S. HRG. 111–142

FORECLOSURE MITIGATION UNDER THE TROUBLED ASSET RELIEF PROGRAM

FIELD HEARING

BEFORE THE

CONGRESSIONAL OVERSIGHT PANEL

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

HEARING HELD IN PHILADELPHIA, PENNSYLVANIA ON SEPTEMBER 24, 2009

Printed for the use of the Congressional Oversight Panel

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CONGRESSIONAL OVERSIGHT PANEL

PANEL MEMBERS

ELIZABETH WARREN, *Chair*

REP. JEB HENSARLING

PAUL S. ATKINS

RICHARD H. NEIMAN

DAMON SILVERS

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FIELD HEARING ON FORECLOSURE MITIGATION EFFORTS UNDER THE TROUBLED ASSET RELIEF PROGRAM

THURSDAY, SEPTEMBER 24, 2009

U.S. CONGRESS,
CONGRESSIONAL OVERSIGHT PANEL,
Philadelphia, Pennsylvania.

The Panel met, pursuant to notice, at 10:03 a.m. in the Kirby Auditorium, National Constitution Center, Damon Silvers, presiding.

Present: Damon Silvers, Richard Neiman, and Paul Atkins.

Mr. SILVERS. This hearing of the Congressional Oversight Panel is called to order. I thank you all for joining us today. My name is Damon Silvers and I serve as Deputy Chair of the Congressional Oversight Panel. The Panel's Chair, Professor Elizabeth Warren was called to testify before the Senate Banking Committee this morning at a hearing on TARP oversight in Washington, DC. She deeply regrets that she is unable to be here, but we are after all the Congressional Oversight Panel.

I will now turn the gavel over to my colleague on the panel, New York Banking Superintendent Richard Neiman. Richard serves as the Chair of New York Governor Patterson's Halt Abusive Lending Transactions Taskforce and is a member of the Multi-State Foreclosure Prevention Working Group. Superintendent Neiman has done extraordinary work in the area of mortgage foreclosure prevention for this panel including, but not limited to, his efforts to put this hearing together. Consequently, it seemed appropriate to us for Richard to chair this morning's hearing. Richard, the gavel.

STATEMENT OF RICHARD NEIMAN, MEMBER, CONGRESSIONAL OVERSIGHT PANEL

Mr. NEIMAN [presiding]. Thank you very much Damon for those kind words and also for the opportunity to share today's hearing. Good morning. First, I do want to thank and am very grateful to the City of Philadelphia and the National Constitution Center for hosting this hearing of the Congressional Oversight Panel. This city has been hard hit by the foreclosure crisis. Too many Philadelphians know firsthand what it means to have a home taken away.

The Panel would also like to thank Senators Casey and Specter and Congressmen Brady and Fattah and their staffs for helping to plan today's hearing on this important issue. I also want to give a special thanks to Judge Rizzo of the Philadelphia Court of Common Pleas for working with the Panel's staff on the hearing and inviting us to visit the court this afternoon to learn more about its innovative mediation program.

The number of families at risk of foreclosures here in Philadelphia and across the country is on the increase. What started as a crisis driven by subprime borrowers with inappropriate products has now spread to include families with traditional mortgages. Even prime borrowers are now losing their homes as a result of the downturn in the economy and the downturn in housing prices and job losses resulting from a recession that few predicted.

Today's three panels of witnesses will convey the view of (1) the homeowners who are in jeopardy; (2) the lenders and servicers who can modify mortgage terms to keep people in their homes; and (3) the government that is implementing and overseeing the programs to facilitate these modifications. Only with these three groups of stakeholders working together can we develop affordable and sustainable solutions to the housing crisis and a greater level of engagement and cooperation that is long overdue. I am concerned that the pace of modifications is not keeping pace with the rise in foreclosures. We are also hearing specific concerns from borrowers and housing counselors regarding the responsiveness and the capacity of mortgage servicers and we will hear much more from them today.

To my knowledge, this hearing is the first time that Treasury, Fannie Mae, and Freddie Mac are together in a public forum along with housing advocates and mortgage servicers to discuss the progress of the Administration's foreclosure prevention programs. We need to see this crisis from the perspective of those who are facing foreclosure, as well as those who are helping these families through counseling, modifications, and the judicial process.

The broad representation that we have here today from the servicing industry is especially critical. Housing counselors and government agencies may design initiatives to help borrowers at risk, but ultimately it is the servicers and lenders who will determine whether these programs succeed. They have the power to decide whether to modify a loan or to pursue a foreclosure.

As New York's Superintendent of Banks since 2007 when the crisis began, I have seen firsthand the positive results for homeowners can be achieved when the public, private and nonprofit sectors come together with a common purpose. Foreclosure, as we all know, is in no one's best interest.

Now, some procedural issues. Because of the number of witnesses appearing today and the extensive scope of the testimony, we invite each witness to make an opening statement limited to five minutes. All of us have already read your written testimony, so in the five minute time period I strongly encourage you to highlight those points that best capture your main positions and constructive suggestions for foreclosure prevention. We need to be strict on our time constraints in order to hear from everyone, so I ask that you be conscious of the time. We'd like to finish our work before 1 p.m. and allow time for members of the public to share their comments with us, as well.

So, with those opening remarks I'd now like to turn it over to Commissioner Paul Atkins for remarks.

[The prepared statement of Mr. Neiman follows:]

ELIZABETH WARREN CHAIR
REP. JEB HENSARLING
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Congress of the United States

CONGRESSIONAL OVERSIGHT PANEL

Opening Statement of Richard H. Neiman

Congressional Oversight Panel Field Hearing
Foreclosure Mitigation Efforts Under the Troubled Asset Relief Program

Philadelphia, Pennsylvania
September 24, 2009

Good morning. We are grateful to the City of Philadelphia and the National Constitution Center for hosting this hearing of the Congressional Oversight Panel. This city has been hard-hit by the foreclosure crisis - too many Philadelphians know firsthand what it means to have a home taken away.

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The number of families at risk of foreclosure here in Philadelphia and across the country is on the increase. What started as a crisis driven by subprime borrowers with inappropriate products has now spread to include families with traditional mortgages. Even prime borrowers are now losing their homes, as a result of the downturn in housing prices and job losses resulting from in a recession that few predicted.

Today's three panels of witnesses will convey the views of -

1. the homeowners who are in jeopardy;
2. the lenders and servicers who can modify mortgage terms to keep people in their homes; and,
3. the government that is implementing programs to facilitate these modifications.

Only with these three groups of stakeholders working together can we can develop affordable and sustainable solutions to the housing crisis, and a greater level of engagement and cooperation is long overdue. I am concerned that the pace of modifications is not keeping pace with the rise in foreclosures. We are also hearing specific concerns from borrowers and housing counselors regarding the responsiveness of mortgage servicers.

To my knowledge, this hearing is the first time that Treasury, Fannie Mae, and Freddie Mac are together in a public forum along with housing advocates and mortgage servicers to discuss the progress of the Administration's foreclosure prevention programs. We need to see this crisis from the perspective of those who are facing foreclosure, as well as those who are helping these families through counseling, modifications, and the judicial process.

The broad representation that we have today from the servicing industry is especially critical. Housing counselors and government agencies may design initiatives to help borrowers at-risk. But ultimately it is the servicers and lenders who will determine whether these programs succeed - they have the power to decide whether to modify a loan or to pursue foreclosure.

As New York's Superintendent of Banks since 2007 when the crisis began, I have seen firsthand that positive results for homeowners can be achieved when the public, private, and nonprofits sectors come together with a common purpose. Foreclosure is in no one's best interest.

Because of the number of witnesses appearing today and the extensive scope of the testimony, we invite each witness to make an opening statement limited to 5 minutes. We have reviewed your written testimony, so in that 5 minute time period I strongly encourage you to highlight those points that best capture your constructive suggestions for foreclosure prevention. We do need to be strict on our time constraints in order to hear from everyone, so I will have to ask you from time to time to conclude your remarks. We would like to finish our work before 1pm, to allow members of the public time to share their brief comments with us as well.

STATEMENT OF PAUL ATKINS, MEMBER, CONGRESSIONAL OVERSIGHT PANEL

Mr. ATKINS. Thank you very much and I'd also like to thank Philadelphia for hosting this in the Constitution Center and most importantly to all of the witnesses who are appearing today at this hearing, some upon rather short notice. So, thank you very much for your efforts in coming here.

The issue of foreclosure mitigation and its effectiveness is one of the areas that Congress specifically tasked this particular Panel to report on under the Emergency Economic Stabilization Act of 2008. I think it's appropriate for us to review what's being done in this area to help address the large number of foreclosures that the U.S. is experiencing these days. I welcome the opportunity to learn from our panel of witnesses today. This is an area that like much of what is being done by the U.S. government in the past year is fraught with moral hazard if poorly implemented. The interest, of course, is in helping those who may be in trouble through an interaction of bad luck, a bad economy, and perhaps bad personal circumstances. If you're out of a job, it is really difficult to make payments unless you've saved over time. But, just like that proverbial dichotomy between the ant and the grasshopper, we want to be sure that we're helping the ant and not necessarily the grasshopper.

So, I'll be interested today to hear how these programs are operating, what steps are being taken to help those who actually deserve it, what measures are built in to root out fraud and who is actually bearing the cost of these extraordinary measures in particular, the taxpayers and the investors. Because I think they deserve to have accountability in this area. Thank you very much.

[The prepared statement of Mr. Atkins follows:]

ELIZABETH WARREN, CHAIR
KEN SALAZAR
PAUL S. ATKINS
RICHARD H. NEIMAN
DAMON SILVERS

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Congress of the United States

CONGRESSIONAL OVERSIGHT PANEL

Opening Statement of Paul S. Atkins

Congressional Oversight Panel Field Hearing
Foreclosure Mitigation Efforts Under the Troubled Asset Relief Program

Philadelphia, Pennsylvania
September 24, 2009

First, I also thank all of the witnesses who are appearing today at this hearing, some upon very short notice.

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I welcome the opportunity to learn from our panels of witnesses. This is an area that, like much of what has been done by the United States Government in the past year, is fraught with moral hazard if poorly implemented. The interest, of course, relates to those who may be in trouble through the interaction of bad luck, a bad economy, and bad personal circumstances. If you are out of a job, it is difficult to make payments unless you have saved over time.

Still, the truth remains that the vast majority of borrowers are making payments on time. Many of these borrowers are themselves struggling and stretching and scrimping in the current environment to live up to their obligations, to pay their taxes, and to keep their property in good condition. In the proverbial dichotomy of the thrifty ant and spendthrift, risk-taking grasshopper, we need to be careful not to bail out the grasshopper.

I will be interested today to hear how these programs are operating, what steps are being taken by the Government, what measures are built in to root out fraud, and who is bearing the costs of any extraordinary measures. Since the costs are mostly borne by taxpayers and investors, for their sake, we need to ensure accountability.

Mr. NEIMAN. Mr. Silvers.

STATEMENT OF DAMON SILVERS, DEPUTY CHAIR, CONGRESSIONAL OVERSIGHT PANEL

Mr. SILVERS. Thank you, Richard and good morning. It's a pleasure to be here in Philadelphia, which is the city where I lived as a child. I mention this not as an exercise in mere nostalgia, but because we are here to talk about home foreclosures. An event in which banks, servicers, investors, courts, and ultimately officers of the law come together to remove a family from their home and their community and their children from their rooms and from their schools and their friends.

I said this at our hearing in February on this subject and I will say it again. The fact that a lender can throw a family out of their home is a necessary part of a system of lending, but it is also an act of emotional violence and economic destruction. Foreclosed homes typically yield less than forty cents on the dollar to lenders while destabilizing neighborhoods. Foreclosure should be the last option after everything else fails.

Before I turn to those economic consequences, I just want to say that I still see this issue through the eyes of the eight-year old I was here on Hamilton Street in Philadelphia and how I would have felt if we had suddenly been forced out of our house. Public policy should be about minimizing foreclosures for the same reasons it should be about minimizing child abuse or protecting the public health or educating our children. Others may disagree. Some may see no particular reason to view a home foreclosure any differently than any other failed financial transaction. Some may feel that the children should suffer from the sins of the parents. Some may feel that before the government can act to help a family, it should undertake an exhaustive inquiry into that family's morality, business judgment, and general character, for fear that some of the money that would otherwise go indiscriminately to the stock and bond holders of our large banks might be tragically and improperly diverted to a less than upstanding homeowner.

The remainder of my statement is addressed to those who share one or more of those views. For the reality today is that the continuously escalating mortgage foreclosure crisis threatens to overwhelm the entire effort to stabilize our financial system in the interest of broader economic recovery. This is the intersection of morality and economics.

Current estimates from the Mortgage Bankers Association are that so far we've had between five and six million foreclosures, which sounds big until you recognize that this is less than half of what is projected to occur between now and the end of 2010. This tidal wave appears to be the result of a combination of predatory lending, a collapse of underwriting in the bubble, rising unemployment, and the inability of homeowners with negative equity to refinance. This tidal wave threatens a vicious cycle in which foreclosures exert downward pressure on housing prices, falling real estate values and defaulted mortgages push down on bank capital, weakened banks pull back on lending, causing business activity to decline and unemployment to rise, feeding more defaults.

This panel takes up the issue of foreclosure prevention—as my colleague Paul Atkins said—a statutorily mandated purpose of both the TARP and this panel against the continuing mystery of why lenders and processors are unable to renegotiate troubled mortgages at scale, when it has long been clear that such restructuring is generally in both parties' interest. Despite the enduring nature of that mystery, two things have changed since our panel held its last focused hearing on foreclosures. The first is that the Obama Administration's plan for prevention has been in operation. The second is that the driving force appears to have shifted from predatory loans to unemployment and negative equity. The Administration's commitment to help families is admirable. However, it appears that without addressing these issues of unemployment and negative equity, it may not be effective. I continue to believe there is no way to do this on a national scale without allowing judges to do so in bankruptcy.

Finally, the problem of mass foreclosures is the other side of the coin of weak bank balanced sheets. So long as we make our policy centered on pretending we have strong banks, we may not be able to admit that these loans have to be written down if we are to end up with viable housing markets and stop the downward spiral.

As Superintendent Neiman has said, we have outstanding examples of innovative approaches here in Philadelphia and Pennsylvania. The program Judge Rizzo has been leading, the MHA Program at the state level, I think is a large part of why we are here today. We have an outstanding set of panels and hopefully it will shed light on some of these questions and how we can make this epidemic of foreclosures a thing of the past. Thank you.

[The prepared statement of Mr. Silvers follows:]

ELIZABETH WARREN, CHAIR
REP. JEB HENSARLING
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CONGRESSIONAL OVERSIGHT PANEL

Opening Statement of Damon Silvers

Congressional Oversight Panel Field Hearing
Foreclosure Mitigation Efforts Under the Troubled Asset Relief Program

Philadelphia, Pennsylvania
September 24, 2009

Good morning. Again, I want to express my thanks to our staff and to my colleague Richard Neiman for their hard work on this hearing.

It is a pleasure to be in Philadelphia, the city where I lived as a child. I mention this not as an exercise in mere nostalgia, but because we are here to talk about home foreclosures—an event in which banks, servicers, investors, courts and ultimately officers of the law work together to remove a family from their home, their community, their children from their rooms and from their schools and their friends.

I said this at our hearing in February on this subject, and I will say it again, the fact that a lender can throw a family out of their home is a necessary part of a system of lending—but it is also an act of emotional violence and economic destruction. Foreclosed homes typically yield less than 40 cents on the dollar to lenders, while destabilizing neighborhoods. Foreclosure should be the last option after everything else fails.

Before I turn to those economic consequences, I just want to say that I still see this issue through the eyes of the eight year old I was here on Hamilton Street in Philadelphia, and how I would have felt if we had suddenly been forced out of our house. Public policy should be about minimizing foreclosures for the same reasons it should be about minimizing child abuse or protecting the public health or educating our children.

Others may disagree. Some may see no particular reason to view a home foreclosure any differently than any other failed financial transaction. Some may feel that the children should suffer from the sins of the parent. Some may feel that before government can act to help a family, it should undertake an exhaustive inquiry into their morality, business judgment and general character, for fear that some of the money that would otherwise go indiscriminately to the stock and bond holders of our large banks might be improperly diverted to a less than upstanding homeowner.

The remainder of my opening statement is addressed to those who share one or more of these views. For the reality today is that the continuously escalating mortgage foreclosure crisis

threatens to overwhelm the entire effort to stabilize our financial system in the interests of broader economic recovery. This is the intersection of morality and economics.

Current estimates from the Mortgage Bankers Association are that so far in the financial crisis there have been between 5 and 6 million foreclosures, a large number until you understand that it is less than half of the 12-13 million foreclosures that are expected to have occurred by just the end of 2010. This tidal wave of foreclosures appears to be the result of the combination of predatory lending and the collapse of underwriting in the bubble, combined with rising unemployment driving defaults on conforming loans, and the inability of homeowners with negative equity to refinance mortgages with reset provisions or balloon payments.

This very tidal wave of mortgages threatens a vicious cycle—in which foreclosures exert downward pressure on housing prices, falling real estate values and defaulted mortgages push down on bank capital, weakened banks pull back on lending, causing business activity to decline and unemployment to rise, feeding more defaults.

This Panel takes up the issue of foreclosure prevention, a statutorily mandated purpose of both the TARP and this Panel, against the continuing mystery of why lenders and processors are unable to renegotiate troubled mortgages at scale, when it has long been clear that such restructurings are generally in both parties' interests.

Despite the enduring nature of that mystery, two things have changed since our Panel held its last focused on foreclosures. The first is that the Obama Administration's plan for foreclosure prevention has been in operation, the second is the driving force behind foreclosures appears to be shifting from predatory loans and resets to the toxic impact of unemployment and negative home equity.

The Administration's commitment to act to help families facing foreclosure is admirable. However, it appears without addressing the problems of unemployment and negative equity, this effort may not be effective. I continue to believe there is no way to do this on a national scale without allowing judges to alter mortgages in bankruptcy.

Finally, the problem of mass foreclosures is the other side of the coin of weak bank balance sheets. So long as we make our policy centered on pretending we have strong banks, we may not be able to admit that these loans have to be written down if we are to end up with viable housing markets and stop the downward spiral I mentioned before.

Here in Philadelphia, local leaders and local judges have come up with innovative approaches to address the problems of unemployment, negative equity, and predatory lending that lead to foreclosures on owner occupied homes. I am very much looking forward to hearing about these model mediation processes.

We have an outstanding set of panels today that hopefully will shed light on the continuing mortgage epidemic, and how it can at last be made a thing of the past. I look forward to our hearing today.

Mr. NEIMAN. Now, for our first panel of the morning. We are happy to have three distinguished gentlemen who share responsibility for running the Making Homes Affordable Program of this Administration. I'm pleased to welcome Seth Wheeler, Senior Advisor in the U.S. Treasury Department, Eric Schuppenhauer, Senior Vice President and Program Executive for the Homeowners' Affordability and Stability Plan at Fannie Mae and Edward Golding, Senior Vice President, Economics and Policy at Freddie Mac.

Mr. Wheeler would you like to start with your opening statements?

STATEMENT OF SETH WHEELER, SENIOR ADVISOR, U.S. DEPARTMENT OF THE TREASURY

Mr. WHEELER. I would, thank you. Members Neiman, Silvers and Atkins, thank you for the opportunity to testify today about the Treasury Department's Making Homes Affordable Program and our efforts to stabilize the U.S. housing market and support homeowners. I'd also like to thank Chair Warren and Representative Hensarling for this invitation, though they're not able to be here today. I'd also like to recognize some of the housing counselors and advocates that will be on the next panel, who have been important partners in helping us understand how we can improve our efforts, as well as the servicers who are key in implementing it.

We announced Making Homes Affordable or MHA in February. A plan to stabilize the U.S. housing market, support loan mortgage rates and offer assistance to millions of homeowners by reducing mortgage payments and preventing avoidable foreclosures. There are clear signs that MHA is already having a meaningful impact. However, as with any new program of this size and complexity MHA faces a number of challenges. The Administration is working to address these challenges and to expand and improve the program going forward.

The Making Homes Affordable Program includes three key elements. First, broad support for the GSEs—Fannie and Freddie—to support mortgage refinancing and affordability across the market. We have supported loan mortgage rates by strengthening confidence in Fannie Mae and Freddie Mac, including through a $200 billion increase in the Stock Purchase Agreements and continued support for market liquidity.

Second, we increased refinancing flexibilities for the GSEs, providing more homeowners with an opportunity to refinance to lower monthly payments. Lower rates have enabled nearly 300 million borrowers with GSE loans to refinance since the announcement of the Administration's comprehensive housing plan.

Third, a key part of the Administration's broad housing plan is a comprehensive $75 billion program to lower monthly mortgage payments for borrowers and providing modifications on a scale never before previously attempted. On launching the modification program, we estimated the program could help as many as 3 to 4 million borrowers through 2012 targeting a run rate of 20,000 to 25,000 trial modifications starts per week.

Six months into the program, there are clear signs that the program is working. Over 57 servicers have signed up for the program. More than 85 percent of loans in the country are now covered by

the program. As of the end of August, servicers had approved and extended over 570,000 trial modifications offers. Also, as of the end of August, over 360,000 trial modifications were already underway.

At the beginning of October, we will report on substantial progress that has been made in September. We are above our target pace of 20,000 to 25,000 trial modifications started per week and are on track to reach our goal of 500,000 trial modification starts by November 1st, but we can do better.

On July 28th we held a meeting with servicers at Treasury where we told them that they need to ramp up modifications and treat borrowers better. We asked servicers to commit to doing better. Servicers must add more staff than previously planned, expand call center capabilities, provide a process for borrowers to escalate servicer performance and decisions, bolster training, enhance online offerings and send additional mailings to potentially eligible borrowers.

I think we are making key progress here. We were hitting 20,000 modification starts prior to that meeting and we've bumped up that number by 50 percent to over 30,000 since that meeting, but there is more to do.

We are working with servicers and Fannie Mae to streamline application documents and develop web tools for borrowers. We are committed to transparency and accountability.

First, on August 4th we began publicly reporting servicer specific results on a monthly basis. The second public report was published earlier this month. These reports provide a transparent and public accounting of individual servicer performance. In the future, we'll expand the content of these reports to cover additional areas.

Second, we are working to establish specific operational metrics to measure the performance of each servicer and will include these metrics in our public reports.

Third, servicers must report the reason for modification denials, both to Treasury and to borrowers.

Fourth, we asked Freddie Mac, as a compliance agent, to develop a "second look" process pursuant to which Freddie Mac will audit a sample of MHA modification applications that have been denied. The "second look" process began on August 3rd and is designed to minimize the likelihood that borrower applications are overlooked or inadvertently denied.

In addition, we are improving borrower outreach, which is essential to the success of the program. We have launched a consumer focused website, established a call center for borrowers and launched a series of borrower outreach events in cities facing high foreclosure rates across the country.

President Obama's Housing Stabilization Plan has made significant progress in assuring the flow of mortgage credit, bringing down mortgage rates and providing many families with the second chance to stay in their homes. We are on track to meet the goals we set for the program. To reach 500,000 trial starts by November 1st and offer help to 3 to 4 million borrowers by the end of 2010. But, we can and we must redouble our efforts to broaden the reach of these programs.

We look forward to working with you and your staff to achieve these goals. Thank you.

[The prepared statement of Mr. Wheeler follows:]

Seth Wheeler, Senior Advisor
U.S. Department of the Treasury
Written Testimony
Stabilizing the Housing Market
Congressional Oversight Panel
September 24, 2009

Chair Warren, Representative Hensarling, members Neiman, Silvers and Atkins, thank you for the opportunity to testify today about the Treasury Department's comprehensive initiatives to stabilize the US housing market and support homeowners.

Introduction

A strong housing market is crucial to a sustained economic recovery. This Administration has acted quickly and aggressively to confront the economic challenges facing our economy and our housing market. Today, I want to provide an update on Making Home Affordable as well as other Treasury and Administration programs designed to strengthen the housing sector and support a sustained economic recovery.

The Administration's efforts to date to address the housing crisis have been substantial. There are clear signs that our efforts are having a meaningful impact. However, as with any new program of this size and complexity, Making Home Affordable faces a number of challenges. The Administration is working to address these challenges and to expand and improve the MHA program going forward.

I will discuss the following five areas in my testimony below: (1) MHA program design and goals, (2) results to date, (3) program implementation, (4) current challenges, and (5) program improvements and next steps.

(1) MHA Program Design and Goals

Within a month of taking office, on February 18, the Administration announced Making Home Affordable, a comprehensive plan to stabilize the U.S. housing market, support low mortgage rates and keep millions of homeowners in their homes.
Making Home Affordable has three key parts:

First, Making Home Affordable includes broad support for the GSEs to support the strength and security of the mortgage market and to help maintain mortgage affordability. To this end, on Feb. 18, the Administration increased its funding commitment to Fannie Mae and Freddie Mac by expanding its commitment to the GSEs under the Preferred Stock Purchase Agreements by $200 billion.

Second, Making Home Affordable includes increased refinancing flexibilities for the GSEs, providing more homeowners with an opportunity to refinance their mortgages to lower monthly payments. These new flexibilities include the Home Affordable Refinance Program (HARP) which provides new refinancing opportunities for underwater borrowers.

Third, Making Home Affordable includes the $75 billion Home Affordable Modification Program (HAMP) which includes $50 billion in Troubled Asset Relief Program funding, a comprehensive mortgage modification plan lowering monthly mortgage payments for borrowers and preventing avoidable foreclosures.

HAMP includes several additional components designed to improve the reach of the first lien modification program, and provide assistance to borrowers unable to benefit from HAMP modifications. These components include the Second Lien Program, incorporation of Hope for Homeowners Refinances, Home Price Decline Protection Incentives and the Foreclosure Alternatives Program (facilitating short sales and deeds-in-lieu of foreclosure for borrowers unable to complete HAMP modifications).

Now I will discuss the Home Affordable Modification Program in more detail.

HAMP Guiding Principles

The Home Affordable Modification Program is built around three core concepts, designed to help the large segment of at-risk homeowners where foreclosure is both avoidable and where the homeowner wants to stay in the home.

First, the program focuses on affordability, in an effort to ensure that borrowers who hope to remain in their homes will be able to afford the modified mortgage payment structure. Every modification under the program must lower the borrower's monthly mortgage payment to 31percent of the borrower's monthly gross income. The borrowers' modified monthly payment of 31 percent DTI will remain in place for five years, provided the borrower remains current. We believe HAMP creates newly modified fixed-rate loans that homeowners can both afford and understand.

Second, HAMP's pay-for-success structure aligns the interests of servicers, investors and borrowers in ways that encourage loan modifications that will be both affordable for borrowers over the long term and cost-effective for taxpayers.

HAMP offers "pay for success" incentives to servicers, investors and borrowers for successful modifications. Servicers receive an up-front payment of $1,000 for each successful modification after completion of the trial period, and "pay for success" fees of up to $1,000 per year for three years, provided the borrower remains current. Homeowners may earn up to $1,000 towards principal reduction each year for five years if they remain current and pay on time. HAMP also matches reductions in monthly payments dollar-for-dollar with the lender/investor from 38 percent to 31 percent DTI. This requires the lender/investor to take the first loss in reducing the borrower payment down to a 38 percent DTI, requiring lenders/investors to share in the burden of achieving affordability. To encourage the modification of current loans expected to default, HAMP provides additional incentives to servicers and lenders/investors after current loans are modified.

Third, participating servicers are required to evaluate every eligible loan using a standard net present value (NPV) test. If the test is positive, the servicer must modify the loan. Under HAMP's loan modification guidelines, mortgage servicers are prevented from "cherry-picking" which loans to modify in a manner that might deny assistance to borrowers at greatest risk of foreclosure.

HAMP Goals and Eligible Population

The Administration expects that HAMP can help millions of at risk homeowners remain in their homes. Prior to launching the program, we estimated that the program could offer help to as many as 3-4 million borrowers through the end of 2012.

Today, there are many borrowers potentially facing foreclosure or in some stage of foreclosure. These homeowners are struggling for a number of reasons, many of them outside the control of the borrower:

- Some were put in unsustainable loans
- Many have seen their incomes decline, while
- Some just bought too much home in the hopes of being able to refinance or sell after further appreciation.

HAMP is intended to help an important segment of these borrowers who are currently at-risk of foreclosure or who will be at risk prior to the end of 2012. The program is targeted to help homeowners who:

- Occupy their home as their primary residence,
- Who have a loan balance less than $729,750,
- Took out their mortgage prior to Jan. 1, 2009,
- Whose mortgage payment is greater than 31% of their gross monthly income, and
- Who can afford to make a reasonable payment on a modified mortgage.

Among this target population, we also expected that there would unfortunately still be some borrowers who would not respond to outreach efforts or who would not act on trial modification offers when extended, though every effort was planned to minimize this number.
On balance, the Administration estimated that this segment of at-risk borrowers who could be offered help through a modified payment under HAMP could be as high as 3-4 million. While it is critical to reach as many of these borrowers as early in the program as possible, the program will continue offering help through the end of 2012; in order to reach that goal, we targeted a run rate of 20,000-25,000 trial modification starts per week.

For the millions of homeowners who are eligible for HAMP, the program will provide a critical opportunity to stay in their homes. It will bring relief to the communities hard hit by foreclosures. It will provide peace of mind to families who have barely managed to stay current on their mortgages or who only recently have fallen behind on payments. It will help stabilize home prices for all American homeowners and, in doing so, aid the recovery of the U.S. economy. However, it will not reach those outside of the eligibility criteria and was not designed

to have a reach broader than the 3-4 million goal articulated from the start of the program. Even with HAMP expected to help millions of homeowners remain in their homes, we unfortunately should still expect millions of foreclosures for the reasons mentioned above, as President Obama noted when he launched the program in February.

(2) Results To Date

There are clear signs that Making Home Affordable and other Administration programs supporting the housing market are having a meaningful impact.

Since announcement of the Administration's broad housing plan on Feb. 18:

- Low rates have enabled nearly 3 million borrowers with GSE loans to refinance
- Fifty-seven servicers have signed up for the HAMP program
- More than 85% of loans in the country are now covered by the HAMP program
- As of the end of August, servicers had extended over 570,000 HAMP trial modification offers
- Also as of the end of August, over 360,000 HAMP trial modifications were underway

With the next report that will be issued at the beginning of October, we will further provide an update on the substantial progress that has been made in September.

We are above our target pace of 20,000 to 25,000 trial modifications started per week and are on track to reach or exceed our goal of 500,000 modifications started by November 1.
Effective implementation is essential to ensure that we can reach as many eligible and qualified borrowers as possible under our program. I outline our implementation efforts below.

(3) Program Implementation

As noted, effective implementation is essential to success of HAMP. There has been significant progress in implementing the program, but, as discussed, there is much additional work to do in further improving both implementation and borrower experience.

Together the GSEs and participating servicers have halted foreclosure sales on all properties until they can be screened for HAMP. Servicers have ramped up capacity and outreach, created MHA specific websites, call centers and mailing campaigns. As of the end of August, servicers report that nearly 2 million requests for financial information have been sent to borrowers potentially eligible for the HAMP program.

In the space of just about six months, the Administration has built the infrastructure to support a $75 billion modification program, including, for example, establishing a data reporting system, accounting and internal control procedures, staffing up the Homeownership Preservation Office, through compliance agent Freddie Mac, establishing a comprehensive compliance system, working with Fannie Mae to establish a borrower call center and borrower outreach events,

launching two websites - one for consumers and one for servicers - and publishing monthly servicer-by-servicer progress reports.

The HAMP public report identifies a population of 2.9 million borrowers who might be eligible for HAMP. As discussed above, this is only a subset of borrowers at risk of foreclosure. For example, any loan on an investor owned, rather than owner occupied property, would not be included in the 2.9 million. Within the 2.9 million, not every borrower will qualify. Again, many will not qualify because their mortgage payment is already less than 31% of their income, or because the NPV tests yields a negative result or for other reasons.
Of the remaining population of borrowers that may be eligible for HAMP, borrowers might not receive modifications because they do not respond to outreach efforts, or because servicers are not able to contact them. This is a group of borrowers who can be helped through effective program implementation. Many of the program's borrower outreach efforts are outlined below in the discussion on program improvements.

(4) Current Challenges

As with any new program with the size and complexity of HAMP, the program faces a number of challenges, which the Administration is addressing aggressively, as outlined below.

On July 9, as a part of the Administration's efforts to expedite implementation of HAMP, Secretaries Geithner and Donovan wrote to the CEOs of all of the servicers currently participating in the program. In this joint letter, they noted that "there appears to be substantial variation among servicers in performance and borrower experience, as well as inconsistent results in converting trial modification offers into actual trial modifications." They called on the servicers "to devote substantially more resources" to the program in order for it to fully succeed.

The joint letter to participating servicers also requested that the CEOs designate a senior liaison, authorized to make decisions on behalf of the CEO, to work directly with us on all aspects of MHA and attend a program implementation meeting with senior HUD and Treasury officials on July 28, 2009. At that meeting, the Administration asked servicers to substantially expand servicer capacity, help promote transparency and accountability at both the program and borrower level, and improve borrower outreach and the overall borrower experience.

After that meeting, the weekly rate of trial modification starts increased by nearly 50%, from 22,000 to more than 30,000 on average.

We continue to address the challenges outlined in the July 9 letter and discussed during the July 28 meeting. As an increasing number of borrowers reach the end of their trial periods, an additional challenge the program will face is conversion of trial modifications to official modifications; this will be the primary focus of near-term discussions with servicers and is of critical importance to the program and the Administration. Accordingly, the Administration is devoting significant resources to helping as many borrowers as possible submit all required documentation and successfully convert their trial modifications to final modifications.

(5) Program Improvements and Next Steps

The Administration is focused on program improvements in three key areas: capacity, transparency and borrower outreach.

Expanding Servicer Capacity

We are taking a number of steps and working with servicers to expand nationwide capacity to accommodate the number of eligible borrowers who can receive assistance through HAMP. I highlight some key measures below:

One, we have asked that all servicers move rapidly to expand servicing capacity and improve the execution quality of loan modifications. This will require that servicers add more staff than previously planned, expand call center capacities, provide a process for borrowers to escalate servicer performance and decisions, bolster training of representatives, enhance on-line offerings, and send additional mailings to potentially eligible borrowers

At the meeting on July 28, servicers committed to reaching a cumulative target of 500,000 trial modifications started by November 1, 2009. We are on track to meet that goal and have made significant progress in reaching implementation objectives outlined during our July 28 meeting.

Two, we are working with servicers and Fannie Mae to streamline application documents and develop a web portal, which can serve as a centralized point for modification applications, and for borrowers to check the status of their applications.

Transparency and Accountability

As Secretary Geithner has noted, we are committed to transparency in all of Treasury's programs. Accordingly, Treasury is focused on continued transparency and servicer accountability to maximize the effectiveness of HAMP. Specifically, we have taken four additional concrete steps to enhance transparency in the program:

One, on August 4, we began publicly reporting servicer-specific results on a monthly basis. The second public report was published on September 9. The third public report will be published in October. These reports provide a transparent and public accounting of individual servicer performance by detailing the number of trial modification offers extended and the number of trial modifications underway. The reports will eventually include the number of official modifications offered and the long-term success of modifications as well.

Two, we are working to establish specific operational metrics to measure the performance of each servicer. These performance metrics are likely to include such measures as average borrower wait time in response to inquiries and response time for completed applications. We plan to include these metrics in our monthly public report.

Three, we are establishing denial codes that will require servicers to report the reason for modification denials, both to Treasury and to borrowers. This will enhance Treasury's ability to evaluate the program and consider options for further program enhancement.

Finally, on July 28 we asked Freddie Mac, in its role as compliance agent, to develop a "second look" process pursuant to which Freddie Mac will audit a sample of MHA modification applications that have been declined.

This "second look" process began in August, and is designed to minimize the likelihood that borrower applications are overlooked or that applicants are inadvertently denied a modification.

In addition, the "second look" program is examining servicer non-performing loan (NPL) portfolios to identify eligible borrowers that should have been solicited for a modification, but were not.

Borrower Outreach and Fraud Prevention

The Administration recognizes the importance of borrower outreach and is committing significant resources, in partnership with servicers, to reach as many borrowers as possible. Here, the Administration has taken a number of steps.

Treasury, working with Fannie Mae and an interagency team has established a consumer focused website for borrowers, www.makinghomeaffordable.gov, with self-assessment tools for borrowers to evaluate potential eligibility in the MHA program. The website has over 3.4 million page views. Treasury and Fannie Mae have also developed a second website to provide program information to servicers, www.hmpadmin.com, to provide online access to program information for participating servicers.

Treasury has worked with an interagency team to establish a call center for borrowers to reach HUD approved housing counselors, so that borrowers are able to receive direct information and assistance in applying for the HAMP program. The Administration is continuing to build capabilities of the HOPE hotline to escalate borrower complaints, and link borrowers to HUD approved housing counselors.

Working closely with Fannie Mae, Treasury has launched an effort to hold foreclosure prevention workshops and borrower outreach events in cities facing high foreclosure rates across the country.

These foreclosure prevention events include counselor training forums where representatives from Treasury, Fannie Mae, Freddie Mac, HUD and other agencies provide information and training to local housing counselors and non-profit groups, leveraging local resources to expand the reach of the HAMP program. We expect to visit 10 hard hit markets by October 1, and will continue our outreach efforts throughout the fall and the year to come.

The Administration has also expanded the efforts of the federal government to combat mortgage rescue fraud and put scammers on notice that we will not stand by while they prey on homeowners seeking help under our program. On September 17, Treasury Secretary Tim Geithner hosted Attorney General Eric Holder, Housing and Urban Development (HUD) Secretary Shaun Donovan, Federal Trade Commission (FTC) Chairman Jon Leibowitz, Financial Crimes Enforcement Network (FinCEN) Director Jim Freis and attorneys general from 12 states to discuss emerging trends and proactive strategies to combat fraud against consumers in the housing markets as well as best practices to bolster coordination across state and federal agencies.

On one final note given the purpose of today's hearing, let me discuss how we have structured HAMP to help ensure that borrowers do not slip through the cracks.

First, the contracts signed by servicers to participate in the Home Affordable Modification Program require servicers to use reasonable efforts to contact borrowers facing foreclosure to determine their eligibility for HAMP, including in-person contact at the servicer's discretion. While we have left the precise method of contact to the discretion of the servicer, we believe that HAMP's design provides servicers with strong incentives to make contact with distressed borrowers.

Second, HAMP requires participating servicers to screen all borrowers for eligibility for a HAMP modification before proceeding to foreclosure sale.

Third, Freddie Mac's Second Look Program is designed to ensure that borrowers are not inadvertently denied modifications and that applications by eligible borrowers are not overlooked.

Conclusion

In less than six months, the Administration has accomplished a great deal and helped homeowners across the country. But we recognize the continued commitment needed to help American families during this crisis and will aggressively continue to build on our progress to date.

Sustained recovery of our housing market is critical to lasting financial stability and promoting a broad economic recovery.

We look forward to working with you to help keep Americans in their homes, restore stability to the US housing market and ensure a sustained economic recovery.

Thank you. I look forward to your questions.

Mr. NEIMAN. Thank you very much for keeping right on time. Mr. Schuppenhauer.

STATEMENT OF ERIC SCHUPPENHAUER, SENIOR VICE PRESIDENT AND CFO/PROGRAM EXECUTIVE, HOMEOWNER AFFORDABILITY AND STABILITY PLAN, FANNIE MAE

Mr. SCHUPPENHAUER. I appreciate the opportunity to participate in today's hearing on behalf of Fannie Mae. In my opening statement I'll briefly touch on the main points of the testimony we've submitted today.

First, as the Department of Treasury's Administrator for the Home Affordable Modification Program, our principal activities include, implementing the program guidelines and policies, preparing the requisite forms, tools and training, to instruct mortgage servicers on how to modify mortgages under the program; serving as paying agent to calculate subsidies and compensation under the program; serving as record keeper for executed loan modifications and program administration; coordinating with Treasury and other parties to achieve the program's goals.

As Mr. Wheeler has testified, the program is making progress and several extensions of the program are in the works or underway.

To make further progress, we're focused on two main challenges. First, we're helping servicers to ramp up their operations to modify loans under the HAMP program. We are providing information and resources that servicers need to implement the program through a special website for servicers as well as through our own business-to-business website for Fannie Mae servicers. We are also communicating all aspects of the program to servicers during both the initial rollout and as program parameters evolve. And, we are helping servicers implement the program and integrate with new systems and processes deployed for it. We work closely with the servicers every single day. We setup a servicer support call center. We have conference calls every week with the leadership of participating servicers. And, we provide servicers with ongoing training, both web-based and in person.

Our second main focus is on expanding borrower awareness of the program. For example, we helped Treasury develop a website and a call center where borrowers can find out whether they're eligible for the program and find out more details. This website has received more than 36 million page views since its launch in March 2009. The call center offers free HUD certified counseling if borrowers need in-depth help with their case. The call center has received hundreds of thousands of calls since it launched in June 2009. We've also produced consumer oriented direct mail, flyers and brochures describing the program. Also, we're expanding our program tracking system to collect data on borrowers who did not obtain a modification to find out how to further assist them. And, we're supporting Treasury's efforts to train counselors so they can work more effectively with borrowers about the program.

In addition, we're continuing to work with Treasury on a multi-city borrower outreach campaign that Mr. Wheeler mentioned. The goal is to draw struggling homeowners to events where they can meet with counselors and servicers and get the help they need. The

events we've held so far drew nearly 10,000 borrowers that were in need of help. In two weeks, we'll be right here in Philadelphia as we continue to target the hardest hit markets from a foreclosure standpoint.

On top of our support of Treasury's efforts, Fannie Mae also has participated in over 140 foreclosure prevention events in roughly 70 markets in the United States with a range of public, private, nonprofit and industry partners. As we carry out the loan modification program, I also wish to note that through August we've entered into 133,000 HAMP trial modifications, just on Fannie Mae loans. We've also completed nearly 88,000 loan workouts outside the HAMP program to help our borrowers avoid foreclosure.

Finally, I'd like to touch on what we are doing to help borrowers refinance their homes. Last month, FHFA, our regulator reported that Fannie Mae and Freddie Mac have refinanced more than 2.9 million loans this year through July. Of those, Fannie Mae has refinanced about 1.7 million loans. We've also made progress carrying out the Home Affordable Refinance Program to help our borrowers who saw their equity disappear as home prices fell. Previously, many of these homeowners were unable to refinance. Thanks to this program, borrowers with loan-to-value ratios above 80 percent and up to 125 percent can refinance for a better loan and a better chance to keep their homes. To support this program, we built a loan lookup tool on Fannie Mae's website where borrowers can determine whether we own their loan and whether they can get refinancing assistance. We also streamlined the loan process and we offered new refinance flexibilities on credit scores, mortgage insurance and appraisals to support the Home Affordable Refinance Program.

In closing, the Making Home Affordable Program has provided powerful tools to help borrowers modify or refinance their mortgages. The main program elements are now in place and we are steadily helping more borrowers. Clearly however, we have much work to do and progress to make. Fannie Mae sees this as a critical responsibility and we'll get the job done.

[The prepared statement of Mr. Schuppenhauer follows:]

Statement of Eric J. Schuppenhauer
Senior Vice President, Fannie Mae
Hearing of the Congressional Oversight Panel
Philadelphia, PA, September 24, 2009

Members of the Congressional Oversight Panel, thank you for the opportunity to discuss Fannie Mae's work to carry out the Administration's Making Home Affordable Program and other efforts to help borrowers avoid foreclosure and refinance their mortgages.

My name is Eric Schuppenhauer, and I am Senior Vice President and Program Executive for the Homeowner Affordability and Stability Plan at Fannie Mae. In this role, I help to lead Fannie Mae's efforts to carry out the Making Home Affordable Program, working closely with the U.S. Department of the Treasury, our regulator, the Federal Housing Finance Agency, Freddie Mac and other partners in this important effort. Fannie Mae's Chairman of the Board Phil Laskawy and President and Chief Executive Officer Mike Williams have made this program a significant priority, and we have moved quickly and aggressively to carry it out.

Today I would like to bring you up to date on our activities to carry out the two elements of the program, which are Home Affordable Modification, or HAMP, and Home Affordable Refinance, or HARP.

Efforts and Progress Under HAMP

First, as we work to modify our own loans, the Department of Treasury has appointed Fannie Mae to serve as administrator for HAMP, which is designed to modify both GSE and non-GSE loans. In our role as program administrator, our principal activities include the following:

- Implementing the guidelines and policies for the program and preparing the requisite forms, tools and training, teaching the servicers how to modify loans;
- Serving as paying agent to calculate subsidies and compensation consistent with program guidelines;
- Serving as record-keeper for executed loan modifications and program administration;
- Coordinating with Treasury and other parties toward achievement of the program's goals;
- And performing other tasks as directed by Treasury from time to time.

As Mr. Wheeler has testified, the program is making progress. We have signed contracts with 57 mortgage servicers, including the five largest, and now 85 percent of the potentially eligible loans in America are covered by HAMP servicers. As disclosed in public reporting on September 9, 2009:

- Servicers have mailed 1.9 million solicitations to borrowers seeking their financial information to begin the process;
- Servicers have also mailed out more than 570,000 trial modification offers;
- And, more than 360,000 trial modifications currently are underway. Of these, Fannie Mae has entered 133,000 of our borrowers into trial modifications.

A few weeks have now passed since that public report and the weekly volumes for trial modifications remain steady, if not slightly higher.

To help additional homeowners, several extensions of the program are in the works or underway. These include:

- Modifications of second-lien loans;
- Streamlined short-sales and deeds-in-lieu of foreclosure;
- And home price decline protections to encourage modifications in hard-hit areas.

In order to significantly increase the number of modifications, we are focused on two fundamental challenges. We are seeking to help servicers implement the program in a more effective manner. At the same time, we're focused on helping borrowers who need help taking advantage of the program.

As Mr. Wheeler testified, a crucial goal is for servicers to ramp up their operations to modify loans under HAMP. We are helping servicers in a number of ways:

- Providing information and resources servicers need to implement the program through a special website called HMPadmin.com, as well as through our business-to-business website for Fannie Mae servicers;
- Communicating all aspects of the program to servicers – both the initial rollout and as program parameters evolve;
- And helping servicers implement the program and integrate with new systems and processes deployed for it.

Our servicer support includes having Fannie Mae personnel dedicated to each participating servicer, working closely together, day to day, to help them implement the program. We also established a servicer support call center in Dallas, we conduct weekly conference calls with the leadership of participating servicers, and we provide training through live web seminars, recorded tutorials, checklists and job aids on the web site.

We expect to see increased activity under the program in the coming months as servicers gain experience with the program, borrower awareness grows and we implement new updates aimed at expanding the program's reach.

On the other side of the equation, we are helping more borrowers take advantage of the program.

What we have learned through experience and research is that not every borrower is willing or able to take part in the program. Also more than a million delinquent loans are ineligible, including those on investor-owned properties or those that exceed the conforming loan limit.

That said, many eligible borrowers who need help are not yet taking advantage of the program. So we are taking a number of steps to reach them and otherwise increase understanding of – and involvement in – the program. For example:

- We supported Treasury in the development of a borrower website – MakingHomeAffordable.gov – where borrowers can determine their basic eligibility for the modification and refinance programs. Since it was launched in March, the website has received more than 36 million page views.
- We leveraged the Homeowner's HOPE Hotline to help Treasury implement a call center that borrowers can contact to determine their basic eligibility for the Making Home Affordable Program and to access free HUD-certified housing counseling if they are in need of more in-depth help with their case. Since launched on June 2, the call center has received hundreds of thousands of calls.
- We've produced consumer-oriented direct mail, flyers and brochures.
- We're conducting consumer market research to understand why borrowers do or do not respond to the program in order to continue improving outreach efforts.
- We're expanding our program tracking system to collect data on borrowers who did not qualify for – or complete – a modification to find out how to further assist them.
- And we're supporting Treasury's efforts to train counselors across the country so they can more effectively work with borrowers.

In addition, as Mr. Wheeler noted, we are working closely with Treasury on a multi-city borrower outreach campaign in hard-hit communities, with a goal of drawing struggling homeowners to events where they can meet with counselors and servicers and get help. To date, we have supported Treasury's borrower outreach efforts in several markets – Miami, Sacramento, Las Vegas, Phoenix, Chicago, Washington, DC, and Boston – and we will be in Tampa tomorrow. Nearly 10,000 borrowers have turned out for these events so far. We will support Treasury's efforts to target many more markets over the coming year.

On top of our support of Treasury's efforts, so far this year, Fannie Mae has also participated in over 140 foreclosure-prevention events in roughly 70 markets. These events include Treasury-sponsored events focused on the Making Home Affordable Program, events with HOPE NOW, city and state offices, and nonprofit partner events, and training forums and industry roundtables.

Finally, as Mr. Wheeler testified, we are working with Treasury and servicers to streamline the borrower documents required for the program, and to otherwise adapt the program based on what we learn as we go forward. It is important that we maintain the appropriate level of controls in the program while making the program simple enough for borrowers to understand. And to give borrowers more time to act on the program, Treasury recently issued guidance to servicers allowing them to offer borrowers a 60-day grace period to send in the documentation necessary to complete their trial period.

As we carry out the Administration's loan modification program, we continue to focus on Fannie Mae's own struggling borrowers. In addition to the 133,000 HAMP trial modifications begun on Fannie Mae loans as mentioned earlier, during the first half of this year, we completed nearly 88,000 loan workouts outside the HAMP program to help our borrowers avoid foreclosure. These include repayment plans, forbearance arrangements, and other modifications and solutions designed to help borrowers stay in their homes. When borrowers cannot or choose not to keep their homes, we also offer foreclosure alternatives including short-sales, third-party sales, deeds-in-lieu of foreclosure and other solutions designed to ease a borrower's transition from the home.

Fannie Mae has an extensive operation in Dallas – our National Servicing Organization – to carry out our foreclosure-prevention programs, and over the past year we have been steadily ramping up this operation. Currently we have over 300 employees and contractors there, and by the end of the year we expect to have 400. They either work directly with our servicers or they perform back-office analytical, operational or technical activities in support of our servicer management and loss mitigation activities. We continue to add personnel to the extent necessary to appropriately focus on workouts for struggling borrowers.

Efforts and Progress Under HARP

The last area I'd like to touch on is our progress in helping borrowers to refinance their homes.

Last month, our regulator – FHFA – reported that Fannie Mae and Freddie Mac have refinanced more than 2.9 million loans this year through July. Fannie Mae is responsible for 1.7 million of those refinanced loans.

A great deal of credit for the near-record volume of refinancing this year goes to the commitment by the Treasury and the Federal Reserve to purchase our mortgage-backed securities. These purchases helped to drive mortgage rates to their lowest level in nearly 40 years and spurred millions of homeowners to refinance their loans to lower their payment, obtain a better loan, and by doing so, increase their chances of staying in their homes.

However, many homeowners could not qualify for refinancing simply because home prices declined and eliminated the equity in their homes. Many are "underwater," meaning they owe more than their homes are worth.

To help these borrowers, the Administration launched the Home Affordable Refinance Program. It allows Fannie Mae and Freddie Mac borrowers in good standing to refinance their loans and obtain lower payments and move into a more sustainable loan, even if their loan-to-value ratios were above 80 percent and up to 105 percent. The Administration subsequently raised the loan-to-value ceiling to 125 percent in order to allow more underwater borrowers to take advantage of HARP. Many of the borrowers targeted by HARP previously would have been completely shut out of refinancing and obtaining better loans.

To support HARP, we built a loan-lookup tool on our corporate website where borrowers could determine whether we own their loans. We also developed new refinance flexibilities, including DU Refi Plus and Refi Plus, which streamline the transaction process and paperwork, and offer flexibilities on credit scores as well as the flexibilities FHFA has provided on mortgage insurance requirements. We've also waived the usual home appraisal process for numerous loans to save borrowers time and money. This past weekend we introduced automated underwriting of loans with the higher, 125 percent loan-to-value ratios, and we will begin taking deliveries on October 1.

While refinancing volumes are sensitive to mortgage rates, we will continue to pursue ways to help borrowers take advantage of this opportunity to save money and obtain a better loan.

* * *

In closing, the Making Home Affordable Program has provided us with powerful tools to help borrowers modify or refinance their mortgages, avoid foreclosure, obtain better loans and save money. Working with Treasury, we now have the main program elements in place, and we are helping more borrowers stay in their homes.

Clearly, however, we have much more work to do and progress to make. Millions of homeowners across the country continue to struggle with their mortgage payments and face the risk of losing their homes. The U.S. government has made a significant investment in Fannie Mae so that we can help these borrowers, and help the nation recover from the worst housing crisis in our lifetimes. We take our role and responsibility seriously, and we are committed to getting the job done, which is to help as many borrowers as possible if they are struggling to make housing payments. Thank you.

Mr. NEIMAN. Thank you very much. Mr. Golding.

STATEMENT OF EDWARD L. GOLDING, SENIOR VICE PRESIDENT, ECONOMICS AND POLICY, FREDDIE MAC

Mr. GOLDING. To the members of the Congressional Oversight Panel, thank you for inviting me to speak today. I am Ed Golding, Senior Vice President of Economics and Policy at Freddie Mac and I head Freddie Mac's team that supports the President's Making Home Affordable Program. Freddie Mac is proud to play a vital role in Making Home Affordable and in fact MHA is our number one priority. To help meet the President's goal of helping millions of families lower monthly costs and avoid foreclosure, Freddie Mac has introduced two new initiatives. The first is our Relief Refinance Mortgage Program. It assists families who are current on their mortgages, but cannot refinance because of declining home values. The program enables borrowers to lock in today's low rates and refinance loans up to 125 percent of the value of their homes. We also continue to support the broader mortgage market's refinancing needs. Freddie Mac, so far this year has refinanced more than 1.3 million mortgages and on average, these refinances reduce the mortgage rates by approximately 1.25 percent, one and a quarter points. This saves families $4 billion per year.

The second initiative is our implementation of Home Affordable Modification Program or HAMP. HAMP helps at risk borrowers keep their homes by lowering monthly payments to affordable levels. HAMP requires borrowers to go through a trial period after which the loan will be permanently modified. Through mid September, approximately 80,000 of our borrowers have entered trial periods. We are working diligently to turn these trials into final modifications through direct outreach to borrowers. We are also pushing hard to get financially stressed families into the trial plans even before they become delinquent.

Freddie Mac also plays a major role in MHA as the compliance agent for Treasury. In this role we conduct examinations and review servicer compliance with program rules and guidelines and report these findings to Treasury.

Because of confidentiality issues, Freddie Mac has created a separate business unit within the company known as MHA–C to carry out these duties. MHA–C has over 100 employees and is continuing to staff up. MHA–C has developed an extensive and robust internal control and compliance system and it has the authority to conduct both announced and unannounced audits of the servicers. Based on these reviews, we are identifying corrective actions and follow-ups with the servicers. We will be using a number of fraud detection and compliance techniques to identify borrower, servicer, and systematic fraud and to improve the quality controls in the servicers.

Additionally, we are reviewing servicers' implementation of the NPV model, which is a key component for determining borrower eligibility. We are testing whether they are using the model appropriately as the program requires.

Treasury has also asked MHA–C to develop what is termed the "second look" process to minimize the likelihood that borrowers are incorrectly deemed ineligible. We are ramping up "second look" efforts significantly to increase the number of files reviewed and to

help increase the number of HAMP modifications. In our reviews we have found variations in how servicers communicate with borrowers who are deemed ineligible. As a result, Treasury has issued guidelines earlier this month to standardize and improve communication between the servicer and the borrower. As more borrowers transition to permanent modifications and incentive payments are disbursed, we will be conducting audits to help ensure that the correct payments are made. As we move forward with MHA, we will continue to improve features of the compliance program to assist the greatest number of borrowers in need at the least cost to taxpayers.

In conclusion, the employees of Freddie Mac come to work everyday highly motivated to make a positive difference for millions of families by lowering mortgage costs and helping more families keep their homes. We are focused on meeting the challenges involved in fulfilling our duties under the Making Home Affordable program and helping to ensure its success.

Thank you for this opportunity to testify. I'm happy to answer questions.

[The prepared statement of Mr. Golding follows:]

Statement of Edward L. Golding
Senior Vice President – Economics and Policy
Freddie Mac

Hearing of the Congressional Oversight Panel
Philadelphia, PA
September 24, 2009

Chair Warren and members of the Congressional Oversight Panel, thank you for inviting me to speak today. I am Edward Golding, Senior Vice President of Economics and Policy at the Federal Home Loan Mortgage Corporation (Freddie Mac). I am a senior member of the Freddie Mac team that leads our effort to fulfill our responsibilities to support the President's *Making Home Affordable* (MHA) program. I also am responsible for overseeing timely and effective communication among Freddie Mac, the United States Department of the Treasury (Treasury), and the Federal Housing Finance Agency (FHFA), our regulator and conservator, on matters relating to MHA.

Freddie Mac is a corporation created by Congress in 1970 to bring liquidity, stability, and affordability to the nation's residential mortgage markets. Traditionally, we have fulfilled our mission by purchasing mortgages in the secondary market and securitizing them into mortgage-related securities that can be sold to investors. Today, fulfilling our mission includes supporting MHA. In my testimony today, I will discuss Freddie Mac's role in MHA, including our efforts to reduce the costs of mortgage credit and prevent home foreclosures, as well as the compliance duties we have been assigned under the program. Under our new leadership, including Chief Executive Officer Ed Haldeman, Chief Operating Officer Bruce Witherell, and Chairman of the Board John Koskinen, support of MHA is our number one corporate priority.

Freddie Mac's support of the President's *Making Home Affordable* Program

President Obama has taken decisive action in his *Making Home Affordable* program to expand refinancing options for struggling homeowners and stem the growing number of foreclosures that threaten the stability of America's families and communities. Freddie Mac is proud to play a vital role in making the President's program a reality. We are working closely with the Treasury and the industry to implement this program.

The President has set an ambitious goal of helping millions of families lower mortgage costs or avoid foreclosure. To help meet that goal, Freddie Mac mobilized quickly. In March, we announced two new mortgage initiatives designed to help families with Freddie Mac-owned mortgages that are delinquent, at risk of default, or struggling to refinance because of declining property values.

Relief Refinance Mortgage℠

The Freddie Mac Relief Refinance Mortgage program, our offering of the Home Affordable Refinance Program, is designed to assist families who are current on their mortgage payments

but who have been unable to refinance into more affordable mortgages due to declining home values and tightening credit terms.

Key features of the Relief Refinance Mortgage program include:

- Enabling eligible borrowers to lock in today's low interest rates
- Keeping refinance costs low by not requiring new or additional mortgage insurance
- Allowing eligible borrowers to refinance loans up to 125 percent of the value of their homes
- Allowing lenders to use an automated valuation tool to provide a property valuation for many one-unit properties instead of requiring an appraisal, saving homeowners hundreds of dollars

At the same time, Freddie Mac has continued its support of the broader mortgage market's refinancing needs. Through August 31, Freddie Mac has purchased in 2009 more than 1.35 million refinance mortgages. On average, each of these refinances results in a 1.25 percentage point reduction in the mortgage note rate. This results in aggregate annual interest savings to these borrowers of nearly $4 billion per year.[1]

Home Affordable Modification Program

Freddie Mac rolled out its implementation of the new national Home Affordable Modification Program (HAMP) to our servicers in March. Through mid-September, more than 84,000 borrowers under Freddie Mac-HAMP have entered into trial period plans.

HAMP is designed to help at-risk borrowers maintain successful homeownership by lowering their monthly payments to more affordable levels, and in some cases to assist eligible borrowers before they fall behind on their mortgage payments. Servicers must modify HAMP-eligible loans using a process that includes rate reduction, term extension, and principal forbearance to reduce monthly payments to 31 percent of a household's monthly gross income.

Other key features of HAMP include:

- Use of a net present value (NPV) test that creates a new industry standard for determining which loans should be modified

[1] Our refinance and purchase money mortgage purchases provide critically needed liquidity to the housing finance market during the worst housing and financial crisis in decades. In 2008, Freddie Mac purchased or guaranteed more than $460 billion in mortgage loans and mortgage-related securities, and through the end of July, we have purchased more than $363 billion in mortgages so far in 2009.

- Financial incentives to encourage investors, servicers and borrowers to execute sustainable loan modifications[2]

- A mandatory trial period plan after which the loan will be permanently modified.

To underscore our commitment to helping financially troubled borrowers, Freddie Mac has directed our servicers to ensure that every possible effort is made to achieve a successful workout for at-risk borrowers by modifying or refinancing their mortgages into more affordable mortgages before pursuing other foreclosure alternatives.

Freddie Mac had extensive programs designed to help prevent foreclosure prior to HAMP, and these remain available for financially troubled borrowers who are not eligible for HAMP. Our efforts to prevent foreclosures both within and outside of HAMP are generating positive results. Using a variety of delinquency resolution methods, Freddie Mac helped more than 85,000 borrowers lower their mortgage payments, sell their properties or modify their loans to a more sustainable level, including trial period plans, in the first half of 2009 – compared to 88,000 for all of last year.

Implementing the Home Affordable Modification and Refinance Programs

Freddie Mac has worked closely with lenders and servicers to help them implement the refinance and modification programs. Such efforts have included:

- Issuing several Single-Family Seller/Servicer Guide Bulletins and customer communications to all our servicers highlighting our policies and requirements

- Distributing promotional material to facilitate borrower outreach efforts

- Conducting Relief Refinance training sessions for our servicers

- Conducting numerous training sessions on the HAMP for servicers and housing counselors

- Developing an online video for all sellers and servicers specifically on HAMP guidelines and requirements

In August, we announced a new initiative, the Mortgage Solution Center, to improve outreach to a large number of borrowers with Freddie Mac mortgages who may be eligible for a Home Affordable Modification and to help ensure such borrowers have access to credible assistance at no cost to them. The Mortgage Solution Center will process thousands of additional requests for a modification under HAMP or other possible workouts.

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[2] For example, servicers will receive one-time incentive payments of $1,000 for each eligible modification meeting the requirements of the program, an additional payment of $500 for modifications made while the borrower is still current, and a "pay for success" fee of up to $1,000 on an annual basis for three years. Borrowers who make timely payments for the first five years will receive annual principal reductions of up to $1,000.

In addition, Freddie Mac made available extensive foreclosure prevention information to the public in the form of foreclosure prevention workshops, radio public service announcements, published MHA-related article placements, and provided online information on the MHA program and how to avoid foreclosure.

MHA Compliance Agent

Freddie Mac plays a major role under the MHA program as the compliance agent for Treasury under HAMP. As the program compliance agent, we conduct examinations and review servicer compliance with program rules and guidelines, the results of which we are required to report to Treasury.

Because of the confidential and proprietary information to which we have access pursuant to our agreement with Treasury, Freddie Mac has created a separate business unit within the company (known within Freddie Mac as MHA-Compliance or MHA-C) to carry out these duties. MHA-C is headed by an officer who reports directly to a top Freddie Mac executive serving on the corporation's management committee. MHA-C has over 100 employees and is continuing to staff up its operations.

A strong compliance program is critical to success of the modification program. MHA-C has developed and continues to adapt an extensive and robust internal control and compliance system for HAMP. MHA-C is independent from program administration and has authority to conduct announced and unannounced audits of the servicers. Based on these reviews, MHA-C is identifying corrective actions, pursuing appropriate servicer follow-up, and establishing the potential implications of servicer non-compliance.

MHA-C will be using a number of fraud detection and compliance techniques in their sampling and compliance reviews. The focus will be on borrower, servicer, and systematic fraud, as well as quality control. Fraud identification includes independent testing to identify items such as servicers reporting modifications that have not occurred, misrepresentation of borrowers' performance, servicers charging borrowers extra fees, servicers keeping borrower incentive payments, servicers not using current credit reports and evidence of incorrect determinations of eligibility in HAMP modifications. Quality control includes identifying issues such as low modification rates, timeliness of customer response, insufficient system processes, and high default rates compared to peer servicers.

One aspect of HAMP on which we have focused attention is the implementation of the NPV model, a key component of determining eligibility. We have monitored compliance with HAMP guidelines with regard to the NPV model to test whether servicers are implementing and using the model as the program requires.

In addition, Treasury asked Freddie Mac, in its role as compliance agent, to develop a "second look" process pursuant to which MHA-C will audit a sample of MHA modification requests determined by the servicer to be ineligible. This "second look" process began in August and is designed to minimize the likelihood that borrower requests are overlooked or that borrowers are inadvertently deemed ineligible.

MHA-C is ramping up the second look effort, and by the end of this month expects to be significantly increasing the number of trial modifications reviewed on a weekly basis. We then will be able to analyze servicer performance and begin to understand trends.

We have found variations in how servicers communicated with borrowers regarding HAMP ineligibility and, if written notification of ineligibility were used by the servicer, the content of such notifications. Treasury issued guidance earlier this month to servicers on providing standardized ineligibility notifications and explanations, along with reporting ineligibility reason codes to the HAMP program administrator (Fannie Mae). These codes will help to facilitate MHA-C's Second Look process.

As more borrowers transition to permanent modifications and incentive payments are disbursed, we will conduct audits in an effort to ensure that the correct payments are made and properly allocated among the borrower, servicer, and investor.

As we move forward with MHA, we will continue to assess and implement changes to features of the compliance program to improve its ability to assist the greatest number of borrowers most in need of assistance at the least cost to taxpayers.

Concluding remarks

The employees of Freddie Mac come to work every day highly motivated to make a positive difference for millions of homeowners and renters by helping make mortgage financing more readily available and helping families avoid losing their homes to foreclosure. We are focused on meeting the challenges involved in fulfilling our duties under the MHA program and helping to ensure the success of the program.

Thank you for this opportunity to testify. I am happy to answer any questions you have.

Mr. NEIMAN. Thank you very much for all keeping it within those timeframes and we'll try to keep that as a habit. My first round of questions, I'd like to start with the metrics of success because that is what is published every month and I think by which the program will be judged. As Mr. Wheeler indicated, through August there was a reported 360,000 trial modifications started. But, I think we would all agree that the success of the program really will be the degree of permanent sustainable modifications that are eventually implemented. Though the data may not all be in yet—particularly with regard to borrowers who have three months of payments—are there any estimates or target projections that the Treasury is using to assess what percentage of those trial modifications we can expect to convert to permanency?

Mr. WHEELER. Thank you for that question because I think that highlights one of the biggest challenges and most important priorities for Treasury. As you noted as of the end of August and as we discussed 360,000 trial modifications were underway. When we update again with this month's report there's certainly many more. It's absolutely critical if the borrowers are to remain in their home that they complete these trial modifications and then ultimately are successful on their official modification. In terms of reporting, as you've noted right now we don't have any robust reports or any reports that we've put out to date on official modifications. The number of official modifications is still very low. As you probably know we put out a grace period of 60 days. In ramping up the program we laid out the program, set forth all the documentation standards that borrowers are required to complete and to ensure that we have as high a conversion rate to fulltime official modifications as possible. We also instituted a 60 day grace period while we review all those documentation standards to ensure that as many as those as possible are able to convert.

Mr. NEIMAN. Any best guesses? Are you operating under any operating assumptions as a particular percentage of those trial modifications?

Mr. WHEELER. At this point most of the information is anecdotal as we talk to servicers, which I'm sure you have. Right now there's certainly risk. If we're not able to close out those modifications there's certainly a risk that a high portion are not able to complete their trial modifications. There will be some who don't make payments and I don't know exactly what that number is, but certainly not a trivial number. And another segment even if they're making payments, they will not complete their documentation for completing the modifications.

Mr. NEIMAN. And we will hear information and issues around the documentation and outreach necessary to complete a permanent modification. The monthly reports also show great disparities between servicers in trial modification starts. Partly, it could be the result of the fact that some trial modifications may start with verbal information as opposed to those that utilize full documentation. Those requiring full documentation will of course have a higher conversion to permanent as opposed to those with verbal. Is this a concern and is that an issue that you are rethinking to address that issue or taking any actions to address that concern?

Mr. WHEELER. On that topic, I think you've correctly laid out the range of possibilities. Certainly, that may not explain all of the disparity, but a good portion may be explained on how far along they're able to document before borrowers start the trial modification. I think our number one priority now is that since we've ramped up capacity that it's essential that we have a program with both documentation standards, if we learn that documenting upfront is much more successful, and then allowing flexibility to start a trial modification. Then, I think we will rethink our standards and what we encourage servicers to do. At this point we have given them that flexibility. And just again to be responsive to this question, as soon as we have more robust data, we absolutely plan on reporting as soon as we're confident in the data. So, we understand the critical importance of being flexible on policy as we learn, as well as being accountable in reporting.

Mr. NEIMAN. We're going to hear from servicers and borrowers later this morning. And we expect to hear that modifications are being hampered by response time and concerns about eligibility issues and servicer capacity. What is the one area that you would say that borrowers should stop doing—that servicers should stop doing or should be doing better to address those issues?

Mr. WHEELER. I certainly have thoughts. I don't want to use up all the opportunity to share perspectives. So, Eric do you want to?

Mr. SCHUPPENHAUER. Yes, thanks Seth. I think from a servicer's perspective it's recognized that more needs to be done. We're in the ramp up phase. Servicers have been adding staff, have been adding personnel, have been adding capabilities to handle the shear level of documentation required under this program. It has taken time. Part of the reason why we instituted the 60 day grace period was to allow that further ramp up without dropping people out of trial periods. We'll continue to evaluate and that's why we are spending every single moment we can to understand the issues and continue——

Mr. NEIMAN. Well, I'm over my time. Unless either of you have a quick response to what a servicer should stop doing.

Mr. GOLDING [continuing]. Standardizing the documents and reviewing which documents are necessary. Sometimes there are variations in how much documentation is taking place from servicer to servicer.

Mr. ATKINS. Thank you very much again. I wanted to move from maybe the macro-level down to the micro-level a bit. We talked about successful modifications. We've talked a little bit about that as you're looking at the program. Overall, what about on the micro-level, what makes a successful modification of an individual loan?

Mr. WHEELER. I'll take the first crack. For a successful modification, I think the only metric that can be used is whether the borrower is able to complete the trial modification and is able to remain in their home. We designed the program, the incentives to servicers and borrowers will continue. The borrower incentives reach out for five years. The servicer incentives reach out for three years. We think that clearly tying those incentives out to that long a period is critical in these challenging times that borrowers whose loans are modified don't just make it six months or a year, but they're able to stay in those homes and help stabilize those commu-

nities. So, I think that's ultimately the measure of success. In early measures it was how quickly we've ramped up. Our next view will be how successful we are at converting trial modifications into official modifications. But, ultimately when looking back five years from now the measure is how successful are we at helping these borrowers stay in homes, helping economic stability and stabilizing neighborhoods.

Mr. ATKINS. So, staying in their homes and meeting their obligations, I take it?

Mr. WHEELER. And meeting their obligations, correct.

Mr. ATKINS. And then do you have any tracking? I know it's still at the early stages, but are there some studies—and I guess we'll hear more about that a little bit later—tracking the ongoing nature of these modifications whether we will fall into a re-default situation and what sort of percentage that looks like?

Mr. WHEELER. Perhaps, briefly Eric could comment as Fannie is running the data reporting efforts and then Ed could comment, Mr. Golding could comment on the compliance efforts to ensure that we have accurate tracking.

Mr. SCHUPPENHAUER. Mr. Atkins, we are tracking a number of data elements as we go through the program. It is too early to tell at this point in the program. The first modifications were done in May, but we haven't had enough time to assess. However, we do plan to provide a tremendous amount of transparency about the types of modifications that have been done. Once the modifications become permanent, it would be the appropriate time to show how deep the modifications are, the payment reduction, as well as their sustainability. We are committed to providing that information as we go forward.

Mr. GOLDING. And we, of course will be reviewing loan files. And it's important to point out we're reviewing both loan files that have been completed along with those that were not completed, that the person was determined ineligible. So, we'll have data of Type 1 and Type 2. Both the ones that were given the modifications, we'll also be able to look at those that were not given modifications.

Mr. ATKINS. As far as geographic distribution of this effort, is it more concentrated on the coast versus the interior of the country or how does that pan out?

Mr. WHEELER. At this point, we're starting to get the data and trying to verify it. Certainly, expectations are that the hardest hit neighborhood; areas will see the most number of modifications. Certainly, California, Florida, Nevada, Arizona and Ohio, Michigan are especially hard hit areas along with a number of others, Pennsylvania included. So, I think we expect that we'll see modifications where there is the most need. But we are collecting that data and starting to verify that data and we will report it in the coming months on a detailed basis, determining how successful we are in each area.

Mr. ATKINS. Okay. Well, my time is up so I'll yield the floor.

Mr. SILVERS. Let me pickup on some of this a little bit in the same vein. Mr. Wheeler, what is Treasury's estimate of the current rate at which foreclosures are being initiated on a monthly basis?

Mr. WHEELER. On a monthly basis we read analysis reports, we don't have an independent estimate.

Mr. SILVERS. But what's your collective sense of the data you received?

Mr. WHEELER. I think several hundred thousand. Certainly, several hundred thousand modifications are being started each month.

Mr. SILVERS. No, I don't mean modifications.

Mr. WHEELER. I'm sorry, foreclosures.

Mr. SILVERS. And you said that the Treasury's target is 20,000 a week?

Mr. WHEELER. 20,000 to 25,000 trial modifications.

Mr. SILVERS. So, 100,000 a month roughly?

Mr. WHEELER. Roughly, 100,000.

Mr. SILVERS. In light of that, don't you think you ought to be adjusting the goal? I mean, is the goal adequate? Is the goal of roughly a million intakes a year against a run rate of 3 to 4 million, is that an adequate goal?

Mr. WHEELER. I think again, this an excellent question. I think a response can be made in several parts. First, it is the design and who our target population is in terms of borrowers and then second, how well we're going against helping those borrowers. So, each of those can be evaluated. I think on the first point we are trying to help all borrowers and we will see millions, as you noted, millions of foreclosure starts over the next several years. We are targeting a subset of those foreclosure starts or those borrowers that are facing the risk of foreclosure. We've targeted borrowers who occupy their own home or residence. Borrowers whose loan balance is below 729,000 in principal balance and then which we've deemed that the eligible population.

Mr. SILVERS. Can I stop you there? What I'm really interested in is not the question of meeting your targets and I think my opening remarks indicated that. I'm not really interested in the question of who's been a good boy or girl and who is not. I'm interested in whether or not we're going to be able with the targets you've got—and I understand that they seemed appropriate at the time they were sent—will that be sufficient to counteract the downward pressure of the foreclosure epidemic on housing markets in our economy?

Mr. WHEELER. I think not only are we trying to help individual families, but we are trying to stabilize neighborhoods. The question is, who is our targeted population and who are we able to help in that targeted population enough to help stabilize neighborhoods? I think a second distinction I'd make is between foreclosure starts, which could certainly be traumatic for families and borrowers and foreclosure sales, where borrowers actually lose their homes. The foreclosure sales rate is much lower, but still very, very high. I think we are, right now, focused on as quickly as possible getting the program up and running, implemented as you know. For our entire target population we have a rule that servicers are not allowed to start foreclosure proceedings. They cannot go through a foreclosure sale until a borrower has been fully evaluated and we strongly encourage them not to even initiate foreclosure proceedings until a borrower has fully been evaluated. I think we are trying to move as quickly as possible to help as many borrowers as possible. But I think in terms of neighborhood stabilization and as

we watch foreclosure sales rates and borrowers losing their homes, I think we will need to continue to evaluate.

Mr. SILVERS. Mr. Wheeler and other members of the panel, I think we had hoped that you might be the last panel rather than the first. We understand that you could benefit from the other witnesses. We understand that was not possible for scheduling reasons. I think that's regrettable. However, I'm going to do my best to make up for it by giving you a glimpse of the testimony that's going to be heard later on in the day. This is from Irwin Trauss, who is the Supervising Attorney for Philadelphia Legal Assistance and I'd like you to react to these statements. He says, "The noncompliance with the HAMP guidelines is pervasive." He's talking about servicers. "The absence of a meaningful method to challenge this noncompliance is frustrating to advocates particularly, to housing counselors who were led to believe that HAMP would be streamlined and self effectuating without the need for an attorney or for litigation." It's an odd thing for an attorney to say, in a way. "To address this situation, we need a multi-pronged approach that is not dependant on the willingness of the mortgage servicers to agree to the solution and is not dependant on the lenders themselves determining for themselves whether they have complied with the requirements of the program." Can you comment on that assessment?

Mr. WHEELER. I'll take just twenty seconds and then let Mr. Schuppenhauer and Golding cover the balance. We've certainly heard those concerns. So, it has been a primary part of our focus in recent months. The comments I'd like to make concern empowering borrowers and in terms of providing transparency around the process. These have been the key areas of feedback we've heard from housing counselors and advocates. So, we are undertaking a number of initiatives, many of which I outlined in my opening comments. I'll let Mr. Schuppenhauer comment in detail on that effort. But, equally important is the compliance role of Freddie Mac. Specifically, if services are not getting the job done, then recommendations can be made by Freddie Mac to close that gap or penalties assessed as appropriate. So, Mr. Schuppenhauer.

Mr. SCHUPPENHAUER. Thank you, Mr. Wheeler. There are two important points here. First, there is an escalation process that we've put in place that serves the borrowers very well. First, they can contact the Help Hotline that's been established, 888–995–HELP, which is a trusted source for information. Second, counselors can also contact our HMP Support Center if there are pervasive issues. Finding out about these issues and dealing with them is of paramount importance from our standpoint so we can get the right training and the right tools out there in the servicers' hands. I'll turn it over to Mr. Golding to talk more about the compliance.

Mr. GOLDING. As I mentioned, we launched "second look" this month. We soon think we'll be able to have a large enough sample so that we would be able to detect whether any servicer was systematically denying modifications that should have been approved.

Mr. NEIMAN. I'm going to use my time to follow-up on the compliance issues because that really is the bulk of what we will be hearing from housing counselors on the next panel. Evidence that servicers may not understand the various terms, specific non-

compliance, or violations of the HAMP guidelines. I'd like to understand a little further about, what are the compliance process schedules that Freddie Mac really intends to employ and also what kind of reporting will there be? And also, how transparent will it be both in terms of overall compliance, but also servicer by servicer reporting? Also, to the extent that you can address, what's the response, are there any remedies built in as a result of that noncompliance for borrowers or sanctions against those servicers? I threw a lot at you, but please do your best.

Mr. GOLDING. Yes. Please come back to me if I miss any of them. Basically, in terms of the review of servicers I divide it into two. One is the on-site visits looking to see what their procedures are, lining them up with HAMP. Are they basically implementing HAMP as directed by the guidelines?

Mr. NEIMAN. What's the staffing for this?

Mr. GOLDING. We currently have a hundred employees. We're ramping up. Our expectations are to be around 200 and we will use contractors as necessary to make sure that we're adequately staffed to reach the servicers that we need to reach. It's basically first lining up—I think of this as two steps—first lining up their procedures with the HAMP requirements and then the second test is going back and seeing whether or not they improperly implemented the procedure. So, testing against their stated procedures, including looking at individual loan files. I should also point out; Eric talked about the escalation process. We are also in constant contact with Fannie Mae as the program administrator listening to what complaints they're getting following their data also.

Mr. NEIMAN. Once those violations are identified they will be recorded, too?

Mr. GOLDING. Well, first this goes a little bit into the remedies. Clearly, if there's a violation where there should have been a modification, the first thing is to stop the foreclosure and make sure that the homeowner gets the modification. Then there are two areas. Let me go to the reports and then I'll get to the remedies and I think I will have covered the three prongs. The reports; we are an agent of Treasury; the reports will be written up servicer-by-servicer and given to Treasury. We are in discussions with Treasury as to how much of that information and what the content will be made public. That's still to be determined.

As for the remedies, clearly there's a range of remedies that we've talked about. One of them would be to withhold the servicer incentive payments that were discussed. Clearly, remedies could go as far as terminating someone from the program. That's not a remedy you would want to use right away because all you're doing is hurting someone on that. So, what we really are focused on are correcting and making sure the homeowner gets that modification. I think correcting the procedures are the most important. If they are not implemented properly, getting to the servicer, having them correct it, and making sure that they try to maximize the number of eligible borrowers that are offered modifications.

Mr. NEIMAN. So, if I heard you correctly decisions with respect to making these reports public and in which format, as well as sanctions are still open issues that have not yet been decided?

Mr. WHEELER. They have not been decided and certainly we have a strong commitment to supporting Freddie Mac in their role as compliance agent and ensuring that these problems are identified and disclosed. Exactly what the content will be has not been determined, but appropriate remedial measures will be taken.

Mr. NEIMAN. In my last 30 seconds, I'm going to ask for a one letter response. What I'd like to do is, I think we should all be evaluating each other's performance. So, what I'd like you to do is give a grade to the servicers in assessing their performance, recognizing this maybe the first semester in terms of A to F.

Mr. WHEELER. If "C" means average then I think I give them a "C". They're doing very well, again against program goals, but we have a lot more work to do on helping borrowers and implementation.

Mr. NEIMAN. Any other differences in grading?

Mr. SCHUPPENHAUER. That is a fair assessment, it's the first semester.

Mr. GOLDING. Obviously, I've had college aged kids. Seth, there's been grade inflations since you've been in college. I gave one of my students a B+ and he complained it was the lowest grade he had ever gotten and I ruined his life. So, I'm with the old scale, I think C is appropriate, but maybe on the new scale they don't give C's anymore.

Mr. ATKINS. I want to turn to cost, the flip side of all of this because when you were talking about $4 billion of savings on the Freddie Mac side for borrowers, obviously the money is coming from somewhere. So, I was wondering if you all could address what the estimated cost of all this activity is so far to taxpayers, in general? Obviously, we're talking to both Fannie Mae and Freddie Mac which now are explicitly government entities.

Mr. WHEELER. So, there are at least three different types of cost. There's the cost of TARP direct outlays in terms of the financial instruments, SPA's that enable the non-agency programs to operate. There's the cost associated with lost mitigation in order to avoid future losses on Fannie and Freddie. And then the program administration cost—what we pay Fannie and Freddie. Right now, as you can see on the third one we don't have a detailed cost estimate. We are trying aggressively to manage cost and Fannie and Freddie certainly they are doing their best to keep cost down. But, we also want to do the program right. It's a balancing act.

The first two we've allocated up to 50 billion in cost for the program and the process by which that's obligated. Each time a servicer signs up, we establish a servicer cap for the agreement that we purchase via Fannie Mae on Treasury's behalf. So, right now we have a certain amount that's been obligated. That doesn't mean all of that will go out the door and then ultimately we are able to increase those obligations as needed through the end of the year. Very few dollars have gone out the door and the program is structured so that we only pay for success. No trial modifications, unless they're successful, cost the taxpayer a dime. When they are successful, even then the incentives are back loaded so servicers can earn much more all the way through an official modification. So, we've tried to be very thoughtful of shepherding and stewarding taxpayer resources. But again, this is a strong, strong priority of

the Administration to achieve economic stability and stability in the housing market. So, certainly we are thoughtful on both sides.

Mr. ATKINS. Any further on your individual sides?

Mr. GOLDING. I might just add that part of what we're doing in general in lowering the frictions in the mortgage market and trying to get it easier to get the modification, easier to get the refinancing. I think to the extent that if you lower frictions, the transaction costs that benefit the system.

Mr. SCHUPPENHAUER. And, as we stated in our written testimony and in the earlier questioning, transparency around this is something we hold very dear. It is in the early innings or the early semester, however you want to phrase it. Very few dollars have gone out the door, but we will be giving a full accounting as time progresses. A very full public accounting in terms of the cost of running the program, as well as the cost involved in the incentives to make these modifications happen and be sustainable.

Mr. ATKINS. I have a little bit of time here remaining. I want to focus on quality control a little bit and just how you all are focusing on that internally, as far as internal audit. Do you have a special program that is supervising these internally?

Mr. WHEELER. Are we talking compliance?

Mr. ATKINS. Yes.

Mr. WHEELER. Mr. Golding, you want to take a first answer to that?

Mr. GOLDING. Yes. I guess the simple answer is yes, we have internal audit. They obviously report independently to the Chair of the audit committee. They have reviewed our processes. We have two functions. One is we're implementing the President's program on our own book and then we have the separate unit, MHA compliance. And audit has been involved in both of those.

Mr. WHEELER. Mr. Atkins, I'd point out that the Office of Financial Stability within Treasury obviously has its own compliance function and dedicated teams that work with Freddie Mac. They design plans, establish protocols and ensure that these programs are following the directives.

Mr. GOLDING. And I'd be remiss not to mention that we also have a federal regulator who has also reviewed our implementation.

Mr. ATKINS. The Special Inspector General for the TARP, has he been involved yet with this, with you all?

Mr. WHEELER. Certainly, at various points TARP, both Mr. Barsharfsky, as well as his team have been consulted. They've been very constructive and thoughtful. They've challenged us, I think more deeply about how we can do a better job and given us very good feedback. As well, I should point out the GAO has also given us constructive feedback and we have tried to be very open. Many of those are very, very good recommendations and we've tried to act on nearly all of those to improve the program.

Mr. SILVERS. I want to continue on the vein of testimony we haven't heard yet. First, I read you a quote before from Mr. Trauss that would appear to allege a fair amount of improper conduct by servicers trying to avoid restructuring people's loans. One of your testimonies, I believe in Mr. Wheeler's testimony, you talked about an interagency group that's met to discuss fraud and other misconduct involving law enforcement and so forth. I would like Mr.

Trauss' testimony reviewed as to whether or not it constitutes a legal problem in any respect for any servicers. In particular, whether or not any servicers are accessing TARP money upon assurances that they're doing things, which they are not doing, which strikes me as raising a whole series of rather serious legal issues, if that's the case.

Now, I'd like to come to some other testimony, briefly. Two important financial issues are covered in later testimony. One is what the likely re-default rate is going to be on mortgage restructurings and the second is the issue of self-cure. How many people, having been served a foreclosure notice for getting 60 days behind, how many people have actually been able to get out? There are some historical data, I gather, that suggest that self-cure rates of 30 percent have been common in the past. On the other hand, we're not really in the past and there's data that says that self-cure rates now are 6 percent. Do any of you have an opinion as to which number is the right number to be thinking about here as we look at the economics of restructuring?

Mr. GOLDING. First of all, it's been a while since I've looked at—and I'd be glad to get you a further answer later. As I read the study, it is sort of a little bit of apples and orange versus the long term rate because the 30 percent cure rate—and sometimes you'll hear as high as 50 depending on how serious the delinquency is—tends to be the long term. As I read the study, they were looking at a shorter time period. So, I will have to go back and make sure to see whether they've lined up the time periods. But as I read that there was a difference. I think your basic point is absolutely right we have to wait and see. This is a very different environment than historical studies where you saw just a few local regions with a downturn.

Mr. SILVERS. You don't disagree that the 6 percent numbers, the data we have on the current environment although its short term dropped.

Mr. GOLDING. I agree that the cure is likely to be lower.

Mr. SILVERS. Lower than historical?

Mr. GOLDING. Lower than historical, yes.

Mr. SILVERS. Mr. Wheeler.

Mr. WHEELER. I'll weigh in with a few thoughts here. You started with re-defaults and clearly re-default is essential for how we establish metrics for success and how to measure how well we're doing, as well as in the NPV model. We've had a number of teams in our agency across both federal regulators, as well as the enterprises in developing an NPV model. They looked at the experience of OCCOTS. They looked at the FDIC experience. They looked at other reports on re-defaults to try to start a benchmark of what a set of re-default assumptions might look given certain borrower characteristics. I think importantly though, some of those reports have indicated a very high re-default rate and we do expect re-defaults. But, in program design we try to minimize those.

Mr. SILVERS. Mr. Wheeler, is it not the case that if you design a poor mortgage relief program, one that doesn't grant real relief, that re-default rates will be very high. And, if you design one that actually is sustainable, re-default rates will be lower?

Mr. WHEELER. Clearly, the better job we do, the lower the re-default rates will be.

Mr. SILVERS. And, your program—I believe and I would hope you would agree—your program is significantly more helpful to borrowers than the voluntary modifications that were going on prior to the adoption of your program?

Mr. WHEELER. There are a number of safe guards that are intended to achieve that.

Mr. SILVERS. But, you've got a 31 percent income-to-payment number, right?

Mr. WHEELER. Correct.

Mr. SILVERS. That wasn't common prior to your program, was it?

Mr. WHEELER. Several of what we believe to be improvements and it's required that every modification, HAMP modification target a 31 percent debt-to-income ratio, payment relative to their income, but also a fairly robust documentation to ensure that we get that modification at the right level. Again, aligning success payments so that servicers and borrowers are both incentivized to keep borrowers current. So, we certainly expect that our performance will be much better than it would've otherwise been. It's still hard to say how much better.

Mr. SILVERS. Well, my time has expired. I would like you all in writing to respond to the suggestions by a number of our witnesses that will succeed you. That is that as part of the Federal program we adopt a HEMAP-like program for unemployment, that we have compulsory mediation that goes on in Philadelphia as a result of the court system and that you look at outreach canvassing of the kind that goes on here in Philadelphia to actually find people. I would appreciate it in writing. Thank you.

Mr. NEIMAN. I'd like to thank the panel and before dismissing you, I do want to highlight particularly for members of the public that though this is our first public setting with the three of you, we have been in regular contact certainly with the Treasury both at the senior and staff levels. Both of you have also offered ongoing commitments to dialogue, both in formal and in informal sessions and we certainly will take you up on that and look forward to that.

Again, I thank you for making the trip here and we look forward to your continued involvement and response to the requests that we made during the panel. Thank you very much.

Now, we'll do a transit to the next panel of witnesses. Thank you very much.

Our second panel is here to give us the homeowner's, the borrower's perspective on foreclosure mitigation and we really are privileged for the panel that we have here this morning. From your left you have Judge Annette Rizzo, of the Philadelphia Court of Common Pleas and the Director of the Philadelphia Mortgage Foreclosure Diversion Program; Irwin Trauss, Supervising Attorney for the Consumer Housing Unit, Philadelphia Legal Assistance; Eileen Fitzgerald, Chief Operating Officer for NeighborWorks and Deborah Goldberg, Director of the Hurricane Relief Project for the National Fair Housing Alliance. And, again I'm going to ask each of you for your opening statements. Please, do try to keep them to five minutes to leave time for questions and answers. Judge Rizzo.

STATEMENT OF HONORABLE JUDGE ANNETTE M. RIZZO, COURT OF COMMON PLEAS, FIRST JUDICIAL DISTRICT, PHILADELPHIA COUNTY; PHILADELPHIA MORTGAGE FORECLOSURE DIVERSION PROGRAM

Judge RIZZO. Thank you. Of course, Mr. Neiman, Mr. Silvers and Superintendent Atkins great to have you here. "Build it and They Will Come", such were the words that started my testimony approximately one year ago when Senators Casey and Specter came to Philadelphia to have a Senate Judictiary Hearing on our program. In June, when we pasted the one year mark on our program, our motto or logon was, "We Built It and They Came"!

We welcome you, the Oversight Panel to Philadelphia to focus on our a very homegrown local effort to stem the flood of foreclosures happening throughout this country and particularly in our city. I want to just share with you some obviously overarching aspects of our program that we have in place, as well as some lessons learned in the year and a half we've been in progress, as well as some of the challenges we've faced, which have really been introduced by the first panel in terms of us implementing the provisions that we now have out of Washington regarding HAMP.

Since our inception, we've been the subject of a multitude of media events, locally, nationally and even internationally. We've been the subject of conferences both in the legal and business communities and the blueprint for the implementation of programs across this country, either locally or on the state level. We've gotten inquires, from as far as Alaska to Maine and even to the paradise island of Hawaii.

In a judicially driven foreclosure state such as Pennsylvania, we really view this program as one of effective case management—and this is of course from the judiciary perspective—to stem the tide of an increased caseload over the last few years where equitable remedies are available. It is not perfect. It is ever-evolving in circumstances, which change as new relief plans avail themselves. However, programs such as ours which are locally based, serve as the staging, really and the theater in which direct and timely relief can be crafted for homeowners on a micro basis.

We are in extraordinary times. I don't refer to this as the crisis—that's the "C" word and we don't use that here—but we see this really as an era of new financial challenges the likes of which we've never faced in our lifetime and it is in need of an extraordinary response.

I really often talk about this in more lofty terms, but in problem-solving, we often look to new ways to deal with existing problems and I say let's flip that. Let's really look at a new situation in an old way. What I kindly refer to as the George Bailey Building and Loan Model. That was a system where local bankers really knew those customers who came into the bank. The highs and their lows of their finances, and based on that strong financial relationship and personal relationship, banking was conducted. We are returning to community banking. We are really infusing in this system a way to try to cut through of all of the complexities of all these new programs. To really be that human touch, that connection as you'll see in our courtroom as you visit us, hopefully this afternoon.

Our program is really all about the fact-to-face between the lender and the borrower. We have created a forum in which lenders and borrowers can dialogue in good faith to bring about attainable, and, more importantly, sustainable solutions to keep borrowers in their homes. The provisions under the HAMP program have provided a useful roadmap for participants in our program to achieve such results. This is not to say that we have not encountered some bumps in the road; bumps which I believe are not insurmountable.

Just briefly, the Program did begin in June of last year and we have passed the one and a half year marker. It is really based on a prototype I developed in 2004 when a moratorium was declared or at least requested by our Sheriff John Green. The moratorium was not given—I really call that the "M" word—but instead we did a prototype of actually stopping the sales, looking at these cases on a real micro basis to see if really we could do some workouts and we did achieve success in doing that.

In addition, we also convened a group of stakeholders from all sides of the issue to come together and meet on a regular basis for four years to deal with some of the issues dealing with foreclosures in general in our procedures, and that really is the genesis of the current program. Because of this Steering Committee, we now have lender bar, consumer bar, the City, the Sheriff, and also all non-profit groups involved with the issue at the table to try to develop the program. So the Committee is the beginning of it all. We dealt with day backward cases where we literally did pull cases off of the Sheriff's sale block to see if we could actually do workouts and that was the beginning of our program. But, now our focus is more on the day forward program where all cases filed in Philadelphia after September 8th of last year are subject to conference, which we schedule 45 days out. Lenders are required, as they are in any civil action to file a civil complaint of foreclosure along with a notice to the homeowners that they must immediately call the Philly Hotline, the Save Your Home Hotline—which Mr. Trauss of course will talk to you in detail about—and as well as to attend a conference which we schedule automatically at the filing of the complaint. In that window, it's very important that then we see a marriage between the courts and non-judicial entities, such as community outreach groups, which literally—with their staff who are experts in this—go out to canvas neighborhoods and actually reach people at their doorstep, ring the bell and go, "You're in foreclosure. Did you call the hotline? Did you call the hotline!? You didn't? Here is my cell phone, call the hotline."

Mr. NEIMAN. If you could start wrapping up. Thank you.

Judge RIZZO. With that said, we have had success with about 6,300 conferences coming through our program to date. We have about 1,500 in terms of actual homes we've saved from foreclosure. Approximately 3000 according to OHCD are actually in queue to be resolved, postponement with purpose and we are looking forward to more iterations of this as we move forward out of the pilot phase into an established program coming 2010.

I'm sure I have more to come in terms of reaction to some of your questions. Thank you for your time.

[The prepared statement of Judge Rizzo follows:]

TESTIMONY OF THE HONORABLE ANNETTE M. RIZZO
COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT
PHILADELPHIA COUNTY

HEARING ON FORELCOSURE MITIGATION EFFORTS UNDER TARP
BEFORE THE CONGRESSIONAL OVERSIGHT PANEL
September 24, 2009

ELIZABETH WARREN, *CHAIR*
REP. JEB HENSARLING
RICHARD NEIMAN
PAUL ATKINS
DAMON SILVERS

"Build It and They Will come"

Madame Chair, distinguished members of the Oversight Panel, invited guests, members of the Bar and local community:

Such were the words which started my testimony approximately one year ago before Senators Arlen Specter and Robert Casey who presided over a United States Senate Judiciary Committee Hearing hosted by the First Judicial District on the Diversion Program.

And when we commemorated our one year mark in June of this year, our mantra became "We Built It and They Came"!

We welcome the Oversight Panel to Philadelphia to bring focus to our local initiative to stem the flood of home loss through foreclosure proceedings. I appreciate the opportunity to share with you a brief overview of the First Judicial District's Mortgage Foreclosure Diversion Pilot Program in addition to the "Lessons Learned" from being in operation almost one and one-half years. Lastly I will discuss the ongoing challenges the Program faces to effectuate meaningful solutions under new relief plans in light of increased job loss of our citizens. These are challenges we meet head-on!

Since our inception, we have been the subject of a multitude of media events, locally, nationally and even internationally. We have been the subject of conferences in the business and legal sectors. We have been a blueprint for the implementation of similar programs across our Commonwealth of Pennsylvania and the country, with inquiries coming to us from Alaska to Maine, and even the "Paradise Island" of Hawaii!

I. OVERVIEW

In a judicially driven foreclosure state, such as Pennsylvania, we view the Diversion Program as one of effective case management which meets the needs of a burgeoning caseload where equitable remedies are available. It is not perfect- it is ever-evolving as circumstances change and new relief plans avail themselves, however programs such as ours which are locally-based serve as the staging, "the theatre" in which direct and timely relief can be crafted for a homeowner on a micro basis.

We are in extraordinary times. I do not refer to it as crises- but we are in an era of new financial challenges the likes of which we have not faced in our lifetimes until now– and, as such, these times are in need of extraordinary response.

In problem-solving, we often look to new ways to deal with existing problems. I view our Diversion Program as really the harkening back of an "old way" to deal with our new challenges. By that I mean that our Program is a return to the principles of community banking- the "George Bailey Building & Loan Model." That was a system where the local banker knew you and your family, when there were "highs" with finances of the family or business being stable, or when there were "lows"- a death of the breadwinner, or loss of a job, etc. The direct financial relationship was impacted accordingly- a grant of delay in mortgage payment, a risk of a new loan taken by the bank to expand a small business, etc. That familiarity, or stated another way, the human connection was at the heart of the relationship. That "connection," that "touch" is the foundation of our efforts here in Philadelphia.

Our Program is all about the face-to-face between the lender and borrower. We have created a forum in which lenders and borrowers can dialogue on the reality of the situation, where they can work, **IN GOOD FAITH**, to bring about attainable, and more importantly, sustainable solutions to keep borrowers in their homes. The provisions under The Making Homes Affordable Plan (MHAP) have provided a useful roadmap for participants in our Program to achieve such results. That is not to say we have not encountered some bumps in the road along the way which I believe are not insurmountable.

The true genesis of our current program, which became fully operational in just 7 weeks, actually began in 2004. At that time Philadelphia Sheriff John Green had cancelled the Sheriff's Sale list and had come before the Court to seek injunctive relief by way of a moratorium of sales. The matter was before me and though I did not grant the relief then sought, I did establish what would amount to be the prototype of the program we now have-taking the time to look at cases and homeowner situations on a micro basis and foster the opportunity for the lenders and homeowners, through counsel, to negotiate favorable resolutions. Success was seen with many of the homeowners based on newly available state funding criteria; however another significant result came from that proceeding. The Sheriff argued to the Court that the Sheriff Sale system was "fundamentally broken" and needed to be fixed. At that point the Mortgage Foreclosure Steering Committee was formed with all sides of the issue coming together on one committee to meet monthly regarding the ever present problem that foreclosures posed for the community as a whole. This Steering Committee, comprised of representatives from the lender bar, consumer bar, Sheriff's Office, City, Office Community Housing and Development, and Volunteers for the Indigent Program (VIP), was ready in 2008 to form this Program where need arose. It remains in existence today and acts as the Steward of the Program.

There are two major criteria of the Program. The first concerns eligibility for our program. Only properties that are residential owner-occupied with four or less units are eligible for the Program. The second criterion is that no property goes to Sheriff's Sale without a "conciliation conference" in the City of Philadelphia. Once the property has been deemed eligible and the homeowner has called the hotline after receiving notice sent to the homeowner along with the complaint in foreclosure, the homeowner is then scheduled for an appointment with a housing counselor. At this appointment the homeowner and housing counselor work together to organize all of the necessary financial information for a formal "Hope Now " proposal which is then sent to the lender attorney for submission to the mortgage servicer for response. At this point the dialogue really begins. If a deal cannot be struck prior to the date of conference, parties attend the conference.

When the Program began, homes were literally being pulled off the sale block for conferences in what was termed a "Day Backward" Program. The Program proved very successful in saving homes in what were deemed hopeless situations for many Philadelphians. Philadelphia is a historic east coast city comprised of neighborhoods and an aging inventory of row homes, thus our foreclosure picture is distinct from that found in the Sunbelt area as well as other locations nationwide. In particular, we found many seniors and single women who were at risk of losing homes where they had resided for decades and who benefitted directly from our Program.

Our focus at present is our "Day Forward" caseload which is comprised of all residential foreclosure cases that have been filed since September 8, 2009. These cases are automatically scheduled for a conciliation conference 45 days from the date of commencement of the civil action, or the filing of the complaint. This is a Program wherein conferences are mandated in

each case as opposed to other jurisdictions which may have fashioned "opt-in" provisions for borrowers who must take the affirmative step to be part of a meditative process. In several discussions I have had with program directors of such programs, the sentiment has been that caseloads have been lower than capacity of such Opt-in Programs (with the expense, are the Programs getting their bang for the buck?) where the system can effectively handle more cases as houses continue to go up for sale with homeowners not availing themselves of the services. There can be discussion on both sides of the issue, as some programs have moved from "opt-in" to "mandatory", however for the Philadelphia Program we have found that our efforts have been best served with mandated conferences on all matters. Such mandates do pose challenges to the Court, however, as the Program has been shouldered by existing court budget with myself and all other court personnel staffing the Program on "stretch" assignment from their other Court duties.

One unique aspect of our Court Program is the Judiciary being in direct and full partnership with non- judicial entities. Our Mayor, Michael Nutter, has given full support to our Program with his funding of community outreach groups, expansion of our dedicated Housing Counseling and legal services team, and his own support of the Hotline efforts through personal PSA's, and other public notices. For that, the Court is ever grateful.

A significant reason for any success of our Program stems from the community outreach groups under the City's budget, which literally canvas neighborhoods with lists of homeowners in foreclosure. These groups go door-to-door to contact borrowers at their homes to notify them of their upcoming conference and to make sure they contact our "Save Your Home Philly Hotline." Once this call is placed, the homeowner is set up with an appointment with a housing counseling agency and they are "in the chute" as we affectionately say. We have found that this

"connection," "this human touch" has greatly reduced our "Failure to Appear" rate, which at the beginning of our program was near 50% and has now been reduced to less than 30% each week. The canvassing efforts have also helped to determine which properties are commercial and vacant and thus not eligible under program guidelines.

We sit in session every Thursday with a morning and afternoon list of approximately 150 cases called in each session. It is a non-adjudicatory proceeding, I am not robed, nor do I sit on the bench. There is a formal "Call of the list", although those who visit may view it as a Moroccan Open Air Market. I tend to view it as the floor of the original Stock Exchange in terms of "organized chaos". We of course welcome a visit this afternoon from our panel members to witness first hand our program in action.

Most often a resolution is reached in the courtroom either by ongoing discussions or with the assistance of a judge pro tempore ("JPT") appointed by the Court to oversee the meditative process in private settings. Lenders and housing counselors along with volunteer attorneys have established good working relationships, that connection or "human touch" helps to resolve these cases without the use of formal mediation. If, however, no consensus is reached, a JPT can be requested for a formal conciliation conference, and the parties are escorted to a private room where the JPT attempts to resolve the case. A recommendation is then made to the Court as to a possible postponement "with purpose" or that the conciliation has not borne fruit and the case must then proceed.

Our borrowers have the benefit of well-trained housing counselors to assist them in the process as well as volunteer lawyers through Philadelphia Volunteers for the Indigent Program ("Philadelphia VIP"). To date over 300 lawyers have been trained and approximately 200

lawyers have served in various cases along with volunteer JPT's, over 40 in number, to represent approximately $1 million in pro bono services rendered.

The volunteer aspect of the Program is in and of itself a testament to local organizations, particularly our Philadelphia Bar Association "stepping up to the plate" to serve! In fact, the Association was a recipient of a national award from the American Bar Association just this summer for their outstanding efforts!

So how do you measure success? Since the Program's inception approximately 6,300 conferences have been scheduled with some 1,600 homes being saved outright from Sheriff's Sale. According to OHCD, another 3,000 cases are in "queue" for future resolution as the parties continue to negotiate and await responses from lenders. We anticipate more cases to be in a "holding pattern" as a result of the HAMP provisions for trial forbearance provisions. The Philadelphia Program will be the subject of an in-depth study by leading Foundations on the Program's effectiveness of sustainable fixes for homeowners.

Success is seen by outright dismissal of court actions, settlements, loan modifications, forbearances, deeds in lieu, short sale, and what I term "graceful exits".

I wanted to take a moment to talk about "graceful exit," a phrase I use to describe a case where it is not feasible for the homeowner to remain in the property-there is no means by which a loan can be performing- and therefore this process again, on a micro level, fosters discussion on planned departure from the property which brings certainty to the parties and dignity to the homeowners in planning for the next phase of their living situation. We have seen many cases in this regard and view this as a success for these homeowners.

I. CHALLENGES

With the advent of the HAMP and its provisions I have seen a welcomed benchmark for case analysis embraced by our stakeholders to the process- we do, however, see some fraying . I am seeing an increase in postponement due to the inability of lenders to react to proposals, the converse of delay caused by the homeowners not being prepared with their necessary paperwork. Both scenarios have a negative impact, with increased arrearages, further possible deterioration of the properties, increased hopelessness of the homeowners, adding yet further impediments to the discussions. I am also experiencing educational gaps on all the nuances of the HAMP provisions which come into play in resolving cases. I have postponed cases directly as we wait for clarity from Washington on certain HAMP provisions. As with any major governmental program, time will hopefully sort out some aspects of the Program, however diverse interpretations of such rules could mean the difference between a borrower staying in his home or having it go to sale.

On the part of lenders and servicers, we are also seeing, in some cases, a lack of knowledge of the guidelines requiring exploration on alternative relief efforts for homeowners beyond HAMP, as well as less than full explanation on denials of loan modifications after trial forbearance periods. My request is for further field training on the HAMP provisions with technical support of designated help-lines readily available for timely guidance.

As new provisions come forward and/or others are clarified, clearly programs such as ours are primed to react on almost an instant basis to what is in place. As a result we serve an important role in being able to effectuate the new directives that come down from Washington on a regular basis.

In addition, an ever growing concern is with the rate of unemployment these homeowners are facing. With homeowners out of work, resolutions are nearly impossible as there is no sustainable capacity to pay. This is clearly not only a Philadelphia problem but a nationwide issue. Here in Pennsylvania we have the benefit of HEMAP (Homeowners Emergency Mortgage Assistance Program), and other local initiatives, which offer money in the form of a loan to help homeowners sustain their mortgage payments when faced with job loss, illness, divorce, etc. This is a program that has been very successful and has in fact MADE money for the state. This is a program that should be reviewed on a national level to provide support to those homeowners facing unemployment.

I would be remiss if I did not take a moment to mention the Court's dismay on the cropping up of scam operations and fraudulent conveyances occurring in response to needy homeowners searching for quick fixes in the wrong places. We applaud the FDIC, the Philadelphia Federal Reserve and the City along with other federal, state and local agencies who are assisting to educate the consumers about such fraudulent acts so that government authorities may impose proper criminal and civil sanctions.

II. CONCLUSION

In sum, we are here to provide a micro-focus to citizen borrowers and lenders in the hopes of achieving as many performing mortgage agreements as possible for the sanctity of these individuals, their families, and our community.

With the continued support and input from our valued stakeholders and the commitment of the wonderful members of the Court and First Judicial District Staff we are encouraged that our efforts will be fruitful.

We invite other jurisdictions within our Commonwealth borders and on a national level to continue to partner with us in this endeavor and avail ourselves to achieve this goal by whatever means necessary.

As this Program continues past its Pilot phase into the year 2010 we continue to evolve to meet the ongoing needs of parties involved in foreclosure actions by providing a forum in which resolutions can be crafted and our mission can be fulfilled; saving homes, one address at a time!

We appreciate the "radar" that this panel has placed to our program. Your interest has put a real face to the current and continuing national and international debate surrounding these critical financial times.

Respectfully Submitted,

Annette M. Rizzo, Judge

Mr. NEIMAN. Thank you. Mr. Trauss.

STATEMENT OF IRWIN TRAUSS, SUPERVISING ATTORNEY, CONSUMER HOUSING UNIT, PHILADELPHIA LEGAL ASSISTANCE

Mr. TRAUSS. To the members of the Panel, I'd like to thank you for your invitation to share my perspective on the MHA Program and the HAMP Program as they relate to the availability of mortgage modifications and folks facing foreclosures in Philadelphia.

I want to start by saying how privileged I am to be on this panel with Judge Rizzo. Judge Rizzo really has been the driving force behind this Diversion Program and it would not work to the extent that it does without her dedication to try to save people's homes. This is one of the reasons why I'm worried about the replicability of this program because not every location is going to have a Judge Rizzo.

I also want to applaud the efforts of the Treasury in creating the Making Home Affordable Program. I think the Program, if mandatory, if implemented as designed, could help a broad spectrum of people facing foreclosures in a way that would have little impact on the Treasury and would have a tremendous impact on avoiding foreclosures. However, there are areas in which Making Home Affordable as designed could not help even if it worked 100 percent and one of those is addressing the needs of the unemployed, as Mr. Silvers has already indicated. Making Home Affordable was not designed to and cannot address the needs of people who can't pay their mortgages, fair mortgages, decent mortgages, simply because of the—of unemployment crisis. I'm sorry, to use that word, but the unprecedented levels of unemployment that we're experiencing. To address that, I think some of TARP money, which has been recovered from the bank, should be re-purposed by this MHA Program. I think an additional program could be created along the lines of the HEMAP Program in Pennsylvania, which, by the way, over its life has recovered more money than it's paid out to homeowners for grants and loans, which could be used to enable people to pay arrears and for continued assistance to pay mortgage payments or part of mortgage payments while people are unemployed.

I'd also like to comment on a couple of things that were said by the previous witnesses. One, about the Hope Now Escalation Team, which we just found out about two days ago and we called yesterday and they don't know, Hope Now does not know that there's a Hope Now Escalation Team, as far as we can tell; at least the person we spoke to on the phone. If we run a hotline, we need to know these things. We're always trying to find out where can you go. We called Hope Now and we said, "We want to talk to somebody in your Escalation Team." They had no idea what we were talking about and they said that they do not do any sort of enforcement and that what they do is help consumers and make referrals. So, I don't know if the Treasury people are still here or if Fannie Mae is still or Freddie Mac, but they need to get the word out to Hope Now that there is an Escalation Team.

Mr. NEIMAN. We will make sure to convey that to the Treasury.

Mr. TRAUSS. Also, with respect to the remedies from our experience, the servicers would like nothing better than to be kicked out

of the program, at least some of them. With respect to what can you do to a servicer who is not complying, many of these servicers seem to be very reluctantly involved in this program and really would love for business to go back to normal where they hound homeowners and foreclose and take sales to Sheriff's sale because that's what they know how to do, they can do it, they can do it quickly, they can do it efficiently, they can do it cheaply, they make lots of money doing it. So, the threat of being bounced from the program, I don't think is a significant threat for compliance.

From my perspective, despite the promise of the program, HAMP and MHA have not been particularly helpful in the Diversion Program with respect to achieving permanent modifications and I think that's reflected in the numbers. It has been helpful in the Diversion Program because it's served to slowdown the foreclosure process while lenders have been acting on HAMP applications. And, it's provided some leverage to advocates to press for meaningful resolutions. But, simply put, lenders are avoiding making permanent loan modifications and as long as homeowners have no leverage to force such modifications, they will not happen in great numbers. Overwhelmingly, as has been pointed out in my written testimony, servicers are not complying with the guidelines and they're doing it with impunity. Servicers generally—in my limited experience—seek ways to find homeowners ineligible. Even when servicers provide trial agreements, they do not provide permanent HAMP modifications at the end of them. Instead, we have seen them offer arrangements that are less favorable than what HAMP requires.

As I pointed out in my written testimony, there's a slew of inadequacies with respect to the enforceability of the program. I'd like to make two points which are related to enforceability and taking the problems out from the discretion of the servicers. One is that in the Housing Economic Recovery Act of 2008, $30 million was provided for attorneys to help homeowners prevent foreclosure. Because of the way the Neighborhood Reinvestment Corporation is interpreting that statute, the regulations prevent that money from being used by lawyers representing people to defend foreclosures, including participating in the Diversion Program. That needs to be changed.

Mr. NEIMAN. I'll give you an opportunity during the question and answer. That was my first question, on change. So, if you could just wrap up.

Mr. TRAUSS. To wrap up, if you want the MHA to work, if you want HAMP to work, I think the most important thing is to convince the Senate to pass the amendments of the bankruptcy code. It would give the bankruptcy court the authority to modify mortgages and make them affordable without incentives to the homeowners. And if there is a threat, then you're going to get lenders doing what we need them to do. Thank you again for the invitation.

[The prepared statement of Mr. Trauss follows:]

TESTIMONY OF IRWIN TRAUSS, ESQUIRE

SUPERVISING ATTORNEY
CONSUMER HOUSING UNIT
PHILADELPHIA LEGAL ASSISTANCE

HEARING ON FORECLOSURE MITIGATION

BEFORE THE
TROUBLED ASSET RELIEF PROGRAM (TARP)
CONGRESSIONAL OVERSIGHT PANEL

SEPTEMBER 24, 2009

Madam Chairperson and members of the Oversight Panel, thank you for the invitation to appear this morning to describe the role of Philadelphia Legal Assistance and the Save Your Home Philly Hotline in the Philadelphia Court of Common Pleas Mortgage Foreclosure Diversion Pilot Program ("Diversion Program"); to discuss with you the challenges we face in working with lenders to obtain affordable loan modifications and other resolutions that will enable our clients to avoid the loss of their homes; and to describe the effect Making Home Affordable ("MHA") has had on our ability to achieve affordable and sustainable arrangements that will keep folks in their homes.

My name is Irwin Trauss. I am an attorney. I supervise the Consumer Housing Unit of Philadelphia Legal Assistance (PLA), an LSC- funded program in Philadelphia, Pennsylvania. I have had this position at PLA for the past 13 years. For the previous 20 years I worked for Community Legal Services (CLS) in Philadelphia in a similar capacity. For almost thirty-three years I have primarily represented low-income homeowners faced with the loss of their homes through mortgage foreclosure, litigating as necessary in state, federal and bankruptcy court. In addition, I have overall responsibility for the operation of the Save Your Home Philly Hotline which, over the past almost 17 months, as part of the Philadelphia Court of Common Pleas Mortgage Foreclosure Diversion Pilot Program (Diversion Program), has handled about 11,000 calls from Philadelphia homeowners facing the loss of their homes to foreclosure.[1] Since April

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[1] Since May of 2008, the Hotline has received an average of between 600 and 700 calls a month. Paralegals who work under the supervision of attorneys whom I supervise take the calls. The paralegals on the Hotline triage the calls. They explain the diversion program; make appointments for the callers with housing counselors; and provide information and advice to homeowners, housing counselors and others involved in helping homeowners save their homes. In appropriate cases they refer the homeowners to the legal services attorneys at PLA or Community Legal Services (CLS) for representation. In a small number of cases they make referrals to private attorneys. The Hotline staff also monitors the operation of the Diversion

of 2008 every person faced with the imminent loss of his or her home through foreclosure has been referred by the Court to the Hotline. As a result, we have an intimate sense of what is happening with foreclosures in Philadelphia.

I understand I have been invited to testify today to provide the perspective of someone who, day in and day out, represents homeowners attempting to stay in their homes. From that perspective, it appears to me that voluntary modifications resulting from programs such as the Diversion Program and MHA will not enable families to save their homes in the vast numbers required to significantly stem the tide of foreclosures. Voluntary modifications, while helpful to some people, in my experience, only help at the margins. Preventing foreclosures in the numbers necessary to have a significant impact on the continued erosion of the housing market and the mass dislocation of people from their homes requires something more. We are faced now with loans that are defaulting for a combination of reasons. In addition to the millions of loans that are in default because they were unaffordable and unsustainable when they were made, we now have millions of defaults that are the result of the rising tide of unemployment. To address this situation we need a multi-pronged approach that is not dependent on the willingness of the mortgage servicers to agree to the solution and is not dependent on the lenders determining for themselves whether they have complied with the requirements of the program.

Program and provides feedback to the Court on behalf of homeowners for whom the Diversion Program has not worked as intended. I and attorneys I supervise, as well as attorneys from CLS with whom we work closely, help train the volunteer attorneys and the housing counselors. At least one attorney from my unit is present in court every day on which conciliation conferences are scheduled to take place to mentor pro bono attorneys and as a resource for the housing counselors. Finally, I and the attorneys and substantive paralegals in my unit undertake extended representation, which can include litigation, in about 200 new cases a year.

MHA as presently structured was designed primarily to address foreclosures resulting from loans that were unaffordable because of their design. It was not designed to address the second wave of foreclosures we are now experiencing, which is caused by the massive spike in unemployment. TARP money being recovered from the banks needs to be re-purposed to a MHA program that is specifically designed to meet the needs of the unemployed.

For example, people whose incomes have been interrupted or substantially reduced by unemployment, but who have fair loans at fixed interest rates, could benefit greatly from a federal loan program using TARP funds that is loosely modeled on the Pennsylvania Housing Finance Agencey's (PHFA) Homeowner Emergency Assistance Program (HEMAP). HEMAP provides loans to cure mortgage defaults and continuing assistance to keep mortgage payments current until temporary reductions in income caused by such things as unemployment, illness and other circumstances beyond the borrowers control are resolved. The loans bear no interest until they are in repayment status and they are not in repayment status until the homeowner's income is restored and until the homeowner can afford to make repayments. Since 1983 when the HEMAP program was created in Pennsylvania, it has collected more in loan repayments than it has paid out to assist homeowners under the program. A homeowner who can afford her current monthly mortgage payment, because he or she is back to work, but who has arrears from a period of unemployment, can get no help from the present MHA. Such a person would be able to keep her home with the help of an additional MHA program that contained HEMAP-like features.

Most importantly, substantive changes in the law, such as the proposed amendments to the Bankruptcy Code, which have been passed by the House, but defeated in the Senate, that require loans to be modified to make them affordable, are also needed as a means of giving

homeowners meaningful leverage in their dealings with servicers. Unless homeowners have leverage to force favorable results, lenders will continue to avoid the meaningful modifications that are necessary to keep folks in their homes.

While Making Home Affordable has made a significant difference in a small percentage of the cases that we have seen in Philadelphia, it has not resulted in a significantly greater willingness on the part of servicers to enter into modifications that meaningfully reduce monthly payments. It has not resulted in a willingness of lenders to reduce the principal due or even to reduce the amount of principal subject to interest. Servicers look for reasons to avoid making the modifications when they are most needed, rather than for opportunities to make them.

I say this based on my personal experience, and based on the information I glean in my role as the supervisor of the Hotline, as a mentor to the housing counselors and to volunteer attorneys who represent clients in the Diversion Program and as an active member of the mortgage foreclosure steering committee who has been involved from the beginning in the creation and operation of the Diversion Program.

The Save Your Home Philly Hotline is run by Philadelphia Legal Assistance with funding primarily from the Philadelphia Office of Housing and Community Development. The Hotline is an instrumental part of the Philadelphia Court of Common Pleas Mortgage Foreclosure Diversion Pilot Program - a program designed to reduce the number of homes lost to foreclosure by requiring lenders to meet with homeowners to explore alternatives before a judgment in foreclosure can be entered and before a sheriff sale of a home can take place.

Pennsylvania is a judicial foreclosure state. Under the Diversion Program, in each foreclosure case filed with the Philadelphia Court of Common Pleas, a conciliation date is scheduled. The court provides notice to the homeowner of the date along with a notice to

contact the Hotline. As part of the program the homeowners are referred by the Hotline staff to housing counselors who help them put together affordable proposals and supporting documentation that will enable them to stay in their homes. The proposals are submitted to the mortgage servicer and to the attorney representing the servicer, who are supposed to respond with a counter-proposal. If there is a gap between the proposal and the counter-proposal, the homeowner can appear on the date set for the conciliation conference and take advantage of available volunteer "judges pro tem" appointed by the Court to assist the parties in reaching an affordable sustainable agreement by bridging the gap between the respective proposals. Under the program, the housing counselor is expected to accompany the homeowner to the conciliation conference and pro bono attorneys are supposed to be available to represent the homeowners at the conferences.

The Diversion Program provides an important procedural break that pauses the foreclosure process. It also provides a forum in which lenders and their attorneys can be and are encouraged to look for alternatives to foreclosure - alternatives that the lenders and their attorneys might otherwise overlook in the rush to foreclosure. The Diversion Program increases the possibility that the homeowner will be able to find an advocate, in some cases a housing counselor, in some cases an attorney, and in some cases both, who will help the homeowner take advantage of programs that are available to prevent foreclosure, including state programs such as HEMAP, the PHFA sponsored HERO and REAL loan program, the federal Hope for Homeowners loans (H4H) or programs that the lenders are obligated to explore such as the FHA loss mitigation programs, FHA HAMP, and HAMP. The Diversion Program also increases the chances that the homeowner will be able to obtain an attorney to defend the foreclosure and to challenge unlawful loan provisions and unlawful charges.

Most importantly, the Diversion Program involves the lenders' attorneys in the search for alternatives. Largely as the result of the herculean efforts of Judge Rizzo, who oversees the program, and the participation of the lenders' bar in its creation, the Diversion Program fosters an environment in which there is an expectation that lenders' counsel will play a role in urging their clients to consider alternatives to foreclosure. As a result of the Diversion process, lenders have offered borrowers affordable loan modifications that would not otherwise have been available to them.

Many homeowners in Philadelphia have greatly benefitted from the existence of the Diversion Program. During its almost 18 months of operation, the Diversion Program has enabled probably several hundred homeowners, who without the program would have lost their homes to foreclosure, to enter into agreements that will enable them to keep their homes, for the time being at least. Including those who have reached agreements that have for now put an end to the foreclosure actions, there are over 1600 homeowners whose foreclosures have been put on hold and who have either reached a resolution or are working on one. This is out of approximately 10,000 homeowners who were eligible for the program and about 5,000 who participated.

The precise figures are not easily discerned, because we have not yet devised a way to examine the agreements that are reached to determine their affordability and sustainability and the people who enter into agreements through the program are not being followed in any systematic way. One cannot easily determine what is happening from the court records themselves, because settlements are not always reflected on the dockets and the dismissal of a case on the docket does not prevent the filing of a new foreclosure action. It is in fact not

unusual for lenders to abandon one foreclosure action and to institute another, particularly if there is a change in servicer.

At bottom, though, the Mortgage Foreclosure Diversion process is voluntary and in it a resolution cannot be imposed upon an unwilling mortgage servicer. It is has been my experience that absent external pressure, i.e. absent some leverage that can be applied by the homeowners or on the homeowners' behalf, lenders have not ordinarily been willing to significantly compromise the mortgages to make them affordable over the long run, even in the Diversion Program. They usually do so when they are forced to, either by an aggressive advocate, by the prospect of litigation, by litigation that frustrates their attempts to foreclose or by pressure applied directly or indirectly, often discreetly, by the Court or the judges pro tem through the Diversion Program, where the homeowner is able to get before Judge Rizzo or before an active judge pro tem.

We are now more than six months into the implementation of MHA. We have found that MHA has made it easier to obtain delays in mortgage foreclosures cases in the Diversion process that have been helpful to homeowners, while the lender considers the homeowner's HAMP application. And we have found that the existence of HAMP and FHA HAMP has provided persistent and dedicated advocates with additional tools with which to leverage agreements from reluctant lenders. But, the existence of MHA and HAMP has not meaningfully affected the overall dynamic. With or without MHA, homeowners represented by knowledgeable advocates who are backed up by counsel prepared to litigate get resolutions that are simply not available to a homeowner who is not so represented. For the most part, HAMP has not been self-effectuating and the number of actual HAMP modifications, as opposed to trial agreements, has been small. I am aware of, fewer than 10 completed HAMP modifications

amongst the clients of all the housing counselors and legal services attorneys who are involved in the Diversion Program.

Both before and after MHA, in the Diversion Program when servicers, either through their attorneys or directly, make loan modification or forbearance proposals, it is not unusual for the proposal to contain provisions that may deprive the homeowner of rights they are entitled to under applicable law and that increase the overall obligation, at the same time the proposal might lower the monthly payment. For example, I have repeatedly seen servicers offer modifications of FHA loans with interest rates that are in excess of the maximum rate permitted by FHA for a loan modification. And I have seen new loan balances that include fees and costs in excess of the amount permitted by the mortgage documents and by the FHA regulations.

The arrival of MHA has not significantly affected the way the mortgage servicers and their counsel operate. It is but one more program with which servicers and their attorneys generally have to be forced to comply - and with which they will refuse to comply if it suits their purposes.

With HAMP it is sometimes difficult to discern if the noncompliance is intentional or is the result of a lack of training, or a combination of the two. But the non-compliance with the HAMP guidelines is pervasive and the absence of a meaningful method to challenge this non-compliance is frustrating to advocates - particularly to housing counselors who were led to believe that HAMP would be streamlined and self effectuating without the need for an attorney or for litigation. [2]

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[2] The Housing and Economic Recovery Act of 2008 provided $30,000,000 to be used to pay for attorneys to assist homeowners in foreclosure who have legal issues that cannot be handled by housing counselors. Ironically, despite legislative history to the contrary, the Neighborhood Reinvestment Corporation, charged with administering the funds, has interpreted

For example, though the Servicer Participation Agreement (SPA) Bank of America (BoA) signed with FNMA required it to participate in the Home Affordable Modification Program (HAMP), callers to the Hotline reported that Bank of America refused to send them HAMP applications when their loans were not owned by FNMA or FHLMC. Hotline paralegals, calling on behalf of clients, were told repeatedly by BoA loss mitigation employees that only GSE-owned loans are eligible for HAMP. This continued until sometime in August of 2009. Bank of America was openly violating the terms of the contract it signed with FNMA. During that time, BoA foreclosed on homeowners entitled to the benefits of HAMP as if the program did not exist, denying thousands or perhaps tens of thousands of homeowners the opportunity to save their homes.

Mortgage servicers such as Saxon Mortgage, after an initial moratorium on the foreclosure sale of homes brought about by its signing the SPA, simply rejects homeowners for consideration under HAMP, apparently for no reason that is in any way connected with the program requirements, with no notice of any kind to the homeowner. Within the last three months I had a case in which Saxon's attorney advised me that my client would not be considered under HAMP because she "did not meet the debt to income ratios of the program." My request for further explanation, of which "ratios" the attorney was referring to, went unanswered.[3] Of course there are no "debt to income" ratios required for eligibility under the

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the Act to preclude its use to pay for attorneys providing representation to homeowners in the Diversion Program. The money is intended to be used to provide legal assistance to help homeowners avoid the loss of their homes through mortgage foreclosure. Yet under the implementing regulations, the money cannot be used once an action in mortgage foreclosure has been filed - precisely when the services of an attorney become essential.

[3]Despite our participation in the Diversion Program and despite the existence of HAMP we were forced to file a bankruptcy to prevent the client's home from going to foreclosure.

HAMP program other than the requirement that the mortgage payment, including principal, interest, taxes and insurance, exceed thirty one percent of the homeowner's gross income. At the same time we were told that the client did not meet the debt to income ratios for HAMP, we were also told the client could not afford the mortgage. Saxon's lawyer made no attempt to reconcile these two positions, which are irreconcilable under the HAMP guidelines. It is not unusual for homeowners participating in the Diversion Program to get no notice that the servicer has concluded that a HAMP modification is unavailable, other than to learn that the house is back on the sheriff sale list, which is what happened in my case, or that a judgment has been entered.

This is not an isolated incident. Housing counselors and attorneys representing homeowners are often told by counsel for the lender that a particular homeowner will not be considered for HAMP because his or her income is insufficient, after an initial postponement is granted so that a HAMP application can be considered. A case brought to my attention at the beginning of this week is representative of the approach servicers seem to take to evaluating HAMP eligibility. The case is of a client who is participating in the Diversion Program. The homeowner was referred to a housing counselor, who requested a HAMP loan modification. The lender's attorney agreed to extend the time in which a default judgment could be taken so that the HAMP application could be considered. No new conciliation conference date was scheduled. The extension for filing a response passed and the lender's attorney entered a default judgment against the homeowners. After taking the default judgment the lender's attorney provided the following explanation for why the homeowner would not be considered for HAMP or any other loan modification :

> "... our client advised the borrower was unable to qualify for HMP. the client stated there were no options, in that borrower cannot afford anything, as the income is only $1000/mo which is only enough to cover the utilities and food."

When pressed for further clarification of the HAMP denial, the attorney responded in a subsequent email to the housing counselor as follows:

> "My client has clarified why there are unfortunately no loan modification options available. The borrower's income is unfortunately too low. Specifically, the borrower only gets $231 per week of unemployment income, which is $1001 per month. The 31% "affordable" payment needs to include PITI (P&I plus taxes and insurance). 31% of $1001.00= $310.31, minus the escrow of $114.27= a P&I of $196.04, which cannot be met by either reducing the interest rate or by adding a balloon. Further, the unemployment ends in May so there is no guarantee for income after that. Thank you."

This response reflects a wholesale misunderstanding of the eligibility for HAMP and of the steps the servicer is supposed to take in processing a HAMP application and applying the HAMP "waterfall." Reference to an amortization table reveals that at 2% over forty years, a payment of $196.04 supports a principal loan balance of $64,736.92. This principal balance is not even $3, 00.00 less than the $68,000.00 original principal amount of the high interest rate mortgage the homeowner took out in November of 2006. The application of the HAMP waterfall would require approximately $19,000 of the $83,672.18 judgment[4] that was entered in the case to be set aside as a non-interest-bearing balloon payment. The lender's apparent belief that application of the HAMP waterfall cannot result in a loan modification that will allow the homeowner to pay $196.06 a month in P+I, is clearly without foundation. And the fact that the homeowner may have no income when the unemployment ends after more than nine months is

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[4] The default judgment that was entered in this case was inflated by foreclosure fees and costs that are of questionable validity, but which the borrower cannot now contest since a default judgment was entered while the homeowner and her counselor awaited the lender's response to the HAMP application.

irrelevant to eligibility for HAMP. Perhaps the lender is saying that the modification required by the application of the HAMP "waterfall" would fail the NPV test, but there is no way to discern this from the reasons given for the denial.

We are finding that, in violation of the HAMP guidelines, servicers are routinely and intentionally "grossing up" income, such as social security income, disability payments and unemployment compensation payments, even though the gross amount of the income is already being reported to the servicer. This overstated gross is then being used as the basis for denying the homeowner consideration for HAMP under the 31% of income test. Where the homeowner remains eligible for HAMP despite the servicer's exaggerated income calculation, they are required to make trial monthly payments that are often unaffordable and in excess of 31% of the true income. In such a circumstance the homeowner's failure to pay the excessive trial payment is then used as a basis for denying the homeowner a permanent HAMP modification.

The whimsical nature of the servicers' decisions to refuse to engage in HAMP modifications is brought home by a case handled by an attorney whom I supervise early in the summer, which involved Wells Fargo. The homeowner's request to be considered under HAMP was denied because, according to Wells Fargo's attorney, "[h]er debt to income ratio for the mortgage alone is over 70%. Her monthly mortgage payment cannot be lowered to bring it within HAMP guidelines and still payoff the mortgage debt." There was no suggestion that the NPV test was implicated or that the NPV test was even done.

The reason given for the denial was nonsensical in light of the HAMP requirement that anyone with a mortgage payment exceeding 31% of gross income is eligible for consideration for a reduction of the mortgage payment to 31% and for the subsequent application of the NPV test. Despite the absurdity of its position in the face of the HAMP guidelines, Wells Fargo only

relented from its position that HAMP was unavailable and the house would be sold when we embarrassed it into doing so by bringing its position to the attention of a representative of FNMA during a fortuitous fact-finding trip he made to Philadelphia. Wells Fargo reversed itself, decided the client is eligible for HAMP, postponed the sheriff sale and is redoing its calculations. Had the homeowner been without counsel, as most are even in the Diversion Program, her home would have gone to foreclosure sale, despite the Diversion Program and despite MHA.

Virtually every servicer arbitrarily excludes whole classes of homeowners from consideration under HAMP.[5] These servicers refuse to consider modifying the loans of folks who have inherited their homes or obtained them as the result of property settlements resulting from divorce. The servicers take this position because in such a case the owner of the property is not a party to the underlying note, even if she has been paying it for years and if the original mortgagor is dead or otherwise unavailable. HAMP permits no such exclusion. There is nothing in the HAMP guidelines that permits the servicer to require the signature of a deceased person as a condition of HAMP participation and there are specific provisions regarding divorced persons that are often ignored by the servicers.

We also see servicers who seem to routinely say that the investor will not allow them to do a HAMP modification as well as some mortgage holders, in particular HSBC, whose mortgage servicers almost always find some excuse for refusing to modify a mortgage, often

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[5]HAMP by its express terms excludes a large class of folks who are most in need of help. It does little for a person at 200% of poverty or less whose mortgage payments may be less than 31% of her income, but are still unaffordable because the remaining 69% of income is insufficient to cover the cost of food, clothing, transportation, utilities and other minimum basic necessities of life. HAMP also is of little help to someone who is back to work after building up a large arrearage because of a disruption in income resulting from illness or unemployment, but because of the resumption in income cannot meet the 31% of income test.

saying that the pooling and servicing agreement does not permit a HAMP modification. In these cases the servicers make no apparent attempt to convince HSBC to make the modifications, as required by the HAMP guidelines. And there is no way to test whether the assertion regarding the pooling and servicing agreement is even true, as it is never produced and reference to where the prohibition lies is never provided.

In cases involving a FNMA loan, we have seen servicers deny HAMP applications to homeowners because their incomes were too small. This is a circumstance which is almost impossible, given that there is no NPV test for FNMA and FHLMC loans. If the mortgage payment is more than 31% of a homeowner's income, she should be eligible for HAMP consideration and for the application of the waterfall.

Compounding the failure of the servicers to adhere to the HAMP guidelines is the lack of transparency surrounding the HAMP denial, particularly in the application of the Net Present Value Test (NPV). I can find no requirement in the guidelines for an affirmative notice to a homeowner whose HAMP application is turned down, absent a trial repayment period. There is no requirement of notice of the reason for the turndown and no notice of the assumptions that are made by the servicer in applying the NPV test. Because of this, it is difficult, if not impossible, to challenge a lender's refusal to agree to a modification and often difficult to even discern that a negative decision has been made until it is too late to prevent the sale of a home or the entry of a default judgment. The forum in which a challenge to a denial can be mounted is not clear and it is certainly not clear that a foreclosure sale can be prevented while the challenge is brought. Servicers almost uniformly take the position that they are not precluded from moving forward with a foreclosure while they consider a request for a HAMP modification despite the guidelines to the contrary.

The Diversion Program can sometimes provide a forum in which the HAMP denial can be tested, if the homeowner has notice of the turndown before a sale takes place or a judgment is entered and if the homeowner has an advocate who is capable of getting the issue before the Court. But, because the diversion program is at bottom a voluntary program, it is not presently designed to provide for the review of a lender's refusal to provide a HAMP modification or to determine if the lender has complied with the requirements of the program. The Diversion Program does have the capacity to evolve and perhaps could evolve into a forum in which a lender's failure to abide by the requirements of HAMP could be routinely reviewed. But we are not there yet.

I have learned recently, by chance, that there is a HOPE Hotline Escalation Team that is supposed to provide "an avenue for borrowers to complain about improper denials and receive an explanation for their denial." It appears the Treasury Department has filed a document with the Court in connection with litigation in Minnesota which refers to this team. According to the Treasury Department's filing, this team has been in place since July 10, 2009, though its existence has not been publicized and we are unable to find any mention of it on the Hope Now website or on any other relevant government web site. I believe I can safely say that as of two days ago I was probably the only person in Philadelphia who had even heard of this team. We have no experience with the Escalation Team, but will see if we can find a way to contact it and if it provides an avenue for obtaining relief from improper HAMP denials.

Absent significant leverage on the part of homeowners to force a change in behavior, the majority of servicers will continue to find ways to avoid meaningful loan modifications despite HAMP and MHA as presently structured. The only way to change the servicers' behavior to the extent required to make meaningful modifications common is to provide the homeowner with

leverage over the servicer, such as the threat of a bankruptcy judge imposing a modification, and loan programs, such as the one I discussed above and grant programs that have been proposed by others designed to help the unemployed, that do not depend on the cooperation of the servicers. The availability of such options for homeowners would likely complement voluntary programs such as HAMP and the Diversion Program and substantially increase the chances that meaningful long-lasting alternatives to foreclosure will result.

Thank you again for the invitation to share my experience with you. I would be happy in the future to provide any information which might be of assistance to this Panel in monitoring the effectiveness of the programs under TARP that are designed to help folks avoid the loss of their homes.

Mr. NEIMAN. Thank you. Ms. Fitzgerald.

STATEMENT OF EILEEN FITZGERALD, CHIEF OPERATING OFFICER, NEIGHBORWORKS AMERICA

Ms. FITZGERALD. Thank you, Superintendent Neiman, Mr. Atkins, Mr. Silvers. Thanks for the opportunity to talk with you today about NeighborWorks' Foreclosure Mitigation work and feedback we have received on negotiating modifications under the Making Home Affordable Program.

By way of background, NeighborWorks is a congressionally chartered nonprofit. We were established in 1978 with a statutory board, which includes the Directors of the Federal Financial Regulatory Agencies and the Secretary of HUD, or their designees. Our mission is to expand affordable housing opportunities, working through a network of more than 235 community based organizations. NeighborWorks was at the forefront of identifying the foreclosure crisis, creating the NeighborWorks Center for Foreclosure Solutions five years ago. In December 2007, NeighborWorks was named the Administrator of the $180 million National Foreclosure Mitigation Counseling Program, which was created under the 2008 Appropriations Act. Two additional Appropriations have been made since then, $180 million in July 2008 and then an additional $50 million in 2009.

To date, 674,000 homeowners have received counseling through NFMC is 1,700 grantees and sub-grantees. During this foreclosure crisis, working with servicers has posed challenges for counselors across the nation. While many issues are being addressed, working with servicers has continued to be a challenge since the launch of MHA. Before I discuss the challenges, I do want to point out that MHA includes a number of really successful components, the trial modifications having been extended and initiated. The 31 percent front end DTI requirement really improves a borrower's chance of success and was a critical element. As was the willingness of both servicers and Treasury to get input on the modification process, and their commitment to addressing issues identified and the addition of the MHA, FHA program.

Back to challenges, NeighborWorks recently held a series of seven feedback sessions with NFMC counselors on MHA implementation uncovering three major themes: difficulty communicating with servicers; servicers not following MHA program guidelines; and frustrations with the system as a whole. Given the time constraints I'll just address a few of these. So, difficulty trying to communicate with servicers. Counselors noted that many servicers will not work with them. Some servicers still ask for their social security numbers, even though servicers have directed staff not to continue this practice. Counselors also told us they spend as much as two hours on hold trying to reach a servicer and then frequently are transferred to numerous phone lines before getting answers for their questions. Some servicers have contracted with third party collection agencies who call borrowers demanding payments and do not address refinance or modification options.

Challenge two: Servicers are not following MHA program guidelines. Counselors gave many examples of servicers not helping homeowners who were current on their payments, but who knew

they would have trouble making payments in the near future. Instead, the servicers advised the borrowers to stop making payments and call back when they were 30, 60 or even 90 days delinquent. Counselors also reported that some servicers would not disclose terms of a modification or a payment breakdown or put their offers in writing. In one case, a servicer made three separate offers to a borrower on the telephone and then sent the borrower a letter stating she was ineligible for a modification.

Servicers are giving misinformation about the program, stating that only Fannie and Freddie loans are eligible or misstating the required front and backend ratios. Other servicers are offering other workouts before MHA workouts, which clearly is not supposed to happen. MHA modifications are supposed to be offered first.

Counselors also gave examples of a number of servicers not halting foreclosures while reviewing files for MHA eligibility. In one case a servicer moved forward with foreclosure sales when clients were being reviewed for MHA. In California there is a 90 day moratorium on foreclosure sales. When asked about this practice, that particular servicer said they were exempt from State and MHA requirements.

Challenge number 3: Frustrations with the system as a whole. Counselors gave many examples of servicers not giving explanation of a denial for HAMP. They also noted it takes too long to get a response to the modification request, two to three months for a trial modification. In some cases counselors are required to resubmit the same packages when servicers lose documents or take so long to review them that the data and the document is outdated.

Finally, a few thoughts on program improvements. NFMC counselors support the creation of a central portal for submitting modification requests, such as Hope Now and Treasury portals which are currently under development, we hope. They also would like uniform procedures and forms. The efforts currently underway to establish uniform servicer guidelines would assist counselors immensely if that happens. And finally, counselors say they could be more effective if they had access to servicers' NPV (not present value) models to understand how servicers determine MHA eligibility.

In sum, government entities, counselors, lender servicers and investors have to continue to work together to address this crisis and improve the effectiveness of the programs.

[The prepared statement of Ms. Fitzgerald follows:]

Statement of

Eileen Fitzgerald
Chief Operating Officer
Neighborhood Reinvestment Corporation
(now doing business as NeighborWorks® America)

Before the
Congressional Oversight Panel on
Troubled Asset Relief Program (TARP)
National Constitution Center in Philadelphia, Pennsylvania

September 24, 2009

Mr. Atkins, Mr. Neiman, and Mr. Silvers, my name is Eileen Fitzgerald, and I am Chief Operating Officer of NeighborWorks America. I appreciate the opportunity to talk with you today about NeighborWorks' housing counseling and foreclosure mitigation work, the challenges borrowers face in negotiating loan modifications with their mortgage servicers, and the impact that Making Home Affordable and the Home Affordable Modification Program (HAMP) has had on servicers' ability to modify troubled mortgages.

By way of background, NeighborWorks America was established by Congress in 1978 as the Neighborhood Reinvestment Corporation. The Corporation receives a federal appropriation from the Transportation, Housing and Urban Development, and Related Agencies Appropriations Subcommittee. For fiscal year 2009, the Corporation's federal appropriation is $131 million, with an additional $50 million for foreclosure prevention counseling grants. The corporation's Board of Directors is made up of the heads of the federal financial regulatory agencies (the Federal Reserve; the Federal Deposit Insurance Corporation; The Comptroller of the Currency; the Office of Thrift Supervision; the National Credit Union Administration) and the Secretary of HUD, or their designees.

NeighborWorks America's primary mission is to expand affordable housing opportunities (rental and homeownership) and to strengthen distressed urban, suburban and rural communities across America, working through a national network of local community-based organizations, known collectively as the NeighborWorks network.

The NeighborWorks network includes over 235 nonprofit organizations, serving more than 4,450 communities across the United States—in all 50 states, the District of Columbia and the Commonwealth of Puerto Rico. NeighborWorks organizations operate in our nation's largest cities and in some of its smallest rural communities.

NeighborWorks organizations provide a wide variety of services that reflect the needs of their neighborhoods and communities. In the last 10 years, NeighborWorks has:

- Assisted more than 270,000 families become homeowners or preserve homeownership;
- Provided homeownership counseling to more than 560,000 families;
- Assisted over 135,000 families of modest means to become homeowners (of which, 91 percent are low-income and 53 percent are ethnic/racial minorities); and
- Provided nearly 85,000 professional training certificates to community development practitioners from over 3,600 organizations and municipalities nationwide.

NeighborWorks organizations also own and manage more than 74,000 units of affordable rental housing.

But today's focus is NeighborWorks' role in foreclosure mitigation.

The Corporation identified the problem of rising foreclosures five years ago and created the NeighborWorks Center for Foreclosure Solutions, which is an unprecedented partnership between leading nonprofit organizations as well as state, local and federal agencies and members of the mortgage lending and servicing sectors that involves a comprehensive, multi-faceted approach to the foreclosure crisis.

From our experience, we know that the best defense against delinquency and foreclosure is objective education and advice before the borrower begins shopping for a home and selecting a mortgage product. The most reliable and trusted home buyer counseling is provided through objective non-profit agencies (including local NeighborWorks organizations and other HUD-approved nonprofit housing counseling agencies) that put the consumers' and the communities' interest first. We also know that homeowners' odds of success are increased even further when they have access to post-purchase counseling and homeowner education. Further, we know that counseling can help troubled homeowners improve their outcomes when facing foreclosure.

In December 2007, the Consolidated Appropriations Act of 2008 (P.L. 110-161) created the National Foreclosure Mitigation Counseling Program (NFMC) to address the subprime foreclosure crisis. The legislation named NeighborWorks America administrator of the $180 million program. The legislation required that NeighborWorks America grant at least $167,800,000 to qualifying organizations including state housing finance agencies, HUD- approved housing counseling agencies, and NeighborWorks organizations that provide mortgage foreclosure mitigation assistance primarily in states and areas with high rates of defaults and foreclosures primarily in the subprime housing market. The funds were targeted to provide foreclosure mitigation counseling to help eliminate the default and foreclosure of mortgages of owner-occupied single-family homes at risk of foreclosure. The legislation required that NeighborWorks America award at least $50 million of the funds within 60 days of the legislation's enactment. In response, in February 2008, NeighborWorks America announced the first National Foreclosure Mitigation Counseling program grants totaling over $130 million to 130 organizations.

On July 30, 2008, Congress passed the Housing and Economic Recovery Act of 2008 (P.L. 110-289), which appropriated an additional $180 million to the NFMC Program, including $30 million for legal assistance. On March 11, 2009, President Barack Obama signed the Omnibus Appropriations Act of 2009 (Public Law 111-8) which appropriated an additional $50 million for continuation of the National Foreclosure Mitigation Counseling (NFMC) Program.

To date (as of September 17, 2009), more than 674,000 homeowners at risk of foreclosure have received counseling through NFMC, served by more than 1,700 NFMC grantees and subgrantees. More than half of clients served (53%) are minority homeowners, while minorities make up 24% of all homeowners. 49% of all homeowners seeking assistance report a loss of income as the primary reason they are facing foreclosure. While only 18% of mortgages nationwide are adjustable rate (ARMs), 37% of homeowners seeking assistance held an ARM. More than half of the homeowners receiving counseling through NFMC were 60 days late at first contact with a counselor

NFMC Program Grantees submit quarterly reports to NeighborWorks throughout the course of the program. In these reports, they are asked to identify key challenges they encountered while counseling homeowners facing foreclosures. NeighborWorks conducted an analysis of the 1,290 challenges Grantees reported for activity that occurred between January 1, 2008 and March 31, 2009 – right after the Making Home Affordable (MHA) program was launched. During this time period, interactions with servicers and lenders were cited most frequently as a challenge for counselors in working with homeowners facing foreclosure.

Types of challenges Grantees reported facing were categorized as:

- efficient and timely communication with lenders and servicers;
- obtaining workable mortgage solutions from servicers for homeowners;
- homeowner resources and interactions; and
- counseling program administration.

The most commonly reported types of challenges pertain to working with servicers (47.8%). Grantees reported that the majority of the challenges they face are related to communication with servicers, which accounted for 37.2% of total challenges. Another type of challenge Grantees reported facing when working with servicers was obtaining workable mortgage solutions for homeowners (15.2%). Grantees commonly reported that they encountered challenges that pertained to homeowners' resources, as well as counselors' interactions with homeowners (37.2%). Challenges related to program administration accounted for the lowest proportion of challenges (15%).

President Barack Obama launched the Making Home Affordable (MHA) program on March 4, 2009. NeighborWorks is appreciative of a number of aspects of MHA. First, we would like to commend the 571,000 offers to borrowers for trial modifications, and 360,000 trial modifications that were initiated as of August 2009. Second, the 31% front end ratio requirement provides a realistic chance of success for borrowers and is a significant improvement over front end ratio requirements in earlier loan modification plans. Further, servicers have been very willing to get input on counselors' issues, and have committed to addressing these issues. The MHA program has also been willing to make improvements as challenges have been identified. Finally, adding Federal Housing Administration (FHA) insured loans to the MHA program expands the opportunity to mitigate the effects of foreclosure to thousands more families.

However, while there are a number of improvements in progress, working with servicers has continued to be a challenge for counselors under MHA.

The counselors in the NFMC Program are working in the MHA program in two ways – counselors assist clients who are trying to determine if they are eligible for a MHA modification or refinance, and they work with clients that have received a refinance or modification but have high back end debt to income ratios. Because these counselors are on the front lines in the foreclosure crisis, the NFMC Program has been holding feedback sessions on what they are finding regarding the implementation of the program.

On July 1, July 15, July 29, August 12, August 26, September 9, and September 23, 2009, NeighborWorks held a series of listening sessions to gather counselor feedback on MHA. Several themes emerged from this feedback including:

(1) Difficulty trying to communicate with servicers
(2) Servicers are not following the guidelines of the Making Home Affordable program
(3) Frustrations with the system as a whole

I will discuss each theme in turn.

(1) Difficulty trying to communicate with servicers

Counselors noted first that many servicers will not work with counselors. For example, some servicers will not accept an authorization form from the counseling agency with the client's signature and require use of their own form. Some servicers want the client to follow up directly with them to ensure the client is not paying for counseling. Finally, some servicers ask for counselors' Social Security numbers before

they can talk to a representative about a client. It is NeighborWorks' understanding that servicers have instructed staff not to ask for counselors' Social Security numbers, but this practice continues.

Counselors also noted that servicer representatives and processes are difficult in general. Counselors may spend as much as two hours on hold trying to reach a servicer, and then are frequently transferred to numerous phone lines before getting answers to questions. Others said that due to heavy phone traffic, calls get routed to any available line that is open. There is no consistency within servicers with regards to which representatives – or what departments – answer a phone call. Further, counselors gave numerous examples of servicers changing contact information frequently and require documents to be resent.

Some servicers are bringing third parties including collection agencies into the process as opposed to modification representatives. These collection agents call borrowers demanding payment and do not address refinance or modification options.

(2) Servicers are not following the guidelines of the Making Home Affordable program

Counselors gave many examples of servicers not helping homeowners who were current on their payments but who knew they would have trouble making their mortgage payments in the near future. Instead, the servicers advised the borrowers to stop making payments and call back when they were 30, 60, or even 90 days delinquent.

Counselors also reported that some servicers will not disclose terms of a trial modification or payment breakdown. For instance, one servicer gave a client a trial modification, but the representative said he was not sure what modification the client would receive at the end of the trial period. In other cases, servicers stated that they could not tell the counselor the terms of the trial modification as they did not know what the terms would be yet – or even if there would be a modification at all. In other cases, several servicers set up trial modifications but did not indicate at that time the terms of the permanent modification, how the payment amount was derived, and/or the breakdown between principal, interest, taxes or insurance.

Other servicers are not putting trial modification offers in writing. In one case, a servicer made three separate offers to a borrower on the telephone and then sent the borrower a letter stating she was ineligible for a modification.

Counselors are citing that servicers are giving out misinformation about the program, such as stating that only Fannie Mae and Freddie Mac loans were eligible for modification, or misstating the required front and back end ratios. In one case, a servicer approved a modification, but told the client they had to prove they had three months of reserves in the bank before the modification could be approved. Some servicers are telling borrowers that they do not have to get the borrower's front end ratio down to 31%, or even to 38%. One servicer worked with a borrower to get their front end ratio down to 47%, and another borrower to 50%, but they said they did not have to get the ratio down to 31%. Some servicers are not clear on the guidelines pertaining to unemployment benefits and refuse to accept them as income. Other servicers are offering other workouts before MHA workouts although MHA modifications are supposed to be offered first.

Counselors also gave examples of a number of servicers not halting foreclosures while reviewing files for MHA eligibility. In one example, the servicer has moved forward with foreclosure sales even though the client is in review for a modification—in California, where there is a 90 day moratorium on foreclosure sales. When asked about this requirement, the servicer representatives said that servicer was exempt from state and MHA requirements, and that an email was sent around to employees stating that they did not have to comply with the moratorium, and could continue with sales on clients being considered for MHA.

Some servicers are extending trial modifications and delaying permanent modifications. One servicer asked to continue the trial modification for one to two months as they had not reviewed the documentation yet and were not prepared to offer a permanent modification.

(3) Frustrations with the system as a whole

Many counselors are frustrated that servicers will not give a reason for denial for HAMP, giving numerous examples of this practice.

Counselors also noted that it takes too long to get a response to modification requests, or that it takes too long to get to the point of having a complete package, and eventually the counselors are required to resubmit new packages with updated information. It often takes as long as two to three months to hear if a client is even approved for a trial modification. In some cases, counselors are required to resubmit the same packages more than once during this time. They said that servicers either lose documents or take so long to review them that the information is outdated. After three months, counselors are told to resubmit stale data.

The NFMC counselors with whom we spoke are very supportive of the idea of creating a central portal for submitting modification requests, such as the Hope NOW and Treasury portals currently in development. They also would like uniform procedures and forms. The effort to establish uniform servicer guideline currently underway will help counselors immensely in helping trouble borrower navigate the foreclosure mitigation process. Finally, counselors feel that they could be much more effective if they had access to NPV models. Counselors would like to understand how servicers determine home values, as the values are different from what the counselor sees from their own Automated Value Models (AVMs), appraisals, and Broker Price Options (BPOs).

In sum, Federal, state, local governments and nonprofits will have to continue to work together with private industry—lenders, servicers and investors—to address the foreclosure crisis and improve the effectiveness of MHA and HAMP.

I again thank you for the opportunity to testify and stand ready to answer any questions.

Mr. NEIMAN. Thank you. Ms. Goldberg.

STATEMENT OF DEBORAH GOLDBERG, DIRECTOR, HURRICANE RELIEF PROJECT, NATIONAL FAIR HOUSING ALLIANCE

Ms. GOLDBERG. Thank you. I want to add my thanks to that of my co-panelists here for you all hold this hearing and for inviting me here to testify. I'm here on behalf of the National Fair Housing Alliance, which is the nation's only national organization that's exclusively devoted to eradicating discrimination in the housing market. As noted, I run the Hurricane Relief Project at NFHA and since 2005 our project has been working with homeowners in the Gulf to help them recover from the storms of that season. What we have found is that many of the homeowners that we have helped would be facing foreclosure even if Hurricanes Katrina, Rita, etc, had not occurred. The reason for that is that they have the same kinds of unaffordable and unsustainable mortgages that so many other homeowners around the country have and whose failure has really launched this current crisis. We do view it as a crisis at the National Fair Housing Alliance and we are very mindful of the fact that to a large extent the cause of this crisis have been born by people of color and the communities in which they live. We have decade worth of research that tells us that these borrowers in these communities have been targeted for the kinds of loans that are not sustainable, that are high cost, that are high risk and they have been on the front lines of this crisis. It's been estimated that people of color, over the last couple of years have lost hundreds of billions of dollars worth of equity as a result of foreclosures. That's going to have a profound effect on their families' financial security now and into the future and it may take us generations to be able to recover from that.

The foreclosure crisis is unraveling several decades worth of concerted efforts by a lot of people to promote community revitalization and wealth building in our nation's cities. And I want to say, I think it's been pointed out that the misery now is being shared by a lot of other people. That loans that might not be considered unsustainable and unaffordable are still going into foreclosure. That's not the kind of sharing I think any of us want to see.

With a crisis of this proportion we think it's been imperative for the government to intervene and we applaud the Obama Administration for launching the Making Home Affordable Program and HAMP. Several people already talked about some of the key elements of that program that have had a really positive impact on the market within limits and we want to support those things, such as the affordable payments and some other things that have been mentioned. And I want to say that we've been trying to work since the beginning with Treasury and other government officials to try and improve the program's operations. I think the early numbers indicate that HAMP is on target to meet its goal. But as has already been discussed extensively, and as we certainly believe, those goals are too modest and the number of foreclosure starts that are projected far outweigh the number of people that we expect that the program will be helping. Our goal needs to be to stop fore-

closures, not to meet the goals that have been established for HAMP.

My written testimony describes a number of operational problems with HAMP and suggests a bunch of changes that we think would strengthen the program, would increase its transparency and accountability and extend its reach. My testimony also makes a number of proposals for steps outside of the context of HAMP that we believe would help us deal with this crisis more effectively. Clearly, I don't have time to go through those all, so I'm just going to focus on a few. I want to point out two that I think have particular fair housing implications. One is the data that are collected and made public about how servicers are performing under the program. We think it's very critical that loan level data, including information on the race, gender, and national origin of the borrower who is applying for a HAMP modification, be made available to the public and that this be done at a geographic level that makes it possible for public officials, community organizations, individual borrowers, and the public at large to understand how the program is working in their communities, to be able to identify places where it may not be working equitably or effectively and to intervene to change that.

A second thing is that we think that there needs to be better support for borrowers, and particularly for outreach into communities where English is not the primary language.

Third, we think that the NPV model must be made available to the public. Borrowers should know what information about them and their home (and a particular concern to us is how the value of that property is assessed) is put into the model and what the model tells them or what comes out of the model about whether they succeed or not and by how much they failed. It's particularly important to catch folks who just barely failed the model's analysis. We also make some suggestions for ways to make the model more accurate.

We believe that it's critical to establish a strong effective and neutral appeals process that is borrower initiated, where someone outside the system, not in the servicer's shop, can review an application to make sure that it was handled appropriately. And finally, I would say we think it's really important to stop all foreclosure actions. We are hearing of far too many borrowers who are either having foreclosure initiated or moving along the path towards foreclosure even though the final sale may not take place. That racks up a lot of costs that undermine the borrower's ability to obtain a successful modification.

And, I will stop there and welcome your questions.

[The prepared statement of Ms. Goldberg follows:]

Progress of the Making Home Affordable Program

Testimony of
Deborah Goldberg
National Fair Housing Alliance

Before the Congressional Oversight Panel

September 24, 2009
Philadelphia, Pennsylvania

I. Introduction

Chairwoman Warren and members of the Congressional Oversight Panel, thank you for inviting me today to testify regarding the Making Home Affordable Program, its impact on foreclosures, and civil rights concerns that Treasury should address as it continues to improve the Home Affordable Modification Program (HAMP).

My name is Debby Goldberg, and I am the director of the National Fair Housing Alliance's (NFHA) Hurricane Relief Project. Founded in 1988, NFHA is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals throughout the United States. It is the country's only national organization exclusively devoted to the elimination of discrimination in the housing market. Through comprehensive education, advocacy, and enforcement programs, NFHA protects and promotes equal access to houses, apartments, mortgage loans, and insurance policies for all residents of the nation. As director of the Hurricane Relief Program, I work with NFHA's members in coastal Mississippi and Louisiana to assist homeowners in hurricane-affected regions with mortgage delinquency issues and obtaining equitable settlements on their homeowners' insurance claims. Many of the homeowners we work with in the Gulf are still struggling to recover from the devastating hurricanes of 2005, but even in the absence of the hurricanes, most of our mortgage clients would be facing foreclosure because they have loans that were never affordable or sustainable. For them and millions of others across the country, government intervention in the foreclosure crisis is crucial.

Since HAMP's inception in the spring of 2009, NFHA and other civil rights, consumer, and community groups have worked with officials in the Treasury Department in an effort to increase the program's success and ensure that it addresses fair housing concerns. While some progress has been made, we believe there are additional changes needed to improve the operation, increase the transparency and accountability, and broaden the scope of borrowers served by HAMP. These are described in more detail below.

II. The Foreclosure Crisis is a Civil Rights Issue

The foreclosure crisis is, at its heart, a civil rights crisis. People and communities of color have borne the brunt of lending practices that allowed mortgage brokers, lenders, investors, securitizers and servicers to profit while borrowers received loans that were more expensive – and riskier – than they could afford.

By now, most Americans are familiar with the scope of the foreclosure crisis. In the first quarter of 2009, 800,000 new foreclosure actions were filed and the Center for Responsible Lending (CRL) projects that number will grow to 2.4 million by the end of the year. These numbers will rise as Option ARM mortgages are recast, homeowners continue to see unanticipated spikes in mortgage payments, and Americans continue to lose their jobs or suffer

from other unanticipated losses of income. In the next three years, CRL estimates banks will initiate some 9 million foreclosures.[1]

At NFHA, we are acutely aware of the dramatic impact that this large number of foreclosures has had in communities of color. Although the foreclosure crisis has left the American economy in the red, its roots are also color-coded, as lenders have aggressively targeted African-Americans and Latinos for high-cost loans. These borrowers have been far more likely than their white counterparts to receive high-cost subprime loans, regardless of income. This phenomenon has been well documented over many years, most recently in a study issued earlier this month by the Center for American Progress. That study, which analyzed the 2006 Home Mortgage Disclosure Act (HMDA) data of the 14 so-called systemically significant banks and their subsidiaries, found that out of 87,000 mortgages originated by these institutions, 17.8% of white borrowers received higher-priced mortgages, while 30.9% of Latino borrowers and 41.5% of African-American borrowers received higher-priced loans. The study also examined the data for borrowers whose incomes were more than twice the area median income for their metropolitan area. Among this wealthy group, 10.5% of white borrowers received higher-priced loans while 29.1% of Latino borrowers and 32.1% of African-American borrowers received these loans.[2] The racial disparity is stark.

This is not a new trend in the mortgage market, but represents an acceleration of past practices. For years, NFHA and its colleagues have called attention to racial disparities in the lending world. For example, in the mid-1990s, NFHA conducted 600 lending tests in eight cities. In these tests, African-American and Latinos posed as first time homebuyers who had slightly superior financial qualifications than white testers. Even though minority testers were better qualified, the testing still showed that lenders:

- steered whites to better loan products than African-Americans and Latinos;
- told African-Americans and Latinos that the qualification standards were more stringent than those quoted to white borrowers; and
- quoted higher closing costs to minority buyers.

As early as 2000, the Department of Housing and Urban Development reported that *high-income* African-Americans living in predominately African-American neighborhoods were three times more likely to receive a subprime loan than *low-income* white borrowers.[3]

As subprime lending activity increased through this decade, African-Americans and Latinos continued to be targets for discriminatory loans, and as a result, minority communities have lost unprecedented amounts of wealth. At the height of the subprime lending boom, people of color were two to five times more likely to receive a predatory loan than white borrowers,[4]

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[1] Center for Responsible Lending, *Soaring Spillover 1* (May 2009), available at http://www.responsiblelending.org/mortgage-lending/research-analysis/soaring-spillover-3-09.pdf

[2] Jakabovics, Andrew and Jeff Chapman, *Unequal Opportunity Lenders? Analyzing Racial Disparities in Big Banks' Higher-Priced Lending*, (Center for American Progress, September, 2009).

[3] *Unequal Burden: Income and Racial Disparities in Subprime Lending in America* (Washington, DC: HUD 2000).

[4] *The Silent Depression: State of the Dream 2009*, United for a Fair Economy, 2009.

and borrowers with subprime loans were substantially more likely to default than borrowers with conventional fixed-rate mortgages.[5] In fact, 10% of African-American borrowers are expected to face foreclosure, compared to only 4% of white borrowers.[6] As a consequence of these lending practices, communities of color lost between $164 and $213 billion in wealth between 2000 and 2007[7], and that number keeps rising as the foreclosure crisis worsens.

Communities of color whose residents have lost more home equity with each new foreclosure[8] are also communities that have long been on the wrong side of a two-tiered banking system that has disadvantaged minority communities. Considerable private and public resources have been devoted to overcoming this phenomenon and increasing the level of minority homeownership. African-Americans and Latinos historically have had much lower homeownership percentages than whites, and homeownership has historically formed the keystone of building wealth. As reported by Kai Wright in a special edition of *The American Prospect*, homeownership represents almost two-thirds of middle-class wealth, and that wealth is largely held by whites. In the early 1990s, only 42 percent of Latinos and 44 percent of African-Americans owned homes, in contrast to nearly 70 percent of whites. These lower homeownership rates resulted in a racial wealth disparity: in 2004, 40 percent of African-Americans and Latinos lived below the asset poverty line.[9] However bleak these numbers are, however, prior to the foreclosure crisis community reinvestment initiatives were narrowing this asset gap. The foreclosure crisis has reopened the chasm, and threatens to undo several decades of redevelopment and wealth building efforts.

Racial disparities in homeownership and foreclosure rates have driven NFHA to engage in the foreclosure crisis. By directly assisting homeowners through the Hurricane Relief Project, assisting NFHA member organizations that provide assistance and counseling to struggling homeowners, and engaging with other national civil rights, community, and consumer organizations, NFHA has worked to find appropriate solutions to the foreclosure crisis: solutions that will be useful to our clients, solutions that will stop foreclosures, and solutions that will be equitable for the communities of color that were the first victims of the crisis.

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[5] After controlling for credit score, CRL found that subprime loans originated in 2000 were 72% more likely to foreclose than conventional loans. Ellen Schloemer, Keith Ernst, Wei Li and Kathleen Keest, *Losing Ground: Foreclosures in the Subprime Market and Their Cost to Homeowners*, December 2006, available at: www.responsiblelending.org.

[6] Wright, Kai. "The Assault on the Black Middle Class." *The American Prospect Special Report: The Credit Crisis and Working America.* Jul/August, 2009.

[7] *Foreclosed: State of the Dream 2008*, United for a Fair Economy, 2008.

[8] Georgia Tech professor Dan Immergluck testified before the House Committee on Oversight and Government Reform, Subcommittee on Domestic Policy, March 21, 2007 and estimated that for "every foreclosure within one-eighth of a mile of a single-family home, property values are expected to decline by approximately 1 percent."

[9] Wright, Kai. Op.Cit.

III. Government Intervention is Vital

Given the scope and impact of the crisis as discussed above, it was imperative for the federal government to intervene at the national level to assist homeowners. We commend the Obama Administration for launching such a program, and for its leadership in seeking loan modifications that are affordable and set a standard for the industry. The Administration's program, HAMP, has laudable goals. HAMP provides financial incentives to mortgage servicers and investors in order to encourage sustainable loan modifications. By engaging with servicers and investors, HAMP has the potential to save many homes and stabilize both families and communities.

In recent weeks, Treasury has reported that HAMP has made progress since its introduction the spring of 2009. As of August 2009, servicers participating in HAMP had begun 360,165 trial modifications, extended 571,354 offers, and sent nearly 2 million requests for financial information to borrowers who could potentially qualify for modifications through HAMP. Fort-seven servicers participate in HAMP, covering approximately 85% of eligible mortgages.[10] Michael Barr, Treasury's Assistant Secretary for Financial Institutions, recently reported to the House Financial Services Committee Subcommittee on Housing and Community Opportunity, that these numbers are encouraging: although data on the modifications' sustainability is still not available, he said that servicers have steadily improved their participation in HAMP since the program's introduction and declared that the program is on pace to meet the administration's stated goal of 500,000 loan modifications by the end of the year and 3-4 million modifications by the end of the program.[11]

IV. More Ambitious Goals are Needed to End the Crisis

In your letter of invitation to testify at this hearing, you posed the question of whether HAMP is on course to reach its foreclosure mitigation goal. The above data indicate that the answer to that question is yes. However, we would respectfully suggest that it is more important to ask a different question: whether HAMP, if it meets its goals successfully, will stem the tide of foreclosures in our nation. Unfortunately, the answer to that question is no. With 9 million foreclosures projected in the next 3 years, and a legacy of insufficient pre-HAMP modifications also bound for re-default, HAMP's goal of modifying 3-4 million mortgages does not sufficiently meet the crisis at hand. Unless HAMP's scope is broadened and its operations are improved so that servicers implement it more effectively, the majority of projected foreclosures will take place.

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[10] Making Home Affordable Program Servicer Performance Report through August 2009.

[11] Testimony of Michael Barr to House Financial Services Committee Subcommittee on Housing and Community Opportunity. Available at http://www.ustreas.gov/press/releases/tg280.htm.

V. Improving HAMP's Implementation and Operation

Industry response is inadequate

The experience of our counselors in the Gulf, which is consistent with that reported by a host of other organizations, indicates that mortgage servicers still have not hired and trained adequate staff, established the necessary systems, or instituted the quality control measures needed to make a systemic loan modification program like HAMP successful. Some of the problems that we have encountered include:

- *Communication with servicers is very difficult.* It is difficult to reach servicer personnel on the phone, and servicers may sit on hold for hours. Phone messages and e-mails go unreturned. Phone numbers, fax numbers, point people and policies change frequently and without advance notice. Some servicers will only accept their own proprietary forms, creating inefficiencies for counselors who deal with many different servicing shops. Documents are lost repeatedly and must be resent multiple times, delaying the resolution for the borrower.
- *Servicers give out inaccurate information about HAMP.* Our counselors have been told that only Fannie and Freddie loans are eligible, that the servicer's investors have not given the servicer permission to participate in the program, and that HAMP is only intended for borrowers who are underwater.
- *Servicers are violating HAMP guidelines.* A number of servicers have denied borrowers because they have a budget deficit, which suggests that the servicer is evaluating the borrower based on the back-end ratio, rather than the front-end debt-to-income ratio as required under the program. Servicers are referring borrowers to foreclosure while their loan is evaluated for HAMP, or during the trial period. Servicers have denied borrowers because they have too much equity in their homes, even before running the NPV analysis. And on many occasions, servicers have said flat out that the investor will not permit loan modifications, without any evidence that the investor guidelines actually contain such a prohibition or that the servicer actually sought permission for the modification but was refused by the investor.
- *Servicers do not provide details about the terms of the modification.* None of the clients we have worked with to date have been given any information about what steps the servicer took to determine their trial period payment or what to expect the terms of a permanent modification will be. They do not know what the interest rate will be, what the term will be, whether there will be principal forbearance or forgiveness, or anything else about how the servicer arrived at the new payment. Not only do they not know what to expect for the future, they have no way to verify that the servicer followed the program guidelines properly.
- *Servicers do not provide details about the reasons for denial.* Borrowers are told things like, "too much equity in the house," "not enough income," "budget deficit," or as mentioned above, "investor not participating." They have no details about how close they came to qualifying and whether there are any changes they could make in order to qualify. Nor do they have any independent means to verify the accuracy of the denial reason they are given.

- *Servicers are not providing permanent modifications in a timely manner.* We are now reaching the point where the early HAMP trial periods are ending, and borrowers who completed the trial successfully should be transitioning into a "permanent" modification. Our experience to date raises concerns about this transition process. None of our clients who are nearing the end of their trial periods have been given information about their permanent modifications, including whether they will be eligible and what the terms will be. Nor have they received documents confirming their permanent modifications. Our concerns are illustrated by events that took place just this week with a client in Mississippi who received a trial modification in April and made timely payments in May, June and July. Having heard nothing from her servicer at the end of the trial period, she continued making the payments in August and September, only to receive a letter from her servicer saying that her documents are either missing or invalid. Her trial modification was based on information provided verbally, but she sent in all of her documents at the beginning of May. The servicer had the documents for nearly five months, but only notified her of inadequacies almost two months after the end of the trial period. This caused the client great distress, and does not bode well for the success of the program.

It is important to note that servicers faced a large volume of loss mitigation requests long before HAMP was conceived. They promised to take steps to ramp up to meet that need long before HAMP was launched. Yet, many months into the program, they still lack the basic staff, training, systems and compliance tools to respond to the need. Counselors and legal advocates who understand the program and servicing procedures encounter tremendous barriers. One can only imagine what happens to borrowers who lack representation. And one has to wonder how many eligible and qualified borrowers are ending up in foreclosure because of the failure of the servicing industry to take adequate steps to respond to the need.

More Resources Are Needed for Borrower Advocates

The many obstacles that borrowers face in dealing with their servicers are an indication that HAMP cannot be successful if borrowers must navigate the process on their own. Outside resources are critical for achieving – or, as is needed, exceeding - the volume of loan modifications for which HAMP is striving. First, borrowers must know of the program's existence and recognize that it can help them avoid foreclosure. Second, borrowers must understand what they are required to do to participate in the program, be able to provide servicers with the required information in a timely fashion, and understand and evaluate the response they get from their servicers. And third, borrowers must have confidence that their applications will be handled fairly and evaluated equitably. Neither servicers nor the Treasury Department can carry out all of these functions effectively. Rather, borrowers need ready access to qualified advisors whom they can trust. This means that we must have a strong network of well-trained foreclosure intervention counselors and attorneys to whom borrowers can turn for advice and assistance. Such resources are particularly critical for in communities where borrowers have limited English proficiency, where servicers lack the language skills, cultural understanding and relationships to interact effectively with borrowers in crisis. In these and other communities, counselors and legal advocates can not only translate, they can provide borrowers with appropriate information bout HAMP, assist borrowers in applying for HAMP,

negotiate with servicers, and help interpret servicers' responses to borrowers' applications for HAMP. They can make the entire process work with greater speed and efficiency, and they can raise red flags when problems with program structure or compliance occur.

More funding is needed for these services, and the structure of the funding must be improved. In addition, counselors and other borrower advocates need access to the NPV model and on-line application portal, as well as other technological resources to increase their efficiency.

VI. HAMP Must be Made More Transparent

For borrowers and counselors, HAMP has been a black box. In order to effectively measure the success of HAMP and to ensure that HAMP is adequately serving all borrowers and not having a disparate impact on African-American and Latino borrowers, Treasury must:

(1) make publicly available data about applications received by all participating servicers, including race, gender, national origin, and the outcome of those applications;

(2) give the public access to the Net Present Value (NPV) model, which servicers use to determine whether a modification is "in the best interests of lenders, servicers, investors and borrowers to modify mortgages,"[12]; and

(3) require servicers to provide borrowers detailed and understandable reasons for denial when they do not provide a HAMP modification.

Make Performance Data Available to the Public

In order to monitor how well HAMP is doing in stopping foreclosures, data on servicer performance in absolutely necessary. Making these data available to the public will allow public officials, community organizations and individuals to see how well the program is working in their communities and to compare their experiences with others. Treasury has established a system for collecting detailed information from HAMP servicers, but has not yet made detailed information available to the public.

Because HAMPis a program related to housing and community development, it also brings with it a statutory fair housing requirement. Under the federal Fair Housing Act (42 U.S.C. §3601, *et seq.*), and clarified by Executive Orders 11063 and 12892, all such programs must affirmatively further fair housing.[13] As stated in the statute:

> All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively

[12] https://www.hmpadmin.com/portal/docs/hamp_servicer/npvoverview.pdf

[13] The executive orders are available at http://www.hud.gov/offices/fheo/FHLaws/EXO11063.cfm and http://www.hud.gov/fheo/FHLaws/EXO12892.cfm.

to further the purposes of this subchapter and shall cooperate with the Secretary to further such purposes.[14]

In plain language, "affirmatively furthering fair housing" means federal programs must work to eliminate discrimination and promote healthy neighborhoods and geographic opportunity for all people.

In order to measure whether HAMP funds are being used in a manner consistent with their obligation to affirmatively further fair housing, data about the loan modifications must be collected and disclosed. Following advocacy from private civil rights and consumer groups and working with HUD, Treasury has laid some groundwork for measuring the success of this program in reaching people of color and women. In addition to other performance data, Treasury is requiring mortgage servicers participating in HAMP to collect and report the race, ethnicity, and sex for applicants for HAMP loan modifications. These reporting requirements are similar to those of the Home Mortgage Disclosure Act, and are critical for assessing the extent to which the program is meeting its mandate not to discriminate and to promote fair housing opportunity.

We commend Treasury and HUD for laying this groundwork. To date, however, it remains unclear how well servicers are fulfilling this requirement. Nor do we know when and how the data will be made available to the public. Currently, only aggregate data have been disclosed. Treasury has said that loan level data, crucial for fair lending purposes, will be available without servicer information included.

Open Up and Improve the NPV Model

One of the key drivers of the decision about whether or not a borrower is eligible for a HAMP loan modification is the servicer's analysis of whether the investors will receive a greater return from a loan modification or a foreclosure sale. The determination of the net present value (NPV) of the property is central to this analysis, and Treasury has developed an NPV model for use by participating HAMP servicers. The model considers a range of factors, including such borrower characteristics as FICO score, debt-to-income ratio and current default status, along with property characteristics such as its estimated current value, its future resale value, the length of time it will take to sell at auction, among others. Clearly, the specific information about the borrower and the property that are entered into the model and the formula for weighing that information are critical.

However, the HAMP NPV model is a complete black box. The model itself is not publicly available. Treasury is permitting certain servicers to customize the model for their own use, and these modifications will not be publicly available. Borrowers do not know what information about them or their home has been entered into the model. They do not know what assumptions the model uses about the value of their property, the likelihood that it will be stripped of plumbing, appliances and the like before it can be sold, how long it will take to sell after foreclosure or much it will likely bring at sale, the likelihood that they will cure their default without intervention, or a host of other factors. They do not know what the result of their

[14] 42 U.S.C. § 3608

NPV analysis is, and whether modest changes in the inputs to the NPV model would yield different results. They do not know, if they failed the analysis, whether they are short by a few dollars or many thousands of dollars. They do not know with certainty whether the servicer even ran the NPV analysis. Rather, they are forced to take it on faith that the servicer ran the analysis, that the NPV model's assumptions were valid for their particular circumstances, and that the result was accurate.

That's a lot of faith to ask for from borrowers, and from the public. We believe that the NPV model itself must be publicly available, and that borrowers must be given access to both the inputs to the model that were used for their NPV analysis and the outcome of that analysis.

Further, we recommend that the following improvements be made to the model:

- Currently, the model uses a formula to calculate cure rates. However, actual data about cure rates – such as that published by Fitch - are available and updated periodically. The model should use these data, updated quarterly, for a more accurate reflection of current experience.
- The HAMP NPV model uses state-wide or MSA-wide information to assess the risk of theft and vandalism. However, the actual experience of theft and vandalism can vary widely by neighborhood, or even within a neighborhood. Where more granular information is available, such as census tract level data, this should be used by the model to provide a more accurate analysis.
- The foreclosure timelines used by the model should be updated quarterly to account for the increased time foreclosures are taking as the numbers increase.
- The model uses state-wide or MSA-wide data to estimate the time it takes to sell real estate-owned (REO) properties. This factor also varies considerably by location, and the data for a smaller geographic area, such as a census tract, should be used for the NPV analysis.

Give Borrowers Detailed Explanations for Denials

Currently, borrowers who are turned down for a HAMP loan modification report that they receive very little information about the reason(s) for their denial. At times, the reasons they are given are confusing or make little sense, as described in more detail above. This makes it difficult for borrowers to know whether their applications for loan modifications were handled properly and whether their servicer followed program guidelines accurately.

Borrowers must be given an explanation of the reasons they were denied a modification in plain language and with sufficient detail for them to understand why they were turned down and whether there is anything they can do to change the decision. This is particularly important for those borrowers who narrowly miss qualifying for a modification. In these cases, correcting errors in data entry, inaccuracies in property valuation and the like could make the difference between a family saving a home or losing it. But unless the borrower knows where errors might have been made or what other changes in their circumstances might make them eligible for a HAMP modification, that opportunity will be lost.

VII. Strengthen Accountability in HAMP

The Obama Administration came into office promising to adhere to the principals of transparency and accountability. Nowhere are these needed more than HAMP, through which American taxpayers have committed an unprecedented amount of public funds in an effort to help solve the worst crisis this country has faced in decades. The consequences of failure are severe, for individual homeowners, the communities in which they live, and for the country as a whole. A tremendous amount of public trust is on the line. To justify and maintain that trust, HAMP must be fully transparent and accountable in all its operations. Transparency and accountability have several components.

Provide Strong Oversight

Strong oversight is essential to make sure that servicers are following the guidelines consistently and completely, borrowers are being treated fairly, and program funds are being spent appropriately. Treasury has tapped Freddie Mac as its compliance agent for HAMP, and has indicated that Freddie Mac has begun reviewing participating servicers for compliance. We know very little about the schedule, nature or outcome of those reviews.

Institute Measures to Ensure Compliance

In cases where servicers fail to comply with program guidelines, and borrowers' applications for loan modifications are wrongly denied, servicers should be subject to sanctions and steps should be taken to make those borrowers whole. It is not clear what compliance options Treasury has available, other than the extreme step of expelling errant servicers from the program. Treasury has provided servicers, investors and borrowers with a set of carrots to encourage participation in the program. It also needs a full range of compliance tools, or sticks, to make sure that participants adhere to program guidelines and procedures.

Provide an Appeals Process for Borrowers

Given the complexity of the HAMP program and the missteps along the way to full and effective program implementation, it is inevitable that errors will be made in the handling of some borrowers' applications. Certainly the current reports from the field indicate that such errors have occurred. Yet, a borrower who feels that his or her application was wrongly denied has no avenue for appeal. Some servicers have indicated that they have "second look" programs, in which they review denied applications to ensure that the denial was not made in error. However, these second look programs are aimed at compliance quality control and are internal to each servicer. That is, the servicer's own staff reviews the application. The borrower cannot initiate the review, neither the borrower nor his or her advocate participates in the process, and no independent, neutral party takes a new look at the borrower's application. We believe that HAMP needs an independent appeal process through borrowers can seek a review of their application when they believe it has not been handled properly.

VIII. Changes Needed to Improve HAMP

To maximize the impact of HAMP and increase its ability to stem the tide of foreclosures, a number of changes are needed to the program. Key among these are:

- *All foreclosure actions must be stopped while borrowers are being reviewed for loan modifications.* There are many incentives for servicers to continue moving a loan toward foreclosure during the HAMP review process. This increases the fees for which the borrower is liable, sometimes by thousands of dollars. Because these fees are capitalized into the unpaid principal balance, they make a modification more expensive, and may even prevent the borrower from qualifying for a modification at all. The current HAMP guidelines, which allow this, should be changed to prevent this from happening.

- *Interest rate reductions must be made permanent.* One of the best features of HAMP is its goal of providing affordable mortgage payments. However, the reduced interest rates which are the primary tool for achieving affordability remain at an affordable level only for a five year period. After that point, the interest rate steps up to a predetermined rate. Instead of creating a permanent solution for borrowers, this model sets them up for possible redefault in the future. Rather than forcing the borrower, the servicer, the investor and the taxpayer to revisit this issue in five years, we should make loan modifications now that will remain in force for the remaining life of the loan.

- *Borrowers must receive principal reductions.* HAMP allows, but does not require, servicers to offer principal reductions to borrowers. We are unaware of any cases in which this has happened. Yet principal reductions can be a critical component of sustainable loan modifications. They help to restore the balance between the borrower's mortgage debt and the market value of their home, a balance that was distorted by the unsustainable mortgage products that flooded the market in recent years. This balance is particularly important for people who need to move, whether to find a new job, or for health, family or other reasons. Without principal reduction, these borrowers are stuck in their homes and without the necessary mobility to adjust to changes in life circumstances. Further, without a more aggressive approach to principal reduction, it is unclear how HAMP will be effective in preventing the anticipated wave of new foreclosures expected to result when 750 million Option ARMs are recast next year, and 250 million others are recast in the following three years.[15] Many Option ARM borrowers are severely underwater. That is, their loan balances far exceed the current market value of their properties. Evidence indicates that these borrowers are already beginning to make the strategic choice to walk away from their mortgages because of the unlikelihood that their property value will ever rebound to the level of their mortgage balance. All of this indicates a pressing need to adjust the HAMP guidelines to make principal reductions more readily available.

- *Repeat modifications must be available to borrowers who default.* Circumstances in the life of borrowers are subject to change. People's income can decline, whether for brief or longer periods, due to changes in family or job situations. Given the unemployment picture, which is grim and expected to remain so for quite some time, we can expect that

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[15] Brian Lewis, *Option ARMs Threaten Housing Rebound as Resets Peak*, Bloomberg.com, June 11, 2009. Available at http://www.bloomberg.com/apps/news?pid=20601109&sid=aQ_ZgC75Zfyw.

a number of borrowers who receive HAMP loan modifications will redefault. The goal of the program is to stop foreclosures, and to do so effectively in the current economic climate, its guidelines must be modified to allow for repeat modifications. Failure to do so will simply lead to a new wave of foreclosures down the line.

- *Mortgages must be assumable by family members.* Death, divorce or other changes in family circumstances should not force family members whose names are not on the mortgage note to face higher mortgage payments or loss of their home altogether. Precedent exists, in federal law and policy, to allow family members to assume a mortgage in a variety of circumstances and as a way to address mortgage delinquencies. HAMP should adopt the same flexibility.

IX. Other Changes are Needed to Stop Foreclosures

Even with these recommended changes, it is not clear that HAMP alone is sufficient to stop the foreclosure crisis. We believe that a number of other actions are needed. In particular, we urge the following:

- *Congress should mandate that servicers offer loan modifications to borrowers where such modifications yield a greater return to investors than foreclosure.* This simple step, which is outside the scope of a voluntary program like HAMP, could help tip the balance away from foreclosure and toward loss mitigation. In doing so, it would save homes, help families, and stabilize communities.

- *We should expand the availability of court-supervised mediation programs, building on the successful examples before us and providing adequate funding.* Mediation – done well - is another tool that can help restore the balance between the interests of borrowers, servicers and investors and lead outcomes that serve all parties fairly and equitably. Mediation programs are still in their early stages, and their approaches and results vary. Federal support to develop and promote best practices and to increase the capacity and availability of strong mediation programs would be very helpful.

- *Congress should allow judges in bankruptcy proceedings to modify mortgages on primary residences.* This would also help eliminate some of the structural disincentives for servicers to pursue loss mitigation. It would provide an alternative for borrowers who are stymied by the inability of servicers to respond effectively to the volume of requests for loan modifications. And it would allow mortgage debt to be realigned with actual housing values, improving the long term stability of the housing market.

X. Conclusion

With HAMP, the Treasury Department has made important strides in the effort to end the foreclosure crisis. The requirement that payments on modified loans not exceed 31% of the borrower's gross income is a significant change from the common practice of many mortgage servicers pre-HAMP. Also important is Treasury's goal of establishing industry-wide standards that shield servicers from liability and are applied to modifications made outside the program. However, a number of changes are needed to maximize the program's effectiveness, and more importantly, to truly stem the tide of foreclosures that is devastating millions of American

homeowners and the communities in which they live. Further, it remains unclear whether HAMP will be effective in meeting its fair housing mandate and treating borrowers of color in an equitable fashion. We urge the Congressional Oversight Panel to use its resources to explore these issues in greater depth and to encourage the implementation of the steps needed to end the foreclosure crisis and prevent its future recurrence.

Mr. NEIMAN. Thank you. Our intent for this panel was to get the borrowers perspective through the views and the eyes of advocates and judges like yourselves. You have represented them well. The testimony that you all have provided us, in my opinion is really the most comprehensive summary of the significant issues facing this program and will really serve as a terrific basis for us in our work, as well as in our reports to the public and interactions with Treasury. My first question is designed to expand on your reports as a follow-up to the issues that you've identified and give you an opportunity to address what is the most important change either in the program design of the Making Affordable Home Program or in its implementation. If we had to leave here with one critical—and I was going to start with three but I know we're pressed for time and some of you may overlap—think of the one most important change that we really should be looking at recommending with respect to the design of the program or the way it's being implemented. I'll start with anybody.

Judge RIZZO. I'm going to start. Again, I hope I can get you more when I come a calling and you visit with us because we have more to talk about. I obviously have the view from the judiciary so I'm sort of level on all sides. Parties come to the court by due process equally. I have to say in terms of actually on the ground running, I go to my colleagues on this panel to discuss it. The bottom line is, I don't know about tweaking it anymore other than just reducing it down to fine points and getting the word out where it's easy to read language and that we have direct, what I would call batphone hotlines to really get clarity on points. Through association I've had being on panels in Washington, etc. I've had outreach to individuals who I personally called to get clarity on. That's all well and good, but what we need is something where there is actually somewhere to go where we can get a clear, quick answer. And that's why programs such as ours, I believe, really work because we can react to that change very rapidly on this micro basis in a case. But, any delay brings more arrearage, more issues with the property, more hopelessness, as I refer to it. So, when we wait and wait to get clarity the numbers are rising and that's going to factor into the numerical formula to actually see if this person can really get——

Mr. NEIMAN. And getting clarity, you mean from the servicer?

Judge RIZZO. Well, the point is the clarity, I would think from the program itself to those who are the stakeholders in it. So, if our servicers don't understand what's going on, how can they in good faith negotiate to know all the terms when in fact from the consumer side there's a conflict—and I speak about this in my comments—there's a disconnect of how it's interpreted. Well, that takes time to unravel all of that. That is time wasted on getting this deal done and now we have more arrears to deal with in terms of the formula we apply.

Mr. NEIMAN. Thank you. Counselors or Ms. Fitzgerald?

Ms. FITZGERALD. I'm going to hope Debbie says transparency of NPV so then I'll say the other thing I want to say. There is a huge process problem here. At the end, there's a lot of good core guts to MHA, but if you dropped from the sky and said how could you design a more dysfunctional system, you probably couldn't get there.

The hours and hours and hours of wasted time, whether that's a homeowner, a counselor, or a legal structure in trying to get resolutions—every servicer using different forms for this, everyone having different requirements. While MHA is the same, the paper requirement documentation is not the same across all of the servicers.

Mr. NEIMAN. How important is the web portal? Is Fannie talking or are administrators talking about this?

Ms. FITZGERALD. The web portal is a really good first step because at least we can say some servicers require fax, some require email, some require mail. So, that solves that problem. What it doesn't solve is what gets pushed up into the web portal and that requires some kind of standardization of documents. In the loan origination process lots of folks use Fannie documents. That's become a consistent process. We're saying come up with one set of documents for every counselor, every borrower. It makes outreach events go a lot better. So, that seems very doable. It's not rocket science. Let's just all agree to that and make that happen.

And then, I think the other piece of the process is really trained staff and servicers. We are very appreciative that servicers have obviously added a lot of staff, which has been required and that's a huge effort to get everybody on the same page. But, particularly on the collection side, I think a homeowner or a counselor might wind up talking to anyone. And while the loan modification groups seem to be maybe a little bit more informed it's not clear that that has permeated the organizations. So, I think really making sure that everyone there knows this is the requirements.

Mr. NEIMAN. I give you ten seconds.

Ms. GOLDBERG. There isn't just one and I think that reduces it too far. I want to completely underscore and echo all the comments that Eileen made. I would say two things. One is we need transparency across the board. Because there are so many issues about the program, because it is a complex program, then we need to know. We need to know what's going on within the NPV model, with the denials for borrowers and the reasons for denial that they're given, with the performance data for the servicers. The only way that we can really get a handle on where the bottlenecks are, where things are falling out is when that kind of transparency is provided.

The other thing I would say is, I think we need to be looking ahead more at how the program guidelines must be changed to deal with what we can see coming down the road. We are in many ways—for all the good things about HAMP—we are kicking the can down the road to the end of the program. We don't have really permanent modifications. We have five-year modifications and who knows what's going to happen at the end of that. We have an economic climate where unemployment is at an all time high or a record high and expected to stay there for quite some time, but yet we're not allowing for people who re-default to get a new modification or to get a forbearance or whatever might be appropriate. We're kicking them out of the program. So, program changes to deal with circumstances like these are needed if we really want to get our arms around the foreclosure problem and keep it from overwhelming our economy.

Mr. NEIMAN. Thank you. My time has expired.

Mr. ATKINS. I wanted to address first a question to Judge Rizzo because it sounds like your program is pretty interesting and I look forward to seeing it in action this afternoon. How are you staffing and supervising this? Have you taken on more folks who are able to delegate this? How does this work, actually?

Judge RIZZO. Well, I always feel like it's the Wizard of Oz. If you move the curtain you'll see it's one person working all of the gadgets. We really are short staffed in terms of the court system. We are really in an all stretch assignment, myself and all my staff and wonderful court administrators. So, from that perspective the court is working within its budgetary bounds. That's not to say it's optimistic and that of course an infusion of some funding in that regard to expand it wouldn't be welcomed. But, more importantly, we are in true partnership with these non-judicial entities, these community outreach groups who actually go into the neighborhoods, our wonderful housing counselors under the office of Housing and Community Development and others, our Philadelphia VIP with our volunteer lawyers, Judge Pro Tems—who I appoint and they work without fee after being trained. We also try to support our wonderful CLS and PLA attorneys who actually are staffed up to handle the more complex cases. So, from an infrastructure perspective, the money side really goes to the City and Mayor Nutter is in complete support in terms of his message to call the hotline. We're all in sync. It's really a marriage of judiciary with non-judicial entities to get this thing going. So, it's always in need of more legal services, more community outreach and increasing our ready, wonderful staffed up and well trained Housing Counselor Network in partnership with the courts. So, we work on a shoestring from the court's internal perspective, yet we'll of course welcome funding to be with our other partners. So, it's a network and I think maybe Mr. Trauss can speak to some of that in terms of the funding demands that are placed on it. But, we do thank our mayor for trying to really support this initiative.

Mr. TRAUSS. The court has managed to—without any increase in funding—to create a program in which all this happens. Most of the funding—as Judge Rizzo said—comes from the City of Philadelphia. A lot of it comes from the Office of Housing and Community Development and the cost associated with the program, which are somewhat invisible. One of the problems with this is that this model has been advocated as a cost free model. It's all volunteer and in the court side that's true, the Judge Pro Tems (JPTs) are volunteers, there are a lot of volunteer lawyers. But, in fact there's probably a million dollars, actually several million dollars that goes in—probably a total of about three million dollars—that goes into the cost of funding the hotline, funding about 32 housing counseling agencies, funding outreach—although the amount of funding for outreach is actually very small for the bang for the buck. So, there is a significant cost and that cost is born by the City in creating the structure, the infrastructure, which needs to be there to have a meaningful program such as the Diversion Program. You have to have housing counselors. You have to have some way for them to get to the housing counselors where the hotline comes in. The hotline, as I indicated in my testimony, serves as something

of a coordinating function. There's a feedback loop that's created with the hotline. So, you need all these things. And also, in a lot of cases, you need the one thing that's missing which is beyond the volunteer attorneys who get involved on a limited basis as lawyers that actually step in and represent people when the lenders—and it is not unusual—when the lenders overstep their bounds and ask for things that they are simply not entitled to.

Mr. ATKINS. What kind of backlog do you have, caseload right now?

Judge RIZZO. Just very quickly. When we're in session we hear approximately 150 cases in the morning and 150 in the afternoon, that are called in. We have no backlog in a sense in that regard. Philadelphia has seen a bump and increase, of course, in foreclosure filings. It's leveled off and we anticipate another bump. So, we're at about 10,000 filings per year just in foreclosures. That has been a 2,000 jump up from the years past. But, in terms of backlog, we're in flow and I think we estimate about 140 or 150 filings per—well actually that's by one firm so I don't know about how many filings per month. We're steady in that regard and there is no backlog because on initiation they immediately go into the chute and they're scheduled for the 45 day conference. I will also add, just to the other point almost a million dollars in pro bono services have been generated and given to support this program. So, that's daunting, but it is actually dedicated volunteers serving.

Mr. TRAUSS. One of the unadvertised benefits of this program is that to the extent that there are resolutions that are reached, it takes cases out of the inventory of foreclosure cased needed to be tried by the courts.

Judge RIZZO. I agree.

Mr. TRAUSS. So, that is a benefit the court experiences. For these to be taken out of the system early, that's a benefit to the court and that saves time and money.

Mr. NEIMAN. Mr. Silvers.

Mr. SILVERS. Like my fellow panelists, I'm pleased to have you all here. Particularly pleased to have Judge Rizzo here and it's an honor to be with you and we're certainly coming to visit. Let me just make sure I heard the testimony right. Judge Rizzo, you said that you've had 6,300 conferences and 1,500 homes saved roughly from foreclosure?

Judge RIZZO. Yes, that's right. We can go on and on and debate how you describe success because from the Court's perspective when it's out of the system, those are the 1,500 because the case has been closed, we're judicial.

Mr. SILVERS. How many of those 1,500 have come back?

Judge RIZZO. Well, that's the point and that's where the data has been. How do you measure success? So, time has to pass in effect for us to go back and revisit that. We're very grateful that a national foundation has come calling to really breakdown our data and give us that kind of critical information.

Mr. SILVERS. So, at this time you don't know?

Judge RIZZO. No, we do not. We're dinosaurs, we aren't very good at collecting our data.

Mr. SILVERS. I would note that the kind of cost figures that you're talking about in the prior exchange, $3 million, 1,500 homes

saved is comparable to the servicer fee that is being paid under the MHA program per mortgage, which is only a small portion of the total cost in the MHA program.

Moving forward from that, Mr. Trauss, when you say that MHA should be mandatory, what do you mean? MHA is mandatory in a sense of participating in the program is mandatory for TARP recipients, more or less. Tell me what you mean by mandatory.

Mr. TRAUSS. Before I answer that question. Can I answer Mr. Neiman's questions about the one thing that should be done?

Mr. SILVERS. Please.

Mr. TRAUSS. And that is, the Administration needs to get behind passing the amendments to the bankruptcy code to allow for mandatory modifications. If that happened, if that was real, then bankruptcy could modify these loans and make them affordable, everything else would fall into line because the creditors would want to avoid that and they would be looking to what program would have incentives for them to make the changes that benefited everybody.

With respect to mandatory, yes participation if you sign the participation agreement then you're supposed to follow the rules, but there're no teeth. So, I guess by mandatory I mean some system where there are immediate consequences for failing to do what you're supposed to do.

Mr. SILVERS. Maybe I'm not following. Laws being complicated, maybe I'm not following this, but it seems to me that a firm that signs that agreement, receives TARP funds, has entered into an arrangement with the Federal Government where they're receiving money for making commitments and adhering to them and in our law there are real penalties, including criminal penalties for intentionally not following such an agreement, isn't that right?

Mr. TRAUSS. Well, I haven't looked into it. I assume that you're correct about that. What I know is that on the ground day-to-day—and you maybe right that five years from now they will——

Mr. SILVERS. My point is just that maybe we have an enforcement problem here and not a lack of penalties problem.

Mr. TRAUSS. Well, we have an enforcement problem, but that's exactly my point. I mean, it's not a question of penalties because penalties down the line do not help the hundreds, thousands and millions of people who lose their homes. For example, Bank of America—I don't know if they're here yet—Bank of America until, I think August in Philadelphia at least, were telling our hotline people that they signed the SPA, but they were only doing GSE loans. They were not offering MHA or HAMP on any non-GSE loans. There were thousands, millions possibly, but thousands, tens of thousands perhaps hundreds of thousands of people were not being put into the system, their houses were going to foreclosure, they were losing their homes because Bank of America was blatantly, as far as we could tell, violating their obligations. We contacted Fannie Mae, we contacted Freddie Mac and the response we got from Freddie Mac was, "Yes, we know."

Mr. SILVERS. You may have noticed Mr. Trauss, I don't know if you were here earlier, but I asked the Treasury Department to review your testimony in relation to allegations, plausible allegations of misconduct and to report back to our committee as to what they found. Can I ask Judge Rizzo—and Mr. Trauss you may know the

answer—when your outreach people go knock on a door, they knock on the door and the person says "Who is it?" what do they answer?

Mr. TRAUSS. Well, I am not directly involved in the outreach. I don't know if anybody from the agencies is here. So, I can't answer exactly what they say. We do get the calls when the outreach workers—we try to coordinate with the outreach workers so that we are there even when we're not.

Mr. SILVERS. I assume they don't answer, "It's your bank calling".

Mr. TRAUSS. No.

Mr. SABER. They identify themselves from the organization they're with.

Mr. SILVERS. I hope that the record taker here could hear that response from the audience.

Judge RIZZO. That's Lance Saber from the City.

Mr. SABER. They identify themselves from the organization that they are with. There are different organizations that are out there.

Mr. SILVERS. Thank you. My time has expired.

Mr. NEIMAN. We're going to try to do one more round. We're running a little behind so we'll really try to keep these within our time limits. I'd like to go back to my first line of questions to the Treasury panel regarding their metrics of success because it is currently focused on trial modifications. As you all know, some trial modifications are offered and started before verification of income based on verbal information while other servicers do wait to verify that documentation before offering a trial modification. Do you all have any views as to whether either of those approaches is preferable?

Mr. TRAUSS. I have no problem with the oral implementation and what I find happening is that anything that reduces the excuse that a servicer can give for not immediately saying, yes we will consider you, we are stopping foreclosure, start sending us money.

Mr. NEIMAN. So, the earliest you can to get people into it?

Mr. TRAUSS. Right, that is the best thing because it doesn't take long. The paperwork that is required by HAMP is very minimal. Now, the servicers add to that paperwork, but the HAMP paperwork is pretty minimal and that's pretty easy to get through. What we find is that the paperwork requirement is used as an excuse to frustrate the ability of people to participate.

Mr. NEIMAN. How about from the counselor's standpoint.

Ms. FITZGERALD. I think it would be important to track those two numbers differently. So, we don't disagree that you should give the borrower the modification as soon as possible, but when someone is going back to look at success, I guess I'd want to know, was there a difference in those, because I wouldn't want folks to say this program didn't work because of stated income. So, I think it's really important if we're going to do that to track separately.

Ms. GOLDBERG. I would also add a second and related but important question is the servicers' ability to handle the paperwork and review it in the timeframe that's provided by the program. In my testimony I cited an example of a client we had recently in Mississippi who got one of the early trial modifications. She got it based on verbal information provided to the servicer. She made her first payment under the trial modification in April, the beginning of April, and at that time she sent in all of her documentation. Un-

fortunately, she did it without consulting with our counselors so she got some of it wrong, like she didn't sign the tax return that she had submitted electronically originally to the IRS. Five months later, she's made five payments now. That's two payments beyond the trial period and the servicer—who was Chase—contacted her and said, the paperwork that we have for you is either missing or it's invalid and if you can't get it to us within 60 days you'll lose your shot at a modification. The servicer had this paperwork for nearly five months and couldn't get through it in a timely fashion to give the borrower the opportunity to correct the errors before the trial period ends.

Mr. NEIMAN. So, how big is it? We keep hearing documentation, we hear it from the servicers because they're saying the individuals are not providing back signed documents. We hear it from the counseling agencies that the documents are either lost or not being presented in a timely fashion. How big on a one to ten scale is documentation?

Ms. FITZGERALD. Big, but again it's the system: They haven't sent any efficient system for collecting and making standardized documentation. That is, to me the bigger problem.

Ms. GOLDBERG. I think earlier testimony alluded to one of the things counselors struggle with, which is that the servicers are consistently changing the system that does exist. So, you're getting a new phone number, a new fax number, a new email address to send stuff to all the time. So, you thought you knew how to do it efficiently until you get the new policy tomorrow.

Mr. NEIMAN. You may have been here when I asked the Government Panel to assess the performance of the servicers using a score grade of A to F, recognizing that this is a first semester as opposed to a year end review. I'd be very interested in your assessment of how you would grade servicers as a whole.

Ms. FITZGERALD. My solution, when I heard that question was incomplete.

Mr. NEIMAN. Incomplete, well that's fair.

Ms. GOLDBERG. Well, with some qualifications, I think I would have to say a "D" and that's for two reasons. One is that I don't think we're in the first semester. This problem has been going on since long before HAMP, and servicers for quite some time have been saying that they've been ramping up and they're not there yet. So, I don't think we're in the first semester.

The second thing is, my kid's teacher sends home a little rubric to grade them by. It says these are the things we're going to judge and effort doesn't count towards your grade. It's what you actually have mastered and can demonstrate that you mastered and the servicers just are not there yet. They maybe making a great effort, but they don't have it mastered.

Mr. NEIMAN. Judge Rizzo or Mr. Trauss, care to weigh in?

Mr. TRAUSS. I concur.

Judge RIZZO. I'm going to refrain from any grading, but I just want to say with all parties at the table, we really need simplification and a way to make it an easy read for everyone. That's also going to benefit our borrowers. Sometimes part of the delay is caused by them even coming up to get it all together. So, I have to, as a Court, balance that. The simplification as easy read will

help those wonderful housing counselors and those who assist in the process, get it in the chute so that it can be evaluated for the servicers. Hopefully, we're all on the same page.

Mr. NEIMAN. Thank you. I'm out of time.

Mr. ATKINS. I want to ask the Panel, especially here in Philadelphia, what you all estimate the percentage of nonstandard loans might be as part of this problem—and subprime and no doc loans—such things as that. What's really driving this or do you see this throughout all parts of the population?

Judge RIZZO. I'll just start. What I've seen coming into the program consistently is not necessarily the subprime. Obviously, it exists to some degree, but that's not where we are. We're an old historic city, made up of Philadelphia row homes, individuals who've been in their homes for many, many years. Our demographics show that our program really assisted the elderly and single parents, moms that were looking into that and we actually have special protocols to deal with their very special needs. It's the situation you read about in law school where someone wants to put aluminum siding on your house, they get into some loan situation, nonpayment or they run, it gets converted into some mortgage document, here we have a lien and now here is someone who was in a home 35 years and are about to lose it. So, I see some of these anecdotal stories, not necessarily of the mass of subprime. We're not the city with these people buying these mansions and being underwater immediately. That's not what we're seeing. So, this consistency of need that I'm seeing coming into the room is not that.

Mr. TRAUSS. I would just have to disagree with Judge Rizzo to some extent.

Judge RIZZO. And he always does.

Mr. TRAUSS. There's a combination and it's been a moving target. To some extent in Philadelphia, I think the subprime crisis, which was directed much more to low income homeowners, kind of peaked in 2004. Subprimes did increase their foreclosures to a level of 6,000 a year to close to 9,000 or 10,000 a year, perhaps last year. At this point we are seeing unemployment as a huge component. Unemployment, under employment, people lose their jobs, get their jobs back, lose their jobs again, get another job. So, there's a shifting face in what we're seeing. Now, remember this is a case, this is a program which looks at cases in which complaints of foreclosures have been filed. And, also in Pennsylvania the time to get to foreclosure is somewhat long, relatively on a case. So, the foreclosure rush that's resulting from the unemployment increase, I don't think has yet hit the Diversion Program to the extent that it might have hit other places because there's a lag of probably about five months before a case actually gets to a complaint of foreclosure. So, we're seeing a change in the composition of the majority of what's causing the foreclosures and it's moving more towards unemployment.

Ms. FITZGERALD. In general across the country I can't find the percentage, but our counselors serve a higher percentage of folks with ARM than are in the general population. So, I think it's probably 35 to 40 percent. With that said, there are a lot of prime loans in this mix and a lot of families in particular. We see each time that the percentage increases and problems with income increase.

I do think that we have a really big challenge with the Option ARMS coming, particularly in California. They are very concentrated, but they only peak in 2010 and 2011 and they're going to present a totally different problem. I do know that Treasury seems to be aware of that and is thinking of different strategies.

Ms. GOLDBERG. I can't speak at all to the numbers in Philadelphia. I can tell you that in Louisiana it's a different situation. We still see a mix of different loan types. And, thinking of what I've heard from NFHA's members around the country, I think it varies a lot depending on the particular local market. In the Midwest it's a little bit different than in some of the sand states. I think everybody is seeing unemployment as an increasing factor regardless of the loan type. But, we're also still seeing the troubling loan types.

Mr. TRAUSS. I was going to talk about the troubling loan types. Philadelphia has historically had a high percentage of its low-income population owning homes and that is what was going up for a while. One of the problems is it's not always obvious what the loans are. In some of these loans, you look at them look like first mortgages, traditional first mortgages. But, if you look closely at them, you find out that they are predatory or unfair, they have high interest rates, they might be part of a 80/20 loan where a person bought a house with a first mortgage and there's a second mortgage they don't really understand for 20 percent that's a high interest rate mortgage, which makes the total package unaffordable. Unlike normal loans, escrow is not included so that when they start getting the payments there's a shock that happens as rates go up and they didn't realize that it wasn't a traditional loan. So, from the Court's point of view it would not necessarily be obvious that the particular loan involved is the kind that they're trying to breakout. There's a lot, of I guess I would call them unfair loans that are in there along with traditional, prime, credit and also these exotic loans with adjustable rates.

Mr. ATKINS. My time is up. Thank you.

Mr. NEIMAN. Mr. Silvers.

Mr. SILVERS. Thank you. When my last time expired I was asking about how the outreach is conducted. Is it your view that having outreach conducted by parties other than the banks has contributed to the success of the program, either Judge Rizzo or Mr. Trauss?

Judge RIZZO. I can tell you, I believe it's been a significant benefit to have this type of canvassing done by neighborhood groups who are known in the community, who have the way to engage and actually have a level of trust infused in the dialogue. When they knock and it's not someone serving papers, it's someone saying, "Listen, I know who you are. You're in foreclosure. Did you get your papers? Did you look? Did you see your date? Did you make the call?" If there were issues with language, we even have abilities through our hotline to deal with those types of issues. So, that outreach, that one-to-one human touch by people in the community, I think that really started it. Actually, some studies were done where we took some batches of our cases coming in subject to canvas or not and we saw that the failure to appear rate was higher in those which were not contacted through canvas. So, we really have some

experience with this to know that it really does make a difference and I think it really is a key in terms of our local program.

Mr. SILVERS. Thank you. I want to shift to a much broader question. There is a certain amount of dissatisfaction on this panel and I think on the last one, to somewhat of a more moderate degree, with the servicers. Any of you, what is happening here, is this disorganization? Is this intentionality? Do the servicers wish not to participate and if so, why?

Ms. FITZGERALD. I think its really hard to aggregate a group of organizations so, we have to be careful at that.

Mr. SILVERS. Well, then let me help you. I mean, I'm just interested in volume. If you look at the Treasury reports, monthly reports, there's a half dozen, I think that constitutes almost all of the volume. I mean, not just the volume of the modifications, but the volume of the underlying loans. Lets talk about them.

Ms. FITZGERALD. I do think that the mergers have created maybe even unanticipated consequences because they have many servicing systems. They have different procedures so I think we've certainly seen probably a decline in responsiveness and just our ability to solve escalated problems due to the consolidation, than maybe we did three years ago about awareness of the problem across senior leadership. Obviously, there's a challenge in execution.

Ms. GOLDBERG. One thing I would just add to that, I can't speak to intent but I think we should be mindful of the incentives that are built in for servicers to move towards foreclosure and how those compare to loss mitigation. Attorneys on the Panel can probably speak to this better than I, but the feedback that I get from the lawyers that I work with is that servicers get paid more, they get paid faster, and they get paid more reliably for all the steps that they take to move somebody towards foreclosure than they do for loss mitigation.

Mr. SILVERS. Ms. Goldberg, stop right there. Is that still true today with the MHA Program being in place?

Ms. GOLDBERG. I believe it is.

Mr. SILVERS. What could be done to the MHA Program—and I invite any of you to comment—that would alter that fundamental calculus? And, not giving in to the deeper questions of the fundamental economics of the loan, but this questioning of servicing and where those incentives are.

Mr. TRAUSS. There's a big problem with the incentives. There's four problems mainly, which relate to your question. I think there's a problem with culture, which is very hard to overcome. There's been a way of doing things since the servicers were created, which is now about 10 or 15 years ago when it became big. They have a way of doing things, they have a mindset that it's our way or the highway and they're not used to changing that mindset and that's a big problem and that relates to habit. And then there's the incentive problem. To answer your question, we can't answer your question, at least I can't without further study about the nature of the incentives. My suspicion is, my gut is that the amounts of money involved, even at this level are not big enough to overcome the cultural problems, the habit problems, the disorganization problems, and the existing incentives to foreclose.

Mr. SILVERS. Can I stop you there for a second? You and I have both stated that we think that restructurings and bankruptcy would help here. From what you just said, might another different approach be to—and this is more like a business approach as opposed to a legal approach—to essentially to get subcontractors who do nothing but this that specialize in reformatting loans, if we've got profound cultural problems with businesses that have been built to do something different?

Mr. TRAUSS. The problem with using subcontractors, as evidenced by the last opinion of Judge Sigmund, the bankruptcy judge. One of her last opinions, talks about how theoretically it could work depending on how you select the subcontractor. Sometimes if you select somebody to do a narrow thing, they don't do it with the right understanding.

Mr. SILVERS. Well, they might not have the broader capacity that the large banks and their servicing facilities have. Is that what you're suggesting?

Mr. TRAUSS. Well, what I'm suggesting is the incentive that loss mitigation has been farmed out, which it has by these servicers already, even before Making Homes Affordable. It has not enhanced the process and I don't know why that is. But, doing exactly what you do hiring a subcontractor to do something repeatedly and efficiently has not made it better, it's made things worse.

Mr. SILVERS. Thank you. My time has expired.

Mr. NEIMAN. Thank you. I want to thank you all for being here this morning, but even more importantly I want to thank you for what you do everyday and I look forward to the afternoon with Judge Rizzo. I will look forward to staying in communication with you. Please keep us advised as you update your data and look at us as a resource, as well. Thank you very much.

Let's try to change panels as quickly as possible because we are running a little behind.

The witnesses—and this is our largest panel so we really do have to be conscious of the time—the witnesses in our third and final panel include three servicers and an economist from the Boston Fed. From the left we have Dr. Paul Willen, Senior Economist and Policy Advisor, Research Department at the Federal Reserve Bank of Boston who has been writing and researching this for many years and well known to many of us; Allen Jones, Senior Vice President of Default Management with Bank of America Home Loans; Larry Litton, President and CEO of Litton Loan Servicing and Joe Ohayon, Vice President in Community and Client Relations for Wells Fargo. I very much appreciate you all being here. I know these are tough environments for you all. I know you all travel and have come a great distance, but I think this is very important. I am glad that if we couldn't get Treasury to sit to the end and listen, I think it's even all the more important that we have the servicers sitting and hearing those prior panels. So, I look forward to your opening statements and to the questions and answers. And please do try to limit those to within five minutes. Thank you. Dr. Willen.

STATEMENT OF DR. PAUL WILLEN, SENIOR ECONOMIST AND POLICY ADVISOR, RESEARCH DEPARTMENT, FEDERAL RESERVE BANK OF BOSTON

Dr. WILLEN. Thank you. Mr. Atkins, Mr. Neiman, Mr. Silvers, thank you for your invitation to testify. My name is Paul Willen and I am a Senior Economist and Policy Advisor at the Federal Reserve Bank of Boston. I come to you today, however, as a researcher and as a concerned citizen and not as a representative of the Boston Fed, the other reserve banks, or of the Board of Governors. Over the last two years we have searched for policies to help troubled borrowers avoid foreclosure. In New England, we at the Boston Fed have worked with banks to setup a lending facility to help subprime borrowers refinance into prime mortgages. We brought borrowers and servicers together in large scale foreclosure prevention events that have served as a national model. In the research department we have gathered and analyzed detailed loan level data to help us evaluate policies to ameliorate the effects of this crisis on our communities and on the country.

In my remarks today, I would like to focus on three aspects of the foreclosure crisis relevant to foreclosure prevention plans. The first is that an effective plan must address the problems of unemployed borrowers. Long term loan modifications that yield affordable payments for borrowers, but also provide attractive payment streams to lenders will help some, but they cannot help unemployed borrowers. 31 percent of an unemployed person's income is often 31 percent of nothing and a payment of zero will never be attractive to a lender. This is important because our research shows that, contrary to poplar belief, unemployment and other life events like illness and divorce, much more than problematic mortgages, have been at the heart of this crisis all along, even before the collapse of the labor market in the fall of 2008. This may seem counter-intuitive. Life events could not explain the surge in defaults in 2007 because there was no underlying surge in unemployment or illness that year. But that view reflects a misunderstanding of the interaction of house price depreciation and life events in causing default. When prices are rising and borrowers have positive equity, detrimental life events lead to profitable sales. But when prices are falling and borrowers cannot pay off their mortgages with the proceeds of a sale those life events lead to foreclosure. Thus, we did not need to see a surge in life events to get a surge in foreclosures, but rather a fall in house prices, which is exactly and unfortunately what we saw.

The second policy-related finding from our research is that it is unlikely that a modest financial nudge to servicers will lead to millions of modification that will help millions of worthy borrowers. In a recent paper we show that in the period of 2005 to 2008 lenders gave payment reducing modifications to only 3 percent of seriously delinquent borrowers. In addition, we show that this did not result from contractual issues related to securitization. Lenders were just as reluctant to modify loans when they owned them as when they serviced them for a securitization trust. We argue that the main reason we see so few modifications is that it simply isn't profitable for lenders. Modifications benefit lenders because it helps to avoid the high cost associated with foreclosure, but re-default risk, the

possibility the borrower who receives the modification will default again, and self-cure risk, the possibility that the borrower would have repaid the loan without any assistance from the lender can wipe out these benefits. The role of self-cure here is key. About a third of the borrowers in our large sample are current on their mortgages or prepay a year after they become 60 day delinquent. An investor would view assistance given to such borrowers as wasted money.

The third result from our research is that policy makers need to exercise care in designing foreclosure prevention policies to provide the right incentive to borrowers and servicers. A program that offers monetary incentives to do as many modifications as possible and to minimize the probability that modified loans re-default, may not in fact prevent many foreclosures. To see why, one must realize that the easiest way to ensure that a borrower doesn't re-default is to choose a borrower who is unlikely to default in the first place. Thus, a servicer could make minor modifications to millions of loans to perfectly creditworthy borrowers, collect large sums from the government and then collect even more as a borrower continues to repay the loan. Taking these research results into account, we believe the most effective use of government money for foreclosure prevention would involve direct assistance to borrowers rather than to servicers. Two recent proposals, one offered by a group of Federal Reserve Economists—including me—and the other by researchers at the University of Wisconsin target the unemployed to help them cover their housing expenses until they get their feet back on the ground. Either plan would prevent large numbers of foreclosures and would be a good starting point for an effective foreclosure relief plan. We hope these findings add perhaps unexpected insights to your work as policy makers and thank you again for the opportunity to appear before you today and of course I'm happy to answer any questions.

[The prepared statement of Dr. Willen follows:]

TESTIMONY OF

Paul S. Willen
Senior Economist and Policy Advisor
Federal Reserve Bank of Boston

BEFORE

The Congressional Oversight Panel

Philadelphia Field Hearing on Mortgage Foreclosures

September 24, 2009

Chairman Warren, Rep. Hensarling, Mr. Neiman, Mr. Atkins and Mr. Silvers , thank you for your invitation to testify. My name is Paul Willen, and I am a Senior Economist and Policy Advisor at the Federal Reserve Bank of Boston. I come to you today, however, as a researcher and as a concerned citizen and not as a representative of the Boston Fed, the other Reserve Banks, or the Board of Governors.

Over the last two years, we have searched for policies to help troubled borrowers avoid foreclosure. In New England, we at the Boston Fed have worked with banks to set up a lending facility to help subprime borrowers refinance into prime mortgages. We brought borrowers and servicers together in large-scale Foreclosure Prevention Events that have served as a national model. In the research department, we have gathered and analyzed detailed loan-level data to help us evaluate policies to ameliorate the effects of the crisis on our communities and on the country.

In my remarks today, I would like to focus on three key aspects of the foreclosure crisis that we believe should be taken into account in designing an effective program.

The first is that an effective plan must address the problem of unemployed borrowers. Many analysts have argued that an appropriate policy response is to encourage long-term modifications to loans that are both affordable to borrowers and attractive to lenders. Such modifications will help some but they cannot help unemployed borrowers. 31 percent of an unemployed person's income – nothing – is still nothing, and a payment of zero will never be attractive to a lender. A modifications that only modestly reduces the monthly payment will never be a workable proposition for a borrower with no income.

And unemployment and other life-events like illness and divorce are not a sideshow in this crisis. Our research shows that, contrary to popular belief, life-events much more than problematic mortgages, have been at the heart of this crisis all along, even before the collapse of the labor market in the fall of 2008. This may seem counterintuitive: life-events could not explain the surge in defaults in 2007, because there was no underlying surge in unemployment or illness that year. But that view reflects a misunderstanding of the interaction of house price depreciation and life events in causing default. Foreclosures rarely occur when borrowers have positive equity, for

the simple reason that a borrower is almost always better off selling if they have to leave the house anyway. Thus, detrimental life events have no effect on foreclosures when prices are rising. Consider that in 2001, Massachusetts suffered a fairly severe recession which led to a big increase in delinquencies, but the number of foreclosures actually fell to a record low, as shown in the chart I have included with my testimony (Figure 1). But when home prices fall, some borrowers can no longer profitably sell, and then the income-disrupting life-events that are always present, even in normal times take a toll. Thus we did not need to see a surge in life-events to get a surge in foreclosures, but rather a fall in house prices – which is exactly, and unfortunately, what we saw.

The second policy-related finding from our research is that it is unlikely that a modest financial nudge to servicers will lead to millions of modifications that will help millions of worthy borrowers. In a recent paper, we showed that in the period 2005-2008, lenders gave payment-reducing modifications to only 3 percent of seriously delinquent borrowers. In addition, we showed that this did not result from contractual issues related to securitization: lenders were just as reluctant to modify loans when they owned them as when they serviced them for the securitization trusts. We argued that the main reason we see so few modifications is that it simply isn't profitable for lenders. I'm using lenders loosely here to mean the bearers of the loss – the investors – or their appointed representatives – the servicers. The reason is that lenders face two risks that can make modification a losing proposition. The first, which has been recognized as an issue by many observers and researchers, is "redefault risk" – the possibility that the borrower who receives a modification will default again, and thus the modification will have only served to postpone foreclosure and increase the loss to the investor as house prices fall and the home itself deteriorates. The second risk, which has been largely ignored, is "self-cure risk" – the possibility that the borrower would have repaid the loan without any assistance from the lender. About a third of the borrowers in our large sample are current on their mortgages or prepay a year after they become sixty days delinquent. An investor would view assistance given to such a borrower as "wasted" money. Some have suggested that our estimates

overstate self-cure risk but we would argue the opposite: the borrowers most likely to benefit from, for example, a twenty-percent cut in payments are borrowers without substantial income loss or deep negative equity and are thus the ones most likely to cure without assistance from the lender.[1]

The third result from our research is that policymakers need to exercise care in designing foreclosure prevention policies that provide the right incentive to borrowers and servicers. A program that offers monetary incentives to do as many modifications as possible and to minimize the probability that modified loans redefault may not in fact prevent many foreclosures. To see why, one must realize that the easiest way to ensure that a borrower doesn't redefault is to choose a borrower who was unlikely to default in the first place. Thus a servicer could make minor modifications to millions of loans to perfectly creditworthy borrowers, collect large sums from the government and then collect even more as the borrowers continue to repay the loan. Anecdotal evidence from borrower testimonials suggest that individual loan officers have engaged in precisely this practice.

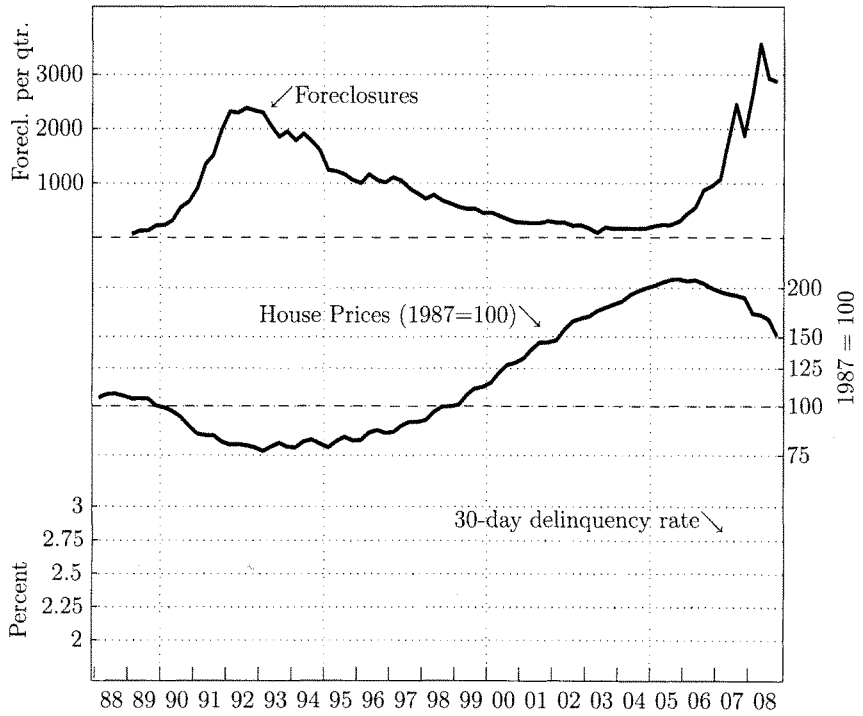
Taking these research results into account we believe that the most effective use of government money for foreclosure prevention would involve direct assistance to borrowers rather than to servicers. We believe that a plan that targets the unemployed to help them to cover their housing expenses until they get their feet back on the ground would prevent large numbers of foreclosures. Several Federal Reserve colleagues and I have written a proposal that involves grants or loans to unemployed borrowers, and researchers at the University of Wisconsin have a proposal that offers housing assistance to all victims of unemployment, whether they own or rent. Both plans get assistance to temporarily unemployed borrowers and avoid the incentive problems that I have just highlighted. Either plan would be a good starting point for an effective foreclosure relief plan.[2]

[1]See attached, Adelino, M., K. Gerardi and P. Willen. "Why Don't Lenders Renegotiate More Home Mortgages? Redefaults, Self-Cures and Securitization." FRBB PPDP 09-04, July 2009.

[2]See attached, Chris Foote, Jeff Fuhrer, Eileen Mauskopf, and Paul Willen. "A Proposal to Help Distressed Homeowners: A Government Payment-Sharing Plan" Public Policy Brief No. 09-1 and Morris Davis, et al. "Foreclosure problem is getting worse, not better."

We hope that these findings add perhaps unexpected insights to your work as policymakers. Thank you again for the opportunity to appear before you today. I would of course be happy to address any questions you might have.

Figure 1: Massachusetts House Price Growth, Foreclosures and Delinquencies, January 1989 to December 2008



Mr. NEIMAN. Thank you. Mr. Jones.

STATEMENT OF ALLEN JONES, SENIOR VICE PRESIDENT FOR DEFAULT MANAGEMENT, BANK OF AMERICA HOME LOANS

Mr. JONES. Superintendent Neiman, Mr. Silvers, Commissioner Atkins, my name is Allen Jones, Bank of America's Default Management Executive. I appreciate the opportunity to appear before you today and provide you an update on Bank of America's efforts to keep our borrowers in their homes. As the country's largest mortgage servicer, we are a major partner in the Administration's Making Home Affordable Program and we understand the responsibilities that are associated with that leadership role. We are committed to helping the Administration achieve its goal of 500,000 trial modifications by November 1st. Bank of America is working to transition 125,000 at risk loans into trial modifications as part of its goal. As a demonstration of our growing momentum, in August we doubled the number of trial modifications we started. And based on the most recent reporting I can tell you that we now have 81,000 borrowers in trial modification. Throughout this historic downturn Bank of America has extended credit to drive economic growth and worked to develop financial solutions for our customers. For example, we were one of the first lenders to leverage the Administration's MHA refinance program and to date have completed refinancing under the program for more than 74,000 borrowers. Earlier this year, Bank of America began reporting on how it continues to lend and invest in the communities we serve. In our second quarter report we stated that the first half of this year, we've extended more than $394 billion in total credit, more than $196 billion in first mortgages $40 billion in loan moderate income mortgages, provided more than $8 billion in small businesses and $149 billion in commercial non-real estate loans. We will continue to provide transparency into our lending and investing efforts and we anticipate our next report on third quarter activity will show continued leadership.

We understand the decisions we make have broad implications even beyond our customer base. Recently Bank of America announced we have created a new position, Consumer Policy Executive, a role which will work directly with our core consumer lines of business to ensure that view points from key external stake holders, including community groups and consumer advocates are taken into account as we address policy issues critical to our customers. We're leveraging lessons learned from this economic crisis as well as input from customers to improve and strengthen our products to better meet consumer needs. At the center of that work is our commitment to simplicity and clarity, developing straight forward products that are easy to use and have clear terms. As described in my written testimony, my teammates on the credit card and deposit teams have also recently announced exciting new innovations. The focus of today's hearing is on what we are doing in the market to keep Americans in their homes. Before MHA we were one of the first lenders to implement a national home retention program. Through that program and other efforts Bank of America completed loan modifications for approximately 190,000 customers from January through mid-September of this year. That's in addi-

tion to more than 230,000 for all of 2008. We are now working hard to help ensure MHA's success and have established a sizeable infrastructure to handle customer demand and program details. Significant resources have been devoted to this effort, including expanding our default management staffing to more than 11,000, a 55 percent increase since the beginning of the year. Our recent results reflect our conversion to MHA as the centerpiece of our home retention efforts. As a result, we have significantly increased our trial modifications from approximately 28,000 in July to more than 81,000 through mid-September. In that same period, we have also increased the number of offers extended under MHA to more than 141,000. Importantly, as we have ramped up, we've placed on hold any foreclosure sale. With that said, we continue to look critically at our loan modification process. Three areas of particular focus right now are how we can make the process more customer friendly and responsive, how we can more efficiently handle customer documentation, and how we can keep customers better informed throughout the process.

In addition, there are other challenges we continue to confront in our efforts to help as many borrowers as possible realize the benefits of MHA. In an effort to improve our outreach and close these gaps, we've ramped up activity through traditional avenues, such as mail, telephone and we've escalated our participation in community and outreach events. Since January we've participated in more than 167 community outreach events and we'll be here in two weeks in Philadelphia. We also have partnered with three national nonprofits. I've heard earlier in the panel the importance of a trusted advisor. So, we partnered with three national nonprofits in the creation of the alliance for stabilizing communities. There are limits to what the current programs can achieve. Unemployment and lack of interest in maintaining a property, those are issues that we have to consider. And as I wrap up my written oral statement, I'd like to focus on the fact that we really understand the urgency here. The strong focus from the Administration has added substantially to our collective efforts to assist homeowners. Yet, we understand we have a long way to go in very challenging circumstances. We look forward to working with the Administration and the Congress and I appreciate the chance to be here. Thank you.

[The prepared statement of Mr. Jones follows:]

TESTIMONY OF

ALLEN H. JONES

BANK HOME RETENTION SERVICING EXECUTIVE

BANK OF AMERICA HOME LOANS

Before the

CONGRESSIONAL OVERSIGHT PANEL

PHILADELPHIA, PA

SEPTEMBER 24, 2009

Madame Chairperson and members of the Panel. Thank you for the opportunity to update you on Bank of America's efforts to help responsible homeowners stay in their homes. I am Allen H. Jones, Bank of America's Home Retention Servicing Executive.

Bank of America is proud to be a leading partner in the Administration's Home Affordable Modification Program (HAMP) and understands and appreciates the responsibilities that come with that. We are committed to helping the Administration achieve its goal of 500,000 trial loan modifications by November 1. Bank of America is working to transition 125,000 at risk loans into trial modifications by November 1 as part of that goal. We have great momentum as demonstrated by our more than doubling the number of trial modifications during the month of August.

Throughout this historic downturn, Bank of America has extended credit to drive economic growth and worked to develop financial solutions for our customers. In the first six months of this year, we've helped 615,000 customers refinance into a more affordable mortgage payment. We were also one of the first lenders to leverage the Administration's Making Home Affordable Refinance program, and to date we have taken 121,000 applications and have completed refinancing under the program for more than 74,000 homeowners.

Earlier this year, Bank of America began reporting on how it continues to lend and invest into the markets we serve even through this unprecedented period of severe economic dislocation. In our second quarter report – available at http://www.bankofamerica.com/qir/quarterly_impacted_report.pdf - we stated that through the first half of the year, the company:

- Extended more than $394 billion in total credit;
- Provided more than $196 billion in first mortgages and $40 billion in low- and moderate-income mortgages;
- Provided more than $8 billion in small business and $149 billion in commercial non-real estate loans.

We will continue to provide transparency into our lending and investing efforts and anticipate our next report on third quarter activity will be available in November.

We understand the decisions we make have broad implications – even beyond our own customer base. That's why, two weeks ago, the company announced it has created a Consumer Policy Executive role to be filled by Andrew Plepler. Andrew, who already heads Corporate Social Responsibility initiatives for the company, will work directly with our core consumer lines of business to ensure that viewpoints from key external stakeholders – including community groups and consumer advocates – are taken into account as we address policy issues of critical importance to consumers.

We're leveraging lessons learned from this economic crisis as well as input from our customers to improve and strengthen our products to better meet consumer needs. At the center of that work is our commitment to simplicity and clarity – developing straightforward products that are easy to use and have clear terms and conditions.

For example, our mortgage business introduced the Clarity Commitment™ – a simple one-page summary of a borrower's loan terms and fees that brings greater transparency to the home loan process. The Clarity Commitment™ is available for approximately 95% of Bank of America loan products and more than 500,000 customers have received Clarity Commitments since April.

In addition, just last week, our credit card business announced the new BankAmericard Basic that offers similar clarity to those who want a credit card with the simplest terms.

We're also offering innovative financial solutions including the Add It Up program, that helps customers save money when they make on-line purchases – earning up to 20 percent cash back. In just a few short months, more than 760,000 customers have signed up and we have paid nearly $1 million in cash back.

We also continue to work with customers experiencing financial difficulties including our ongoing home retention efforts we're here to discuss today.

Bank of America has been at the forefront of government and industry efforts to assist struggling homeowners. In July of 2008, Bank of America completed the purchase of Countrywide Financial Corporation at a time when that firm was at risk of failure and when its base of customers – the industry's largest – needed the strength and commitment of Bank of America to offer them solutions to sustain homeownership.

Just three months later, in October 2008, we announced the creation of our National Homeownership Retention Program to help nearly 400,000 Countrywide borrowers with subprime and pay option ARM products.

Before HAMP implementation, through this program and others, Bank of America and its affiliates completed loan modifications for approximately 170,000 customers from January through July of 2009, compared with more than 230,000 for all of 2008.

We have made important progress under our programs, yet HAMP represents a watershed in loan modifications. The program applies lessons we learned in early efforts across the industry, establishes uniform national standards and provides appropriate incentives to borrowers, servicers and investors. We are confident HAMP enables servicers to help more struggling homeowners and will play a key role in stabilizing the housing markets and promoting economic recovery.

We are working hard and with a strong sense of urgency to ensure HAMP's success. We began months ago establishing an appropriate infrastructure to handle HAMP customer demand and program details. The program is now the first loan modification solution we consider in our waterfall of home retention efforts. For Bank of America customers who don't qualify for HAMP, they still benefit from the availability of our National Homeownership Retention Program and other programs Bank of America continues to offer.

Our recent results as published by the U.S. Treasury Department reflect the conversion to HAMP as the centerpiece of our home retention efforts. We continue to gain momentum having more

than doubled the number of customers with a trial modification in one month – from approximately 28,000 through July to 68,000 through the end of August. In that same period, we also increased the number of offers extended under HAMP to more than 135,000. These numbers reflect our loan modification activity for the entire month of August. We can also report that progress continues – our most recent reporting for the week of September 14 shows we now have more than 81,000 active trial modifications and nearly 141,000 offers.

Importantly, as we have ramped up, we placed on hold any foreclosure sale for borrowers who may be eligible for HAMP. Those holds remain in place during the time that it takes us to contact and evaluate the borrower and through the trial modification period. Similarly, we have placed on hold foreclosure sales for borrowers who may be eligible for our other programs as well.

As the largest servicer in America, we recognize the importance of helping our customers sustain home ownership. Significant resources have been devoted to this effort including expanding our default management staffing to more than 11,000 – a 55% increase since the beginning of the year. In addition to personnel, we have devoted substantial systems, training and other resources to our home retention efforts.

We continue to critically look at our loan modification process, and to listen to our customers, community partners, and other stakeholders about how we can improve. Three areas of particular focus right now are how we can make the process more customer-friendly, how we can more efficiently handle customer documentation, and how we can keep customers better informed throughout the process. For example, we are working to extend our Clarity Commitment™ to loan modifications to provide consumers greater transparency about the terms of their modified loan.

There are other obstacles we continue to confront in our efforts to help as many homeowners as possible realize the benefits of HAMP. Two of the most significant hurdles are customers not providing required financial information and a lack of borrower response to our outreach efforts. We recognize that we have an opportunity to improve our outreach efforts and are working to close this gap.

We have ramped up our outreach efforts through traditional avenues such as mail, telephone, and participation in community events. Since January, Bank of America has participated in more than 167 community outreach events in 27 states. About 50% of customers we reach at these events had no prior contact with us during the last 60 days. We recently started a nationwide door-to-door outreach campaign where we are reaching out to 50,000 customers who have received a trial modification offer but have not yet responded.

We have partnered with the National Council of La Raza, National Urban League, and the National Coalition for Asian Pacific American Community Development in the creation of the Alliance for Stabilizing Communities. And, we provided $2.5 million in funding to support this national coalition and their work to hold 40 housing rescue fairs over the next two years in 24 communities hardest hit by the foreclosure crisis.

We also recently launched a Customer Assistance Center pilot in California that will provide face-to-face counseling for customers experiencing financial difficulty. The center is equipped to handle questions on all consumer products including loan modifications. If successful, we will expand it to more locations across the United States.

We will continue to pursue transformative initiatives that increase the number of customers receiving assistance and enhance the sustainability of the loans. As part of this effort, we are eager to hear and consider all ideas from public officials, community leaders and our customers.

Regrettably there are limits to what the current programs can achieve. Unemployment, lack of interest in remaining in the property and other eligibility issues are current impediments to qualifying for a HAMP modification. With unemployment still near 10%, even the most ambitious loan modification program will not be able to assist borrowers who have no ability to make a reasonable mortgage payment. To address this issue, we have begun exploring with the Administration methods for allowing responsible unemployed borrowers to stay in their homes. Such relief could include forbearance and temporary rate relief.

Beyond unemployment, we also frequently encounter customers with the following characteristics: 1) low-to-moderate income borrowers that have a mortgage debt-to-income ratio of less than 31%, but do not have enough discretionary income left over to cover all their other necessary expenses; 2) borrowers who can afford their mortgage payment but are unwilling to pay their mortgage debt because they believe it is in their best financial interest to walk away from their underwater mortgage; and, 3) borrowers that have run up too much other debt and are choosing to allocate funds to pay other debt instead of their mortgage. We believe the Administration should expand HAMP to cover the first group of lower income borrowers who could still benefit from this program.

Our goal is to keep as many customers in their homes as possible. Our efforts do not stop if we are unable to apply a HAMP solution. We will exhaust every other available option including our National Homeownership Retention program and other loan modification solutions, as well as short sales and deeds in lieu, when a homeowner chooses to sell their property or has no other option except foreclosure.

The entire mortgage servicing industry is racing against the clock to stem the tide of foreclosures and home loss. We fully understand the urgency and will never be satisfied that we have done enough until the country is through this difficult cycle.

Bank of America is committed to driving economic growth, strengthening our communities and supporting our customers. Our pledge is to always be a responsible lender and help create successful homeowners - to ensure that our customers can enjoy their homes with confidence today and into the future.

We look forward to continue working with Congress, the Administration, and our other external partners on these important issues. I would be happy to answer any questions you might have.

Mr. NEIMAN. Mr. Litton.

STATEMENT OF LARRY LITTON, PRESIDENT AND CEO, LITTON LOAN SERVICING

Mr. LITTON. First of all, I would just like to thank you for the opportunity to be here and if many of you can't tell, I'm from Texas. I'm the funny sounding guy up here. So, I am very excited to have this opportunity to kind of share some insights with you. I am responsible for running a mortgage portfolio for about 365,000 loans and about $58 billion worth of mortgage products. We're in all 50 states. It's predominately subprime as well as ALT–A products. At Litton we've been a leader in providing workout solutions to homeowners for more than 20 years. We have been and we continue to be a proponent of thoughtful as well as practical loan modifications that provide affordable opportunities to struggling homeowners and that is very consistent with our obligations to the owners of those loans. We are very proud that many of our early strategies served as a basis for many of the loss mitigation methods that the industry deploys up to this day.

Over the past twelve months or in the twelve months prior to the announcement of the HAMP Program in February, we had modified more than 44,000 loans over that twelve month period of time. That represented about 30 percent of our service to first lien mortgage portfolio that were 60 day or more past due. On average, these modifications lowered the homeowner's monthly principle and interest payment by about 20 percent based off of how those loan modifications had been structured.

Since March 2009, when the initial HAMP guidelines were published up through August 2009 when Litton had signed up for HAMP, we had extended trial modifications to approximately 40,000 additional homeowners. These trial modifications were offered in accordance with the broad principles of the HAMP guidelines. Since signing onto the program in early August we have offered another 10,000 HAMP loan modifications. So, when you add all that up you get 44,000 loan modifications that we had done in the twelve months leading up to February, 40,000 trial modifications over that timeframe from February up until we signed on the HAMP and then 10,000 additional loans that we modified under HAMP, makes up a total of about 25 percent of our total portfolio that we service has been modified over the past 18 months.

So having said that, I'm here today to kind of offer a couple of suggestions as it relates to the HAMP guidelines. HAMP has very successfully created substantial momentum in the mortgage servicing industry by providing more loan modification opportunities to struggling homeowners. But as with any government program, there are some lessons that I think that we've learned and there are four suggestions I'd like to make here today.

The first suggestion has to do with debt-to-income ratio. So, the 31 percent debt-to-income standard is a very reasonable basis to calculate a modified mortgage payment. However, I'm going to give you an example. There are homeowners who have substantial arrearage that has built up and that arrearage was built up because a borrower may have had a prior unemployment situation or other life event that may have created an instance where the borrower

got past due. Today they may have a front end debt-to-income ratio that's less than 31 percent and then after capitalizing arrearage or forbearing the arrearage, you may create a situation where the DTI payment may be greater than 31 percent, but those borrowers would be excluded from HAMP. So, expanding HAMP to include situations where borrowers have less than 31 percent debt-to-income ratios in those instances where arrearage have been created, might be a worthwhile way for policy makers to consider expanding the program to be more effective. From an income documentation prospective, it's completely understandable for a program that relies on taxpayer funds to require lots of income documentation. However, I would say that there are delays that are created by requiring some of the documentation that HAMP requires. The earlier panel made reference that in many instances there is not a lot of documentation. I would agree with that. However, I would state that it is a problem in many instances getting that information from some of these consumers. So, I think a way to streamline that might make the program more effective, as well.

As it relates to the NPV model that the GSEs rolled out, the NPV model was based on state averages of home price depreciation and is not often granular enough to take into account home price appreciation or declines within specific communities and neighborhoods. This will cause some loans to fail or some loans to pass the NPV test when they potentially should not. Our experience has found that more loans fail than what should actually fail in this situation because it's not granular enough. So, being a little bit more specific as it relates to the NPV models might also be something for policymakers to consider, as well.

The last point I'll make has to do with option ARMS. Your prior panelists made reference to a point—I think they are exactly on point—that there's a coming wave as it relates to option ARMS loans and many of those loans will not fit within this program. So, policymakers considering ways to expand the program to make it more focused on option ARMS product might be something very worthwhile, as well. Thank you very much, I'm happy to answer any questions that you might have.

[The prepared statement of Mr. Litton follows:]

Written Statement of Larry B. Litton, Jr.,
President and Chief Executive Officer of Litton Loan Servicing LP

Congressional Oversight Panel
Field Hearing on Foreclosure Mitigation
September 24, 2009

Good morning members of the panel and all those attending this important hearing. My name is Larry B. Litton, Jr. I am the chief executive officer of Litton Loan Servicing, which manages a portfolio of approximately 365,000 mortgage loans totaling about $58BB of predominantly subprime mortgages. I appreciate the opportunity to discuss the Home Affordable Modification Program (HAMP) with you. As you are well aware, foreclosure mitigation is one of the central challenges growing out of the financial crisis.

Litton Loan Servicing has been a leader in providing multiple workout solutions to homeowners for more than 20 years. We have been, and continue to be, a proponent of thoughtful and practical loan modifications that provide affordability to struggling homeowners, consistent with our obligations to loan owners. We are proud that many of our early strategies serve as a basis for the many loss mitigation methods that the industry employs today.

In the past 12 months prior to the announcements of HAMP, in February of this year, we had modified more than 44,000 loans, representing about 30% of our serviced first lien loans that were 60 days or more past due. On average, these modifications lowered homeowners' monthly principal and interest payments by about 20%.

From March 2009, when the initial HAMP guidelines were published, through early August, 2009, when Litton signed up for HAMP, we had extended trial modifications to approximately 40,000 homeowners. These trial modifications were offered in accordance with the broad principles of HAMP. Since signing onto the program in early August 2009, we have offered about 10,000 HAMP trial modifications.

The 44,000 completed modifications mentioned above, along with the 40,000 trial modifications offered prior to signing on to HAMP and the 10,000 trial modifications offered post signing, represent about 25% of our total serviced first lien loans over the past 18 months.

HAMP has successfully created substantial momentum in the mortgage servicing industry to provide more loan modification opportunities to struggling homeowners, and it is providing affordable payments to many of the homeowners who need it most. But as with all new programs of this scale, there are lessons to be learned and I would like to share four suggestions, as I see it from the servicer perspective:

(1) While the 31% debt-to-income (DTI) ratio required for HAMP is a reasonable basis to calculate a modified mortgage payment, excluding homeowners with less than 31% DTI is limiting the effectiveness of the program. An example, there are many homeowners who have substantial arrearages that were created by prior unemployment, under-employment, or other economic factors but these homeowners have now improved their current income situation and therefore fall

below the 31% DTI. However, in many cases, after capitalizing the arrearage in accordance with the guidelines of HAMP the DTI is greater than 31%.

Servicers' workout options in these situations are limited and I believe that a significant percentage of the denials under the HAMP guidelines fall into this category.

Developing a more flexible DTI model for the program that would take into consideration situations like these could expand the universe of effective modifications and avoid even more foreclosures.

(2) The income documentation required under HAMP, while completely understandable for a program that relies on taxpayer funds, is creating substantial delays in the modification approval process and is creating frustration for many homeowners. Policymakers may want to consider streamlining the required documentation that verifies the customer's current income which could increase the likelihood of homeowners submitting the information in a timely manner and shorten the approval time frames for a modification.

(3) The GSE NPV model is based on state averages of home price deprecation which is not granular enough to take into account home price appreciation or home price depreciation in specific neighborhoods and communities. This will cause some loans to fail and/or pass the NPV test when they potentially should not. As we all

know, there are huge differences in home prices within any large city let alone the differences in prices within a state.

Additionally, the LTV, which is calculated using the various state haircuts within the model, weighs heavily on the probability of a loan curing or re-defaulting. These technical factors have a dramatic impact in terms of whether a homeowner is offered a loan modification. More specific NPV models based at a local level versus a state level should be considered to more accurately determine if a loan is eligible for a modification.

(4) We believe there are very significant numbers of Option ARMS resets coming due in the near future, and because of the low payments these homeowners have prior to reset, HAMP provides very little relief to these homeowners. Policymakers may want to consider this issue as they formulate or refine measures to address the many problems facing homeowners.

Thank you again for this opportunity to address the panel. I will be happy to answer any questions that you may have.

Mr. NEIMAN. Mr. Ohayon.

STATEMENT OF JOE OHAYON, VICE PRESIDENT FOR COMMUNITY AND CLIENT RELATIONS, WELLS FARGO HOME MORTGAGE

Mr. OHAYON. Thank you. Members of the Congressional Oversight Panel, I'm Joe Ohayon, Senior Vice President of Community and Client Relations of Wells Fargo Home Mortgage Servicing. Thank you for the opportunity to speak before the Oversight Panel today. We take seriously the responsibility that comes with Treasury's investment in Wells Fargo through the Capital Purchase Program and we are committed to do everything we can to assist struggling homeowners as part of that responsibility. Wells Fargo may be a big corporation, but we operate within the conscience of a company determined to do what is right for our customers, our investors and all American taxpayers.

Of course, this year much has changed and evolved in our economy and in our efforts to assist struggling borrowers. First, we worked hard to implement the very detailed and evolving Home Affordable Modification Programs, which include different guidelines and requirements for Fannie, Freddie, non-GSE, and most recently FHA borrowers.

To handle the greater than 200 percent increase in borrowers requesting assistance—including the 35 to 40 percent who are current on their mortgages—we have hired and trained an additional 4,600 U.S.-based home retention staff for a total of more than 12,000. As of September 3rd, we have qualified more than 304,000 customers for trial and completed modifications this year alone. As it pertains specifically to HAMP, we have offered 78,000 customers a trial modification and we have received at least the first payment for about 44,000 of those trial modifications.

We have further enhanced our support systems, our training and our retraining to aide our service representatives in appropriately communicating modification programs and guidelines as they continue to change and expand to help more borrowers.

In addition, we have improved the ways to obtain from borrowers the extensive documentation the government requires for its programs and we continue to work to ensure all documents are processed in a timely manner. And most importantly, in this dynamic environment we continue to conduct final review to ensure every option is exhausted before a property moves to foreclosure sale because when a foreclosure occurs everyone loses.

Despite widespread decreases in home values, more than 92 percent of our customers in our entire servicing portfolio remain current on their mortgage payments. This is the direct result of our customers' efforts and our commitment to responsibly servicing all of the loans in our portfolio, including those formerly owned by Wachovia and loans we service, but did not originate.

In addition, our delinquency and foreclosure rates continue to be significantly lower than the industry average and the lowest of the nation's largest mortgage lenders. And for all of 2008 and 2009 year-to-date, less than 2 percent of the owner-occupied properties in our servicing portfolio have actually proceeded to foreclosure sales. These results would not have been achievable without the

continued collaborative public and private sector efforts to inform customers of their options and the introduction of the new Home Affordable Modification Programs.

While we're proud to be part of the HAMP development, it's important to acknowledge that HAMP will not help all borrowers in need of payment relief. For the customers who are ineligible for HAMP and where we can reach affordability, we offer customized solutions.

You've also asked for our feedback on Philadelphia's Residential Mortgage Foreclosure Diversion Pilot Program and I'm happy to provide you with a few comments based on our experience. In general, we found that intervention programs like Philadelphia's can be helpful when they allow a servicer to engage in the discussion of alternatives to foreclosure with borrowers that have not yet had such discussions with us. Anytime we have the opportunity to work with a borrower that we have been unable to reach or to have a deeper discussion with a borrower, we open up the possibility that we can find a way to avoid a foreclosure that otherwise would have occurred.

From our perspective, Philadelphia's Diversion Program is one of the most streamlined and cost effective programs of this kind and provides intervention in a way that can be helpful to the borrower without being overly burdensome on the servicer. Conferences are scheduled in a relatively short time, servicers can participate by telephone, key steps in the foreclosure process can proceed in parallel with the conciliation process and the standards for evaluating whether or not the foreclosure can be avoided are relatively clear. The city also has done a good job of adapting its program and making adjustments as lessons are learned.

In terms of ways to improve the program, we find that some homeowners for whom a conference is scheduled fail to attend the conference and a limited number of borrowers come out of a conciliation conference with the potential for a workout solution. If the city could provide some means of limiting the conference to only those borrowers who have not been fully evaluated for a possible alternative to foreclosure and those who are actively engaged in the process, the resources required on behalf of the city and servicers could be significantly reduced and the customers who can truly benefit could still be served. As servicers, we sit between the customer and investors and we are responsible for doing modifications the right way. We also have the responsibility to execute these programs well for all American taxpayers by ensuring that customers given modifications are truly facing hardships and that they can afford and sustain their home payments after a modification is completed.

Thank you and I look forward to your questions.

[The prepared statement of Mr. Ohayon follows:]

Testimony of

Joe Ohayon
Senior Vice President
Wells Fargo Home Mortgage Servicing

Before the

Congressional Oversight Panel
Field Hearing
Philadelphia, Pennsylvania

September 24, 2009

Superintendent Neiman and Members of the Congressional Oversight Panel, I'm Joe Ohayon, senior vice president of community and client relations of Wells Fargo Home Mortgage Servicing.

Thank you for the opportunity to come before the Oversight Panel today to discuss our continued commitment to doing everything we can to prevent avoidable foreclosures and to help stabilize the housing market. We take seriously the responsibilities that come with Treasury's investment in Wells Fargo through the Capital Purchase Program and we are committed to doing everything we can to assist struggling homeowners as part of that responsibility. Wells Fargo may be a big corporation, but we operate with the conscience of a company determined to do what is right for our customers, our investors, and for all American taxpayers.

Over the course of this year, much has changed and evolved in our economy and in our efforts to assist struggling borrowers.

- First, we worked hard to implement the very detailed and evolving *Home Affordable Modification Programs* which include different guidelines and requirements for Fannie, Freddie, non-GSE, and most recently FHA borrowers.
- To handle the greater than 200 percent increase in borrowers requesting assistance – including the 35 to 40 percent who are current on their mortgages – we have hired and trained an additional 4,600 U.S.-based home retention staff for a total of more than 12,000.
- As of September 3, we had qualified more than 304,000 customers for trial and completed modifications this year alone. As it pertains specifically to HAMP, we had offered 78,000 customers a trial modification and we had received at least the first payment for about 44,000 of these trial modifications.
- We have further enhanced our support systems, our training and our re-training to aide our service representatives in appropriately communicating modification programs and guidelines as they continue to change and expand to help more borrowers.
- In addition, we have improved the ways we obtain from borrowers the extensive documentation the government requires for its programs, and we continue to work to ensure all documents are processed in a timely manner.
- And, most importantly, in this dynamic environment we continue to conduct final reviews to ensure every option is exhausted before a property moves to foreclosure sale – because when a foreclosure occurs everyone loses.

Wells Fargo has long adhered to responsible lending and servicing principles that guide our

business practices. We did not make negative amortizing, pay option adjustable rate mortgages or subprime stated income loans, despite their popularity. And, as a result, we can directly attest to the fact that the home loans our company originated perform better than those loans we service but had no involvement in originating or underwriting.

Despite widespread decreases in home values, more than 92 percent of our customers in our entire servicing portfolio remain current on their mortgage payments. This is the direct result of our customers' efforts and our commitment to responsibly service all of the loans in our portfolio – including those formerly owned by Wachovia and loans we service but did not originate.

In addition, our delinquency and foreclosure rates continue to be significantly lower than industry average, and the lowest of the nation's largest mortgage lenders. And, for all of 2008 and 2009 year-to-date, less than 2 percent of the owner-occupied properties in our servicing portfolio have actually proceeded to foreclosure sale.

These results would not have been achievable without the continued collaborative public and private sector efforts to inform customers of their options and the introduction of the new *Home Affordable Modification Programs*.

While we are proud to have been part of HAMP's development – as it is an important option – it needs to be acknowledged that HAMP will not help all borrowers in need of payment relief. For the customers who are ineligible for HAMP and where we can reach affordability, we offer customized solutions. During June, July and August – the same time we fully executed HAMP – more than 83% of our customized modifications reduced payments. Where payments stayed the same or increased, the customer did not have a permanent hardship, could afford their monthly payments, and needed short-term assistance to take care of their delinquency – or there were investor restrictions.

You also have asked us for our feedback on Philadelphia's Residential Mortgage Foreclosure Diversion Pilot Program and I am happy to provide you with a few comments based on our experience.

In general, we have found that intervention programs like Philadelphia's can be helpful when they allow a servicer to engage in a discussion of alternatives to foreclosure with borrowers that have not yet had such discussions with us. Any time we have the opportunity to work with a borrower that we have been unable to reach or to have a deeper discussion with a borrower, we open up the possibility that we can find a way to avoid a foreclosure that otherwise would have occurred.

From our perspective, Philadelphia's diversion program is one of the most streamlined and cost-effective programs of this kind, and provides intervention in a way that can be helpful to the borrower without being overly burdensome on the servicer. Conferences are scheduled in a relatively short time, servicers can participate by telephone, key steps in the foreclosure process can proceed in parallel with the conciliation process and the standards for evaluating whether or not the foreclosure can be avoided are relatively clear. The city also has done a good job of adapting its program and making adjustments as lessons are learned.

In terms of ways to improve the program, we find that some homeowners for whom a conference is scheduled fail to attend the conference and a limited number of borrowers come out of a conciliation conference with the potential for a workout solution. If the city could provide some means of limiting the conferences to only those borrowers who have not been fully evaluated for a possible alternative to foreclosure and those who are actively engaged in the process, the resources required on behalf of the city and servicers could be significantly reduced and the customers who can truly benefit could still be served.

Wells Fargo is a company committed to doing what is right for our customers. We hold ourselves to a high level of accountability for improving communication and returning all of our customers to the level of service they deserve.

As servicers, we sit between the customer and investor and we are responsible for doing modifications the right way. We also have a responsibility to execute these programs well for all American taxpayers, by ensuring that customers given modifications are truly facing hardships and that they can afford and sustain their home payments after a modification is completed.

In closing, as we have from the very beginning of this crisis, Wells Fargo will continue to seek innovative ways to address the evolving challenges facing our nation. We continue to have faith that together, we will help the nation turn the corner and return the housing market and our economy to a state of health.

Thank you, I look forward to your questions.

Mr. NEIMAN. I started off my questioning of the Treasury and GSEs by pointing to the success metrics that the Treasury has been using to evaluate the success of the program and also to establish performance among the various servicers. As you all know, there is great disparity between performance, with some down at zero percent with others up in the high double digits. Recognizing that some of these disparities maybe due to the timing when some servicers entered the program or based on the type of trial modification. Is it based on verbal information or have they waited for full documentation? I'd like your views on what is the best way to analyze this information and should there be changes in how we implement or look at trial modifications? I'm open up to whomever. Larry, you seem to be nodding.

Mr. LITTON. As it relates to whether we start with the verbal or a written, I 100 percent concur with the statement that was made earlier that the most important thing is to get moving whenever we have a customer on the telephone. So, we're of the view that proceeding with verbal information is critical so that we can stop the foreclosure and so that we can begin the process of the loan modification. So, we're very supportive of that. However, that does bring up challenges later in terms of making sure that you follow-up with getting the income documentation that we have to have. But I do think that that's one area that could be driving substantial disparity, the fact that some may be waiting for the written information to come in before they start the trial.

Mr. OHAYON. I would agree with Larry. We've done it both ways at Wells Fargo. A program has evolved over time now since February and certainly has gotten better and more refined as the months have gone on. Things like the roll out of FHA in late July—which went live in the middle of August—certainly help a servicer like Wells Fargo because we have a strong concentration of FHA loans. But we started with fully underwriting, requiring proof of income and documentation upfront. It has since moved to a verbal approach. It provides immediate relief to the customer because we can grant a trial payment and reduce payments immediately. But, as Larry points out, certainly it provides the opportunity that once we get supporting documentation it may exceed that level or beyond the level of income that we actually got from the customer.

Mr. NEIMAN. Thank you. You know, I'm also interested to the extent that the program has restricted your ability to offer loan modifications outside of the program. And, I would particularly like to start off with Mr. Litton because he, to my understanding, was one of the few servicers that had been utilizing principle reduction as a favored loan modification and the fact that HAMP does not prohibit it, but it doesn't require it—permits it, but doesn't require it. Do you have a view on whether this is making it more difficult for principle reduction and is that something that the program should be reconsidering?

Mr. LITTON. You know, I testified back in November in front of Congress on this issue. We adopted a policy in November 2008, ran that policy up through March 2009 that did support a principal reduction strategy. That was based off the fact that our analysis at that time concluded that using principal reductions is a way to reduce payments, create lower loan-to-value ratios, provide more exit

opportunities for consumers later on down the road and might provide more motivation. Obviously, under the HAMP program, constructed as the way it is, it is an option. However, the industry standard now—most servicers are not using the principal reduction component of that, they're using the principal forbearance part of that. The ASF as well as several other entities have, I think been comfortable with that and you'll see most servicers executing it within those broad parameters.

Mr. NEIMAN. Any of the bank servicers care to?

Mr. JONES. Sure, I'd be happy to address that. Bank of America's perspective is that in certain circumstances principal reduction makes sense. I mentioned earlier that we've done 190,000 modifications outside of MHA this year. Under MHA the centerpiece of our activity today—81,000 loans in trial—what we have found, it's not really the exit strategy as much as keeping our borrowers in their homes. And we've found that rate reductions, we've found that forbearance, we've found that extension of term, those are the ways that we can keep borrowers in their homes and that's what is important in communities.

Mr. NEIMAN. So, even though the affordability may be the same, I think it's your rationale that the motivation to sustain that and when we look at re-default rates down the road that may have a difference?

Mr. LITTON. Absolutely. That's what led us down that road. When I said exit, what I meant there is that the borrower then has an opportunity if he needs to sell the house in two years or three years or if he gets transferred, you're not carrying a balance that is unsustainable at that point in time. That's what led to that conclusion back at that point in time.

Mr. NEIMAN. Appreciate that. Mr. Atkins.

Mr. ATKINS. I wanted to refocus on the re-default aspect here, especially with unemployment statistics as they are. OCC and OTS had a study that they also released earlier this year, which pretty much—which we were talking about, Dr. Willen. So, I was wondering is this principal reduction really the only type of ultimate tool or what are the other types of things that make sense in this context?

Dr. WILLEN. On the issue of principle reduction it's exactly right. What I said before is the problem with negative equity is basically the borrowers can't respond to life events and I think—I don't know if it's quite the right way to put it—it's sort of like they don't have an immune system. So, there are shocks that happen to people with positive equity that never show up in the data as foreclosures. They just show up as sales. So, for example in Massachusetts in 2001 we had a big increase in unemployment. We had a recession. The number of delinquent borrowers went up, doubled. But, then you actually saw a reduction in the number of foreclosures. It was a record low for foreclosures. So, when people have positive equity there are lots of different ways they can refinance, they can sell, they can get out of the transaction. So, in the long run I think one of the things we've been emphasizing is that it's not just the re-defaults, it's the fact that there are a lot of borrowers out there who are okay right now, who are fine right now, and who may be fine a year from now. But, until they build up

some equity in their house, those are at-risk homeowners. So, in that sense dealing with the principle reduction has its virtues and the problem is most homeowners with negative equity continue making their mortgage payments. So, you run this risk when you start reducing principal that you're inviting all kinds of people who can make their mortgage payments, and who do make their mortgage payments, to look for relief.

Mr. ATKINS. Right and I guess basically, that's for the rest of you. I think that once we go down that road, rather it be cram down or whatever, we're basically changing the whole risk or ratio of this entire industry and I was wondering what you might—how you would expect that to affect interest rates for everybody in the whole way that industrialists look at this industry?

Mr. JONES. I certainly will agree with much of what Dr. Willen said and would cite as an example, negative equity around payment option ARMS. That certainly is an area product based whereon principal reduction makes a lot of sense. A program like that existed a couple of years ago, but we eliminated that program. So, payment option ARMS prospectively, we will not offer. As it relates to improvements to MHA around these same types of issues—keeping borrowers in their homes—we've made suggestions and have had a good dialogue around what can we do for those who are temporarily unemployed and how can we help borrowers—our borrowers—stay in their homes as they go through a gap in unemployment. But, we predict that they will gain reemployment. So, there are opportunities there for us to keep working with our borrowers and keep them in homes.

Mr. OHAYON. Regarding the principal curtailments we do at Wells Fargo, depending on a product type that pay option ARMS, certainly it may make sense to actually utilize curtailment, just to get the dynamics of the product itself. But, when you're looking at a background of what we're trying to accomplish and one is addressing a hardship a customer is facing and trying to create affordability. To get to affordability, you can get there quicker and deeper through rate reduction, term extension, and really the top of the waterfall for HAMP and that's really the approach we've been taking given the government's plan.

Mr. ATKINS. Quickly, part of the bubble produced a lot of questions regarding documentation and now we see that come up in some courts as ownership issues, who owns the mortgage. Have you all experienced that as a problem?

Mr. LITTON. No. From a practical prospective, day-to-day, I'm not saying that there's never documentation issues, but in terms of being able to demonstrate who the owner of the mortgage is, that has not been an issue.

Mr. OHAYON. Yes, I would agree.

Mr. SILVERS. I would agree, as well. Like my fellow panelists, I want to express my appreciation to all of you for coming and being with us today. A person might wonder whether this would be a pleasant experience and I want to commend you for being here. Dr. Willen, his testimony stated that we really needed to do something directly to deal with the consequences of unemployment and I think it's been the theme today that that's not in the design of the original MHA Program. Do the rest of you agree that that would

be a good idea for the Administration to address that problem directly in the MHA?

Mr. OHAYON. We do at Wells Fargo. We've had a number of conversations with the Administration around a short-term solution to specifically address unemployment and even under employment when you can't create affordability based on that underemployment status, so we do.

Mr. SILVERS. Is Pennsylvania a good model for how to do this? The long-standing Pennsylvania program has been in effect for about 20 years.

Mr. LITTON. With regards to the ACT 6 and the ACT 91?

Mr. SILVERS. I forgot the acronym. Is that program a good model for the Treasury to consider in your view?

Dr. JONES. I think we will continue to look for innovations and that is one that ought to be considered. I go back to the earlier comments, Mr. Silvers, that we need to continue to refine the program and work very strongly with the Administration to keep our borrowers in their homes.

Mr. SILVERS. Dr. Willen, you said a moment ago that in relation to principal reductions that there was a problem of—everyone would like a principal reduction, not everyone needs one. Why is that not kind of a slam dunk argument given the fact that principal reductions—and I think everyone has said that there are circumstances in which principal reductions are the only solution? Principal reductions in commerce are typical. Meaning, in other lending relations principal reductions happen all the time when people get in trouble in various ways. Dr. Willen, is it the point that there needs to be some sort of activity here, not just a slam dunk argument for putting this in the bankruptcy courts?

Dr. WILLEN. You know, the bankruptcy claims I don't know. That may well be. Let me say, I'm no expert on this, but I do question how appealing it will be for the borrower.

Mr. SILVERS. It's not an appealing place, is it?

Dr. WILLEN. No, it doesn't seem at this point that telling a borrower, I got good news for you, you can file for bankruptcy, that that's the kind of solution that we're looking for right now.

Mr. SILVERS. But isn't that a good thing in a way if we want people who really want to stay in their homes to pay a price?

Dr. WILLEN. Let me say, I think another alternative to this is an enhanced short sale program because in a sense a short sale is a principal reduction. So, I would guess in this sense I would direct questions to Larry in a way about what's happening.

Mr. SILVERS. But that doesn't keep anybody in their homes, a short sale program.

Dr. WILLEN. It doesn't keep anyone in their homes, but it's an exit strategy for borrowers. And I think in some cases what borrowers are looking for is closure. And I think one thing to keep in mind, one of the problems borrowers face is that they're unemployed and they have a job opportunity and they need to move.

Mr. SILVERS. That's a different issue.

Mr. LITTON. But these are the kinds of problems. When you talk to people these are the kinds of problems they're facing.

Mr. SILVERS. I think that this seems to me to be the argument for having this option available. It's that you have—as I think your

testimony quite compellingly states—certain types of life problems, such as needing to move for a job. Being underwater is very problematic and this helps. If you don't want to move, short sales aren't a big help and short sales put a lot of inventory on the market and that may not be what we want to do right now. But in any case, I just wanted to get that clear on the bankruptcy court issue. Mr. Litton, we heard from Dr. Willen that his financial model is driven, I think, by two numbers, re-default rates and self-cure rates suggest that it may not be profitable for people in your position to restructure loans. You've just finished telling us that even before MHA you had restructured something, I think something like 80,000 loans in total when you add all the numbers up?

Mr. LITTON. Yes, sir.

Mr. SILVERS. You seem like a bottom line focused type of person. Explain to me why Dr. Willen is wrong?

Mr. LITTON. Well, I wouldn't say it that way, that he's wrong. The way I would phrase it is this, at Litton Loan Servicing, and taking into account our prior ownership, we were aligned with the holder of the credit risk. So, as loans defaulted and as losses mounted it was in our best interest for those guys, in order to modify the loans and keep in their homes because the losses would be lower, that's number one.

The number two, what I would argue is that it's clearly stated in the pooling and servicing agreements that we are all kind of responsible for servicing loans in that that we have a contractual responsibility to represent investors and make losses as low as we can make them. And, loan modification, in our judgment, has been one of the ways to fulfill those contractual responsibilities. And then there are economic incentives way above and beyond what the HAMP program calls for. So, for example, advances. Anytime a borrower doesn't pay me, our company has to write the check and fund those advances to the investors. And in this kind of climate those advances add up to a lot of money at the end of the day. So, all of those things combined is what I would argue is what led us down this road.

Mr. NEIMAN. During the prior panel a statement was made that the incentives under the HAMP program were not enough to overcome the culture, systems, and other incentives that are provided to servicers. Do you agree with that statement and would you like to comment on it?

Mr. OHAYON. As Larry mentioned we've been doing loan modifications for a long time, even pre-HAMP, because of judiciary responsibilities to our investors. We also do it because we think it's the right thing to do for our customers. So, regardless of the incentives structure, we think it's the right thing to do. Certainly, I want to get back to Larry's point around the cost of foreclosure. The advances made are significant. The reimbursement from investors doesn't happen until a foreclosure action is taken or the loan reinstates through modifications. So, actually we were recovering monies sooner by doing a modification. So, you would think the incentive structure is probably a reverse of that.

Mr. OHAYON. We don't have incentive to foreclose.

Mr. NEIMAN. Mr. Jones.

Mr. JONES. I agree with much of the remarks.

Mr. NEIMAN. Okay. Mr. Litton, do you?

Mr. LITTON. Yes, sir.

Mr. NEIMAN. Do you think that was overstated?

Mr. LITTON. Well, what I would say is the following. Most servicers, well some servicers—and the reason that that argument comes up is that some servicers have historically owned REO outsourcing firms or foreclosure trustee firms, things like that. And most of us don't. so, it is not a profit center I can tell you in any way, shape or form in our company and for most of the guys in the industry today.

Mr. NEIMAN. I'd also like to understand—and I've asked the other panelists—about recommendations for changes in the program design or in the implementation that would improve the process under which you comply with this program. Are there any that you would like to highlight for our panel in our work?

Mr. JONES. What I'd like to offer is number one, a thought around the value of uniformity for all of us here. MHA offers that uniformity. As far as, improvements we certainly have——

Mr. NEIMAN. Meaning web portal documentation?

Mr. JONES. We're a strong supporter of that and have been engaged in dialogues around that. That is very helpful. Documentation is one thing, but again there is a segment of borrowers that MHA is not able to help today and so our efforts in discussing the unemployment issue is something that we'll see definite value in and update. But, I'd like to look at MHA as one part of Bank of America's overall approach to keeping borrowers in their homes. We support the Administration going forward and want to continue the dialogue that has been very, very positive. We'll see things coming around second liens, around short sales, around deeds and—as much as we can make those uniform, the better for the industry, the better for the borrower.

Mr. NEIMAN. Thank you. Mr. Litton.

Mr. LITTON. Yes, sir. I had one other thing that wasn't in my written testimony, which is I think more clarity around imminent default would be a great, great thing. We have lots of customers that are current that call us that need a loan modification and you're right it is absolutely silly to wait for the loan to go delinquent. I think HAMP does allow you to modify, but you have to have an imminent default standard. Having a little bit more clarity around that, I think would make servicers more comfortable doing more loan modifications.

Mr. NEIMAN. Good practical suggestion. With my last sixty seconds I also asked the other panelists to grade the servicers' performance recognizing where we may be in this school year using a grade of A to F. Since I am used to self-grading and I often feel that we are probably toughest on ourselves in grading performance, I'd be interested if you would grade—you don't have to necessarily grade your own firm, grade each other or grade the man next to you. No, grade all the servicers as to an A to F, I'd be curious.

Mr. JONES. Certainly. Thank you for the question. I think this has been an evolutionary process to get to where we are today. In the beginning of the year to summer, I think we were really challenged. I think all of the servicers would say, "We could do better.

We could do more." Today where we are, I would give Bank of America a B.

Mr. NEIMAN. Mr. Litton.

Mr. LITTON. I would comment on more from an industry prospective. I deal with a lot of people whether it be up from the regulatory side, the advocacy side, or customers, etc., I would say our industry given an honest self-grade right now, is at a C versus where we need to be.

Mr. NEIMAN. Mr. Ohayon.

Mr. OHAYON. I'll look at it from an industry prospective as well and including the Administration and everyone else putting this together. It's come a long way in six months.

Mr. NEIMAN. And the grade is?

Mr. OHAYON. I think the ability to get where we are is pretty good. So, I would say a B.

Mr. NEIMAN. Dr. Willen, you want to weigh in?

Dr. WILLEN. Just to weigh in, I think that if we're giving them a grade we should take into account that I think what we were trying to say, just to clarify a little is, I think this is an extremely hard problem. So, this is like a grade in a CAL Tech astrophysics lab. So, I think they're doing well given what an exceedingly difficult challenge they have.

Mr. NEIMAN. Thank you very much.

Mr. ATKINS. Some of the stories we've heard today and elsewhere sounded like a lot of it has to do with training and internal processes and it sounds like you all have increased the number of people. It sounded like they had 11,0000 people and Wells Fargo 12,000 and so I was just wondering what your efforts are to recruit, train and—internal quality control is my question.

Mr. OHAYON. We had to adjust quickly given the volume that came in pre-HAMP and post-HAMP. So, as I mentioned earlier, we increased to about 46,000 team members in home retention just this year. The training program is really comprehensive. Its traditional training types, which is more classroom based, but also a very practical experience in working with our most seasoned representatives. We'll actually rotate our representatives so that they're working with the skills that they have. So, less complex tasks are given to new staff. And then as they become more seasoned we kind of rotate them into a more seasoned position. So, I think between traditional and practical experience is what we've been doing with our staff. We have an internal QC operation, which listens to phone calls. So, everyone of our calls are actually voice recorded and we sample that to make sure that what the customer is hearing is consistent with what we're actually putting forth. It's been a difficult environment, I can tell you that. Just look at the HAMP program over the past six months. Things have evolved significantly and it's been really important for us to make sure that are baseline employees understand what those changes are. So, that's sort of how we've been doing it.

Mr. JONES. Mr. Atkins, I agree with a lot of what has been said around training. I would add that from Bank of America's prospective the way we look at it really is top down. So, we have our executives all focused on home retention. They are all focused on how we train. The mention of call listening, we do that as a practice.

We listen to calls, we connect them and then we give them to the line and we grade. Here it is, here is where we need to make improvements. It has been a process of bringing that 11,000 folks onboard. It's not easy as in astrophysics as Dr. Willen said, but it is something that we have gotten better at each month. And with the commitment of our leadership across the board, I think the focus and the urgency around making these programs successful ultimately will win.

Mr. ATKINS. And then as far as incentives for representatives for themselves to show personal success, what sort of motivation is there internally as far as benchmarks? How are they themselves graded?

Mr. JONES. We have a standard package for our staff that are working and we do not compensate on an incentive basis by x number of calls, this number of outcomes. So, we have a base salary that we offer to our staff and we have across the board for all employees at Bank of America a paid performance rewarded depending on how the company does.

Mr. OHAYON. I would agree. There is team member kind of report cards. There are group goals that we meet and there's investors score cards that we have that are directly tied to their status. So, I think a combination of those report cards is telling how really great we're doing.

Mr. LITTON. And then, what I would add is, Mr. Atkins, is that since HAMP has come out we've really enhanced our quality control focus as it relates to that. I listen to phone calls. I talk to customers. I deal with the advocacy groups. I do understand that there's frustration around customers as it relates to making sure that we have a consistent theme and message coming out from our employee base. That is fundamentally critical so we want to make sure incentives are aligned to accomplish that objective.

Mr. ATKINS. Mr. Silvers this will be our last around of questions.

Mr. SILVERS. Just, I want to get a couple of things about data straight. Mr. Jones and Mr. Ohayon, you both gave totals for temporary modifications offered, temporary modifications entered into. Are these totals at the holding company level or are these for your primary banking subsidiary?

Mr. JONES. The trial modification number that I gave you of 81,000 is for Bank of America.

Mr. SILVERS. Bank of America the national bank, not for all subsidiaries of the holding company?

Mr. JONES. This is for all of the operations of Bank of America, which for all intensive purposes is the legacy Countrywide company and Bank of America that rolls up to Bank of America National Association.

Mr. SILVERS. I was told that Bank of America, the parent owns a firm called Home Loan Services. Is that correct?

Mr. JONES. That is correct.

Mr. SILVERS. Can you explain to me why it is that Home Loan Services has zeros on the Treasury Department charts?

Mr. JONES. Sure, I'd be happy to do that.

Mr. SILVERS. Let me also say that there have been some other statements made about Bank of America by prior witnesses. I

would invite you to respond to those, as well if you wish either now or in writing.

Mr. JONES. Sure. I'd rather go to——

Mr. SILVERS. Answer this.

Mr. JONES. Okay. As we have acquired entities, as Bank of America has had the opportunity to acquire firms, Wilshire Home Loan Services, the transition and the technology and the platforms associated with those companies have come into our system. So, the number that I gave you is 81,000. I saw the zero for HLS. Certainly understand and would expect that you would ask that question. We are working with our most at-risk borrowers and doing everything that we can to get trial modifications started. So, I think when you look at going from 28,000 to 81,000 today, the trajectory is very good and that will continue for all of Bank of America.

Mr. SILVERS. I would invite you Mr. Jones—I don't want to spend all of the time we have on these matters—I would invite you in writing to comment to the panel on prior testimony relating to Bank of America. Frankly, I don't understand zeros. I understand differentials, I don't understand zeros. If you want to expand more in writing on that, I'd appreciate it.

Mr. JONES. Sure.

Mr. SILVERS. Mr. Ohayon, a similar question to you. Are there subs of Wells Fargo parent that I need to know about behaving differently than the numbers that you just described?

Mr. OHAYON. The numbers I described are part of Wells Fargo Home Mortgage, which includes loans that we originated directly or those that we acquired the servicing. It's that umbrella itself. It doesn't include like corporate trusts or things with trustees.

Mr. SILVERS. It includes Wachovia mortgages that you know; the Wachovia servicing?

Mr. OHAYON. I don't think so.

Mr. SILVERS. Because again, I think we have an issue here where the Wachovia numbers are really not so good. Again, if you could just explain why that's so since that would apparently be a pool of mortgages that really needs help.

Mr. OHAYON. I certainly will. A big part of the Wachovia portfolio that we service is the pay option ARMS portfolio. As I mentioned would be for a solution on the pay option ARMS portfolio for HAMP.

Mr. SILVERS. We heard you on that and that was very helpful testimony to educate us on that subject. I want to come back to you Mr. Ohayon, one more time. Wells has a large, I believe, portfolio of second mortgages held in-house. Is that right, not laid off on the securitized markets?

Mr. OHAYON. We do.

Mr. SILVERS. Can you just give me a dollar value of that in number of loans?

Mr. OHAYON. I believe its $129 billion portfolio size between junior liens as well as the equity lines that we have out there. I can't give you a loan count.

Mr. SILVERS. That's alright because it gives us some dimensions. What are the circumstances in that portfolio in terms of 60-day no payments foreclosures arising out of that, do you know?

Mr. OHAYON. I don't and I apologize. I don't directly manage the home equity group.

Mr. SILVERS. I would appreciate it if you could respond in writing giving us that data on that book and also the face value of that book and also what it's current at.

Mr. OHAYON. Absolutely.

Mr. SILVERS. Thank you very much.

Mr. NEIMAN. I very much like again to thank this panel. As I said for our earlier panels, this is not a one time. We hope that you can continue to have this level of dialogue with us. I know we've been in contact with you previously to this public hearing and I look forward to continuing this level of cooperation with your organization. So, thank you again and you may leave. Thank you very much. Now, we're going to try to take as many questions or comments—not questions—this is an opportunity for members of the public who would like to share any comments with us that we can take away with us. We would not like to engage in and it wouldn't be appropriate for us to engage in a dialogue of answering any questions, but it is an opportunity for anybody to make a statement. We would like you to try to keep that to a minute.

Mr. HAVER. My name is Lance Haver. I will encourage you, as you do your analysis to think about people like me. I pay my mortgage, but my house becomes worthless as mortgage companies who I support through my tax dollars refuse to do the workouts. And I encourage you to explain to other homeowners why it's so important that you force these mortgage companies or you come up with the money necessary to help unemployed people pay their mortgages. That you help other homeowners understand that every time a house is foreclosed, their neighbor's house is foreclosed, the house across the street is foreclosed, the value of their house goes down. And frankly, living in Philadelphia with two houses on my block that are vacant, it would be almost impossible for me to sell my house now at the price that I think I would've gotten two years ago. If the mortgage company would've helped those families out and those houses were occupied, I would be able to sell my house for what it was worth. Thank you.

Mr. NEIMAN. Thank you. Any other comments? Well, thank you all. We very much appreciated being here. I think this was a very constructive hearing for the panel and for those who are listening or who will read about this in the future. So, I thank everybody who participated here. I also want to thank members of the public who were here for their time and patience. Again, appreciate the efforts of the staff that helped put this together as well as the hospitality of the City of Philadelphia and others who contributed to this event. Thank you very much. Meeting is adjourned.

[Whereupon, at 1:01 p.m., the hearing was adjourned.]

Statement for the Record
Congressman Chaka Fattah
2nd District, Pennsylvania

Thank you Chairwoman Warren, and other distinguished members of the Congressional Oversight Panel, for holding an extremely timely and critically important field hearing on the deleterious effects of mortgage foreclosure, and its negative impact on individuals and families who are facing significant financial hardships due to the current economic recession.

On numerous occasions, President Obama declared the road to recovery must begin with correcting the damaged housing market by providing people the tools necessary to keep their homes and prevent foreclosure. According to a recently released report by RealtyTrac, a realty company that maintains a comprehensive national database of pre-foreclosure and foreclosure properties, nearly 400,000 properties received foreclosure filing in August 2009. Though number of filings decreased less than 1 percent from the previous month, the overall number of foreclosure filings is nearly 18 percent higher than the previous year. More strikingly, the report also indicates 1 in every 357 properties used for housing are under threat of foreclosure.

Although not all homes in the foreclosure process will end in a foreclosure completion, an increase in the number of loans in the foreclosure process is generally accompanied by an increase in the number of homes on which a foreclosure is completed. According to the Mortgage Bankers Association, about 1 percent of all home loans were in the foreclosure process in the second quarter of 2006. By the second quarter of 2009, the rate had quadrupled to over 4 percent.

Traditionally, housing is considered a relatively safe investment that allows for the possibility for a high rate of return. Rapidly rising home prices reinforced supported this view. During the rapid of expansion of housing in the early part of this decade, many people decided to buy homes or take out second mortgages in order to access their increasing home equity. Furthermore, rising home prices and low interest rates contributed to a sharp increase in people refinancing their mortgages. For example, between 2000 and 2003, the number of refinanced mortgage loans jumped from 2.5 million to over 15 million. In 2006 and 2007, the value of housing dropped precipitously, which triggered an unexpected increase in the number of homeowners that were delinquent on their mortgages payments and facing foreclosure.

Mortgage foreclosures are very costly to both the foreclosed homeowner and the mortgage lender. Lenders suffer revenue losses from uncollected interest on delinquent loans, as well as unrecoverable origination costs and fees. Though loans that are insured under the Federal Housing Act mitigates losses to lenders to a certain extent, foreclosures cost the lending industry approximately $32,000 for every home that is in foreclosure proceedings since foreclosed properties are often sold below market value.

Unforeseen events can happen to all people, in all communities. Unexpected medical expenses, sudden unemployment, and divorce are only some of the myriad of unforeseen circumstances that can create financial instability for hardworking homeowners. Such hardships are frequently

cited as significant contributing factors that hinder a homeowner's ability to maintain timely mortgage payments, ultimately resulting in dramatically higher rates of mortgage foreclosure. Homeowners in America face the added pressure of simultaneously handling the financial burdens of unforeseen events and their mortgage obligations.

Making Home Affordable, the new Obama plan which requires lenders to modify mortgages, is a good idea that is off to a slow start as lenders have yet to gear up for or aggressively seek modifications to those eligible. Foreclosures caused by unemployment are becoming a greater and greater portion of the foreclosure problem. Estimates are that 5.5 million homes will enter foreclosure in 2009 and 2010.

In Pennsylvania, a major state initiative to combat family-devastating foreclosures has been operating with success for more than a quarter-century, enacted in the wake of the severe recession of 1983. The Homeowners Emergency Mortgage Assistance Program (HEMAP) has provided loans to over 43,000 homeowners since 1984 at a cost to the Keystone State of $236 million. Assisted homeowners have repaid $246 million to date which works out to a $10 million profit for the state after 25 years of helping families keep their homes.

The Pennsylvania model will work nationally, and that is why I have introduced H.R. 3142, the Homeowners Emergency Mortgage Assistance (HEMA) Act, which is pending before the House Financial Services Committee. HEMA establishes an emergency mortgage assistance program for qualifying homeowners who are temporarily unable to meet their obligations due to financial hardship beyond their control. Under HEMA, homeowners would have the opportunity to regain financial stability without the immediate pressure of foreclosure.

As chairman of the Congressional Urban Caucus and a member of the Appropriations Committees' subcommittee on financial services, I have seen the serious and life-impacting effects of the national financial crisis on homeowners in our metropolitan areas, in my home town of Philadelphia and all across the nation.

This spring economists from the Boston Federal Reserve posted a paper arguing for helping homeowners who had a "significant income disruption" through bridge loans of up to 24 months. They argued that this would be more effective than loan modifications as it would offer adequate funds to prevent the foreclosure, circumvent problems with investors and servicers who may resist reducing payments and offer help when it is needed.

A national HEMA offers a workable complement to President Obama's new Making Home Affordable program. Making Home Affordable has allocated $75 billion in TARP funds to provide financial incentives to encourage participation by mortgage servicers and homeowners. The HEMA concept fits within the frame of House Financial Services Committee Chairman Barney Frank's broad and much needed mortgage-adjustment proposal, H.R. 3068, the TARP for Main Street Act.

Although the Treasury Department is taking steps to increase the effectiveness of Making Home Affordable by pressing mortgage servicers to put additional resources and staff into providing loan modifications that make mortgages affordable for homeowners, the scale of the problem is

huge and the ability and willingness of servicers to do the work necessary is in question. The loss of six million US jobs since the start of the recession complicates the crisis as many jobless won't even have enough income for a loan modification to be effective.

A HEMA-style loan program could use TARP funds already allocated for foreclosure prevention to directly cure mortgage defaults for the unemployed. As the economy recovers most jobless workers will get back to work and be able to resume their mortgage payments. Even a portion of the $75 billion set aside for Making Home Affordable could pay a lot of mortgage payments to bring homeowners current and not have them at the mercy of a mortgage servicer who is poorly equipped to offer them help.

Such a program could be run much more efficiently than the time consuming loan modification program. A homeowner who indicated that he or she was unemployed would provide verification of unemployment compensation to the servicer and automatically be approved for a loan that would pay any mortgage above 31 percent of their income (the target amount in Making Home Affordable modifications). The Treasury could make payments for the homeowner who is then current on the mortgage. It would cut through the disorder of the loan modification program and slow the numbers of foreclosed properties on the market.

We have tried everything else. The Treasury has already allocated far more than $2 billion to prevent foreclosures. It seems likely that many of those dollars will not be spent in a timely manner by mortgage servicers modifying loans. It's time to get people's mortgages paid directly and to slow the pace of home losses that are destroying families and crippling our overall economy. It's time to think outside the box about foreclosures – and way past time to keep Americans inside their homes.

Statement for the Record
Anthony Orman, Vice President of Client Programs
Consumer Credit Counseling Service of Delaware Valley

Since 1966, CCCS has helped more than 500,000 local residents improve their financial health. We currently have a staff of 80, including 41 certified credit and housing counselors. Our service area includes Philadelphia, Bucks, Chester, Delaware and Montgomery counties in Pennsylvania and Burlington, Camden, Cumberland, Gloucester, and Salem counties in New Jersey.

CCCS is accredited by the Council on Accreditation and we are an active member of the National Foundation for Credit Counseling (NFCC). We are certified by HUD, PHFA and AARP for various types of housing related counseling, and by the U.S. Department of Justice, Executive Office of U.S. Trustees (EOUST) for bankruptcy counseling and education.

As the leading and largest locally based credit and housing counseling agency in the Philadelphia Metropolitan area, we have seen the demand for delinquency, foreclosure prevention and foreclosure housing counseling skyrocket by 198% in the last 12-month period.

The need to counsel individuals and families who are in danger of losing their homes is evident by the number of clients we are seeing. As the need continues to grow, we are challenged by the lack of funding available.

Ending September 21, over 6,893 individuals have met with one of our housing counselors for delinquency-related counseling as compared to 3,485 from the same time in 2008.

The following results to date are provided for the 6,893 Housing Delinquency sessions completed in the last 12-month period:

Interview Results	Total	Percentage
Brought mortgage current	171	2%
Counseled and referred to other agency	1362	20%
Obtained partial claim loan from MHA lender	13	<1%
Bankruptcy	74	1%
Entered debt management plan	7	<1%
Counseled and referred for legal	554	8%
Currently receiving foreclosure	1564	23%
Withdrew from counseling	69	1%
Mortgage refinanced	28	<1%
Mortgage modified	882	13%
Received second mortgage	14	<1%
Initiated a forbearance agreement	1772	26%
Executed a deed-in-lieu	31	<1%
Solid property/choose alternative	69	1%
Pre-foreclosure sale	254	4%

Mortgage foreclosed	29	<1%
Total	6893	100%

Our 41 counselors are seeing unemployment and insufficient income as the primary issues leading homeowners to foreclosure. Some are also citing loss of income issues as a result of marital separation and divorce which is negatively affected family relationships.

Homeowners are also coming to us for counseling after they've already paid a rescue scam company that promised to help them. Instead, they are incurring additional costs with no assistance for rectifying their situation.

Some clients have indicated that their servicers are refusing to work with them, even when their budget shows that it is balanced. Servicers are indicating to homeowners that they will follow up with them within 30 to 60 days, but homeowners are complaining that they are not receiving any follow up from servicers. Our Counselors are then submitting duplicate information to the servicers for review. Many homeowners and our counselors are holding on the phone for long periods during the counseling sessions.

Additionally, there have been some internal communication issues noted with some servicers that are impacting clients.

One couple, from Broomall, PA met with one of our counselors in June. There were waiting for final documents from their servicer for a regular loan modification. In July they received their final documentation for this modification and at the same time received another loan modification package from the same lender, under the Home Affordable Modification Plan (HAMP). This mortgage would be $80 less per month for the initial 3-month trail period.

The clients called the phone number on the HAMP loan package and spoke to a representative who urged them to complete the documentation and send back. Because this was $80 per month less the client agreed to this mortgage.

During this period, the client was receiving foreclosure notices and re-contacted their CCCS counselor. The counselor pulled all parties together on a conference call to figure out why they had received two packages form the same lender. It then became clear the servicer had a 3rd party working on the HAMP loan, with no communication with the department that had sent the original modification. At this point, the deadline had passed and the original loan modification was null and void..

Because of this lack of communication, the couple still does not have final approval to the HAMP loan as they wait to complete their trial period.

Questions for the Record from the Congressional Oversight Panel
Philadelphia Field Hearing on September 24, 2009

Questions for Seth Wheeler, Senior Advisor
U.S. Department of the Treasury

1. *In order to better appreciate the total all-in costs of the Administration's various foreclosure mitigation efforts, please provide the taxpayers with a thorough and fully transparent analysis on the following matters:*

   (i) *The total amount of funds the Administration has advanced and committed to advance under its various foreclosure mitigation efforts (including, without limitation, under MHA, HAMP and HARP, the second lien programs, as well as the programs adopted by Fannie Mae and Freddie Mac);*

   The Administration has a wide variety of programs to directly and indirectly address foreclosure mitigation.

   Treasury has budgeted $50 billion from the Troubled Asset Relief Program (TARP) and $25 billion under the Housing and Economic Recovery Act of 2008 (HERA) for preventing avoidable foreclosures as part of the Home Affordable Modification Program (HAMP). As of October 16, 2009, $27 billion of the $75 billion has been allocated for eventual payment to HAMP servicers and investors for successful modifications. There is no direct commitment of funds for the Home Affordable Refinance Program (HARP).

   The Administration has a variety of other foreclosure mitigation programs, across many agencies, including, for example, the Department of Housing and Urban Development's Neighborhood Stabilization Program and Housing Counseling Program. Treasury would refer questions about the costs and funding specifics of programs across other agencies to the particular agencies responsible for running those programs.

   (ii) *The total amount of funds the Administration reasonably expects to advance and commit to advance over the next five years under all of its present and anticipated foreclosure mitigation efforts; and*

   The total amount that has been allocated to the HAMP is $50 billion under TARP authority and $25 billion under HERA authority. This is in addition to a wide array of other Administration housing programs that also target housing market stability and foreclosure mitigation. As previously stated, we believe that questions about the programs at other agencies would best be addressed by the agencies responsible for running them.

Over the next five years, there are likely to continue to be a wide variety of programs focused on housing and foreclosure mitigation. We do not have sufficient information at this time to project the total amount of Administration funding that will be committed for housing related and foreclosure mitigation related programs during that period.

(iii) *The total anticipated costs to all financial institutions and other mortgage holders and servicers under all of the Administration's present and anticipated foreclosure mitigation efforts.*

The HAMP is designed to provide "pay-for-success" incentive payments to help compensate servicers and investors for the costs of successful modifications. Every mortgage under consideration for a HAMP modification is subject to a net present value test. Servicers are only required to provide modifications where the net present value test is positive, meaning that the cost of a modification to the investor is less than the cost of foreclosing on that loan. Overall, the HAMP requires modifications where modifications are estimated to provide a net benefit to servicers and investors in terms of cash flows over time.

2. *Determination of costs is especially important if, as Secretary Geithner has stated, TARP is interpreted to be a "revolving facility." Given the likelihood that the Secretary will extend TARP to October 31, 2010, it's possible that a substantial portion of the $700 billion TARP facility could be directed to foreclosure mitigation efforts.*

   To what extent does the Administration contemplate using additional TARP funds in its foreclosure mitigation efforts?

   At this time, we believe that the $50 billion allocated from TARP for the HAMP will be sufficient to fully cover costs of that program.

   Please describe any such foreclosure mitigation efforts.

   The Administration continues to closely monitor market developments and the progress of our foreclosure mitigation programs in preventing avoidable foreclosures and providing increased housing market stability. We have been in contact with representatives of industry as well as consumer and community groups, and of course members of Congress. They have offered many suggestions which we have considered. The Making Home Affordable Plan reflects what we believe to be the best and most practical ideas that we have heard. Of course there's no perfect plan and every plan involves trade-offs. We believe that our plan provides the most public benefit relative to cost.

3. *Since one of Treasury's fundamental mandates under TARP is "taxpayer protection," the incorporation of a shared appreciation right or equity kicker feature into HAMP and any other foreclosure mitigation programs would appear appropriate. It is my understanding*

that the foreclosure mitigation programs announced by Treasury do not provide Treasury or the mortgage lenders with the ability to participate in any subsequent appreciation in the fair market value of the properties that serve as collateral for the modified or refinanced mortgage loans. For example, a $100,000, 6 percent home mortgage loan may be modified by reducing principal to $90,000 and the interest rate to 5 percent. If the house securing the mortgage loan subsequently appraises, say, $25,000, the taxpayers and the mortgage lender who shared the cost of the mortgage modification will not benefit from any such increase in value. Such result seems inappropriate and particularly unfair to the taxpayers. Why has Treasury failed to include shared appreciation rights or equity kickers in each of its foreclosure mitigation programs? Will Treasury modify its programs to incorporate shared appreciation rights and equity kickers? If not, why not?

The Administration considered a wide range of possible program designs in creating the Making Home Affordable Program. After considering that wide range of possibilities, the Making Home Affordable Plan is the plan that the Administration believes provides the most public benefit relative to cost.

Specifically, the complex administrative, operational and program management costs associated with shared appreciation or equity kicker programs make them difficult to implement. There is not currently a plan to adopt these types of programs.

4. *The Mortgage Bankers Association estimates that if bankruptcy cram down were to become law, mortgage rates would increase by approximately 1.50 percent resulting in annual additional mortgage payments of approximately $3,970, $3,346 and $2,989 for typical homeowners in California, Washington DC and New York, respectively.*

   Does the Administration intend to support the amendment of the bankruptcy code to include a bankruptcy cram down provision? If so, why?

   President Obama has long been a supporter of balanced bankruptcy reform. The Administration believes that judges should have the power to modify mortgages for borrowers who have run out of other options and to put in place a responsible payment plan so that debtors in bankruptcy can get back on their feet.

   The Administration supports giving bankruptcy judges the power to write down debt on primary mortgages to fair market value for distressed borrowers just as is done with vacation homes or investment properties--when a person has no other options.

   Moreover, under the Home Affordable Modification Program, we want to help borrowers avoid the costs and burdens of bankruptcy and obtain affordable, voluntary modifications. The Administration wants debtors and creditors alike to have the right incentives to achieve a sustainably affordable modification.

5. *Subsidized loan refinancing and modification programs may provide relief for a select group of homeowners, while working against the majority who shoulder the tax burden and make mortgage payments on time. Moral hazard is not just an issue of fairness – programs that give no consideration to the rightful, necessary link between risk and*

responsibility could potentially create additional housing "bubbles" and result in greater threats to stability. Do you agree? If not, why not?

Avoiding preventable foreclosures has stabilizing impacts on the overall housing market by improving the stability of home prices and neighborhoods, while reducing the costs to neighborhoods and communities. High numbers of foreclosure result in decreasing nearby property values and increases in crime and vandalism due to vacant properties, which ultimately strains both the local tax base and local resources. All of these negative costs and impacts of foreclosures are borne by a much wider range of people and communities than those being foreclosed upon.

Millions of homeowners playing and paying by the rules will benefit from the ability to refinance and modify their loans under the Making Home Affordable Program. Nearly 3 million borrowers have already had the opportunity to refinance to lower payments due to the lower interest rates resulting from a wide range of Administration and Federal Reserve Board policies. Millions more responsible Americans will benefit by the reduction of foreclosures in their neighborhoods. Sometimes they will benefit by being able to save their own home that is no longer affordable because they lost their job due to the recession. Importantly, all homeowners will benefit because by preventing avoidable foreclosures, our plan will keep the typical homeowners' house price from falling by up to $6,000 from the spillover damage that foreclosure would have on overall house prices.

Questions for the Record from Representative Jeb Hensarling
Philadelphia Field Hearing on September 24, 2009

Questions for Eric Schuppenhauer, Senior Vice President and
Program Executive for Homeowner Affordability and Stability Plan
Fannie Mae

1. *Fannie Mae has so far received approximately $44.9 billion in equity injections from Treasury through the Preferred Share Purchase Agreements authorized by the Housing and Economic Recovery Act of 2008 [HERA].*

   (i) *Will Fannie Mae request additional funds from Treasury through this program?*

   As described in our Form 10-Q for the quarter ended June 30, 2009, due to current trends in the housing and financial markets, we expect to have a net worth deficit in future periods, and therefore will be required to obtain additional funding from Treasury pursuant to the senior preferred stock purchase agreement.

   (ii) *Will Treasury's commitment to purchase preferred shares in Fannie Mae increase beyond the $200 billion limit announced in March 2009?*

   Under the senior preferred stock purchase agreement, Treasury committed to provide us up to $200 billion under specified conditions. The agreement requires Treasury, upon the request of our conservator, to provide funds to us after any quarter in which we have a negative net worth. The senior preferred stock purchase agreement does not terminate as of a particular time; however, we may no longer obtain new funds under the agreement once we have received a total of $200 billion under the agreement.

   Beyond this, Fannie Mae does not have information concerning Treasury's plans and intentions that would permit us to respond to this question.

2. *How much of the funding that Fannie Mae has received through HERA-authorized injections has been spent on the Administration's Making Home Affordable plan?*

   The funding that Fannie Mae has received from Treasury pursuant to the senior preferred stock purchase agreement has been used to eliminate deficits in our net worth so that we could continue our operations. This funding is not linked directly to our role in the Making Home Affordable Program.

   How much has Fannie Mae committed from HERA-authorized funds for Making Home Affordable efforts?

   Specifically, how much of this funding has been and will be used by Fannie Mae for the Administration's Home Affordable Modification Program?

As stated above, HERA-authorized funds (received from Treasury pursuant to the senior preferred stock purchase agreement) are used to eliminate deficits in our net worth so that we can continue operations. This funding is not linked directly to our role in the Making Home Affordable Program.

In addition, the overall effect of the Making Home Affordable Program on our financial results and condition will depend on a number of factors, including the number of modifications successfully completed, the extent to which modified loans remain current, and overall economic and housing market conditions. These factors will affect the incentive and "pay for success" fees we pay to servicers and some borrowers, and also the extent to which the program is effective in reducing foreclosures, keeping borrowers in their homes, benefiting the overall housing market, and helping to reduce our long-term credit losses. We expect to publicly provide more information about the costs of the program and its impact on our financial results and condition as that information becomes available.

How much of this funding has been and will be used by Fannie Mae for the Administration's Home Affordable Refinance Program?

Under the Home Affordable Refinance Program, Fannie Mae refinances mortgages we already own or guarantee. Since Fannie Mae already owns or guarantees these mortgages, the company incurs very limited incremental costs related to this program. In addition, we also incur some limited administrative costs for the program.

Finally, HERA-authorized funds (received from Treasury pursuant to the senior preferred stock purchase agreement) are used to eliminate deficits in our net worth so that we can continue operations. This funding is not linked directly to our role in the Making Home Affordable Program.

3. *What is the average cost of modifying a home loan under Home Affordable Modification Program, according to Fannie Mae's most recent data?*

As a general matter, the cost of modifying a loan is comprised of several factors, including:

(a) fees incurred for borrower and servicer incentives, and other out-of-pocket expenses;
(b) operational costs to support our servicers (generally personnel and administrative costs);
(c) forbearance for delinquent principal and interest rate reductions (when applicable); and
(d) fair value loss charge-offs to reduce the modified loans to fair market value.

We do not yet have sufficient data to determine the average personnel and administrative costs, or the average write-downs and fair value loss charge-offs upon modification. We expect to publicly provide more information about the costs of the program as that information becomes available.

Out of this amount, how much has been financed through Treasury capital and ultimately the taxpayers?

If you do not have this data, please explain why not.

HERA-authorized funds (received from Treasury pursuant to the senior preferred stock purchase agreement) are used to eliminate deficits in our net worth so that we can continue operations. This funding is not linked directly to our role in the Making Home Affordable Program.

4. *What is the average cost of refinancing a home loan under Home Affordable Refinance Program, according to Fannie Mae's most recent data?*

   Under the Home Affordable Refinance Program, Fannie Mae refinances mortgages we already own or guarantee. Since Fannie Mae already owns or guarantees these mortgages, the company incurs very limited incremental costs related to this program. In addition, we also incur some limited administrative costs for the program.

   Out of this amount, how much has been financed through Treasury capital and ultimately the taxpayers?

   If you do not have this data, please explain why not.

   HERA-authorized funds (received from Treasury pursuant to the senior preferred stock purchase agreement) are used to eliminate deficits in our net worth so that we can continue operations. This funding is not linked directly to our role in the Making Home Affordable Program.

5. *In general, how do you expect Fannie Mae's participation in the Making Home Affordable plan to affect financials for the next quarter?*

   What about for the next year?

   The unprecedented nature of the Making Home Affordable Program and uncertainties related to interest rates and the broader economic environment make it difficult for us to predict the full extent of our activities under the program and how those will affect us, or the costs that we will incur either in the short term or over the long term.

   We expect that modifications we make under the Home Affordable Modification Program of loans we own or guarantee will adversely affect our financial results and condition due to several factors, including:

   - The requirement that we acquire any loan held in a Fannie Mae MBS prior to modifying it which, prior to January 1, 2010, will result in fair value loss charge-offs at the time we acquire the loan;

   - Incentive and "pay for success" fees paid to our servicers for modification of loans we own or guarantee;

   - Incentives to some borrowers under the program in the form of principal balance reductions if the borrowers continue to make payments due on the modified loan for specified periods; and,

- The effect of holding modified loans in our mortgage portfolio, to the extent the loans provide a below market yield, which may be lower than our cost of funds.

We also expect to incur significant additional operational expenses associated with the Making Home Affordable Program.

Accordingly, the Making Home Affordable Program will likely have a material adverse effect on our business, results of operations and financial condition, including our net worth. If the program is successful in reducing foreclosures and keeping borrowers in their homes, however, it may benefit the overall housing market and help in reducing our long-term credit losses. We expect to publicly provide more information about the costs of the program and its impact on our financial results and condition as that information becomes available.

6. *The Federal Reserve has already purchased about 860 billion of its 1.25 trillion dollar commitment to buy Fannie Mae and Freddie Mac-guaranteed mortgage-backed securities. To put it in context, right now, the Federal Reserve buys the lion's share of all new issuance, which is somewhere around 80 percent.*

   (i) If the Federal Reserve stops purchasing Fannie Mae's mortgage-backed securities then who will purchase the securities and at what price?

It is difficult to make specific predictions regarding the future market for GSE mortgage-backed securities (MBS), however, we believe that spreads on GSE MBS would likely widen following the expiration of the Federal Reserve purchase program.

   (ii) Has the Federal Reserve or Fannie Mae attempted to sell these securities to private sector participants and, if so, what has been the response?

As described in our Form 10-Q for the quarter ended June 30, 2009, the overall size of Fannie Mae's mortgage portfolio, including our portfolio of Fannie Mae MBS, has remained relatively flat for the first six months of 2009. While Fannie Mae has limited recent experience with selling these securities to private sector participants, the response to those sales reflected the Federal Reserve's participation in the overall market for these securities.

   (iii) Have any significant purchasers of U.S. Treasuries asked the Federal Reserve to cap its purchases of these securities?

Fannie Mae has no knowledge of any inquiries the Federal Reserve has received on this topic.

Freddie Mac

Questions for the Record from Congressional Oversight Panelist Congressman Jeb Hensarling
October 21, 2009

1. **Freddie Mac has so far received approximately $50.7 billion in equity injections from Treasury through the Preferred Share Purchase Agreements authorized by the Housing and Economic Recovery Act of 2008 [HERA].**

   Will Freddie Mac request additional funds from Treasury through this program?

   At June 30, 2009, Freddie Mac's assets exceeded its liabilities by $8.2 billion. Because we had a positive net worth as of June 30, 2009, FHFA did not submit a draw request on our behalf to Treasury for additional funding under the Purchase Agreement. The aggregate liquidation preference of the senior preferred stock is $51.7 billion and the amount remaining under the Purchase Agreement is $149.3 billion at June 30, 2009.

   The potential for continued deterioration in the housing market and future new losses in accordance with GAAP make it more likely that we will have additional draws under the Purchase Agreement in future periods. For additional information related to this topic, please refer to our Quarterly Report on Form 10-Q for the quarter ended June 30, 2009.

   Will Treasury's commitment to purchase preferred shares in Freddie Mac increase beyond the $200 billion limit announced in March 2009?

   We cannot speculate as to whether Treasury will increase the commitment.

2. **How much of the funding that Freddie Mac has received through HERA-authorized injections has been *spent* on the Administration's Making Home Affordable plan?**

   Pursuant to draw requests that FHFA has submitted to Treasury, Freddie Mac has received $50.7 billion. These funds have eliminated deficits in our net worth so that we could continue our operations.

   Our current focus and purpose is to meet the urgent liquidity needs of the U.S. mortgage market, lower costs for borrowers and support the recovery of the housing market and U.S. economy. We have changed certain business practices and other non-financial objectives to provide support for the mortgage market in a manner that serves public policy, including the MHA program, but that may not contribute to profitability. Some of these changes increase our expenses, while others require us to forego revenue opportunities in the near term. We expect the majority of expenses incurred in the MHA program will be recognized as either market-based losses on

loans that we have modified or as incentive fees due to both servicers and borrowers once the related loans are modified. To date, most of the HAMP modifications we have begun are in the required trial period and the modification process is not complete.

It is not possible at present to estimate the extent to which costs, incurred in the near term, may be offset, if at all, by the prevention or reduction of potential future costs of loan defaults and foreclosures due to these initiatives.

How much has Freddie Mac *committed* from HERA-authorized funds for "Making Home Affordable" efforts?

Specifically, how much of this funding has been and will be used by Freddie Mac for the Administration's Home Affordable Modification Program?

As previously stated, the funding provided pursuant to Freddie Mac's Senior Preferred Stock Purchase Agreement was based on deficits in our net worth. We have not restricted this funding to specific activities.

Total expenditures and benefits will depend on several factors, including the number of borrowers who successfully complete a HAMP modification as well as the ability of those borrowers to remain current on their modified loans, which affects both the amount of incentive payments that Freddie Mac will pay to servicers and borrowers and the potential for reduction in the number of foreclosures and stabilization of house prices that would reduce future credit losses.

How much of this funding has been and will be used by Freddie Mac for the Administration's Home Affordable Refinance Program?

The Home Affordable Refinance Program was designed to allow Freddie Mac to refinance mortgages we already own or guarantee. As a result, aside from utilization of existing personnel for administering the program, we incur limited incremental cost related to the program, because Freddie Mac's risk with respect to each mortgage is the same or is slightly reduced.

3. **What is the average cost of modifying a home loan under Home Affordable Modification Program, according to Freddie Mac's most recent data?**

The cost of modifying a loan is generally comprised of: (a) out-of-pocket expenses, principally fees incurred for borrower and servicer incentives, (b) incremental personnel and administrative costs to support our servicers, and (c) when applicable, forebearance for delinquent principal and interest rate reductions for modification. Additionally, we record market-based losses to reduce the modified loans to fair market value.

We are unable to yet determine the average personnel and administrative costs, or the average write-downs and fair value loss recognition upon modification since insufficient data exist to calculate these items at this time. The potential combined incentive fees we would pay to servicers and borrowers for successful modifications that reduce the borrower's payment by 6% or more total approximately $9,500 per loan over a five-year period.

Out of this amount, how much has been financed through Treasury capital and ultimately the taxpayers?

If you do not have this data, please explain why not.

The funds that Freddie Mac has received to date have not been directly linked to our role in Making Home Affordable. It is not possible at present to estimate the extent to which costs, incurred in the near term, may be offset, if at all, by the prevention or reduction of potential future costs of loan defaults and foreclosures due to these initiatives.

4. **What is the average cost of refinancing a home loan under Home Affordable Refinance Program, according to Freddie Mac's most recent data?**

   The Home Affordable Refinance Program was designed to allow Freddie Mac to refinance mortgages we already own or guarantee. As a result, aside from utilization of existing personnel for administering the program, there is limited incremental cost related to the program. Based on our research, borrowers who refinance reduce their mortgage rate, on average, by approximately 1.25 percentage points.

   Out of this amount, how much has been financed through Treasury capital and ultimately the taxpayers?

   The Home Affordable Refinance Program was designed to allow Freddie Mac to refinance mortgages we already own or guarantee. As a result, we incur limited incremental cost related to the program, because Freddie Mac's risk with respect to each mortgage is the same or is slightly reduced.

5. **In general, how do you expect Freddie Mac's participation in the Making Home Affordable plan to affect financials for the next quarter?**

   What about next year?

   We expect the Home Affordable Modification Program to primarily affect our financial statements in the following manner: (i) loan loss reserves will be utilized, or reduced as delinquent loans are removed from our mortgage-backed securities and modified; (ii) recognition of losses on loans purchased will increase as we record market-based losses to reduce the modified loans to fair value; and (iii) other

administrative expenses will increase for recognition of incentive fees to borrowers and servicers.

It is not possible at present to estimate the extent to which costs incurred in the near term, may be offset, if at all, by the prevention or reduction of potential futures costs of loan defaults and foreclosures due to these initiatives. For example, if the program successfully reduces the number of foreclosures in future periods, the number of property acquisitions would be reduced and therefore, the amount of our REO operations expense would also be reduced.

In addition, Freddie Mac will continue to play major role under the MHA program as the compliance agent for Treasury under HAMP. As the program compliance agent, we conduct examinations and review servicer compliance with program rules and guidelines, the results of which we are required to report to Treasury. Freddie Mac has created a separate business unit within the company to carry out these duties. We expect to be compensated by Treasury for some or all of our services as compliance agent.

6. **The Federal Reserve has already purchased about 860 billion of its 1.25 trillion-dollar commitment to buy Fannie Mae and Freddie Mac-guaranteed mortgage-backed securities. To put it in context, right now, the Federal Reserve buys the lion's share of all new issuance, which is somewhere around 80 percent.**

   If the Federal Reserve stops purchasing Freddie Mac's mortgage-backed securities then who will purchase the securities and at what price?

   Freddie Mac mortgage-backed securities are typically purchases by institutional investors, including U.S. banks, thrifts, pension funds; public and private investment vehicles, such as mutual funds; and foreign investors, including foreign governments. It is difficult to speculate, but the yield on the MBS (and hence mortgage rates) would likely increase to attract new investors, were the Federal Reserve to stop purchasing, which would be reflected in declining security market prices.

   Has the Federal Reserve or Freddie Mac attempted to sell these securities to private sector participants and, if so, what has been the response?

   We cannot comment on Federal Reserve activity. Of note, however, there are many investors in our securities. As of August 2009, of Freddie Mac's outstanding MBS of $1.9 trillion, approximately $1.5 trillion was held by investors other than Freddie Mac. Our outstanding debt of $850 billion is also held by other investors. The majority of our securities are held by investors other than the Federal Reserve, Freddie Mac or Fannie Mae.

Have any significant purchasers of U.S. Treasuries asked the Federal Reserve to cap its purchases of these securities?

We are not aware of any such requests.