

**Comments of the
National Consumer Law Center
(on behalf of its low-income clients),
National Association of Consumer Advocates,
National Legal Aid & Defender Association,
Neighborhood Economic Development Advocacy Project,
National Association of Consumer Bankruptcy Attorneys,
Center for Responsible Lending, and Consumer Federation of America**

Regarding

**Department of Housing and Urban Development
Docket No. FR-5271-P-01
24 CFR Parts 30 and 3400, RIN 2502-A170**

**Proposed Rule
SAFE Mortgage Licensing Act: HUD Responsibilities Under the SAFE Act**

Submitted March 5, 2010

These comments are submitted by the National Consumer Law Center (on behalf of its low income clients),¹ the National Association of Consumer Advocates,² the National Legal Aid & Defender Association,³ Consumer Federation of America,⁴ the Neighborhood Economic

¹ The **National Consumer Law Center, Inc.** (NCLC) is a non-profit Massachusetts corporation, founded in 1969, specializing in low-income consumer issues, with an emphasis on consumer credit. On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of eighteen practice treatises and annual supplements on consumer credit laws, including Foreclosures (2d ed. 2007 and Supp.), Foreclosure Prevention Counseling (2d ed. 2009), and Truth in Lending (6th ed. 2007 and Supp.), as well as bimonthly newsletters on a range of topics related to consumer credit issues and low-income consumers. NCLC attorneys have written and advocated extensively on all aspects of consumer law affecting low income people, conducted training for tens of thousands of legal services and private attorneys on the law and litigation strategies to deal predatory lending and other consumer law problems, and provided extensive oral and written testimony to numerous Congressional committees on these topics. NCLC's attorneys have been closely involved with the enactment of the all federal laws affecting consumer credit since the 1970s, and regularly provide comprehensive comments to the federal agencies on the regulations under these laws. These comments were written by Andrew Pizor of NCLC.

² The **National Association of Consumer Advocates** (NACA) is a non-profit corporation whose members are private and public sector attorneys, legal services attorneys, law professors, and law students, whose primary focus involves the protection and representation of consumers. NACA's mission is to promote justice for all consumers. NACA members have been at the forefront of the fight against predatory lending and residential foreclosures.

³ The **National Legal Aid & Defender Association** (NLADA), founded in 1911, is the oldest and largest national, nonprofit membership organization devoting all of its resources to advocating equal access to justice for all Americans. NLADA champions effective legal assistance for people who cannot afford counsel, serves as a collective voice for both civil legal services and public defense services throughout the nation and provides a wide range of services and benefits to its individual and organizational members. NLADA has more than 700 program members representing more than 15,000 attorneys in the 50 states, the District of Columbia, American Samoa, Guam, Puerto Rico and the U.S. Virgin Islands

⁴ **Consumer Federation of America** (CFA) is a nonprofit association of some 300 pro-consumer groups, with a combined membership of 50 million people. CFA was founded in 1968 to advance consumers'

Development Advocacy Project,⁵ the Center for Responsible Lending,⁶ and the National Association of Consumer Bankruptcy Attorneys.⁷ These comments are in response to the February 16, 2010 Notice of Proposed Rulemaking issued by the Department of Housing and Urban Development (HUD). HUD solicits comment on proposed clarifications and on regulations proposed to be codified pursuant to the SAFE Act.

I. Summary

While we appreciate HUD's effort to improve the licensing and registration of loan originators, certain aspects of the proposed rule are problematic and may unintentionally harm those the SAFE Act is intended to protect. Specifically, we are concerned about the lack of a clear exemption for bona fide nonprofit organizations and the unduly narrow exemption for attorneys. Subjecting bona fide nonprofits and attorneys to the Act will duplicate existing supervision and could dry up legitimate sources of assistance for homeowners who most need it. We also believe that licensing and registering third-party loan modification specialists, as HUD has recommended,⁸ will ultimately do more harm than good by legitimizing a largely worthless industry.

The SAFE Act is intended to reduce misconduct in the residential mortgage origination business. Abuses committed by mortgage brokers and mortgage lenders have forced thousands into foreclosure and threatened the nation's economic stability. Bona fide nonprofits and attorneys, however, are beyond the intended scope of the Act. Including them in the scope of the SAFE Act will be counterproductive and harmful to the public.

II. Add an Exemption for Bona Fide Nonprofit Organizations

We urge HUD to add an exemption for bona fide nonprofit organizations with tax exempt status under 501(c)(3) of the Internal Revenue Code that provide housing or legal assistance to those in need. The Vermont Housing & Conservation Board has already submitted comments

interests through research, advocacy, and education.

⁵ The **Neighborhood Economic Development Advocacy Project** (NEDAP) is a resource and advocacy organization, based in New York City. NEDAP employs multiple strategies – including community outreach and education, advocacy, policy research and analysis, and direct legal services – to ensure that communities have access to fair and affordable credit and financial services, and to address inequities in the financial services system. NEDAP chairs the New Yorkers for Responsible Lending coalition, comprised of 147 non-profit groups from around New York State.

⁶ The **Center for Responsible Lending** (CRL) is a nonprofit, nonpartisan 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 mortgages. In total, Self-Help has provided over \$5.65 billion of financing to 64,000 low-wealth families, small businesses and nonprofit organizations in North Carolina and across America.

⁷ The **National Association of Consumer Bankruptcy Attorneys** (NACBA) is the only national organization dedicated to serving the needs of consumer bankruptcy attorneys and protecting the rights of consumer debtors in bankruptcy. Formed in 1992, NACBA now has more than 4,700 members located in all 50 states and Puerto Rico.

⁸ See 74 Fed. Reg. 66554 (Dec. 15, 2009) (discussing third-party loan modification specialists).

that adequately explain the need for such an exemption.⁹ With the addition of nonprofit legal services providers,¹⁰ we join their comments.

HUD should limit the exemption to "bona fide" nonprofits so the exemption is not abused by for-profit businesses that cloak themselves as nonprofits to evade regulation. If the rule refers only to nonprofits without the "bona fide" qualifier, law enforcement authorities may have their hands tied when confronting a fake nonprofit that is evading the licensing and registration requirement.

The exemption should also include nonprofit legal assistance providers because homeowners in need of housing counseling often need legal assistance to avoid foreclosure or to address the consequences of predatory lending. These organizations assist the poor and the elderly free of charge.¹¹ They are usually funded by charitable donations, IOLTA¹² funds, and grants from state and federal government programs. Federal agencies that regularly fund legal assistance providers include the Legal Service Corporation, HUD, and the Administration on Aging. It is common for legal assistance attorneys to negotiate loan modifications when there is a legal issue that housing counselors cannot address or that may provide additional leverage to obtain a modification that a housing counselor could not. The burden of complying with the SAFE Act could cause some legal assistance providers to stop representing distressed homeowners as a way to conserve scarce financial resources.

III. Exemption For Attorneys Is Too Narrow

The proposed rule includes an exemption for attorneys, but we believe the exemption is too narrow and does not support the goals of the Act. The Act is designed to promote accountability for loan originators, to enhance consumer protection, and to raise the standards for becoming a loan originator.¹³ Without a broader exemption for attorneys, the proposed rules will duplicate existing state bar regulations, increase the regulatory burden on attorneys,¹⁴ and may reduce the number of attorneys willing to represent homeowners.

The exemption currently set forth in section 3400.103(e)(6) exempts:

a licensed attorney who only negotiates terms of a residential mortgage loan on behalf of a client *as an ancillary matter to the attorney's representation* of the client, unless the attorney is compensated by a lender, a mortgage broker, or other

⁹ Supplemental Comments of Vermont Housing & Conservation Board on the SAFE (dated Feb. 15, 2010), available at <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a92ccf> (Document ID HUD-2009-0155-1754.1)

¹⁰ Examples of nonprofit legal service providers that should be exempt include legal aid societies and Legal Services Corporation grantees.

¹¹ A client's income must usually be less than 200% of the federal poverty level, though income levels may be higher for senior citizens.

¹² Interest on Lawyer's Trust Accounts

¹³ Public Law 110-289, § 1502 (hereinafter "SAFE Act"); Dep't. of Housing and Urban Development (HUD) website regarding the SAFE Act, available at www.hud.gov/offices/hsg/ramh/safe/smllicact.cfm.

¹⁴ This will be in direct conflict with the stated goal of the Act to reduce and streamline the regulatory burden. SAFE Act § 1502(5).

mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator;

(emphasis added). Neither the rule nor HUD's commentary on the Act clarify the scope of the phrase "an ancillary matter," but it appears to indicate that the negotiations must be a minor aspect of the attorney's work,¹⁵ otherwise the attorney will be subject to the Act's registration and licensing requirements.

A. Loan Modification Negotiations Are Often Central to Attorney Representation of Homeowners

It is not unusual for homeowners facing foreclosure to seek legal assistance, especially when they have been injured by unfair, deceptive, or predatory mortgage lending practices. In recent years, loan modifications have become one of the most common methods for helping homeowners avoid foreclosure. Negotiating modifications—or even drafting new loan terms—is especially important when seeking to reform mortgages originated in violation of state or federal law or when using the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, to rescind abusive and predatory loans. These negotiations are a central—rather than ancillary—matter to the attorney's representation, making the attorney subject to the SAFE Act.

Because the Act would impose additional requirements on attorneys practicing this area of law, an unduly narrow exemption may lead attorneys to stop helping consumers. This would be cruelly ironic because consumer protection attorneys are often homeowners' only defense against improper loan origination activities. A survey of private practice members of the National Association of Consumer Advocates who had previously expressed interest in mortgage issues and members of the National Association of Consumer Bankruptcy Attorneys showed that more than half of respondents represent homeowners in matters that would bring them within the scope of the SAFE Act. Of 282 respondents, 59.2% said they try to help homeowners arrange loan modifications in connection with some form of court or administrative action.¹⁶ Of 111 respondents to a separate question, 71.2% do the same work but not in connection with court or administrative actions. Anecdotal evidence suggests that some of these attorneys would cease performing this type of work if they are subject to increased licensing and regulatory requirements.¹⁷

The SAFE Act was intended to improve consumer protection by "encouraging states to establish minimum standards for the licensing and registration of state-licensed mortgage loan originators" and to establish a licensing and registration system.¹⁸ These are important goals, but they have already been achieved in the realm of attorney regulation.

¹⁵ Ancillary has been defined as "subordinate" and "auxiliary." Webster's II New Riverside University Dictionary (1988).

¹⁶ Including bankruptcy. The survey was limited to attorneys charging a fee for their services so the results do not include attorneys working for nonprofit legal assistance programs or private practice attorneys representing homeowners without charge.

¹⁷ See, e.g., Letter by Geoffrey L. Giles, Esq. to FTC regarding MARS proposal, dated Feb. 10, 2010 (attached as Exh. 1).

¹⁸ HUD, SAFE Act Commentary, available at www.hud.gov/offices/hsg/ramh/safe/smllicact.cfm.

B. Regulating Attorneys Under the SAFE Act Will Duplicate Existing State Bar Regulation

Attorneys are already subject to state licensing requirements that generally exceed the requirements of the SAFE Act. Instead of the twenty hours of education required by the Act,¹⁹ attorneys must complete an average of seven years of higher education (college and law school). Like the application process proposed for loan originators, bar applicants must complete an extensive application detailing the applicant's employment history and other biographical information. States often fingerprint applicants, conduct criminal background checks, obtain credit reports to detect signs of financial irresponsibility, and impose "character and fitness" requirements. In addition applicants must pass examinations in ethics and law.²⁰ These requirements either duplicate or exceed those imposed by the SAFE Act on non-attorney loan originators. After attorneys are granted a license to practice law, they remain subject to rules of professional responsibility and state authorities maintain public records on disciplinary actions.²¹ The majority of states also have mandatory continuing legal education requirements.

Attorneys already owe a higher duty of loyalty to their clients than the SAFE Act would impose. In addition, clients and state regulators already have the power to hold attorneys accountable through disciplinary proceedings and civil malpractice litigation. Requiring attorneys to obtain licenses and register as loan originators would duplicate existing attorney regulation and would increase the regulatory burden.²²

C. Expand the Attorney Exemptions

HUD should change the proposed rule to include a complete exemption for state licensed attorneys practicing law.

If HUD does not adopt a complete exemption, we recommend a broader exemption that better differentiates between attorneys who are best regulated by state bar officials and those who work on matters within the jurisdiction of state banking officials. Such an exemption would exempt all attorneys otherwise within the scope of the Act *except* those:

- (1) not licensed to practice law, on active status, and in good standing;²³ or
- (2) advertising or providing services within the scope of the Act to homeowners in states in which the attorney is not licensed to practice law, on active status, and in good standing; or
- (3) not engaged in the practice of law;²⁴ or

¹⁹ SAFE Act § 1505(c).

²⁰ These are summarized on the National Conference of Bar Examiners web site. See www.ncbex.org/multistate-tests/mpre/ (describing the Multistate Professional Responsibility Examination) and Comprehensive Guide to Bar Admission Requirements (2010), available at www.ncbex.org/fileadmin/mediafiles/downloads/Comp_Guide/CompGuide_2010.pdf.

²¹ See, e.g., The State Bar of California, Public Records & Information, available at www.calbar.ca.gov/state/calbar/sbc_generic.jsp?cid=13469&id=23365.

²² Decreasing regulatory burdens is one of the stated objectives of the SAFE Act. SAFE Act § 1502(5)

²³ This refers to attorneys that may have a law degree but who are not admitted to the bar, and attorneys who may be admitted but who are on inactive or retired status, or who have been suspended for any reason.

(4) compensated by a lender, a mortgage broker, a mortgage assistance relief provider,²⁵ or other mortgage loan originator, or by any agent thereof for the activity that is within the scope of the rule, other than fees and costs awarded to an attorney by court order or otherwise paid to an attorney in settlement of pending or anticipated litigation; or

(6) sharing fees with a nonattorney; or

(7) engaging in or benefiting from the covered activity through a partnership, corporation, association, referral arrangement, or other entity or arrangement:

(i) that is directed or controlled, in whole or in part, by a nonattorney; or

(ii) in which a nonattorney holds any interest; or

(iii) in which a nonattorney is a director or officer thereof or occupies a position of similar responsibility; or

(iv) in which a nonattorney has the right to direct, control or regulate the professional judgment of the attorney; or

(v) in which a nonattorney who is not under the supervision and control of the attorney delivers the service or exercises professional judgment with respect to the provision of the service.

We believe these criteria differentiate between the already-regulated practice of law and the commercial activity of loan origination, which is properly addressed by the SAFE Act. Several of these criteria are based on Rule 5.4 of the American Bar Association's Model Rules of Professional Conduct which is designed to prevent abuses in the practice of law and to ensure that attorneys provide independent, unbiased advice to their clients. These criteria also address what HUD has called the "commercial context" of transactions that are properly within the scope of the proposed rules.

As HUD states in its commentary on the Act, "[n]otwithstanding the broad definition of 'loan originator' in the SAFE Act, there are some limited contexts where offering or negotiating residential mortgage loan terms would not make an individual a loan originator."²⁶ Consumer protection attorneys representing homeowners, and not engaged in the conduct listed above, are acting in one of those limited contexts and should not be considered loan originators.

²⁴ This refers to attorneys who may be licensed to practice law in a jurisdiction but who are employed in a non-legal position.

²⁵ As defined by the Federal Trade Commission. See Federal Trade Comm'n Notice of Proposed Rulemaking: Mortgage Assistance Relief Services (RIN 3084-AB18) (hereinafter "MARS NPMR") available at www.ftc.gov/os/2010/02/100204marsfrn.pdf (not yet published in Fed. Reg. as of this date).

²⁶ HUD, SAFE Act Commentary, available at www.hud.gov/offices/hsg/ramh/safe/smllicact.cfm.

IV. Do Not Require Licensing For-Profit, Third-Party Loan Modification Specialists

HUD should not require states to license for-profit, third-party loan modification specialists.²⁷ Requiring states to license and register for-profit, third-party loan modification specialists would ultimately harm the public because licensing these entities would give them a veneer of legitimacy that evidence suggests they do not deserve. The National Consumer Law Center and the Federal Trade Commission have documented numerous examples of for-profit loan modification specialists that seem devoted to bilking, rather than helping homeowners.²⁸

There is a substantial risk that licensing these scammers will give the false impression that their services are legal and have been approved by the licensing authority. At least one federal court has cited California's licensing regime in a manner that reflects this misperception. In *U.S. v. Blechman*,²⁹ the U.S. Attorney in Kansas sought the civil forfeiture of proceeds from a scheme involving "the service of foreclosure stoppage or delay" by a "foreclosure consultant."³⁰ The government "argue[d] that there was nothing that defendants provided to their victims that could be viewed as a lawful or legitimate service."³¹

The court "agree[d] with the government's assessment of defendants' conduct," but rejected the government's request because the scheme was not an illegal service or unlawful activity as required by the forfeiture statute. The court based this conclusion, in part, on "the fact that California law specifically authorizes and regulates the business of "foreclosure consultants," who offer the same service as defendants"³² While the decision does not specifically identify the California law, it is most likely California Civil Code § 2945.45, which does not make any statement regarding the legality of the defendants' activities. Nevertheless, the mere fact that California licenses and regulates foreclosure consultants gave the impression that the defendants were engaged in a lawful activity. Licensing so-called "specialists" through the SAFE Act could lead other courts—and homeowners—to make the same mistake.

The SAFE Act, like the California statute, is neutral regarding the question of whether licensed individuals are providing illegal services. Nevertheless, as the *Blechman* case shows, the act of granting a license can easily be misconstrued as a government seal of approval for the product or service offered by the licensee. Even if a savvy consumer realizes that a license does not guarantee the quality of the product or service, it is reasonable to assume—as the District of Kansas did—that no state would license an illegal activity.

Licensing serves a valuable purpose for lawful activities and we support the effort to license loan originators. For-profit, third-party loan modification specialists, however, are not loan originators. They are an ill-defined category of individuals who claim to help desperate homeowners—for a fee—but who more often rob them of their cash and any remaining

²⁷ See 74 Fed. Reg. 66554 (stating HUD's "view that third-party loan modification specialists should be covered by the licensing requirements of the SAFE Act.").

²⁸ See FTC MARS NMPR, *supra*, n.17; NCLC, Desperate Homeowners: Loan Mod Scammers Step in When Loan Servicers Refuse to Provide Relief (July 2009) available at www.nclc.org/issues/mortgage_servicing/content/LoanModScamsReport0709.pdf

²⁹ 2010 WL 235035 (D. Kan. Jan. 8, 2010).

³⁰ *Id.* at *1.

³¹ *Id.* at *2.

³² *Id.*

opportunity to save their homes. In contrast, loan origination by a broker or an in-house loan officer is a legitimate service with value to the public when provided on fair terms and without deception. The same cannot be said of for-profit, third-party loan modification specialists.

As the FTC and NCLC have shown in great detail, these "specialists" provide a dubious service that often causes more harm than good. Many advocates have told us that they have *never* seen a legitimate provider of these services. At a minimum, HUD should first coordinate with the FTC before requiring states to license this conduct. If HUD nevertheless requires these specialists to register, HUD's rules and commentary should clearly state that being licensed as a loan originator does not imply that the service provided by the licensee is legal or approved by the government.³³ Based on the information currently available, requiring states to license for-profit, third-party loan modifiers will confuse and endanger the public and could hinder law enforcement prosecution of scammers.

V. Conclusion

We support HUD's efforts to fully implement the SAFE Act's regulation of loan originators. To ensure that the rules are properly implemented, we encourage HUD to add an exemption for bona fide nonprofits that provide housing and legal services; to expand the exemption for attorneys; and *not* to require for-profit, third-party loan modification specialists to register as loan originators.

Respectfully Submitted,

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³³ Such a statement would not protect consumers but would at least reduce the risk of courts and law enforcement officials making the same mistake the District of Kansas made in *Blechman*.

Exhibit 1

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Robert Mahini c/o
FEDERAL TRADE COMMISSION
Division of Financial Products
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Washington, DC 20580

February 10, 2010

CERTIFIED MAIL, RETURN RECEIPT

Re: Public Comments about proposed rule regarding
prohibiting attorney fees in loan modification

Dear FTC;

I understand that the FTC is about to issue a rule that would forbid lawyers from being paid 'up front' for aiding distressed homeowners in obtaining loan modifications. I would like to provide my input on this matter for your consideration.

I am from Nevada, where the percentage of foreclosures is the highest and it would be a great mistake to prevent homeowners from getting legal help. [making counsel wait to get paid would be the same thing from a practical standpoint]. Nevada is a 'foreclosure mediation' state under our newly enacted AB149, which is to say that those who occupy their own homes in foreclosure can elect to mediate and meet, face to face, with the bank before the home is lost. I have done a dozen or so of these since the law went into effect. What happens is that a lawyer from the loan servicer shows up and telephones in to someone at the HAMP desk. Initially the process comes down to qualifying for such a modification. There are, of course other kinds of modifications, but those are considered only if the person does not qualify for HAMP. Personally, I have about at 90% success rate with this procedure, though I have been doing mods long before the adoption of HAMP. There is a huge amount of pre-mediation preparation that is required to make these cases work, including writing a legal memorandum. I can provide you redacted copies of these materials if you like along with the modification paperwork. In my opinion, it would be a very great mistake to cut the lawyers out of this process, because the banks invariably try to 'get over' on the homeowners if they can find a way to do it.

For reasons of economics and the inherent structure securitized loans, a servicer can make more money foreclosing, than it can by modifying a loan.¹

Let me give you a concrete example: The Nevada mediation process has a provision for homeowners to take an appeal to the state district court in the event that the lender acts in bad faith. This procedure is a 'petition for review', that can not be undertaken by a layman. A husband and wife came to me for representation when the mediation they attended without counsel failed and bad faith was found. I filed a petition for review asking the court to order the bank to do the mediation over, in good faith. The loan servicer was PNC and the lender/investor NATIONAL CITY.² The lawyer that went to the mediation on behalf of PNC said that while it was a participant in the HAMP program, that NATIONAL CITY was not, and hence no modification. A cursory review of the government website shows that PNC signed a participation agreement on July 14, 2009 and NATIONAL CITY signed one on June 18, 2009. Therefore, the lawyer for PNC was either ignorant of the facts or purposefully deceptive. There is nothing in the proposed rules that addresses that sort of behavior by counsel for the banks, and therefore no way to keep the lender's of the process honest.

Without counsel these people would simply have lost their home when there is a workable³ federal program to prevent that. It is quite unfortunate that the lawyers for the banks are frequently telling the mediator that while servicer participates in HAMP, the investor does not, so consequently nothing can be done. Investors were not invited by the Treasury Department to participate in HAMP, unless they happen to be those who were warehousing loans that are awaiting the securitization process. This policy of deceit flies in the face of the 'safe harbor' provision that the Congress enacted last year; 15 U.S.C. 1639(a), which is to say that servicers are entitled to modify loans without consent of the loan holder. Homeowners need lawyers to guide them thru this morass.

I do not advertize that I help people with loan modifications, nor hold myself out for that sort of thing in any way. I get business by word of mouth, because I teach CLE on the subject and because my colleagues know that I am good at it. I started doing loan mods

¹See: "Why Servicers Foreclose When They Should Modify, and Other Puzzles of Servicer Behavior", by Dianne Thompson, NCLC 2009 www.nclc.org/issues/mortgage..

² I actually doubt that National City was the owner of the note, but because the homeowners had a letter from it to that effect, I took it at face value. The terms; 'lender' 'servicer' 'bank' 'investor' are used somewhat interchangeably as a matter of stylistic parlance and not substance.

³ The HAMP process has gotten a great deal of bad press, largely because people are impatient and desire a rapid resolution of their loan issues, and because the popular press has not devoted the time and energy to understand the issues. This is generally not possible to resolve these cases quickly as financial statements have to be gathered and reviewed by the servicer that is on the verge of being overwhelmed with an avalanche of paperwork. BAC has had 10,000 'new hires' in 2009, and it is just recently getting to the point were it can deal with the defaults.

after I quit practicing Bankruptcy in light of the BAPCPA in 2005. At this point they were extremely difficult to obtain and many homeowners ended up in bankruptcy. On average, a successful loan modification takes a year, and is never accomplished in less than six (6) months, though those figures are improving. Most people come to me because they have tried to get loan mods on their own and are being stone-walled by the banks. I can not tell you how many times that I have made contact with a mortgage company; gotten a request for 50-100 pages of documentation, sent those things in by fax, eMail and certified mail, only to hear later that the bank doesn't have them. Worse, they frequently 'sit on' the documents without action, only to call or write back that the information is 'stale'. This is frequently accompanied by a letter that concludes the client must no longer be interested, with is the furthest thing from the truth. [At this juncture I will not discuss the issues of calling in to a servicer about a problem on a toll free phone number; suffice it to say that it is not generally possible to do so, protestations of the industry notwithstanding.]

The average family that has kids in school, simply can not tolerate such a lengthy period of uncertainty. As counsel, I do the 'hand holding' throughout the process and I am the one that assures them they are not going to lose their homes. I make referrals to chapter 13 counsel in extreme circumstances. Having done dozens of these in the last few years I have not, as yet, failed in that mission, with only one exception. If the FTC says I can't collect a fee in advance, I will have to exit this field of practice. What am I supposed to tell my secretary? My landlord? My vendors? That they get paid in a year! That is unreasonable may be an unconstitutional denial of access to the court system. In a few cases I have agreed to work for nothing up front, and when I finally get the deal, the client mulcets me⁴

The simple fact is that the banks/lenders/services/investors have gotten billions in taxpayer dollars that are never going to be recovered, no matter how much they 'spin' the facts. These funds are trickling down to the homeowners, but the mechanism for doing this is in its infancy. All the numbers I have seen point to the fact that the 'second wave' of foreclosures will crest in 2011, when the bulk of the prime ARMs explode. The term 'reset' is a euphemism that I am not prepared to use for this phenomenon.

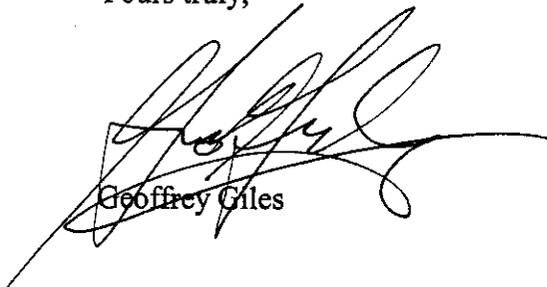
The average homeowner didn't read his or her loan documents at closing because they were not allowed to take them home, and they could not spend 3-4 hours reading them at the title company, so they accepted as true, that which was told to them about the loan. I believe the great majority of people with badly structured loans would never have signed

⁴ It took me 8 months to get a loan mod from a non-HAMP participating bank last year. The client said she would pay when the job was done. I got \$25k in arrears wrapped into the balance, got the interest rate down from 7.5% to 5% and got her a ten (10) year balloon, when the construction loan was all due and payable before she came in to see me. The reason she is not paying me is because I did not get her a 2% deal like she read about on the internet.

for them if they understood how they work, but I have no direct evidence of that contention. By the same token these homeowners simply can not understand the loan modification applications nor what is necessary to get them submitted, reviewed and approved. I wrote to the Inspector General about this problem at the inception of HAMP, but have not yet received a reply.

If you take the lawyer out the picture, the only ones that will remain in the industry are the fraudsters and scam-artists, that you are trying to stamp out. These people are in the grey market, under the radar, and rules simply will not deter them. I personally have a policy to refund the fees to the client where I am unsuccessful. I don't tell them about it, but that's how I have practiced law for my entire career. In thirty (30) years of lawyering I have no bar complaints, fee disputes nor lawsuits of any kind. If you pass this rule, it will drive lawyers like myself out of the market, and the number of permanent HAMPs that are executed will probably drop precipitously. In Nevada, if lawyers are forbidden to practice under AB149, that legislation will fail to meet its objectives. Thank you for listening. This is the first 'public comment' I have ever made on anything during my career, and I hope that I have not been so long winded that it fails to be considered. I remain...

Yours truly,



Geoffrey Giles

GG:gg

cc: NACA

Foreclosure Mediation Director