

MEMORANDUM

From: Patton Boggs LLP
Date: July 16, 2009
Subject: Senate Banking Committee Hearing
Preserving Homeownership: Progress Needed to Prevent Foreclosures

I. Summary

Today, the Senate Banking Committee held a hearing titled: *Preserving Homeownership: Progress Needed to Prevent Foreclosures*. The main purpose of the hearing was to discuss the current home ownership programs, including Hope for Homeowners (H4H) and the Making Home Affordable program and their lack of progress in stemming the rise of foreclosures. The first panel was Herbert M. Allison, Jr., the Assistant Secretary for Financial Stability at the Treasury Department and William Apgar, a Senior Advisor to the Secretary for Mortgage Finance at HUD.

During their testimony and Q&A, both men blamed the servicers for providing incorrect information or failing to respond to customers in a timely fashion. Many Senators criticized the Administration officials for not implementing programs quickly enough and sought assurance that more tangible results would arrive soon.

The second panel included a consumer who discussed his experience in trying to modify his mortgage, representatives from Bank of America and Wells Fargo, consumer advocates, an economist and a representative from the mortgage investor industry.

In response to criticism that not enough is being done to keep borrowers in their homes, the banks and servicers blamed the government for not providing sufficient guidance. The consumer advocates blamed the banks and servicers for not providing sufficient training and resources to meet its customers' demands. The economist from the Federal Reserve of Boston and the mortgage investors endorsed principal reduction for borrowers to establish homeowner positive equity despite the loss investors would incur.

The following summary lays out the highlights of the hearing, including a brief summary of the witness' opening remarks and the question and answer periods.

II. Panel I

Senator Dodd (D-CT)

Senator Dodd doesn't see a sense of urgency from the Administration or from servicers in trying to stem the foreclosure problem plaguing the nation. Housing problem was major catalyst to economic crisis and we must stop housing plunge to start economic recovery. Borrowers should not wait 6-8 weeks before receiving a response from a servicer. 50% of foreclosures are caused by health care costs in borrower's family.

Senator Shelby (R-AL)

Hope for Homeowners, announced nearly a year ago, has only modified a handful of mortgages and the program needs a thorough examination. In determining how to prevent foreclosure, the Committee must first determine the degree to which escalating default rates can be attributed to lenders and then determine which programs are effective. Modification programs are not working.

Honorable Herbert M. Allison, Jr., Assistant Secretary for Financial Stability, Treasury

Mr. Allison outlined the Administration's efforts, including the Making Home Affordable Program (MHA), which includes the Home Affordable Modification Program (HAMP), the Home Affordable Refinance Program (HARP), providing support to the GSEs, and Hope for Homeowners. He emphasized that the undertaking is akin to what was done for the financial services industry and that an initiative of this scale has never been previously attempted. Contracts have been signed with 27 servicers who cover more than 80 percent of all mortgage loans and 325,000 trial loan modifications have already been offered. The next steps will include expanding the servicers' capacity, improving transparency and accountability, and increasing visibility and awareness of the programs to borrowers through outreach.

Honorable William Apgar, Senior Advisor to the Secretary for Mortgage Finance, HUD

Mr. Apgar gave an update on the progress made through the MHA and the integration of Hope for Homeowners into the Administration's housing programs. In order for the program to prevent additional foreclosures, servicers must provide prompter responses and give consumers accurate information. Recent legislative enactments will make Hope for Homeowners a more attractive and less burdensome option for underwater borrowers seeking to refinance and regain equity in their homes. The high level of unemployment is making mortgage payments more difficult for families who are struggling. The Administration is looking into ways to combat unemployment and foreclosure.

III. PANEL I: Q&A

Senator Dodd

Comment: We must distinguish between the people we can help and the people we cannot help.

Q: Which leads to a better outcome – principal reduction or payment reduction?

Allison: The important factor is to making housing affordable. Both options can be important and used to permit the borrower to stay in the home and make the payments.

Apgar: Evidence suggests affordability is the key issue. Trying to reach 31% debt-to-income.

Q: If we can help people, should we try to move the property?

Allison: Going to begin disclosing the performance of each servicer based on the number of modifications performed and how quickly they act.

Q: Boston Fed report indicates that the reason lenders are not doing modifications is because it's not profitable.

Allison: That study is based on older data for past efforts. We are in the beginning of the largest undertaking and that data is from a different situation. The new approach should result in decreased payments.

Q: Why isn't the data for modification analysis made public?

Allison: The Treasury Department is creating escalation procedures for servicers to follow. Freddie Mac is auditing mortgage modifications for accuracy and making sure that the qualified applications are approved.

Q: Many servicers hold second liens which are an obstacle in the H4H. Shouldn't second liens be sold for pennies on the dollar to alleviate the problem? How can we extinguish them?

Apgar: The key is to find a fair price for these second liens. We are working with bank regulators to come up with fair compensation system.

Allison: As part of new second lien program that will be announced soon, Treasury has signed servicers of 85% of second liens to agree to work for affordability solutions.

Senator Shelby

Q: Why has H4H failed to meet the expectations?

Apgar: The industry did not realize how big of a problem mortgage modifications would be. The first lien investors were reluctant to take a haircut on their investment, but are now willing to do so. There were conflicts in the original program for servicers (ex: certifications). The newly constituted program is much more likely to succeed.

Q: How did the Treasury Department determine that \$50 billion in TARP funds was an appropriate amount for the HAMP?

Allison: It is a pay for performance program for servicers and borrowers. Based on the models, \$50 billion was a reasonable estimate. Thus far, \$18 billion has been used to modify first lien loans.

Senator Reed

Q: How can these programs be jumpstarted?

Apgar: Programs must tackle both unemployment and foreclosure. Government must first stimulate jobs, and then try to keep people in their homes. All ideas, including making defaulted borrowers tenants in their homes, are being considered to prevent people from losing their homes.

Senator Bunning

Comment: The problem stems from a decision in 1994 to allow the Federal Reserve to oversee the mortgage industry.

Senator Warner

Comment: We've provided carrots for servicers in terms of financial incentives to participate, but worth considering if we need sticks too.

Apgar: Since the announcement that servicer performance will be published, there has been a noticeable improvement.

Senator Menendez

Q: What number of modifications would make the programs a success?

Apgar: We anticipate modifying 3-4 million mortgages by the end of 2012. That equates to approximately 20,000 mortgages a week, and the pace of mortgage modification applications currently exceeds that rate.

Senator Schumer

Comment: Raised program idea of turning delinquent borrowers into renters in their homes. Would allow the borrower to remain in the home and pay a more affordable amount in housing costs and would be a greater amount of money being received by the servicers. Leaves open possibility to return to homeownership in the future.

IV. PANEL II

Mr. Thomas Perretta, Consumer, State of Connecticut

Mr. Perretta shared his story of needing to modify his mortgage after the passing of his wife and trying to afford college tuition for his college-age son. Explained the frustration of trying to work with Chase to modify the payments on his mortgage without any success.

Ms. Joan Carty, President and CEO, The Housing Development Fund in Bridgeport, CT

Discussed how stories like Mr. Perretta's are too frequent in her work with the community

development financial institution. There are too many cases when they send clients' modification requests to banks or servicers and the modification package enters a black box for months on end. These borrowers are in distress; even a 30 day time frame can radically affect their credit profile. Servicers have done a poor job of updating their systems, causing unnecessary delays that result in added costs taken on by borrowers.

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

Introduced research recently conducted that shows that servicers don't try to modify second lien mortgages because they cannot generate profit from such action. The housing crisis is an effect of the general economy, and if employment and other economic factors can be improved, there will be a decrease in foreclosures.

Ms. Mary Coffin, Head of Mortgage Servicing, Wells Fargo

Stressed that the banks are working as quickly as possible to ramp up staff and train employees on the new modification options. There was some confusion in implementation as the Administration's rules changed several times as the programs were formulated. The banks are partners in the housing crisis and seek to work out mutually beneficial arrangements with each of its borrowers.

Mr. Curtis Glovier, Managing Director, Fortress Investment Group

The banks are reluctant to modify second lien mortgages because they will not profit. Also, servicing fees are based on value of the loans, and reductions in outstanding principal balance result in lower fees. Investors support modification of mortgage loans, even if that means taking a haircut on their investors. Hope for Homeowners is the best option to slow the housing crisis by removing the negative equity position many borrowers find themselves in today.

Mr. Allen Jones, Default Management Executive, Bank of America Home Loans

Mirrored the comments made by Ms. Coffin of Wells Fargo. Stood by B of A's track record working with loan modifications and meeting consumer demand. Blamed part of the problem on the Administration's creating confusion by announcing new guidelines for the program concurrent with their effective date.

Ms. Diane E. Thompson, Of Counsel, National Consumer Law Center

In her work with borrowers, she has found numerous instances of servicers violating the government program's guidelines. Servicers are charging borrowers fees for modifications, initiating foreclosures while loans are still pending review for modification and turning down qualified borrowers. There must be more transparency in the modification application evaluation process and better information made available to borrowers. Servicers must add additional resources to promptly and accurately respond to borrower's questions and claims.

V. PANEL II: Q&A

Q to Ms. Thompson: Have you contacted Treasury about your experiences?

Ms. Thompson: We've discussed the possibility of publishing net present valuation formulation and calculations. It has been tabled to a future meeting.

Q to banks: Are you aware of your companies violating the program rules or making non-compliant modifications?

Ms. Coffin: We have documented all of the decisions made for future audits. Wells Fargo is confident no violations have been intentionally made.

Mr. Jones: Bank of America supports the governments' programs and will always work to do the best for its customers. We have made it clear to our employees who work with customers that it is not necessary for a loan to be in default in order to seek a modification.

Q: How has holding the second lien loans prevented H4H principal reductions?

Mr. Jones: We have not yet received complete guidelines for the H4H program, and until second lien program information is released, it is difficult for us to use the program.

Ms. Coffin: We are actively involved in HAMP and wait for the H4H guidelines. A preferred solution would be to lower both the interest rate and the principal balance at equal proportions to the modifications made to first lien loans.

Ms. Thompson: She has heard frequently that second lien holders refuse to modify their loans. Reducing the principal balance makes a loan more affordable and allows the borrower to establish equity. This is more effective than an interest rate decrease. Servicers oppose the lowering of outstanding principle balances because it takes away from their fees.

Q: Do you have any other policy recommendations?

Mr. Willard: The most direct assistance possible is the most beneficial. Working to stem unemployment and offering targeted grants or loans to the unemployed to use towards housing costs would be effective and not require additional bureaucracy because the unemployment agencies already exist.