TESTIMONY OF

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Before the

HOUSE FINANCIAL SERVICES COMMITTEE

UNITED STATES HOUSE OF REPRESENTATIVES

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Good morning, Mr. Chairman, Ranking Member Bachus and Committee Members. I am Michael Gross, Bank of America's Managing Director of Loan Administration Loss Mitigation. Thank you for the opportunity to appear again to update you on the efforts of servicers like Bank of America to help families prevent avoidable foreclosures and stay in their homes. As the leading lender and servicer of mortgage loans in the country, following the acquisition of Countrywide in July 2008, Bank of America understands and fully appreciates its role in helping borrowers through these difficult economic times. We are committed to being a responsible lender and servicer, and facilitating home ownership and retention.

First, I want to provide a brief update on our mortgage business. We are making great progress integrating Countrywide Financial Corporation into Bank of America. And we are actively making new mortgage loans available to eligible customers for buying homes and refinancing their current mortgage loans.

- We are open for business across America. In the three months following the merger, we funded more than $50 billion in home loans, financing over 250,000 homes.
- We are leading the industry in responsible lending practices. Our goal is to ensure that our customers are successful homeowners and we work to provide financing that helps them not only get into their homes, but stay there.
- We're also working hard to help customers who may be in trouble. We've developed important programs that are projected to modify over $100 billion in loans; enough, over three years, to help keep up to 630,000 borrowers in their homes.

In addition to being America's largest home lender, we are one of the nation's largest and most solid financial institutions. With over 6,100 banking centers, 59 million customers and over

$800 billion in deposits, Bank of America has the strength and stability to help people, as we always have, finance their homes in ways that are right for them.

Bank of America is leading the mortgage industry out of today's challenging environment. We know that consumers who are experiencing financial challenges, but who ultimately have the ability and willingness to repay their loans, often need our help to stay in their homes. We are ready to help them. We do so because *no one* benefits from a foreclosed home.

Since I was last here Bank of America has announced an ambitious new proactive National Homeownership Retention Program. The program was announced on October 6 and was developed together with several state Attorneys General. It is designed to achieve affordable and sustainable mortgage payments for borrowers who financed their homes with subprime loans or pay option adjustable rate mortgages serviced by Countrywide and originated by Countrywide prior to December 31, 2007. Our 5,600 home retention professionals will be equipped to serve eligible borrowers with these new program elements by December 1. The foreclosure process will not be initiated or advanced for a customer likely to qualify until Bank of America has made a decision on the customer's eligibility.

The centerpiece of the program is a proactive loan modification process to provide relief to eligible customers who are seriously delinquent or are likely to become seriously delinquent as a result of loan features, such as rate resets or payment recasts. Various options will be considered for eligible customers to ensure modifications are affordable and sustainable. First-year payments of principal, interest, taxes and insurance will be targeted to equate to 34 percent of the borrower's income. Modified loans feature limited step-rate interest rate adjustments to ensure annual principal and interest payments increase at levels with minimal risk of payment shock. The program's foreclosure alternatives provide a "win" for borrowers and investors and are intended to assist in the effort to stabilize the country's deteriorating housing market. Modification options include, among others:

- FHA refinancing under the HOPE for Homeowners Program;
- Interest rate reductions, which may be granted automatically for certain borrowers that become seriously delinquent as a result of interest rate adjustment; and
- Principal reductions on pay option adjustable rate mortgages that restore lost equity for certain borrowers.

The program applies to eligible mortgage loan customers serviced by Countrywide and who occupy the home as their primary residence. Under the national program, Countrywide will not charge eligible borrowers loan modification fees, it will waive late fees associated with the borrower's present default, and Countrywide will waive prepayment penalties for subprime and pay option ARM loans originated between 2004 and 2007 that it or its affiliates own. Loan modifications will be made in compliance with servicing contracts and, where servicing contracts limit modification, Countrywide will seek consents from investors and other third parties.

I also want to take this opportunity to reaffirm to the Committee Bank of America's support of the Hope for Homeowners program contained in the Housing and Economic Recovery Act of 2008 and assure you that we are engaged in efforts to utilize the new tools that it provides. We expect the Hope for Homeowners program will contribute to efforts to bring stability to the housing market, and we believe it will help both homeowners and investors alike. Subject to investor consent and state procedural considerations, we will avoid completing foreclosure sales for these customers while we determine eligibility.

We also want to thank this Committee for including more flexibility for the implementation of the Hope for Homeowners program in the recently enacted Emergency Economic Stimulus Act (EESA) legislation. We understand the Oversight Board is considering how best to use this new authority. Added underwriting flexibility means more customers will qualify, and so we encourage the Board to increase the minimum loan-to-value levels requirement. (For certain pay option ARM borrowers who have no equity in their homes, we may consider a write down of principal to 95% of current market value under our recently-announced loan modification program.) Additionally, we ask the Oversight Board to consider increasing the minimum debt to income ratio requirements. (Our program will use a starting front end ratio of 34%, but may go as high as 42%.) Lastly, we encourage the Board to examine pricing to ensure these new loans under the program are both viable for the eligible homeowners and competitive to other approaches to loan modifications. These adjustments will help servicers fully utilize this important new tool during these difficult economic times.

I also would like to update the Committee on additional progress we have made to date on our home retention efforts. As I testified last time, we have added more staff and improved the experience, quality and training of the professionals dedicated to loss mitigation. Since early last year, as the housing and credit markets have struggled, the combined home retention staff for Bank of America and Countrywide has more than doubled, to over 5,600. We will continue to maintain sufficient staffing levels to ensure that we are responsive to our customers.

At the core of our combined operations are the substantial commitments we made to engage in aggressive loss mitigation efforts to help customers avoid foreclosures and remain in their homes. In addition to the new loan modification program for subprime and pay option borrowers I described earlier, Bank of America is devoting significant resources to modifying and working out loans of *any* type for customers who are facing default and possible foreclosure. Specifically, we are tailoring our workout strategies to a customer's particular circumstance. Bank of America currently uses a range of home retention options to assist customers who are struggling to make their monthly loan payments. These options include:

- Formal and informal workout arrangements that allow customers additional time to bring their loans current;
- Loan modifications that may significantly reduce interest rates, extend maturities or otherwise modify loan terms; and
- Partial claims that involve unsecured, no-interest or low-interest loans to customers to cure payment defaults.

Bank of America begins evaluating and working on these options to assist at-risk borrowers from the time we become aware a customer is having difficulty making mortgage payments through the foreclosure process. We also continue to educate customers about the options available to them and the workout solutions they may be able to employ to stay in their homes.

A key component of successful loss mitigation initiatives undertaken by national servicers such as Bank of America includes partnerships with financial counseling advocates and community based organizations such as Hope Now, NeighborWorks, NACA and the Homeownership Preservation Foundation. We are also actively engaged in foreclosure prevention outreach programs with both governmental and community organizations around the country. We will continue to work with investors, the government-sponsored enterprises (GSEs), regulators and community partners to further identify ways to improve our ability to reach customers with affordable home retention solutions.

Early and open communication with customers is the most critical step in helping prevent foreclosures. So far in 2008, we have participated in more than 340 home retention outreach events across the country, including foreclosure prevention and "train the trainer" events. We are proactively reaching out to customers by:

- Making an average of 15 attempts per month to contact delinquent homeowners through phone, mail and other means.
- Seeking to contact customers through outbound calls, including nearly 13 million outbound calls in October. These outbound calls resulted in approximately 1 million conversations with at risk homeowners in October.
- Mailing, on average, 800,000 personalized letters and cards each month that offer customers the choice to contact Bank of America, a HUD-approved housing agency, or a nonprofit housing organization.
- Sending company workout counselors to branch offices and events all over the nation to meet directly with homeowners who need assistance.

In the first ten months of 2008, the Home Retention Division completed over 214,000 retention workouts, a 214% increase over the first 10 months of 2007. I would emphasize here that these are workouts in which the customer enters into a plan to *keep their homes*. It does *not* include deeds in lieu of foreclosures or short sales.

In addition to sharply increasing the pace of workouts, we have also become more aggressive in the types of workout plans completed. Since we announced a series of home retention initiatives last autumn, loan modifications have become the predominant form of workout assistance. Year to date, through October of 2008, loan modifications have accounted for approximately 75% of all home retention plans, while repayment plans accounted for 12% of home retention plans. Prior to the programs announced last year, loan modifications accounted for less than one-third of all home retentions. For example, interest rate relief modifications – where the servicer freezes or reduces the borrower’s interest rate – were extremely rare until late last year. Today, interest rate modifications account for 67% of all the loan modifications completed in 2008. Importantly, the vast majority of these rate relief modifications have durations of at least 5 years.

Finally, I would like to highlight a few continuing impediments to loan modifications for the Committee’s consideration. Bank of America today services approximately 15 million loans. Some of these loans are held for investment in our own portfolio, but others are serviced on behalf of investors, including GSEs (the largest category of investors), government entities (such as FHA and VA), and private investors. Our servicing is governed by the underlying pooling and servicing contracts and related rules of these investors. For loans that are held for investment, we have broad flexibility to modify the loans. For other categories, however, investor rules and underlying servicing contracts with respect to modifications are not uniform and may prevent us from doing modifications that would benefit borrowers and investors. Under some arrangements, for example, servicers have express or implied authority to make loan modifications; while under other arrangements, loan modifications are expressly disallowed. Even within categories of investors, such as the GSEs, there is significant variation in the rules that apply. Servicers are frequently unable to effect loan modifications because of contractual prohibitions.

Another challenge is lack of uniformity in approaches to loan modifications. Servicers increasingly are responding to current market conditions by accelerating their loan modification practices. Examples include voluntary loan modification programs like ours, as well as government programs, like the one the FDIC adopted in connection with its acquisition of IndyMac. Servicers are employing usual and customary loan modification techniques, such as interest rate and principal reductions or deferrals; and they are developing underwriting and other guidelines -- frequently imbedded in models -- to determine when and what type of a loan modification is appropriate and benefits borrowers and investors. Bank of America supports government and industry efforts to develop greater consensus regarding these elements of loan modification programs. Yesterday's announcement by the Treasury Department, Federal Housing Finance Agency, HUD and other government entities to adopt systematic loan modification programs will help drive uniformity among these entities in the approach to loan modifications. We believe industry organizations, including those appearing before you today, also should play a role by issuing additional standards for loan modifications that will encourage servicers to do more.

Finally, changed circumstances of the borrower, such as unemployment, divorce or dissatisfaction with the property may make a loan modification unattainable. As a baseline, we can only modify loans where the borrower has the ability and willingness to repay. Our studies show such 'unresolvable' borrower issues represent the largest impediments to modifications, and this could worsen without economic growth and housing market stability.

There are certainly other challenges, and we would be glad to discuss those with the committee subsequent to the hearing.

Bank of America thanks you for the opportunity to describe our new home retention initiative. We recognize there is still much more to be done. Today's market conditions demand expedient, affordable loan modifications that help borrowers, while protecting returns to investors**.** This is a critically important undertaking that must be done right if we as an industry are going to preserve the flow of mortgage credit to support housing, and at the same time protect communities and neighborhoods from avoidable foreclosures. I would be happy to answer any questions you might have.