



Statement of Faith Schwartz
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Before the
House Energy and Commerce Committee
Subcommittee on Communications and Technology
Hearing on
“H.R. 3035, The Mobile Informational Call Act of 2011”
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Chairman Walden, Ranking Member Eshoo, Vice-Chair Terry, and Members of the Subcommittee, thank you for the opportunity to testify today. My name is Faith Schwartz. I am the Executive Director of the HOPE NOW Alliance and a co-founder of HOPE Loan Port.

I have served in a leadership capacity at HOPE NOW since 2007, during which time I worked closely with members and partners of the Alliance, including mortgage servicers, investors, non-profit housing counseling partners, government agencies and regulators to help homeowners avoid foreclosure. Before my time with HOPE NOW, I served in various capacities in the housing finance industry for 28 years.

The comments I make today are my own and reflect my experience in the mortgage business and in particular, in working with servicers and counselors attempting to help at-risk homeowners. These comments do not necessarily represent the views of all HOPE NOW members.

I am here today to speak to you specifically about our ongoing foreclosure prevention efforts and the difficulty of reaching borrowers in financial distress.

The financial services industry, and its non-profit and government partners, remains committed to using all of the tools available to assist families, whether they are home retention solutions, short term alternatives or other alternatives to foreclosure.

Since 2007, the mortgage industry has completed 5 million permanent loan modifications for struggling homeowners.

The industry has provided a total of 14.7 million solutions for homeowners that include loan modifications, short term solutions such as repayment plans and forbearance and options such as short sales and deeds in lieu that provide alternatives to foreclosure.

We have allocated considerable resources and collaborated with non-profits and government entities to educate at-risk homeowners about all of their options.

HOPE NOW has held 117 free face to face events across the country since 2008 that have afforded homeowners the opportunity to meet with their servicer or a non-profit counselor in order to find an alternative to foreclosure. Without question, the outreach events have improved the experience of many customers

trying to resolve their mortgage difficulties through a face to face meeting with their loan servicer or counseling through a non-profit agency.

But our exit surveys continue to show that as many as 30% - 40% of those attending had never had contact with their servicer before the meeting. Other surveys have found that 50% of all borrowers who reach foreclosure have not talked to their servicer, despite multiple attempts by the servicer.

The single greatest obstacle to keeping a delinquent borrower in their home is the inability to contact them and make them aware of the workout options available. The breadth and complexity of options, both government programs and proprietary solutions – a full list of which I have included in my written testimony – makes it imperative that homeowners be in contact with their servicer.

But we know from experience, that often borrowers in financial distress do not open mail, cancel their land-line service or increasingly rely on wireless phones as their primary or exclusive communications device.

As we see these numbers ever-increasing, with cell phones and text messaging becoming the primary means of communication, it has become clear that the current Telephone Consumer Protection Act (TCPA) has not kept pace with consumer's use of communications technology, and has hindered effective communication between homeowners and servicers.

H.R. 3035, The Mobile Informational Call Act of 2011, attempts to modernize the TCPA by eliminating restrictions on informational calls to mobile phones that serve as an impediment to consumers' real-time access to information, like that from a mortgage servicer.

For twenty years, the TCPA has permitted automated informational calls to be delivered to consumers' wire-line phone numbers, but not their wireless numbers. H.R. 3035 would allow automated commercial calls to mobile phone numbers as long as they do not include marketing messages.

Currently, our primary means of contact are land-lines and mailing invitations to foreclosure prevention outreach events. It is difficult if not impossible to efficiently reach the approximately 40% of consumers who rely on wireless phones as their primary device.

Consumers reap significant benefits when financial institutions are able to reach them quickly and efficiently. Using autodialers or prerecorded messaging, as the bill allows, is not only quicker and more cost-effective, it would also free up loss mitigation specialists to spend their time working with individual borrowers, rather than making repetitive manual phone calls.

While this bill is not a panacea - it will not end every foreclosure - it will, without a doubt, increase our contact rates. And the more people we contact, the more solutions we can offer. The equation is rather simple: if you increase the number of borrowers we can reach, you increase the number of workouts, and decrease the number of foreclosures.

In conclusion, Mr. Chairman, the law as currently written unfairly prejudices borrowers who use cellphones – and makes it more difficult for us to communicate with these borrowers regarding our ongoing outreach and foreclosure mitigation efforts. In the area of foreclosure prevention, The Mobile Informational Call Act is a net positive for consumers and those working to keep them in their homes.

ADDITIONAL INFORMATION:

Foreclosure Prevention: 2007 to present

Today there are nearly three million Americans at least 60 days or more delinquent on their mortgage, and millions more who are still feeling the repercussions of a significant slide in housing prices. Studies and experience has shown that one of two homeowners going to foreclosure never contact their loan servicer in order to find out if an alternative to foreclosure is available. Some may desire to move on and others may not realize there are many effective tools that may assist them to avoid foreclosure.

HOPE NOW

Established in 2007, HOPE NOW is a voluntary, private sector, industry-led alliance of mortgage servicers, non-profit HUD-approved housing counselors and other mortgage market participants focused on finding viable alternatives to foreclosure. HOPE NOW's primary focus is a nationwide outreach program that includes 1) over five million letters to non-contact borrowers, 2) regional homeownership preservation outreach events offering struggling homeowners face to face meetings with their mortgage servicer or a counselor, 3) support for the national Homeowner's HOPE™ Hotline, 888-995-HOPE™, 4) Directing homeowners to free resources through our website at www.HOPENOW.com and

5) Directing borrowers to free resources such as HOPE LoanPort™, the new web-based portal for submitting loan modification applications.

In addition, HOPE NOW also collects data on almost 40 million first lien loans, from all participating servicers, on loan workout solutions; and has publically reported these results on a monthly basis since 2007.

Summary of 2011 3rd Quarter data results:

Total Loan Modifications Since 2007 at 4.86 Million

Permanent proprietary loan modifications for August 2011 were approximately 56,000. Since HOPE NOW began reporting data in 2007, the mortgage industry has completed 4.86 million loan modifications for homeowners. This includes more than 4.06 million proprietary modifications and 791,399 completed under the Home Affordable Modification Program (HAMP) through July 2011.

60+ Days Delinquencies Remained Flat

According to the survey data, the inventory of 60 day plus delinquencies is 2.80 million for August 2011, virtually unchanged from the 2.81 million reported in July.

Foreclosure Sales and Starts Increased Since July

Completed foreclosure sales for August 2011 increased 5% from the previous month (68,000 compared to 65,000). Foreclosure starts increased by 18% for the month (218,000 compared to 185,000).

HOPE NOW Outreach

The HOPE NOW outreach events are broad partnerships that include Making Home Affordable, NeighborWorks® America, Federal Reserve Banks, The GSEs, local task forces and hundreds of volunteers who care deeply about their communities. The homeowner outreach events were first initiated by the industry in early 2008 and since then they have been expanded to include these vital partners.

HOPE NOW has hosted over 100 in-person outreach events across the country since 2008. These events have enabled more than 85,000 families to meet with servicers and counselors to work face-to-face on foreclosure prevention solutions. It is important to note the significant personnel and resource dedication that

mortgage servicers, counselors and partners have made to HOPE NOW events and other outreach events. Outreach events are held throughout the year and there are many individuals that work seven days a week to work with distressed homeowners who want to stay in their home.

Foreclosure Prevention Options

Government programs

In 2007, there were few government resources focused directly on foreclosure prevention. Mortgage servicers and others worked individually and then pulled together through HOPE NOW to meet the challenge, progress was made but the growth of the housing crisis outweighed the response. Since 2008, the Government has taken on a broader role to address the crisis.

Government programs have fallen into the following categories:

- Refinance
- Unemployment Assistance
- Modification
- Short sale and deed in lieu
- Mediation (at the state level)

Some of these programs are more successful than others and it is difficult to measure the full impact of the programs.

- a) **FHA HOPE for Homeowners** was an attempt to assist homeowners who might qualify to refinance to an FHA-insured loan with the participation of servicers and investors willing to write-down the existing loan. It also required the homeowner to share possible future appreciation of the property with the government. There were few loans produced through the program in part because of its complexity. Originators and servicers have not been easy to match up with regard to refinancing higher risk loans and expanding short payoffs.
- b) **Home Affordable Refinance Program (HARP) is the refinance portion of the MHA program** offered by the Fannie Mae and Freddie Mac. It is a first lien refinance program targeted to loans at 80% LTV up to 125% LTV. Essentially, it targeted borrowers who were current on their loan, but at-risk to become delinquent. From April 2009 through November 2010, FHFA

reports 539,597 homeowners refinanced into this program. This is creative and an opportunity to continue reaching borrowers who could not otherwise refinance and may become future foreclosure candidates.

- c) **Making Home Affordable: HAFA** – A short sale and deed in lieu program that focuses on a detailed process for the complicated nature of a “short sale” and deed in lieu product. The effort has key timelines, document and process requirements that need to be followed and extends the timeline for loans for up to 120 days. It includes forgiveness of the deficiency when a borrower sells a property short of value and it offers clarity, accountability and clear expectations of what is required for realtors, servicers, and other stakeholders. Junior lien holders often require more dollars than HAFA supports. Recent adjustments to the program offered by Treasury suggest that this program may be used more in the future because of adjustments made to the requirements to prove hardship or stick to 31% DTI thresholds.
- d) **Making Home Affordable: HAMP** – This is the loan modification program which was rolled out to respond to the growing stress in the housing market. The crisis was deepening. By intervening with a loan modification that was subsidized by the government, it was a change from the previous attempts to modify loans, and was an important step toward creating market standards.
- **Standards:** Despite criticism for falling short of projected numbers for permanent modifications, HAMP helped create standards that improved methods and transparency on how to achieve affordable and sustainable loan modifications.
 - **Increasing Homeowner Awareness:** When the United States Government offers a potential solution to the loan modification process, the public listens. The awareness created by the HAMP program helped engage millions of at-risk homeowners in efforts to preserve their home and avoid foreclosure. The existence of the HAMP program helps attract borrowers to seek help. It is still a very valuable way for borrowers to get in the system, even if they do not qualify for a HAMP modification.
 - **First line of defense for homeowners:** The HAMP program structure requires participating servicers to first review the borrower for HAMP eligibility prior to placing them into alternative modifications. Even if they do not ultimately qualify, borrowers are first assessed for eligibility

for HAMP and then must be considered for other loan modifications or other workouts.

- *Safe Harbor*: HAMP created an industry “safe harbor” for modifying loans. Due to conflicting investor contracts, prior to HAMP it was difficult to identify a consistent “industry standard”. HAMP helped create these standards and common practices. The creation of tools to use in an evaluation “waterfall” and use of a Net Present Value test has transcended HAMP and is a model for servicers to use for proprietary modifications. This may transcend HAMP for other modifications as the process and NPV test provide an “industry standard”.
- Structure created: Through Making Home Affordable, government HAMP modifications introduced clear guidance for the HAMP waterfall, including guidance for working with unemployed or underemployed borrowers- one of the most difficult situations. The protocols on structuring an affordable payment for borrowers include:
 - a. Forbearance (3-6 months) for unemployed borrowers;
 - b. 31% housing DTI split by investors and government dollars from 38%;
 - c. Use of lower interest rate to 2%, extended terms to 40 years, and principal deferral and/or principal write-down;
 - d. If ineligible, servicers must review for proprietary solutions (GSE, other), and if ineligible for that option;
 - e. Servicers must consider HAFA (Home Affordable Foreclosure Alternatives short sale and deed in lieu) or proprietary programs;
 - f. In many instances, foreclosure prevention will then state mediation requirement to review all solutions outside of foreclosure; and
 - g. Foreclosure sale as the final option.
- e) ***Treasury: Hardest Hit Funds*** - Treasury has also expanded foreclosure prevention programs by creating a Hardest Hit Fund. The Hardest Hit Fund distributed \$7.5 billion dollars to 18 States and the District of Columbia and directed them to set up their own programs to assist unemployed and other at-risk homeowners in the hardest-hit housing markets. When a borrower is unemployed, it is difficult to qualify for a loan modification due to lack of income. State housing finance agencies develop the waterfall for approving borrowers for various means of assistance, including unemployment

assistance, principle write down, and combined funds that may compliment a HAMP modification.

This deployment of dollars should be helpful to assist some homeowners in particularly distressed States where there are few other solutions. However, the states, Treasury, counselors and state housing finance agencies must continue to work with industry to achieve some uniformity to ensure servicers can implement the many variations of programs in the different states. To help share information and increase the ability to execute on these programs, HOPE NOW has played a role in convening the stakeholders to discuss implementation issues. As a reminder, loan servicers need uniform standards and guidelines wherever possible for efficient execution. Each time a program is introduced, the more aligned it is with similar programs in various states with uniform automation, the more successful that new program will be.

f) Other government involvement, state mediation programs - Mediation is a recent development and there are now approximately 26 states that offer some kind of opt-in or opt-out mediation for homeowners. The physical presence of a third party is valuable for this final attempt to bring parties together to prevent a foreclosure. When appropriate mediation is a viable option, however, there is not enough data on mediation programs to make a clear judgment around the best mediation process. For instance, an author for the *Sun Sentinel* newspaper recently reported that Broward County, Florida examined 326 cases via mediation in December 2010 and 17% resulted in written settlements that avoided foreclosure. It is important we study mediation efforts going forward and wisely use our limited funds and human capital to make these most effective nationwide, and maximize assistance to qualified homeowners.

II. Proprietary Solutions/Modifications

The quality and uniformity of proprietary modifications has improved from earlier years of freezing existing rates or capitalizing arrearage and recasting the loan. According to HOPE NOW's 2010 data estimates:

- 84% of all proprietary modifications, from June 2010 through December 2010, had an initial set rate duration of five years or greater.

- 81% percent of proprietary modifications in 2010 had a lower principal and interest payment.
 - 59% of these modifications, from June 2010 through December 2010, reduced principal and interest payments by 10% or more.
- 80% of all proprietary modifications, on average, are performing after 6 months seasoning and are less than 90 days past due. This data looks back over an 18 month period.

Considering all retention plans, workout plans, and permanent modifications, HOPE NOW servicers, and the housing industry, have assisted nearly 14.7 million families since July 2007. While some forms of support are short term (due to short term hardships) and others longer term and permanent solutions, the tools used across the industry have had a meaningful impact on foreclosure prevention for millions of families.

Impact of proprietary loan modifications: The proprietary modifications have been a work in progress pre-HAMP and post-HAMP roll out. The face of proprietary modifications has changed due to some standards set by HAMP and the changing nature of the problem with unemployment and significant increase in defaults on prime loans.

If a borrower is qualified and there is more flexibility with the modification terms (such as documentation or DTI adjustments) then the borrower may be moved swiftly into a proprietary modification (in lieu of foreclosure).

As a reminder, proprietary modifications follow only after a loan is ineligible for a HAMP modification.

Proprietary modifications make up the majority of the total loan modification solutions being offered, providing sustainable, affordable and permanent solutions for borrowers seeking to avoid foreclosure. Additionally, there are no government funds or incentives used for proprietary modifications.