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PRESS RELEASES

REPRESENTATIVE WATERS ANNOUNCES TWO MAJOR LEGISLATIVE INITIATIVES TO ADDRESS GROWING FORECLOSURE CRISIS

BILLS WOULD GIVE SOME DISTRESSED BORROWERS LEGAL REMEDY AGAINST MORTGAGE SERVICERS, AND PROVIDE RESOURCES TO CITIES AND STATES TO PURCHASE AND RESELL/RENT FORECLOSED PROPERTIES.

Washington, DC, Apr 2, 2008 | Michael Levin ((202) 225-2201) | [0 comments](#)

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Today on Capitol Hill, Representative Maxine Waters (D-CA)—Chairwoman of the Subcommittee on Housing and Community Opportunity of the House Financial Service Committee—introduced two major pieces of legislation in response to the nation's growing foreclosure crisis—H.R. 5679, "The Foreclosure Prevention and Sound Mortgage Servicing Act" and H.R. 5678, "The Neighborhood Rescue and Stabilization Act."

"I have been taking a careful and comprehensive look at this crisis, both in my position as the senior California Member of the Financial Services Committee and as Chair of that Committee's Housing and Community Opportunity Subcommittee," stated Rep. Waters. "While these two bills alone will not be enough to deal with the impact of the crisis on individual homeowners, neighborhoods, and communities, I strongly believe they respond to critical gaps in our current federal policy response."

"First, I am convinced that we can no longer rely only on the voluntary actions of the mortgage industry to keep as many distressed borrowers in their homes and in affordable mortgages as needed to address the greatest foreclosure wave since the Great Depression. From the beginning of this debacle, I have been focused on the actions of mortgage servicers[1][1]—who are the direct point of contact for nearly all borrowers. It is now crystal clear that they just aren't moving quickly enough, or offering borrowers approaching foreclosure sustainable alternatives to losing their homes."

"The fundamental problem is that the mortgage servicers have no legal obligation to make a reasonable effort to keep a borrower in delinquency in his or her home, even where that borrower may have been the victim of a predatory, unaffordable loan. Their only duty is to the investment trust that holds the bundle of mortgages they service, and even though the servicers regularly come before Congress and tell us that their financial incentive is to avoid foreclosure, and stabilize people in their homes, foreclosure rates just keep increasing."[2][2]

CMW leg initiatives to address foreclosure crisis

"Enough is enough. While I look forward to the Committee's consideration of Chairman Frank's ambitious proposal to expand FHA loan guarantees to incentivize industry to write down principal on 1-2 million at-risk mortgages,[3][3] the time has come to add a stick to the carrots being offered to mortgage servicers to do what it takes to stem this crisis now. Simply put, absent a statutory duty of some kind, I am concerned that consumers have little leverage with mortgage servicers in the current crisis, and will continue to lack it in the future. H.R. 5679, the Foreclosure Prevention and Sound Mortgage Servicing Act creates this enforceable legal duty."

Second, even as we work to keep as many borrowers in their homes as possible, it is clear that we must provide help to communities across the country that already face block-after-block of foreclosed and abandoned properties. A consensus has rapidly formed that a sound approach to providing additional economic stimulus to the ailing economy would include making federal resources available for state and local government, in partnership with nonprofits, to purchase these properties and either resell them or operate them as affordable rental properties."

"While I look forward to Congressional consideration of the full range of proposals to assist communities with the growing foreclosed and abandoned property problem,[4][4] I believe H.R. 5678, The Neighborhood Rescue and Stabilization Act (NRSA) is the soundest approach to investing federal resources."

The Chairwoman issued the following detailed statement providing background and details on the two pieces of legislation.

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The Foreclosure Prevention and Sound Mortgage Servicing Act (FPSMSA)—creating a legal duty for mortgage servicers to engage in reasonable loss mitigation activities before foreclosing.

“On November 30, 2007, I convened a Housing and Community Opportunity Subcommittee hearing in Los Angeles entitled “Foreclosure Prevention and Intervention: The Importance of Loss Mitigation[5][5] Strategies in Keeping Families in Their Homes.” Witnesses at the hearing painted a different picture of the mortgage servicers’ initial response to the subprime crisis than industry press releases. Homeowners, homeownership counselors, Legal Aid attorneys, and local government officials all testified to the difficulties they encountered in getting prompt, reasonable action by mortgage servicers. Too often, individual borrowers and even their trained advocates found it difficult even to find an actual person to speak to about loss mitigation—much less one authorized to offer the kind of loan modifications that the borrowers needed to remain in the home for the long-term. Shockingly, Countrywide testified at the hearing that it had contacted 18 million at-risk borrowers, yet managed to execute fewer than 40,000 loan modifications.”

“At that time, however, I was still prepared to withhold final judgment on industry efforts. I wanted to confirm whether the industry—as it repeatedly claimed—was still in the ramping up phase of far more decisive and collective voluntary action by the mortgage servicers, especially through the much publicized and Bush Administration-endorsed HOPE NOW Alliance.”

“Unfortunately, the results have now come in, and they are unimpressive. HOPE NOW reported that it helped 545,000 subprime borrowers during the second half of 2007. Yet 33% more people actually lost their homes during that period than in the first six months of the year. That is not progress. More recently, HOPE NOW touted having completed loan workouts for 638,000 troubled subprime borrowers from July, 2007 through the end of January, 2008. But, as was the case with Countrywide in November 2007, it turns out that the vast majority (72%) of those who received any help were put on repayment plans that simply allowed them to catch up on missed payments and back interest—we have no way to know if these repayment plans are affordable to the borrowers for the long-term.”

“Even the loan modification figures provided by HOPE NOW are troubling. While the Alliance and Treasury Secretary Paulson emphasize the increasing proportion of loan modifications in January (93,000) versus prior months, industry executives were forced to acknowledge to The New York Times

(<http://www.nytimes.com/2008/03/04/business/04paulson.html?scp=1&sq=Hope+Now+and+Alliance+and+93%2C000&st=nyt>) that the majority of the HOPE NOW loan modifications likely just stretched out the original repayment terms. Again, we have no assurance that such modifications are affordable for borrowers over the long term—such as freezing the interest rate of a subprime “ARM” (adjustable rate mortgage) to freeze the interest rate at the initial, affordable “teaser” rate for some significant length of time— or simply delay the inevitable foreclosure. Indeed, today’s New York Times makes even more clear that the HOPE NOW Alliance is failing to produce the results we need.”

H.R. 5679, The Foreclosure Prevention and Sound Mortgage Servicing Act constitutes a balanced approach to ensuring more prompt, comprehensive, and sustainable loss mitigation activities by mortgage servicers – and policymakers’ ability to track those activities– in this and any future mortgage crises.

- **The FPSMSA requires only “reasonable” activities by mortgage servicers, not Herculean efforts or imprudent measures.**

“The FPSMSA simply establishes that a mortgage servicer has a duty to engage in reasonable loss mitigation strategies, or it cannot foreclose on a borrower’s principal residence. It is in no respect a radical bill. It does not prohibit foreclosures outright, as several state legislatures and Presidential candidates have already proposed. Nor does it demand that a servicer to engage in loss mitigation that doesn’t make sound business sense. Rather it obligates mortgage servicers do what they say they are already doing, namely, prioritizing alternatives to foreclosure that keep homeowners in their homes and turning to the foreclosure process only when clearly warranted.”

- **The FPSMSA addresses specific concerns raised by borrowers, housing counselors, consumer attorneys and local public officials in describing their dealings with mortgage servicers during the current crisis.**

“The bill would also rectify some of the troubling situations I learned of at the November 30, 2007 hearing and since, by:

- mandating that all servicers: (1) provide a toll-free or collect-call phone number that provides the borrower with direct access to a person with the information and authority to fully resolve issues related to loss mitigation; and (2) undertake all loss mitigation activities in the United States;
- prohibiting a servicer engaged in loss mitigation from conditioning a loan modification on a borrower’s limitation or waiver of legal rights;
- requiring that servicers affirmatively notify borrowers with Adjustable Rate Mortgages (ARMs) of the date of any impending increase in the interest rate and the projected mortgage payment at the anticipated rate based on a projection;
- directing a servicer, in the case of mortgages where a payment is over 60 days overdue, to forward the borrower’s contact to a HUD-certified housing counselor; and
- ensuring that mortgage servicers provide prompt and comprehensive information in response to inquiries by borrowers and their agents, including housing counselors.”

- o The FPSMSA ensures that mortgage servicers have a financial incentive to pursue alternatives to foreclosure and provides guidance on the kinds of loss mitigation plans that courts and regulators are likely to determine are "reasonable"

"Perhaps most importantly, the FPSMSA ensures that it is cost-effective for servicers to engage in loss mitigation—by authorizing fees for loan modifications and other loss mitigation activities^{[6][6]}— and provides guidance to them about the kinds of loss mitigation offers that courts are likely to deem "reasonable." While no statute can take into account the full range of situations distressed borrowers and servicers will confront, the FPSMSA identifies an essential element of sustainable loss mitigation activities— their long-term affordability to the borrower. It does no good for a mortgage servicer to offer a borrower a repayment plan in which the borrower's income represents only 25% of his debt, or excludes non-mortgage debt from the calculation of such a "debt-to-income" ratio, or demands so much from the borrower in terms of monthly payments that insufficient residual income remains for food, medicine and other necessities of life."

"Right now, the stories recounted to me by borrowers and their advocates suggest that many that many mortgage servicers are not using sound long-term underwriting standards in making loss mitigation decisions; therefore, the FPSMSA identifies an approach to calculating the affordability of mortgage payments that has long worked for our nation's veterans—that of the VA Loan Guaranty program. A loss mitigation activity that meets the Loan Guaranty program's standards will automatically qualify as affordable under the Act, which will in turn inform the decision of any court or regulator in judging the 'reasonableness' of that loss mitigation activity. This should move the industry in the direction of the sustainable solutions for distressed borrowers needed to turn the tide on this crisis."

- o The FPSMSA is essential to addressing this foreclosure crisis and preventing the next one.

"Ultimately, the FPSMSA is about both helping as many borrowers caught up in the current crisis and ensuring that the mortgage servicing industry's loss mitigation commitment and capacity never again shrinks so far below the level of need. From the day this bill is enacted, mortgage servicers and investors in mortgage-backed securities will have to take account in their contracts of the servicer's legal duty to engage in reasonable loss mitigation. As a consequence, never again will this industry be so ill-prepared to address a crisis of the kind we face now."

"I am compelled to conclude by noting that a recent article in the The American Banker (February 13, 2008) quoted an industry source who described an earlier discussion draft of this bill as a "nightmare." Well, the real nightmare is the one experienced by families that live in houses that are rapidly losing value, and have loans scheduled to reset to such high rates that there is no way the resulting monthly payment will be affordable. These families deserve more from the entities servicing their loans than press releases and repayment plans that simply kick the can down the road a few months. If enacted, H.R. 5679, The Foreclosure Prevention and Sound Mortgage Servicing Act will give that to them."

The Neighborhood Rescue and Stabilization Act (NRSA)—giving states and large cities the resources to save devastated neighborhoods by purchasing, rehabilitating, and reselling/re-renting foreclosed and abandoned properties."

"I believe that H.R. 5678, The Neighborhood Rescue and Stabilization Act (NRSA) creates the most prudent and effective strategy for assisting communities during this crisis because this legislation:

- o Targets assistance to the communities that are hardest-hit by the foreclosure wave.

"The foreclosure crisis has not hit all areas of the country equally. California, Las Vegas, and the Rust Belt cities of the Midwest have been especially hard-hit. Additionally, many communities may face significant increases in foreclosure rates, if they have high rates of subprime ARMs and other dangerous loan products per capita and/or have extraordinarily high median home prices.

For these reasons, NRSA would require HUD to devise within 60 days a formula to distribute the \$10 billion authorized by the legislation among states based on based on the share of total foreclosures nationwide that occurred in the State during the most recent six month period for which data is available, adjusted to account for differences in the states in (a) number and percentage of homes in the State financed by a subprime mortgage; (b) number and percentage of homes in the state default or delinquency; and (c) median home price in the State. "

- o Puts resources in the hands of governments with enough jurisdiction and capacity to address the crisis.

"It is critical that federal resources devoted to revitalizing foreclosed and abandoned properties not be dissipated across too many jurisdictions to be invested in a coordinated and effective fashion. Proposals that address this concern by distributing all such resources to the states, however, ignore the substantial capacity and jurisdictional reach of the nation's large cities."

Accordingly, H.R. 5678 strikes a balance between state and local distribution of funds by requiring that states receiving funding under the bill direct a portion of that funding to all cities within their bounds larger than 200,000 (a local government size/capacity cut-off used frequently in the distribution of federal transportation resources) under a funding formula to be established by the Secretary based on the share of total foreclosures in the State that occurred in the individual cities during the most recent six month period for which data is available, adjusted to account for differences between the individual cities and the Statewide average for (a) percentage of homes financed by a subprime mortgage; (b) percentage of homes in default or delinquency; and (c) median home price. "

- o Provides maximum flexibility in the use of resources.

“Addressing the foreclosed and abandoned property aspect of the current economic crisis is filled with uncertainty. Many of these properties are located in communities with rapidly shifting—and sometimes nearly impossible to determine—market values. Moreover, it is not clear exactly how best to allocate funds between purchase and resale vs. re-rental, and across the broad range of costs that will be incurred from purchasing to rehab to ongoing operating costs. Therefore, NRSA takes the most flexible approach, by proposing to (1) distribute the \$10 billion in authorized funding entirely in the form of grants – because likelihood of repayment of even zero interest loans is not clear; and (2) make a range of activities eligible for funding that is broader even than HUD’s existing block grant programs (e.g., HOME, CDBG), including:

1. grants, loans, and other financing mechanisms to CDFIs, national intermediaries, community development corporations and other non-profit housing organizations, and others to purchase and rehabilitate abandoned and foreclosed homes in order to sell, rent, or redevelop them;
2. establish financing mechanisms for such redevelopment, including soft-second, loan loss reserves, and shared equity loans for low and moderate income homebuyers;
3. purchase and rehabilitate homes that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes;
4. establish land banks for homes that have been foreclosed upon;
5. demolish blighted structures;
6. project-based rental assistance;
7. project operating reserves;
8. project operating subsidies including payment for management, taxes, handling, insurance, and other related costs; and
9. all other activities eligible under CDBG.

“H.R. 5678 guards against abuse of grant funding by requiring that no abandoned or foreclosed upon home be purchased for greater than the appraised value of the home based on the most up-to-date appraisal, as such appraisal is defined by the Secretary.”

- o Ensures that the poorest and most-housing cost-burdened will not be left out.

“While there is incomplete and conflicting data at this point regarding exactly where the foreclosure wave has “hit” on the income spectrum in individual communities, I believe that any substantial investment of federal resources in the homeownership and rental housing stock of communities must take account of the housing needs of extremely low income (ELI) families—defined by HUD as those earning below 30% of area median income.”

ELI households face a ‘double whammy’ in the current crisis. First, thanks to the Administration and subprime lender led push to increase homeownership at all costs, more of them are homeowners than ever before, and represent those at greatest risk of foreclosure given their lower capacity to withstand financial disruption such as a rate reset. Second, they face competition for the already inadequate supply of low cost rental housing from slightly higher income households who have been foreclosed upon. Accordingly, it is essential that a portion of the resources dedicated to helping state and local governments stabilize neighborhoods affected by the foreclosure wave be focused on the needs of extremely low income families. Accordingly, NRSA requires that 25% of total assistance authorized—or \$2.5 billion—must be targeted to ELI households.

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[1][1] The vast majority of home mortgage loans do not remain on the books of the bank or other financial entity that originated them. Rather, they are typically bundled together and “securitized”—sold in the secondary market as part of investment trusts in which the investors hold financial interests in particular bundles, or “tranches,” of the underlying mortgages. The trust then contracts with a mortgage servicing entity which takes payment and otherwise interacts with the individual borrowers behind the trust’s underlying mortgages. The mortgage servicer is, therefore, responsible for taking all steps to address payment delinquency including foreclosing on behalf of the investment trust.

[2][2] Realty Trac reports that foreclosure filings in January, 2008 were 8% higher than in December 2007, and 57% higher than a year earlier.

[3][3] A summary of Chairman Frank’s FHA proposal can be found at <http://financialservices.house.gov/FHA.html> subheading I.

[4][4] S. 2636, The Foreclosure Prevention Act, introduced by Senate Majority Leader Reid on February 14, 2008, included \$4 billion in emergency CDBG funding for this purpose. The House Financial Services Committee in its Views and Estimates of the President’s Fiscal Year 2009 Budget Request proposed reserving \$10 billion in the budget resolution for grants and loans to support these activities. The outline of a proposal by Financial Services Committee Chairman Frank for the use of these funds can be viewed at <http://financialservices.house.gov/FHA.html> subheading III.

[5][5] “Loss mitigation” refers to a range of activities that a mortgage servicer may offer a homeowner as an alternative to foreclosure, and includes repayment plans, loan modifications, short sales, and deeds-in-lieu of foreclosure.

[6][6] Some have observed that mortgage servicers often do not receive fees for loss mitigation activities under their pooling and servicing agreements with investors, and by contrast, may generate substantial fees from the foreclosure process http://www.nytimes.com/2007/11/06/business/06mortgage.html?_r=1&scp=2&sq=Katherine+Porter+and+Iowa+and+servicing&st=nyt&oref=slogin.