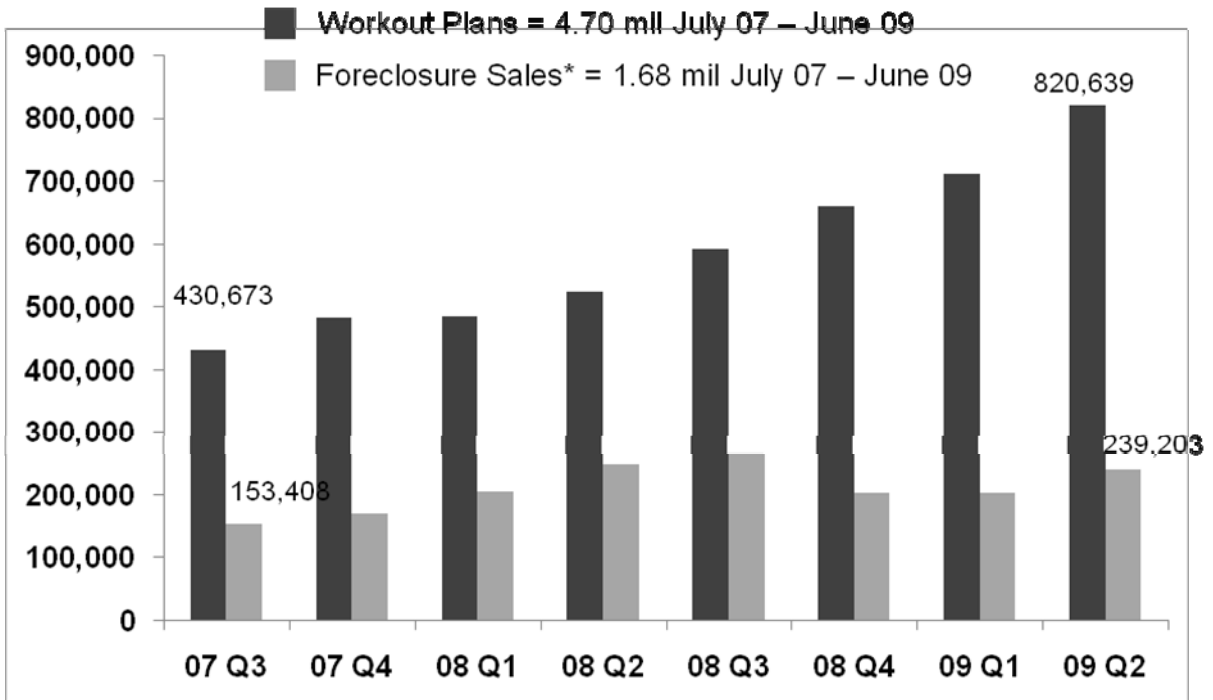
Modifications: A modification occurs any time any term of the original loan contract is permanently altered. This can involve a reduction in the interest rate, forgiveness of a portion of principal or extension of the maturity date of the loan.

Mortgage Workout Plans



Source: HOPE NOW, "National Data: June 09"

Workouts & Foreclosures



*Workout plans = repayment plans + modifications / *Foreclosures = completed sales only, does not include mortgages at-risk of or in the process of foreclosure*

Source: HOPE NOW. "National Data: June09"