

**Prepared Statement of Senator Chuck Grassley
Senate Committee on the Judiciary
"Foreclosure Mediation Programs: Can Bankruptcy
Courts Limit Homeowner and Investor Losses?"**

Tuesday, February 1, 2011

Mr. Chairman, thank you for holding this hearing today. It's important to study the relationship between bankruptcies and foreclosures and whether there is a need for a change in the Bankruptcy Code.

The Committee also needs to study how the Obama Administration is responding to foreclosures, whether that response is working and whether the 75 billion dollars that the administration is spending is a proper use of taxpayers' hard earned money ---- and if so, whether that money is being used in the best and most effective manner.

This hearing is a chance to have some of the facts come out and as a chance to have the issue fully and fairly examined. I'm open to listening to proposals that can make a difference.

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 and properly spending taxpayers' money.

But our efforts 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 on them will impact future generations of Americans.

The issue of mortgage modifications is not a simple one. There are significant and real concerns about the mortgage or loan modification programs being run by bankruptcy courts. There are questions about how those programs are being administered and how they might impact the economy.

For example, concerns also include questions about whether judges will use these programs to mandate "cram-downs" --- that is a reduction on the principal amount of the loan --- something that even the Obama Administration's program doesn't 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 real problem.

If you review the written materials and procedures for the program run by the bankruptcy court in Rhode Island, you see multiple references to the Home Affordable Modification Program --- commonly referred to as "HAMP."

As you know the Treasury Department currently operates a number of foreclosure mitigation programs. One of those programs is the Home Affordable Modification Program, a \$75 billion program, which began two 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 these modifications that are converted to permanent agreements that enable homeowners to permanently avoid foreclosures is low.

Particularly disturbing is the fact that the Treasury Department still hasn't established performance goals or benchmarks for the Home Affordable Modification Program, meaning that there's no effective way for us to know whether this \$75 billion program is accomplishing its intended purpose. That's not accountability. That's not transparency. That's just more taxpayer money flying out the window.

In July of last year, as the Ranking Member of the Finance Committee, I participated in a hearing examining the 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 for the program.

Remarkably, the letter I received back from the Treasury Department defended the program as a success and confirmed that the department does not -- and apparently refuses to -- set performance goals for the program.

My concerns are shared by the Special Inspector General - SIGTARP. Just six days ago, on January 26, the Special Inspector General issued a report that continues to confirm the failures of the Home Affordable Modification Program. That report also continues to call for the Treasury Department to establish specific goals and benchmarks for the program.

As the Special Inspector General's report reveals, the numbers for the program are "remarkably discouraging."

The number of permanent mortgage modifications under the Home Affordable Modification Program remains anemic -- there were just under 522,000 ongoing permanent modifications as of December 31, 2010. A combined total of more than 792,000 trial and permanent modifications have been cancelled, 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 Department'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 the Treasury Department's steadfast refusal to adopt meaningful goals and benchmarks --- as perhaps the most fundamental of the causes of the program's failure to have a material impact on preventing foreclosures.

The report also outlines some disturbing conduct by the Treasury Department. The report explains:

"Rather than develop meaningful goals and metrics for the program, which would allow meaningful oversight, promote accountability, and provide guidance for useful change, Treasury instead has regularly changed its criteria for success, citing at different times the total number of trial modification offers extended to borrowers, regardless of whether they were accepted, and then the total number of

trial modifications, regardless of whether they became permanent, which far fewer than half have actually done."

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

In light of the documented problems with the program and its continued failure to provide real relief, the question becomes why are taxpayers paying for a \$75 billion program that doesn't work?

The next question is --- will another government program, -- this time in the bankruptcy courts and this time without any Congressional oversight, -- really work or could it actually damage our suffering economy?

We must be mindful that there will be limited Congressional or other oversight of the substantial authority and power wielded by the judges within this bankruptcy court program. Accordingly, we must always be very careful before we grant judges -- who are not elected and, in the case of bankruptcy judges, not subject to Senate review through the confirmation process -- new and unchecked powers.

I look forward to hearing the witness testimony and working with members of the Judiciary Committee on finding the right approach to this issue.