Remarks by
FDIC Chairman Sheila Bair
to the
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As we all know Americans everywhere are worried about the economy, their mortgages, their bank accounts, their credit cards, and their jobs.

Last week I was on a televised town hall that ran on the CNBC network. The topic was "Who's Protecting Our Money." Judging from the calls and the emails into the show, not to mention several questions from the audience, there's a lot of anxiety and uncertainty out there, and some down-right fear. And people are looking to their government – regulators and law enforcement – for help and protection.

As a bank regulator, I see each and every state attorneys general as an essential partner in answering the call. So I'm delighted to be here today to visit with you, and to talk about ways we can pull together to reduce the fallout from the credit crisis, and the recession that it triggered.

These days, consumer protection is on everybody's mind. A failure to promulgate and enforce stronger consumer protection rules applying to all mortgage lenders contributed significantly to this crisis. And unfortunately, in policing mortgage lending practices, instead of working together, federal and state officials were too often at odds.

We must work together now. Mortgage fraud continues to be a significant problem. Scammers are moving into foreclosure prevention. During tough economic times like these, the American consumer can be easy prey for new scams and abuses.

Sources of high cost, short term credit including subprime credit cards and payday loans warrant heightened vigilance. We need to redouble our efforts to make sure that consumers are treated fairly and protected. And we need to do it together.

I view consumer protection as central to a bank regulators' mission. Effective consumer protection bolsters peoples' confidence in the banking system, which is critical to revitalizing overall trust and confidence in the economy.

At the FDIC we're very active in many consumer areas.

A top priority for nearly two years has been encouraging mortgage loan modifications. Like you, we saw early on the widespread deterioration of mortgage lending standards and the corresponding need for wide scale, systematic restructuring of unaffordable loans.

Unfortunately, we came up short in this call. And the resulting cascade of unnecessary foreclosures has put huge downward pressure on home prices, and that's hurting everybody.

Tomorrow, the Obama Administration will launch its very broad program to help millions of borrowers at risk of losing their homes. The President's program includes a standard, national loan modification protocol that very much tracks the model the FDIC has been using to modify thousands of loans at IndyMac Federal Bank in California.

Early on you embraced creative solutions.

Homeowners across the nation are benefiting from the FDIC's close working relationship with you in addressing our housing problems. The agreement with Countrywide and Bank of America is a case in point, which is now making affordable and sustainable loan modifications available to at-risk borrowers.

I greatly appreciate your advocacy and your support for this common sense approach to preventing unnecessary foreclosures. It now is the core of the President's plan.

You also were early advocates of clear and transparent reporting for loan modification efforts. As we all know too well, the devil is in the detail.

Unfortunately, there were some who were unwilling to listen to your good ideas on defining modifications, and on making sure the reporting was accurate and meaningful. But that will change with the President's plan which will require much more granular reporting of loan modifications, as you have long advocated.

Our reporting at IndyMac, which now covers over 11,000 loan modifications, and the state reporting efforts, have led the way. Far too many "mods" reported in the press were nothing but recapitalization of past due principal and interest and other short term "fixes" that frequently raised payments instead of lowering them.

These "modifications" have not performed well, creating the impression that all loan mods are doomed to failure. The jury is still out on redefault rates and to be sure, a worsening economy will mean even more mortgages will become delinquent. But studies to date have suggested much higher success rates when the modification results in a meaningful payment reduction to an affordable level.

Enforcement and third parties

Many of the problems we have seen in the housing markets can be traced to the use of third party mortgage originators by lenders who exercised insufficient oversight over them. We know that using third parties can cut costs and provide services efficiently. Many banks use mortgage brokers and other third parties effectively and seamlessly in operating their business and meeting customer needs.

However, third party relationships entail inherent risks, including legal and reputational. And that can cause substantial harm if not scrupulously managed. While third parties do not always act as legal agents of banks, their activities are frequently indistinguishable from a bank's identity. And banks must be very cognizant of that fact.

As spelled out in recent guidance to the industry, we hold bank management responsible for evaluating, selecting, and controlling third party relationships in a way that protects their customers, shareholders, and public reputation. Specifically, banks may not use third party providers to avoid compliance with risk management and consumer protection requirements applicable to the bank itself.

More vigilant oversight of third parties can also help banks protect themselves from fraudulent origination activity. Cracking down on mortgage fraud in particular is a safety and soundness issue for both the banking industry and the housing markets.

Pumping bad mortgages into the housing market that are likely to default because of fraud, can only make a tough situation worse. Mortgage fraud is now a very big priority for us, as I'm certain it is for all of you.

Our Inspector General has brought hundreds of criminal cases. We're also pursuing thousands of civil cases as receiver for failed banks.

Our inspector general, for example, has nearly 180 active cases. And nearly 40 percent are mortgage fraud related, involving potential losses of $7.5 billion. That's big money. The fraudsters we go after include mortgage brokers, appraisers, attorneys, loan officers, and closing agents.

And their schemes run the gamut, from property flipping, inflated appraisals and foreclosure scams to stolen identities. As you might expect, these cases are concentrated in recent booming growth areas, including Atlanta, south Florida, New York/New Jersey, and southern California.

I want to point out that over half of these investigations are initiated by referrals from U.S.

Attorneys or the FBI, which puts us all on the same team. Our Professional Liability Group, which handles claims in connection with failed banks, is also gearing up for a surge in civil cases against mortgage brokers and other third parties that defrauded lenders. To date we're pursuing well over a hundred home mortgage fraud cases, and investigating some 4,000 more.

Subprime credit cards & payday lenders

Two other areas involving third party providers are subprime credit cards and payday loans. We have found that these relationships are ripe for compliance problems, especially in a weak economy with rising joblessness.

In late December, the FDIC and the Federal Trade Commission won a major settlement against a marketing firm for misleading subprime credit card users. The company agreed to give customers $114 million in credits to help them pay fees that it failed to properly disclose.

We also pursued enforcement actions against three banks that had used this firm's services. Two have settled with the FDIC, agreeing to pay civil money penalties and to improve oversight of third-party affiliates.

Our enforcement action against the third bank is currently pending; we expect a similar resolution of that action. This is a stern warning to banks and their third party providers that we are serious about protecting consumers in these relationships.

Social Security check scammers

Another area of rising concern involves vendors and payment processors using banks to capture Social Security benefits for loan repayments or check cashing fees via direct deposit accounts. We're completing an investigation of three banks that were allowing their systems to be used by third parties to solicit customers for direct deposit of their Social Security benefits.

We found that some of the banks weren't keeping an eye on how these customers were being treated when they attempted to get their money from the third parties. We discovered instances where check cashers, payday lenders, and small retail merchants were using a host of bad practices to keep them as customers, and worse yet, to keep them in perpetual debt.

At least one bank said it knew nothing of what was going on. This is unacceptable. Banks need to step up to the plate and know what's running through their operation. We recently entered into a cease and desist order with that bank. When banks don't properly supervise third parties, we issue orders to require them to do so.

These banks will be required to review their compliance programs and procedures and make the necessary changes to avoid these problems in the future. In addition, where we found the largest problems, we told the bank to unwind these accounts, and help consumers find better ways of getting their benefits.

Conclusion: a call for state & federal action

If ever there were a time for the states and the "feds" to work together, that time is right here, right now. The last thing we need is to preempt each other.

To be blunt, a lot of our current problems were caused by widespread failure to protect consumers. Most of us know that, deep down. And I don't want to get into any finger-pointing. That's not helpful.

But we can pull together, as we're doing in stamping out mortgage fraud. There's much that can be done to put right the abuses of the past. And to prevent them from happening again.

A new area, for example, that we can target is "loan mod" scams. I've recently heard a number of very sad stories of struggling homeowners getting ripped off, some of them losing thousands of dollars as they attempt to find an affordable mortgage.

We see state "AGs" as our partners, not our competitors in going after these scams. We want to work with you even more closely, and cooperatively. And given tight budgets and strained resources, it's absolutely crucial that we leverage our resources and share information.

Among us we have a broad array of effective tools and powers at our disposal. And combined, they are a force to be reckoned with. All we need is to find the most effective ways to our powers in common purpose.

So the plate is very full. And much is a stake. These are very challenging times for everybody. And the American people expect their leaders and our government at all levels ... all of us here today ... to lock arms and work to turn this economy around.

Thank you.

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