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November 16, 2010

Attorney General Tom Miller
Iowa Department of Justice
1305 E. Walnut Street
Des Moines IA 50319

Attorney General Steve Bullock
Montana Department of Justice
P.O. Box 201401
Helena, MT 59620-1401

Dear Attorney General Miller and Attorney General Bullock:

Like you, I am deeply troubled by many of the recent allegations that have been made about improper and fraudulent mortgage servicing and foreclosure processing and by the first hand reports that my office has received from Montanans facing foreclosure. I wanted to share with you a recent letter that I received from foreclosure counseling agencies in Montana describing a number of practices that reveal mismanagement of modification requests and foreclosures by servicers. As you continue your investigation into these allegations, I hope that you will examine the activities that are outlined in this letter.

It is clear that improper activities by mortgage servicers go far beyond the "robo-signing" and chain of title issues that have been reported in recent weeks. The letter that I have attached describes the complete lack of consistency to the process and the maze of paperwork, computer systems and misinformation that homeowners must fight through in hopes of receiving a modification. I have been particularly troubled by situations in which servicing associates have instructed homeowners to stop paying their mortgages in order to qualify for a modification only to hit homeowners with interest, penalties and damage to their credit after their modification is declined, raising questions about the motivations of some servicers.

While the practices outlined in this letter are troubling on their own, the fundamental misalignment of the incentives of servicers with homeowners and investors is even more unsettling as I fear that we may be seeing new signs of a broader, more expansive foreclosure crisis. It is critical that we understand the magnitude of this issue so that we can respond to address any potential safety and soundness issues that could arise from new revelations.

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I wish you well as you continue your investigation and stand by ready to assist in any way that I can.

Sincerely,

Jon Tester
United States Senator

NeighborWorks®
MONTANA

November 12, 2010

US Senator Jon Tester
724 Hart Senate Office Building
Washington, DC 20510-2604

Dear Senator Tester:

As you know, NeighborWorks® Montana is a statewide non-profit network which focuses on helping Montana citizens obtain and sustain homeownership. Part of our work is to coordinate the foreclosure counseling efforts in the state through the National Foreclosure Mitigation and Counseling Program (NFMC). All of the certified foreclosure counselors in the state communicate regularly on issues related to communication with servicers. We have been informed that the Senate Banking Committee is having a hearing on November 16 to discuss the loan modification programs currently being administered by loan servicers. We wanted to share the experiences of our counselors in working with the Making Home Affordable and in-house modification programs.

The largest issues quoted by the counselors are:

- There is **no consistency to the process at all**. This includes who the counselor talks to, getting multiple answers to the same questions, computer systems that are not updated when information is in the servicer's office, and paperwork that does not get transferred with the cases.
    - One example a counselor gave is that Bank of America sent out two modifications to a client on two different days from two different offices, with different terms.
    - The process for resolving issues is different and often hard to figure out. In some cases (and with some servicers) there is an escalation contact that is responsive, with some servicers there is no clear path to escalate the case or resolve the case.
- When a modification is under review, the borrower continues to get notices of trustee sale during the process. While the counselor can explain that these are computer generated, it is hard to accept for the customer. Another related issue is someone is in the process of getting a modification, but they continue to get new modification packages in the mail.
- Bank of America has a consistent problem in that faxes and mailings are sent over and over again and they say it is not received. This happens with other servicers, but seems to be especially consistent at Bank of America.
- Servicers tell people they do not qualify for HAMP unless they are three months behind, or use the fact that they are not behind to say that there is no imminent threat of default. People in Montana seem to be pro-active, and often contact a counselor and

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the servicer before they are behind because they don't want to impact their credit. This is a quote from a letter sent by Chase to a customer: *"We are unable to offer you a Home Affordable Modification because you are less than sixty (60) days past due on your mortgage Loan and after reviewing the financial information you provided us we have determined that you are not at risk of default because you have not documented a financial hardship that has reduced your income or increased your expenses, thereby impacting your ability to pay your mortgage as agreed."* The counselor asserts there were other factors that indicated there was an imminent default in this case.

- Trial modifications have been a consistent issue, where the modification is supposed to be for three months, and the servicer does not contact the client after the three months is up. The client continues paying the trial modification payments for several months, then a payment gets returned with a notice the permanent modification has been denied, but no reason is given. Many clients use all their savings trying to meet these trial modifications, and then end up losing the home any way.
    - A related issue is that servicers request a complete new package at the end of the trial modification, not just updates on what has changed (i.e., prior year tax returns, etc. that have not changed since the trial modification started). Some servicers request a whole new package every 60 days as well.
- Counselors express concern that the servicers or investors want people to get more and more behind, especially when there is substantial equity in the home. One counselor gave as an example a Bank of America case where the modification was denied because the property is worth too much money—the customer had never missed a payment, but was advised to miss three payments to be eligible for the modification. The client was denied the modification, and was now no longer eligible for a refinance because of missed payments. Counselors say "it seems that in some cases the servicers just want to get to a sale date because there is value in the property".
    - In some cases, late fees and other fees continue to accumulate during the time the modification is being reviewed, or when the borrower misses payments to try to meet the imminent default criteria. This can lead the consumer to lose a significant amount of equity in the home.
- Some modifications come to the client with a higher payment than the previous (regular) payment, and then if the client turns it down they are told they don't qualify for anything else because they turned down the modification.
- Some servicers use national averages for budget items, and do not believe the customer-represented budget. This seems to be the case more where the individual is self-employed.
- When servicing is transferred from one entity to another, modifications that are in process or in trial often are not honored. A specific example was where the client was in a trial modification with HomeEc, and then the servicing was transferred to Ocwen. Ocwen did not honor the trial modification and told the customer she had to start over. The client had been making the trial payments to Ocwen subsequent to the transfer of servicing.

NeighborWorks and its partners have signed up for the HOPELoan Portal, which will allow us to transmit new casefiles to many of the servicers electronically. The counselors have

indicated this does seem to be generating some response, and we are hopeful that this system will lead to some better results. This does not help us with existing cases that have been in process but early results show it is helping with new cases.

I think there is still much confusion out there about what the requirements of the Making Home Affordable program, or HAMP, is all about. It is also clear that the front line servicing and loss mitigation staff has not received much training about the program and so there are many different interpretations of what the program actually is, and what servicers are supposed to do. Our counselors' do the best job they can advocating for their clients, but it is a difficult and frustrating process for all involved.

Sincerely,

Maureen J. Rude on behalf of:

Maureen J. Rude
Director of Operations
NeighborWorks Montana

Karen Nebel
Homeownership Center Manager
NeighborWorks Great Falls

Andrea Davis
Executive Director
homeWORD, Inc.

Dana Burkett
Director, Road to Home
HRDC Bozeman, The Road To Home