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"New Ideas for Refinancing and Restructuring Mortgage Loans"

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Introduction

Good afternoon, Chairman Menendez, Ranking Member DeMint, and Members of the Subcommittee. Thank you for the invitation to speak to you this afternoon regarding the state of the U.S. housing market. I am Richard A. Smith, the president and CEO of Realogy Corporation, a global provider of residential and commercial real estate franchise services, real estate brokerage, employee relocation and title insurance services. Our brands and business units include Better Homes and Gardens® Real Estate, Century 21®, Coldwell Banker®, Coldwell Banker Commercial®, The Corcoran Group®, ERA®, Sotheby's International Realty®, NRT, LLC, Cartus and Title Resource Group. Collectively Realogy's franchise system members operate approximately 14,400 offices, with operations in all 50 states and 100 countries and territories around the world. We are headquartered in New Jersey.

State of Housing

I will open my comments with the statement that in our view existing home sales appear to have essentially bottomed, and the national average sales price for existing homes is close to its low. New home sales have reached historic lows and may still see slight downside on both unit sales and average sale prices.

From its peak at 8.3 million total new and existing home sale units in 2005 and an average national sales price of $271,000, the U.S. housing market steadily declined to 5.2 million total units in 2010 and an average national sales price of $223,000,[1] and

[1] National Association of Realtors (NAR) historical data

thus far has recorded a peak-to-trough price correction of approximately 30%. This has been the worst housing correction on record. The headwinds of the past almost six years have been substantial and persistently stubborn. In spite of enormous challenges, we believe housing in the macro sense appears to have essentially stabilized for now, although at depressed levels.

The current industry forecasts for full-year 2011 and 2012 call for annualized existing home sales in the range of 4.9 million to 5.1 million units, and the median sales price is expected to go from a range of down 3% to down 4% year-over-year in 2011 to between minus 1% and plus 2% in 2012.[2] Residential real estate values and home sales are historically determined by local market influences such as the local job market, population growth, quality of the schools, quality of life, and the features of the home relative to the local market. The macroeconomics have substantially influenced home sales during the past six years. Insomuch that housing activity is now beginning to vary market-by-market it appears that the microeconomics are beginning to overshadow the macroeconomics, which is certainly a good sign.

The current housing market, although stabilized, is at depressed levels both in terms of sales and price. But the good news is we have a stabilizing market. The not-so-good news is that it is very fragile and only functioning for limited segments of the market. The make-up of the market is noticeably different than it was just five years ago. The very high end of the market, characterized as all-cash buyers, has been very active

[2] NAR Economic Outlook, September 2011; and Fannie Mae Housing Forecast, August 2011

representing a large percentage of sales in many of the major markets. The balance of the market has been dominated by first-time buyers and investors. The first-time buyer is compelled by historically low mortgage rates and unprecedented pricing. In many of our markets, take Florida as an example, more than 50% of our sales are all cash. The middle of the market, characterized by the move-up buyer, is noticeably absent. By most accounts about 25% of homeowners are "underwater" on their mortgages[3], meaning that they have little to no equity and thus cannot sell their current house to "move up" to the next home. That has clearly had a major impact on national home sales.

Investors, on the other hand, have a seemingly endless appetite for distressed and foreclosed homes. As one of the largest brokers of foreclosed homes in the United States, we currently have about 60% of our distressed inventory being sold to investors with the balance going to first-time buyers as owner-occupied homes. The investors are all-cash buyers and the first-time buyer is typically using FHA financing with less than a 20% down payment. Our REO, or Real Estate Owned, inventory, which we believe is representative of the national foreclosed housing stock, is typically a 3-bedroom 2-bath home with 1,800 square feet. The list price is typically half the unpaid principal balance and sells within 80 days at 98% to 99% of the list price. The typical buyer spends

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[3] "New CoreLogic Data Reveals Q2 Negative Equity Declines," Sept. 13, 2011; and Zillow Q2 2011 Market Report, Aug. 9, 2011

$10,000 to $16,000 to prepare the home for occupancy. The market for foreclosed homes is very strong nationwide.

Distressed property sales, often called short sales, involve a lender agreeing to accept a purchase price from a prospective buyer that is less than the remaining principal value of the mortgage. If accepted, the seller is often released from the obligation and the bank avoids the cost and the difficulties of a foreclosure. According to the most recent monthly survey information from the National Association of Realtors, distressed properties – meaning foreclosures and short sales typically sold at deep discounts – accounted for 29 percent of existing home sales in July.

What are buyers experiencing? Mortgage lending, although available, is very difficult. Lenders are requiring unprecedented levels of disclosure and documentation. Appraisals are often conducted by inexperienced personnel with little to no local market experience often resulting in flawed value assessments, the outcome of which is a rejected loan. The market value is no longer determined by what the buyer and seller agrees is a fair price. It is now determined by an appraiser and often an inexperienced one at that.

Renting is certainly in vogue for the moment and given the lack of consumer confidence and the extraordinarily high rates of unemployment, it is not a surprise. In most markets it is more cost effective to own as rents continue to escalate nationally at a rate of 5% to 7%. In New York City alone, where we are the largest rental broker, year-over-year rents will likely increase this year by 10%. Renting is not a long-term solution. In our view, homeownership continues to be the goal of most Americans.

So what is holding back a housing recovery, and what are the solutions? Unfortunately there are no silver bullets. We believe the immediate issues are high unemployment, the persistent overhang of foreclosed properties, low consumer confidence and failed government intervention programs.

Jobs

Unemployed and underemployed people do not buy homes. So for the purpose of housing, our focus is on the U.S. Bureau of Labor Statistics monthly underemployment report, which as of September is 16.2%, a staggering number.[4] When the full-time employment numbers rise, a housing recovery will follow, marked by pricing stability and the return of the move-up buyer.

Foreclosures

The government's repeated efforts to mitigate the foreclosure problem facing our country have done little but prolong the recovery. In our view, lenders should be permitted to accelerate foreclosures in the cases where reasonable efforts to avoid foreclosures have failed. A resold foreclosed house generates economic value and aids the process of stabilizing local market home values. Delaying the process has the

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[4] Bureau of Labor Statistics, Table A-15. Alternative measures of labor underutilization, Sept. 2, 2011

opposite effect. The government's well-intentioned programs are burdened with extensive layers of red tape that have substantially limited the effectiveness of the effort.

Short Sales

A short sale, an agreement between a mortgage holder and a seller to accept a sale price that is less than the mortgage, could be an effective private sector solution. However, although short sales entail a much improved process compared to foreclosures, the process has been less effective in part because lenders are slow to respond to the purchase offer and a frustrated buyer moves on. Nevertheless, short sales should be encouraged as a superior alternative to foreclosure.

Debt-for-Equity

A debt-for-equity solution is a concept that we believe has merit for underwater homeowners as well as lenders and/or loan servicers. In place of foreclosure, a lender agrees to exchange the outstanding mortgage for a new loan with a lower principal and, equally as important, shares in the equity of the house. The homeowner agrees to maintain the house, stay current on the new loan and when the house is eventually sold the lender receives the proceeds from the retirement of the loan as well as its share of any appreciated value. The full description of the proposal is attached to our submitted comments as an addendum *(see Addendum 1, "Debt-for-Equity Solution for Underwater Homeowners")*.

Assumable Loans

Mortgage rates are at historic lows and locking in those rates for the benefit of future buyers would stimulate current sales. Any government-backed loan originated during the next two years should be assumable for the term of the loan. A new buyer would be required to qualify under current underwriting standards but would assume the historically low interest rate. We believe this provision should apply to any size loan that is government guaranteed.

Fannie Mae Rental Proposal

Much has been said of late about a Fannie Mae proposal to convert foreclosed homes into affordable rental housing. Our experience with a similar effort has thus far proven ineffective and usually detrimental to neighborhoods. In the case of a similar effort in Florida, single-family homes in owner-occupied neighborhoods were rented at rates deeply discounted to the market rental rates. The result was lower local property values and high eviction rates. In one instance, 50% of the renters were evicted after six months. At least on the basis that has been described, we strongly oppose such a strategy.

Refinance Programs

The proposed expansion of the Home Affordable Refinance Program (HARP) program to encourage the refinancing of loans guaranteed by the U.S. government, regardless of the lack of equity, will help reduce foreclosures and stabilize select housing markets in the near term. We caution, however, that an improved economy and value appreciation are essential to any long-term solution. Underwater equity today that remains underwater equity five years from now does little to improve the long-term state of housing.

Loan Limits

A reduction in conforming loan limits for Fannie Mae, Freddie Mac and the FHA is scheduled to occur on October 1st, 2011. It is often argued that higher loan limits only benefit higher-cost markets but that is not supported by the facts. The National Association of Realtors estimates that reducing the current loan limits would reduce the availability of mortgage loans in 612 counties in 40 states plus the District of Columbia. We believe the current loan limits should be extended for two or more years.

National Flood Insurance

The National Flood Insurance Program is the only source of insurance in the case of at least 500,000 annual home sales according to the National Association of Realtors. About 8% of the nation's housing inventory – or 10 million homes – is located in FEMA's 100-year flood plains. Until such time that an alternative private market solution is available, the current National Flood Insurance Program must be extended in order to avoid the risk of another near term set-back for housing.

Dodd-Frank

The residential mortgage provisions of the Dodd-Frank Act will negatively impact housing, which we addressed in our formal reply to the Notice of Proposed Rulemaking released on March 29, 2011 specifically with respect to the proposed Qualified Residential Mortgage (QRM) and risk-retention criteria for securitization. As written, the proposed QRM definition focuses almost entirely on a minimum down payment requirement. Had the proposed QRM definition's 20% down payment requirement been in effect in 2009, 2010 and 2011, then more than 70% of all homebuyers would not have qualified for a mortgage that could be securitized, resulting in higher costs to the borrower.

Realogy supports the position taken by the Coalition for Sensible Housing Policy that urges the redesign of QRM to make loans accessible to a broad range of credit-worthy borrowers. The data is very clear that a 20% down payment would be punitive to low- to moderate-income borrowers, clearly not an intended outcome. This requirement will make homes less affordable for the vast majority of the population that doesn't have the means to make a 20% down payment. The higher rates that low- to moderate income borrowers will be forced to pay means that middle-class Americans who are otherwise prudent borrowers from an underwriting standpoint would be priced out of homeownership. That's an unintended consequence waiting to happen, but it is avoidable. The focus should be on underwriting standards, the inadequacy of which caused this crisis, not on a minimum down payment, which as best we can determine played little to no role in creating the current circumstances.

Dodd-Frank requires that lenders retain 5% of the face value of the securities sold into the secondary market. The 5% retention rule, although clearly well intentioned, will effectively limit the private mortgage market to those lenders with the balance sheets sufficient to commit such high amounts of capital. By some estimates, more than 75% of private lending would accrue to the top five FDIC lenders, further limiting the availability of mortgage financing. In our response to the request for public comments, Realogy outlined an alternative proposal that we labeled an "Enhanced Disclosure Approach," requiring extensive loan portfolio data that surpasses any previous SEC requirement *(see Addendum 2, "Realogy's Comments to Regulators Regarding Dodd-Frank Mortgage Rules," July 22, 2011).* The required disclosures would provide prospective residential mortgage-backed securities investors with data that provides a thorough and transparent risk profile of the securities (and the underlying mortgage portfolio). Independent of rating agencies, investors will be better able to evaluate the risks and the quality of the investment. We believe the Enhanced Disclosure Approach is far more effective than the proposed retention/QRM provisions of Dodd-Frank.

GSE Reform

The uncertainty regarding the future of the GSEs and the onerous provisions of Dodd-Frank are contributing to the headwinds preventing a housing recovery. The federal government's role in the housing finance industry is institutionalized and will not change easily. Those advocating no government role fail to adequately appreciate the circumstances that originally created Fannie Mae and Freddie Mac. Both were created to support housing finance when the private markets completely shut down, just as they did in 2008.

A pure private sector solution is not practical unless Congress is willing to accept extended periods of time during which home mortgage financing would not be available. In addition, it is also very unlikely that the 30-year fixed conventional mortgage would survive in a purely private market, resulting in almost exclusively variable rate mortgages with higher rates, which is a less than desirable outcome for millions of American families.

We have proposed a solution that consolidates all federal government home lending – VA, FHA, U.S. Department of Agriculture, etc. – into a restructured Fannie Mae and spins off Freddie Mac to the private sector, in effect reducing its capacity and role, paving the way for a stronger private sector. Redundant costs would be eliminated, streamlining the federal government's role in home lending. Fannie Mae would continue to operate as the government guarantor, and, when necessary, as the market maker in times of economic stress. The U.S. government would take warrants in Freddie Mac, and in the event it is acquired and/or taken public, the U.S. taxpayer would recoup some or all of its value.

Closing Comments

In summary, it is noteworthy that when housing sales improved in the first two quarters of last year as a result of the Homebuyer Tax Credit, we clearly saw the economy begin to follow an upward trend in the third and fourth quarters. Likewise, once housing sales declined in the third and fourth quarters of 2010, the effect on the economy was visible as GDP fell noticeably in the first and second quarters of 2011.

That said, housing will recover when unemployment and underemployment decline and consumer confidence is restored. Private sector alternatives to foreclosure should be encouraged but when they fail, lenders must be permitted to expeditiously pursue their legal rights under the applicable foreclosure laws and regulations. Prolonging the inevitable is not helpful to the housing market or the economy. And last, but certainly not least, GSE reform and Dodd-Frank entail major structural issues that must be approached with great care and caution.

Thank you again for the opportunity to appear before this committee.

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