FORECLOSURE MEDIATION PROGRAMS: CAN BANKRUPTCY COURTS LIMIT HOMEOWNER AND INVESTOR LOSSES?

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TUESDAY, FEBRUARY 1, 2011

United States Senate,
Committee on the Judiciary,
Washington, D.C.

The Committee met, pursuant to notice, at 10:01 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Sheldon Whitehouse, presiding.

Present: Senators Whitehouse, Klobuchar, Franken, Blumenthal, and Grassley.

OPENING STATEMENT OF HON. SHELDON WHITEHOUSE, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator Whitehouse. The hearing will come to order. I am delighted to be joined by the Judiciary Committee's Ranking Member, the Honorable Chuck Grassley, who I am very much looking forward to working with on these issues as we go forward.

I want to welcome all of the witnesses who are here today: Mr. Britt, Judge Drain, Mr. Rao, Dr. Sanders, Dr. Grossman.

What we will do is do some opening statements. Welcome, Senator Blumenthal. I know that it is not official yet that you are on this Committee, but for purposes of this hearing, I intend to treat you and our new Republican member, Senator Lee, should he come, as if they were because I think it is a fait accompli, and we might as well yield to common sense. So welcome, Senator Blumenthal.

Last October, I convened a Subcommittee hearing in Providence to examine a sensible approach to reducing foreclosures that has been adopted by the bankruptcy court for the District of Rhode Island, as well as a number of other districts. Under the foreclosure loss mitigation program, the court, at the request either of the homeowner or the servicer, will order the parties to sit down with each other and see if a settlement would be mutually beneficial. The settlement must be consensual and none is required, but the mere act of sitting the homeowner down with someone who has the authority to modify the mortgage or agree to another common-sense settlement often is enough to avoid a costly and painful foreclosure. It is often the first time that the homeowner has had that opportunity. The Rhode Island program is modest, but I believe that it has the potential to help many thousands of homeowners, and help is definitely needed.

As the foreclosure crisis continues in Rhode Island and across the Nation, the administration's Home Affordable Modification Program, while well intentioned, has not succeeded in producing anywhere near enough modifications to stem the tide of foreclosures. The Congressional Oversight Panel recently estimated that the HAMP is on pace to modify 700,000 to 800,000 mortgages--far short of the 3 to 4 million that was the original goal of the program and nowhere near the 8 to 13 million foreclosures expected through 2012. Even the relatively few homeowners that manage to get HAMP modifications must endure a disorganized and often harrowing process.

Members of Congress hear frequently from our constituents being ignored and abused throughout the modification process: documents repeatedly lost over and over again, inconsistent advice from one person and then another, hours trapped on the phone waiting to find someone to talk to, and common sense frequently turned on its head to reject fair modifications or even short-sale requests in favor of foreclosure. Too often the left hand does not seem to know what the right hand is doing, and the homeowner is caught in the middle.

We have likely all heard from our mayors about the terrible collateral cost to communities from foreclosure. We have seen the big loan servicers drag their feet in the HAMP. And we have learned that these companies were playing fast and loose in the foreclosure process, carrying out foreclosures in the cheapest manner possible, often outsourcing the process to "foreclosure mill" documentprocessing companies. Tragically, these foreclosures are often unnecessary, indeed often not even in the mortgage holder's best interests, but they are driven forward by conflict-ridden bureaucratic machinery that lacks the most basic American failsafe: the chance to talk to a responsible human being who can make an actual decision in your case.

The bankruptcy court loss mitigation programs will not save every home, but they can help countless frustrated homeowners cut through that bureaucratic nightmare and get answers to their modification requests. Because foreclosures can trash the value of a house, loss mitigation programs can save investors money, too. Servicers too often act in their own fee-driven interests and not in the interests of the investors who actually hold the mortgages. A court-supervised negotiation can ensure that servicers do not reject reasonable settlements that would benefit the investors. And that is one reason that the National Association of Mortgage Investors is supporting our efforts here.

Loss mitigation programs have important benefits even for servicers. Bankruptcy courts have the power to clear title questions that have been raised by faulty paperwork with respect to mortgages. Court-approved settlements can protect servicers against future investor litigation.

Pooling and servicing agreements often leave servicers unsure if they should modify mortgages or foreclose. A court can help to alleviate this uncertainty by signing off on the reasonableness of a settlement.

Ultimately, I believe that giving bankruptcy court judges the power to reduce the principal on primary residence mortgages would be the most efficient and least costly way to keep families in their homes, but that is not the topic of today's hearing. This morning we are focusing on far more modest loss mitigation programs, which, without conferring any new substantive powers on bankruptcy courts, have proven effective in avoiding unnecessary foreclosures, mostly because it is the first time the homeowner has actually had a chance to talk with a human being from the bank who has the authority to make a decision in his case and to look at the file.

Thank you very much. I look forward to hearing the witnesses. We will hear from Senator Grassley, and then we will--I do not know if Senator Blumenthal cares to make an opening statement. If he does, we will do that. And then I will swear in the witnesses, and we will proceed with the hearing. Senator Grassley?

OPENING STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator Grassley. Obviously, I thank you for holding this hearing. It is important to study the relationships between bankruptcies and foreclosures and whether there is, in fact, a need for change in the Bankruptcy Code.

The Committee also needs to study how the President and administration is responding to foreclosures, whether that response is working, whether the $75 million that the administration is spending is a proper use of the taxpayers' money; and if so, whether that money is being used in the most effective manner.

This hearing has a chance to have some of the facts come out and to have the issue fully and fairly examined, and I am open to listening to proposals that can make a difference. And I had an opportunity before the holidays to have such a discussion in my office with Senator Whitehouse, and I appreciate very much your coming to discuss your legislation.

The Nation is experiencing some difficult times. Our fellow citizens are hurting, and we must get the economy moving in the right direction. That means helping spur job creation and wisely spending taxpayers' money. But our effort must be fully thought out. As part of our responsibilities to our fellow citizens, we must carefully examine how relief proposals will impact the whole economy and how the money spent will impact future generations.

The issue of mortgage modification is not a simple one.

There are significant and real concerns about the mortgage loan modification program being run by bankruptcy courts. There are questions about how these programs are being administered and their impact on the economy.

For example, concern also includes questions about whether judges will use these programs to mandate cramdown, which obviously, you know, is a reduction in the principal amount of a loan, something that even the Obama administration program does not condone.

I also know that there are questions about whether the discussion on loan modification programs being run by bankruptcy courts is just ignoring the very real problem. If you review the written materials and procedures for programs run by the bankruptcy court in Rhode Island, you see multiple references to the Home Affordable Modification Program. The Treasury Department currently operates a number of foreclosure mitigation programs. The Home Affordable Modification Program is a $75 million program which began 2 years ago. However, the Home Affordable Modification Program has come under severe criticism even from Obama administration officials.

Although homeowners have applied to the program and received trial modifications, the number of modifications that are converted to permanent agreements that enable homeowners to permanently avoid foreclosure is, in fact, low. Particularly disturbing is the fact that Treasury still has not established performance goals or benchmarks for the Home Affordable Modification Program, meaning that there is no effective way for us to know whether the $75 million program has accomplished its intended purpose. That is not accountability. It is not transparency. That is just more taxpayer money going out the window.

In July of last year, as Ranking Member of the Finance Committee, I participated in a hearing examining failures of the Home Affordable Modification Program. A few days after the hearing, I sent a letter to Treasury Secretary Geithner urging him and his Department to establish specific goals and benchmarks. Remarkably, the letter I received back from the Treasury defended the program as a success and confirmed that the Department does not and apparently refuses to set permanent goals for the program.

My concern is shared by the Special Inspector General for TARP. Just 6 days ago, the Special Inspector General issued a report that continues to confirm failures of the Home Affordable Modification Program. That report also continues to call for the Treasury Department to establish specific goals and benchmarks just as I asked the Treasury Secretary to do.

As the Special Inspector General's report reveals, the numbers for the programs are "remarkably discouraging." The number of permanent mortgage modifications under the Home Affordable Modification Program remain anemic. There were just under 522,000 ongoing permanent modifications as of December 31st. A combined total of more than 792,000 trial and permanent modifications have been canceled, with more than 152,000 trial modifications still in limbo.

These permanent modification numbers pale in comparison not only to foreclosure filings but also to the Treasury's initial prediction that the Home Affordable Modification Program would "help up to 3 to 4 million at-risk homeowners avoid foreclosure by reducing monthly payments to sustainable levels."

In particular, the Special Inspector General's report confirms my concerns by describing Treasury's steadfast refusal to adopt meaningful goals and benchmarks as perhaps the most fundamental of the causes of the program's failure to have material impact on preventing foreclosures. And the report also outlines disturbing conduct of the Treasury Department: "Rather than develop meaningful goals and metrics for the program which would allow meaningful oversight, program accountability, and provide guidance for useful change, Treasury instead has regularly changed its criteria for success, citing at different times a total number of trial modifications, offers extended to borrowers, regardless of whether they were accepted, and then the total number of trial modifications, regardless of whether or not they became permanent, which far fewer than half already have done."

I agree with the Special Inspector General's conclusions that, "Given the current pace of foreclosures, achievements of the program look remarkably modest, and hope that this program can ever meet its original expectation is slipping away."

Now, in light of the documented problems with the program and its continued failure to provide real relief, the question comes why are taxpayers paying $75 million that does not work. The next question then, and appropriate here, is: Will another Government program, this time in the bankruptcy courts and this time without any congressional oversight, really work to turn things around?

We also must be mindful that there will be limited congressional oversight of congressional action over judges within the bankruptcy court program. Accordingly, we must always be very careful before we grant judges who are not elected, in the case of bankruptcy judges not subject to Senate review through the confirmation process, new powers without a thoughtful approach to it. I look forward to that thoughtful approach, as was evidenced by the Chairman's discussion with me back before Christmas.

Senator Whitehouse. Thank you very much, Senator

Grassley. And for opening statements in order of arrival, I would begin with Senator Blumenthal.

OPENING STATEMENT OF HON. RICHARD BLUMENTHAL, A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator Blumenthal. Thank you, Senator Whitehouse, and thank you for organizing and holding this hearing on a subject that I know is of huge importance to a lot of homeowners as well as to the industry. Having come from an office where we have seen daily and weekly and year after year the heart-wrenching consequences of homeowners being given the runaround, confronting this problem of red tape and the mortgage servicers and often losing their homes as a result, we know from our experience that mediation and intervention of this kind really works, and the numbers show it.

In Connecticut, we have had a program that actually has saved thousands of homeowners in this situation, a State-run, judicially operated mediation program that has stopped foreclosures, modified loans, to the benefit of the lenders as well as the homeowners. And the numbers in the Rhode Island program within the bankruptcy court I think further add evidence to the importance and potential practical consequences beneficial to all sides of this kind of mediation program.

We are here for the very limited purpose, as Senator

Whitehouse pointed out, of clarifying the law to enable these mediation programs to take place under the auspices and authority of the bankruptcy court. But I think that in their potential for encouraging State-operated programs, they also have great significance.

So I want to thank you for being here. Thank you for your innovative work. I know Judge Drain, for example, has been very important in encouraging innovative solutions to these kinds of needs and challenges, and they are very definite challenges. But I am looking forward to your testimony and learning more about what needs to be done and how these programs can be expanded.

Thank you.

Senator Whitehouse. Thank you.

For an opening statement, Senator Klobuchar.

OPENING STATEMENT OF HON. AMY KLOBUCHAR, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator Klobuchar. Well, Senator Whitehouse, I just want to thank you for your early and clear leadership on this issue. From the very beginning, you have identified the foreclosure issue and have worked in many, many different areas. So I want to thank you for that. I am looking forward to hearing from the witnesses.

Senator Whitehouse. And also of Minnesota, the junior Senator, Senator Franken.

OPENING STATEMENT OF HON. AL FRANKEN, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator Franken. Thank you, Mr. Chairman, for leading on this issue so steadfastly and for so long and for holding this important hearing on foreclosure mediation programs in bankruptcy courts to better protect consumers. You just have been a real leader on bankruptcy issues, and I applaud you for your work in this area.

I want everyone to forgive me. I am bouncing between here and the Energy Committee hearing, so I will be back and forth.

Many problems have come to light since the beginning of the foreclosure crisis. Most recently we have seen mortgage servicers fraudulently signing affidavits to execute foreclosures when they have zero personal knowledge of the individual borrower's situation. This problem, known as "robo-signing," is particularly troubling to me.

Last year, I wrote letters to Ally Financial and JP Morgan Chase calling for a suspension of all foreclosure proceedings until this issue had been resolved. I got a form letter from Ally touting their efforts to complete HAMP and non-HAMP loan modifications, and it is nice to see that they do not treat their homeowners they are servicing any worse than they treat a Senator.

I also joined with Senator Menendez in asking GAO to investigate the role of Federal regulators in overseeing foreclosure proceedings. While some mortgage servicers have taken action on this issue, I worry that it is a day late and a dollar short.

Borrowers are at such an extreme disadvantage in these foreclosure proceedings that I fear robo-signing is only one of many ways that servicers have been able to take advantage of vulnerable families and homeowners. And because most homeowners do not have access to legal advice or even basic counseling, most of these abuses never come to light.

Some of you may have heard me tell the story of Tecora, a Minneapolis homeowner who fell behind on her mortgage when her payments went up. She entered the Home Affordable Modification Program, or HAMP, but was told by her mortgage servicer that her file was closed because she had "declined a final modification of her mortgage." The problem was that she actually had not done that. Tecora is working with the Twin Cities' Habitat for Humanity, a wonderful nonprofit that is helping her fight this mistake and stay in her home. Every homeowner deserves this type of assistance. Unfortunately, not everybody gets it.

Minnesota has taken important first steps to address this matter by requiring mortgage service providers to provide homeowners with pre-foreclosure notices that include foreclosure prevention counseling resources. Every State needs to adopt this and other services to help give homeowners a fighting chance.

I am pleased that Judge Drain could join us today to tell us about the innovative foreclosure mediation program that was developed in the Southern District of New York. In Minnesota, more than 22,000 people filed for bankruptcy this year. This is a record number, and it is more than 87 percent higher than the bankruptcy rate in 2007 before the recession occurred. Although I realize bankruptcy reforms will not help all families going through devastating foreclosures, these types of mediation programs are one important way we can help families in Minnesota and elsewhere to stay in their homes.

Thank you, Mr. Chairman. I look forward to hearing the witnesses' testimony.

Senator Whitehouse. Thank you, Senator Franken.

I will now ask all of the witnesses to please stand and be sworn. Do each of you affirm that the testimony you are about to give before the Committee constitutes the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Britt. I do.

Judge Drain. I do.

Mr. Rao. I do.

Mr. Sanders. I do.

Mr. Grossman. I do.

Senator Whitehouse. Please be seated.

I think I will ask for each--I will introduce each witness and ask them to make their statement. I will remind them that that little red light that comes on means your time is up and you need to wrap so that there is time for questioning by the Senators. And at the end of the testimony of the entire panel, we will then do questions.

Let me begin with Larry Britt, who is a homeowner from Riverside, Rhode Island, who will discuss his struggles over the past 2 years in getting a mortgage modification from his loan servicer. Mr. Britt teaches English as a second language to adults for the Rhode Island Family Literacy Initiative and holds a B.A. from the Harvard Extension School, and I am delighted that he has come down from Rhode Island to share his experience with us today.

Mr. Britt, please proceed.

STATEMENT OF LARRY BRITT, HOMEOWNER, RIVERSIDE, RHODE ISLAND

Mr. Britt. Thank you, Senator Whitehouse and Committee members, for taking part in this important hearing.

My name is Larry Britt, and I have owned my home in Riverside, Rhode Island, since 2003. I bought my home as a permanent residence in which to spend my final working and future retirement years. My home purchase was not an attempt to get in on the crazy real estate boom of the times. I work in metro Providence and, as the Senator said, I am an adult educator teaching workplace readiness, English proficiency, and U.S. citizenship preparation skills.

One month from now, I will be entering my third year of the mortgage modification process.

When I started the process in March of 2009, I had never been late paying any bills to any creditors, and my credit score was near perfect. Since entering into a modification process with Bank of America, the bank has ruined my credit rating and has been the major contributor of uncertainty about my future. As of November 2010, my credit score had dropped 160 points as a consequence of improper credit reporting by Bank of America. During the process I subscribed to a credit report service, and I received weekly e-mail notifications of continuing negative impacts to my credit score. Also during that time, two creditors closed my accounts, and three radically lowered my available credit limits. Equally, I am concerned about rescinded and denied credit that my elderly mother and other family members have suffered as a consequence of their financial relationships with me.

Bank of America told me that I was told my credit score would be adversely impacted but could not provide documentation that proves I was told of this consequence when I started the modification process. I received documentation from the bank that contradicts what I assert after I contacted Senator Whitehouse as well as the Office of the Comptroller of Currency.

Because of legitimate financial hardships that I have documented, I entered into Bank of America's mortgage modification program hoping I could avoid prospective financial problems. In the past 24 months, I have immediately replied to all Bank of America inquires and requests for documentation. If we have the time, I could read through a chronology of my interactions with Bank of America from March 2009 to May 2010. But it sounds like I have a time limit, so, in short, I will say the chronology lays out a repeated cycle of applications, providing documentation, approvals, denials, mixed messages, and multiple departments and customer service representatives that left me unsure about my modification status. I am going to skip the details of that period of time, Senator.

Kind of at the end of that time period, in May 2010, I received a letter from Bank of America stating that I had been denied a mortgage modification because all requested documentation had not been received by the bank.

In May of 2010, I called Bank of America and was told to disregard the letter dated May 7th. The customer service representative stated that, according to Bank of America records, "all documentation was complete and received as of March 29, 2010."

At that time, I became truly frightened at the prospect of losing my home. I had mailings from Bank of America stating that I was about to go into foreclosure and that I was not eligible for mortgage modification. Two Bank of America customer service representatives had told me to ignore the letters, yet I had nothing in writing from them that assured my case was still under review.

That is when I contacted the Senator Whitehouse's office, and gratefully, I got an immediate response from Karen Bradbury, a case worker in the Senator's Providence office.

Karen's efforts resulted in a connection for me with the Department of Treasury's HAMP Solution Center. At first, my HAMP case worker sounded like the answer to my ongoing problems. The HAMP representative told me that he would be an advocate for me with Bank of America. At that time, the HAMP representative told me that he had learned from Bank of America that I was "under review for the Making Home Affordable Second Look" program. Throughout July and August of 2010, I contacted the HAMP Solution Center seven times. Each time, the HAMP Solution representative told me that his updates directly from Bank of America said that my modification was still under review and that I had complied with all requests for documentation as well as honored my agreement to make on-time modified monthly payments.

Honestly, after a few months with HAMP, I felt like they were reading from the same script as the banks. When I checked in with them, there was never any update; there were never any outstanding bank requests for documentation from me. Yet once a month or so over this same period, I received additional requests from the bank for repeat documentation.

I continued to make on-time mortgage modification payments, and the bank continued to report me as delinquent on payments. Consequently, my credit score and available credit continued to go down.

Last September, I started to work on filing forms with all three credit reporting agencies in an attempt to get BofA modified payments reclassified as modified payments rather than delinquencies. The credit reporting forms strongly encouraged trying to get the creditor in question to correct the problem. So I called Bank of America on October 4th of last year. I asked the Bank of America representative to review my account and confirm that I had made my modified payments that I had agreed to.

The customer service representative told me that my mortgage was in default as of May 7, 2010, and that I had been sent a letter saying I was not eligible for the Making Home Affordable Modification program because I did not provide Bank of America with requested documents. The representative also said that I had been sent a letter requesting the documentation. I never received this letter, and I explained the following to the representative.

This next testimony is just a rehash of what I have already said.

Senator Whitehouse. Why don't you go ahead and summarize then. The time has expired.

Mr. Britt. Okay. Finally, I talked to that representative's supervisor. She would not give me her name. She told me she had no time for me and hung up on me.

So, to wrap up, I would say that since my first modification agency with the bank in October of 2009, I have been paying my modified monthly payment on time. However, since the bank considered my payments to be incomplete, the most recent modification agreement states that my modified principal balance has been increased by over $11,000. As the bank told me in a prior mailing, the modification agreement states that this amount includes unpaid and deferred interest, fees, escrow advances, and other costs. The agreement also states that interest will now accrue on the unpaid interest that is added to the outstanding principal balance, which would not happen without this agreement.

Had the bank honored its terms of the October 2009 modification agreement with me and permanently modified my loan after I had made the agreed-upon trial modification payments, my principal loan balance would include 3 months of deferred interest and fees rather than the 16-month total of $11,000.

As with past modification agreements, I have once again provided all of the same paperwork and once again made three on-time trial modification payments. Unlike past modification agreements with Bank of America, I now have a customer advocate from the bank's Office of the CEO and President. She has a first name and a last name, and I can talk to her when needed. But, sadly, I believe it took the advocacy of my Senator to receive the level of customer service that all consumers deserve.

So I should be happy and I am truly grateful to the Senator's office and Rhode Island housing for what I hope is a final resolution. However, given the past 24 months of misinformation, can I be sure that Bank of America's "approval" is for real? Does another Bank of America division have me slated for foreclosure? I just cannot be sure, and the 24-month process has forced me into deeper financial trouble and emotional distress.

I know this story is hard to follow. It has taken me untold hours to keep track of and compile the scores of interactions I have had with the bank and HAMP Solutions Center.

If needed, I can document all of my activities, phone calls, documents sent, and the names of customer service representatives.

I want to thank you again for your time and consideration, and I would be happy to answer any questions or elaborate on any points that I have made.

[The prepared statement of Mr. Britt follows:]

Senator Whitehouse. Thank you very much, Mr. Britt. Your story provides an important backdrop against which the testimony of our next witness I think it is important to be seen.

Judge Robert Drain has been a bankruptcy judge in the Southern District of New York since 2002. Prior to his appointment to the bench, Judge Drain practiced bankruptcy law at the renowned New York law firm of Paul, Weiss, Rifkind, Wharton & Garrison. He is a fellow of the American College of Bankruptcy and a member of the American Bankruptcy Institute, the International Insolvency Institute, and the National Conference of Bankruptcy Judges. Judge Drain holds a B.A. from Yale University and a J.D. from Columbia University, and we are delighted that he has taken the trouble to join us today and share his experience.

Judge Drain?

STATEMENT OF THE HONORABLE ROBERT DRAIN, UNITED STATES BANKRUPTCY JUDGE, SOUTHERN DISTRICT OF NEW YORK

Judge Drain. Thank you, Senator Whitehouse, Senator Grassley, Senator Blumenthal. Thank you for inviting me to testify on the loss mitigation program implemented on January 1, 2009, by the United States Bankruptcy Court for the Southern District of New York.

Senator Whitehouse briefly summarized my biography. I should note that since I started practicing bankruptcy law in 1984, I dealt exclusively with large corporate bankruptcies and reorganizations, the types of cases for which the Bankruptcy Court for the Southern District of New York is well known.

However, like our colleagues around the country, we also preside over thousands of consumer bankruptcy cases, where the fate of the home is of central importance.

When confronted in late 2008 with the mortgage foreclosure crisis, my colleagues and I saw a set of problems that cried out for a formal mediation structure. And I would like to believe that our led us to see the issues as much from the lenders' perspective as from the homeowners'. In fact, it was creditors' lawyers--I want to emphasize that, creditors' lawyers, representing mortgage lenders and servicers--who first asked the court to consider such a mediation program.

The problem was, and is, I think, basic. Increased defaults and the drop in home prices rendered the autopilot servicing model applied to the vast majority of home mortgage loans inadequate. A model premised on collecting payments in the ordinary course for all but a tiny percentage of mortgages and foreclosing on the few defaulted ones in the context of a rising market all too often simply did not work anymore. In the present market, to maximize their recovery, lenders actually would have to decide between adding to their stock of foreclosed homes or, alternatively, engaging in a workout with their borrower; either course could be preferable in the right circumstances.

However, this process simply was not happening with loan after loan after loan. Instead, loan servicers were leaving enormous amounts of money on the table simply because they continued to press the foreclosure button rather than respond to their borrowers' calls to renegotiate defaulted loans. The lenders' lawyers saw this, as did we. Moreover, whether because of fears about breaching the automatic stay under the Bankruptcy Code, constraints in their governing documents, or perceptions about the risk of liability to their beneficiaries if they negotiated with their borrowers, servicers wanted a court order setting a framework for such negotiations. Finally, and importantly, the lenders wanted structure imposed on the negotiations to make sure that the homeowners would not simply waste the lenders' time.

Of course, these lender goals almost completely overlapped with the borrowers'. Nothing, I believe, has been more frustrating to homeowners than loan servicers' refusal or inability to address their defaulted loans directly, banker to borrower, on a businesslike basis. Mr. Britt has just testified to this at today's hearing. From my experience, such testimony does not describe merely isolated instances of lender deafness but a widespread and pervasive problem.

To develop the mediation guidelines that eventually became the loss mitigation program in our district, we opened the discussion from the creditors' lawyers to consumer lawyers, and then to a wider group of creditor and consumer lawyers and finally put the proposal out for public comment. We reached out to the creditor and consumer bar again after the program had been operating for about a year and a half and have modified it somewhat in the light of their comments. However, remarkable consensus continues in its support. We did not, frankly, have anyone object to it.

The loss mitigation program is embodied in two general orders of the court, as well as model forms of commonly used documents that can be found on our website.

In summary, it applies in all cases under the Bankruptcy Code to loans secured by an individual debtor's primary residence. It may be invoked, on notice and with an opportunity to object, by either the homeowner or the lender. If there is no objection, the court enters an order establishing deadlines for the exchange of contact information for representatives with authority to negotiate; requests for and exchange of relevant information, such as the debtor's financial information and appraisals of the house; and the filing of affidavits disclosing the information that has been submitted, which, after about a year and a half, we found to be necessary to obviate disputes over whether information was, in fact, provided to the lender since a frequent homeowner complaint is that the lenders often ask for the same information after it has already been sent. The guidelines also provide for a conference between the parties; a conference, if necessary, with the court; as well as an outside date to conclude the mediation. While the parties are negotiating, all litigation between them is put on hold, although either party can request that negotiations be terminated and litigation resume.

Lender objections to the invocation of loss mitigation--and requests to terminate I t--are granted if, taking into account the homeowner's financial circumstances and the value of the house, it is not reasonable to expect that the parties, negotiating in their own self-interest, will reach an agreement. As best we can tell--and we are trying to improve our statistics--there have been over 2,000 requests for loss mitigation, only 90 of which drew an objection by the lender. We have entered 75 orders granting such objections. Of the remaining 15, based on my experience, most of the creditors actually, once they met with the lender--I am sorry, with the debtor, agreed to have the mitigation continue in their own interests. With the experience under the program, it became clear that it would not be invocated simply as a delaying tactic but actually to get something done. And objections to loss mitigation have almost ceased.

The program facilitates consideration of a homeowner's eligibility for the Government-sponsored HAMP program, but it is not limited to HAMP modifications. Indeed, although the program most often results in some form of loan modification, it is expressly not limited to loan modification. The parties may consider, for example, negotiating a "graceful exit" in which the homeowner has a specified time to leave the house--perhaps coinciding with the end of the school year--parameters for a short sale, or a deed in lieu of foreclosure.

The loss mitigation program has two primary benefits. It ensures, first, that there is a responsible lender representative with whom to discuss the loan. I cannot emphasize this enough: Without the structure imposed by the program, most of the time this simply would not happen. Second, the program's structure, under the ultimate supervision of the court, ensures that the parties deal with each other in good faith.

Most of the program's corollary benefits relate to its bankruptcy context. In a bankruptcy case, the lender can see how the homeowner is resolving his or her entire financial predicament, often freeing up income to pay the mortgage. For example, the Bankruptcy Code lets a debtor resolve wholly underwater junior mortgages and judgment liens that have been placed on the home and otherwise clear title; and the bankruptcy case provides a forum for dealing with tax liens and claims. Moreover, lenders with document problems, which today is not a negligible concern--can be settled on notice to interested parties and with the approval of the bankruptcy court.

The court's supervision is critical but limited. Our role is to ensure that the parties deal with each other in good faith. We may not impose an outcome on the parties, either directly or by, for example, refusing to relieve them of the loss mitigation procedures until they reach an agreement. We are there to enforce the deadlines imposed by the order and to resolve complaints that a party is acting arbitrarily, capriciously, or otherwise to the detriment of good-faith negotiations.

For example, we might ask a lender representative if the lender has considered whether the debtor is offering to pay more, on a present value basis, than the value of the house in foreclosure, but it would be inappropriate to insist that the lender reconsider a valuation that was done in good faith. At times we may make a suggestion about how to cross an impasse, but only on a basis to which the parties are prepared to agree.

About one-half of the loss mitigations that have concluded have resulted in some form of an agreement--usually a loan modification reducing the interest rate and stretching out payments.

We often hear that the loss mitigation mediations that did not result in an agreement also had a good effect: The homeowners saw, after actually engaging with their lender, the dollars and cents reasons why they could not keep their house. At a time when many homeowners cannot even get their letters and phone calls returned--often by banks that homeowners are acutely aware have themselves been rescued by the Federal Government--this is no small achievement.

Obviously, before we implemented the loss mitigation program, we assured ourselves of our legal authority to do so. The program is consistent with Congress and the Federal courts' general encouragement of mediation, as well as specifically with section 105(d) of the Bankruptcy Code, Bankruptcy Rules 7016 and 9014, and the courts' inherent power to manage their own docket. The legal basis for our loss mitigation program has never been challenged, although I am aware of such a challenge to a similar program in the Bankruptcy Court for the District of Rhode Island that has recently been denied by that court.

One reason for legislation in this area would be to make the courts' authority absolutely clear. There is another reason as well, however. By passing legislation expressly recognizing the benefits of home mortgage mediation programs, Congress would endorse a solution to one of the most vexing problems of the financial crisis by encouraging bankers to return to being bankers.

Since I am not testifying today on behalf of any group, I can tell you that my personal view of legislation is that less is best. Even if you share that view, however, and perhaps especially if you share it, facilitating homeowners and lenders to negotiate the resolution of their loans is a good idea.

Thank you again for inviting me to testify on this important topic, and I am happy to try to answer any questions that you have about it.

[The prepared statement of Judge Drain follows:]

Senator Whitehouse. Thank you, Your Honor. I am very grateful to you for coming here and sharing your experience.

Our next witness is John Rao. He is an attorney with the National Consumer Law Center, focusing on consumer credit and bankruptcy issues. He has served as a panelist and instructor at numerous bankruptcy and consumer law trainings and conferences. He has served as an expert witness in court cases and has testified in Congress on consumer matters. He is a contributing author and editor of NCLC's Consumer Bankruptcy Law and Practice, co-author of NCLC's Bankruptcy Basics; Foreclosures; and Guide to Surviving Debt; and contributing author to NCLC's Student Loan Law; Stop Predatory Lending; and NCLC Reports: Bankruptcy and Foreclosures Edition. He is also a contributing author to Collier on Bankruptcy and the Collier Bankruptcy Practice Guide. Mr. Rao serves as a member of the Federal Judicial Conference Advisory Committee on Bankruptcy Rules, appointed by Chief Justice John Roberts in 2006. He is a conferee of the National Bankruptcy Conference, a Fellow of the American College of Bankruptcy, Vice President for the National Association of Consumer Bankruptcy Attorneys, and former board member for the American Bankruptcy Institute. He is an adjunct faculty member at Boston College School of Law. Before coming to NCLC, Mr. Rao served as a managing attorney of Rhode Island

Legal Services and headed the programs Consumer Unit. His practice included a broad range of cases dealing with consumer, bankruptcy, and utility issues, requiring representation of low-income clients before Federal, State and bankruptcy courts, and before administrative agencies. And I can assure everyone listening that both from being with him and against him on some of those cases, he was an excellent advocate. Mr. Rao is a graduate of Boston University and received his J.D. in 1982 from the University of California-Hastings.

Mr. Rao, thank you.

STATEMENT OF JOHN RAO, ATTORNEY, NATIONAL CONSUMER LAW CENTER, BOSTON, MASSACHUSETTS

Mr. Rao. Senator Whitehouse, Senator Grassley, Senator Blumenthal, thank you for holding this hearing--

Senator Whitehouse. May I just note you have done this before and you know the rules, and I know you have got a lot of testimony that is in the record, and I hope you will confine yourself, as best you can, to the times that are scheduled. As a former practicing attorney, I am still sufficiently intimidated of judges that I did not gavel Judge Drain. But I would urge the other witnesses to try to make it within the time frame if they can.

Mr. Rao. Thank you, Senator. I testify today on behalf of the low-income clients of the National Consumer Law Center, as well as on behalf of the National Association of Consumer Bankruptcy Attorneys.

The Treasury Department's HAMP program will not reach its goal of 3 to 4 million permanent loan modifications because it has relied upon the voluntary efforts of servicers, and no effective method of enforcement was incorporated into the program's design. Treasury has used various incentives to encourage servicer participation, but these carrots have not resulted in servicer compliance.

In response to the very basic problem of homeowners who cannot get servicers to promptly consider their requests for loan modifications in a timely manner or, for that matter, to even get a simple yes or no answer, numerous foreclosure mediation programs have been adopted nationwide by State and local courts.

At their core, these programs are a procedural device to bring homeowners and mortgage servicers together to consider alternatives to foreclosure. They do not compel a particular outcome, as Judge Drain mentioned. They do not force a servicer or investor to modify their contracts or to cram down a loan. All they compel is that the parties designate someone with settlement authority to participate and that the parties negotiate in good faith. In that respect, these programs are consistent with the many court-annexed alternative dispute resolution and mediation programs that have become commonplace in both Federal and State courts.

I would like to outline the reasons why bankruptcy courts, too, can play an important role in avoiding unnecessary foreclosures. As was mentioned, homeowners routinely encounter numerous bureaucratic barriers. Mr. Britt mentioned he was required to submit the same documentation over and over again. The New York and Rhode Island loss mitigation programs attempt to break this logjam by requiring the homeowner and servicer to designate contact persons for the exchange of information. Importantly, the loss mitigation programs provide for the entry of an order which specifies time deadlines for those requests for information to be exchanged.

Also, too often homeowners wait under the HAMP program for over a year for a decision to get a modification request. These delays occur despite the fact that HAMP guidelines require a decision within 30 days after an application has been submitted.

Contrary to Mr. Grossman's statement in his testimony, the reality is that HOPE NOW does not help homeowners get through to a decisionmaker. The advantage of mediation programs is that they require each of the parties to designate a person having authority to resolve the matter.

A major failing of HAMP is also that homeowners are often never told the reason why their modification request has been denied, even though Treasury requires them to provide those reasons. Under the Rhode Island and New York loss mitigation programs, the servicer who wishes to terminate the program must state those reasons clearly in a request to the court, and the information about denials can be obtained.

HAMP-participating servicers are under contractual obligations to consider homeowners for loan modifications before they foreclose. If a homeowner is found eligible, they are supposed to stop the foreclosure. However, the

HAMP guidelines do not provide the same protection for homeowners while their application is under consideration. In a bankruptcy loss mitigation program, that protection to avoid the foreclosure from proceeding while the application is considered would be available because of the automatic stay.

More troubling than servicers not making decisions is that they are often providing proprietary workout agreements on less favorable terms. Recently, the Congressional Oversight Panel reported that almost 70 percent of loan modifications have not been under HAMP and that these proprietary modifications have a much higher re-default rate.

In a loss mitigation program in a bankruptcy court, all the parties can look and see what was done and make sure that the homeowners was properly evaluated for HAMP.

The loss mitigation programs in bankruptcy also deal with the Second Mortgage Program. Many homeowners have other second mortgages which prevent the first mortgage holders from modifying the loans. The laws of bankruptcy allow for that to be dealt with.

Finally, a modification in a bankruptcy proceeding also permits the court and the homeowner to address all of the debt--the consumer's entire debt load, all of the other debts they are dealing with--car loans and credit card debts--and that, too, has a way of increasing the possibility of avoiding re-default on these modifications.

Thank you again for holding this hearing, and I am happy to answer any questions that you may have.

[The prepared statement of Mr. Rao follows:]

Senator Whitehouse. Thank you very much, Mr. Rao. I appreciate you being here.

Our next witness is Dr. Anthony B. Sanders. He is a distinguished professor of finance in the School of Management at George Mason University. His research in teaching focuses on housing, financial institutions, and real estate finance and investments. Professor Sanders earned his Ph.D. and M.A. from the University of Georgia, and we welcome him here today.

STATEMENT OF ANTHONY B. SANDERS, PROFESSOR AND SENIOR SCHOLAR, THE MERCATUS CENTER, GEORGE MASON UNIVERSITY, FAIRFAX, VIRGINIA

Mr. Sanders. Mr. Chairman and members of the Committee, my name is Anthony Sanders, and my research focuses on real estate finance, securitization, and housing economics. Thank you for the invitation to testify before you today.

When President Obama was elected in November 2008, the Case and Shiller Composite-10 housing index was 165.95, down from its peak in June of 2006 of 226.29. The unemployment rate in November of that same year was 6.5 percent, up from 4.8 percent at the peak of the housing bubble in June 2006. According to the most recent releases, the Case-Shiller index has declined further to 157.28 while unemployment has risen now to 9.1 percent.

While housing and unemployment numbers are disturbing at a national level, they are far worse in many States. House prices haven fallen substantially in the "sand States" of Florida, Arizona, Nevada, and California--each over 40 percent from peak to recent. Other States such as Rhode Island, Maryland, and Michigan have experienced a decline of over 20 percent in housing prices. And in terms of unemployment, Nevada, California, and Florida have unemployment rates far higher than the national average of

9.1 percent.

Thus, until unemployment starts to shrink dramatically and housing prices began a serious recovery, successful loan modifications will be very difficult to achieve. The forecast for unemployment is not positive, so difficulties in loan modifications are likely to continue.

A number of alternative proposals to HAMP and voluntary, privately initiated current servicer programs for loan modifications have been proposed. They range from the dramatic principal reductions--the Hubbard-Mayer proposal--to loan modifications for the unemployed.

Whatever proposal Congress pursues, it will be a steep hill to climb. Lenders filed 3.8 million foreclosures in 2010, and even more are expected to be filed in 2011. It is projected that the foreclosure wave will subside in 2012, but not before several million foreclosures have been filed. And we can only hope that housing prices have started to rise again in 2012 and unemployment begins to decrease.

The Hubbard-Mayer proposal highlights the difficulty of a Government solution to the problem. Essentially, Hubbard and Mayer advocate having Freddie and Fannie reduce borrower loan principal through refinancing on mortgages they insure or hold. The borrower's principal would be reduced to local house price levels, thus negating the negative equity problem and partial income curtailment problems.

While it is true that their plan would lower mortgage payments and may reduce future foreclosures, the costs are staggering. Hence, the difficulty with trying to implement a Government solution trying to fix the negative equity problem.

One of the objectives of the Government loan modification program is home preservation. Home preservation is achieved when loan modifications are used to keep borrowers in their home. The desire to keep borrowers in their home must make economic sense to both the investor and the servicer.

What do I suggest? Well, first, having a mandatory mediation assumes that a borrower would be better off in their home as an owner rather than as a renter. Given the prevalence of negative equity and the large supply of vacant and rental property--a story today said 11 percent nationwide--it is likely that many borrowers would actually be better off renting.

Second, a mandatory mediation adds additional costs and delays to the process, a process that is already severely strained. The average time to liquidation of a house averages 17 months already--costing the investor/lender lost interest and asset value declines. If bankruptcy becomes more appealing to borrowers because of the mandatory mediation, we would expect rather onerous delays in moving borrowers to foreclosure. Furthermore, the mandatory modification may result in borrowers bypassing HAMP.

Third, Fannie and Freddie, the mortgage giants, have expansive databases and models regarding the likelihood of a borrower surviving with a loan modification. If Fannie and Freddie are having trouble with serious delinquencies and foreclosures, what are the odds that a bankruptcy court can intervene with a sensible loan modification solution that Fannie and Freddie could not direct its servicers to accomplish?

Fourth, any requirement of mediation between a borrower and a servicer must be made explicit when the mortgage loan is originated and the securities are created. As of now, there is no understanding by borrowers or investors that mandatory mediation in bankruptcy is required or that it is even possible. This represents another surprise to investors and other market participants which are in all cases viewed negatively. Creating more surprises may further decrease the interest in mortgage market investment, resulting in less available mortgage credit and funds.

Finally, while mediation may result in more loan modifications being made, we know that the failure rate on loan modifications is about 50 percent and could be higher if house prices continue to be soft and unemployment does not improve. Stated differently, if the standards for getting a loan modification are lowered, the more likely it is that the failure rate for modifications would increase.

In summary, the housing market needs to recover, and persistent attempts at delaying foreclosure--whether through mediation or moratorium--only adds additional uncertainty to the housing market and slows any recovery.

Thank you for your willingness to let me share my thoughts with you.

[The prepared statement of Mr. Sanders follows:]

Senator Whitehouse. Thank you, Professor Sanders.

Our last witness is Andrew Grossman, who is a visiting legal fellow in the Center for Legal and Judicial Studies at the Heritage Foundation. His research focuses on law and finance, bankruptcy, and the constitutional separation of powers. Mr. Grossman is also a litigator at the law firm of Baker & Hostetler in Washington, D.C. He received his J.D. from the George Mason University School of Law, a master's degree in government from the University of Pennsylvania, and a B.A. from Dartmouth College.

Welcome, Mr. Grossman.

STATEMENT OF ANDREW M. GROSSMAN, VISITING LEGAL FELLOW, THE HERITAGE FOUNDATION, WASHINGTON, D.C.

Mr. Grossman. Mr. Chairman and members of the Committee, the Committee is to be commended for holding this hearing today to consider the promises and pitfalls of bankruptcy courts' loss mitigation programs. These programs are a recent innovation, and while there is some anecdotal evidence on their operations, there has yet to be the kind of formal study or statistical evidence that could drive sound policymaking with respect to them.

As to whether these loss mitigation programs are, in the broadest possible sense, successful, I can offer no firm opinion today because I do not believe that anyone at this time could say with any degree of certainty that these programs are having a positive impact on our housing market or on homeowners in distress overall.

There are, however, good reasons to doubt that loss mitigation programs stand to make a positive net contribution. I will discuss three.

First, it seems unlikely that, absent some form of coercion, these programs will provide a significant marginal benefit over the myriad of programs that already exist to aid responsible homeowners who find themselves in financial distress. Bankruptcy should be an option of absolute last resort, not a front-line tool to achieve broad policy results. It is unlikely to succeed in achieving such results when pre-bankruptcy interventions have proven unsuccessful. That is probably the case here.

As you know, home mortgage modification programs to date have had mixed records of success. HAMP, for example, will never achieve the 3 to 4 million permanent modifications that its backers promised, and indeed it has a record of failed modifications that should be troubling to any observe and give pause.

The mortgage industry's proprietary modification efforts, which they have organized under the acronym HOPE NOW, have a better record, with over 1.5 million modifications completed in 2010. These efforts are not a panacea by any means. Foreclosure rates remain high and foreclosure starts are growing in many areas of the country. The primary reason for this is a stubborn reality, one that has taken policymakers and Government actors some time to grasp. Many individuals have little equity in and are unable to afford the payments for the homes in which they are currently living. Because prices collapsed, refinancing is not available in many of these cases. Solving this problem takes money--lots of it--not legal tweaks.

This explains in large part the failure of HAMP. To alter the incentives of servicers and convince mortgage investors to write down in part bad loans, HAMP offers subsidies to servicers and lenders to undertake the modification process and reduce monthly payments. Nonetheless, tens of billions of dollars remain on the table.

The avowed premise underlying bankruptcy courts' loss mitigation programs is that there are informational barriers between borrowers and servicers and lenders that hamper mutually beneficial loan modifications. This ignores the enormous progress that it has made in getting reliable information to at-risk homeowners and the many avenues of contact that now exist. Not all homeowners may take advantage of these resources, but they do indicate that the time when information on modification was hard to come by and modification decisions were made slowly through opaque processes has long passed.

Loss mitigation also assumes that in a large number of cases it is possible to reach a mutually beneficial negotiated settlement, especially a mortgage modification. The debtor and the lender are merely made to confer. This is a questionable premise. As experience with HAMP has shown, the low-hanging fruit is gone. Most modifications that are obviously win-win have been done, or could be done, without any intervention by a bankruptcy court. They are off the table. Modifications that fall slightly outside the band of mutual benefit either have been evaluated for HAMP eligibility, or could be at any time, again without action by the bankruptcy court. And modifications that fall outside of that band--that is, where even the HAMP subsidies are insufficient to enable the parties to make a deal--are likely to be unworkable. Payment that is acceptable to the lender is likely to be more than the borrower can afford to pay. So there is no good reason to believe that, absent coercion, loss mitigation during the bankruptcy process will cause deals to emerge that were previously impossible or unavailable. To believe otherwise would be to expect a free lunch: w

Without putting any additional money on the table, bankruptcy courts can somehow bridge the gap between a borrower's ability to pay and what the lender is willing to accept.

There are, however, situations in which that might superficially be the case, and that is my second point. There is a real risk that these programs, as legally structured, could function in a manner that is coercive, that places undue burdens upon mortgage investors, and that upsets legitimate investment-backed expectations.

The loss mitigation programs differ in their terms. They share several features intended to push the parties toward settlement. First, a party objecting to the loss mitigation process or seeking to terminate it must usually provide the court with specific reasons why loss mitigation would not be successful. Second, the creditor must be represented by an individual with full decisionmaking authority to enter into a loan modification or take other action. This is in itself a burden. Third, the parties must negotiate in good faith and are subject to sanctions for failure to do so and to follow this amorphous requirement. Fourth, when the period allotted for negotiation has run its course without any agreement, any party--usually the debtor--may seek an extension to continue negotiations, and a party--usually the creditor--opposing the extension must, again, show cause as to why an extension would be inappropriate. Taken together, these features effectively place the burden on the lender to demonstrate why the debtor is not eligible for relief. This represents a reversal of the normal bankruptcy practice. Instead, the creditor must make a separate and additional showing to enforce what is on paper itself a legally enforceable right. This tilts what had been a level playing field in bankruptcy practice.

It is troubling in this context that several bankruptcy courts have candidly discussed their loss mitigation programs in the absence of their--in the context of the absence of their authority to order changes to the terms of loan agreements securing debtors' primary residences. The implication is that although bankruptcy judges are without power to cram down a mortgage securing a debtor's principal residence, they may through requiring the direct participation of high-ranking officials heavy-handedly enforcing the good-faith requirement and placing the burden on servicers and lenders to show cause why a modification could not be reached, effectively achieve the same result. In these ways, loss mitigation programs can coerce creditors--repeat players who recognize the necessity of remaining on good terms with bankruptcy courts--to make concessions that compromise their rights.

Third, and finally, there is a real risk that loss mitigation programs will in some instances cause harm to those they are meant to aid. As with HAMP, homeowners may enter into modifications that ultimately prove unworkable and result in additional financial distress without preserving their home. This is, if anything, a greater risk in loss mitigation programs because of their ad hoc approach to making modifications without any of the safeguards and strict eligibility criteria that are embedded into HAMP and proprietary programs or the generous subsidies in HAMP that may serve to reduce payments.

Unfortunately, the bankruptcy courts lack the facilities to undertake the kind of data collection that would be necessary to chart the subsequent performance of mortgages modified in this manner. Not only do we not know whether these modifications are injuring a substantial proportion of those whom they are intended to benefit--which has been the case with HAMP--but we will have no way of knowing that even in the future.

The fact that loss mitigation may drive some homeowners to file for bankruptcy who would otherwise have not done so is also harmful. Bankruptcy is an expensive, disruptive, and potentially damaging process. One-third of all Chapter 13 filers complete the process successfully and get a fresh start. The rest, two-thirds, pay court fees, pay attorneys' fees, pay fees to the bankruptcy trustee, invest time and money to restructure their financial affairs, and then wind up with nothing more than temporary relief.

These statistics suggest that holding out the promise of significant relief from mortgage debt to encourage more individuals to file for bankruptcy is bad policy. At best, bankruptcy would serve only to delay foreclosures in most cases, while imposing enormous costs and harmful delay on those who are already financially vulnerable and limiting their future access to credit.

I thank you again for the opportunity to testify and look forward to answering your questions.

[The prepared statement of Mr. Grossman follows:]

Senator Whitehouse. Thank you, Mr. Grossman.

Judge Drain, let me ask you, you have done, according to your testimony, 2,000 of these--more than 2,000 of these loss mitigation mediations in your courtroom. Only 90 of them drew an objection. The original process was one that was first requested by creditors' lawyers, correct? And the backdrop to it, as I understand it, is loan servicers' refusal or inability to address their defaulted loans directly, banker to borrower, on a businesslike basis.

In your experience of the 2,000 loss mitigations that you have been through, in how many of those, approximately, would it have been the first time that the homeowner, the debtor, actually had a face-to-face conversation with somebody who had full settlement authority and that they were able to negotiate with in good faith?

Judge Drain. Well, first let me be clear. The 2,000 requests for loss mitigation are court-wide. I myself have probably presided over, oh, I would say, about 400. But you have accurately summarized my testimony. This program was developed first at the request of creditors' lawyers who were appearing in court and not having the data really to get the relief that their client wanted, and also in addition were telling their clients that they were leaving a lot of money on the table by foreclosing.

Second, it was developed with creditor and consumer lawyer support, posted for public comment, and did not receive negative comments as some sort of coercive program.

But as far as how many people had not spoken with a businessperson, my belief is that the distinct majority had not gotten a response.

Senator Whitehouse. Ever.

Judge Drain. Ever.

Senator Whitehouse. Do you have any guesstimate on how long these negotiations between the homeowner and the servicer or the bank customarily have gone before it comes to your court?

Judge Drain. Well, they are not really negotiations. One of the issues with HAMP--

Senator Whitehouse. Participation in the program. Let us put it that way.

Judge Drain. One of the issues with HAMP is that there are not people there to implement it. It is a very haphazard process of taking information, often losing it, passing it on to someone else, and it is not really premised ultimately on a business assessment of what is good for the lender in the first place.

So I mentioned this. Of the 15 objections by lenders to the invocation of loss mitigation, the ones that I have dealt with, except with one expectation, the lenders, when they actually come to court and see the facts, say, "Well, you know, this actually makes sense. We will talk with this person. He or she has been basically getting the runaround."

So I think that the main benefit of any formal mediation program is to put decisionmakers together.

Senator Whitehouse. So to the extent that Professor Sanders believes that this is another surprise to investors and other market participants which is almost always viewed negatively, your answer would be actually this is a surprise that they sought, welcome, and are happy to work with?

Judge Drain. I think that is right. What is not in the record, frankly, is opposition by lenders, and particularly those whose real money is at stake. A servicer may find it inconvenient, and servicers sometimes do have different incentives. But if your money is really at stake as a lender and your borrower can pay you more than the house is worth, clearly more, it is really kind of a no-brainer.

Senator Whitehouse. And that may explain why the Association of Mortgage Investors is working with me on this and seems excited about it. So I think that is a good thing.

My time has expired. Our Ranking Member, Senator Grassley.

Senator Grassley. Thank you.

I think it is legitimate, as we have done already, to raise the question--we have HAMP--whether or not that should not be fixed before we look at something else, but we need to do both. And I said in my opening statement how the Special Inspector General raised questions about not having meaningful goals and then not having transparency and accountability that comes from transparency. And he repeated that to our Committee last July and now again 6 days ago. So I am going to direct some questions to Dr. Sanders and Mr. Grossman, but I have got two questions that are about HAMP, but I want to get to a couple questions about the bankruptcy process, so just a short answer.

Dr. Sanders and Mr. Grossman, do you agree with the Special Inspector General's assessment? And, more importantly, do you have any insights into why the Treasury Department's refusal to set goals for the HAMP program? Dr. Sanders, then Mr. Grossman.

Mr. Sanders. I am sorry. I did not hear the last part of your question.

Senator Grassley. Why the Treasury Department might be refusing to set goals, as I have asked them to do and as the Special Inspector General said they should do.

Mr. Sanders. Well, I have some light I can shine on that. When President Obama first came into office, I met with Treasury and gave them a presentation, which I will be glad to share with everybody, pointing out, saying in the next few years you are going to have horrendous problems in terms of loan modifications because I know what you are thinking of, you are thinking of doing means-testing for loan modifications, which means we are going to pick an income group and give them loan modifications, but if you are in too high of an income group or you suffered property loss, we are not going to do anything about it.

And I said, okay, those are policy decisions based on economics and other things, but your program is not going to work. It is not going to target enough people, and it will not be effective enough. That is all the servicing issues aside.

I think what Secretary Geithner in terms of that response is saying is that, you know, the problem is that any target we set, we do not know what we can meet. I think literally it is because, as I said, housing prices are still falling; unemployment is not getting any better. How do you set targets for successful loan modifications when the economy is still in complete disarray? That is a tough one. So on that one I kind of--I wish you would set targets. You can still do it. But, again, what targets would they set to make any sense?

Senator Grassley. Mr. Grossman, and only if you have got another point of view on that.

Mr. Grossman. I would just say the entire policymaking community on every possible side of this issue shares your frustration with the lack of transparency that has accompanied these efforts. It has made it very difficult for many people to make positive contributions.

Senator Grassley. Dr. Sanders, Mr. Grossman, one of the concerns with the loan modification program being run by bankruptcy courts is that judges, directly or indirectly, might force lenders to cram down home mortgages. Cramdown is a reduction of principal, as everybody knows. A further concern is that because most mortgages are held by the Federal Government, taxpayers will ultimately be left holding the bag, and the national debt and economy would be further damaged.

Could you elaborate further on the potential damages that cramdown might have on the economy? Mr. Grossman and then Dr. Sanders.

Mr. Grossman. Well, I think a lot of people have come to realize over the past 2 years that the largest problem we have is the fundamental disconnect in many instances between a debtor's ability to pay and the amount of money that would need to be paid to rescue that person's home. It is a financial question. It is an economics question.

To the extent that it is possible in a large number of circumstances to bring those two numbers together, it is going to have to be through some type of coercion. That is the way that a modification will have to be achieved.

To the extent that that happens, that upsets legitimate investment-backed expectations, and one would reasonably expect that that would stifle investment in the mortgage sector.

One also expects that it would upset the contractual agreements between mortgage investors and servicers, and that would have a similar effect.

Senator Grassley. Dr. Sanders?

Mr. Sanders. Again, in my testimony I mentioned Fannie Mae and Freddie Mac, the mortgage giants. They are not disposed towards cramdowns. In fact, they are very much scared of them, for the following reasons: number one, it would be very harmful towards taxpayers; it would be very harmful towards investors in mortgage-backed securities, because, again, it is the moral hazard problem. Once somebody realizes there is a potential for a cramdown, writing off some principal--maybe not all the principal but some principal--they are worried about the fact that that would open Pandora's Box and you could actually have a flood of people rushing into bankruptcy just to try to get a massive principal writedown.

Now, again, I realize there would be safeguards in place for that not to happen. I just do not know what those safeguards are. But, again, it terrifies Fannie and Freddie and it terrifies other investors out there.

Now, there are investors in the market--that one trade organization you are talking about wants to see principal writedown, so not everyone is against them. But Fannie and Freddie clearly are.

Senator Grassley. At 11:30 I have got to go, and I would submit some questions for answer in writing. And I would also like to have some testimony from some trade associations to put in the record.

Senator Whitehouse. Without objection, the trade association's testimony, timely received, will be put in the record. Your questions will be put in the record as questions for the record.

[The testimony follows:]

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[The questions of Senator Grassley follow:]

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Senator Whitehouse. While we are doing this, I have a statement from Chairman Leahy that will also be made a part of the record.

[The prepared statement of Chairman Leahy follows:]

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Senator Whitehouse. I will turn to Senator Blumenthal, but before I do, I want to exercise the prerogative of the Chair to ask Judge Drain one question.

Judge Drain, is cramdown a part of your program?

Judge Drain. Absolutely not.

Senator Whitehouse. Okay.

Senator Blumenthal?

Senator Blumenthal. Thank you, Mr. Chairman. You have just asked and elicited an answer to my first question.

Clearly, this entire program is voluntary, is it not, Judge Drain?

Judge Drain. Yes.

Senator Blumenthal. Let me address the two objections or concerns that I think have been very thoughtfully raised by Professor Sanders and Mr. Grossman: first, that the unintended consequences of this kind of program can enable or encourage people to stay in homes they really cannot afford and thereby just delay a day of reckoning and maybe even hurt people as a result. I think that concern is belied by the experience in Connecticut where we have a mandatory mediation program, not a voluntary one, and out of 7,700 cases in foreclosure, some 4,400 families have been enabled to stay in their homes and are in their homes.

So I would like to ask you, Judge Drain, and perhaps Mr. Rao, whether you have any practical experience or statistical evidence--Mr. Grossman has said that the evidence is only anecdotal so far--that would address that concern?

Judge Drain. Well, I think that one of the benefits that the lenders saw in our program is that the court would supervise it and cut it off if the debtor's expectations were unrealistic, and that happens. Most people in our district are represented by counsel, and so they are advised by counsel in advance what they can achieve and what they cannot achieve. But there are times with pro se's and also sometimes with individual debtors whose expectations are just not realistic. This resolves that promptly. It does it in an objective way so that they can at least get the sense that they were not getting a runaround. So my belief is that at least once they are in the loss mitigation program, the ability to succeed or not gets flagged pretty quickly.

Mr. Rao. Senator, there are obviously concerns about the lack of transparency with HAMP, but one thing we do know and we have seen from the reports that have been coming out of Treasury is that it proves the point that if you do actually modify the mortgage and give the homeowner an affordable payment, they will pay. The statistics are showing that one year after the program with homeowners who have been on permanent modifications, 85 percent of those homeowners are staying on the program. The re-default rates on HAMP modifications are considerably lower than any other modifications that have been attempted, and I specifically refer to the proprietary mortgages that servicers are doing outside of the HAMP program which have re-default rates which are twice as high as HAMP modifications.

The final point is even within that category of homeowners who are staying on the program, the re-default rate, when you lower their monthly payment more, often more than 30 percent, the re-default rates are even lower. So the more you reduce the monthly payment, the more the homeowner will continue to make ongoing payments which will contribute to investor gains.

Senator Blumenthal. I thank you for those answers, and perhaps I can ask Mr. Grossman and Professor Sanders, the reference to this program as "coercive"--and I respect your point that very often the mere request by a judge to reach a settlement can impose some degree of pressure as someone who has been in that position as a practicing attorney. Is there something special about this program that is more coercive, exerts more pressure? Because in the course of almost any litigation, a judge will say at some point, "Can't you folks reach an agreement?" And those lawyers very often appear frequently before that judge and so may feel some pressure. But is there something about this program that is different from the ordinary litigation, Mr. Grossman?

Mr. Grossman. With respect to the normal bankruptcy process, I think the primary difference is that in some cases this would serve to effectively shift the burden from the debtor to the creditor to justify why it is in a particular instance that a modification or some other type of settlement could not be reached.

Now, it depends entirely on the courts and it depends entirely on the judge. In some cases, these are going to go forward, and it is not going to be done in a coercive manner, and I think that in many cases has been the experience. And from what Judge Drain has described, I think his court has done an exemplary job of implementing this program and working through what is a very difficult situation.

That said, by shifting the legal burdens and putting on a party a burden to enforce a property right that they otherwise would be able to enforce free and clear, that is necessarily in some instances going to have an effect on the out; otherwise, you would not do it. I think that stands the potential of being coercive in some instances.

Senator Blumenthal. I realize my time has expired, but if it were made clear that there is no shift in legal burden, I gather that concern would be addressed.

Mr. Grossman. I fear that that would really cut to the heart of these programs, because the way to effect that would be necessarily to remove from them the mandatory nature of the mediation, to remove the mandatory nature of the negotiation. It would require a significant change. I think voluntary mediation programs are wonderful, and I think that is something that judges should move forward on. I think that this creates a very good template for that sort of model.

Senator Blumenthal. So if it were made clear that this program is completely voluntary, that objection, again, would be addressed.

Mr. Grossman. If the participation in the program itself were entirely voluntary and it did not abrogate any other rights or responsibilities that are specified in the Bankruptcy Code, that would be a very different beast.

Senator Blumenthal. Thank you.

Thank you, Mr. Chairman.

Senator Whitehouse. Save that question, Judge Drain. We will be back to it, but I do not want to interrupt Senator Franken.

Senator Franken. Well, I want to continue with this because, Mr. Grossman, I am a little confused, because in your previous answer you had said it would require coercion for this to be done. That this kind of settlement would require coercion is what you said. And so now it seems like your answer is very different when confronted with the reality--when taken out of your theoretical framework in answering the Ranking Member, you said it would require coercion. But now what I see from Judge Drain's court, as you just acknowledged, is that there is no coercion there.

So, you know, to me--let us get to the reality of this and what has really happened as opposed to some theory. We have heard, Judge Drain, the concerns raised by the other witnesses that lenders are coerced to negotiate better terms for the loan. Can you tell me what percentage of loan modifications in your program involve reduction in principal of the loan?

Judge Drain. Not that many. Most of them involve significant reductions in interest rate, 12 percent down to 3, 4, 2, percent; waiver of fees; waiver of default interest; and rolling defaulted principal payments into the back end of the loan.

Where there has been a principal reduction, it is usually on a second mortgage where the second mortgage holder realizes that in a foreclosure they would get nothing, so they are getting a better deal by having a principal reduction. Or where the mortgage holder has significant document problems and might not ever succeed in foreclosing. In that case, I have approved very significant settlements where the principal was reduced a lot, but that was really a different--that was a legal issue as opposed to an economic issue.

Senator Franken. All this is to me part of a whole--pieces of a whole. During Mr. Grossman's testimony, he talked about all the stuff that--all the opportunities that people have on the way there and why do we need this in addition. But in your testimony and in response to questions, you said this is very often the first time that the homeowners have gotten this information.

Mr. Rao, Senator Grassley very rightly said we need to fix HAMP as part of this.

Now, I proposed legislation that actually passed the Senate last year--in fact, Senator Grassley voted with it, along with quite a few Republicans--to create an office within HAMP to provide assistance to homeowners navigating the system, the Homeowner Advocate Office. And, unfortunately, it did not get passed by the House, but given your experience--I mean, my experience with people in Minnesota is the servicers do not provide them with information, and the servicers either are incompetent or lie to them or--you know, and the idea of a Homeowner Advocate Office is that there is some place in the Treasury--and we paid for this with Treasury funds; it did not cost a thing--to have a homeowner advocate in the Treasury office.

So given your experiences working with homeowners in foreclosure proceedings, would you see the value of having an homeowner advocate involved in the proceeding?

Mr. Rao. Well, Senator, I think something obviously is required. A homeowner advocate could potentially fill that role of providing the impetus for servicers to be accountable for their actions and, most importantly, as we keep saying over and over again today, for them to simply make decisions, which they are required to do under the HAMP guidelines.

Mr. Grossman referred to these loss mitigation programs as imposing a burden on servicers to have a decisionmaker. That is their requirement under--as a participating servicer, they are required to make decisions and to do it within 30 days.

So, yes, I believe a Homeowners Advocate Office could help enforce, for example, that requirement. I think the other legislation passed by Congress as part of the Dodd-Frank bill requiring disclosure of information such as the results of the net present value test will also be helpful for achieving accountability with the HAMP program, so that the parties, especially the homeowners and their advocates, can know whether there has been a proper denial of their application.

Senator Franken. Thank you, Mr. Chairman.

Senator Whitehouse. Thank you.

Mr. Britt, you said at the end of your testimony that you now have a customer advocate from the bank's Office of the CEO and President. She has a first and last name, unlike a lot of the names on the phone that you had to deal with beforehand, and you can talk to her when needed rather than just calling an 800 number and getting whatever first name picked up the phone.

Mr. Britt. Yes.

Senator Whitehouse. You believe that it took the advocacy of a Senator's office to get you that. My specific question is: In the 2 years that you have been wrestling your way through this program and with this bureaucracy, how long was it before that connection with the CEO's office, customer advocate, existed? For how long were you on your own fighting against this bureaucracy?

Mr. Britt. Twenty months.

Senator Whitehouse. Twenty months. And Judge Drain has testified that that is the--20 months might not be the exact number, but it is a commonplace for the people who are coming into the loan mitigation program to have never yet had a chance to talk to a human being who has authority to make a decision in their case. So the context in which I see this, Mr. Grossman, is a little bit different than yours. The context in which I see this is that we have a highly imperfect, bureaucratic system that is grinding away and never taking a good, hard look at these cases because you are always dealing with somebody who is hired to answer the phone and who is hired to move paper, but has no decisionmaking capacity. And you can imagine the frustration of an ordinary American like Mr. Britt whose home is at stake and for 20 months cannot find something as simple and American and basic as a human being to talk to on the other end. And you see the same thing work out--this judgment is confirmed, in my opinion, by what you see working out with local banks, community banks, banks who hold their mortgages.

I can assure you--and I bet you that Senator Franken and Senator Blumenthal can do the same--that the foreclosure problem does not exist in anywhere near the dimensions that it does in the general market when the bank is still there. And it is for that simple, American reason that you have the chance to go into your bank and talk to a human being, and if there is a solution to be found that is in everybody's best interests, you get it.

I really believe that you should reconsider whether or not you want to put your credibility behind the notion that the system that led to the loss mitigation program deserves the credit that you give it at having sorted out those problems beforehand, and that the only residual value that the loss mitigation program can present is coercion. It is inconsistent with the judge's experience. It is inconsistent with our experience, with our case in Rhode Island. And I think what is really happening here is that people who have never had somebody to talk to--it is always "John," and he is always giving you information; then somebody else writes a letter, and it is terrifying because your home is at stake, and the paperwork has to be filed over and over again to the point where you feel you are being harassed because you are being asked for the fifth or sixth time to file the same damned paperwork that you have already filed, that you have the Federal Express certificate that you filed, you have the fax receipt that you filed, and they still make you do it again because they have got the whip hand to take your home away if you do not go ahead and file it again.

After 19 or 20 months of that, it is pretty frustrating, and when that can be broken by simply getting two people in a room--you are a litigator, are you not?

Mr. Grossman. Yes.

Senator Whitehouse. You have seen situations in which in front of a judge the two parties come together, and suddenly they are willing to be a lot more reasonable, and suddenly a deal is worked out. And judges do that all the time, do they not? Yes, you are saying. They do that all the time.

Let me ask you specifically: Of the three elements of this proposal, one is that somebody has to show up in the court with full settlement authority for the bank. That is one. Two is that they have got to show up during the loss mitigation program. And three is that they have to negotiate in good faith. Which one of those three specifically do you object to? Do you object to them having to show up with full settlement authority? Do you object to them having to show up during the loss mitigation process? Or do you object to them having to negotiate in good faith?

Mr. Grossman. It is my concern that if--the problem at root here that you are discussing, the ability to sit down in a room and hash things out person to person, to the extent that that is what is lacking, an individual should not need--

Senator Whitehouse. Let us assume that that is what is lacking--

Mr. Grossman. --should not be forced to file for bankruptcy--

Senator Whitehouse. No, no--

Mr. Grossman. --to achieve that result.

Senator Whitehouse. I agree with you. But here we are dealing with people who are required to file for bankruptcy. They are at that stage. Nobody does it because they love it. They are at that stage. Why in that forum, once they are there, should a rule that somebody has to show up with full settlement authority, that person has to be present during the loss mitigation program, and they have to negotiate in good faith, which one of those three is objectionable to you in that circumstance that you are now in bankruptcy court with a foreclosure in the offing?

Mr. Grossman. Again, the problem--and I think I stated this previously--is the mandatory nature of this program. It effectively rewrites the contractual obligations of either the creditor and/or the servicing agent.

Senator Whitehouse. That is what bankruptcy courts do. Right? That is where you go to get contracts renegotiated, and it is the American way that it is in everybody's best interests to get that done. And how mandatory is it when you have done 2,000 and there have been--Judge Drain, do you want to respond to that?

Judge Drain. Well, I would respond in two ways. First, again, the vast majority do not view it as being coerced into doing it. We have had 15 people who objected whose objections either were retracted or denied out of 2000.

Secondly, you cannot just walk into bankruptcy court as a lender and snap your fingers and say, "I want the house back." It does not happen that way. That is not the law.

The lender has to make a motion for relief from the automatic stay, and the response often to that motion is, "We have sought out the HAMP program." And courts, as recently described in Judge Votolato's decision from Rhode Island, faced with a lawyer standing up in court and you ask that lawyer for the bank, "Well, did they invoke the HAMP program?" And the lawyer says, "I do not know," because they do not know. It is autopilot.

And so then you say, "Well, you better find out, and we are going to adjourn the hearing until you do," because obviously the HAMP program puts you on one path and foreclosure puts you on another. So it is just a fallacy to say that the law gives a lender the ability to snap its fingers and get stay relief.

But, more importantly, economically, the lenders want court supervision of this process because that is how it works. It keeps the debtors in line. It forces them to have a client. There is nothing worse than not having a client, appearing at a judge and not really having a client. And, unfortunately, the way the large securitized or packaged loans operate, they do not have clients.

Senator Whitehouse. In the same way that homeowner--

Judge Drain. That the local bank--

Senator Whitehouse. --has nobody to talk to.

Judge Drain. Right.

Senator Whitehouse. The lawyer for the organization--

Judge Drain. Or the local bank. You know, if you represent a local bank, you know who your client is, and you get directions from him or her.

Senator Whitehouse. Senator Blumenthal, second round, if you wish.

Senator Blumenthal. Thank you, Mr. Chairman. Again, I must say, as an Attorney General recently in this business, so to speak, one of my frustrations has been, in fact, for our attorneys and personally that finding someone who was the real party and was in a position to negotiate and modify a mortgage was one of the real travails, most frustrating aspects, often to the detriment of, in fact, the real party in interest whose real concern or interest would have been well served by being present and being involved in the process.

But since it is, in essence, consensual in my view, not coercive, and since everyone the program itself would be optional for the bankruptcy court, I would like to ask perhaps, Judge Drain, whether you have an indication that more bankruptcy courts would, in fact, engage in this kind of program if their authority were clarified under section 105.

Judge Drain. I think that is the case. Since we enacted it, half of the court in the Eastern District said they would do it. I am told by one of my colleagues there that one of the judges who did not do it was somewhat concerned that he would be overreaching his authority.

As I think you said, Senator, in your opening remarks, by enacting legislation in this area, the Congress would also be telling courts, not just Federal courts but State courts, that you should think about this. And, you know, we are public servants, and I think that is an important message.

Senator Blumenthal. Thank you.

Thank you, Mr. Chairman.

Senator Whitehouse. Senator Franken.

Senator Franken. I really have enjoyed listening to the Chairman, who really has bored into this subject and has been on this for so long, and I have enjoyed listening to the former Attorney General of Connecticut for--what was it? About 50 years?

[Laughter.]

Senator Franken. I would actually like an answer to the Chairman's question from Mr. Grossman. Which of the three requirements do you object to: that someone with the fully authority for the lender in the loss mitigation program be there; that they show up during the loss mitigation program, two; and that they act in good faith? Which if those three do you object to?

Mr. Grossman. Senator, as I stated, my objection is with the mandatory nature of the program. I suppose you could take that as being all three, although I do not think that would be strictly an accurate way of describing it. But it is the mandatory nature of the program.

Senator Franken. Okay. The mandatory nature in a bankruptcy court where--as a bankruptcy judge, Judge Drain, do you--you have the authority--your job is to resolve all these claims on someone when they go bankrupt, right?

Judge Drain. Yes.

Senator Franken. And you have authority to do these things, right?

Judge Drain. Yes--well, I will give you the--I have forced one lender to continue loss mitigation. One. That was as lender that has a $200,000 equity cushion, so they would not have gotten relief from the automatic stay, and they simply were not paying any attention to the borrower. I said, "I am not going to terminate loss mitigation until you look at this borrower's financial information." I think I have the authority to do that because they were not going to get relief from the stay anyway for months because they had an equity cushion, $200,000.

But that was an exception. I mean, most of the time--and by "most of the time," like 99 percent of the time, they want the structure because that is why you do mediation.

You want someone there to keep the parties focused and to not let them throw hogwash up at you and get the deal done.

Senator Franken. Thank you.

Mr. Rao, one last question. I have been very concerned with the issue of robo-signing in which employees of mortgage servicers have improperly signed affidavits executing foreclosures without having actual firsthand knowledge of the facts of the mortgage. Would loss mitigation programs in bankruptcy courts have prevented this problem or at least mitigated the problem? Or could it prevent a similar issue in the future by ensuring that more attention is paid to each individual case?

Mr. Rao. I think that definitely could mitigate the problem, primarily because bankruptcy courts have been addressing this issue for some time. In my written testimony, I listed a number of cases dating back 10, 15 years in which bankruptcy courts have encountered problems with false affidavits and false documents being filed and have sanctioned parties for filing them. So although it has become sort of popular in the press right now and there has been a lot of coverage of it, it is actually not at all new to bankruptcy courts, and bankruptcy judges have done a very good job of ensuring the truth and veracity of the documents that get filed in the courts. So having it be part of a loss mitigation program would only improve that.

Senator Franken. Thank you. And I thank all of you for your testimony.

Thank you, Mr. Chairman.

Senator Whitehouse. Thank you, Senator Franken.

I think we will call the hearing now to a conclusion. I want to first of all thank our Ranking Member, Senator Grassley, who is an extraordinarily distinguished member of this body, for the time that he took here with us today, and I look forward to working with him and to have my staff work with his staff on helping to resolve the issues about whether this is a secret cramdown program of some kind, which I hope the judge's testimony helped dissipate, but to make sure that that is clear to all concerned and to make sure that the investors' voices are heard in this, because they are another party that benefits from these types of programs. And with any luck, we will be able to get to a resolution that allows us to go forward.

In order particularly to facilitate the questions that come from Senator Grassley, he has additional written questions that we have accepted into the record, and I would urge all of you, to the extent that they are directed to you, to respond as rapidly as you can. We close the record of the hearing after one week, ordinarily, so obviously the quicker Senator Grassley's questions can get to you, the more that week that remains for you to answer and get them back. But I think it would be very helpful, and I would urge you to be as punctual as possible in getting those answers back.

The record of this hearing will be kept open for one week in order to accommodate your answers and any other materials that any members of the Committee may wish to add. And I just want to particularly thank those who have traveled some distance for being here. Mr. Grossman, I think you are actually nearby, but it appears that Professor Sanders has come from Georgia, and I am grateful to you for that. Maybe not. Maybe you are from nearby. I thought you were--

Mr. Sanders. Fairfax, Virginia.

[Laughter.]

Senator Whitehouse. Oh, you were easy then, even though there is a fair amount of snow on the ground by Washington standards.

Mr. Rao has come down from New England. I appreciate that very much. Judge Drain has come down from New York. I appreciate that very much. Mr. Britt has come from Riverside, Rhode Island, where he is successfully hanging on to his home after at least 20 months of a bureaucratic nightmare. And I am grateful for the testimony of all of you. You have each contributed to this hearing, and I appreciate it. But, again, as a former practicing attorney, I cannot help but extend a particular appreciation to Judge Drain, who I know has a very busy schedule in his court, and to have you with us, sir, I think is particularly significant and much, much appreciated on my part, Your Honor.

So thank you all very much. The hearing is adjourned subject to the week for providing of answers.

[Whereupon, at 11:48 a.m., the Committee was adjourned.]

C O N T E N T S