

Statement of
The Honorable Sheldon Whitehouse

United States Senator
Rhode Island
July 23, 2009

Opening Statement of Sheldon Whitehouse
Chairman, Senate Judiciary Subcommittee on Oversight and the Courts
Hearing on "The Worsening Foreclosure Crisis: Is It Time to Reconsider Bankruptcy Reform?"
As Prepared for Delivery

The hearing will come to order.

Nearly ten months ago we enacted a \$700 billion bailout package to rescue the economy from the subprime mortgage meltdown. This hearing will look at whether the foreclosure situation is worsening and what can be done for the millions of families in Rhode Island and Alabama and across the nation at risk of losing their homes.

We tried in October to include in the Troubled Asset Relief Program measures that would help homeowners on Main Street, in addition to the banks on Wall Street. Unfortunately, these efforts proved fruitless. We included in the bailout legislation a requirement that the Treasury work to modify the mortgages it purchased as part of the TARP. That requirement was rendered meaningless by the outgoing Administration's decision not to purchase "toxic assets" as initially proposed. The money went directly to banks, and the Treasury held no mortgage-related assets to modify. Wall Street benefited, and Main Street was left in the cold.

Democrats in Congress, led by Senator Durbin, tried unsuccessfully to include in the TARP legislation a provision that could have kept millions of families in their homes at zero cost to the taxpayers. This proposal would have corrected an anomaly in the Bankruptcy Code that prohibits judges from modifying primary residence mortgages the way they can modify every other type of contract from mortgages on vacation homes to car and jewelry and corporate loans. Despite the fact that a bankruptcy modification would spare the community the terrible costs of foreclosure, the mortgage banking industry invested millions of dollars to lobby against this reform and has so far been able to prevent its passage.

As subprime mortgage teaser periods began to expire last year, and with the credit market dried up so they could not refinance, millions of homeowners faced higher monthly payments that they could not afford. In the final quarter of 2008, there were over 200,000 residential foreclosures. These homeowners faced this foreclosure wave with minimal assistance from their government.

The new administration has tried to address the foreclosure crisis. Through the Treasury's Making Home Affordable programs, President Obama encouraged loan servicers to start modifying mortgages. While these programs so far have kept 160,000 families in their homes

through trial modifications, it is becoming increasingly clear that Congress must do more - much more - to address the worsening crisis.

As you will hear from one of the witnesses today, there is evidence that the worst of the foreclosure crisis is not behind us. Just as the wave of potential foreclosures from subprime mortgages begins to subside, a new wave of potential foreclosures tied to rate resets on other, exotic mortgage instruments is just around the corner. The Center for Responsible Lending estimates nine million homes may be lost to foreclosure from 2009 through 2012. At their current rates of modification, the Treasury's voluntary programs may only assist two million or fewer families during that period.

It is clear to me that Congress must do more to help struggling American homeowners, and specifically, that we need to take another serious look at the Durbin proposal to allow bankruptcy judges to modify the terms of mortgages on principal residences. If we fail to act, I fear that we put ourselves at risk: that a vicious cycle of foreclosures, falling home values, and declining tax revenues will keep us in recession for years to come.

I look forward to hearing the views of today's panel on this proposal and others.

Joseph Verdelotti, Jr., a constituent of mine from West Warwick, Rhode Island will share his experience struggling with two mortgages during a period of rising costs and falling home prices. Mr. Verdelotti, a licensed electrician, and his wife April, a hospital worker, have been unable to obtain mortgage modifications and may soon be forced to leave their home.

Alys Cohen is a staff attorney at the National Consumer Law Center's Washington office, where she advocates on predatory lending and sustainable homeownership issues. Ms. Cohen leads NCLC's mortgage policy. Ms. Cohen is a graduate of the University of Pennsylvania Law School.

Professor Adam Levitin of the Georgetown University Law Center is a nationally regarded expert in bankruptcy and consumer law. He serves as Special Counsel for Mortgage Affairs for the Congressional Oversight Panel. Professor Levitin is a graduate of Harvard, Columbia, and Harvard Law School.

Dr. Mark Calabria is Director of Financial Regulation Studies at the Cato Institute. Prior to joint the Cato Institute, Dr. Calabria was a senior professional staffer on the Senate Banking, Housing, and Urban Affairs Committee. He holds a doctorate in economics from George Mason University.

Richard Genirberg is a practicing attorney from Jonesboro, Georgia. He specializes in bankruptcy, collections, and criminal law. He earned his law degree from Georgia State University College of Law and his B.A. at Michigan State University. He also has an MBA from Georgia State University. Prior to owning his own firm, Mr. Genirberg was General Counsel for the minority party at the Georgia House of Representatives.