Written Testimony of Alabama Attorney General Luther Strange
Joint Hearing of the Subcommittee on Financial Institutions and Consumer Credit and the Subcommittee on Oversight and Investigations
"Mortgage Servicing: An Examination of the Role of Federal Regulators in Settlement Negotiations and the Future of Mortgage Servicing Standards"
Thursday, July 7, 2011 10:00 AM

Chairmen Capito and Neugebauer, Ranking Members Maloney and Capuano, and members of the Subcommittees:

My name is Luther Strange, and I am the Attorney General of the State of Alabama. Thank you for inviting me to testify today on the ongoing settlement negotiations with the mortgage servicing companies.

In October of 2010, the Alabama Attorney General's Office joined the 49 other state Attorneys General and state banking and mortgage regulators in more than three dozen states in an investigation into allegations that mortgage companies mishandled documents and violated laws when they foreclosed on homeowners across the United States (the "Foreclosure Multistate Working Group").

Like twenty-six other states, Alabama is a nonjudicial foreclosure state. A mortgage holder must provide publication notice of the foreclosure for three successive weeks in a local newspaper, and the foreclosure must take place on the date provided in the foreclosure notice at the applicable County courthouse steps during a statutorily specified time. Alabama law provides for a one year right of redemption following the date of the foreclosure. To redeem the property, the prior owner must pay the mortgage holder or subsequent owner the purchase price paid at the foreclosure plus statutorily allowable interest.

In March of this year, the Foreclosure Multistate Working Group submitted a term sheet to the nation's largest mortgage servicers, which was presented as a draft agreement on behalf of Attorneys General and other state and federal agencies, and was intended to settle allegations related to improper foreclosure practices and loan servicing. The servicers have responded to the term sheet and negotiations are currently underway between the States, the federal government and the mortgage servicers.

As I review any potential settlement agreement, I am guided by three overarching principles. First, the settlement must hold the mortgage servicers accountable for unlawful and deceptive practices under state law. Second, Attorneys General are not responsible for legislating and setting policy, and the settlement agreement should not attempt to overreach into the area of state and federal policy decisions. Third, the settlement must contain provisions that discourage and deter future illegal activity. This final principle is the most crucial.

Above all else, unethical mortgage servicers, and any other bad actors in the mortgage servicing industry, must be held accountable for any unlawful or deceptive practices they engaged in. Certain aspects of the term sheet, such as those dealing with single point of contact (SPOC), "dual-track" foreclosures, robo-signing, and verification of account information, contain many changes in practice that are beneficial to consumers. Enforcement agencies and the entire industry should have a vigorous debate on these proposals. My staff and I take our duty to protect consumers seriously, and we will work to investigate and prosecute bad actors to the fullest extent of the law. Any fines or penalties assessed on the servicers pursuant to a

settlement agreement should be linked, and in response, to specific, documented violations of state and federal law.

I want to thank Attorney General Miller for his tireless efforts and leadership of the Foreclosure Multistate Working Group. Protecting consumers, like many other goals of the Foreclosure Multistate Working Group, is not only laudable, it is something that I consider my highest duty. But I am concerned that what started out as an effort to correct specific practices harmful to consumers has evolved into an attempt to establish an overarching regulatory scheme that fundamentally restructures the mortgage loan industry in the United States – an effort which is well beyond the scope of responsibility of Attorneys General. I would like to take the remainder of my time to address some specific concerns I have.

First, any ultimate settlement must not preempt state law sovereignty. Alabama, like many other states, has made the policy decision to permit nonjudicial foreclosures. I am skeptical of any agreement that overrides my State's decision by imposing requirements that essentially make all states subject to the judicial foreclosure process without a legislative mandate. The legislative process in Alabama has also yielded certain consumer protection laws that my Office is charged with enforcing, such as the Deceptive Trade Practices Act. The causes of action under those statutes were the result of legislative deliberation, and any new causes of action related to the mortgage foreclosure situation should also be the result of legislation, not a settlement agreement.

Second, mandated principal reduction is bad public policy and creates questions of fundamental fairness and justice. Hard working folks throughout the country are currently underwater on their mortgages, but they work every day to pay their debts. Mandated

principal write-down would create an incentive for these homeowners to default and seek a reduction. Requiring lenders to reduce mortgage balances would remove incentives for banks to lend money and for investors to purchase mortgages, denying people access to the credit they need to purchase a home. Mandatory principal write-down would negatively impact an already devastated housing market, reduce home loans, and potentially put home ownership out of reach for millions of Americans. In 2009, both the House and Senate rejected amendments that would have permitted bankruptcy judges to "cram-down" home loan principal. We should not attempt to legislate this rejected policy through a settlement agreement.

Third, a settlement must not impair an efficient foreclosure process that clears local markets and facilitates economic recovery. I am very skeptical of any settlement that forces servicers to violate contracts with mortgage owners and abrogates the rights of second lien holders. Terms such as these could have serious unintended consequences. Unfortunately, there are many mortgages for which it is clear a modification is not feasible. These homes are often vacant and depress home values, and an efficient foreclosure process is essential to clearing these homes from the market.

Finally, a settlement must not impose onerous regulatory burdens on community banks. Alabama has over 130 community banks that are an important economic driver of the state. Community banks focus attention on the needs of local families, businesses, and farmers. Community banks channel most of their loans to the neighborhoods where their depositors live and work, helping to keep local communities vibrant and growing. I am very concerned about the effects of an ultimate settlement on these community banks. We must not increase their

regulatory burden when it is clear they generally were not engaged in the conduct giving rise to the investigation.

Thank you again for holding this important hearing, and I look forward to answering your questions.