Statement of

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"Promoting Bank Liquidity and Lending Through Deposit Insurance, HOPE for Homeowners, and Other Enhancements"

Mr. Chairman, Ranking Member Bachus and members of the committee, I am John Courson, President and Chief Executive Officer of the Mortgage Bankers Association (MBA).[1] I appreciate the opportunity to appear before you today to testify on behalf of MBA. My remarks will address the situation in today's housing market, efforts to help families save their homes as well as the proposed bill to promote bank liquidity and lending through deposit insurance, the HOPE for Homeowners Program, and other enhancements. I will begin my comments today by providing a brief update of the residential real estate and mortgage markets.

From 2003 through 2006, home prices increased at a pace that far exceeded inflation. During that time, many mortgages were written with adjustable interest rates and/or negative amortization features. In 2007, the real estate "bubble" burst, leading to record borrower defaults. The resulting glut of foreclosed properties coming on the market helped swell the homes for sale nationwide in 2008 from a normal 2.6 million units to 4.6 million units. This further reduced real estate prices and caused a backlog of homes for sale in excess of one year's supply. The reset of adjustable rate mortgages (ARMs) coupled with the number of homes where the mortgage balance exceeds the home value has limited borrowers' options to manage their financial needs or sell their properties.

More alarming still is the current trend in delinquency rates and the record migration of 30-day delinquent loans to foreclosure. Historically, the percent of 30-day delinquent loans that eventually resulted in foreclosure has been in the range of 5 to 15 percent. It has grown to around 35 percent. The increase in delinquency is resulting in additional homes being placed on the market, pressuring home prices into a further downward spiral.

While servicers have executed a record number of repayment plans and loan modifications to bring delinquent borrowers current, servicers can only execute loss mitigation options permitted by their investor contracts. The ability to amend investor contracts or obtain investor approval to exceed contractual limits has proven to be a challenging, if not prohibitive obstacle, for many servicers.

On the new mortgage production front, interest rates for 30-year fixed-rate mortgages dropped from 6.3 percent in 2007 to 6.0 percent in 2008, and they are expected to average 5.1 percent during 2009. Although MBA forecasts an

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 370,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

increase in mortgage production in 2009 to $1.9 trillion, from just under $1.8 trillion in 2008, purchase mortgages are expected to decline, again pointing to a stalled market for existing homes. Many homeowners cannot afford to sell their properties because of falling property values, while others cannot refinance their mortgages from costly adjustable-rate or option ARM loans to fixed-rate loans due to credit problems.

In addition to these market woes, banks and independent mortgage companies are struggling with a variety of other challenges including an unprecedented volume of repurchase requests from Fannie Mae and Freddie Mac and dealing with record numbers of delinquent loans, loan modifications and foreclosures. In addition, the independent mortgage bankers are facing a sub-crisis of the credit crisis that jeopardizes their businesses. This sub-crisis is the result of a shortage of warehouse lines of credit, meaning independent mortgage bankers are doubly hamstrung to originate new mortgages threatening their viability.

Warehouse lines of credit are used to finance loans held for sale from origination to delivery into the secondary market. Currently, some warehouse lenders are going out of business, and the remaining ones are either terminating warehouse lines of credit, or adding restrictions to their warehouse lines of credit. The phenomenon is causing independent mortgage lenders to struggle to maintain their ability to serve consumers. Warehouse lending capacity has declined dramatically – from over $200 billion in 2007 to approximately $20-$25 billion in 2008, a decline exceeding 85 percent. For the mortgage originator that depends solely on warehouse lines of credit, this reduction threatens to extinguish their lending business and adversely impact consumers in their market, stifling the real estate recovery before it has a chance to get off the ground.

In light of this market backdrop, a need exists for legislation that will assist borrowers to stay in their homes. MBA commends the committee for demonstrating willingness to make improvements to the HOPE for Homeowners (H4H) program, reduce servicer liability and extend the Troubled Asset Relief Program (TARP) to smaller institutions. However, MBA recognizes that much more must be done to stem the current foreclosure crisis and re-stabilize the mortgage market. We will highlight solutions to the problem throughout this testimony.

HOPE for Homeowners

The H4H program was created by the Housing and Economic Recovery Act of 2008 (HERA), as a tool to help delinquent homeowners avoid foreclosure, as well as to assist in stabilizing the mortgage market. While well intentioned, the H4H program, in its current state, contains statutory obstacles that prevent its optimal use. MBA applauds the committee's efforts to amend the program by removing those obstacles and increase its effectiveness.

The bill removes the requirement that borrowers have a housing debt-to-income (DTI) ratio greater than 31 percent. This change will allow more borrowers to qualify. The bill further expands the H4H program by increasing the maximum loan-to-value (LTV) permissible under the program from 90 percent of the appraised value of the property to 93 percent. While this change is directionally correct, we would like the LTV raised under the H4H program to 96.5 percent in order to be more aligned with other FHA programs. The additional 3.5 percentage points will make the H4H program more attractive to lienholders, as they will be able to take a smaller principal write down for borrowers to qualify. MBA believes that the H4H program could be further enhanced by reintroducing an appreciation sharing feature and providing lenders protection that the mortgage and notes used in this context are enforceable in all states.

In addition to improving the H4H program, the bill reduces lender liability in the program by removing legal impediments that currently deny Federal Housing Administration (FHA) insurance benefits in cases where there are late endorsements. MBA believes the reduction in lender liability also serves to increase the viability of the H4H program.

Furthermore, MBA appreciates that the bill addresses the program's exceedingly high annual premiums for borrowers. Currently, the H4H program requires an upfront premium payment of 3 percent of the mortgage amount, and an additional annual premium of 1.5 percent of the remaining principal balance of the mortgage. The new bill would grant FHA flexibility in setting the annual premium between 0.55 and 0.75 percent of the remaining principal balance – in line with other FHA products. The reduction in premium payments will make the H4H program more affordable for borrowers.

The bill also provides additional security to the servicer and helps cover the cost of managing the refinance program by allowing the H4H Board to pay the servicer a fee for each loan refinanced through this program, similar to incentive fees granted by FHA on other loss mitigation tools.

Servicer Liability

MBA appreciates the committee's efforts to provide servicers with greater legal protections for performing loss mitigation activities. Although most pooling and servicing agreements (PSAs) allow for modifications and workouts, not all do. Some PSAs that allow modifications and workouts may contain conflicts, while others may be silent on modification, thus increasing the risk of liability for the servicer. These problems have limited servicers' ability to help borrowers.

While MBA appreciates enhanced servicer protections, MBA does not support abrogating contracts. As a conflict resolution tool, MBA is concerned that investors may challenge the validity of this safe harbor. The cost of such challenges will be borne by the servicer community. Ultimately, if investors succeed in their challenge, servicers will be exposed to legal liability and losses for breaching their contracts despite such actions being within the spirit of the law.

Because of these concerns, we would encourage this committee to consider the following enhancements to the bill:

- A provision that would indemnify servicers from liability for legal fees and losses if the safe harbor provision is deemed unlawful; and

- A provision clarifying that real estate mortgage investment conduit (REMIC) tax status will not be negatively affected by the servicers' or trustees' loss mitigation actions pursuant to this safe harbor.

Mini-Miranda Change

Another barrier that servicers face in attempting to perform loss mitigation is the Fair Debt Collection Practices Act (FDCPA) (the so-called "Miranda" warning) that chills the borrowers' willingness to communicate with servicers on loss mitigation. The FDCPA regulates the practices of independent debt collectors. While creditors collecting their own debts are generally exempt from the FDCPA, creditors that acquire delinquent loans and their servicers are not exempt.

In addition to its substantive anti-abuse protections for debtors, the FDCPA requires a debt collector to notify the borrower in the first written communication with the borrower that it is attempting to collect a debt and that any information obtained will be used for that purpose and to indicate that each subsequent communication is from a debt collector, even after the borrower has brought the loan current. These disclosure requirements create unique difficulties for mortgage loan servicers because they chill the borrower's willingness to discuss options with the servicer that may prevent foreclosure.

The Miranda provision is designed to prevent debt collectors from concealing their true identity when they attempt to obtain information from a consumer. Mortgage servicers are not true debt collectors despite the treatment under FDCPA. Moreover, there is never any question as to the mortgage servicer's identity. The mortgage servicer is the party responsible for receiving the borrower's monthly mortgage payments. If a borrower gets behind on those payments, the mortgage servicer is expected to contact the borrower to assist the borrower in catching up. This process is the same whether or not the servicing responsibilities are transferred to a new servicer.

MBA is confident that an amendment to FDCPA along with a reduction in servicer liability will provide lienholders with the much needed freedom to assist more borrowers.

Troubled Asset Relief Program

MBA greatly values all that Congress has already done to address the current economic crisis, particularly passage of the Emergency Economic Stabilization Act (EESA), which established TARP. Above all else, we believe it is important to return TARP to its original purpose, which was to purchase non-performing assets off banks' balance sheets.
MBA would like to endorse this committee's efforts to provide additional clarity and direction to the Department of the Treasury in using funds allocated to TARP. For example, the bill directs the Treasury Department to give priority to TARP funds that would channel TARP funds to smaller community focused financial institutions, as well as financial institutions whose corporate structures preclude them from participating in existing TARP funding programs.

MBA fully supports measures to provide financial assistance to those lenders with limited access to some of the funding channels available to large, complex financial institutions. We note Congress' definition of financial institution in EESA includes an expansive range of financial services providers to be eligible for TARP funds. Nevertheless, most existing TARP programs limit eligibility to depository institutions chartered by a federal or state bank regulator. Many financial institutions do not meet TARP's eligibility criteria. Consequently, they are unable to access funds Congress made available to them – while financial institutions with non-housing product lines can.

Commercial/Multifamily Issues

MBA also recognizes that the broader credit crisis has negatively impacted the $6 trillion commercial real estate market, which is financed in part through more than $3 trillion of debt. Currently, there are significant challenges associated with the refinancing of maturing performing loans collateralized by commercial real estate, which may result in increased defaults.

An immediate action that could be readily implemented is for the Treasury Department to provide TARP funds to revive the broader private commercial mortgage markets. Specifically, we recommend that the Federal Reserve Bank of New York utilize TARP funds to create a commercial lending facility that would provide the private market with liquidity and allow for the extension of new credit, as well as assist in refinancing performing loans held by banks or in commercial real estate mortgage-backed securities (CMBS) pools. We expect this credit facility to generate meaningful results and to jumpstart the broader private commercial mortgage markets.

In addition to the commercial lending facility, there are many options in which commercial loans and CMBS can be included in the TARP program. The complexity of the commercial real estate finance industry combined with the varied market participants has, thus far, not yielded a "magic bullet" that would resolve the many challenges facing the commercial finance industry. We encourage Congress to consider and implement a range of programs that holistically address this multifaceted industry. Because multifamily properties are income producing and are generally classified as commercial real estate, we would encourage multifamily loans and CMBS to be included in all TARP commercially-related programs.

Restoring Stability and Confidence

As the mortgage and capital markets continue to readjust following a once-in-a-generation upheaval, MBA supports actions by Congress and the administration that would restore stability and confidence in these markets. However, we caution federal policymakers to avoid taking steps that could worsen the situation and make it more difficult for the markets to recover.

Mortgage Improvement and Regulation Act

MBA believes all borrowers, including future borrowers seeking to realize the dream of homeownership, would benefit most by a long overdue overhaul of the regulatory framework for mortgage lending. MBA has been developing a legislative proposal that would do just that.

We believe such a plan should include a new federal regulator for mortgage lending, empowered to apply rigorous uniform national mortgage standards. Such a regulator would work in partnership with federal and state financial regulatory authorities to supplement, examine and vigorously enforce these standards. Our plan would also assure federal regulation of independent mortgage bankers and mortgage brokers, establish national counseling and financial literacy responsibility, fight mortgage fraud, and greatly increase transparency in the mortgage process. These new efforts would replace the uneven patchwork of state and federal mortgage lending laws that are costly and do not always protect borrowers.

MBA's proposal would offer a steady stream of resources to effectively fund regulation by assessments on regulated entities. By including substantive requirements and consistent regulation, these proposals would return stability to the nation's financial system, ensure fairness, facilitate greater secondary market investment, and lower costs to borrowers.

FHA Improvements

MBA supports the following key ways to protect FHA and, in turn, restore confidence in the entire mortgage industry. The prudent strategies below will help FHA support the housing market while controlling risk:

- Increase technology investment. Improvements to FHA's technology will allow it to more effectively manage its portfolio, garner efficiencies and lower operational costs, and enable it to monitor its operations and partners more closely to mitigate loss.
- Increase staff resources at FHA and Ginnie Mae. FHA now accounts for over 20 percent of single-family originations, compared to 3 percent a year and half ago. This dramatic increase in demand has put a strain on the staff at bothr FHA and Ginnie Mae.
- Ensure the quality of originations. Several steps should be taken to maintain the quality of FHA loans and ensure performance, including raising standards and qualifications for mortgage brokers; enabling FHA to expose and expel "bad actors" from programs; and making available fraud protection tools.
- Provide authority to FHA to address current market conditions.   FHA should have increased flexibility to respond to current dynamic market conditions, such as being granted legislative authority to have flexible use of Hope for Homeowners.
- Increase loan limits to enable FHA and Ginnie Mae to provide secondary market support to the broadest spectrum of home prices during this period of market instability and beyond.
- Explore restoring the risk-based premium structure. Depending on the structure, a risk-based premium structure would allow FHA to serve more borrowers, and do so with a lower risk to the MMIF.
- Increase borrower protection for HECMs. Policies and practices that protect seniors from abuse and fraud are necessary to protect homeowners and the industry.

In order to further restore confidence and improve consumer protections in the mortgage market, MBA supports legislative and regulatory action to assure reasonable net worth, bonding and transparency requirements for mortgage bankers and mortgage brokers.

Specifically, we believe mortgage bankers should maintain a minimum corporate net worth requirement of the greater of $500,000 or one percent of FHA loan volume up to a maximum of $1.5 million, as evidenced by audited financial statements. New requirements for mortgage bankers should be uniform across all states in order to protect consumers and lower costs through maximum competition. Mortgage brokers' should also have increased corporate net worth requirements. Mortgage brokers requirements should be the greater of $150,000 or 0.5 percent of FHA loan volume up to the minimum for a Full Eagle status (currently $250,000 – or, if increased as recommended, $500,000).

MBA also supports a strong Ginnie Mae dedicated to its mission as the primary vehicle for the securitization of FHA, Veterans Administration (VA) and Rural Housing Services (RHS) mortgages. MBA believes Ginnie Mae's funding for human resources should be increased and that any increase in the current Ginnie Mae multifamily guarantee fee is unnecessary and would create disincentives and result in less use of the current programs. Ginnie Mae should continue to work with MBA members, investors and dealers to refine its programs, add products and to improve MBS disclosure.

Maintain Warehouse Credit Lines

In order to provide much needed capacity in the mortgage market to reach consumers for purchase and refinance transactions, Congress and the administration should take steps to help maintain existing lines of warehouse credit and create new lines of warehouse lending. One option would be to provide a short-term (i.e. 12-24 months) federal guarantee of warehouse lines that are collateralized by Fannie Mae, Freddie Mac, FHA, VA, and RHS-eligible residential mortgages that are held for sale by mortgage lenders.

This action by the federal government could be immediately implemented to maintain the mortgage funding structure consumers depend upon, especially consumers who rely on independent, non-depository lenders. An additional solution to explore is temporarily allowing Fannie Mae and Freddie Mac, within the means of their charters, to help improve the flow of funds to financial institutions whose lines of credit have been restricted or eliminated. These solutions could include the expansion of current short-term lending programs or an authorization by the Federal Housing Financing Authority (FHFA) to permit Fannie Mae and Freddie Mac to purchase participation or syndicated interests in warehouse lines of credit in order to expand the supply of funds to warehouse lending. MBA believes such programs should not be permanent and we would strongly advocate establishing a sunset date. Designing and implementing any program should be closely monitored by FHFA with specific requirements regarding the program's scope and longevity, as to not blur the line between the primary and secondary markets.

Secondary Market Issues

Much of the economic crisis is attributable to a lack of confidence in the secondary mortgage market, the market in which lenders sell pools of mortgages to investors in exchange for funds that are used to finance additional mortgages in the primary market. The secondary market was once a vibrant source of liquidity, teeming with private investors along with Ginnie Mae, Fannie Mae, Freddie Mac and the Federal Home Loan Banks (FHLB). Now, private investors are virtually nonexistent, leaving government programs to fill the void. Exacerbating the crisis of confidence is the fact that Fannie Mae and Freddie Mac are in conservatorship, FHA is bumping up against its funding ceiling, and

Federal Home Loan Bank System activity has slowed as a result of capital constraints triggered by tightening accounting standards.

MBA believes that additional measures must be taken so that existing government run or government sponsored programs have the capacity to perform their vital roles as liquidity providers of last resort. For example, the GSE Credit Facility expires at the end of this year, as does the Treasury's authority to purchase GSE MBS in the open market. We believe it is imperative to suspend the expiration date for these programs until such time as an economic recovery is reasonably foreseeable.

MBA Views

MBA is committed to revitalizing the housing finance system and develop programs to foster sustainable homeownership. Please find more details on MBA's ideas on ways to stem the current housing crisis and curtail foreclosures at http://www.mortgagebankers.org/Advocacy/IssuePapers.

Conclusion

Again, MBA appreciates the committee's efforts to stabilize the mortgage market and help avoid future foreclosures. We are confident that the H4H enhancements, the limitations on servicers' liability and the expanded use of TARP funds in the bill will further the committee's efforts.

We strongly urge Members of this committee and the entire Congress to closely examine the proposals in this testimony in order to restore confidence and stability to the mortgage market. MBA looks forward to working with you through that process.

Thank you for this opportunity to share our views and ideas with this committee.