

Homeowners Need Mandatory Loan Modifications and Expanded Access to Mediation; Current Programs Fall Short.

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Foreclosures Far Outweigh Modifications.

Thirteen million foreclosures will start by the end of 2014, according to estimates by Goldman Sachs. The spiraling numbers of foreclosures weaken the entire economy and devastate communities. Neighbors lose equity; crime increases; tax revenue shrinks. Yet, loan modifications to date are insignificant beside the foreclosure tsunami. Even if the Administration's Home Affordable Modification Program (HAMP) meets its goals of providing loan modifications to 3-4 million homeowners in the next few years, millions of homeowners will be locked out of this program. Moreover, homeowners receiving HAMP assistance may face problems in the future. The structure of the HAMP program limits the long-term sustainability of modifications while preventing homeowners who redefault from obtaining further assistance. Thus, among the 3-4 million people who may obtain modifications, a substantial number will face foreclosure again in the future with no assurance of assistance. With cure rates plummeting to historic lows, sustainable and permanent modifications remain the main solution to the foreclosure crisis.

Servicers Profit More from Foreclosure Than From Loan Modifications.

Unlike investors, servicers profit more from homeowner foreclosure than from loan modifications. Servicers get paid through a fixed percentage of the total loan pool, as well as fees charged to homeowners in default and profits from affiliated businesses who administer default-related services. Servicers receive payment in full for any fees or advances at the conclusion of a foreclosure, whether or not the investor loses money, yet servicers may lose money on a loan modification. Foreclosure, in fact, offers servicers an opportunity to make more money, by charging various default fees. In any event, servicers can usually recover their advances more quickly and completely by foreclosing than by modifying. Performing large numbers of loan modifications also would cost servicers upfront money in fixed overhead costs, including staffing and physical infrastructure. Many large servicers are also lenders who hold second lien mortgages, further complicating incentives to modify loans.

Current Loan Modifications Often Violate Program Rules, and the Rules Themselves Are Inadequate.

Participating servicers violate the HAMP guidelines by selling homes at foreclosure while homeowners are negotiating loan modifications, requiring waivers of homeowner rights, and refusing to offer HAMP modifications to qualified borrowers. Lack of transparency in the application, review and turn down process exacerbates these problems.

Making the Net Present Value model for qualifying homeowners available to the public, offering a clear appeals process, and coordinating second lien modifications with primary liens would strengthen HAMP and increase compliance. Servicer incentives to provide loan modifications would increase if all foreclosure actions, not just sales, were temporarily

stopped during the modification review process. The modifications themselves would be more sustainable if: principal reductions, rather than forbearance, were available; loan modifications were permanent and assumable; and homeowners suffering an involuntary drop in income were eligible for a second HAMP loan modification.

New Policies Are Needed: Mandated Loan Modification Offers to Qualified Homeowners, Funding for Quality Mediation Programs, and Judicial Modifications Would Turn Around the Foreclosure Crisis.

Voluntary loan modification programs have not produced results. Congress should pass strong programs to help qualified homeowners save their homes and communities.

Congress should mandate loan modifications for qualified homeowners where modifications are more profitable to investors than foreclosure. By favoring loss mitigation over foreclosure, this rule would incentivize servicers to help homeowners stay in their homes. Requiring the simple step of reviewing homeowners for loan modifications that benefit investors is a logical and modest step whose time has come.

Court-supervised mortgage mediation programs help borrowers and servicers find outcomes that benefit homeowners, communities and investors. The quality of programs varies widely, however, and most communities don't yet have mediation available. Government funding for mediation programs would expand their reach and help develop best practices to maximize sustainable outcomes.

Finally, Congress should allow bankruptcy judges to modify appropriate mortgages in distress. The failure to allow bankruptcy judges to align the value of the debt with the value of the collateral contributes to our ongoing foreclosure crisis. Moreover, allowing bankruptcy judges to review first-lien mortgages provides a solution to the severe implementation problems homeowners face when they are forced to seek help directly from mortgage servicers. The exclusion of home mortgages from bankruptcy supervision dates back to the 1978 Bankruptcy Code, when mortgages were generally conservative instruments with a simple structure. The goal was to support mortgage lending and homeownership. Today, support for homeownership demands that homeowners have greater leverage in their effort to avoid foreclosure.