U.S. House of Representatives
Committee on the Judiciary

Testimony of
Steve Bartlett
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Hearing on
STRAIGHTENING OUT THE MORTGAGE MESS:
HOW CAN WE PROTECT HOME OWNERSHIP AND PROVIDE RELIEF TO CONSUMERS IN FINANCIAL DISTRESS?
Before the
Subcommittee on Administrative and Commercial Law
Judiciary Committee
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Good morning Madam Chair, Congressman Cannon and Members of the Subcommittee. I am Steve Bartlett, President and CEO of The Financial Services Roundtable. I appreciate the opportunity to testify before the Subcommittee today.

The topic of this hearing is not about mere technical points of bankruptcy law. In reality, this hearing is about whether Congress will consider converting secured debt into unsecured debt through changes in the bankruptcy process. Such an action would not only NOT help homeowners, but would in fact make things much worse both for today's homeowners, but, more importantly, for future borrowers. Those with less than perfect credit would be priced out of homeownership, and even those with perfect credit would pay higher rates.

Let me hasten to say I do appreciate the good intentions of the Chair and members of the Subcommittee. I realize that with the difficult time we are experiencing, there is a tendency to want to do something. Unfortunately, opening the bankruptcy law to convert secured debt to unsecured does a lot more harm than good.

The good news is there is good news on the home mortgage front. Companies are reaching out to help borrowers in trouble on an unprecedented scale. And Chapter 13 is working to save homes. According to one prominent bankruptcy practitioner who represents homeowners, Chapter 13 is successful in stopping foreclosures in 97% of cases. This means Chapter 13 is highly successful. I am reminded of the old adage, "if it isn't broken, don't fix it."

My testimony today will focus on five items. First, I will discuss affirmative steps lenders are taking at this time to contact borrowers facing interest rate resets. Next, I will describe an industry initiative called HOPE that has provided the opportunity for free counseling to over 120,000 homeowners, often with significant successful outcomes. Third, I will discuss developments in the securitization industry that will create much-needed flexibility to modify mortgage loans. Fourth, I will simply cite some evidence that indicate Chapter 13 in its current form is a very successful program which should be continued. And finally, I will address some of the specific bankruptcy proposals in the recently-introduced legislation, HR 3609.

The Roundtable, through our Housing Policy Council which represents over 65 percent of originated mortgages in the United States, has not been sitting idly by as some borrowers have begun to face difficulties. We have been working to develop proactive strategies to prevent foreclosures. We believe that no one wins from a foreclosure.

There is not much positive in the press about subprime mortgages and foreclosures. Hopefully, the Fed's recent decision to cut interest rates may eventually lessen the credit crunch and help homeowners facing interest rate resets later this year. But I would like to share some more immediate good news.

Because Roundtable member companies, and all responsible lenders, want customers to be successful, major national lenders and servicers are actively working to contact their borrowers, particularly those facing adjustable rate mortgage resets. In addition, we are helping our customers through a national partnership with NeighborWorks® America and the Homeownership Preservation Foundation. It is estimated that about 50 percent of homeowners facing foreclosure never contact their lender. Our members are trying to overcome that challenge through active efforts to reach out to their borrowers. Our members are aggressively adopting new programs and products to address the specific difficulties subprime borrowers may have, with a particular focus on those with adjustable rate mortgages in this challenging interest rate environment and the slowing housing market.

Our members are taking action to offer options before a borrower is in default that are designed to ensure that borrowers are in the best possible position to anticipate and manage the challenges they may face with upcoming payment adjustments.

These actions include proactively contacting borrowers through a variety of channels – direct mail, email, interactive websites, inbound and outbound calling up to six months in advance of rate adjustments – to let them know of affordable refinance opportunities or of mutually agreeable payment plans that will keep borrowers in their homes.

For those borrowers who are unable to make their mortgage payments and where refinancing is not an option, lenders have adopted loss mitigation efforts to help them avoid foreclosure. These efforts include forbearance agreements of varying lengths (up to 12 months in some cases), loan modifications, enhanced counseling programs and increased staffing to assist customers. With regard to loan modifications, lenders are reducing payment amounts, lowering interest rates and/or extending the terms of the loans held by subprime borrowers.

For those borrowers who are reluctant to contact their lender or are just not aware of the options open to them, industry participants, led by the member companies of the Roundtable's Housing Policy Council, have formed a national foreclosure prevention partnership with NeighborWorks® America and the Homeownership Preservation Foundation, to reach out to these homeowners in trouble and offering them help.

This national partnership is based on the successful Chicago Homeownership Preservation Initiative (HOPI), an innovative partnership between the City of Chicago, the Federal Reserve Bank of Chicago, the Neighborhood Housing Services of Chicago, the Homeownership Preservation Foundation and several lenders who worked together to tackle the city's foreclosures. By all measurements, this program has been a success. In the year of the program, over homeowners 4,000 in the Chicago test market received counseling, over 1,300 families avoided foreclosure, and the program resulted in $267 million in collective savings for the City of Chicago, its homeowners and HOPI lender partners. We have expanded these successes on a national scale.

Building on the successful Chicago HOPI program, the Housing Policy Council and fifteen of its member companies have partnered with Fannie Mae, Freddie Mac, the Mortgage Bankers Association, other lenders, and respected national non-profits, NeighborWorks® America and the Homeownership Preservation Foundation, in a national foreclosure prevention campaign.[1] All participants are united in the goal of helping homeowners avoid foreclosure whenever possible. Through this new and innovative program, our member companies are taking exceptional measures to help any homeowner who is experiencing a financial crisis and potential foreclosure.

Free phone counseling is available, which can be reached by dialing the Homeownership Preservation Foundation's hotline, 888-995-HOPE. Every counselor is an independent specialist in foreclosure prevention, certified by the Department of Housing and Urban Development. When it is appropriate, the counselor acts as an intermediary on behalf of the homeowner, contacting their lender and discussing options available. Free in-person counseling is also available through local NeighborWorks® affiliates. The hotline is now available in all 50 states and Puerto Rico and bilingual services are available. In June 2007, the Ad Council introduced a new campaign promoting the Homeowners' Hope hotline in television, radio and print advertisements. The tag line of the campaign is a message I cannot emphasize enough: if you are in financial difficulty, call the hotline for help because "nothing is worse than doing nothing."

In 2006, over 48,000 homeowners called the HOPE Hotline while in 2007, counselors have already fielded over 80,000 calls from at-risk homeowners, with almost 40,000 of those completing counseling. The average daily call volume in August was 1600. Nearly half of those counseled have avoided foreclosure either through a loan modification or pre-foreclosure home sale. That is, over 120,000 Americans have had the opportunity for free counseling and about 60,000 borrowers have been able to stop a foreclosure. The Homeownership Preservation Foundation is seeing some significant trends in callers from July and August that I would like to share with you:

- More callers are reaching out earlier. 23% are less than 30 days late at the time of contact (up from 14% in Q1 and 21% in Q2). The earlier the borrower reaches out, the more options available. This is a positive trend potentially attributable to the national Ad Council campaign.
- More homeowners with ARM products are calling. Those with an ARM product is up to 44%, (up from 34% in Q1 and 40% in Q2). Of all the homeowners counseled in July and August, 31% had ARMs at 8% or higher interest rate (up from 24% in Q1 and 30% in Q2). 34% of those counseled have fixed rate products.
- California is the state with the highest call volume, accounting for 15% of calls. In August, 8600 Californian homeowners called the hotline. Other states with high call volume include Ohio (11% of calls), Georgia (9.5% of calls), Florida (7.3% of calls), and New York (5.9% of calls).

Now I want to share with you some good news in the securitization area. One of the most exciting developments in the field of mortgage lending has been the growth of mortgage-backed securities. Mortgages are now routinely pooled and sold to buyers who rely on the income stream from borrowers. This has provided for the regeneration of capital to permit lenders to make additional mortgage loans to even more aspiring homeowners. Because of the secondary markets, the capital markets have been making a much larger pool of capital for home mortgages. But if enacted, HR 3609 could have a de-stabilizing effect on the mortgage markets, which are now begging to stabilize.

But there was a problem. Market actors in the securitization process were not as well-equipped as we should have been to handle a downturn. Earlier this year, the Roundtable worked with the holders of mortgage-backed securities to allow for loan modifications for distressed customers in a way that is best for everyone. By June, 2007, the American Securitization Forum created guidance to encourage companies that service mortgages which have been sold into the secondary market to modify loans to prevent foreclosure. Now servicers can speak for investors and permit loan modification. Under this guidance, servicers are permitted to reduce principal in some cases. I would ask consent that a June, 2007 Statement of Principles related to loan modifications be entered into the record. The lesson here is that mortgage servicers and the holders of mortgage-backed securities see the problems facing some American homeowners and have responded by offering flexibility and demonstrating a willingness to work with borrowers. As this Statement of Principles becomes more widely adopted in the marketplace, we should expect more and more homeowners with subprime mortgages to get needed relief.

I hope all that I have described dispels the misperception that lenders actually want to foreclose. The exact opposite is true; responsible lenders wish to avoid foreclosure. Foreclosure is a losing proposition for all parties: the borrower, the neighborhood, and the lender. Lenders lose money in a foreclosure and they also lose a customer; responsible lenders want customers for life who can benefit from other services and products they offer.

Chapter 13 as it currently stands is an effective government program. One prominent Chicago bankruptcy lawyer argues on his website that Chapter 13 is effective at staving off foreclosure for 97% of all cases. And since the 2005 reform law, the percentage of Chapter 13 cases has jumped to around 35-40% of all consumer cases. Another prominent bankruptcy attorney described Chapter 13 as a "lifeline" and is "the best way to save a home." And a February, 2007 study financially supported by the Federal Reserve Bank of Philadelphia notes that 80% of Chapter 13 filers have a plan confirmed by a judge, even though some portion of these debtors will not complete the plan for one reason or another.

Finally, I want to address proposals to change bankruptcy law as it relates to mortgages. Radical, risky reforms to bankruptcy will have the devastating effect of increasing risk for lenders to an unacceptably high level. HR 3609 contains a provision that could have this detrimental impact. Section 3 of the bill would authorize bankruptcy judges to unilaterally reduce the loan amount of any mortgage and convert part of the mortgage to an unsecured status. It is important to note that this applies to all mortgages, even prime, fixed-rate loans that are fully current. This will force mortgage lenders to charge much higher interest rates for all types of mortgage loans. This will dry up credit for many Americans who may not be able to afford these higher rates.

If courts can simply reduce the value of collateral, a mortgage loan can effectively become unsecured and lenders will offer interest rates that more closely resemble the much higher interest rates for unsecured loans. Such greatly increased costs will fall hardest on lower income borrowers seeking to purchase a home. And these increased costs will make it hard for young families to afford a first home.

Allowing for wholesale, involuntary revisions to mortgage loans by bankruptcy judges will likely also harm the secondary market for mortgage loans. As I mentioned earlier, the industry is working hard to create flexibility for borrowers. As we all know, the secondary market is a crucial source of liquidity, permitting mortgage lenders access to funds to make new loans to more Americans pursuing the dream of homeownership. Bankruptcy law revisions must not have the effect, even if unintended, of reducing liquidity that flows from the secondary market.

Similarly, it would be highly unwise for Congress to give bankruptcy judges unlimited discretion to effectively re-amortize loans. Section 4 of HR 3609 could do just that by stretching payments to mortgage lenders over an even longer period of time. As with converting secured debt to unsecured debt, this proposal would increase risks, chill the secondary market and result in fewer mortgages and higher interest rates. Again, low and middle income Americans would be the big losers in this scenario.

In the short term, there is a real possibility that the voluntary work-out programs currently being used and expanded could be disrupted if Chapter 13 were modified to give bankruptcy judges unlimited discretion to modify loans. After all, if a borrower – any borrower, even a solvent borrower who is current on a prime and fixed-rate loan -- can simply file for bankruptcy and a judge could re-write almost all aspects of the loan – as HR 3609 proposes to
do – there is a greatly reduced incentive to work things out with a lender.

Finally, I am truly mystified by the idea that Congress would exempt homeowners from counseling as a pre-condition for filing bankruptcy. As our HOPE projects shows, counseling can help save homes. It us therefore counterintuitive to remove the counseling requirement for homeowners as Section 5 of HR 3609 would do. I urge the Subcommittee not to deprive homeowners of the financial training and education that comes with high quality counseling.

Madam Chair, Chapter 13 has worked well at saving homes while preserving access to mortgage credit and paying unsecured lenders after satisfying secured debt. I recognize that you have the best of intentions. But converting secured debt into unsecured debt will make things worse. With due respect, HR 3609 is a step toward higher interest rates and higher fees and lower rates of homeownership. We stand ready to discuss how Congress might help in the face of the credit crunch, but we are compelled to oppose changes in bankruptcy law that undermine the very foundation of low-cost secured lending. As I have stated earlier, mortgage lenders and servicers are working hard to help borrowers. We have a hotline with free counseling that is working. The financial services industry is looking to avoid foreclosures and create positive outcomes for both borrowers and lenders. Thank you for inviting me to testify. I look forward to your questions.

The Homeowner's HOPE™ Hotline is available:

- To any homeowner in America having trouble paying their mortgage
- Any time – 24 hours a day, 7 days a week

888-995-HOPE offers:

- Absolutely free foreclosure prevention counseling by expert counselors at HUD-approved agencies.

When a constituent calls 888-995-HOPE:

- Service begins immediately—the counselors themselves answer the phone
- Homeowners can get budgeting help, a written financial plan, and assistance contacting their lender when appropriate
- If they'd like face-to-face counseling, they are referred to their local NeighborWorks® agency or other local resources
- If they need additional services, homeowners may be referred to agencies in their area

The details:
The Homeowner's HOPE Hotline (888-995-HOPE) is provided free of charge by the Homeownership Preservation Foundation, a nonprofit dedicated to preserving homeownership. The Foundation partners with local governments, nonprofits, borrowers, and mortgage lenders/servicers to deliver innovative homeownership preservation solutions.

In 2006, over 48,000 homeowners called the HOPE Hotline. In 2007, HPF has fielded over 60,000 calls from at-risk homeowners. Nearly half of those counseled have avoided foreclosure by working out new loan terms or by selling their home. Currently call volume is increasing by 25% every 6-8 weeks. Callers tend to be female, married, with children, mid to lower income.

In-person counseling is provided by over 230 NeighborWorks® organizations, located around the country in all 50 states, Puerto Rico and the District of Columbia. NeighborWorks® organizations are chartered by NeighborWorks® America, a national nonprofit created by Congress to provide financial support, technical assistance, and training for community-based revitalization efforts.

National Supporters of this effort include: American General Financial Services, a member of AIG, Inc., Bank of America, Barrett Burke, LLP, Citigroup, Countrywide Home Loans, EMC Mortgage, Fannie Mae, Freddie Mac, GE Money, GMAC ResCap, Housing Policy Council, HSBC– North America, JPMorgan Chase, LaSalle Bank, Mortgage Bankers Association, National City Mortgage Co., Ocwen Loan Servicing, LLC, Option One Mortgage, State Farm Insurance, SunTrust Banks, Inc., Washington Mutual and Wells Fargo Home Mortgage.

If you need more information:

About 888-995-HOPE and HPF: visit: **www.995hope.org**
About in-person counseling: visit: **www.nw.org/ForeclosureSolutions**
Ad Council Campaign: visit: **www.ForeclosureHelpAndHope.org**