Statement of

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before the

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Committee on Financial Services

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Hearing on

"The Recently Announced Revisions to the Home Affordable Modification Program (HAMP)"

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Chairwoman Waters, Ranking Member Capito, members of the subcommittee, I am Robert E. Story, Jr., CMB, Chairman of the Mortgage Bankers Association (MBA) and President and Chief Executive Officer of Seattle Financial Group, parent company to Seattle Mortgage, Seattle Savings Bank, Seattle Capital and Seattle Escrow. I appreciate the opportunity to appear before you today on behalf of MBA to discuss the recent announcements related to the Making Home Affordable (MHA) program and Federal Housing Administration (FHA) refinance and loss mitigation programs.

Our member servicers are committed to helping financially troubled borrowers retain homeownership whenever possible and otherwise avoid foreclosure. Many of MBA's members are participating in the administration's Home Affordable Modification Program (HAMP) for private label and portfolio servicing and all servicers for Fannie Mae and Freddie Mac loans are participating in HAMP as directed by the GSEs. Servicers are working hard implementing recently announced changes to the HAMP program in Supplemental Directive 10-02 and the Home Affordable Foreclosure Alternatives program that became effective April 5, 2010.

Our members continue to work with the administration to suggest improvements to HAMP processes and requirements in order to increase efficiency and provide better outcomes. Servicers strive to ensure a positive customer experience and improved consumer contact in these high-volume and often very emotional times. The challenge is daunting, but servicers continue to hire staff, redeploy personnel to the loss mitigation function, contract with third-party experts to reach out to borrowers, work with HUD-approved counselors, and employ new technology and strategies to communicate with borrowers.

According to the U.S. Department of the Treasury's Making Home Affordable Program Servicer Performance Report Through February 2010, more than 1.3 million borrowers have been offered trial modifications since the inception of the program. Currently, one million borrowers are in active trial and permanent modifications of which 168,708 represent active permanent modifications. An additional 91,843 permanent modifications have been approved by servicers and are pending borrower acceptance. The report further indicates that borrowers are on average saving $500 a month on their mortgage payments, a 36 percent median monthly payment decrease. Borrowers in active HAMP trial modifications and permanent modifications have saved more than $2.7 billion. Servicers have substantially increased the pace with which permanent modifications are being done and we agree that such pace needs to continue.

In addition to HAMP, servicers are providing their own modification and home retention solutions when the borrower does not qualify for the administration's modification program. The HOPE NOW Data Report dated March 31, 2010, indicates that from July 2007 through February 2010, the industry completed a total of 6.7 million workout solutions, including almost 2.7 million loan modifications. During the month of February, 95,586 homeowners received proprietary loan modifications outside of HAMP. When combined with HAMP modifications, homeowners received a total of 148,000 loan modifications in February 2010.

Recent Administration Announcements

Between March 24 and March 26, the Obama administration announced several new programs, including:

- Forbearance program for unemployed borrowers;
- Principal reduction option for certain underwater loans under HAMP;
- Increased relocation incentives for borrowers, increased incentives to servicers for HAMP modifications and for extinguishment of subordinate liens;
- Incentive payments to execute FHA's HAMP;
- Additional procedural requirements for borrower solicitations, performance timeframes for servicers and borrowers, foreclosure referrals and intervening foreclosure steps;
- Requirement for offering HAMP to borrowers in bankruptcy;
- Changes to FHA's refinance options to encourage principal write downs of the existing mortgages; and
- Revisions to the second lien program.

Unemployment and Delinquency Statistics

Before discussing the recent additions to the MHA program, we would like to discuss the current housing market conditions in order to put into perspective the challenges the industry and government faces.

According to MBA's National Delinquency Survey, the delinquency rate for mortgage loans on one-to-four unit residential properties fell to a seasonally adjusted rate of 9.47 percent of all loans outstanding as of the end of the fourth quarter of 2009, down 17 basis points from the third quarter of 2009, and up 159 basis points from one year ago. The delinquency rate includes loans that are at least one payment past due but does not include loans in the process of foreclosure. The percentage of loans in the foreclosure process at the end of the fourth quarter was 4.58 percent, an increase of 11 basis points from the third quarter of 2009 and 128 basis points from one year ago. The combined percentage of loans in foreclosure or at least one payment past due was 15.02 percent on a non-seasonally adjusted basis, the highest ever recorded in the MBA delinquency survey. The percentage of loans on which foreclosure actions were started during the fourth quarter was 1.20 percent, down 22 basis points from last quarter and up 12 basis points from one year ago.

The pattern of mortgage delinquencies very much follows the pattern of unemployment. Just as short-term delinquencies have fallen during the latter part of 2009, first-time claims for unemployment insurance have declined by about a third since their peak in March 2009. As long-term delinquencies now dominate total mortgage delinquencies, long-term unemployment now dominates the total unemployment number. People who have been unemployed for six months or more now constitute more than 40 percent of the total unemployed, the highest share in the history of the unemployment survey. In addition, during the last several months we have seen a large number of people simply drop out of the work force, many who are discouraged about being able to find work. Until the issue of this large segment of long-term unemployed is resolved, many of the longer-term mortgage delinquencies will remain a problem with a strong likelihood of turning into foreclosures.

Nonetheless, we are likely seeing the beginning of the end of the unprecedented wave of mortgage delinquencies and foreclosures that started with the subprime defaults in early 2007, and continued with the meltdown of the California and Florida housing markets due to overbuilding and weak underwriting. With fewer new loans going bad, the pool of seriously delinquent loans and foreclosures will eventually begin to shrink once the cure rate exceeds the pace of new delinquencies. Despite the drop in short-term delinquencies, foreclosure rates are likely to climb, as more borrowers enter forbearance and modification programs. A sizable number of the loans in the 90-plus day delinquent category are in trial loan modification programs. Loans in forbearance and trial modifications are carried as delinquent until borrowers become current through permanent modifications or cure.

Forbearance Program

MBA believes assisting unemployed borrowers should be a priority. According to the Bureau of Labor Statistics, the number of unemployed persons remained relatively unchanged from February to March, at approximately 15 million people or a rate of 9.7 percent.

To address the record unemployment numbers, the administration introduced a forbearance program that will benefit unemployed borrowers. We fully support this initiative. While the specific details are not yet published, the administration indicates that the program would reduce an eligible borrower's first mortgage payment to an affordable level for a minimum of three months, and up to six months. Most borrowers' payments will be reduced to 31 percent of their monthly income, or less. At the end of the forbearance period or when the borrower becomes reemployed, borrowers with first mortgage payments above 31 percent of their income will be considered for a permanent HAMP modification. The program is required for servicers who are participating in the MHA program. Unemployed borrowers must meet basic HAMP eligibility criteria.

MBA supports the creation of a temporary forbearance program to address the unique circumstances of unemployed borrowers. In many cases, these borrowers fail to make sufficient income to qualify for a HAMP modification. In other cases, borrowers are granted a permanent solution for a temporary situation that fails to reflect their true economic needs.

Features outlined in the administration's forbearance program are consistent with MBA's own recommendations presented to the Treasury Department in February 2010 for a forbearance program for unemployed borrowers, including the recognition that, in appropriate cases, borrowers should continue to pay a portion of their income toward their mortgage. We also support allowing different periods of forbearance to help ease financial institutions' concerns with the accounting and regulatory treatment of assets that remain delinquent for six months or longer.

Our recommendations, however, have additional important features. We hope these will be considered to facilitate implementation of the new requirements. Specifically MBA recommends:

- **A low cost source of loans** to banks and non-bank financial institutions to allow them to carry delinquent mortgages for the additional three to six months called for by the forbearance program. Servicers must advance principal and interest payments to private label investors during this time despite not receiving such payments from borrowers. Servicers of GSE loans must advance such payments until they are four months past due. In addition, the servicer advances funds to pay delinquent borrowers' tax and insurance premium obligations. While the servicer ultimately gets reimbursed for these advances from the security, the carry time and costs are substantial. This is especially true for non-bank institutions that must borrow funds from commercial lenders. These "servicing advances" are not always readily available and are often subject to caps and dollar limitations. In order to comply with the forbearance program, servicers must be given the tools to succeed. Such funds would be repaid with interest to the Treasury Department and thus would not be a cost to taxpayers. The Treasury Department should establish lending parameters of such funds.

- **Application of a risk sharing feature** to offset the investor's risk of delaying foreclosure when a forbearance plan fails. One option is to apply the Home Price Decline Protection Incentives to the forbearance program so that investors are not accepting greater risk of loss in a declining market by granting forbearances that unfortunately fail.

Principal Reductions

The Treasury Department announced a revised principal write down component to HAMP. Over the next several months, Treasury will develop an alternative Net Present Value (NPV) model placing principal write downs first in the waterfall of borrower assistance options. Under this model, principal will be reduced to achieve a 31 percent first mortgage debt-to-income ratio, but not lower than 115 percent loan-to-value (LTV). Servicers will be required to run the new alternative NPV (that includes the new incentives) and standard NPV. If the alternative NPV yields a higher return than the standard NPV, the servicer will have an option to write down principal over a three-year period, as long as the homeowner remains current on payments. The lender will receive incentive payments for such write downs. The principal write downs are thus voluntary and subject to contractual restrictions.

While MBA is concerned this program may exacerbate delinquencies, we do not oppose such principal write downs at this time, as long as they remain voluntary. If they are made mandatory, such principal write downs would constitute takings by the federal government and would cause the same severe impacts as judicial cram downs, including the possible loss of mortgage insurance protections. We urge the Treasury Department to monitor the program to gauge whether it is causing strategic defaults and to make adjustments to avoid such deleterious consequences if necessary.

It is unclear at this time how many loans will be modified through principal reduction. There is not sufficient information about the alternative NPV calculation and its assumptions to determine how many will pass the test. Also, loans that are protected by mortgage insurance will require the insurer's approval and partial or full claim payment. Some pooling and servicing agreements (PSAs) may also prohibit principal write downs. Finally, each lien holder will have different tolerances on principal write downs due to their financial structure, loan purchase price, loan status, borrower financial situation, lien priority, and market conditions. The incentives for loan extinguishment are positive and may encourage lenders to use this option in certain cases.

One area of substantial concern, however, is the announcement that servicers must retroactively apply the new principal write down feature for all borrowers who have already received permanent modifications or who are in trial modification and current when the program is operational (later in 2010). This is a substantial burden on servicers that will not yield the results anticipated. The industry is disappointed with this broad requirement given existing concerns about servicer capacity. This provision exacerbates these concerns and should be more appropriately targeted when final guidance is given. Servicers need some finality in their evaluation of borrowers under HAMP. We suggest limiting such reviews to borrowers or loan products the servicers determine to be eligible for principal reduction.

Supplemental Directive 10-02

Supplemental Directive 10-02 was issued on March 24 and adds considerable new requirements to an already complex and heavily prescriptive process. The Supplemental Directive also creates performance timeframes for both servicers and borrowers, prohibits a new foreclosure referral when a borrower is cooperating with the servicer to obtain a modification, and requires a pause, or in some states a cancellation, of the foreclosure process while the borrower is in the trial period based on verified income. Borrowers in active bankruptcy must be considered for HAMP upon request.

We support the new timeframes in that they set out expectations on borrower cooperation and responses. While we have some technical and clarifying issues we would like to discuss with Treasury officials, we are most concerned with: (1) the solicitation and re-solicitation requirements and (2) the foreclosure pause.

- **Solicitation Requirements:** The solicitation requirement calls for four telephone calls and two letters, one of which must be sent by certified mail or overnight delivery. MBA appreciates that the Supplemental Directive also establishes what details must be provided in those communications. What is of concern is the requirement that servicers effectively re-solicit all eligible borrowers again under these requirements even if they were solicited before. This is a substantial burden on the servicing staff, will divert resources away from working with cooperative borrowers and will create confusion for borrowers. We believe re-solicitation is not necessary. Rather, efforts should be made to remove or avoid the creation of barriers to effective communications between servicers and borrowers, which we discuss later in our testimony.

- **Foreclosure Pause:** MBA is also concerned with the new requirement that servicers pause foreclosures if the borrower is in a trial modification. While we agree that a foreclosure sale should never occur while the borrower is being evaluated for HAMP or in a trial modification, we are concerned that this new requirement will actually require foreclosures to be cancelled. In some states, the cancellation of a foreclosure requires the complete recommencement of the action rather than a mere pause. Should the borrower fail to perform, the servicer must restart the entire process anew, causing significant delays and duplication of foreclosure costs. As stated above, the carrying costs of such delays need some reasonable support from the Treasury Department. We recommend Treasury also consider a low-cost loan program to help support the cost of advances of principal, interest, tax and insurance due to foreclosure cancellations.

<u>FHA Enhancements</u>

On March 26, HUD announced a new refinance program for underwater borrowers and the Treasury Department announced TARP incentive payments for executing FHA HAMP.

MBA supports the new incentives for FHA HAMP. In order to receive the incentives, the FHA servicer must sign a modified Servicer Participation Agreement. Irrespective of those incentives, servicers are required to consider FHA HAMP in the waterfall of loss mitigation and will continue to do so.

FHA also announced new refinance parameters for borrowers who owe more than their house is worth. The program enables refinances at 97.75 percent LTV (and 115 percent CLTV) for current borrowers even though they may have credit blemishes. The original lien holder must be willing to reduce the debt by 10 percent.

The benefit for lenders of this program is that performance of these refinance loans will not be subject to Credit Watch or Neighborhood Watch, which can affect the continued ability of a mortgage origination branch to originate loans if its delinquency rate exceeds FHA thresholds. Moreover, to date, these refinance loans are eligible to be placed in

Ginnie Mae securities with the most advantageous pricing. The combination of these two enhancements ensures more competitive interest rates and greater access to FHA credit for borrowers despite a poor credit score. The TARP incentives for price extinguishment of first and seconds liens are also positive provided that the receipt of such funds does not impose additional obligations. Conversely, the requirement for a 10 percent reduction in principal and a combined 31 percent first and second mortgage debt-to-income ratio will limit the number of borrowers eligible for the product. This refinance product is not available on FHA loans.

Second Lien Program

The administration released revised rules for the Second Lien Modification Program (2MP) also on March 26, 2010. When a borrower's first lien is modified under HAMP, participating second lien servicers must offer to modify the borrower's second lien according to specified protocol. The program is voluntary. Today, four of the largest banks, including Bank of America, Wells Fargo, Citigroup and JP Morgan Chase, have executed the 2MP agreement. The revised 2MP policies made several significant changes to the incentive compensation that we believe makes the program more attractive. Both the investors' Extinguishment Incentives and Payment Reduction Cost Sharing Incentives have been increased and the calculations simplified.

While MBA does not collect data on second lien servicing or holdings, according to the FDIC Quarterly Banking Profile, there were $661 billion outstanding in home equity lines in the fourth quarter of 2009, from 8,012 institutions reporting. Despite the large number of institutions reporting second lien activities, second liens and servicing are highly consolidated in the largest institutions. While it is unclear how many servicers will execute the 2MP contract, the fact that the four largest holders and servicers of second liens are participating will have a significant impact on the number of borrowers receiving help. According to the National Mortgage News Alternative Quarterly Data Report, 4th Quarter of 2009, the four residential second lien servicers who have signed the 2MP agreement hold or service approximately $427 billion in second liens. We estimate they represent approximately 60 percent of outstanding second mortgages.

Improvements to Facilitate HAMP

The subcommittee requests input on any process improvements that are needed within HAMP or within servicers' operations, to ensure that eligible borrowers receive trial modifications, and that eligible trial modifications are converted to permanent modifications.

- **Waiver Process:** The Treasury Department should establish a well-staffed help line to review and approve program exceptions. Borrowers' personal and financial circumstances are highly individual and do not fit neatly into program rules that are quite prescriptive. Servicers are understandably reluctant to approve exceptions that are reasonable, but outside the strict parameters of the program rules. If a waiver process is implemented, servicers must have the ability to rely on such waivers during MHA compliance audits. Rapid response and approval of waivers of HAMP guidelines would go a long way to help move borrowers from trial to permanent modifications. Such waivers are offered by Fannie Mae and Freddie Mac with regard to their own lending and servicing guidelines.

- **Interest Only Modifications:** The industry has requested for some time that the Treasury Department allow an interest only option for modifications. The interest only feature would be particularly helpful when addressing ARMs with low rates. The concept is similar to principal forbearance except that all principal payments would be deferred, but interest would accrue.

- **Fair Debt Collection Practices Act:**

    - **Eliminate Mini Miranda Warning for Mortgage Servicers:** MBA has been a long-time proponent of amending the Fair Debt Collection Practices Act (FDCPA) to exempt mortgage servicers from the so-called mini Miranda warning they must give delinquent borrowers prior to any discussion with them. The mini Miranda warning not only extends the telephone hold time, but chills the reception toward the offer of help. It is also unnecessary in a mortgage context because a borrower knows that he or she has monthly mortgage payments that are due. The mini Miranda requirements are in conflict with other parts of the FDCPA and create unnecessary liability for servicers trying to assist borrowers.

    - **Permit Informational Voice Mail Messages:** Servicers find themselves unable to properly and effectively communicate with borrowers due to the FDCPA. The act fails to allow servicers to leave voice mail messages with any meaningful information about the offer of help that would encourage borrowers to call back due to conflicting provisions of the law. When servicers do leave messages, court cases have been less than helpful and are contradictory as to what information can be left and whether stating the mini Mirada warning required by the FDCPA, also violates the act. Some servicers choose to refrain from leaving messages in response to these cases, a result that reduces effective communications regarding loss mitigation alternatives. Clearly this step would not be in the best interests of borrowers trying to remain in their homes. While there is little question that the provisions of the FDCPA provide critical protection to consumers relating to the debt collection practices of some collection agencies, application of the FDCPA to mortgage servicers and their counsel could have the unintended consequence of chilling meaningful communication with consumers regarding work out options.

Conclusion

HAMP is a critically important effort that is assisting hundreds of thousands of homeowners. Concurrently, servicers continue to assist hundreds of thousands of homeowners who do not qualify for HAMP with their own proprietary solutions. We hope to continue working with the administration on successful implementation of the new programs. Our members are dedicated to implementing HAMP and providing other loss mitigation solutions to financially distressed homeowners. Thank you for inviting me to testify before you today on behalf of the Mortgage Bankers Association.