Testimony of Bruce Marks, NACA CEO
House Financial Services Committee
Private Sector & Government Response to the Mortgage Foreclosure Crisis
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My name is Bruce Marks. I am the Chief Executive Officer of NACA (Neighborhood Assistance Corporation of America). Founded in 1988, NACA is a national non-profit community advocacy and homeownership organization. NACA is known for its "Best in America" mortgage program for both homebuyers and homeowners. For homebuyers, NACA offers low and moderate income Americans home mortgages with a low fixed interest rate, no down payment nor closing costs. For Homeowners, NACA has established the most effective program in providing long-term affordable solutions for homeowners with an unaffordable mortgage payment. NACA has 38 offices nationwide and two national call centers. All of NACA's services are FREE.

NACA has now established the national standard in providing long-term affordable solutions for homeowners with an unaffordable mortgage. Over the past two years NACA's historic "Save the Dream Tour" has brought many thousands of homeowners, hundreds of counselors and Servicers/Lenders together to permanently restructure mortgages to what the homeowner can afford, often in one day. It has been an incredible success with hundreds of thousands of homeowners attending in 13 cities and thousands of homeowners receiving same day solutions. The tour will continue next year, expecting to reach 30 cities. We are determined to make the NACA standard the national standard. NACA is the most successful model.

These Save the Dream events are spectacular. They destroy the myth that mortgages cannot be made affordable and that it is a difficult process. We often get it done in one day. These events last over four to five days. There are over three hundred NACA counselors, hundreds of staff from all the major servicers, representatives from Fannie Mae, Freddie Mac and HUD, and hundreds of volunteers to provide logistical and operational support. Tens of thousands of people participate at each of these events and often there are thousands who sleep outside in order to be the first ones in. Counseling begins at 8:00 a.m. and often continues beyond 1:00 a.m. the next morning.

The counselors and Servicers utilize NACA's state-of-the-art web-based software called the NACA-Lynx. Once the counselor completes a counseling session, the complete file identifying the affordable payment with the documented income, hardship affidavit, tax authorization and other HAMP required documents are submitted in real-time to the Servicers. The file is then accessed by the Servicer's underwriters off-site as well as the Servicer's staff on-site. The homeowner then goes to meet with their Servicer on site to get their solution. This occurs in many cases.

Many homeowners have had their mortgage payments permanently reduced by over $500, and many by over $1,000 a month. Often the interest rates are permanently reduced to 3% or 2% and sometimes a principal reduction. NACA has achieved this through legally binding agreements with all the major Servicers: Bank of America, Chase, Wells Fargo, Citibank, GMAC, Saxon, Litton, OneWest, AHMSI and HSBC as well as investors like Fannie Mae and Freddie Mac. The NACA agreement provides for two viable solutions to alleviate the foreclosure crisis for at-risk homeowners. One is a permanent restructure that provides homeowners with an affordable payment through either interest rate reduction to as low as 2% fixed for the life of the loan (no more than 30 years) and/or, a principal reduction/forbearance. The other solution is a forbearance agreement in which a homeowner who is unemployed without stable income would make a minimum payment every month for up to six months (in some cases longer) until they obtain additional income.

With the huge number of homeowners in the NACA program we are able to identify which Servicers and investors are providing long-term affordable solutions and where are the problems. The homeowners are dissatisfied with the traditional HAMP solution since they are determined to have a permanent payment without future increases or an extension of the term. They do not want a mortgage payment where there is a built-in payment shock. A mortgage payment that does not increase and is fully amortizing for less than thirty years is crucial, particularly when the outstanding principal is greater than the value of the property.

Also, FHA and VA loans are extremely problematic. It is outrageous that homeowners with a predatory mortgage from the private sector can get a better solution than a homeowner with a government mortgage even when the homeowner is a veteran. FHA uses a different version of HAMP which has not produced many long-term affordable solutions. It does not allow a borrower to get an interest rate below the FHA market rate (estimated around 5% as of Dec. 8, 2009) and any principal changes must be repaid at a later date. It is outrageous that the government has come up with a modification program to get borrowers an interest rate as low as 2% on non-FHA loans, but a government insured loan cannot achieve this.

The two major Servicers on this panel reflect the range of effectiveness in addressing the foreclosure crisis. JP Morgan Chase is the worst in this regard. They are extremely disorganized. They are impossible to work with and the homeowners hate working with them. While Chase was one of the first Servicers to offer trial modifications, they have not been able to provide long-term affordable solutions. They do not underwrite their files in the beginning of the process and wait at least three months to finalize the mortgage. They underwrite files with an originators mindset in that they are looking for a reason to say no. In fact in November, Chase has revealed that close to a quarter of trial modifications have been unsuccessful, as they have yet to receive even one payment from their borrowers, and almost half have been unsuccessful in making all three payments[1]. Also only a quarter of Chase's customers who have made all three payments have also sent in all the mandatory documents. Chase is a disaster.

On the other hand, Bank of America is one of the best in providing permanent modifications and accomplishing it in an efficient manner. At NACA's "Save the Dream" events, which happen throughout the country, they often approve permanent restructures/modification the same day. They even print and notarize the restructure agreement that same day so homeowners have proof of a permanent solution while they are at the "Save the Dream" event.

The government's response to the foreclosure crisis has been a failure. There are many reasons why HAMP is failing but the major reason is the business model and mindset of the Servicers. Servicers are effective at collecting and remitting payment to the investors. They, however, are NOT able to handle the huge volume of restructures/modifications that need to be done in order to stem the foreclosure crisis. Restructuring a mortgage it is more like originating a loan and Servicers do not have the systems or the trained staff to accomplish this effectively. In addition, they do not believe it is in their financial interest to do so.

Even though the Obama administration has incentivized Servicers (up to $4,500 per loan), the Servicers are not sufficiently motivated to permanently modify loan because of the extra cost of staff, overhead and the computer technology to do modifications. On the other hand, NACA has created state-of-the-art computer technology that currently provides the platform for the all the major Servicers. NACA provides solutions for homeowners, provides borrowers with up-dates including requests for additional document requirements and the ability to track the process. NACA does all the work for the Servicers, which helps reduce much of their costs, so there is no excuse for Servicer's working with NACA that they can't do more permanent solutions. What the Servicers lack is will and motivation.

Another problem is the Pooling and Servicing Agreements (PSA)'s that govern the rules between Servicers and investors. There needs to more transparency with the PSA's. Many times a servicer will say the investor does not allow a sustainable modification, but there is no recourse for the homeowner to follow up to see what the true facts are. The Servicer does not communicate with the investor (Pimco, Fortress, etc) to get a clarification of what they can offer a borrower. They rely on the master trustees who are part of the major lenders/servicers (Chase, Wells Fargo, etc.). Attorney guidance for these master trusts is risk adverse, and many times they proceed towards a foreclosure. PSA's often mandate that Servicers initiate a foreclosure sale while simultaneously attempting a modification, therefore creating confusion among homeowners[2]. In addition, many investors are advocating for principal reductions which the Servicers refuse to do. The Servicers do not want to set a precedent on the true value of their mortgage assets. This would require additional capital as well as highlighting the weaknesses of the major financial institutions in this country.

Second mortgages are also a problem. Chase, Wells Fargo, Bank of America and Citigroup own $442 Billion in second mortgages[3]. They are also the biggest Servicers of first mortgages in the country. The U.S. Department of Treasury is working with these institutions to accelerate the rate of modifications, but many of the loans that need to be modified also have these 2nd mortgages. These large banks have no interest in writing down the value of 2nd mortgages because of balance sheet impairment.

What should we do? As a former regulator at the Federal Reserve Bank, I understand the regulatory process and the power of the regulators. The Federal Reserve, OCC, FDIC and OTS must require Servicers to make every effort to provide a solution for the borrower: either a restructure/modification or forbearance. They also need to require principal reduction. With so many mortgages greater than the value of the house, only significant principal reduction can stem the foreclosure crisis and reestablish a viable housing market.

The heads of the two major regulators, John Dugan at the OCC and Ben Bernanke at the Federal Reserve were instrumental in allowing and in facilitating this foreclosure crisis. They continue to refuse to address it from a regulatory approach. While the banks were required to accept TARP funds to address the safety and soundness of the financial industry, they refuse to use that same Safety and Soundness standard to assist the millions of homeowners at risk of foreclosure. John Dugan needs to take the first step and utilize his regulatory power and require Chase and the other institutions the OCC regulates to provide affordable solutions. Chairman Ben Bernanke, who has been silent on this, needs to do the same. In no uncertain terms, federal regulators must push Servicers to permanently modify unaffordable mortgages. If this does not occur we will have massive foreclosures ahead of us. It is unthinkable for the U.S. Treasury to have to bribe, beg and plead with Servicers to modify loans. When and how did our government become so powerless? Why aren't Servicers penalized for violating Treasury terms they agreed to? Dramatic action must be taken by the Obama Administration.

There must also be legislation enacting bankruptcy reform which would put the Servicers on notice. Bankruptcy court judges should be able to change the terms of primary mortgage loans when a modification is appropriate. Finally, the future lending environment needs to be changed which requires enactment of a Federal Consumer Agency to protect homeowners from predatory loans. No new restrictions exist today to prevent lenders from repeating the same disastrous practices.

Thank you for the opportunity to speak before the Financial Services Committee today. I welcome the opportunity to answer any questions.

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[1] Floyd Norris, Why Many Home Loan Modifications Fail, New York Times (Dec. 3, 2009).

[2] Diane E.Thompson, *Why Servicers Foreclose When They Should Modify and Other Puzzles of Servicer Behavior, Servicer Compensation and its Consequences,* National Consumer Law Center (OCT. 2009).

[3] Gretchen Morgenson, Why Treasury Needs a Plan B for Mortgages, New York Times (Dec. 5, 2009).