Opening Statement of Ranking Member Spencer Bachus, Full Committee Hearing on "Accelerating Loan Modifications, Improving Foreclosure Prevention and Enhancing Enforcement"

December 6, 2007

Mr. Chairman, thank you for convening the latest in a series of hearings that the Committee has held this year on the turmoil that continues to characterize the U.S. mortgage market. Since the Committee’s last hearing on this issue in October, the fundamentals in our nation’s housing markets have continued to deteriorate; economic growth forecasts have been revised downward; and several of our nation’s largest financial institutions have written down billions of dollars worth of mortgage-backed securities. What many had hoped would be a short-term market event that could be easily contained has instead become, in the words of Treasury Secretary Paulson, the largest single threat to the health of the U.S. economy.

Two years ago, I proposed a very un-intrusive legislative solution to an emerging crisis in subprime lending which was obvious to some of us. It included registration and licensing of all loan originators, both brokers and bankers; a mandate to federal regulators to adopt and enforce an “ability to repay” standard for mortgages; and additional enforcement mechanisms to address unfair and deceptive (i.e. predatory) lending practices. At that time, I was assured that sufficient regulations were already in place and being enforced, and that the market would “take care of any abuses.” Today, we have reason to suspect those assurances. Unfortunately, while we know that market forces are taking care of the excesses, they are also taking down the economy and lots more.

Although estimates vary, upwards of 2 million subprime adjustable rate mortgages are expected to reset over the next 18 months. If, as many experts predict, a significant number of these borrowers are unable to make their mortgage payments once their introductory rates expire, the result could be a wave of foreclosures that would deepen the housing downturn and damage our economy. As we have heard in previous hearings, the consequences of foreclosure extend far beyond the individual parties to a residential mortgage contract, affecting entire communities and straining the resources of local governments forced to deal with blighted neighborhoods and declining tax revenues.

To avoid mass foreclosures, the Treasury Department and some of our nation’s leading financial institutions have been actively engaged in efforts to identify and assist those subprime borrowers who are in danger of falling behind when their interest rates reset in the coming months. The Administration is expected to announce today an initiative that would expedite the loan modification process, by freezing the interest rates on hybrid adjustable rate mortgages where the borrower has demonstrated an ability to make payments at the lower introductory rate but will be unable to do so once the rate adjusts upward. While I intend to reserve judgment on the Administration’s plan until all of the details are known, Secretary Paulson should be commended for encouraging innovative, private sector-driven solutions to the problems plaguing the mortgage sector.

Congress has a role to play here as well. The House has previously passed legislation to establish a nationwide registry of mortgage originators; address abusive mortgage lending practices; modernize the FHA program so that it can assist a wider range of worthy subprime borrowers; reform the GSEs, which play such a critical role in providing liquidity to the mortgage market; and provide tax relief to homeowners whose lenders have forgiven portions of their mortgage debt. All of these measures await action in the Senate, and I would hope that the other body could find time on its calendar this year to move forward on some of these initiatives before events overtake us and market conditions deteriorate further.

There is a broad consensus now that something must be done to mitigate if possible an inevitable surge in foreclosures as loans reset. As we consider what positive steps should be taken, we must also recognize that the best public policy is to address obvious destructive and predatory financial practices before the market and consumers fall victim, and before they become so prevalent that a crisis mandates a legislative cure which may have its own negative consequences. Benjamin Franklin had it right when he said that an ounce of prevention is worth a pound of cure.

A word of caution is in order regarding proposals for wholesale corrective action. There are significant risks in at least three areas:

1. People who are able to pay and not eligible for modification may feel unfairly treated;

2. Litigation can be expected from several quarters. A change in the fundamental structure of our mortgage markets over the last 30 years has resulted in multiple parties to every mortgage contract.

3. Despite denials we know there will be costs. What are the costs and who will bear them? There will be significant objections to having the public bear even a portion of the cost of these loan modifications

We also need to remember there are already laws and regulations available to deal with predatory loans. Under the Truth In Lending Act, the Federal Reserve and other regulators already have the power to act to curtail unfair and deceptive acts and practices. Indeed the Federal Reserve is expected to issue proposed regulations later this month to address abusive mortgage lending practices pursuant to its authority under HOEPA. An energized and motivated regulatory community can address many of the worst cases without action by Congress.

In closing, let me again commend the Chairman for holding this hearing, and the gentleman from Delaware, Mr. Castle, for his efforts on behalf of America’s homeowners. Thanks also to all of our witnesses for being with us today. We look forward to your testimony.