Statement of Donald Bisenius
Executive Vice President – Single Family Credit Guarantee Business
Freddie Mac

Hearing of the U.S. Senate Committee on Banking, Housing and Urban Affairs
December 1, 2010

Chairman Dodd, Ranking Member Shelby, and members of the committee: thank you for inviting me to speak today on servicing and foreclosure issues. I am Don Bisenius, head of Freddie Mac's Single Family Credit Guarantee Business. I have been with Freddie Mac since 1992. In my current role, I oversee the sourcing, pricing, securitization and performance of single-family mortgages we purchase.

Today's hearing raises important issues about the integrity of the mortgage origination, securitization and servicing processes. To understand Freddie Mac's role in these processes, the Committee should consider the following:

- Freddie Mac currently owns and guarantees approximately 12.4 million single-family mortgages. In both the acquisition and ongoing servicing of these loans, Freddie Mac relies on its sellers and servicers. We don't originate loans, and we don't service loans. Rather, Freddie Mac provides guidelines for the origination and servicing of our loans, and contracts with sellers and servicers to carry out these operations. Institutions conducting these activities with respect to Freddie Mac loans represent and warrant to us that they are following our contractual requirements. Failure to fulfill these obligations creates a liability for either the originator or the servicer, including the possibility that they will be required to repurchase the loan. Freddie Mac actively requires repurchases of mortgages sold to us in violation of representations and warranties, as appropriate. We pay the servicing industry about $5 billion per year to service our mortgages.

- Freddie Mac expects servicers of our loans to treat borrowers fairly, with respect, and in full compliance with all applicable laws, regulations and Freddie Mac policies. No homeowner with a mortgage owned or guaranteed by Freddie Mac should ever worry about losing his or her home to an unnecessary or wrongful foreclosure.

- While Freddie Mac currently owns almost 25 percent of total single-family mortgages outstanding in our nation, we own less than 10 percent of seriously delinquent loans (90 days or more past due). Freddie Mac owns fewer than 500,000 seriously delinquent mortgages, compared to approximately 5 million across the mortgage industry. Freddie Mac's disproportionately small share of seriously delinquent mortgages directly results from our low mortgage delinquency rates relative to the mortgage industry as a whole. As of September 30, 2010, our single-family serious delinquency rate was 3.8 percent – less than one-half of the mortgage industry average of 8.7 percent. Our ability to assist troubled borrowers is limited to this small share of seriously delinquent loans we own.

- Freddie Mac has long had policies and initiatives in place to help financially-troubled borrowers avoid foreclosure. In response to the unprecedented mortgage default crisis, we have created additional servicer incentives and loss mitigation options. In addition to $5 billion that Freddie Mac pays servicers each year for managing the servicing process, we offer additional financial incentives for servicers to avoid foreclosure, pay credit counselors to work with at-risk borrowers, and even had an initiative for door-to-door contact of borrowers who are behind on their mortgage payments to inform them of options for resolving their delinquency. Since the beginning of 2009, we have helped nearly 370,000 families avoid foreclosure. Through the first nine months of 2010 alone, nearly 211,000 delinquent borrowers with Freddie Mac-owned or guaranteed mortgages avoided foreclosure – nearly twice the 114,000 who were foreclosed on. The number of loan modifications alone during the first nine months of this year (132,000) exceeded foreclosures. At the same time, we recognize more remains to be done to help at-risk families.

- The length of time for the average foreclosure of a Freddie Mac loan indicates that borrowers are not being rushed through the foreclosure process. We require our servicers to seek to resolve borrower delinquencies through a variety of foreclosure alternatives offered by both the Obama Administration's Making Home Affordable Program and Freddie Mac's traditional foreclosure avoidance initiatives. However, if the borrower's delinquency cannot be cured by these methods, servicers must move ahead with foreclosure to minimize further financial risk to taxpayers. Currently the nationwide average for completion of a foreclosure on a delinquent mortgage owned or guaranteed by Freddie Mac is 449 days, and borrowers whose properties are foreclosed are behind on their payments, on average, well over one year.

Freddie Mac's support of the housing market during the crisis

Freddie Mac is both mindful and appreciative of the federal financial support we have received, and as an institution in conservatorship, we are highly focused on being good stewards of this support. Accordingly, I would like to begin by briefly summarizing how, throughout the worst housing and financial crises since the Great Depression, Freddie Mac has provided a stable and constant source of mortgage funding for our nation. From the beginning of 2009 through October 2010, Freddie Mac purchased or guaranteed $864 billion in mortgage loans and mortgage-backed securities. Our purchases have helped 3.9 million American families own or rent a home. This includes 2.7 million homeowning families who have been able to refinance into lower rate mortgages – saving those families $5.2 billion annually.

Together with Fannie Mae, we have provided the vast majority of conventional mortgage liquidity during the past two years as other sources of capital have left the market. With continued weakness in the housing sector, our support remains critical. During the third quarter of 2010, Freddie Mac and Fannie Mae purchased or guaranteed about 70 percent of mortgage originations. FHA comprised most of the remainder of the market.

As we have maintained liquidity in the residential mortgage market, we believe the credit quality of the single-family loans acquired in 2009 and the first nine months of 2010 (excluding relief refinance mortgages) is better than that of loans acquired from 2005 through 2008 as measured by original LTV ratios, FICO scores, and income documentation standards. We are working together with our regulator and conservator, the Federal Housing Finance Agency (FHFA), and our mortgage lending partners to strengthen the foundation of responsible lending practices to produce better quality loans. Our goal is to create sustainable homeownership opportunities for America's families, ensure fewer unexpected costs for our lenders, drive better loan performance, and reduce Freddie Mac's dependence on taxpayer dollars. While these and other changes involve costs for the lender -- and in some cases, tighter credit requirements for borrowers -- we believe they are essential to placing the housing finance system on a better foundation going forward.

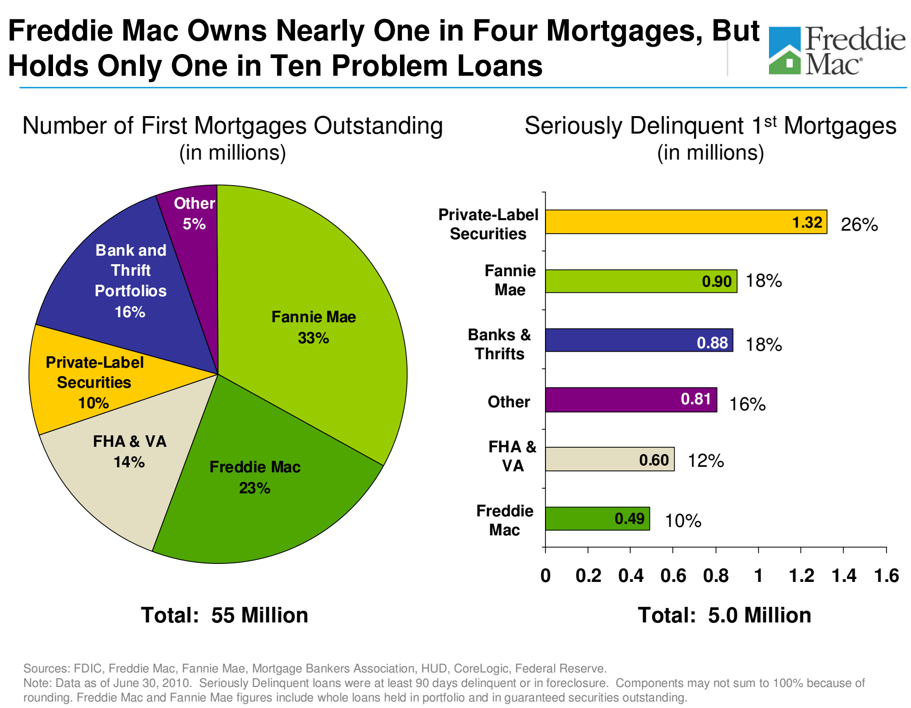
Freddie Mac continues to help families avoid foreclosure

Helping financially troubled families avoid foreclosure is the right thing to do for homeowners and communities, and it reduces losses to Freddie Mac. Since the beginning of 2009, we have helped nearly 370,000 families facing financial hardship to keep their homes or sell their properties, through both our own foreclosure avoidance initiatives and the Making Home Affordable (MHA) programs, such as the Home Affordable Modification Program (HAMP). During the first nine months of this year, more than 121,000 Freddie Mac-owned loans were modified through HAMP.

Additionally, we have enabled nearly 223,000 homeowners to refinance into lower-cost mortgages through MHA's Home Affordable Refinance Program (HARP). HARP was designed to assist borrowers who have remained current on their mortgage obligations but have been unable to refinance because the values of their homes have declined. Borrowers with mortgages up to 125 percent of the current value of their homes are eligible for refinancing through HARP. The program enables financially-stressed borrowers to reduce their monthly mortgage payments by refinancing into lower rate mortgages, fixed-rate mortgages, or mortgages with longer terms. As a result of HARP, fewer borrowers fall behind in their mortgage payments in the first place.

We provide our servicers with a variety of financial incentives to resolve borrower defaults by means other than foreclosure, including forbearance, repayment plans, loan modifications, short payoffs, make-whole pre-foreclosure sales and deeds-in-lieu of foreclosure. The result is that during the first nine months of 2010, delinquent borrowers with Freddie Mac-owned or guaranteed mortgages were more likely to receive loan modifications (132,000) than to lose their homes to foreclosure (114,000). Nearly 211,000 borrowers in total avoided foreclosure during the first nine months of this year – 184,000 through home retention actions including modifications, repayment plans and forbearance agreements, and 27,000 through short sales and deed-in-lieu transactions. Freddie Mac has long been recognized as an industry leader in identifying and addressing delinquencies before they become foreclosures, and in devising ways to identify, contact and help delinquent borrowers navigate the loss mitigation process. In addition to helping borrowers through our loss mitigation tools, for years, we have worked closely with national nonprofits to educate borrowers about foreclosure prevention and mortgage fraud. We support these efforts through a number of online resources, including an award-winning financial literacy curriculum. We have also sponsored targeted marketing campaigns, in-home counseling, walk-in community events and permanent help centers. Our goal is to foster a strong communication link between the borrower and the servicer, which is critical to successful home retention and loss mitigation.

As noted earlier, Freddie Mac's ability to stem the tide of foreclosures on our own is limited, simply because we own a small proportion of seriously delinquent mortgages. As the chart below shows, Freddie Mac owns or guarantees nearly one-quarter of outstanding first mortgages but only one-tenth of seriously delinquent loans. Freddie Mac's disproportionately small share of seriously delinquent mortgages directly results from our low mortgage delinquency rates relative to the mortgage industry as a whole. As of September 30, 2010, our single-family serious delinquency rate was 3.8 percent – less than one-half of mortgage industry average of 8.7 percent. When loans owned or guaranteed by Freddie Mac and Fannie Mae are excluded, the industry's serious delinquency rate rises into double digits.



The role of Freddie Mac's servicers and our relationship with them

Like most other mortgage investors, Freddie Mac is not a servicer. Instead, we contract with either the mortgage originator or another financial institution to service the mortgages we purchase. In general, servicers collect loan payments from the borrowers and remit them to Freddie Mac each month. They are paid for their services on a monthly basis by retaining the difference between the interest rate on the note and the interest rate paid to Freddie Mac. This difference, commonly known as the "servicing spread," averages one-quarter of one percent (25 basis points). In the aggregate, the servicing industry is paid about $5 billion per year to service Freddie Mac-owned or guaranteed mortgages.

As discussed above, servicers' duties also include working with borrowers who fall behind in making payments on their mortgages. In the event that loss mitigation efforts are unsuccessful and there is no reasonable likelihood of curing the borrower's delinquency by means other than foreclosure, servicers must finalize foreclosure in accordance with our timelines and begin helping the borrower transition out of homeownership. At that point, we must place greater emphasis on minimizing further financial risk to taxpayers. In recent years, our foreclosure timelines have been extended to allow for additional months of loss mitigation activities, and under current standards, borrowers who lose their homes to foreclosure are behind on their payments, on average, well over a year prior to the completion of a foreclosure sale.

Freddie Mac sets forth a comprehensive set of requirements for servicers in our Seller/Servicer Guide ("the Guide"). The Guide provides detailed instructions and guidelines for servicing both performing and non-performing mortgages, including the compensation and incentives paid to servicers. Notably, the Guide also requires servicers to fully comply with all applicable laws relating to the mortgages they service.

Freddie Mac owns or guarantees millions of mortgages, and we rely primarily upon the contractual representations and warranties provided by servicers that their activities and actions are in full compliance with our requirements. We conduct targeted reviews of servicers that focus on evaluating processes, procedures, and controls. We also have a dedicated team that provides support and guidance to servicers as needed.

If a servicer is found to be in violation of the Guide, we have a number of remedies at our disposal. Our response in most cases is to require servicers to correct identified violations of Guide requirements and/or deficiencies in their operations, and to reimburse us or indemnify us for our losses. As circumstances warrant, we also have the option of imposing financial penalties on servicers, issuing a repurchase request for the loan, or, in extreme cases, suspending or terminating a servicer's contract to service Freddie Mac-owned mortgages and transferring the loans to other servicers.

Requiring servicers to meet their obligations under HAMP

Freddie Mac requires that servicers seek a HAMP modification for HAMP-eligible delinquent borrowers with Freddie Mac-owned loans before foreclosing on the property. To monitor servicers' compliance with this obligation, Freddie Mac conducts operational reviews of selected servicers. In these reviews, Freddie Mac conducts interviews with the appropriate servicer employees, and then tests a sample of loans in various stages of default. Freddie Mac requests and reviews the applicable records (collection, loss mitigation, foreclosure, bankruptcy) for each sample loan. We then determine whether the servicer properly determined eligibility and solicited the borrower for a HAMP modification and whether the servicer followed the correct steps (including retaining applicable documentation) throughout the process.

Freddie Mac's response to foreclosure process deficiencies

Recent reports of improperly executed affidavits and faulty notarizations have raised serious concerns about the integrity of the foreclosure process. Freddie Mac is deeply concerned by these reports and, in coordination with FHFA, we are working with our servicers to address these issues.

On October 1, we instructed all our servicers to review their processes to determine whether documents used in foreclosures on Freddie Mac-owned mortgages are being executed in accordance with applicable laws. We are requiring servicers who have identified deficiencies in their foreclosure documentation to remediate the deficiencies. We also are continuing to determine the extent and scope of this problem, including the total number of loans that may be affected. It is critical to note, however, that all servicers who have identified documentation problems have determined the underlying information within the documents is correct, i.e., the indebtedness amounts as presented to the court in each case in support of the foreclosure are accurate. The problem appears to have largely been that the individual executing the affidavit did not have personal knowledge of the facts described in the affidavit even though the affidavit said he or she had such knowledge.

Freddie Mac will continue to work with FHFA and our servicers to require that the foreclosure process is conducted appropriately and in compliance with applicable laws, and that borrowers' rights are fully protected.

Freddie Mac's use of law firms in foreclosure proceedings

In 1994, Freddie Mac established our Designated Counsel Program to manage the costs and quality of essential legal services involved in taking a property through foreclosure. Today, the program operates in 20 states.

Law firms are selected for inclusion in the program based on their demonstrated abilities to handle foreclosures and other legal work in a professional, efficient and cost-effective manner. We expect our lawyers to conduct their practices in accordance with applicable legal and ethical requirements.

In response to recent reports that some law firms handling foreclosure cases may have failed to follow appropriate legal standards in preparing or filing documents used in the prosecution of foreclosure cases, Freddie Mac on October 15 directed all firms in the Designated Counsel Program to review their processes regarding the preparation and execution of such documents and the integrity of the contents of those documents, and to notify Freddie Mac of any deficiencies found. Our reviews of these firms remain ongoing.

Freddie Mac recently terminated the participation of the Law Offices of David J. Stern, P.A., in the Designated Counsel Program, resulting from our review of the firm's processes following reports of certain deficiencies in its operations. We have instructed our servicers to no longer refer cases to the firm, and we have placed cases previously assigned to this firm with new counsel.

Document custody

Concerns have been raised about the custody of mortgage notes and other documents. When a mortgage is sold to Freddie Mac, the seller must deliver the original note for each mortgage loan, together with any power of attorney or modifying instrument (such as a modification agreement, conversion agreement, assumption of liability or release of liability agreement), to a document custodian, which holds the documents in trust for Freddie Mac. Currently, Freddie Mac uses approximately 125 document custodians, with much of the volume concentrated in a relatively small number of large companies.

Our Guide sets forth eligibility standards and various other requirements for document custodians. Each document custodian enters into a tri-party custodial agreement with Freddie Mac and the servicer that is servicing a mortgage for which the custodian holds note files. Each document custodian files an annual certification report to Freddie Mac, and is required to notify Freddie Mac between reports of any significant personnel, operational or financial changes. Freddie Mac also conducts periodic on-site reviews of document custodial operations.

Dual track

Numerous concerns have been raised in this Committee and elsewhere about pursuing loan modifications or other alternatives to foreclosure while also moving forward with the foreclosure process. These concerns arise from widespread reports of delinquent borrowers receiving foreclosure notices from their servicers as they are being considered for loan modifications. As a result, some policymakers have expressed a desire to end this "dual track" process and allow servicers to initiate foreclosure actions only after all other resolution options have been exhausted. While we believe that borrowers who already are under significant stress arising from their financial situations should not be subjected to needless confusion, we also believe that unnecessary delays in an already lengthy foreclosure process would be counterproductive.

Contrary to popular impression, foreclosures are a very lengthy process, and Freddie Mac's requirements do not result in rushing delinquent loans to foreclosure. Freddie Mac requires servicers to contact borrowers at the first indication of a problem, starting when a payment has not been received 10 days after the due date – 20 days before the borrower becomes delinquent. Foreclosure proceedings are instituted 120 days following a missed payment, and under our guidelines servicers continue to consider borrowers for workouts until the foreclosure sale. Currently, the nationwide average number of days from the initiation of a foreclosure action to a foreclosure sale for a mortgage owned or guaranteed by Freddie Mac is 449 days. In states with judicial foreclosures, the average currently is 565 days.

Freddie Mac also gives servicers the authority to stop or suspend a foreclosure action whenever there is an opportunity for a viable workout, short sale or deed-in-lieu of foreclosure as a result of verifiable changes in the borrower's financial situation. Our servicers have had this authority for more than 20 years.

The dual track process allows for a delicate balance between the need to minimize losses and protect communities while protecting borrower interests. Lengthy foreclosure delays impose substantial losses on Freddie Mac and taxpayers – by some estimates, $30-40 per day and $10,000 to $15,000 per year for every defaulted loan. These costs do not include additional losses resulting from depreciation in the value of the property. Furthermore, delays in foreclosures can lead to increased property blight, reduced neighborhood property values, and loss of revenues for local governments, utilities and homeowners associations.

The dual track process enables commencement of the foreclosure process, so that in those cases in which non-foreclosure alternatives are determined to be not viable for the borrower, the servicer can move forward with the foreclosure as expeditiously as possible, reducing losses to Freddie Mac and, ultimately, taxpayers. It is important to note that the dual track process leaves sufficient time both before and after the initiation of a foreclosure action to explore foreclosure alternatives, and even after the foreclosure process begins, it remains in everyone's interest – including Freddie Mac's – to keep viable homeowners in their homes. For this reason, we believe it is not in the borrower's interest for the process to drag on indefinitely. The longer the borrower's delinquency goes uncured, the farther behind he or she gets and the harder it becomes to bring the loan current.

At the same time, I want to emphasize that we do recognize how confusing and distressing it can be for borrowers to receive what appear to be mixed messages from their servicers. We want to work with the industry to find a way to improve communication and minimize confusion for borrowers.

Conclusion

In conclusion, I would like to reiterate Freddie Mac's full commitment to seek alternatives to foreclosure; to require that financially troubled borrowers are treated in accordance with the law and set expectations for servicers to make every effort to treat borrowers fairly, with respect; and, most of all, make certain that no borrower with a mortgage owned or guaranteed by Freddie Mac should ever lose his or her home to an unnecessary or wrongful foreclosure.

Thank you again for this opportunity to testify today.