Testimony of Julia Gordon, Center for Responsible Lending
Before the U.S. House of Representatives Committee on Financial Services

"The Private Sector and Government Response to the Mortgage Foreclosure Crisis"

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Good morning Chairman Frank, Ranking Member Bachus, and members of the committee, and thank you for the invitation to participate today. We are now facing historic levels of homes lost through foreclosures. Not every individual foreclosure can or should be stopped, but there is an urgent need to stop the epidemic by closing the growing chasm between prevention and losses. Without stronger policy intervention, not only will millions of families lose their homes unnecessarily, but massive foreclosures will continue to destroy communities, drag down the housing market, and keep a full economic recovery out of reach.

I serve as Senior Policy Counsel at the Center for Responsible Lending (CRL), a nonprofit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, a nonprofit community development financial institution that consists of a credit union and a non-profit loan fund. For close to thirty years, Self-Help has focused on creating ownership opportunities for low-wealth families, primarily through financing home loans to low-income and minority families who otherwise might not have been able to get affordable home loans. Self-Help's lending record includes a secondary market program that encourages other lenders to make sustainable loans to borrowers with weak credit. In total, Self-Help has provided over $5.6 billion of financing to 62,000 low-wealth families, small businesses and nonprofit organizations in North Carolina and across America.

The downturns in the housing market and economy are impacting Self-Help as well as other lenders. As a result, we have had to step up our loss mitigation activity significantly. In the process, Self-Help is grappling with many of the same issues encountered by other lenders, including servicer issues, increasing borrower outreach, and developing a loan modification program that works for people who are facing many economic challenges. Our testimony today is informed by this experience.

Reckless and abusive lending practices created a nationwide foreclosure crisis that has had catastrophic consequences for families, communities—especially communities of color—and the overall economy. Historically, the housing sector has led the way out of economic downturns.[1] Yet with one in seven homeowners behind on their mortgage or in foreclosure[2] and one in four mortgages underwater,[3] continued weakness in the housing sector will likely slow or derail economic recovery and hamper efforts to create jobs and reduce unemployment.

The housing crisis is sufficiently broad and deep that there is no "silver bullet" strategy to stop the downward spiral of foreclosure-ravaged neighborhoods. Moreover, the problem has evolved from the subprime loan failures of 2007 to a broader problem among all loans exacerbated by steep housing price declines and widespread unemployment. Because the problem has spread and become even more complex over time, the necessity of addressing it through multiple solutions had become even more necessary and urgent.

We are glad that the Administration has taken this problem seriously and has created a significant program to address it. We now must ensure that this program reaches its potential and that the government has a sufficiently broad array of tools at its disposal to target different types of loans and homeowner situations. For each aspect of the foreclosure prevention program, we should consider both how it theoretically addresses each problem and also whether the program's goals are achievable given the resources on the ground. For example, while the current HAMP program has the theoretical potential to help a very significant number of homeowners, it has not reached its potential so far because the servicing industry is either unable or unwilling to do what it has been asked to do.

In this testimony, we offer a number of recommendations and ideas for improving the HAMP program and for making its goals achievable. Many of these recommendations address well-documented problems that we believe have readily achievable solutions, so we urge immediate adoption and implementation of these recommendations. Some of the other ideas put forward here are in areas where it is clear that additional action is required, but the potential response requires further testing and development.

In our view, the following efforts are likely to have the highest impact in preventing foreclosures and protecting homeowners:

- Stop foreclosures while servicers evaluate eligibility for loan modifications or other non-foreclosure options.
- Make the "net present value" (NPV) model for qualifying homeowners transparent and available to the public.
- Share data with the public to ensure that all stakeholders have the opportunity to propose evidence-based solutions to the problem.
- Ensure that homeowners have adequate equity in their homes to continue with successful homeownership by reducing principal balances on troubled loans.
- Create a program to assist homeowners who have lost their jobs and do not have nine months of guaranteed unemployment income.
- Transfer servicing to entities that don't have conflicts and automatically convert trial modifications into permanent modifications.
- Pass legislation mandating loss mitigation prior to foreclosure.

In addition, Congressional or Treasury action in several other areas would provide significant benefit in mitigating the crisis:

- Provide an independent appeals process easily accessible by homeowners.
- Prohibit servicers from requiring homeowners to waive legal rights when receiving a modification.

- Permit homeowners who experience additional adverse life events to be eligible for additional HAMP modifications.
- Clarify that homeowners in bankruptcy are eligible for the HAMP program.
- Ensure that homeowners receiving mortgage debt forgiveness or modifications do not find their new financial security undermined with a burdensome tax bill.
- Create the Consumer Financial Protection Agency, which can establish and monitor common-sense rules to ensure this type of crisis never happens again.
- Prohibit predatory lending in the future, particularly unsustainable loans, yield spread premiums and prepayment penalties.

I. Background

A. Foreclosures continue to soar and the mortgage market continues to suffer.

According to estimates from the Mortgage Bankers Association, since 2007, nearly six million foreclosures have been initiated.[4] Right now, approximately six and a half million more homes are at risk, with the homeowners either more than 30 days behind on their mortgage or with the home already in the foreclosure process. Continued high unemployment as well as the new wave of defaults expected due to option ARM and other Alt-A mortgages will add millions more to this total. Without significantly more intervention to stop foreclosures, by the time this crisis abates, as many as 13 million families will have lost their homes.[5]

In addition, the spillover costs of the foreclosure crisis are massive. Beyond the homes that are at risk of foreclosure themselves, tens of millions of other homes – households where the owners have paid their mortgages on time every month – are suffering a decrease in their property values that amounts to hundreds of billions of dollars in lost wealth just because they are located close to a property in foreclosure – aside from the overall loss in property value due to the overall housing price declines.[6] These losses, in turn, cost states and localities enormous sums of money in lost tax revenue and increased costs for fire, police, and other services. As property values decline further, the cycle of reduced demand and reduced mortgage origination continues to spiral downward.

B. Toxic loan products are at the heart of the mortgage meltdown.

1. The housing crisis was precipitated by risky loans, not risky borrowers.

Since the problems in the subprime market became evident in early 2007, many in the mortgage industry evaded responsibility and fended off government efforts to intervene by blaming the borrowers themselves, saying that lower-income borrowers were not ready for homeownership or not able to afford it.[7] Yet empirical research shows that the leading cause of the problem was the characteristics of the market and mortgage products sold, rather than the characteristics of the borrowers who received those products.

More specifically, research has shown that the elevated risk of foreclosure was an inherent feature of the defective nonprime and exotic loan products that produced this crisis. Loan originators—particularly mortgage brokers—frequently specialized in steering customers to higher-rate loans than those for which they qualified and loans loaded with risky features. In late 2007, the Wall Street Journal reported on a study that found 61% of subprime loans originated in 2006 "went to people with credit scores high enough to often qualify for conventional [i.e., prime] loans with far better terms."[8] Even applicants who did not qualify for prime loans could have received sustainable, thirty-year, fixed-rate subprime loans for—at most—half to eight tenths of a percent above the initial rate on the risky ARM loans they were given.[9] Perhaps even more troubling, originators particularly targeted minority communities for abusive and equity-stripping subprime loans, according to complaints and affidavits from former loan officers alleging that this pattern was not random but was intentional and racially discriminatory.[10]

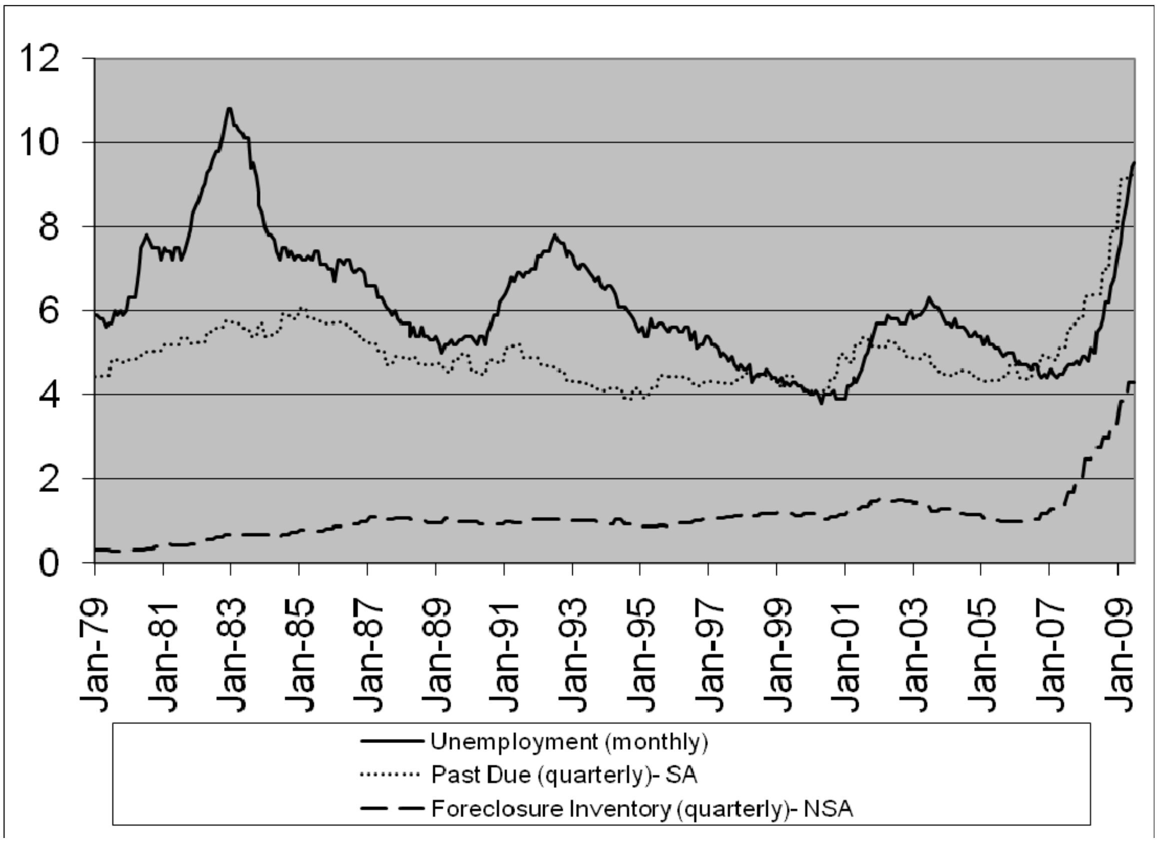
Our research has also demonstrated that common subprime loan terms such as adjustable rate mortgages with steep built-in payment increases and lengthy and expensive prepayment penalties presented an elevated risk of foreclosure *even after accounting for differences in borrowers' credit scores.* It has also shown how the risk entailed in these loans had been obscured by rapid increases in home prices that had enabled many borrowers to refinance or sell as needed. The latent risk in subprime lending has been confirmed by other researchers from the public and private sectors.[11]

A complementary 2008 study that we undertook with academic researchers from the University of North Carolina at Chapel Hill supports the conclusion that risk was inherent in the loans themselves.[12] In this study, the authors found a cumulative default rate for recent borrowers with subprime loans to be more than three times that of comparable borrowers with lower-rate loans. Furthermore, the authors were able to identify the particular features of subprime loans that led to a greater default risk. Specifically, they found that adjustable interest rates, prepayment penalties, and broker originations were all associated with higher loan defaults. In fact, when risky features were layered into the same loan, the resulting risk of default for a subprime borrower was four to five times higher than for a comparable borrower with the lower-rate fixed-rate mortgage from a retail lender.

Finally, CRL conducted a more targeted study to focus on the cost differences between loans originated by independent mortgage brokers and those originated by retail lenders. In that study, we found that for subprime borrowers, broker-originated loans were consistently far more expensive than retail-originated loans, with additional interest payments ranging from $17,000 to $43,000 per $100,000 borrowed over the scheduled life of the loan.[13] Even in the first four years of a mortgage, a typical subprime borrower who used a broker paid $5,222 more than a borrower with similar creditworthiness who received their loan directly from a lender.[14]

2. **While high unemployment makes a bad situation worse, unemployment itself is not the reason for the soaring foreclosure rate.**

In light of the high unemployment rates now prevailing across the country, it is useful to examine the relationship between unemployment, mortgage delinquency, and foreclosures.[15] The chart below shows that during previous periods of very high unemployment, delinquency levels did rise somewhat, but they rose far less than they've risen during the recent crisis. Even more telling, during those previous periods of high unemployment, foreclosure numbers remained essentially flat.[16]



Sources: MBA National Delinquency Survey, Bureau of Labor Statistics.

The reason that the current housing-led recession has been accompanied by unprecedented levels of delinquency and foreclosure is due to the shift in the past decade from relatively safe, fully underwritten, fixed-rate, amortizing mortgages to unsustainable, dangerous and confusing mortgage products with adjustable rates. The lack of appropriate underwriting for ability to repay has led to mortgage debt consuming far more of a family's total income, which makes it harder to survive a period of unemployment without defaulting (other debt, such as credit card debt, is also at much higher levels that have been the case historically).

Also, in past recessions, homeownership served as a buffer against income interruptions. Homeowners facing unemployment could sell their homes or tap into their home equity to tide them over. Yet today, vast numbers of homeowners have little or no equity at all. Selling homes is difficult to impossible in many markets, and even when sales take place, the former homeowner sees no net proceeds from the sale. This problem exists because the glut of toxic mortgages first inflated the housing bubble and then led to the bursting of the bubble, followed by a self-reinforcing downward spiral of home prices.

As the nation's unemployment numbers continue to rise, some have questioned whether focusing on job creation strategies would be preferable to restructuring mortgages or reforming the way home loans are made. Certainly unemployment or underemployment is contributing significantly to the dire economic straits in which many families find themselves, impacting their ability to pay mortgages as well as other debts and living expenses. But the assertion that unemployment is the cause of the current foreclosure crisis is incorrect, and to make a difference in the foreclosure rate, we must directly address failing mortgages.

II. The government, private industry, and the nonprofit sector must all work together to stop as many foreclosures as possible and interrupt the downward cycle of housing price declines and continued economic weakness.

As goes the housing sector, so goes the economy. While we have seen some improvements in the housing market recently, a large increase in foreclosures could lead to a double-dip recession or at least to a slower recover. For this reason, it is imperative that we continue to try to stop foreclosures and restore health to the housing market, even as it becomes clear that this task is much more daunting than some may have imagined. Not only does it reflect badly on us as a society that we would permit so many people to lose their homes, but the enormous costs both to homeowners and to state and local governments will continue to drag the economy down (it is worth noting that these external costs are not accounted for by the HAMP program's net present value analysis). With no easy solution to this problem, all stakeholders must work together to come up with innovative, workable strategies that can adapt as circumstances change.

A. In our view, the following efforts are likely to have the highest impact in preventing foreclosures and protecting homeowners:

A first priority is to ensure that the federal government's programs are reaching their goals. Unfortunately, neither Treasury's Home Affordable Modification Program (HAMP) nor HUD's Hope for Homeowners (H4H) program have yet produced the hoped-for results.[17]

The HAMP program, initially projected to help three to four million borrowers, works by reducing homeowner payments to an affordable level, defined as a 31% debt-to-income ratio. After nine months of operation, approximately 650,000 homeowners are now in a trial modification, yet only a fraction of those have received a permanent loan modification.[18] What's more, early indications are that close to a quarter of these trial modifications have failed prior to the end of the three-month trial period, some failing in the first month.[19] Homeowners and their advocates report that the program is hard to access, and the program itself still presents serious barriers to mass loan modifications.[20] The program's effectiveness has been hampered by a severe problem with servicer capacity, by a piece-by-piece rollout of complementary programs addressing second liens and short sales, and by lagging compliance, data availability, and appeals procedures.

To improve the HAMP program and extend its reach, we have outlined a number of recommendations below.

1. Foreclosures should be stopped while servicers evaluate eligibility for loan modifications or other non-foreclosure options.

Because servicers are not barred from proceeding on a parallel track toward foreclosure while a HAMP evaluation is pending, homeowners are receiving a confusing mix of communications from their lender, some of which tell the borrowers they are being considered for HAMP, but others of which warn of an impending foreclosure sale. This mixed message may well lie at the heart of several vexing problems, including the failure of borrowers to send in all their documentation, the early redefault of many trial modifications, and the difficulty servicers have reaching certain borrowers.

In addition, the continuation of the foreclosure process often means that the servicers' lawyers bill thousands of dollars in attorneys fees that the homeowners are then expected to pay. Servicers either demand these payments upfront (an apparent violation of HAMP) or add the costs into the loan balance. In either event, these costs make it harder to provide an affordable loan modification.

Finally, although HAMP guidelines prohibit the actual foreclosure sale from taking place prior to a HAMP evaluation, some sales are taking place anyway because the foreclosure proceedings are handled by outside law firms and communications between servicers and foreclosure attorneys regarding HAMP are extremely minimal.[21]

To alleviate the confusion and prevent inadvertent foreclosures, servicers should be barred from proceeding with any portion of a foreclosure action prior to concluding their determination of whether a borrower qualifies for a HAMP modification. In other words, they should not be permitted to institute an action, and if an action has already been instituted, they should not be permitted to move forward at all, in cases where they can reach the homeowner or the homeowner has already requested an evaluation. Guidelines should be established to clarify when the servicer can continue with foreclosure proceedings if the homeowner is unreachable.

2. Make the NPV model for qualifying homeowners transparent and available to the public.

A homeowner's qualification for a loan modification under HAMP is determined primarily through an analysis of the Net Present Value ("NPV") of a loan modification as compared to a foreclosure. The test measures whether the investor profits more from a loan modification or a foreclosure. The outcome of this analysis depends on inputs including the homeowner's income, FICO score, current default status, debt-to-income ratio, and property valuation, plus factors relating to future value of the property and likely price at resale. Servicers that participate in HAMP are required to apply a specific NPV analysis model to all homeowners who are 60 days delinquent and those at imminent risk of default. Homeowners and their advocates need access to the HAMP program's NPV model so that they can determine whether servicers have actually and accurately used the program in evaluating the homeowner's qualifications for a HAMP modification. Without access to the NPV analysis, homeowners are entirely reliant on the servicer's good faith.

Treasury has recently made some modest improvement on this front by requiring servicers to provide homeowners who are denied a HAMP modification based on the NPV calculation an opportunity to verify certain inputs the servicer used in making the NPV calculations. This requirement should be strengthened to require servicers automatically to provide the NPV inputs to homeowners denied a HAMP modification, instead of requiring homeowners to make a request for the data. Servicers should also be required to provide borrowers with the numerical results of the NPV calculations, rather than the mere result that modifying their loan would pass or fail the test. Finally, servicers should be required to allow borrowers to review the property valuation used in the NPV calculation, as it is one of the inputs with the greatest effect on the results.

3. **Share data with the public to ensure that all stakeholders have the opportunity to propose evidence-based solutions to the problem.**

To its credit, the Treasury Department is collecting a broad range of data from servicers participating in the HAMP program. This data can shed great light into how the HAMP program is working: what types of borrowers are getting modifications and which are not, particularly as it relates to minority borrowers; the geography of modification activity; the types of modifications that are being provided; and the patterns of re-defaults that are occurring. However, the Treasury Department has severely limited the data it has released.

The loan-level data already being provided to the Treasury Department should be released to the public, both in report form and in the maximum possible raw disaggregated form so that independent researchers and other interested parties can analyze the data themselves. This data is crucial for those working to develop more and better tools to fight foreclosures and prevent a repeat of this crisis. Public access to this data should be comparable to public access to the data collected under the provisions of the Home Mortgage Disclosure Act (HMDA) data, although we hope that the data will be available in something much closer to real time.

Treasury has promised such a data release will take place, but so far, there are no details about what we can expect and when we can expect it. One troubling rumor is that race and ethnicity data will not be released on a servicer-by-servicer basis. Until more data is released, most analysts outside the Administration have only the limited information contained in the two-page reports that Treasury has been releasing on a monthly basis.

4. Ensure that homeowners have adequate equity in their homes to continue with successful homeownership by reducing principal balances on troubled loans.

There are two main reasons why addressing the question of equity position is so important: the incentives to homeowners to continue to perform on their loans, and the ability of the HAMP program to help people in payment option ARM and interest-only loans. Many analysts believe that principal reduction is ultimately the only way to help the housing market reach equilibrium and begin to recover.[22]

Many homeowners whose mortgages are at risk owe more on their mortgages than their homes are worth. While the overall percentage of American mortgages that are underwater is estimated to be 23%,[23] we can assume that percentage is higher for homeowners who are having trouble affording their mortgage.[24] It is also far higher in certain geographic areas, such as California, Nevada, Florida, and Arizona. This problem was caused by the extreme housing price declines triggered by risky lending, and in some cases is exacerbated by the mortgage product itself, such as in the case of payment option ARMs.

The phenomenon of underwater mortgages is one of the most troubling aspects of the entire housing market collapse, especially because of the correlation between negative equity and mortgage delinquency. Homeowners who are underwater have no cushion to absorb financial difficulties. Furthermore, in some cases, homeowners who are unlikely to move into a positive equity position have fewer incentives to stay in the home.[25] For these homeowners, even the reduction of monthly payments to an affordable level does not fully solve the problem. As a result, homeowner equity position has emerged as a key predictor of loan modification redefault, more so than unemployment or other facts.[26]

a) Ways to achieve principal reduction.

The OCC's Mortgage Metrics report indicates that even as loan modification activity ramps up, principal reduction is still relatively rare. One context in which it occurs is in portfolio loans with no second liens,[27] which suggests that banks understand the usefulness of principal reduction but that in situations where there are other obstacles (ie, securitized loans or loans with second liens), they are not willing to do what it takes to get to the same result. Some servicers also are writing down some principal for payment option ARM loans.

The only government program to aim at principal reduction is the Hope for Homeowners program. Under this program, if lenders agree to write loan balances down to 90 percent of current value, HUD will permit the refinancing of those loans through FHA, thereby moving distressed loans off the books of the original lender and attracting new refinance loans with the FHA guarantee. However, there are many obstacles to use of the program, including the need to extinguish all junior liens, high premiums, and a complex appreciation and equity sharing provision. After the initial failure of the program, HUD sought Congressional authority to make some changes to the program aimed at making it more attractive, yet as of a couple of weeks ago, there have been no loans yet made under the revised program either.

As others on the panel will discuss, there are currently investors with available cash who are ready and willing to buy loans and write down principal aggressively. They believe the long-term value of a loan modified using principal reduction so that the homeowner continues to perform will ultimately exceed the current value of the loan. Yet it is almost impossible to get the servicer to initiate a principal reduction. A main reason for this lack of interest in principal reduction is that many banks hold in portfolio the second liens on securitized mortgages, which leaves the bank-owned servicers with a conflict of interest in deciding to reduce the principal balance. Other disincentives are that servicers derive the bulk of their income from the monthly servicing fee, which is set as a percentage of the outstanding loan principal balance in the pool; servicers may take a hit against their residual income if the loss is recognized immediately; and servicers may need to buy loans back out of the pool.

Ultimately, it is likely that the only way principal reduction is ever going to happen is if it is required as part of HAMP or a program like HAMP, and if there are financial incentives for taking the writedown. Alternatively, loans could be removed from the control of the servicers in some way. It may be useful to consider policies that will make it easier for investors to buy loans out of pools, as long as these incentives are only applicable when the investor plans to modify the loan for the current homeowner (recent accounting changes will make this option possible beginning in January 2010). We do not have a detailed proposal, but we believe it is crucial to explore all avenues.

So far, the only policy reason advanced for the Treasury's failure to incorporate a principal reduction into HAMP is the fear of moral hazard. While this fear is certainly understandable, given the relatively small numbers of homeowners strategically defaulting at present,[28] we think it is not anywhere near the problem that it has been made out to be. It should be possible to build numerous safeguards into the application process, narrowly tailoring eligibility and either phasing in the reduction over time or creating a shared equity component that would kick in upon sale of the home. If principal reduction is indeed a crucial component of stopping foreclosures, a fear of moral hazard should not stand in the way of additional experiments in this area.

Specifically, principal reductions should be achieved by two primary methods:

(1) Reduce principal balances to make option ARMs affordable.

One of the most problematic categories of loans right now is payment option ARMs (POARMs). POARMs allowed borrowers to choose among three different monthly payment levels: a fully amortizing payment, an interest-only payment, and a payment that did not even cover interest, thereby permitting the loan balance to grow larger (negatively amortize) during the period when the minimum payment is being made.

Unscrupulous lenders offered these loans to borrowers for whom they were not well suited, structured the products so that the payments substantially increase in five years or less when they hit their negative amortization cap, used excessive teaser interest rates to lure borrowers to the product, and failed to document income. POARMs are also the category of loans that are most likely to be underwater, both because of the negative amortization feature and because their origination was concentrated in high-cost areas that have experienced steep price declines. (The vast majority of POARM borrowers chose to make the minimum payment permitted, at least while they were still paying on their loan, meaning most of these loans were negatively amortizing even as housing prices declined.)

Homeowners with POARMs are in desperate need of assistance. In the second quarter of 2009, 15.2 percent of option ARMs were seriously delinquent, compared with 5.3 percent of all mortgages, and 10 percent were in the process of foreclosure, more than triple the 2.9 percent rate for all mortgages. [29] Unfortunately, because of the way these loans were structured, the current design of HAMP is not able to help many of the POARM borrowers get their payments to an affordable level. Minimum payments on these loans are so low that it is hard to restructure the loans without raising the monthly payments. What's more, the initial interest rates on these loans are quite low, so reducing the interest rate does not help as much as it does for loans with higher rates, and many POARMs already have a 40-year term, so a term extension cannot help either. The only way to help POARM borrowers in a sustainable way is to reduce principal.[30]

(2) **Lift the ban on judicial modifications of mortgages on primary residences**

Judicial modification of loans is available for owners of commercial real estate and yachts, as well as subprime lenders like New Century or investment banks like Lehman Bros., but is denied to families whose most important asset is the home they live in. In fact, current law makes a mortgage on a primary residence the only debt that bankruptcy courts are <u>not</u> permitted to modify in chapter 13 payment plans.

Permitting judges to modify mortgages on principal residences, which carries *zero cost to the U.S. taxpayer*, has been estimated to potentially help more than a million families stuck in bad loans keep their homes.[31] It would also help maintain property values for families who live near homes at risk of foreclosure. It would address the "moral hazard" objections to other modification proposals current under consideration, as the relief it provides would come at a substantial cost to the homeowner—including marring the homeowner's credit report for years to come and subjecting the homeowner's personal finances to strict court scrutiny. And it would complement the various programs that rely on voluntary loan modifications or servicer agreement to refinance for less than the full outstanding loan balance.

Proposals to lift this ban have set strict limits on how it must be done. Such proposals would require that interest rates be set at commercially reasonable, market rates; that the loan term not exceed 40 years; and that the principal balance not be reduced below the value of the property. And if the servicer agrees to a sustainable modification, the borrower will not qualify for bankruptcy relief because they will fail the eligibility means test. As Lewis Ranieri, founder of Hyperion Equity Funds and generally considered "the father of the securitized mortgage market,"[32] has recently noted, such relief is the only way to break through the problem posed by second mortgages.[33]

5. Create a program to assist homeowners who have lost their jobs and do not have nine months of guaranteed unemployment income.

It has become clear that there is a need to create a program to assist unemployed homeowners who cannot demonstrate nine months of unemployment benefits necessary to qualify for a HAMP modification, yet would ultimately be successful long-term homeowners. There are at least two potential solutions to this problem. The first is to add a payment forbearance component to HAMP that would give unemployed homeowners a period of time where they did not need to pay their mortgage, without any additional fees or charges accruing. The forbearance will need to be long enough to account for the very high rate of unemployment, the slow economic recovery, and the fact that employment tends to recover later than other aspects of the economy – while we are not certain of the right length, it is clear that the typical 3 month or even 6 month forbearance will be inadequate for many homeowners.

Another proposal is to create a low-cost loan fund similar to a program created by the state of Pennsylvania to provide loans to unemployed homeowners to help them pay their mortgage. Pennsylvania's Homeowners Emergency Mortgage Assistance Program (HEMAP) has provided loans to over 43,000 homeowners since 1984 at a cost to the state of $236 million. Assisted homeowners have repaid $246 million to date, which works out to a $10 million profit for the state over a 25-year period of helping families keep their houses. To be eligible for HEMAP homeowners must be in default through no fault of their own and have a reasonable prospect of resuming their mortgage payments within 36 months. A recent paper from the Boston Federal Reserve also proposes helping homeowners who had a "significant income disruption" through bridge loans of up to 24 months.[34]

Several Members of Congress, including Chairman Frank, have embraced this concept. Chairman Frank's TARP for Main Street bill would provide $2 billion in TARP money to make loans to homeowners to help pay mortgages if they don't qualify for other assistance.

6. Transfer servicing to entities that don't have conflicts and automatically convert trial modifications into permanent modifications.

Since early 2007, mortgage loan servicers have been promising to help homeowners in trouble.[35] The Bush Administration believed that servicers would voluntarily provide this assistance because in so many cases, foreclosure made no economic sense for the lender or loan owner. Unfortunately, financial incentives for servicers often encourage outcomes that are not advantageous either for the loan owner or for the homeowner.[36] What's more, like other players in the financial services industry, much of their income comes from fee-generating tricks and traps for consumers.

It is fully understood now that helping homeowners avoid foreclosure is frequently in conflict with the financial interest of servicers. Thus, the HAMP program provides servicers with financial incentives for placing homeowners into permanent loan modifications if the benefit (net present value) of the modification is higher than that of foreclosure. Unfortunately, so far, these financial incentives have not proven sufficient for servicers to process loan modification requests in a timely, effective manner.

There is now widespread recognition that most servicers in their current form lack the capacity to handle a foreclosure crisis of the size and scope we are seeing today. Servicers had to do a great deal of retooling, morphing from collection agencies to something a lot more like a lender as staff are now essentially required to do underwriting and have extensive customer contact. In the early months of the program, a great deal of latitude was given to servicers for their ramp-up time. However, capacity issues continue to persist, although it has been more than two years after widespread recognition of the foreclosure and nine months since the HAMP program began. Homeowners still have terrible trouble reaching their servicers, and when they do, they often encounter staff who are ignorant of the HAMP program, they sit through attempts to steer them into other products, and they are unable to get any firm decisions made in a timely manner. Scores of newspaper and radio articles have wondered why it is that servicers cannot seem to retool their businesses to handle the demands of this crisis.[37]

The perceived shortcomings of the mainstream servicing industry has led to significant growth in the number and size of so-called specialty servicers – businesses that specialize in intensive, "high-touch" approaches to working with homeowners in trouble. These specialty servicers are often able to reach homeowners at many times the rate of a mainstream servicer and in many cases are more skilled in dealing with families in crisis. Recently, Fannie Mae and Freddie Mac began to require their servicers who are not producing sufficient results to use specialty servicers for the delinquent accounts.

We think it would be useful to explore how and under what circumstances the Treasury Department could require HAMP-participating servicers to turn their accounts over to special servicers working for the government when the account becomes 60 days delinquent. However, it would be of the utmost importance to ensure that the specialty servicers are carefully monitored to ensure that a more aggressive approach does not violate consumer rights with respect to debt collection.

We also suggest that trial modifications to convert to permanent modifications automatically upon the successful completion of the trial period.[38]

7. Pass legislation mandating loss mitigation prior to foreclosure.

Even if the HAMP program is changed to prevent the filing of foreclosure prior to evaluation, Congress should make this requirement into a legal standard with a private right of action. The fact is, while HAMP servicers do have a contract with the Treasury Department, the servicers and the Treasury are the only parties to those contracts. Even if a servicer breaches the contract, the Treasury's primary remedy is to withhold incentive payments, which by and large are not yet emerging as a strong enough incentive to change servicer behavior. It is important to give homeowners a clear right to evaluation prior to foreclosure, and for many servicers, only a legal requirement will cause them to build the systemic safeguards necessary to ensure that such evaluations occur.

One such proposal is HR 3451, introduced this summer by Representative Maxine Waters. This bill would require loan servicers to engage in loss mitigation efforts prior to foreclosure without mandating any particular outcome or result. By requiring loan servicers to engage in loss mitigation prior to foreclosure, this legislation will assist homeowners, lenders, investors, and communities. However, HR 3451 needs to be extended to cover all loans, both prospectively and retroactively.

B. In addition, Congressional or Treasury action in several other areas would provide significant benefit in mitigating the crisis:

1. Provide an independent appeals process easily accessible by homeowners.

Effective January 1, Treasury will require servicers to promptly notify homeowners who are rejected for a HAMP modification and provide an explanation for why they have been rejected. This is a long overdue improvement, but homeowners who have been denied a loan modification or who are being foreclosed on in error still need access to an independent appeals process. Freddie Mac's compliance program aims to ensure that servicers abide by the program's guidelines, but it is not a process accessible by an individual homeowner. Treasury is allowing servicers to offer the HOPE hotline as a dispute resolution mechanism in their rejection letter to homeowners, yet as described, the HOPE hotline can only contact the servicer; it does not have any authority to enforce or monitor compliance with program requirements. Homeowners need access to an independent escalation process in addition to any internal review process they can access within the servicer.

Treasury is also allowing servicers to tell homeowners that they have been rejected for HAMP because the investor, mortgage insurer, or guarantor for their loan has refused to allow HAMP modifications – but there is no requirement to provide the name of that party or identifying what efforts the servicer made to obtain their permission. Without access to that information, homeowners and their advocates are unable to confirm that third-party restrictions truly are a roadblock to a HAMP modification—servicers sometimes will use "investor restrictions" as an easy scapegoat—and whether servicers are complying with HAMP's requirement "to use reasonable efforts" to waive third-party restrictions.

2. Prohibit servicers from requiring homeowners to waive legal rights when receiving a modification.

We are pleased that the HAMP program guidelines prohibit servicers from requiring homeowners to sign sweeping waivers of legal rights in order to obtain a modification. At a hearing in July 2008, Chairman Frank spoke out strongly against such waivers, instructing servicers to stop using them. Unfortunately, despite consequent changes in official policy at many servicers, these waivers continue to arise.[39] The Treasury Department should immediately change its contracts to prohibit such broad waivers being used either in HAMP modifications or in other modifications or any other context by any HAMP-participating servicers. If this problem cannot be solved through HAMP, it might be necessary for Congress to act.

3. Permit homeowners who experience additional adverse life events to be eligible for additional HAMP modifications.

Even after a homeowner is paying their monthly payments due under a HAMP loan modification, life events may still occur that would further alter their ability to repay the loan, such as job loss, disability, or the death of a spouse. These subsequent, unpredictable events, outside the control of the homeowner, should not result in foreclosure if a further loan modification would save investors money and preserve homeownership. Foreclosing on homes where homeowners have suffered an involuntary drop in income without evaluating the feasibility of a further HAMP modification is punitive to homeowners already suffering a loss and does not serve the interests of investors. Some servicers provide some modifications upon re-default as part of their loss mitigation program; this approach should be standard and mandated, and should include continued eligibility for HAMP modifications rather than only specific servicer or investor programs.

4. Clarify that homeowners in bankruptcy are eligible for the HAMP program.

As a result of the HAMP guidelines providing servicer discretion on whether to provide homeowners in bankruptcy access to loan modifications under the program, homeowners generally are being denied such loan modifications. The HAMP guidelines should provide clear guidance on instances where a loan modification should be provided to homeowners in bankruptcy. The HAMP guidelines should explicitly provide that servicers must consider a homeowner seeking a modification for HAMP even if the homeowner is a debtor in a pending bankruptcy proceeding.

5. Ensure that homeowners receiving mortgage debt forgiveness or modifications do not find their new financial security undermined with a burdensome tax bill.

Finally, even principal forgiveness or the most carefully structured loan modifications can be seriously undermined if struggling homeowners must treat the forgiven mortgage debt as taxable income. Solving this tax problem has been flagged as a priority by the IRS's Office of the National Taxpayer Advocate.[40]

To describe the tax problem in brief, when lenders forgive any mortgage debt, whether in the context of a short sale, a deed-in-lieu-of-foreclosure, foreclosure, or principal reduction in a loan modification, that amount of forgiven debt is considered to be income to the homeowner and tax must therefore be paid on it unless the homeowner qualifies for some kind of exclusion to that tax. In 2007, Congress passed the Mortgage Forgiveness Debt Relief Act of 2007 to prevent adverse tax consequences to homeowners in trouble. After passage of this bill, most policymakers considered the problem to have been solved.

Unfortunately, because of the way that legislation was written, many homeowners still owe tax despite the Mortgage Forgiveness Debt Relief Act. That legislation defined "qualified mortgage debt" to include only that debt that was used to purchase a home or make major home improvements. In calculating the tax, any unqualified debt is first subtracted in its entirety from the amount of forgiven debt (not on a pro rate basis). In many cases, the amount of unqualified debt will equal or exceed the amount of debt forgiven, leaving the homeowner to pay tax on the entire forgiven debt – and even in those cases where the amount forgiven exceeds the amount of unqualified debt, the homeowner will still owe a large tax bill.

Expanding the definition will make it easier for everyone, even those homeowners already fully covered by the Mortgage Forgiveness Debt Relief Act, to take advantage of this exclusion. To take advantage of the mortgage debt exclusion, a homeowner now has to file a long-form 1040, along with a Form 982, a very complicated and difficult form. Unfortunately, most lower and middle income taxpayers are not accustomed to using these forms, and taxpayers filing long-form 1040s are not eligible to use the various tax clinics offered by the IRS and others for lower-income taxpayers. The National Taxpayer Advocate reports that last tax year, less than 1% of those eligible for the exclusion claimed it.[41] If the definition of qualified mortgage debt is expanded as described above, the IRS can take steps through its tax forms to simplify the process for taxpayers claiming the mortgage debt exclusion.

6. Create the Consumer Financial Protection Agency

In light of our research, we believe there are several important additional steps Congress should take to prevent reckless lending that could once again fundamentally disrupt our economy. Most importantly is the creation of the Consumer Financial Protection Agency, which this Committee has already reported out and which will considered by the full House of Representatives this week.

As demonstrated above, the subprime market itself delivered loans with significant inherent risks over and above borrowers' exogenous risk profiles through the very terms of the mortgages being offered. Although financial regulatory agencies were aware of this risk, regulatory action was discouraged by the concern that any regulatory agency taking action against these types of loans would place their regulated institutions at a competitive disadvantage. In addition, the ability of lenders to choose their regulator has resulted in a system where lenders may exert deep influence over their regulator's judgment.[42]

The Consumer Financial Protection Act would gather in one place the consumer protection authorities currently scattered across several different agencies, and would create a federal agency whose single mission is to protect our families and our economy from consumer abuse. The Agency would restore meaningful consumer choice by averting the race to the bottom that has crowded better products out of the market.[43]

The design of the Agency is appropriately balanced to enhance safety and soundness and allow appropriate freedom and flexibility for innovation while providing effective consumer protection. Highlights include the following:

- The Agency will have essential rule-making authority to prevent abusive, unfair, deceptive and harmful acts and practices and to ensure fair and equal access to products and services that promote financial stability and asset-building on a market-wide basis.

- The Agency will have strong enforcement tools, along with concurrent authority for the States to enforce the rules against violators in their jurisdictions.

- States will not be hamstrung in their efforts to react to local conditions as they arise and preserves the ability of states to act to prevent future abuses.

- The Agency will have access to the real-world, real-time information that will best enable it to make evidence-based decisions efficiently.

In other areas of the economy, from automobiles and toys to food and pharmaceuticals, America's consumer markets have been distinguished by standards of fairness, safety and transparency. Financial products should not be the exception – particularly since we have demonstrated that it is the subprime mortgage products themselves that raised the risk of foreclosure. A strong, independent consumer protection agency will keep markets free of abusive financial products and conflicts of interest. Dedicating a single agency to this mission will restore consumer confidence, stabilize the markets and put us back on the road to economic growth.

7. Prohibit predatory lending in the future, particularly unsustainable loans, yield spread premiums and prepayment penalties.

It is also imperative to pass legislation that would require sensible and sound underwriting practices and prevent abusive loan practices that contributed to reckless and unaffordable home mortgages. For this reason, we urge the passage of H.R. 1728. While there are some ways in which this bill should be strengthened, it represents a critical step forward in requiring mortgage originators to consider the consumer's ability to repay the loan and to refinance mortgages only when the homeowner receives a net tangible benefit from the transaction.

Most important, H.R. 1728 establishes bright line standards that will result in safer loans and in more certainty for originators of those loans. The bill's safe harbor construct would grant preferred treatment to loans made without risky features such as prepayment penalties, excessive points and fees, inadequate underwriting, and negative amortization. It would also ban yield spread premiums – which, as we explained earlier, were key drivers of the crisis – and it would permit states to continue to set higher standards if necessary to protect their own residents.

Similarly, we strongly support the Federal Reserve Board's proposal to ban yield spread premiums for all loan originators and prohibit steering consumers to unnecessarily expensive loans. The Board's proposed rule represents an important step forward in the recognition that disclosure alone is not enough to protect consumers and that certain practices themselves give rise to unfairness and unnecessary risk.

Many industry interests object to any rules governing lending, threatening that they won't make loans if the rules are too strong from their perspective. Yet it is the *absence* of substantive and effective regulation that has managed to lock down the flow of credit beyond anyone's wildest dreams. For years, mortgage bankers told Congress that their subprime and exotic mortgages were not dangerous and regulators not only turned a blind eye, but aggressively preempted state laws that sought to rein in some of the worst subprime lending.[44] Then, after the mortgages started to go bad, lenders advised that the damage would be easily contained.[45] As the global economy lies battered today with credit markets flagging, any new request to operate without basic rules of the road is more than indefensible; it's appalling.

Conclusion

Today's foreclosure crisis is arguably one of the most significant economic challenges this country has faced since the Great Depression, and the stakes are high. We know that this year alone, American households will lose $500 billion in equity as a result of foreclosures that happen to occur in their neighborhoods.[46] Additional spillover costs are also significant, including cuts in community services and lower levels of consumer spending. As foreclosures mount, these related costs will only grow worse as well.

It is now clear that current prevention efforts alone will allow the current crisis to continue and fester, even under a best-case scenario. Some new approaches along with changes in the way the program is implemented could significantly strengthen foreclosure prevention and reduce associated losses. Many of the potential policy solutions we have discussed here are accessible, relatively simple to implement, and build upon efforts that are already underway. We urge you to act quickly and decisively.

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[1] See, e.g., "Housing Starts and Vacant Units: No 'V'-Shaped Recovery, Calculated Risk (November 15, 2009), available at http://www.calculatedriskblog.com/2009/11/housing-starts-and-vacant-units-no-v.html; Dean Baker, testimony before the Congressional Oversight Panel "The Failures of TARP," (November 19, 2009).

[2] MBA National Delinquency Report, Nov. 19, 2009.

[3] Ruth Simon and James R. Hagerty, *One in Four Borrowers is Under Water*, Wall Street Journal (Nov. 24, 2009) ("The proportion of U.S. homeowners who owe more on their mortgages than the properties are worth has swelled to about 23%, threatening prospects for a sustained housing recovery. Nearly 10.7 million households had negative equity in their homes in the third quarter, according to First American CoreLogic, a real-estate information company based in Santa Ana, [California]").

[4] According to data from the Mortgage Bankers Association, since the first quarter of 2007 through the third quarter of this year, foreclosures starts are very clost to six million (5,954,800).

[5] Jan Hatzius and Michael A. Marschoun, *Home Prices and Credit Losses: Projections and Policy Options*, Goldman Sachs Global Economics Paper,(No. 177, Jan 13, 2009) at 16.

[6] Center for Responsible Lending, *Continued Decay and Shaky Repairs: The State of Subprime Loans Today*, p.2 (Jan. 8, 2009), p.3, *available at* http://www.responsiblelending.org/issues/mortgage/research/continued-decay-and-shaky-repairs-the-state-of-subprime-loans-today.html.

[7] It is popular, although incorrect, to blame the Community Reinvestment Act (CRA) and Fannie Mae and Freddie Mac (the GSEs) for the foreclosure crisis. For a complete discussion of why CRA and the GSEs did not cause the crisis, see Testimony of Eric Stein, Center for Responsible Lending, before the Senate Committee on Banking (Oct. 16, 2008), *available at* http://www.responsiblelending.org/pdfs/senate-testimony-10-16-08-hearing-stein-final.pdf.

[8] Rick Brooks and Ruth Simon, *Subprime Debacle Traps Even Very Credit-Worthy As Housing Boomed, Industry Pushed Loans To a Broader Market*, Wall Street Journal at A1 (Dec. 3, 2007).

[9] Letter from Coalition for Fair & Affordable Lending to Ben S. Bernanke, Sheila C. Bair, John C. Dugan, John M. Reich, JoAnn Johnson, and Neil Milner (Jan. 25, 2007) at 3.

[10] Julie Bykowicz, "City can proceed with Wells Fargo lawsuit", Baltimore Sun (July 3, 2009) (available at http://www.baltimoresun.com/news/maryland/baltimore-city/bal-md.foreclosure03jul03,0,5953843.story).

[11] *See e.g.,* Yuliya Demyanyk, "Ten Myth About Subprime Mortgages", Economic Commentary, Federal Reserve Bank of Cleveland (May 2009) (available at http://www.clevelandfed.org/research/commentary/2009/0509.pdf); Karen Weaver, "The Sub-Prime Mortgage Crisis: A Synopsis" Deutsch Bank (2008) (available at http://www.globalsecuritisation.com/08_GBP/GBP_GSSF08_022_031_DB_US_SubPrm.pdf) (concluding

that subprime mortgages "could only perform in an environment of continued easy credit and rising home prices);

[12] Lei Ding, Roberto G. Quercia, Janneke Ratcliff, and Wei Li, "Risky Borrowers or Risky Mortgages: Disaggregating Effects Using Propensity Score Models" Center for Community Capital, University of North Carolina at Chapel Hill (September 13, 2008) (available at http://www.ccc.unc.edu/abstracts/091308_Risky.php).

[13] Center for Responsible Lending, *Steered Wrong: Brokers, Borrowers and Subprime Loans* (April 8, 2008), *available at* http://www.responsiblelending.org/mortgage-lending/research-analysis/steered-wrong-brokers-borrowers-and-subprime-loans.pdf.

[14] Center for Responsible Lending, *Steered Wrong: Brokers, Borrowers and Subprime Loans* (April 8, 2008), *available at* http://www.responsiblelending.org/mortgage-lending/research-analysis/steered-wrong-brokers-borrowers-and-subprime-loans.pdf.

[15] The first two lines on this graph (unemployment and mortgage delinquency) were circulated by the Mortgage Bankers Association as an advocacy tool to demonstrate that unemployment rather than bad practices was responsible for the current foreclosure crisis. However, once foreclosure data is added to the chart, it is clear that the relationship did not exist during previous downturns.

[16] Similarly, the "cure" rate – the rate at which homeowners who are behind on their mortgages catch up rather than default – has plummeted to an astonishing 6.6 percent. See Fitch Ratings, Delinquency Cure Rates Worsening for U.S. Prime RMBS (Aug. 24, 2009).

[17] The refinancing portion of the Home Affordable initiative has also had somewhat more limited reach than had been anticipated. *See* news release from the Federal Housing Finance Agency (Nov. 2, 2009),

[18] According to the Congressional Oversight Panel, only 1,711 had been converted as of September 1, 2009. Recently, Tom Heinemann of the Office of Homeownership Preservation told an audience at a consumer conference that the number was now in the "tens of thousands," (Consumer Federation of American Conference, December 4, 2009).

[19] Wash Post 12/5/09

[20] See Testimony of Alys Cohen, National Consumer Law Center, before the House of Representatives Subcommittee on Housing and Community Opportunity of the House Committee on Financial Services, September 9, 2009.

[21] One Pennsylvania bankruptcy judge has recently provided troubling details of how "communications" between servicers and their outside law firms take place almost entirely through automated systems without any human interaction. In re Taylor, 407 B.R. 618 (E.D. Pa. 2009). That judge concluded, "The thoughtless mechanical employment of computer-driven models and communications to inexpensively traverse the path to foreclosure offends the integrity of our American bankruptcy system."

[22] This will be discussed in today's testimony by Laurie Goodman, Senior Managing Director, Amhert Securities Group LP.

[23] *See* note 3 above.

[24] Homeowners with equity in their homes are generally able to refinance into lower rate loans and are much less likely to get in a situation where they require assistance.

[25] Although many decry the phenomenon of "walkaways," when people voluntarily default on their mortgages, there are actually far fewer such walkaways than economic theory might predict. [cite] however, it is clear that at some level, the disincentive of being underwater will have an impact on the homeowner's success in continuing with the mortgage.

[26] Gretchen Morgenson, Why Treasury Needs a Plan B for Mortgages, New York Times (Dec. 5, 2009), citing a report by Laurie Goodman of Amherst Securities [hereinafter "Amherst study"].

[27] Amherst Study.

[28] Experian-Oliver Wyman Market Intelligence Report, *Understanding Strategic Default in Mortgages Part I*, Sept. 2009.

[29] OCC mortgage metrics Q2 2009.

[30] Servicers with large POARM books are moving many of these homeowners into 10 year interest-only loans, which is helpful in the short term but is ultimately only postponing the day of reckoning if the housing market does not enter another bubble period before 10 years is up.

[31] Mark Zandi, "Homeownership Vesting Plan", Moody's Economy.com (December 2008) (available at http://www.dismal.com/mark-zandi/documents/Homeownership_Vesting_Plan.pdf).

[32] *Lewis Ranieri to deliver Dunlop Lecture on Oct. 1*, Harvard University Gazette, Sept. 25, 2008, *available at* http://www.news.harvard.edu/gazette/2008/09.25/06-dunlop.html.

[33] Lewis S. Ranieri, "Revolution in Mortgage Finance," the 9th annual John T. Dunlop Lecture at Harvard Graduate School of Design, Oct. 1, 2008, *available at* http://www.jchs.harvard.edu/events/dunlop_lecture_ranieri_2008.mov (last visited Oct. 13, 2008). Ranieri, is "chairman, CEO, and president of Ranieri & Co. Inc. and chairman of American Financial Realty Trust, Capital Lease Funding Inc., Computer Associates International Inc., Franklin Bank Corp., and Root Markets Inc. He has served on the National Association of Home Builders Mortgage Roundtable since 1989. . . ." *Harvard University Gazette,* Sept. 25, 2008.

[34] Chris Foote, Jeff Fuhrer, Eileen Mauskopf, and Paul Willen, *A Proposal to Help Distressed Homeowners: A Government Payment-Sharing Plan*, Federal Reserve Bank of Boston Public Policy Briefs (No. 09-1) (July 9, 2009).

[35] Homeownership Preservation Summit Statement of Principles (May 2, 2007), http://dodd.senate.gov/index.php?q=node/3870/print (The Summit resulted in a statement of Homeownership Preservation Principles announced by Chairman Dodd, and endorsed by the Mortgage Bankers Association, CitiGroup, Chase, Litton, HSBC, Countrywide, Wells, AFSA, Option One, Freddie Mac, and Fannie Mae).

[36] Diane E. Thompson, *Why Servicers Foreclose When They Should Modify and Other Puzzles of Servicer Behavior*, National Consumer Law Center (Oct. 2009), available at http://www.nclc.org/issues/mortgage_servicing/content/Servicer-Report1009.pdf

[37] See, e.g., Chris Arnold, *Are There More Foreclosures Than Necessary?* National Public Radio Planet Money (May 15, 2009). http://www.npr.org/templates/story/story.php?storyId=104177396

[38] It might be useful to consider in what way housing counselors, consumer lawyers, and other trusted intermediaries can help move the loan modification process forward. The Center for American Progress has suggested these intermediaries should be empowered to place homeowners into trial modifications that would automatically convert to permanent modifications after 90 days unless the servicer object. We are

not certain whether it would be possible to accomplish this kind of transfer of authority under current contracts.

[39] Loan modification made by Wells Fargo, available on file at CRL.

[40] National Taxpayer Advocate, *2008 Annual Report to Congress*, p. 341, 391-396 ["NTA Annual Report"].

[41] NTA Annual Report, p. 394.

[42] *See e.g.*, Silla Brush, "Audit: OTS knew bank data was skewed", The Hill (May 21, 2009) (available at http://thehill.com/business--lobby/audit-ots-knew-bank-data-skewed-2009-05-21.html).

[43] *See* Center for Responsible Lending, Neglect and Inaction: An Analysis of Federal Banking Regulators' Failure to Enforce Consumer Protections (July 13, 2009) *available at* http://www.responsiblelending.org/mortgage-lending/policy-legislation/regulators/neglect-and-inaction-7-10-09-final.pdf.

[44] Id.

[45] For example, in September 2006, Robert Broeksmit of the Mortgage Bankers Association told Congress, "Our simple message is that the mortgage market works and the data demonstrate that fact," and "I strongly believe that the market's success in making these "nontraditional" products available is a positive development, not cause for alarm." Statement of Robert D. Broeksmit, CMB Chairman, Residential Board of Governors, Mortgage Bankers Association, Before a Joint Hearing of the Subcommittee on Housing and Transportation and the Subcommittee on Economic Policy, U.S. Senate Committee on Banking, Housing and Urban Affairs, Calculated Risk: Assessing Non-Traditional Mortgage Products, *available at* http://banking.senate.gov/public/_files/broeksmit.pdf./. In May 2007, John Robbins of the Mortgage Bankers Association said, "As we can clearly see, this is not a macro-economic event. No seismic financial occurrence is about to overwhelm the U.S. economy. And we're not the only ones who think so." John M. Robbins, CMB, Chairman of the Mortgage Bankers Association at the National Press Club's Newsmakers Lunch – Washington, D.C. , *available at* http://www.mortgagebankers.org/files/News/InternalResource/54451_NewsRelease.doc.

[46] "Soaring Spillover Cost of Foreclosures," Center for Responsible Lending, available at http://www.responsiblelending.org/mortgage-lending/research-analysis/soaring-spillover-accelerating-foreclosures-to-cost-neighbors-436-billion-in-2009-alone-73-4-million-homes-lose-5-900-on-average.html.