

**TESTIMONY OF**  
**FAITH SCHWARTZ**  
**ON BEHALF OF**  
**THE HOPE NOW ALLIANCE**

**HOUSE COMMITTEE ON FINANCIAL SERVICES**

**HEARING ON**

**Accelerating Loan Modifications, Improving Foreclosure  
Prevention and Enhancing Enforcement**

December 6, 2007

Mr. Chairman and Ranking Member Bachus, thank you for the opportunity to testify today on efforts to assist at-risk homeowners through expanded outreach efforts and solutions, such as accelerating loan modifications and other methods to prevent foreclosures. My name is Faith Schwartz and I am pleased to be here on behalf of the HOPE NOW Alliance to talk about the latest steps in this unprecedented joint industry and non-profit national initiative to reach out to at risk borrowers and find solutions to prevent foreclosures. I serve as Executive Director of HOPE NOW and am coordinating the efforts of all our industry and non-profit partners.

As you know from your hearing on November 2, the HOPE NOW Alliance is collaboration between credit and homeownership counselors, lenders, investors, mortgage market participants, and trade associations. It was formed with the encouragement of the Department of the Treasury and HUD and builds on the efforts that you and other Members of Congress have encouraged us to undertake. HOPE NOW is establishing a coordinated, national approach among servicers, investors and counselors to enhance our ability to communicate with borrowers who may have or expect to have difficulty making their mortgage payments and to offer them workable options to avoid foreclosure.

The members of the HOPE NOW Alliance recognize the urgency of this issue, and we are working to reach new milestones on a weekly basis. I will update you on these efforts which are intended to meet the goals you have stated as part of this hearing.

On November 13, loan servicers who are HOPE NOW Alliance members agreed to a Statement of Principles on reaching out and helping distressed homeowners remain in their homes. These principles were established to ensure that all borrowers can expect quality service and assistance when they contact their lender/servicer in the Alliance.

These principles are consistent with your call for the industry to expedite solutions for borrowers. The principles are:

- HOPE NOW members agree to attempt to contact at-risk borrowers 120 days, at a minimum, prior to the initial ARM reset on all 2/28 and 3/27 ARM loan products.
- HOPE NOW members agree to inform borrowers of the potential increase in payment and terms of the loan, in an effort to determine if the borrower may face financial difficulty in keeping their mortgage current.
- HOPE NOW members agree to establish a single port of entry for all participating counselors to use by January 2008.
- HOPE NOW members agree to make available dedicated e-mail and fax connections to support counselor and consumer contacts by January 2008.

By establishing these principles, HOPE NOW members are improving the infrastructure needed to help more borrowers on a much larger scale. In addition to improving lender/servicer systems for working with counselors and borrowers, we must redouble efforts to reach out to at-risk borrowers.

You have heard it before, but it can't be emphasized too much: borrowers in trouble are reluctant to ask for help. It has been found that 50 percent of borrowers who go into foreclosure never contacted their servicer for help. We are working to drastically reduce that number and help as many troubled homeowners as possible avoid foreclosure.

On November 30, we completed the first in a series of direct mail outreach to at-risk borrowers. From November 19-30 HOPE NOW members sent more than 300,000 letters to borrowers who are behind on their mortgage payments and provided a dedicated number to their

servicer to call for help. We are asking all Members of Congress to help publicize that letter campaign and urge their constituents who receive a HOPE NOW letter to respond to it. We are gathering data on the response rate to that mail campaign.

On December 19, we will begin another direct mail campaign to at-risk borrowers and this letter will include the 888-995-HOPE Hotline, provided by the Homeownership Preservation Foundation, which directly connects the homeowners with a counselor at HUD-certified non-profit counseling agency. Those counselors will have direct access to the lender/servicers through improved single points of entry that all HOPE NOW Alliance members have agreed to create.

The Homeowner's HOPE Hotline, 888-995-HOPE, is having a dramatic and positive impact for at-risk homeowners. The HOPE NOW Alliance will continue to expand the Hotline's capacity and promote it to reach more at-risk borrowers.

- Since the Homeowner's HOPE Hotline's inception in 2003, it has received over 304,015 calls which led to counseling for 134,889 homeowners.
- Calls are increasing monthly. In October, there were 22,461 calls to the Hotline that produced 10,660 counseling sessions.
- Through October 26, 2007, more than half of all homeowners counseled have been connected with their lender for assistance, and about one quarter of all homeowners counseled in the third quarter of 2007 were referred to their lender for a recommended workout.
- As of November 30, the Homeowner's HOPE Hotline has received over 149,725 calls in 2007.
- Those calls have led to 67,516 homeowners being counseled in 2007.

- That compares to 25,364 calls and 10,321 counseling sessions in all of 2006.
- In November, the HOPE Homeowner's Hotline received 26,966 calls which led to 11,185 unique counseling sessions for homeowners. In the last week of November alone, there were 9,408 calls and 3,247 counseling sessions.
- Counseling sessions are rapidly increasing. Call volume increased 104% from first Quarter to second quarter and 89% from second quarter to third quarter.
- Lender/servicers are urging borrowers to call for counseling. Homeowners primarily hear about the Homeowner's HOPE hotline from their lender – up to 33% in third quarter.
- More homeowners with ARMS are calling – 44% of callers in third quarter of 2007, up from 34% in first quarter.
- On December 4, the hotline received 5,800 calls

In the coming weeks, publicity for the Homeowner's HOPE hotline, 888-995 HOPE will continue to increase. When Secretary Paulson mentioned the Homeowner's HOPE Hotline in his remarks on Monday, calls to the hotline increased dramatically. The Homeownership Preservation Foundation, a HOPE NOW Alliance member, is operating the hotline. The Foundation is working to add trained, experienced counselors to the program to handle the increasing call volume from concerned homeowners. In November, a sixth counseling agency was added, Money Management International. The National Foundation for Credit Counseling (NFCC) is also in talks with HPF to add its broad network of trained counselors to the Homeowner's HOPE hotline effort. The addition of the NFCC's counselors could potentially double the telephone counseling capacity of the Homeowner's HOPE hotline provided today by

the following agencies: Auriton Solutions; CCCS Atlanta; CCCS San Francisco; Novadebt; and Springboard.

As you know, NeighborWorks America, a national network of more than 240 community-based organizations in 50 states, is part of the HOPE NOW Alliance, and actively providing in-person counseling services to consumers today, as are many other counseling groups. NeighborWorks has also taken the lead in working with the Advertising Council on the national advertising campaign for the Homeowners' HOPE hotline.

In addition, on Friday December 7, NeighborWorks and other HOPE NOW Alliance members will meet with HUD and other HUD counseling intermediaries to review ways to include additional grass roots counseling groups. We are working to broaden the HOPE NOW effort to ensure it is a model that works broadly for industry and non-profits to maximize the ability to reach troubled borrowers.

Reaching borrowers to work with them on a workable solution is the key to helping them stay in their homes. The solutions will vary with the circumstances of the borrower. Prudent and responsible loan modifications and other types of workout options are solutions that can both help borrowers keep their homes and minimize losses to investors. The HOPE NOW Alliance is committed to pursuing all viable solutions to help people stay in their homes.

### **Accelerating Loan Modifications**

You have asked what can be done to accelerate loan modifications. Loan modifications are a solution for borrowers who have an ability to repay a loan, and the desire to do so and keep their home, but may need some help in meeting this goal. Loan modifications are not the only

solution – in many cases, refinancing, forbearance, and repayment plans provide borrowers a more appropriate option than loan modifications.

HOPE NOW members recognize that an enhanced process for indentifying borrowers who may benefit from a loan modification and establishing a process for advancing those is an essential part of this effort.

Servicers that are members of HOPE NOW have been working closely with the American Securitization Forum and their investor members with the strong encouragement of the Department of the Treasury, HUD and the federal banking agencies.

The focus of the effort has been to identify categories of subprime hybrid ARM borrowers who can benefit from workout solutions that can help as many homeowners as possible remain in their homes. We believe such a framework can be put in place with the cooperation of investors and servicers and the support of policymakers and Congress.

As you know, the key is to find solutions which help borrowers but do not violate the agreements with investors who now own the securities containing these loans.

Building on our members' continuing and increasing efforts to contact borrowers, servicers and HOPE NOW have been working with ASF and their investor members to develop a triage system to identify in advance of a reset solutions for borrowers who would qualify for refinancing, loan modifications, and other workout options. The key is to allow servicers to have a system to offer options to borrowers in a manner that does not violate the pooling and servicing agreements with investors. Servicers need to be confident that investors will accept and support more far-reaching loan modification and other workout solutions, and will not engage in a series of law suits which can only slow down the effort to assist targeted borrowers. It is important that markets recognize that this approach is needed to avoid unnecessary

foreclosures that could exacerbate the housing market downturn and further erode the value of existing mortgage securities.

The framework that is being established will help provide solutions for homeowners with subprime hybrid ARMs who fall into three categories.

**Refinancing:**

The first category or segment of borrowers are those who are current, likely to remain current even after reset, or likely to be able to refinance into available mortgage products, including FHA, FHA Secure or industry products. Generally, the servicer will determine whether loans may be eligible for refinancing into various available products based on readily available data such as LTV, loan amount, FICO, and payment history. The servicer will facilitate a refinance in a manner that avoids the imposition of prepayment penalties whenever feasible.

**Loan Modifications:**

This second category or segment of borrowers includes those with good payment records but who will not qualify for refinancing; these borrowers will be targeted for streamlined loan modifications. These are borrowers who are unlikely to be able to refinance into any available product. These borrowers will be eligible for a fast track loan modification if the loan is secured as a primary residence and meets additional criteria regarding their upcoming reset and their ability to pay at the reset amount, using evaluating factors such as a comparison of their original and current FICO score and a Loan to Value test. Borrowers in this category will be offered a loan modification for 5 years under which the interest rate will be kept at the existing rate of the loan.

This fast track option does not in any way preclude a servicer from conducting a more individual in-depth review, analysis, and unique modification for a borrower to determine if a longer term modification would be appropriate.

The fast track framework allows the servicer to make these decisions:

- The borrower is able to pay under the loan modification based on his current payment history prior to the reset date.
- The borrower is willing to pay under the loan modification by agreeing to it after being contacted.
- The borrower is unable to pay (and default is reasonably foreseeable) after the upcoming reset under the original loan terms, based on the size of the payment increase that would otherwise apply, and based on current income if the borrower did not pass the FICO improvement test.
- The modification maximizes the net present value of recoveries to the securitization trust and is in the best interests of investors in the aggregate, because refinancing opportunities are not available and the borrower is able and willing to pay under the modified terms.

### **Loss Mitigation:**

This third category includes loans where the borrower is not current and is not able to refinance into any available product. These are borrowers who are significantly behind in their payments and their situations need to be evaluated individually. It is especially important for us to reach this group of borrowers through efforts such as the HOPE NOW direct mail campaign and through the national advertising campaign for the Homeowner's HOPE hotline. For loans in this category, the servicer will determine the appropriate workout and loss mitigation approach on a loan-by-loan basis. Referrals from counselors if the borrowers contact the Homeowners' HOPE hotline will also be important. The approaches for these borrowers may include loan modification (including rate reduction and/or principal forgiveness), forbearance, short sale,

short payoff, or foreclosure. Because these borrowers are already behind in their payments, and may face challenges such as loss of income or other issues, they require a more intensive analysis, including current debt and income analysis, to determine the appropriate loss mitigation approach.

Mr. Chairman, it is important to note that a streamlined, scalable solution for current borrowers facing a reset will allow for more detailed attention to at risk, hard to reach, delinquent borrowers. Servicers will be able to work closely with credit counselor and or homeowner to ensure all options are explored to avoid foreclosures. The scalable outreach, streamlined modification effort in no way precludes on going workout solutions for the highest risk, delinquent borrowers

Mr. Chairman, we are committed to an aggressive system of finding solutions for borrowers. As part of that system HOPE NOW will track and measure outcomes. We will develop measures of trends in delinquencies and resolution outcomes, e.g. reinstatement, workout (repayment plans, modifications, short sales, deed in lieu, partial claims) and foreclosure. The intent is to develop consistent and informative data reports based on common definitions and to develop information that provides insights into the nature and extent of the current mortgage crisis and helps in the development of workable solutions that avoids foreclosure whenever possible.

### **H.R 4178, legislation by Representative Castle to create a safe harbor for Loan**

#### **Modifications**

H.R. 4178 seeks to promote loan modifications through additional protection for servicers from litigation by third parties for loan modifications for individuals who are in default or immediate danger of default and the result maximizes the return to the pool.

Litigation is a serious concern for servicers in making decisions about modifying loans which have been securitized and are now held in the private secondary market. Since there always seem to be plaintiffs available to aggressive lawyers, protection from litigation would help promote loan modifications.

At the same time, servicers recognize that confidence in contracts are essential to appropriately sort out rights and responsibilities of the parties, and impartial dispute resolution facilities, be it courts or arbitration, have been a necessary ingredient to assure that the rule of law works well and smoothly. Absolute confidence in the integrity and immutability of that procedure and system is the foundation of the ability to conduct business confidently.

The importance of confidence in the system goes directly to price and availability of credit for consumers. If business people are unable to say with certainty that the rules under which they make binding agreements will persist for the life of the agreements, they must make some allowance for the possibility that any changes in the rules will be to their disadvantage. They must assume that the costs to the lender will increase, and if that is the case the lender will have to either charge more for the credit or choose to use the capital allotted for that business, in this case lending to subprime mortgage customers, to another business in which the risk-adjusted return on capital is better and uncertainty is perceived to be lower.

Just as there is no requirement that borrowers take out mortgage loans, there is no requirement that lenders make mortgage loans, or that investors invest in them. Lenders make them only because doing so is good business, and they receive a return on capital that is adequate to warrant using their capital in that way. If uncertainty becomes too big a part of the circumstances that must be considered, the attraction of making mortgage loans diminishes.

H.R. 4178 would provide protection for servicers as they try to modify an unusual number of mortgage loans in a short period of time, particularly from lawsuits brought by investors who might try to challenge whether such modifications maximized the return to the pool. That protection could come at a steep price if investors believe that it establishes a precedent, albeit only for a short period of time, of abrogating contracts and calling into question the certainty surrounding the dispute resolution system into which the parties believed they had subjected interpretations of their agreement.

The present voluntary plan discussed today is being developed by servicers, investors, securitizers and has been strongly encouraged by the Administration and federal banking regulators. This plan is best practice for industry participants to follow. Those who modify loans consistent with that plan will be adhering to what the pooling and servicing agreements refer to as the industry standard, and therefore will be doing what is in the best interests of not only the borrower but also of the pool of mortgages.

We believe that a servicer who performs its responsibilities consistent with this plan will have a very reasonable and strong defense against aggressive plaintiff's attorneys. Nevertheless, there may well be a few who will take a chance on suing a servicer who has performed appropriately if for no other reason than to try to get a nuisance settlement from the servicer. If the investor community does not broadly endorse the plan, legislation like that proposed by Congressman Castle may have to be revisited as an option.

The servicer has an obligation to maximize the return for the pool in practices it pursues in modifying loans. There are an unprecedented number of borrowers who currently face the possibility of being unable to make payments under loans into which they entered when the housing market was much better. While individually reviewing each file and discussing with

borrowers the options which are available has been the method followed previously, because of the great number of borrowers in certain situations in the present circumstances, doing so one by one would be expensive and time consuming, meaning that a number of loans would go into the process of foreclosure before servicers had a chance to review them for modifications. Those expenses, of course, would all have to be deducted from the revenues of the pool, and this could seriously raise questions whether such an approach would maximize the return to the pool. Using the approach articulated in the plan would do so.

In addition, the lenders and servicers supporting the HOPE NOW Alliance are pleased to see the best standards of industry practice being articulated in this plan, because absent it, it is difficult to sort out the best industry standards from among the many ways servicers approach loan modifications. It can be done, but with this plan, it is much easier to do and is less susceptible to challenge. As you know, industry standards are important in the interpretation of actions taken by the servicer.

We would urge the regulators to issue interpretations and guidance which support servicers in modifying loans consistent with this plan, further defining the plan as the industry standards for modifying loans.

Taking all of this into consideration, it may be best to defer action on H.R. 4178 at this time. We support the goal of Congressman Castle's legislation to promote loan modifications by providing more assurances against litigation, but we hope that the plan developed by the industry at this time helps provide additional solutions that will assist more borrowers in an expedited fashion.

## **Conclusion**

Mr. Chairman, the HOPE NOW Alliance and those working with it are committed to enhanced and on-going efforts to contact at-risk homeowners and to offer workable solutions. Our top priority is to keep people in their homes and to avoid foreclosures whenever possible.

We want to again express our appreciation for your statement of support for the HOPE NOW effort when it was announced in October and we appreciate the efforts you and Congressman Bachus have made to inform your colleagues of the 1-888-995 HOPE hotline number. Active involvement of Members of Congress to alert constituents that help is available when they contact either their lender/servicers or a non-profit counselor through the HOPE hotline will continue to be essential in helping as many homeowners as possible in the coming months.

The HOPE NOW Alliance is a serious and committed effort that will continue as long as necessary until problems in the housing and mortgage markets abate. We will provide updates on our progress to you in the coming weeks.

Thank you for inviting us to testify today.

