



## At-a-Glance Top Policies for Addressing the Foreclosure Crisis

CRL Issue Brief

April 14, 2009

### I. PENDING LEGISLATION

#### **Allow qualified homeowners to restructure mortgages under court supervision.**

H.R. 1106 passed on March 5, 2009; referred to Senate.  
Senate bill S. 61

**In brief:** Reverses the existing policy that excludes homeowners from getting their mortgage restructured in bankruptcy court—even though that option is now available to owners of vacation homes and commercial property. Courts would have the option to “cram down,” i.e., reduce a loan’s balance to bring it in line with the property’s current value when homeowners have exhausted all other options. Also includes servicer safe harbor that would permit servicers to modify loans that increase the value to investors as a whole without fear of lawsuit. Finally, increases the ability of servicers to voluntarily modify FHA loans.

**Benefits:** The judicial modification provision would stop at least 800,000 foreclosures, which in turn would help mitigate the widespread economic damage caused by home losses. Provides benefits directly through court-supervised modifications, and would also strengthen incentives for more and better voluntary loan modifications.

**More info:** [Learn more about court-supervised loan modifications](#) and [read what the experts say](#).  
[www.responsiblelending.org/issues/mortgage/solutions/a-tax-free-foreclosure-solution-loan-mods-through-the-courts.html](http://www.responsiblelending.org/issues/mortgage/solutions/a-tax-free-foreclosure-solution-loan-mods-through-the-courts.html)  
Congressional testimony: [www.responsiblelending.org/pdfs/calhoun-testimony-senate-judiciary-111908.pdf](http://www.responsiblelending.org/pdfs/calhoun-testimony-senate-judiciary-111908.pdf)

#### **Restore confidence in the housing market by strengthening mortgage lending practices and correcting perverse business incentives to make bad loans.**

Pending bill: H.R. 1728 (Note: CRL supports the basic goals of H.R. 1728, but has serious concerns about provisions that maintain incentives to make abusive mortgages and that prevent states from enforcing their own laws in this area.)

**In brief:** Today we are experiencing the disastrous consequences of loosely regulated mortgage lending and business incentives that work against homeowners. We

badly need common-sense policies that would restore integrity in lending practices and ensure accountability for all major players in the lending process. A strong reform bill will (1) eliminate perverse incentives that lead to risky loans; (2) apply strong consequences for lenders that ignore basic risk management standards; (3) realign business incentives to reduce Wall Street's appetite for risky loans; and (4) maintain states' rights to protect consumers in their areas and enforce lending laws designed to strengthen homeownership.

**Benefits:** Effective mortgage reform would help restore confidence in the housing market and ensure that we don't repeat the current financial crisis, which was triggered and fueled by bad lending.

### **Reduce tax burdens related to loan modifications that undermine foreclosure prevention.**

**In brief:** When lenders repair loans by reducing the principal balance, under some circumstances the homeowner may have to pay taxes on the amount of debt forgiven. To avoid a tax burden that undermines the sustainability of the loan modification, this bill amends the tax code so that "forgiven" mortgage debt is not taxable.

**Benefits:** Helps ensure that loan modifications are effective in meeting the goal of preventing foreclosures.

**More info:** Congressional testimony (see Section III.C.1 at pp. 6-7)  
<http://www.responsiblelending.org/pdfs/calhoun-testimony-2-3-09.pdf>

### **Reduce or eliminate key obstacles to constructive loan modifications.**

Pending bill: S. 376 (a.k.a. the "REMIC bill")

**In brief:** Currently, securitized loans are subject to pooling and servicing agreements that present legal barriers to voluntary loan modifications needed to avoid foreclosures. Under this bill, investors must allow servicers to make economically-rational loan modifications in order for investment trusts to keep their favorable tax status ("REMIC" status). It would also permit loan sales out of trusts.

**Benefits:** Would greatly enhance the private sector's willingness and ability to restructure hundreds of thousands of mortgages that otherwise will fail, thus keeping people in their homes with affordable loans and mitigating widespread economic damage resulting from massive foreclosures.

**More info:** Congressional testimony (see Section IV on p. 9)  
<http://www.responsiblelending.org/pdfs/calhoun-testimony-2-3-09.pdf>

**Increase modifications by providing legal protection for loan servicers and boosting participation in the Hope for Homeowners Program.**

Pending bill: H.R. 703

**In brief:** This would provide key legal protections for servicers who modify loans, and also strengthen incentives for mortgage holders and homeowners to participate.

**Benefits:** If coupled with TARP-funded streamlined modification efforts, and with enough flexibility for FHA to respond to rapidly changing market conditions, this would reduce foreclosures and promote bank liquidity.

**More info:** Congressional testimony  
[www.responsiblelending.org/policy/testimony/promoting-bank-liquidity-and-lending-through-deposit-insurance-the-hope-for-homeowners-program-and-other-enhancements.html](http://www.responsiblelending.org/policy/testimony/promoting-bank-liquidity-and-lending-through-deposit-insurance-the-hope-for-homeowners-program-and-other-enhancements.html)

## **II. A FEW POLICIES WE WOULD LIKE TO SEE**

### **Strengthen oversight of the FHA and provide more resources.**

**In brief:** As subprime and Alt-A markets have dried up, the FHA has become a primary source of loans for people who can't get a conventional mortgage. Potential for abuses are high, and the agency needs adequate funding to meet today's challenges.

**Benefits:** These steps would avoid the production of even more unsustainable loans and provide a resource for constructive lending for low- to moderate-income families.

**More info:** Congressional testimony  
[www.responsiblelending.org/pdfs/calhoun-testimony-2-3-09.pdf](http://www.responsiblelending.org/pdfs/calhoun-testimony-2-3-09.pdf)

### **Improve efforts to work with distressed homeowners.**

**Previous bill:** In last Congress, H.R. 5679

**In brief:** Congress should amend the Real Estate Settlement Procedures Act of 1974 to require loan servicers to engage in reasonable loss mitigation activities before foreclosing.

**Benefits:** This would increase constructive efforts to work with struggling homeowners and help reduce foreclosures.

**More info:** Congressional testimony  
<http://www.responsiblelending.org/pdfs/servicing-testimony-final.pdf>

### **Prevent predatory and reckless lending in the future.**

**Previous bill:** In last Congress, S. 2452

**In brief:** This bill would help stop many abusive lending practices that led to the current foreclosure crisis, including abusive prepayment penalties, perverse incentives that encourage brokers to overcharge, and poor underwriting practices by lenders.

**Benefits:** A strong federal law would guarantee minimum protections nationwide and would help stop reckless lending practices that have cost our nation trillions of dollars in direct costs and spillover effects.

**More info:** Americans for Fairness in Lending. See, e.g.,  
[www.affil.org/consumer\\_rsc/typical-and-unfair-lending-practices](http://www.affil.org/consumer_rsc/typical-and-unfair-lending-practices)

#### **About the Center for Responsible Lending**

The Center for Responsible Lending is dedicated to protecting home ownership and family wealth by working to eliminate abusive financial practices. CRL is a national nonprofit, nonpartisan research and policy organization that promotes responsible lending practices and access to fair terms of credit for low-wealth families.

For additional information, please visit our website at [www.responsiblelending.org](http://www.responsiblelending.org).