TESTIMONY OF

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PRESIDENT

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Before the

SENATE BANKING COMMITTEE

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Introduction

Chairman Dodd, Ranking Member Shelby, and Members of the Committee, thank you for the opportunity to discuss Bank of America's loan modification performance and foreclosure process.

The prolonged economic downturn and sustained high unemployment, coupled with the collapse of the U.S. housing market, have led to challenges that are more profound and complex than anyone anticipated. For a borrower, the prospect of falling behind on mortgage payments due to loss of income would be a wrenching personal situation in normal times. But these are not normal times, and the traditional solutions of the refinance of debt or the sale of a home at sufficient value to repay the debt, do not exist for many, which causes great anxiety and frustration for borrowers under economic stress. We know you are hearing from your constituents, because in many cases your constituents are also our customers.

These customers depend on us – Treasury, GSE's, lenders, and servicers to have a solution for their unprecedented needs. The good news: we have worked together at extraordinary speed to create solutions – like HAMP – and to retool mortgage servicing; adding new people, new processes, and new technology capabilities to meet the ever increasing needs. Unfortunately, those solutions have not met all of the needs nor have they been executed well in some cases.

It's important to note that despite the hardships most Americans are facing, more than 86% of Bank of America customers remain current and are making their mortgage payment each month. Others are unfortunately in distress. Helping these customers remain in their homes where possible is a top priority for Bank of America – as evidenced by our 700,000 completed loan modifications since 2008.

Whether one of our customers has just missed his or her first mortgage payment or is many months delinquent and at the point of foreclosure – Bank of America believes the customer's experience with us, from start to finish, must be consistent, accurate, and understandable. Our customers are entitled to an experience that gives them confidence they are being treated fairly.

We have, however, reached a crossroads between loan modification efforts and the reality of foreclosure. Fortunately, early stage delinquencies are stabilizing. The majority of initial volume and backlog of customers seeking solutions have been evaluated for available programs. We're reaching a peak where some customers will be dealing with the reality that despite the myriad of programs and our best efforts, foreclosure is unavoidable. That has driven an increase in the concerns you and we hear from distressed homeowners, and our increases in staffing and foreclosure alternative programs are directed at moving through this difficult period. We believe that these efforts are working, as every day we reduce the backlog in both modification decisions and customer complaints.

It is our responsibility to be fair, to be responsive and, where a foreclosure is unavoidable, to treat customers with respect as they transition to alternative housing. We, and those who work with us in connection with foreclosure proceedings, also have an obligation to do our best to protect the integrity of those proceedings. When and where that has not happened, we accept responsibility for it, and we deeply regret it. We take seriously our obligation to the customer, the investor, the legal process and the economy.

We also fully understand our obligation to evaluate customers for every way to make their payment more affordable, and we are continually improving our processes for working with customers.

When industry concerns arose with the foreclosure affidavit process, we took the step to stop foreclosure sales nationwide and launch a voluntary review of our foreclosure procedures. Thus far, we have confirmed the basis for our foreclosure decisions has been accurate. At the same time, however, we have not found a perfect process. There are areas where we clearly must improve, and we are committed to making needed changes.

We've also used this opportunity to further evaluate our modification program and identify additional enhancements we can make. We have done this based on feedback from you, our customers, community groups, investors, and from our regulators. We also are committed to a constructive dialogue with State Attorneys General, who have taken a leadership role on these issues.

Role of the Servicer

Before I describe the changes we have made in the foreclosure and modification processes, I would like to provide some context regarding the role of mortgage servicers, the complexity of our portfolio and loan modification performance. This context relates directly to the changes we are making.

Traditionally, a mortgage servicer's primary function is to collect loan payments from customers and to distribute payments to the investors who own the loan. Until recent years, foreclosures were ancillary and loan modifications were essentially non-existent. Economic conditions – including the loss of income, inability of many consumers to pay their mortgages or, when in distress, to sell their property – have dramatically increased the volume of modifications and foreclosures, severely straining industry systems and resources designed around much lower volumes of activity.

Moreover, Bank of America is constrained by our duties to investors; of the nearly 14 million loans in our servicing portfolio:

- 23% of the portfolio is owned by Bank of America
- 77% of the portfolio we service for the investors who own the loans – Fannie Mae and Freddie Mac are the investors on 60% of these loans, for example.

Many investors limit Bank of America's discretion to take certain actions. When working with delinquent customers, we aim to achieve an outcome that meets customer and investor interests, consistent with whatever contractual obligations we have to the investor.

Duties to investors add complexities to the execution of modification programs and can result in confusion for customers. For example, Treasury, investors, and other constituencies often change the requirements of their modification programs. HAMP alone has had nearly 100 major program changes in the past 20 months. Fannie and Freddie, as investors, have layered on additional requirements, conditions and restrictions for HAMP processing. When these changes occur, we and other servicers have to change our process, train our staff, and update technology. These changes can also affect what is required of the customer, for example the need for new or different documentation.

Basic Facts of the Bank of America Portfolio

With the Countrywide acquisition, Bank of America became the nation's largest mortgage servicer – with a servicing portfolio that more than tripled post-acquisition to nearly 14 million customer loans – 1 in 5 of all U.S. mortgages.

The majority - 86% - of our customers are current and making their mortgage payments on time every month. Fortunately, that number is stabilizing. But the segments of the portfolio that are distressed include large numbers of customers who are seriously delinquent. Nearly 600,000 customers have not made a mortgage payment in more than a year; of these 195,000 have not made a mortgage payment in two years.

Servicer Implementation of Loan Modification Solutions

To address these drastic economic and industry changes, Bank of America has had to undertake a massive retooling since our acquisition of Countrywide in 2008 to shift our servicing organization from one that simply services loans, to one that also manages customer requests for aid as the housing downturn and high unemployment persist. We also have built new processes, tools and partnerships with community organizations to reach customers who do not respond to loan modification offers.

We've hired and trained more than 10,000 new employees – and now have a team of more than 26,000 helping customers who are delinquent. To reach customers we've opened bricks and mortar customer assistance centers; gone door to door with modification solicitations, and participated in more than 500 housing rescue fairs across the country.

We have completed more than 614,000 proprietary modifications and 85,000 HAMP modifications. Given the majority of our delinquent borrowers are not eligible for HAMP today, proprietary solutions have been critical to provide meaningful options for those who fall outside the requirements of HAMP. We have completed over 95,000 second lien modifications and were the first servicer to implement the Treasury's second lien program – 2MP.

We have provided innovative solutions to meet evolving customer needs, including the launch of an industry-leading principal reduction program earlier this year. Bank of America is also a leader in the Hardest Hit Fund program development and is working with Treasury, the state Housing Finance Authorities, and others as we attempt to find solutions and design programs including principal reduction in the most severely impacted states.

If all home retention options are exhausted, and there is not a viable alternative to create an affordable payment, we offer short sale and deed-in-lieu solutions that allow customers to avoid foreclosure and ease the transition to alternative housing. Earlier this year, we launched a proprietary cooperative short sale program that proactively solicits customers in late stage delinquency to provide assistance. We are also fully operational with Treasury's Home Affordable Foreclosure Alternatives (HAFA) program, which streamlines the short sale process for borrowers who have been considered for HAMP and offers customers relocation assistance of $3,000. We've completed nearly 70,000 short sales through the first three quarters of this year.

We also provide deed in lieu programs that do provide an increased cash allotment for expenses such as moving and rental security deposits in exchange for the deed to the property in which the customer currently resides.

Our intent is to exhaust all modification, short sale and other disposition options before foreclosure. Despite those efforts, far too many customers have been impacted by an economy that has left them unemployed or severely underemployed to a point that leaves even a modified mortgage payment out of reach.

With that background in mind, I would like to inform you of some key decisions and commitments we have made to address concerns we have heard from our customers, your constituents and other stakeholders:

Single Point of Contact
A frequent source of frustration for customers is when they feel they are being passed around the system, seemingly never talking to the same person twice. We are addressing this by redesigning our modification process to offer a single point of contact for every eligible borrower. We are in the midst of implementation and more than 140,000 customers have already been assigned a single case manager to whom they can always turn with questions or concerns that arise throughout the process. We are also in discussions with key stakeholders, like the State Attorneys General, about how this approach can be expanded, and refined, to improve the customer experience and reduce borrower anxiety during the time they are being considered for modifications. We know this goes to the heart of many customer complaints that you have heard.

Reform of Dual Track System
Parallel foreclosure and modification processes are required by many investors, and reflect an industry-wide servicing practice. This so-called "dual track" process has been a source of confusion for customers. We want to be a partner with you, State Attorneys General, other servicers, and investors in looking for ways to change industry practice with respect to evaluation of borrowers for modifications after they have been referred to foreclosure to mitigate the very real concerns we have heard about that practice.

Customer Status Checklist
Customers are understandably frustrated when they are unsure where they are in the process of modification or foreclosure. To address this and provide greater clarity, we are working to create a Customer Status Checklist, so that customers will have a document in hand to understand their status, the steps they have completed, reasons decisions have been made and what additional steps remain.

Housing Rescue Fairs and Outreach
By establishing a presence in the community, we've had greater success reaching customers who have not been responsive to more traditional contact methods. We've deployed Customer Assistance Centers in areas most impacted by the housing downturn. We've also launched mobile home retention teams who travel around the country meeting with customers.

We've had considerable success in working with nonprofit partners such as Neighborhood Assistance Corporation of America (NACA), National Urban League, National Council of La Raza and the National Association of Asian Pacific Americans for Community Development. We established the Alliance for Stabilizing our Communities – the first national multicultural outreach and home retention effort to address foreclosure prevention in diverse communities. Through the Alliance, 34 home rescue fairs have been completed serving more than 9,800 families.

We find that the opportunity for customers to work with a trusted nonprofit and get the chance to meet with their servicer face-to-face can enhance the response rates of borrowers and the chance for a successful modification, and we are committed to increasing the resources committed to face to face contact in 2011 – including doubling our outreach staff.

Enhanced Transition Services:
When we cannot change the foreclosure outcome, we can ensure the process is respectful. We have been in extensive conversations with the Neighborhood Preservation Foundation, the *United Way*, other non-profit agencies, and with HUD to determine how we can most effectively engage them to help customers in the transition of households to alternative, more affordable housing. We are working with

these and other community partners to expand support services – relocation assistance, credit counseling, and other aid to help customers and rejuvenate neighborhoods.

Other Reforms

Additional reforms and process enhancements may be identified through our constructive and continuing conversations with State Attorney General Miller and the Executive Committee of the National Association of Attorneys General.

Foreclosure Process

Our commitment at Bank of America and its subsidiaries is to ensure that no property is taken to foreclosure sale until our customer is given a fair opportunity to be evaluated for a modification to an affordable payment or, if that cannot be done, a short sale or deed in lieu solution. Foreclosure is the option of last resort.

We voluntarily launched a foreclosure hold in October 2008 and have participated in several others -- as new programs were developed and launched, in order to ensure no customer goes to foreclosure who has a reasonable option to stay in their home.

We re-evaluate borrowers for home retention options throughout the foreclosure process and check to determine whether a borrower is being evaluated for a modification all the way up until the day before the foreclosure sale. Subject to investor guidelines and the rules of the applicable court, we defer the sale dates of borrowers who are being evaluated for modifications.

When a customer is referred to foreclosure sale, the process and requirements vary significantly among states. Courts have jurisdiction over foreclosures in 23 states (called judicial states). In both judicial and non-judicial cases, it is our policy to refer a loan to foreclosure only after we have completed a review for modification eligibility, assessment of foreclosure alternatives and compliance with applicable state law requirements. Also included are several checks to ensure the data supporting the foreclosure is both accurate and accurately recorded.

On average, it takes nearly a year from the time a customer receives a foreclosure notice until the actual foreclosure sale is completed; and for customers in judicial states like Florida that timeline can be closer to two years. This is not a process that is rushed and there are multiple checkpoints and controls along the way to prevent wrongful foreclosure – controls that have now been further strengthened.

Foreclosure Review and Improvements

After concerns emerged at other lenders regarding the foreclosure affidavit in judicial foreclosure states, Bank of America and its servicing subsidiary initiated a review of our foreclosure procedures. On October 1, we voluntarily suspended foreclosure judgments in the 23 judicial foreclosure states while we completed this review.

One week later, we paused foreclosure sales nationwide as we launched a voluntary review of our foreclosure process in all 50 states. We believe this step was appropriate and responsible in order to give our customers confidence they are being treated fairly in the process. I would like to share some conclusions we've reached following our review, as well as some of our plans to improve our process going forward.

Let me first offer a quick overview of the typical foreclosure process in a judicial foreclosure state. If the internal foreclosure review process concludes all other options are exhausted and that foreclosure is necessary, the loan is referred to our foreclosure operation and to outside foreclosure counsel, who prepare affidavits of indebtedness where required and ultimately handle the local foreclosure process.

The decision to refer a loan to foreclosure is made by Bank of America after a foreclosure review process that is based on an evaluation of our servicing records. This evaluation precedes and is independent from the process used to create and execute affidavits of indebtedness. The foreclosure affidavit is a summary of the basic facts in the foreclosure case (for example, the borrower's name, address and delinquent amount). For all GSE loans, we select the outside counsel from pre-approved lists created by each of Fannie Mae and Freddie Mac.

Once Bank of America receives the affidavit from outside counsel, we conduct a multi-step quality assessment process to verify the key facts underlying the affidavit. After this quality check, the verified affidavits are sent to a bank officer for a notarized signature and then returned to foreclosure counsel for filing.

Even though our review has indicated the basis for our foreclosure decisions has been accurate, we have identified areas for improvement as a result of our intensive review. We are taking the need for improvement very seriously and are implementing changes accordingly. These changes in the foreclosure process include, among other things, a new affidavit form and additional quality control checks.

Every affidavit will be individually reviewed by the signer, properly executed, and promptly notarized. We are carefully restarting the affidavit process with these controls in place. We are working to replace previously filed affidavits in as many as 102,000 pending foreclosure cases that have not yet gone to judgment. Further, with regard to both judicial and non-judicial states, we are implementing new procedures for selecting and monitoring outside counsel.

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Conclusion

If a Bank of America customer is eligible for a modification, we'll help him or her stay in their home. That is in our interest as a mortgage servicer and as an owner of loans. And, when foreclosure is the necessary outcome, we will pursue it through a respectful process. As the loan servicer, the decision is not always in our hands, but ensuring a process that is fair, accurate and consistent is our accountability.

We have worked for two years since our acquisition of Countrywide to aggressively respond to more than a million customers in distress. We don't claim perfection, but we believe we have led with innovative ideas and continue to put forward solutions that respond to customer needs. That's a responsibility that comes with being America's leading consumer bank – and a responsibility every associate at Bank of America is working diligently to uphold.

Thank you and I look forward to your questions.