Bank of America

TESTIMONY OF
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BANK OF AMERICA
Before the
HOUSE SUBCOMMITTEE ON HOUSING AND COMMUNITY OPPORTUNITY
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON, DC
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Good afternoon, Madame Chair, Ranking Member Capito and subcommittee members. I am Michael Gross, Bank of America's Managing Director of Loan Administration Loss Mitigation. Thank you for the opportunity to appear again to update you on the efforts of Bank of America to help families prevent avoidable foreclosures and stay in their homes. As the country's leading mortgage lender and servicer, Bank of America understands and fully appreciates its role in helping borrowers through these difficult economic times. We are committed to being a responsible lender and servicer and facilitating home ownership and retention. We want to ensure that any borrower who has sufficient income and the intent to maintain homeownership has the ability to do so using any and all tools we have available.

Support for the President's Foreclosure Relief Efforts

Bank of America applauds the Obama Administration's Homeowner Affordability and Stability Plan's focus on assisting financially distressed homeowners with their mortgage payments through their refinancing and loan modification program. Ken Lewis, our Chairman, has assessed the plan as very thoughtfully constructed and believes it has a very good chance to make a significant and positive impact. We strongly support the Administration's focus on affordability in the loan modification and refinance processes in order to achieve long-term mortgage sustainability for homeowners. Bank of America recently announced a moratorium on foreclosure sales that is in effect until guidelines for implementing the Homeowner Affordability and Stability Plan are released. Bank of America's foreclosure sales moratorium includes first lien owner-occupied mortgage loans owned and serviced by Bank of America, Countrywide and subsidiaries of Merrill Lynch, as well as those owned by investors who have agreed to the terms of the moratorium. Simply put, we want to have every opportunity to help homeowners who can be assisted by these new initiatives.

The Administration's focus on affordability and sustainability is consistent with the approach we have successfully developed with our customers, which has led to more than 230,000 loan modifications for our customers in 2008, and another 39,000 customers in January 2009 alone. In 2008, Bank of America committed to offer loan modifications to as many as 630,000 customers over the next three years to help them stay in their homes, representing more than $100 billion in mortgage financing. We appreciate the opportunity to work with the Administration in developing guidelines for the uniform implementation of its modification and refinance initiatives to ensure success of the Homeowner Affordability and Stability Plan.

Bank of America is "Open for Business"

I also want to provide a brief update on our mortgage business. We understand that the focus of this hearing is on loan modifications, but we strongly believe that long-term recovery in the economy and housing markets relies upon lenders responsibly and effectively providing loans to creditworthy borrowers. To that end, we are making great progress toward fully integrating Countrywide Financial Corporation into Bank of America. In April we will unveil "Bank of America Home Loans," which will bring together the Bank of America and Countrywide mortgage products and brands under the Bank of America banner and standards. Bank of

America Home Loans brand will confirm our longstanding pledge to all of our customers and associates that we will only offer helpful, understandable and affordable mortgage products. We have a simple, compelling brand promise: to be a responsible lender, and to help our customers achieve successful, sustainable homeownership.

We understand the leadership role we play in stimulating the country's economic activity. We are in fact making new mortgage loans available to eligible customers for buying homes and refinancing their current mortgage loans, as evidenced by the following:

- In the fourth quarter of 2008, we originated more than $60 billion in new loans for consumers, including $45 billion in mortgages and $5 billion in home equity.
- As part of this activity in the fourth quarter of 2008, we originated more than $11 billion in mortgages for more than 77,000 low-to-moderate income borrowers.
- In January 2009, we produced $21.9 billion in mortgages, including $6.3 billion in home purchase originations and $15.6 billion in refinance transactions.

In addition to being America's largest home lender in 2008, Bank of America is one of the nation's largest financial institutions. With over 6,100 banking centers, 59 million consumer households and over $800 billion in deposits, Bank of America has the strength and stability to continue helping people realize and maintain their dream of homeownership. We also are now routinely publishing public updates on our lending volumes at: www.bankofamerica.com/progress.

Bank of America's National Homeownership Retention Program

Bank of America is leading the mortgage industry out of today's challenging economic environment. We know that many consumers are experiencing financial hardships, but they ultimately have the ability and willingness to repay their loans. We are hard at work helping them do just that.

Since I last appeared before Congress, Bank of America launched the National Homeownership Retention Program. The ambitious new program was announced on October 6, 2008 and was developed together with several state Attorneys General. Today Attorneys General from more than 30 states have joined in the program. It is designed to achieve affordable and sustainable mortgage payments for borrowers who financed their homes with subprime loans or payoption adjustable rate mortgages serviced by Countrywide and originated by Countrywide prior to December 31, 2007. Our home retention division of nearly 6000 professionals began serving eligible borrowers on December 1, 2008.

The centerpiece of the program is a streamlined loan modification process designed to provide relief to eligible subprime and pay option ARM customers who are seriously delinquent or at risk of imminent default as a result of loan features such as rate resets or payment recasts. The program's goal is the same as that of President Obama's Homeowner Affordablility and Stability Plan: to reduce monthly mortgage payments to affordable and sustainable levels. We are targeting first-year payments of principal, interest, taxes and insurance to equate to 34 percent of the borrower's income. Modification options for qualified homeowners include:

- Unsolicited streamlined interest rate reductions to the introductory rate for five years for borrowers facing interest rate resets or payment recasts;
- Interest rate reductions to as low as 2.5% for qualified borrowers making fully amortized payments;
- Ten-year interest-only periods with interest rate reductions to as low as 3.5% for interest only payments;
- Gradual step-rate interest rate adjustments to ensure annual principal and interest payments increase at levels with minimal risk of payment shock, subject to interest rate caps;
- Elimination of the negative amortization provision in payoption ARM loans; and
- Principal write-downs on certain payoption ARMs that restore lost equity for certain borrowers.

Our program applies to eligible mortgage loan customers serviced by Countrywide who occupy their home as their primary residence. Under the program, Countrywide does not charge eligible borrowers loan modification fees, it waives late fees associated with the borrower's present default, and it waives prepayment penalties for subprime and payoption ARM loans originated between 2004 and 2007 that it or its affiliates own. Loan modifications are made in full compliance with investor servicing contracts and, where servicing contracts limit modification, Countrywide seeks consent from investors, rating agencies, and mortgage insurers.

Bank of America's Home Retention Operations

I also would like to update the Subcommittee on additional progress we have made to date on our home retention operations beyond the Countrywide loan portfolio. We have added more staff and improved the experience, quality and training of the professionals dedicated to home retention. Since early last year, as the housing and credit markets have struggled, the combined home retention staff for Bank of America and Countrywide has more than doubled, to nearly 6000. We will continue to increase home retention staffing levels to ensure that we are responsive to our customers.

At the core of our combined operations are the substantial commitments we made to engage in aggressive home retention efforts to help customers avoid foreclosures and remain in their homes. In addition to the new loan modification program for Countrywide subprime and payoption ARM borrowers I described earlier, Bank of America is devoting significant resources to modifying and working out loans of all types for its customers who are facing default and possible foreclosure. We are tailoring our workout strategies to a customer's particular circumstance by using a range of home retention options to assist those who are struggling to make their monthly loan payments, such as:

- Formal and informal workout arrangements, repayment plans and forebearance agreements that allow customers additional time to bring their loans current;
- Loan modifications that may significantly reduce interest rates, extend maturity dates or otherwise modify loan terms, including the new Streamlined Modification Program created jointly by Fannie Mae, Freddie Mac, FHFA, Department of Treasury, and the Hope Now Alliance;

- Partial claims that involve unsecured, no-interest or low-interest loans to customers to cure payment defaults; and
- Targeted strategies for customers facing interest rate resets that include automatic rate reductions for up to five years.

Bank of America begins evaluating and working on these options to assist at-risk borrowers as soon as we become aware they are having difficulty making mortgage payments. We also continue to educate customers about the options available to them and the workout solutions they may be able to employ to stay in their homes.

The qualifications for a loan modification depend on whether the loan is owned by an investor and the terms of a particular Pooling and Servicing Agreement (PSA). Generally, we have more flexibility with loans directly held by the bank. With these loans we do not have to wait until someone is 60 or 90 days delinquent. The loans we service on behalf of investors, including the GSEs, are subject to PSAs. In some instances there is flexibility to consider loan modifications early in a borrower's state of delinquency, but some PSAs have very strict limits. It is important to note that even where we have flexibility for early intervention, a distressed borrower still must meet basic ability to repay requirements. We were pleased to see that the Presidents new foreclosure assistance initiative will provide further guidance and support for earlier intervention with borrowers in financial hardship.

Key to successful loss mitigation initiatives undertaken by national servicers such as Bank of America are our partnerships with financial counseling advocates and community based organizations such as Hope Now, NeighborWorks, NACA and the Homeownership Preservation Foundation. Given the impact national and local nonprofits have had in reaching and assisting families, Bank of America also is collaborating with the National Urban League, National Council of La Raza and National Coalition of Asian Pacific American Community Development to address the disproportionately high foreclosure rates among minority communities. As part of this, Bank of America made a $2.5 million grant. In March we will kick off this national effort, beginning with a home rescue fair in Chicago, followed by fairs and outreach in cities across the US throughout 2009 and 2010, including Los Angeles. We are also actively engaged in foreclosure prevention outreach programs with both governmental and community organizations around the country. We will continue to work with investors, insurers, the government-sponsored enterprises (GSEs), HUD and VA, regulators and community partners to further identify ways to improve our ability to reach customers with affordable home retention solutions.
As we have learned through experience, early and open communication with customers is the most critical step in helping prevent foreclosures. In 2008, we participated in more than 350 home retention outreach events across the country, including foreclosure prevention and "train the trainer" events. We are proactively reaching out to customers by:

- Making more than 10 attempts per month to contact delinquent homeowners through phone, mail and other means.
- Seeking to contact customers through outbound calls, including nearly 12 million outbound calls in January. These outbound calls resulted in approximately 1 million conversations with at risk homeowners in January.

- Mailing, on average, 700,000 personalized letters and cards each month that offer customers the choice to contact Bank of America, a HUD-approved housing agency, or a nonprofit housing organization.
- Sending company workout counselors to branch offices and events all over the nation to meet directly with homeowners who need assistance.

In general, the costs for a loan modification are lower than the costs of the full foreclosure process. However, there are several variables that influence costs for each scenario, including state foreclosure law requirements, authority under Pooling and Servicing Agreements, and the complexity of the loan modification. Among the significant costs that servicers incur for loan modification are personnel and information technology. We believe the President's inclusion of financial support to servicers for loan modifications generally will be helpful for servicers as they strive to pursue every loan modification contemplated by the plan. Once a loan is successfully modified there are no unique or specific challenges for servicing that loan.

Bank of America's Home Retention Results

In 2008, our Home Retention Division completed over 230,000 loan modifications, a 198% increase over 2007. I would emphasize here that these are workouts in which the customer enters into a plan to *keep their homes*. It does *not* include deeds in lieu of foreclosures or short sales.

In addition to sharply increasing the pace of workouts, we have also become more aggressive in the types of workout plans completed. Loan modifications are now the predominant form of workout assistance. In 2008, loan modifications accounted for approximately 75% of all home retention plans. Of these loans, interest rate modifications accounted for approximately80% of all the loan modifications. This past January, loan modifications accounted for approximately 87% of all home retention plans. Of these loans, interest rate modifications accounted for 88% of all the loan modifications. Importantly, the vast majority of these rate relief modifications have durations of at least 5 years.

In a significant majority of our loan modifications over the last year, the monthly principal and interest payment level has stayed the same or decreased. In some instances, the best solution for a customer with an ARM is simply to freeze the interest rate at the current lower level. For others, the amount of the decrease depends on factors such as the financial situation of a customer and the amount of flexibility we have to modify the loan under any applicable Pooling and Servicing Agreements. In those situations where a monthly payment may have increased it is usually the result of needing to structure the repayment of delinquent amounts and overdue taxes payments.

The Subcommittee also asked that we address redefault rates. Upfront it is important to emphasize that continued economic decline is driving changes in borrower income and that, in turn, is a major contributor to redefault. The purpose of modifications is to assist borrowers from losing their home to foreclosure. In this regard we measure redefault in terms of borrowers who have, since modification, fallen victim to foreclosure or have returned to a state where we have initiated foreclosure proceedings once again. By this measure, we believe that 25-40% of our modifications have redefaulted. Certainly many of our customers who have obtained modifications continue to struggle. Some are seriously delinquent once again (60 days delinquent or even 90 days delinquent). These are very volatile times and economic and unemployment uncertainty are placing increased stress on all borrowers, including those with recent modifications. Try as we might to find the appropriate long-term solution for distressed borrowers it is impossible to measure the true definition of success or failure in this environment. The way we look at it, these efforts will allow more people to stay in their home than not, so it is a positive.

Recommendations for Expanding Loan Modifications

I would like to highlight a few continuing impediments to loan modifications for the Subcommittee's consideration. Importantly, I must note that despite our best efforts, it is changed circumstances of the borrower, such as unemployment, divorce, illness or dissatisfaction with the property that may make a loan modification unattainable. As a baseline, we can only modify loans where the borrower has the ability and willingness to repay. Our studies show that such "unresolvable" borrower issues represent the largest impediment to modifications, and this could worsen without economic growth and housing market stability.

Bank of America today services approximately 15 million loans. Some of these loans are held for investment in our own portfolio, but others are serviced on behalf of investors, including GSEs (the largest category of investors), government entities (such as FHA and VA), and private investors. The manner in which we service these loans is governed by the underlying pooling and servicing contracts and related rules of these investors. For loans that are held for investment, we have broad flexibility to modify the loans. For other categories, however, investor rules and underlying servicing contracts with respect to modifications are not uniform and may prevent us from making modifications that would benefit borrowers and investors. Under some arrangements, for example, servicers have express or implied authority to make loan modifications - while under other arrangements, loan modifications are expressly disallowed. Even within categories of investors, such as the GSEs, there is significant variation in the rules that apply. Servicers are frequently unable to effect loan modifications because of contractual prohibitions.

Another challenge is lack of uniformity in approaches to loan modifications. Examples include voluntary loan modification programs like ours and our peers, as well as government programs, like the one the FDIC adopted in connection with its acquisition of IndyMac. Servicers are employing usual and customary loan modification techniques, such as interest rate and principal reductions or deferrals; and they are developing underwriting and other guidelines -- frequently imbedded in models -- to determine when and what type of loan modification is appropriate and benefits borrowers and investors. Bank of America supports government and industry efforts to develop greater consensus regarding these elements of loan modification programs. In the fall we supported the announcement by the Treasury Department, Federal Housing Finance Agency, HUD and other government entities to adopt systematic loan modification programs that will help drive uniformity among these entities in the approach to loan modifications. Last week's annoucement by the President took another very important step in this direction by calling for the creation of standardized loan modification processes by March 4. We believe that nationwide modification standards are needed and that this is the best solution to keeping borrowers in their homes and ensuring that borrowers receive consistent treatment regardless of who owns their loan.

We have been working with investors and servicers to achieve these standards, and there has been good momentum towards achieving this goal. Some of the important components for a national standard are that:

- It applies a net present value model so that we achieve the goal of assisting distressed borrowers while at the same time retaining investor confidence that they also benefit from these decisions;
- It is streamlined to maximize effectiveness but also addresses moral hazard concerns through requirements such as verification of borrower hardship and income; and
- It includes a variety of modification solutions, including interest rate reductions, interest only payment options, and principal forbearance and forgiveness.

We support proposals that would provide a guarantee for a portion of the losses if a modified loan redefaults. We believe that such a guarantee will increase the number of loan modifications made since this would reduce the amount of loss that the holder of a loan would absorb if there was a redefault. The guarantee could be incorporated into a servicer's net present value model to increase the number of modifications that are made because it would reduce expected loss severities for the investor. We would also support other alternatives such as subsidizing interest rates and principal reductions as part of loan modifications.

Importantly, servicers need protection from litigation when applying modification solutions. We would request that Treasury and the Federal Reserve support legislation currently before Congress that would provide such a safe harbor.

I also want to take this opportunity to reaffirm Bank of America's support of the Hope for Homeowners (H4H) program contained in the Housing and Economic Recovery Act of 2008. We believe the legislative improvements recently approved by the House Financial Services Committee and that may be forthcoming in the Administration's guidelines for the Homeowner Affordability and Stability Plan will increase the viability of the program. The servicing industry needs as many tools as possible, such as H4H, as possible to maintain homeownership. Furthermore, we believe that legislative changes are needed to enhance the ability of servicers to help FHA borrowers. Today, the regulations that provide loss mitigation tools for servicers to assist FHA borrowers often impede our ability to modify these loans. While FHA offers insurance to lenders to pay claims associated with defaulted loans, FHA cannot exceed its statutory authority to pay loan modification costs incurred when a loan is bought out of a Ginnie Mae pool at par, modified, and then repooled. In this economic environment, Congress should arm the FHA with the tools to allow a servicer, who does not own the loan, to modify it and be reimbursed the costs of maintaining that borrower's full FHA insurance protection and the opportunity for ongoing sustainable homeownership.

Finally, we also need to ensure that lenders and servicers subject to federal regulation are not hampered in their ability to modify previously modified loans by restrictions and limitations imposed by the Federal Financial Institutions Examination Council ("FFIEC"). We appreciate the federal agencies' concern with financial institutions disguising their distressed assets through multiple modifications for defaulting borrowers. Nevertheless, the foreclosure crisis and rising concerns not only about consumers losing their homes but also neighborhood blight from vacant properties call into question whether such limits on modifying previously modified loans are justified in this environment. We believe the needs of families and communities outweigh regulator concerns in this context, or at least warrant exceptions or new alternatives to these FFIEC provisions. Servicers and mortgage holders must not worry that their efforts to provide more manageable loan payments to borrowers will result in regulator criticism or penalties. We must be able to provide whatever relief we can to homeowners who are willing and able to make reasonable, affordable payments to maintain homes for their families. We hope to work with the Obama Administration in addressing this issue through the forthcoming guidelines to the Homeowner Affordability and Stability Plan.

Conclusion

I want to thank you for the opportunity to describe our ongoing home retention efforts. We recognize there is still much more to be done. Today's foreclosure crisis demands expedient, affordable loan modifications that help borrowers, within the framework of our contractual obligations to investors. This is a critically important undertaking that must be done right if we as a country are going to preserve the flow of mortgage credit to support sustainable homeownership and at the same time protect communities and neighborhoods from avoidable foreclosures. We look forward to working with Congress and the Administration to accomplish these goals. I would be happy to answer any questions you might have.