Oakland Fair Lending Coalition
Presentation to Rosie Rios, Obama Treasury Transition Team
December 19, 2008

I. Foreclosures & Bankruptcy

Presented by Paul Leonard, Center for Responsible Lending

Treasury Should Implement the FDIC Modification Plan Using TARP Funds

We strongly support the streamlined loan modification proposed by the FDIC. Under this plan, the government would guarantee loan modifications made following the plan protocols at a 50% level.[1] This plan could be quickly implemented by Treasury on a broad, expedited basis to reduce foreclosures.

This proposal surmounts several obstacles which have stymied loan modifications to date:

- its net present value analysis demonstrates to investors why a successful modification is a better outcome than foreclosure;
- its servicer payments offset countervailing incentives built into the structure of the servicing industry;
- mortgage modifications can be made with second liens remaining in place;
- the initial six-month performance requirement will weed out participants with no chance of succeeding;
- the focus on first-mortgage debt-to-income makes it easy for servicers to administer quickly;
- the requirement of a systematic loan review by participating services removes any chance of adverse selection of loans.

Lift the ban on judicial modifications

Congress must permit bankruptcy judges to restructure mortgages on primary residences. This could prevent foreclosures for hundreds of thousands of people. Currently, a loan on a family's primary residence is the only secured debt that cannot be restructured in a chapter 13 payment plan. This is strange as loans for investment homes can be restructured. [Even loans for vacations can obtain bankruptcy relief.] This essential change in the law would require legislative authorization and therefore is not an action that Treasury could take unilaterally; however, it is a crucial element in stabilizing the home markets.

Restructuring loans under Chapter 13 breaks through the problem of second liens, addresses the entire debt picture of the borrower, and is not held hostage by recalcitrant servicers or investors. Moreover, in addition to helping homeowners whose loans cannot otherwise be modified, the availability of restructuring in bankruptcy would give servicers a much stronger incentive to modify loans voluntarily, particularly because their investors would have an incentive to approve a voluntary modification.

Current proposals to permit such restructuring have built-in protections for lenders: only families who fail a means test and therefore face foreclosure would be eligible; interest rates would be set at

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[1] Details of the plan can be found at http://www.fdic.gov/consumers/loans/loanmod/index.html

commercially reasonable, market-based rates; the loan term would not be able to exceed 40 years; and the principal balance would not be able to be reduced below the fair market value of the property.

II. Assignee Liability

Presented by Maeve Elise Brown, Housing & Economic Rights Advocates

Federal imposition of assignee liability for mortgage loans would help protect individual homeowners, the mortgage market itself and the U.S. economy as a whole by increasing accountability on the part of buyers (and issuers) of mortgages. In the context of home mortgages, 'assignee liability" refers to the notion that each successive buyer or holder of a predatory mortgage loan could be liable for damage arising from the loan's predatory nature. Under existing federal law, there is only limited assignee liability for mortgage transactions through the Homeowner and Equity Protection Act (HOEPA) which was a 1994 revision to the Truth in Lending Act. HOEPA protections are only triggered when the mortgage loan is <u>very</u> high-cost, and shortly after the law's passage, most lenders began issuing loans priced just below the high-cost trigger level. Thus, HOEPA's assignee liability provisions protect very few homeowners. Some states have passed their own assignee liability laws, but these are of limited value as federal regulators have preempted state laws which affect nationally chartered financial institutions.

The lack of assignee liability has encouraged the development of the Wild West mentality in the mortgage market place that has lead to the current foreclosure crisis and collapse of the credit market. Purchasers of mortgages were shielded from liability in their purchase of predatory loans. Consequently, some of the basic due diligence which purchasers of commercial paper usually undertake was neglected by many remote mortgage purchasers. They could fund and, essentially, facilitate fraudulent or abusive transactions without being held accountable. We have reaped the results of this problem in the form of default rates of 30-45% in many securitized pools of mortgage loans. Those losses on the market reflect the loss by millions of homeowners of their dwelling and primary asset. Passage of a law imposing assignee liability would protect consumers (and our economy) from future, similar abuses.

III. Mortgage Brokers and Yield Spread Premiums

Presented by Norma Garcia, Consumers Union

Broker Licensing

Many of the troubled mortgage loans that are delinquent or have resulted in foreclosure were originated through loan brokers. Loan brokers are licensed and regulated by each state and the type and amount of regulation over their activities varies. Establishing a federal licensing standard that establishes minimum standards for all brokers would assure that consumers in every state have a level of protection necessary to prevent broker abuses. Federally imposed standards should not preempt a state's ability to create greater protections but instead should allow a state to build upon the minimum federal standards where necessary. Any federal minimum standards should include a statutory fiduciary obligation on mortgage loan brokers to put a borrower's interest first.

Yield Spread Premiums (YSP)

Minimum federal standards governing mortgage loan brokers should also prohibit the payment of a yield spread premium (YSP) by a lender to a broker. The payment of YSPs by lenders to brokers for putting borrowers into higher cost loans than the borrowers deserve creates perverse incentives for brokers to act in their own best interest rather than a borrower's. Many borrowers mistakenly believe that their broker owes them a fiduciary obligation when in fact that is not the case. Disclosure of the payment of a YSP is not enough to eliminate broker abuses involving this practice.

IV. Establish Task Force to implement changes via rule-making

Presented by John Russo, Oakland City Attorney

In keeping with the President Elect's consensus style of governance, we propose a Task Force of no more than 15 members be created to propose beneficial new rules and administrative orders in order to bring fairness and stability to the home mortgage market. Members of the Task Force should include representatives of the mortgage brokers, mortgage lenders, investment banks, commercial banks, home builders, real estate brokers, consumer advocates, state and local government, community organizations, and any other impacted stakeholders.

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