CONGRESSIONAL OVERSIGHT PANEL

MARCH OVERSIGHT REPORT

FORECLOSURE CRISIS: WORKING TOWARD A SOLUTION

MARCH 6, 2009.—Ordered to be printed

Submitted under Section 125(b)(1) of Title 1 of the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110–343

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CONTENTS

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EXECUTIVE SUMMARY *

For as long as there have been mortgages, there have been foreclosures. The reasons are well documented. Job losses, medical problems, and family breakups can leave families strapped for cash, unable to meet their monthly payments.

Foreclosures have now skyrocketed to three times their historic rates. But the causes of this foreclosure crisis are very different than the foreclosures of the past. Since the late 1990s, mortgage lending, once considered the safest of all investments because of the well-researched decision-making that carefully documented the ability of a borrower to repay, morphed into an assembly-line business that looked nothing like mortgages of the past. This new approach to mortgage lending included steering high-priced mortgages to people who may have qualified for lower-priced fixed rate mortgages and aggressive marketing of high-risk loans to people whose incomes made it clear that they could not possibly repay over the life of the loan. In effect, such mortgages could be repaid only if the housing market continued to inflate at historic rates and borrowers could endlessly refinance their loans. After dizzying price increases in many parts of the country, housing prices flattened, refinancing became impossible, and the bubble burst.

Now millions of Americans find themselves unable to meet their monthly mortgage payments. Millions more people who can make their payments now recognize that they owe far more than their houses are likely to be worth for many years, and some are walking

* This report was adopted by a 4–1 vote on March 5, 2009. Rep. Jeb Hensarling voted against this report.

away. Over the next few years, an estimated one in every nine homeowners is likely to be in foreclosure, and one in five will likely have a mortgage that is higher than their house is worth, making default a financially rational alternative.

Mortgage foreclosures pose a special problem. Millions of people could make market-rate payments on 30-year fixed mortgages for 100 percent of the current market value of their homes. But these can-pay families are driven into foreclosure because they cannot pay according to the terms of the higher-priced mortgages they now hold, and refinancing options are limited or nonexistent. After accounting for the costs of foreclosure and the lower prices foreclosure auctions bring, the lenders will lose an average of $60,000 per foreclosure and recover far less than the market value of the homes. Foreclosure for can-pay families destroys value both for the family forced out of its home and for the investor who will be forced to take a larger loss.

For decades, lenders in this circumstance could negotiate with can-pay borrowers to maximize the value of the loan for the lender (100 percent of the market value) and for the homeowner (a sustainable mortgage that lets the family stay in the home). Because the lender held the mortgage and bore all the loss if the family couldn't pay, it had every incentive to work something out if a repayment was possible.

But the mortgage market has changed. A series of impediments now block the negotiations that would bring together can-pay homeowners with the investors who hold their mortgages. In this report we identify those impediments. These are structural problems, created as the mortgage business shifted. They include fallout from securitizing mortgages, the arrangements with mortgages servicers that encourage foreclosures over modifications, and severe understaffing of workout departments. Because of these impediments, foreclosures that injure both the investor and the homeowner continue to mount.

Like the crisis in the banking system, the foreclosure problem has grown so large that it threatens the entire economy. Foreclosures depress housing and commercial real estate prices throughout neighborhoods, imposing serious costs on third parties. Each of the eighty closest neighbors of a foreclosed property can suffer a nearly $5,000 property value decline as a result of a single foreclosure. Communities with high foreclosure rates suffer increased urban blight and crime rates. When families have to relocate, community ties are cut, affecting friendships, religious congregations, schooling, transportation and medical care. Numerous foreclosures flood the market with excess inventory that depress other sale prices. Thus, foreclosures can harm other homeowners both by encouraging additional foreclosures and by reducing home sale prices, while decreased property values hurt local businesses and reduce state and local tax revenues.

To help individual families and to stabilize the economy, Congress has pressed Treasury to devise a plan to deal with foreclosures.[1] The Congressional Oversight Panel was explicitly instructed to review "the effectiveness of foreclosure mitigation ef-

[1] Emergency Economic Stabilization Act of 2008 (EESA), Pub. L. No. 110–343, at § 109.

forts" undertaken by Treasury under the authorization of the Emergency Economic Stabilization Act.[2]

To develop this report, we explored the available data and discovered how little is known about the current state of mortgage performance across the country. The ability of federal banking and housing regulatory agencies to gather and analyze this data is hampered by the lack of a nationwide loan performance data reporting requirement on the industry. Consequently, there is no comprehensive private or government source for accurately tracking loan delinquencies and loss mitigation efforts, including foreclosures and modifications, on a complete, national scale. No federal agency has the ability to track delinquencies and loss mitigation efforts for more than 60 percent of the market. Existing data are plagued by inconsistencies in collection methodologies and reporting, and the numbers are often simply unverifiable. Worse still, the data that are collected are often not the data needed for answering key questions, such as, what are causing mortgage defaults and why loan modifications have not been working. The United States is now two years into a foreclosure crisis that has brought economic collapse, and federal banking and housing regulators still know surprisingly little about the number of foreclosures, what is driving the foreclosures, and the efficacy of mitigation efforts. The Panel endorses a much more vigorous plan to collect critical foreclosure data.

To evaluate plans to deal with foreclosures, we identified the main impediments to economically sensible workouts. From there, we developed a checklist to evaluate the likely effectiveness of any proposal to halt the cascade of mortgage foreclosures.

Checklist for Mortgage Mitigation Program
Will the plan result in modifications that create affordable monthly payments?
Does the plan deal with negative equity?
Does the plan address junior mortgages?
Does the plan overcome obstacles in existing pooling and servicing agreements that may prevent modifications?
Does the plan counteract mortgage servicer incentives not to engage in modifications?
Does the plan provide adequate outreach to homeowners?
Can the plan be scaled up quickly to deal with millions of mortgages?
Will the plan have widespread participation by lenders and servicers?

[2] *Id.* at § 125(b)(1)(A)(iv).

On February 18, 2009, President Obama announced the Homeowner Affordability and Stability Plan intended to prevent unnecessary foreclosures and strengthen affected communities. The Plan focuses on payment affordability through an expanded refinancing program involving Fannie Mae and Freddie Mac and a modification program targeting a wide range of borrowers at risk. The Plan also includes financial incentives to encourage both lenders and borrowers to strive for sustainable outcomes. It also encourages servicers to modify mortgages for at risk homeowners before they are delinquent. There are additional incentives available to extinguish junior mortgages.

The Administration estimates that the Plan's expanded refinancing opportunities for Fannie Mae and Freddie Mac mortgages could assist four to five million responsible homeowners, some of whom otherwise would likely have ended up in foreclosure.

While these projections are encouraging, the Panel has additional areas of concern that are not addressed in the original announcement of the Plan. In particular, the Plan does not include a safe harbor for servicers operating under pooling and servicing agreements to address the potential litigation risk that may be an impediment to voluntary modifications. It is also important that the Plan more fully address the contributory role of second mortgages in the foreclosure process, both as it affects affordability and as it increases the amount of negative equity. And while the modification aspects of the Plan will be mandatory for banks receiving TARP funds going forward, it is unclear how the federal regulators will enforce these new standards industry-wide to reach the needed level of participation.

The Plan also supports permitting bankruptcy judges to restructure underwater mortgages in certain situations. Such statutory changes would expand the impact of the Plan. Without the bankruptcy piece, however, the Plan does not deal with mortgages that substantially exceed the value of the home, which could limit the relief it provides in parts of the country that have experienced the greatest price declines.

The Administration released additional guidelines for the Plan on March 4, as this report was prepared for publication. The Panel will promptly pursue any outstanding issues with the Treasury Department and will keep Congress and the American people advised of its ongoing evaluation of the Administration's Plan.

The foreclosure crisis has reached critical proportions. The Panel hopes that by identifying the current impediments to sensible modifications that we can move toward effective mechanisms to halt wealth-destroying foreclosures and put the American family—and the American economy—back on a sound footing.

SECTION ONE: THE FORECLOSURE CRISIS: WORKING TOWARD A SOLUTION

INTRODUCTION: THE NEED FOR A COMPREHENSIVE FORECLOSURE PLAN

America is in the midst of a home foreclosure catastrophe, unprecedented since the Great Depression. The Congressional Oversight Panel ("COP" or the "Panel") has been charged with reporting to Congress on the state of the crisis, gauging the adequacy of existing responses, and evaluating the promise of potential responses.[3] This report is the Panel's first to focus on foreclosure mitigation efforts. The Panel's goal in this report is not to endorse or propose any particular foreclosure mitigation program. Rather, through an examination of the causes of the crisis and the impediments to its resolution, this report sets forth a framework to analyze the problem and a checklist of factors that any successful foreclosure mitigation program must address. These factors will provide a metric for the Panel's evaluation of the Administration's efforts, as well as any other federal, state, local or private efforts.

The Emergency Economic Stabilization Act of 2008 (the "EESA") aimed to stabilize the economy both through direct support of financial institutions and through encouraging foreclosure mitigation efforts. These two endeavors are intertwined. Foreclosures have exerted downward pressure on real estate markets generally. In turn, the falling real estate prices have put more pressure on real estate backed assets in the financial system and applied pressure on the economy as a whole. To date, the Treasury Department's emphasis in implementing the EESA has been focused exclusively on stabilizing the economy by dealing with financial institutions and insurance and auto companies, at the expense of dealing with the crisis directly by addressing home mortgage foreclosures, an approach suggested by the EESA.[4] The Panel asked Treasury about foreclosure relief in the context of TARP in its first report. Treasury responded by referring to several existing voluntary programs, which were not actually part of TARP. In this report, the Panel will examine in detail the reasons that these voluntary programs have proven inadequate to address the crisis.

The mortgage market, central to both consumer finance and the broader American economy, has reached crisis stage. An estimated 10 percent of residential homeowners currently face foreclosure or have fallen behind on their mortgage payments, a number nearly ten times higher than historic foreclosure levels.[5] The effects of the foreclosure crisis ripple through the economy, affecting spending, borrowing and solvency for households and financial institutions alike. Stabilizing the housing market will not solve the economic crisis, but the economic crisis cannot be solved without first stabilizing the housing market. An effective solution to the foreclosure

[3] EESA at § 125(b)(iv).
[4] *Id.* at §§ 109–110.
[5] Vikas Bajaj and Michael Grynbaum, *About 1 in 11 Mortgageholders Face Problems,* New York Times (June 6, 2008). See Section I, *infra,* for a more complete discussion about the size and scale of the current foreclosure crisis.

crisis is necessary not only to help homeowners, but also to help fix the economy as a whole.

Foreclosures generally have both direct and indirect costs for borrowers and lenders. Further, the cost of foreclosures can spill over from the parties to the transaction to the neighborhood, larger community, and even the economy as a whole as the foreclosure epidemic drives falling real estate prices. When compared with the costs of foreclosure, the cost of loan workouts can often provide a more efficient, economically rational outcome for both the borrower and the lender, generally making foreclosure a lose-lose situation. But the rate of loan modifications has not kept pace with the rate of foreclosures. In this report, the Panel explores how we arrived at this point and why foreclosure often seems to be the default option rather than successful, sustainable loan modifications.

This report proceeds in six parts. Part I provides a picture of the foreclosure crisis and its impact on American society and the global economy. Part II addresses the need for reliable information on mortgage markets as a basis for making sound policy judgments and the inadequacies of current mortgage market data. Part III examines the obstacles to loan performance that have been driving the foreclosure crisis and the obstacles to foreclosure mitigation that have inhibited its resolution, particularly through a review of past foreclosure mitigation programs. Part IV outlines a checklist of specific factors for successful future efforts at foreclosure mitigation. Part V discusses key policy issues for the future, including the moral hazard and distributional issues that are raised by foreclosure mitigation efforts. The report concludes with a review and assessment of the foreclosure mitigation initiative recently announced by the Obama Administration.

I. THE FORECLOSURE CRISIS

A. A PICTURE OF THE FORECLOSURE CRISIS

Foreclosures are about the home. The importance of the home to Americans can hardly be overstated. The home is the center of American life. It is where we live, where we raise our families, where we gather with friends, and, in many cases, where we work. It is the physical and emotional nexus of many households as well as the centerpiece of many Americans' finances. The home is the single largest asset of many Americans.[6]

The financing of the home is central to the American economy. Home mortgage debt accounts for 80.3 percent of consumer debt,[7] and housing expenses, which are primarily mortgage and rental payments, account for approximately 22 percent of the economy.[8] Since the early 1980's consumer spending has risen from approximately 60 percent of GDP to approximately 70 percent of GDP,[9] as a result of falling savings rates and rising consumer debt. This is

[6] Brian K. Bucks et al., *Changes in U.S. Family Finances from 2004 to 2007: Evidence from the Survey of Consumer Finances,* Federal Reserve Bulletin, at A1, A33 (Feb. 2009) (online at www.federalreserve.gov/pubs/bulletin/2009/pdf/scf09.pdf) (reporting that home equity accounted for 31.8 percent of total family assets).

[7] Board of Governors of the Federal Reserve System, *Federal Reserve Statistical Release Z.1: Table L.101* (Dec. 11, 2008) (Table L.101).

[8] Hoover Institution, *Facts on Policy: Consumer Spending* (online at www.hoover.org/research/factsonpolicy/facts/4931661.html).

[9] *Id.*

not a sustainable economic structure, and over time the United States must return to an economy where consumption is wage based and there is adequate consumer savings. But while the economy cannot be revived based on more asset-based consumption, neither can the country afford a continuing asset price collapse. An orderly return to a more wage-driven economy requires that we have functioning credit markets. American homeownership is in crisis. Out of 110 million residential units in the United States,[10] around 75 million are owner-occupied, and of these, nearly 51 million are mortgaged.[11] Over a million homes entered foreclosure in 2007[12] and another 1.7 million in the first three quarters of 2008.[13] This means that nearly one out of every twenty residential borrowers entered the foreclosure process in the past two years.

Over half a million homes were actually sold in foreclosure or otherwise surrendered to lenders in 2007, and over 700,000 were sold in foreclosure in the first three quarters of 2008 alone.[14] At the end of the third quarter of 2008, one in ten homeowners was either past due or in foreclosure, the highest levels on record.[15] At the current pace nearly 2,900 families are losing their homes each day.

A comparison to Hurricane Katrina provides some sense of the scope of the foreclosure crisis. A national disaster, Katrina created serious social disruptions as many of New Orleans' residents left, never to return. In the year following Katrina, New Orleans' population declined by approximately 229,000, according to the Census Bureau. More Americans are losing their homes in foreclosure each month than left New Orleans after Hurricane Katrina.[16] In 2008 alone, the foreclosure crisis has had the force of a dozen Hurricane Katrinas.

[10] U.S. Census Bureau, *Housing Vacancies & Homeownership (CPS/HVS)* (Oct. 2008) (Table 4. Estimates of the Total Housing Inventory for the United States: Third Quarter 2007 and 2008) (online at www.census.gov/hhes/www/housing/hvs/qtr308/q308tab4.html).

[11] U.S. Census Bureau, *American Housing Survey for the United States: 2007* (2007) (Table 3–15. Mortgage Characteristics—Owner-Occupied Units) (online at www.census.gov/hhes/www/housing/ahs/ahs07/tab3-15.pdf).

[12] RealtyTrac, *U.S. Foreclosure Activity Increases 75 Percent In 2007* (Jan. 29, 2008) (online at www.realtytrac.com/ContentManagement/pressrelease.aspx?ChannelID=&ItemID=3988&accnt=64847).

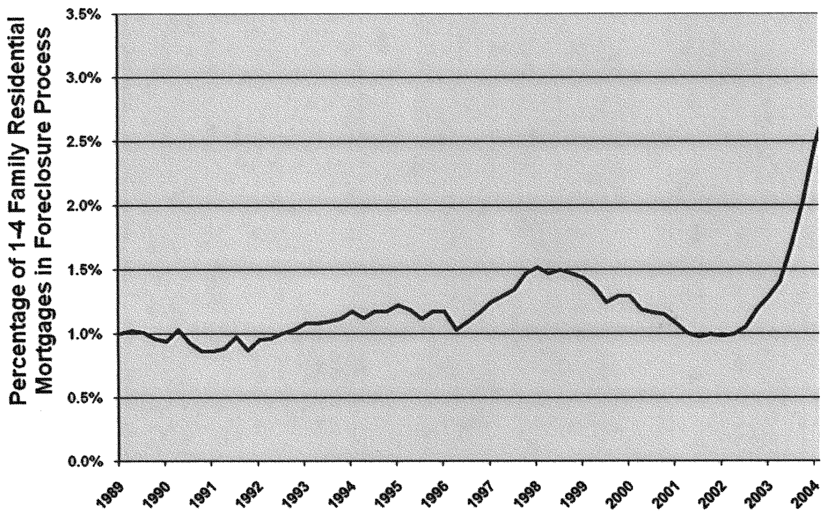
[13] HOPE NOW, *Workout Plans (Repayment Plans + Modifications) and Foreclosure Sales, July 2007–November 2008* (online at www.hopenow.com/upload/data/files/HOPE%20NOW%20Loss%20Mitigation%20National%20Data%20July%2007%20to%20November %2008.pdf). *See also* Chris Mayer et al., *The Rise in Mortgage Defaults,* Journal of Economic Perspectives (2009) (forthcoming) (reporting 1.2 million foreclosure starts in first half of 2008).

[14] HOPE NOW, *supra* note 13; Adam J. Levitin, *Resolving the Foreclosure Crisis: Modification of Mortgages in Bankruptcy,* Wisconsin Law Review (2009) (online at papers.ssrn.com/sol3/papers.cfm?abstract_id=1071931).

[15] Mortgage Bankers Association, *Delinquencies Increase, Foreclosure Starts Flat in Latest MBA National Delinquency Survey* (Dec. 5, 2008) (online at www.mbaa.org/NewsandMedia/PressCenter/66626.htm) (reporting that 2.97 percent of all one-to-four family residential mortgages outstanding were in the foreclosure process in the first quarter of 2008, and 6.99 percent were delinquent). *See also* Vikas Bajaj and Michael Grynbaum, *About 1 in 11 Mortgageholders Face Problems,* New York Times (June 6, 2008). Because of the steadily increasing level of homeownership in the United States, higher percentages of past due and foreclosed mortgages means that an even greater percentage of Americans are directly affected by higher delinquency and foreclosure rates. *See* U.S. Census Bureau, *Housing Vacancies and Homeownership (CPS/HVS): Historical Tables* (Table 14: Homeownership Rates for the U.S. and Regions) (online at www.census.gov/hhes/www/housing/hvs/historic/index.html) (accessed Mar. 1, 2009).

[16] According to the Census Bureau, the population loss after Hurricane Katrina was 228,782. U.S. Census Bureau, *Census Bureau Announces Most Populous Cities* (June 28, 2007) (online at www.census.gov/Press-Release/www/releases/archives/population/010315.html). Given the average household size of 2.6 individuals and 2,900 foreclosures per day, more than 226,000 persons are losing their homes per month. U.S. Census Bureau, *Fact Sheet: 2005–2007* (online at factfinder.census.gov/servlet/ACSSAFFFacts) (accessed Mar. 1, 2009).

Chart 1: Percentage of 1–4 Family Residential Mortgages in Foreclosure Process [17]



The foreclosure crisis shows no signs of abating, and without decisive intervention it is likely to continue for years and directly affect millions of Americans. Current projections suggest that by the end of 2012, around 8.1 million homes, or one in nine residential borrowers will go through foreclosure.[18]

Foreclosure has enormous deadweight costs. Lenders lose a significant part of their loan. Foreclosed properties sell for highly depressed prices and lenders incur significant direct costs in the foreclosure process. One study estimates that lenders incur nearly $60,000 of direct costs on average in the foreclosure process.[19]

For homeowners, foreclosure means the loss of their home and possibly their home equity. It means having to find a new place to live and moving, a move that can place extreme stress on borrowers and their families.[20] It often means losing connections with their old neighborhood and community. It usually means children being moved to a new school.

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[17] Mortgage Bankers Association, *National Delinquency Survey: Seasonally Adjusted* (Mar. 4, 2009).

[18] Credit Suisse Fixed Income Research, *Foreclosure Update: Over 8 Million Foreclosures Expected* (Dec. 4, 2008) (online at www.chapa.org/pdf/Foreclosure UpdateCreditSuisse.pdf).

[19] Craig Focardi, *Servicing Default Management: An Overview of the Process and Underlying Technology* (Nov. 15 2002) (TowerGroup Research Note No. 033–13C) (stating that foreclosures cost on average $58,759 and took 18 months to complete).

[20] See, e.g., Lorna Fox, *Re-Possessing Home: A Re-analysis of Gender, Homeownership and Debtor Default for Feminist Legal Theory,* William & Mary Journal of Women & Law, at 434 (2008); Eric S. Nguyen, Parents in Financial Crisis: Fighting to Keep the Family Home, American Bankruptcy Law Journal, at 229 (2008); Mindy Thompson Fullilove, *Root Shock,* at 11–20 (2005); Margaret Jane Radin, *Property and Personhood,* Stanford Law Review, at 958–59 (1982). *But see* Stephanie Stern, *Residential Protectionism and the Legal Mythology of Home,* University of Michigan Law Review (2009). *See also* Andrea Hopkins, *Ohio Woman, 90, Attempts Suicide After Foreclosure,* Reuters (Oct. 3, 2008); Michael Levenson, Facing Foreclosure, *Taunton Woman Commits Suicide,* Boston Globe (July 23, 2008).

B. SPILLOVER COSTS OF FORECLOSURES

Foreclosures also depress housing and commercial real estate prices throughout neighborhoods, imposing serious costs on third parties. When families have to relocate, community ties are cut. Friendships, religious congregations, schooling, childcare, medical care, transportation, and even employment often depend on geography.[21] A single foreclosure can depress the eighty closest neighbors' property values by nearly $5,000.[22] When multiple foreclosures happen on a block or in a neighborhood, the effect is exponential. The property value declines caused by foreclosure hurt local businesses and erode state and local government tax bases.[23] Condominium and homeowner associations likewise find their assessment base reduced by foreclosures, leaving the remaining homeowners with higher assessments.[24]

The housing price declines caused by foreclosures can also fuel more foreclosures, as homeowners who find themselves with significant negative equity may choose to abandon their houses and become renters. Numerous foreclosures flood the market with excess inventory that depress other sale prices. Thus, foreclosures can harm other mortgagees both by encouraging additional foreclosures and by reducing home sale prices.

Foreclosed properties also impose significant direct costs on local governments and foster crime.[25] A single foreclosure can cost a city over $34,000.[26] Foreclosures also have a racially disparate impact because African-Americans invest a higher share of their wealth in

[21] *See* Phillip Lovell and Julia Isaacs, *The Impact of the Mortgage Crisis on Children,* (May 2008) (online at www.firstfocus.net/Download/HousingandChildrenFINAL.pdf) (estimating two million children will be impacted by foreclosures, based on a projection of two and quarter million foreclosures).

[22] Dan Immergluck and Geoff Smith, *The External Costs of Foreclosure: The Impact of Single-Family Mortgage Foreclosures on Property Values,* Housing Policy Debate, at 58 (2006). Immergluck and Smith found that in Chicago in the late 1990's, a single foreclosure depressed neighboring properties' values between $159,000 and $371,000, or between 0.9 percent and 1.136 percent of the property value of all the houses within an eighth of a mile. For Chicago, which has a housing density of 5,076 houses per square mile, or around 79 per square eighth of a mile, this translates into a single foreclosure costing each of 79 neighbors between $2,012 and $4,696. City-Data.com, *Chicago, IL (Illinois) Houses and Residents* (online at www.city-data.com/housing/houses-Chicago-Illinois.html) (accessed Mar. 3, 2009). *See* also Mark Duda & William C. Apgar, Mortgage Foreclosures in Atlanta: Patterns and Policy Issues, at ii (Dec. 15, 2005) (online at www.nw.org/network/neighborworksProgs/foreclosuresolutionsOLD/documents/foreclosure1205.pdf).

[23] *See, e.g.,* Laura Johnston, *Vacant Properties Cost Cleveland $35 Million, Study Says,* Cleveland Plain Dealer (Feb. 19, 2008); Global Insight, *The Mortgage Crisis: Economic and Fiscal Implications for Metro Areas: Report Prepared for The United States Conference of Mayors and The Council for the New American City* (2007) (online at www.vacant properties.org/resources/documents/USCMmortgagereport.pdf) (estimating a $6.6 billion decrease in aggregate tax revenue in ten states especially impacted by the foreclosure crisis).

[24] Christine Haughney, *Collateral Foreclosure Damage for Condo Owners,* New York Times (May 15, 2008).

[25] Dan Immergluck and Geoff Smith, *The Impact of Single-Family Mortgage Foreclosures on Neighborhood Crime,* Housing Studies, at 851 (2006); William C. Apgar and Mark Duda, *Collateral Damage: The Municipal Impact of Today's Mortgage Foreclosure Boom,* at 9 (May 11, 2005) (online at www.995hope.org/content/pdf/Apgar__Duda__Study__Short__Version.pdf).

[26] William C. Apgar et al., *The Municipal Cost of Foreclosures: A Chicago Case Study,* at 2 (Feb. 27, 2005) (Homeownership Preservation Foundation Housing Finance Policy Research Paper Number 2005–1) (online at www.995hope.org/content/pdf/Apgar__Duda__Study__Full__Version.pdf).

their homes[27] and are also more likely than financially similar whites to have subprime loans.[28]

Foreclosures also hurt capital markets. Investors in mortgage-backed securities see their investment's market value decline both because of direct losses from foreclosures of mortgages collateralizing their investment and because of the general decline in housing values, fueled, in part, by foreclosures. To the extent that these investors are financial institutions or their insurers, their foreclosures reduce the value of their assets and, if they have large exposure to mortgage-backed securities, may place their solvency at risk. Thus, foreclosures also affect the investors in these financial institutions. In short, foreclosure is an inefficient outcome that is bad not only for lenders and borrowers, but for society at large.

There are important moral questions about borrower and lender responsibility in the foreclosure crisis, as discussed in Section V, *infra*. While the Panel emphasizes the importance of crafting foreclosure mitigation efforts to reach responsible homeowners, the Panel also recognizes that the serious spillover effects of foreclosures on third parties creates a threat to communities and the economy that counsels for targeted government action to protect innocent third parties from the harmful effects of foreclosures.

II. INADEQUATE MORTGAGE MARKET DATA LIMITS SOUND POLICY DECISIONS

In every area of policy, Congress and the Administration need quality information in order to make informed decisions. This is as true for financial and housing markets as it is for military intelligence. The first step for understanding the foreclosure crisis and evaluating responses is to have an accurate empirical picture of the mortgage market. For example, how many loans are not performing, what loss mitigation efforts have lenders undertaken, how many foreclosures have occurred, how many are in the process of occurring, and how many more are likely to occur? How many of these foreclosures are preventable, meaning that another loss mitigation option would result in a smaller loss to the lender? What is driving mortgage loan defaults? Are there any salient characteristics of the loans that are defaulting and for which successful modifications are not feasible? What relationship does foreclosure have to loan type, to loan-to-value ratios, to geographic factors, and to borrower characteristics? And crucially, what obstacles stand in the way of loss mitigation efforts? These are some of the questions for which the Congressional Oversight Panel believes the Congress and the Administration need to know the answers in order to make informed policy decisions.

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[27] Melvin L. Oliver and Thomas M. Shapiro, *Black Wealth, White Wealth: A New Perspective on Racial Inequality,* at 66 (2006) (showing that housing equity accounted for 62.5 percent of all black assets in 1988 but only 43.3 percent of white assets, even though black homeownership rates were 43 percent and white homeownership rates were 65 percent). *See also* Kai Wright, *The Subprime Swindle,* The Nation (July 14, 2008); Brian K. Bucks et al., *Recent Changes in U.S. Family Finances: Evidence from the 2001 and 2004 Survey of Consumer Finances,* Federal Reserve Bulletin, at A8, A12, A23 (2006) (noting that while there was only a $35,000 difference in median home equity between whites and nonwhites/Hispanics in 2004, there was a $115,900 difference in median net worth and a $33,700 difference in median financial assets, suggesting that for minority homeowners, wealth is disproportionately invested in the home).

[28] Bob Tedeschi, *Subprime Loans' Wide Reach,* New York Times (Aug. 3, 2008); Mary Kane, *Race and the Housing Crisis,* Washington Independent (Jul 25, 2008).

Unfortunately, this essential information is lacking. The failure of federal banking and housing regulatory agencies to gather and analyze quality market intelligence is striking. The United States is now two years into a foreclosure crisis that has brought economic collapse, and federal banking and housing regulators still know surprisingly little about the number of foreclosures, what is driving the foreclosures, and the efficacy of mitigation efforts.

A. THE PANEL'S FORECLOSURE MITIGATION SURVEY

In an attempt to provide Congress and the public with a more detailed and comprehensive picture of foreclosure mitigation efforts, the Congressional Oversight Panel requested, pursuant to its power under section 125(e)(3) of the EESA that federal banking and housing regulatory agencies provide it with a variety of information about foreclosures and loss mitigation efforts from their regulated institutions. The request was sent to the Departments of Treasury and Housing and Urban Development (HUD), to the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the National Credit Union Administration (NCUA), the Federal Reserve Board, Federal Deposit Insurance Corporation (FDIC), and the Federal Housing Finance Agency (FHFA). A copy of the Panel's foreclosure data survey is included as an Appendix.

The results of the survey were distressing. The overall state of federal banking and housing regulatory agency empirical knowledge about the mortgage market and the foreclosure crisis is inadequate. Most agencies have little in the way of original data, and those that do have conducted little analysis. Some agencies had no data or knowledge. Most of those with some knowledge rely on a pair of commercial data sources that have well-known drawbacks, lack full market coverage, and are based on voluntary industry reporting, rather than tailored to regulatory interests.

B. INADEQUATE DATA SOURCES ON LOAN PERFORMANCE AND LOSS MITIGATION

There are four major private sources that track mortgage delinquencies, foreclosures, and loss mitigation efforts, but their coverage is either limited or of questionable reliability. Two private subscription sources, First American LoanPerformance and McDash, feature loan-level data and are considered to be reliable sources with sufficiently detailed data for meaningful analysis about factors driving mortgage defaults, but these sources have limited market coverage. LoanPerformance collects loan performance data, including foreclosures, from the trustees of securitized private label pools. LoanPerformance supposedly covers over 80 percent of the subprime market, but has more limited coverage of prime loans.[29] McDash collects data from mortgage servicers for both securitized and portfolio loans and is supposed to cover be-

[29] *See* Vanessa G. Perry, *The Dearth and Life of Subprime Mortgage Data: An Overview of Data Sources for Market Modeling* (Jan. 8, 2008) (online at www.hoyt.org/subprime/vperry.pdf).

tween 40–50 percent of the subprime market,[30] and a similar range of the prime market.[31]

In addition to these sources, there is the Mortgage Bankers Association's quarterly National Delinquency Survey, which is data that is estimated to cover 80–85 percent of the market.[32] The MBA's NDS tracks defaults and foreclosures, but does not have the granularity to support meaningful analysis about factors fueling defaults and it does not contain any data on loss mitigation efforts. Additionally, RealtyTrac publishes a monthly U.S. Foreclosure Market Report, which tracks foreclosures, not delinquencies or loss mitigation efforts. RealtyTrac's report is based on court filings and does not include information about the specific characteristics of loans. Moreover, RealtyTrac's methodology overstates the number of unique properties in foreclosure because it measures foreclosure filings, and there can be multiple filings for an individual property. Moreover, many foreclosures that are initiated result in cure and reinstatement, a workout, a short sale, or a deed in lieu. RealtyTrac also tracks completed foreclosure sales, although it does not publish these numbers, but these are a more reliable indicator of foreclosure activity, albeit with a significant delay.

Several government agencies track mortgage delinquencies, foreclosures, and loss mitigation efforts, but only for limited segments of the market. No federal agency tracks foreclosures for the entire market.[33] Several federal agencies subscribe to the McDash and LoanPerformance databases. Additionally, in the Treasury Department, the Office of Comptroller of the Currency and the Office of Thrift Supervision have recently begun using an expanded version of the McDash data service to jointly track foreclosures in the servicing portfolios of fourteen national banks and federal thrifts, which combine for around 60 percent of the total mortgage servicing market. OCC and OTS have begun to publish a quarterly Mortgage Metrics Report, detailing some of its analysis of foreclosure mitigation efforts. The Mortgage Metrics Report, however, is still a work in progress. Its first two editions lacked data about many crucial issues. OCC and OTS have announced that the March and June editions will include expanded data and analysis, which the Panel applauds. But the Panel notes that this expansion in data collection has come about only following the Panel's request for information in the form of the COP Mortgage Data Survey. While the Panel is pleased to see the expanded data collection, the data collection efforts that are beginning today are ones that should have been implemented by the agencies months, if not years ago.

Beyond the OCC and OTS, FHFA tracks certain aspects of Fannie Mae and Freddie Mac's modification efforts, although not in much detail. In any case, the FHFA could at best oversee only part

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[30] *Id*.

[31] Lei Ding et al., *Risky Borrowers or Risky Mortgages: Disaggregating Effects Using Propensity Score Models* (Dec. 2008) (online at www.ccc.unc.edu/documents/RiskyMortg__Final__Dec11.pdf).

[32] The MBA survey is a voluntary survey of over 120 mortgage lenders, including mortgage banks, commercial banks, thrifts, subservicers and life insurance companies. *See* Mortgage Bankers Association, *Learn More About MBA's National Delinquency Survey* (online at www.mortgagebankers.org/files/Research/NDSFactSheet.pdf) (accessed Mar. 1, 2009).

[33] Some state agencies attempt to track foreclosure data, but the process is complicated because foreclosure procedures vary by state, foreclosures often take place outside of the court system, records are often maintained on a county level and are not aggregated to produce statewide data, and some record-keeping is not automated.

of the market, but its jurisdiction does not extend to loans in the private-label securitization market or financial institutions' portfolio loans. The Federal Reserve Board appears to rely solely on analysis of third-party data sources. FHA and VA track some elements of the performance of FHA/VA insured loans, but that is only around 10 percent of the market. FDIC has been monitoring the portfolio of the failed IndyMac Federal Savings Bank, and has performed much more detailed analysis than any of the other financial regulators, but the FDIC is only monitoring the servicing portfolio of a single institution. Additionally, a working group of states' attorneys general and the Conference of State Bank Supervisors has been tracking foreclosures in the servicing portfolios of thirteen primarily subprime servicers, which make up about 57 percent of the subprime market.[34] Unfortunately, the state attorneys general working group's efforts to reach out to the OCC and OTS to coordinate data collection efforts were rebuffed due to jurisdictional rivalries.[35]

The result is that no comprehensive private or government source exists for accurately tracking loan delinquencies and loss mitigation efforts, including foreclosures and modifications, on a complete, national scale. No federal agency has the ability to track delinquencies accurately and loss mitigation efforts for anything more than 60 percent of the market. The existing data are plagued by inconsistencies in data collection methodologies and reporting, and are often simply unverifiable. Worse still, the data being collected are often not what is needed for answering key questions, namely what are causing mortgage defaults and why loan modifications have not been working.[36]

C. EXPLAINING THE REGULATORY INTELLIGENCE FAILURE

There appear to be several reasons for the failure of regulatory intelligence gathering and analysis. First, in the past, foreclosures have been largely a matter for state courts and for the county clerks who record transfers of real property. Many states and counties have not invested in the infrastructure needed to compile this information because the level of foreclosures has not reached crisis

[34] State Foreclosure Prevention Working Group, *Analysis of Subprime Mortgage Servicing Performance* (Sept. 2008) (Data Report No. 3) (online at www.csbs.org/Content/NavigationMenu/Home/SFPWGReport3.pdf). Maryland has made special efforts to track foreclosures. The Panel also recognizes the concerted efforts of several other states to deal with the foreclosure crisis, including California, Illinois, Iowa, Maryland, Massachusetts, New Jersey, New York, North Carolina, and Ohio.

[35] Letter from State Foreclosure Prevention Working Group to John C. Dugan, Comptroller of the Currency, and John M. Reich, Director, Office of Thrift Supervision (Feb. 2, 2009) (online at www.banking.state.ny.us/pr090202a.pdf); State Foreclosure Prevention Working Group, *States Urge OCC and OTS to Push for Affordable Mortgage Modifications* (Feb. 2, 2009) (online at www.csbs.org/AM/Template.cfm?Section=Press__Releases&CONTENTID=20998&TEMPLATE=/CM/ContentDisplay.cfm); State Foreclosure Prevention Working Group, *Analysis of Subprime Mortgage Servicing Performance*, at 2, 7, 20 (Feb. 2008) (Data Report No. 1) (online at www.csbs.org/Content/NavigationMenu/Home/StateForeclosurePreventionWorkGroupDataReport.pdf).

[36] For example, the Office of Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS) have been jointly gathering data on redefault rates on modified loans in the servicing portfolios of fourteen national banks and federal thrifts. This data shows a high rate of redefaults on modified loans. From this the Director of OTS concluded that modification efforts cannot work. The Comptroller, however, noted that the data shows nothing more than the fact that modifications have not worked; without knowing more about the modifications themselves, we cannot conclude that modifications *cannot* work. Cheyenne Hopkins, *When Mods Fail, What Next?: Regulators Split on Implications of Redefaults*, American Banker, at 1 (Dec. 9, 2008).

proportions since the Great Depression. Bank regulators are further hampered in their independent data collection efforts by the lack of a nationwide mortgage loan performance reporting requirement.

Without a similar requirement for performance data in a standard, electronic format, regulators are limited to information obtained voluntarily from the industry or from reviews of individual bank records. Indeed, many states do not regulate either investors in whole loans or securitized mortgages or the servicers who service those mortgages. Similarly, foreclosures and loan modifications have not been a traditional subject of federal regulatory focus. Yet, absent adequate information on foreclosures and mitigation efforts, it is difficult to craft effective responses to the crisis, and the federal banking and housing regulators have never requested authority to collect more information.

Second, divided regulatory bailiwicks, an issue that the Panel has previously drawn attention to in its regulatory reform report, have contributed to the failure to gather market intelligence. No agency appears to have identified mortgage market intelligence gathering and analysis as its responsibility. Mere jurisdictional divisions, however, are insufficient to explain or excuse this failure, as federal banking and housing regulators have coordinated successfully on other issues before. Nor do divided regulatory bailiwicks explain why so many agencies lack knowledge of what is happening within their regulatory sphere. For example, FHFA, which supervises Fannie Mae, Freddie Mac, and the Federal Home Loan Banks, did not have any data on hand about such basic elements as loss severities in foreclosure in the GSEs' portfolios or about the efficacy of GSE foreclosure mitigation efforts. The Panel is puzzled how FHFA can be performing its mission of overseeing the safety and soundness of the GSEs when it lacks basic knowledge of GSE losses.

Given the state of agency knowledge about the mortgage market, the Panel must content itself, for this report, with reporting some of the salient statistics from the existing publicly-available metrics. These statistics paint a grim picture of mounting foreclosures, failed private and public mitigation efforts, and many likely future defaults and foreclosures. Mortgage default rates and foreclosures are at historically unprecedented levels, not just for subprime loans, but for prime loans as well.[37] And private and government foreclosure mitigation attempts have failed to make much headway in either preventing foreclosures or restructuring loans.

D. THE NEED FOR FEDERAL DATA COLLECTION GOING FORWARD

While there is a clear picture of rising foreclosures and loss mitigation efforts that fail to keep pace, they do not provide sufficient information to determine *why* so many loans are defaulting and why foreclosure, rather than workouts, have been the dominant response and why modifications have often been unsuccessful. These sources often conflict and none has complete market coverage. In order for Congress and various regulators to respond properly and

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[37] Mortgage Bankers Association, *Delinquencies Increase, Foreclosure Starts Flat in Latest MBA National Delinquency Survey* (Dec. 5, 2008) (online atwww.mbaa.org/NewsandMedia/PressCenter/66626.htm).

promptly to issues in the residential housing market, better information is needed. Absent more complete and accurate information, legislators, regulators, and market participants are flying blind.

The housing market has traditionally been treated as a state law issue. While states have an important role to play, housing finance is a national market, closely linked with capital markets and the financial system. Going forward, Congress and the regulators need to have much better data available so they can ensure the smooth and efficient functioning of the national housing finance market and prevent future crises. Thus, the Panel believes that Congress should create a national mortgage loan performance reporting requirement applicable to banking institutions and others who service mortgage loans, to provide a source of comprehensive intelligence about loan performance, loss mitigation efforts and foreclosure, that federal banking or housing regulators would be mandated to analyze and share with the public. Such a reporting requirement exists for new mortgage loan originations under the Home Mortgage Disclosure Act. Because lenders already report delinquency and foreclosure data to credit reporting bureaus, the additional cost of federal reporting should be small.

III. OBSTACLES TO LOAN SUCCESS AND FORECLOSURE MITIGATION: PAST PROGRAMS

A. OBSTACLES TO LOAN SUCCESS

Despite gross inadequacies in the existing data on foreclosures and mitigation attempts, it is nonetheless possible to discern the basic obstacles to loan performance and to successful foreclosure mitigation.

1. Affordability

The underlying problem in the foreclosure crisis is that many Americans have unaffordable mortgages. There are five major factors behind the affordability problem. First, many mortgages were designed and underwritten to be refinanced, not to be paid off according to their terms. Second, lenders extended mortgage credit to less creditworthy borrowers for whom homeownership was a financial stretch. Third, fraud, by brokers, lenders and borrowers produced mortgages that borrowers cannot afford to pay. Fourth, borrowers who qualified for lower cost mortgages were steered into higher priced subprime mortgage products. And fifth, a deteriorating economy has made it more difficult for many Americans to afford to pay their mortgage.

a. Affordability problems

i. Changes in mortgage product type

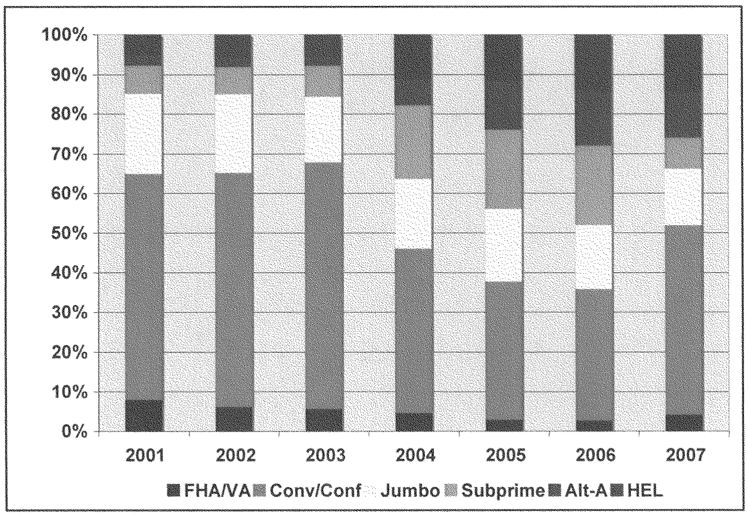
Most mortgages are of relatively recent vintage; the majority of mortgages are less than seven years old.[38] In the last seven years, the mortgage market saw a major shift in product type to products

[38] Approximately 76 percent of outstanding mortgages originated after 2000, with the median year of origination being 2003. U.S. Census Bureau, *American Housing Survey for the United States: 2007*, at 164 (2008) (online at www.census.gov/prod/2008pubs/h150-07.pdf) (providing the data used for the calculations).

that had much greater risk of becoming unaffordable than conventional prime mortgage that historically dominated the market.

Starting in 2004, there was a significant growth in subprime, alt-A, and home equity loans (HEL) markets for new originations. (See Chart 2.)

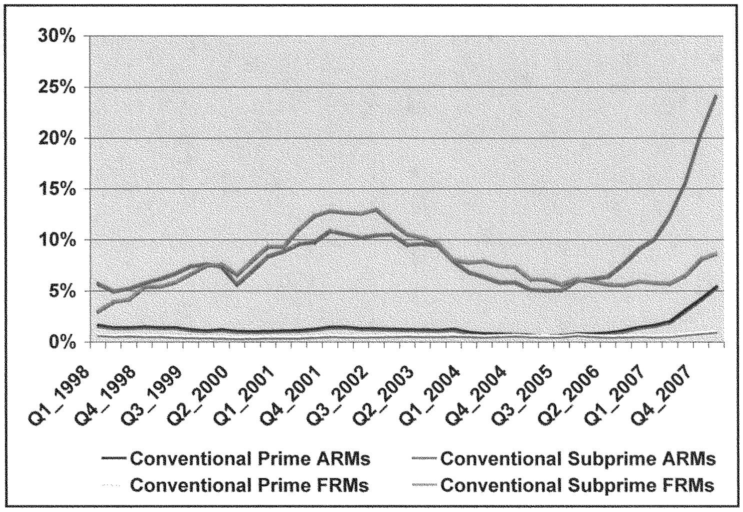
Chart 2. Market Share by Product Type [39]



Each of these products increased the risk that mortgages would become less affordable. Subprime loans are, by definition, higher-priced loans. They have been made to both less creditworthy borrowers and to those with good credit but who were steered into these loans. Because they are higher priced and often have sharply escalating payments, subprime loans have historically had much higher default rates than prime loans. (See Chart 3.)

[39] Inside Mortgage Finance, *Mortgage Market Statistical Annual*, at 4 (2008) (Vol. 1).

Chart 3. Percentage of 1–4 Family Mortgages Seriously Delinquent by Type [40]



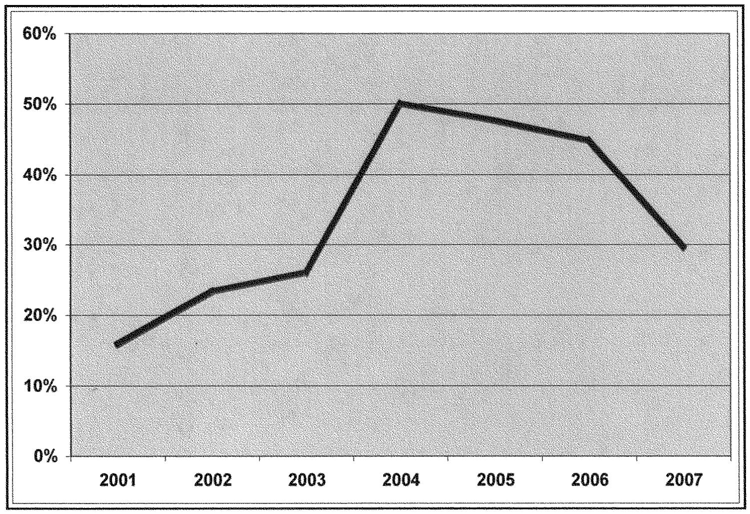
Alt-A loans typically required less documentation of the borrower's ability to repay. Because they are not underwritten with the certainty of a traditional conforming prime loan, they are riskier products. Home equity lines of credit (HELs) also create affordability risk because they add a second mortgage payment obligation, increasing the risk that a family cannot maintain payments on either mortgage. In addition, because HELs are junior mortgages, they are protected by a smaller equity cushion than a typical first mortgage.

As the type of risky products proliferated, the share of adjustable rate mortgages among new originations also grew sharply. (See Chart 4.) Adjustable rate mortgages create an affordability risk because the interest rate and thus the monthly payment can reset to a higher (and potentially unaffordable) amount, creating "payment reset shock" for the borrower.

Many of the adjustable rate mortgages originated in recent years were so-called hybrid ARMs, such as the 2/28 and 3/27, which had an initial fixed teaser rate period for two or three years, after which the monthly payment reset according to an adjustable rate index for the remaining 28 or 27 years of the loan. Many hybrid ARMs were underwritten based on the borrower's ability to make the monthly payments for the initial fixed-rate teaser period, not after the loan went into the adjustable rate period. The affordability of the adjustable rate period was ignored because the products were sold with the representation that the borrower could simply refinance the mortgage at the end of the teaser period—with the lender collecting another round of fees for the refinancing.

[40] Mortgage Bankers Association, *supra* note 17.

Chart 4. Market Share of Adjustable Rate Mortgages [41]

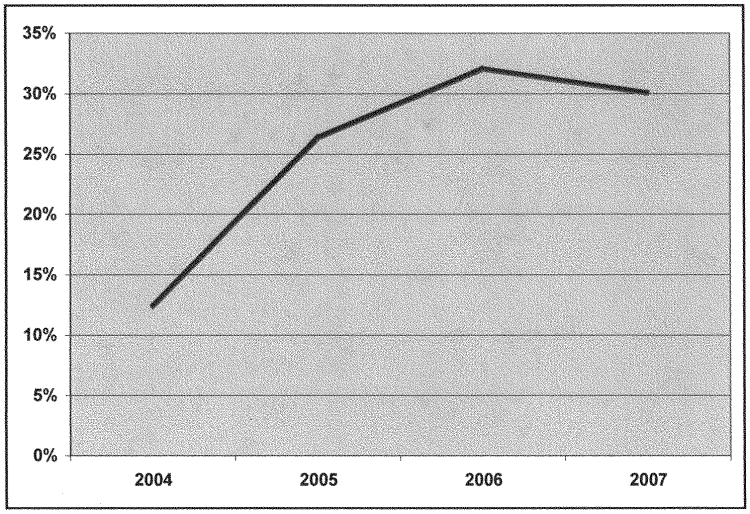


At the same time that risky products and variable rate mortgages were expanding, the market share of so-called "exotic" mortgage products, such as interest-only, pay option-ARMs, 20/20s, and 40-year balloons grew dramatically among new originations. (See Chart 5.) Many of these were special niche market products designed for sophisticated consumers with irregular monthly incomes, but they began to be marketed to the general population.[42] As with the hybrid ARMs, these products all have built-in monthly payment amount resets that can lead to payment reset shock. Like many variable rate mortgages, these products were sold on the representation that the loans would be refinanced before the payment reset shock.

[41] Inside Mortgage Finance, *Mortgage Market Statistical Annual*, at 4 (2008) (Vol. 1).

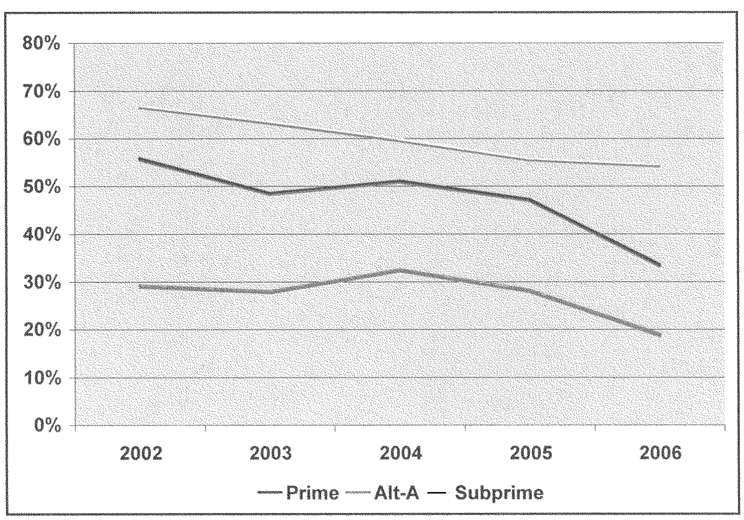
[42] Interest-only mortgages are non-amortizing loans on which the borrower makes payments of interest only for a fixed period, generally five to seven years. At the end of the period, the principal would begin to amortize, with monthly payments becoming much higher. Pay option-ARMs permit the borrower to choose a monthly payment amount. The borrower can choose a payment that would lead to a 30-year amortization, a 15-year amortization, interest only (no amortization), or negative amortization. If there is too much negative amortization, the pay-option goes away and the loan resets to a fully amortizing loan (with higher monthly payments). Like 2/28s and 3/27s, the expectation was that interest-only mortgages would be refinanced before they began to amortize. The 40-year balloons are a variation on the 2/28 or 3/27. These are 30-year loans with a 40-year amortization and a balloon payment due at the end of the 30th year. The 40-year amortization was designed to make the monthly payments during the teaser rate periods on these loans even more affordable to more borrowers (who would be less likely, therefore, to be able to afford the payments after the teaser period). The 20/20 is a variation of the 40-year balloon, with a fixed-rate for 20 years and then an interest rate reset in the 21st year.

Chart 5. Market Share of Exotic Mortgage Products [43]



Finally, the rise of so-called "no-doc" and "low-doc" loans meant that in many cases underwriting was not based on actual income and affordability, but rather on an inflated income that misstated affordability. (See Chart 6.)

Chart 6. Percentage of Full Documentation Loans [44]



[43] Inside Mortgage Finance, *Mortgage Market Statistical Annual*, at 6 (2008) (Vol. 1).

[44] Jesse M. Abraham et al., *Explaining the United States' Uniquely Bad Housing Market*, at 11–12 (Sept. 2008) (University of Pennsylvania Law School Institute for Law and Economics Research Paper No. 08–34) (online at papers.ssrn.com/sol3/papers.cfm?abstract__id=1320197).

In the past few years, the mortgage market shifted dramatically from mortgages issued under conditions that assured a high likelihood of affordability to a much greater proportion of mortgages that were higher risk instruments that either were, or were likely to become, unaffordable.

ii. Fraud

In other cases, poor underwriting, either by brokers or lenders eager to originate more and larger mortgages or by the homeowner, created the lack of affordability. Both law enforcement and industry groups have reported dramatic increases in the incidence of mortgage fraud over the last decade.[45] There is considerable anecdotal evidence of homeowners overstating incomes, appraisers offering inflated appraisals, and purchasers of investor properties fraudulently representing that the properties would be owner-occupied.[46] There is also a sizeable body of anecdotal evidence of fraud being committed by intermediaries between borrowers and lenders, such as mortgage brokers, who inflated information on borrowers' capacity to pay in order to close deals on more and larger loans.[47] And finally, there is also significant anecdotal evidence of lenders that were happy to look the other way and forgo rigorous underwriting diligence because they could quickly sell the loans they made and pass along the credit risk on those loans to distant investors through securitization.[48] The increase in low-doc and no-doc loans, for example, facilitated fraud, as borrowers had to provide little information to lenders and lenders made little effort to verify the information.[49]

Measuring the role of fraud and speculation in the mortgage crisis is difficult, but fraud by borrowers, lenders, and intermediaries undoubtedly played a role in placing many homeowners in mortgages that they could not ultimately afford.

iii. Steering

Subprime and exotic mortgage products were also frequently targeted at prime borrowers, as well. Many borrowers with excellent credit histories, especially minority borrowers with good credit, were steered to higher-rate loans than those for which they qualified.[50] The *Wall Street Journal* reported that 61 percent 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." The impact on minorities is also stark. A study by the Center for Responsible Lending found that Latino bor-

[45] *See, e.g.*, Financial Crimes Enforcement Network, *Filing Trends in Mortgage Loan Fraud: A Review of Suspicious Activity Reports Filed July 1, 2007 through June 30, 2008*, at 10 (Feb. 2009) (reporting a tenfold increase in suspicious activity reports relating to mortgage fraud between 2002–2003 and 2007–2008); Mortgage Asset Research Institute, *Eighth Periodic Mortgage Fraud Case Report to Mortgage Bankers' Association*, at 2 (Apr. 2006).

[46] Mortgage Asset Research Institute, *Quarterly Fraud Report*, at 3 (Dec. 2, 2008).

[47] *Id.*

[48] Federal Bureau of Investigation, *2006 Mortgage Fraud Report* (May 2007) (online at www.fbi.gov/publications/fraud/mortgage_fraud06.htm); Gretchen Morgenson, *Was There a Loan It Didn't Like?*, New York Times (Nov. 2, 2008); David Stout and Eric Lichtblau, *Pardon Lasts One Day for Man in Fraud Case*, New York Times (Dec. 24, 2008); Gregg Farrel, *Las Vegas Called Ground Zero for Mortgage Fraud*, USA Today (June 3, 2008).

[49] Mortgage Asset Research Institute, *Tenth Periodic Mortgage Fraud Case Report to Mortgage Bankers Association*, at 2, 10 (Mar. 2008).

[50] *See, e.g.*, Kenneth R. Harney, *Study Finds Bias In Mortgage Process*, Washington Post (June 17, 2006).

rowers purchasing homes were as much as "142 percent more likely to receive a higher-rate loan than if they had been non-Latino and white," and that "African-American borrowers were as much as 34 percent more likely to receive certain types of higher-rate loans than if they had been white borrowers with similar qualifications." [51] The growth of subprime and exotic loan markets cannot be cast solely as a result of a democratization of credit.

An important driver of the steering of prime borrowers to higher-rate loans were yield-spread premiums (YSPs), a bonus which lenders pay independent brokers if they place the customer into a higher cost loan than the loan for which the customer qualifies.[52] Even higher bonuses were awarded for brokers who could sell a mortgage with a prepayment penalty that would lock in the higher rate. For example, at Countrywide Financial, broker commissions were up to 1.48 percent for standard fixed rate mortgages, but they rose to 1.88 percent for subprime loans, and jumped to 2.5 percent for pay-option ARMs.[53] Similar incentive structures existed for lender sales representatives making non-brokered loans.[54] The difference could mean thousands of dollars more for the broker for each placement of a non-standard mortgage. This created a strong incentive for brokers and lenders to steer creditworthy consumers into high-cost, loans with risky features. The result is that more homeowners are now in unaffordable and unsustainable loans.

On February 27, 2009, in Prince George's County, Maryland, the Panel held a field hearing and heard testimony regarding the disproportionate impact of subprime lending on minority communities. According to Maryland Secretary of Labor, Licensing, and Regulation Thomas E. Perez, "We know that Maryland homeowners were disproportionately impacted by the subprime lending spree that led to this crisis. While 18 percent of white homeowners were given subprime loans, 54 percent of African American homeowners and 47 percent of Hispanic homeowners received subprime loans." He went on to note, "We had problems of discrimination at the origination end. It is not a stretch to suggest that there are going to be potential fair housing issues at the modification level."

iv. General economic conditions

The result of these trends in the mortgage origination market over the past few years is that millions of Americans now find themselves faced with mortgage payments they cannot afford. The

[51] Center for Responsible Lending, *Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages* (May, 2006) (online at www.responsiblelending.org/pdfs/rr011-Unfair__Lending-0506.pdf). *See also* Christopher Mayer and Karen Pence, *Subprime Mortgages: What, Where, and to Whom?* (June 2008) (National Bureau of Economic Research Working Paper No. W14083); Consumer Federation of America, *Subprime Locations: Patterns of Geographic Disparity in Subprime Lending* (Sept. 2006); Robert Avery et al., *New Information Reported Under HMDA and Its Application in Fair Lending Enforcement*, Federal Reserve Bulletin, at 344–94 (2005); Paul K. Calem et al., *The Neighborhood Distribution of Subprime Mortgage Lending*, Journal of Real Estate Finance and Economics, at 393–410 (2004).

[52] Howell E. Jackson and Laurie Burlingame, *Kickbacks or Compensation: The Case of Yield Spread Premiums*, Stanford Journal of Law, Business, and Finance (2007).

[53] Ruth Simon and James R. Hagerty, *Countrywide's New Scare—Option ARM Delinquencies Bleed Into Profitable Prime Mortgages*, Wall Street Journal (Oct. 24, 2007).

[54] *See* Gretchen Morgenson and Geraldine Fabrikant, *Countrywide's Chief Salesman and Defender*, New York Times (Nov. 11, 2007) (noting former employee who said commission structure rewarded sales representatives for making risky, high-cost loans, including, for example, a commission increase of 1 percent of loan value for attaching a three-year prepayment penalty; noting that the higher the interest at reset, the higher the broker's commission).

problem has been further exacerbated by the economic recession. It is important to recall that the foreclosure crisis began *before* the general problems of the economy. Even in normal times, some mortgages, no matter how well underwritten originally, become unaffordable when the borrowers are struck by unemployment, illness, divorce, or death in the family. As the economy worsens and layoffs increase, traditional factors contributing to mortgage defaults compound the affordability problems caused by reckless underwriting.

b. Negative equity and the inability to refinance

Lack of affordability is a serious and complex problem. However, it would be much easier to resolve if the broad, steep decline in housing prices had not left so many homeowners with negative equity. Creditworthy borrowers with equity in their homes would refinance into more affordable long-term fixed-rate mortgages, and homeowners who could not qualify for an affordable mortgage would sell their properties and either purchase more affordable homes or become renters.

The affordability problem today, however, is compounded by a negative equity problem. Homeowners with negative equity are usually unable to refinance because lenders will not lend more than the value of their home, especially if a market is declining or projected to experience only slight appreciation in the near term. Modification of their existing loans may be the more appropriate option for the many homeowners with negative equity.

Today, perhaps a fifth of American homeowners owe more in mortgage debt than their home is worth.[55] Negative equity is a function of loans that were initially issued at ever higher cumulative loan to value (CLTV) ratios and compounded by declining housing prices. (See Charts 7, 8, and 9.)

[55] First American CoreLogic, *Negative Equity Data Report* (Sept. 30, 2008) (online at www.facorelogic.com/newsroom/marketstudies/negative-equity-report.jsp) (stating that over 7.5 million mortgages, or 18 percent, were in a negative equity position as of Sept. 30, 2008).

Chart 7. Average Combined Loan to Value (CLTV) Ratio by Loan Type [56]

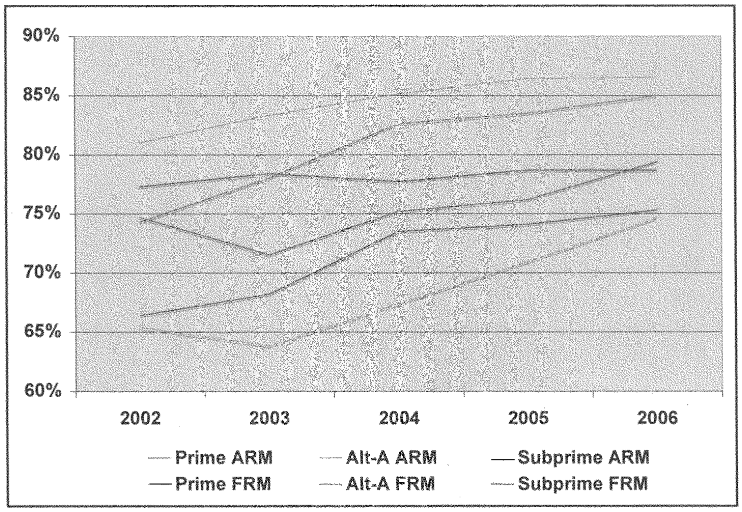
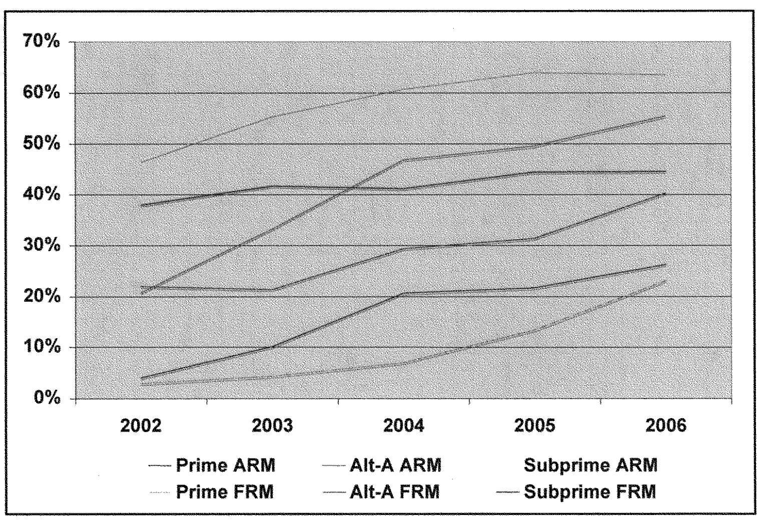


Chart 8. Percentage of Loans with CLTV>80 Percent by Loan Type [57]



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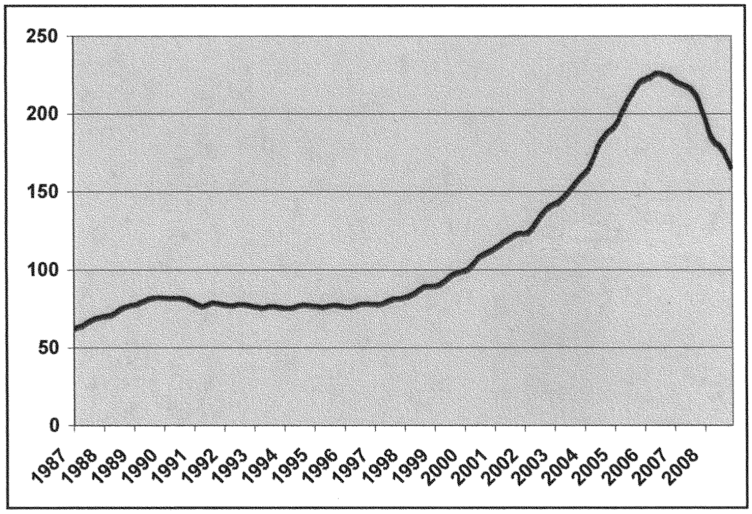
[56] Abraham et al., *supra* note 44, at 11–12.
[57] Abraham et al., *supra* note 44, at 11–12.

Chart 9. S&P/Case-Shiller Composite 10 Home Price Index (Year 2000=100) [58]



Traditionally, negative equity alone does not usually lead to foreclosures. In past regional housing busts, as long as the mortgage payments remained affordable, homeowners with negative equity typically remained in their homes.[59] This is not surprising, because although American families are increasingly mobile,[60] many still have strong emotional ties to their homes [61] and the costs of relocation are significant.

On the other hand, past regional housing busts may not provide good guides to homeowner behavior in the current crisis. In some parts of the country, negative equity is far deeper than it has ever been in past regional housing busts, and the overall condition of the economy is worse.

Data from the Panel's survey of federal banking and housing regulators indicates that negative equity is a central problem in the current housing crisis. However, this result is based on multiple data sets that have significant limitations. It is likely that income data in these sets does not reflect current income at the time of default and, furthermore, because of the high proportion of Alt-A and subprime loans in the sample, income at origination may not have been verified and may have been overstated. Data submissions also were incomplete with respect to a number of fields. For all these reasons, the results may—or may not—under-estimate the importance of affordability, negative equity, or other factors in predicting

[58] Standard & Poor's, *S&P/Case-Shiller Home Price Indices* (online at www2.standardandpoors.com/spf/pdf/index/CS HomePrice__History__022445.xls) (accessed Mar. 4, 2009).

[59] Christopher L. Foote et al., *Negative Equity and Foreclosure: Theory and Evidence* (June 5, 2008) (Federal Reserve Bank of Boston, Public Policy Discussion Papers Paper No. 08–3) (online at www.bos.frb.org/economic/ppdp/2008/ppdp0803.pdf).

[60] U.S. Census Bureau, *Geographical Mobility: 2002 to 2003*, at 2 (Mar. 2004) (online at www.census.gov/prod/2004pubs/p20-549.pdf) (noting increasing occurrence of long-distance moves).

[61] Radin, *supra* note 20; Stern, *supra* note 20.

default.[62] Nevertheless, this data set represents the most complete information available and the Panel therefore used it in the following analyses. The limitations the Panel observed in the survey data supports the Panel's recommendation for a national mortgage loan performance reporting requirement.

Chart 10 displays data from the response from the Office of Comptroller of the Currency and Office of Thrift Supervision to the Panel's foreclosure mitigation survey. The data relate to fourteen major financial institutions that cover approximately 60 percent of the mortgage servicing market shown. Chart 10 displays the percentage of loans with particular characteristics that are 60–89 days delinquent.

As Chart 10 shows, negative equity is the single best indicator that a property is likely to enter foreclosure for this data set. Over 20 percent of loans with negative equity are 60–89 days delinquent, a far higher percentage than for any of the other characteristics about which the Panel inquired. Notably, back-end DTI, an affordability measure, does not have a clear correlation with default, although this may be a function of data inadequacies. A similar picture emerges in Chart 11, which shows the percentage of loans with particular characteristics that are 60–89 days delinquent in the IndyMac Federal Bank portfolio serviced by the FDIC. The IndyMac portfolio is mainly low-doc or no-doc Alt-A loans, so robust DTI information is not available. Again, though, negative equity is among the leading factors, surpassed only by negative amortization loans, many of which are likely negative equity.

[62] *See* Merrill Lynch, *Loan Modifications: What Investors Need to Know*, MBS/ABS Special Report, Nov. 21, 2008, at 7–8 (finding that "Clearly both DTI and current LTV influence [defaults]. However, DTI seems less important than LTV," and cautioning about problems with DTI data).

Chart 10. Percentage of Loans 60–89 Days Delinquent, OCC–OTS Data [63]

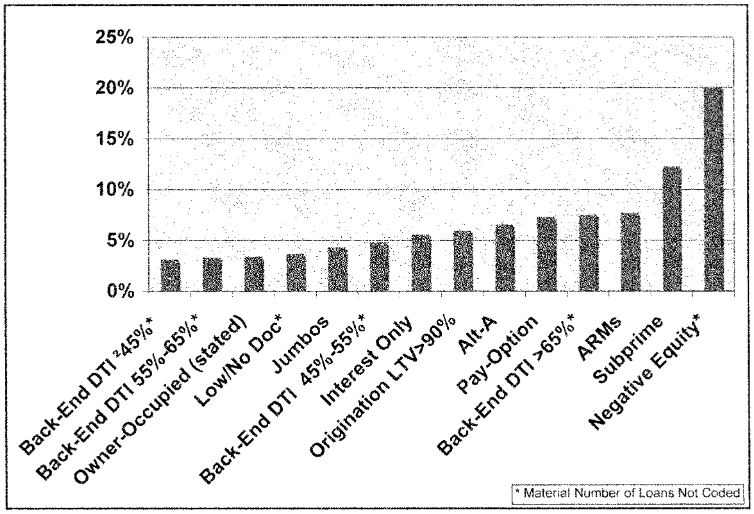
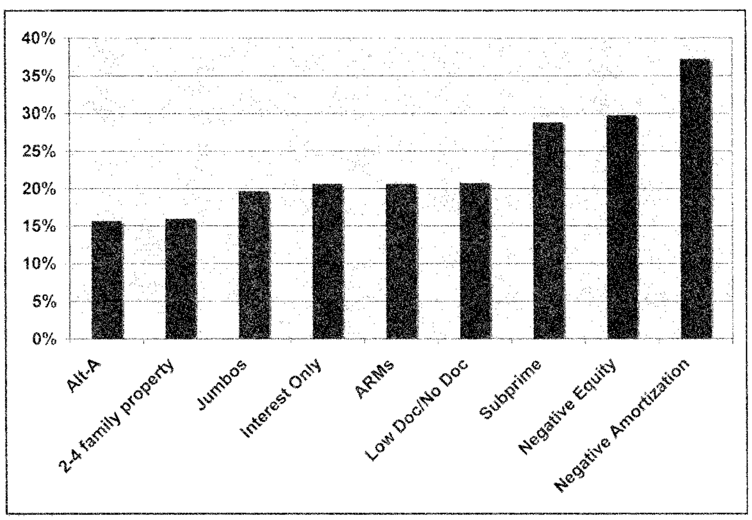


Chart 11. Percentage of Loans 60–89 Days Delinquent, IndyMac Portfolio [64]

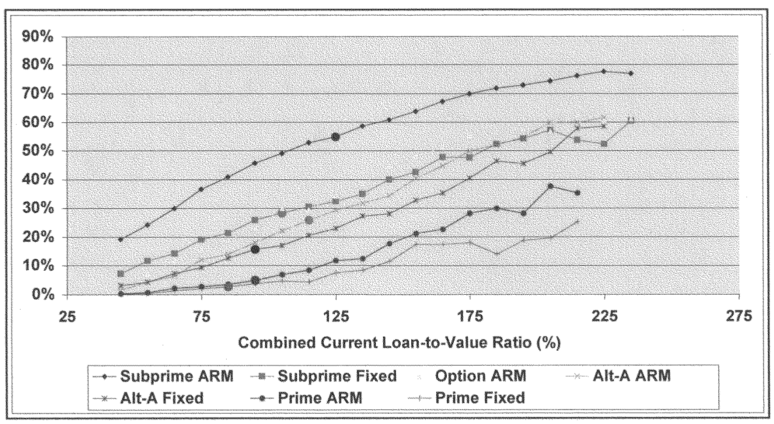


The strong correlation between negative equity and default is also borne out in analysis of private loan performance data sources. Based on the performance between November 2008 and January 2009 for all deals issued in 2006 that are covered in the Loan Per-

[63] Congressional Oversight Panel, *Mortgage Survey Data from the Offfice of the Comptroller of the Currency and the Office of Thrift Supervision*, Appendix VI, *infra*.
[64] Congressional Oversight Panel, *Mortgage Survey Data from the Federal Deposit Insurance Corporation*, Appendix VII, *infra*.

formance data set—excluding those that have already been modified—Chart 12 shows the likelihood that a loan will become 60+ days delinquent in the next year given its combined current loan to value (CCLTV) ratios. Thus, at 125 percent CCLTV there is a 7.5 percent chance that a prime fixed-rate loan will become 60+ days delinquent in the next year, compared with an 11.7 percent chance for a prime ARM, 23 percent for Alt-A fixed-rate loan, 29.2 percent for Alt-A ARM, 34.1 percent for a pay-option ARM, 32.3 percent for a subprime fixed-rate loan, and 54.8 percent for a subprime adjustable rate mortgage. As Chart 11 shows, there is a very strong linear correlation between delinquency rates and CCLTV. Negative equity provides the best single indicator of likely default in this data set.

Chart 12. Annualized Net Flow (Excluding Modifications) from <60 to ≤60 Days Delinquent by Combined Current Loan to Value Ratios [65]



Given the depth of negative equity and the strained state of many consumers' finances generally, it is not surprising that negative equity is a leading indicator of the likelihood of default. When there is only a small level of negative equity and prospects for a recovery of the housing market in the short-term, a homeowner might reasonably be willing to continue to pay through the negative equity period. Given the slim prospects of the housing market recovering to 2005–2007 price levels in the near future, some homeowners might begin to question whether they will ever have positive equity in their homes.

For these homeowners, depending on other factors including household income in relation to debts, there may be a point at which they begin to consider abandoning the house and finding an equivalent (but cheaper) rental property, resulting in a foreclosure on the house.[66] A borrower who is further underwater may be more willing to absorb the impact of a credit default, which will be carried on a credit report for seven years, depending on how long it

[65] Ellington Management Group, LLC. Bold circles indicate median CCLTV by product.
[66] Foote et al., *supra* note 59, at 2.

could take her to see positive equity on the home. If even a small percentage of those with negative equity but generally affordable mortgages abandon their homes, foreclosure rates will remain greatly elevated.[67] Incentives may be needed to encourage borrowers with negative equity to adopt a long-term view and to remain in their homes whenever possible.

When exigent circumstances exist, however, and the borrower must immediately sell the home, serious negative equity poses greater challenges. Widespread negative equity can create disruptions in labor markets, in elderly care, and in the private home sale market. A homeowner with negative equity often cannot move to take a new job. In order to move, the homeowner must sell his house. The house will not sell for the amount of the loan, only for its fair market value. In order to discharge the mortgage, the homeowner must make up the difference, and if the homeowner lacks sufficient cash to do so, the sale cannot be completed. As a result, homeowners may be stuck in their homes. This hurts employers' ability to get the best employees and workers' ability to get the best jobs.

Similarly, negative equity creates problems for elderly care. Elderly Americans with negative equity in their homes often cannot relocate to an assisted living facility because they cannot sell their homes except by paying the difference between the mortgage amount and the home value itself, and many elderly Americans lack the ability to do so.

Negative equity also affects the private home sale market. Homeowners move for numerous other reasons, such as families outgrowing their homes or empty-nesters wishing to move to smaller houses. To the extent that negative equity traps homeowners in their home by requiring an unaffordable balloon payment upon sale, it decreases the number of private home sales. The current downward spiral of declining housing prices creates more negative equity, which leads to more foreclosures, which increases housing market inventory, further depressing prices. To break out of this cycle and ensure sustainable affordability of home mortgages, it is necessary to address both the affordability and negative equity problems.

B. OBSTACLES TO SUCCESSFUL FORECLOSURE MITIGATION

1. Previous Programs

The ideal solution to the foreclosure crisis would be voluntary loan modifications and refinancings. In all cases in which the net present value of a restructured loan would outweigh the net present value of pursuing foreclosure, lenders would restructure unsustainable, unaffordable loans into sustainable, affordable ones. Lenders would thereby minimize their losses, homeowners would not be forced to relocate, third parties would not suffer the externalities of depressed housing prices, urban blight, crime, reduced tax revenue, and disrupted social relationships as a result of vacant, foreclosed properties. The housing market would stabilize based on supply and demand, not on the distortions created by ex-

[67] David Leonhardt, *A Bailout Aimed at the Most Affllicted Owners*, New York Times (Feb. 18, 2009) (citing former Federal Reserve Governor Frederic Mishkin).

otic mortgages or high foreclosures. This is the solution that would attain in a perfectly functioning market.

Unfortunately, many factors can disrupt a perfectly functioning market. Accounting issues within financial institutions with exposures to the residential mortgage market may pose a significant disincentive for otherwise mutually beneficial loan restructurings. If mortgages or mortgage backed securities are being carried at par or close to par, even though there may be a likelihood of future default, the holders of those mortgages or mortgage backed securities may be reluctant to renegotiate those loans because such a renegotiation would require that assets supported by those mortgages be written down to the value of the renegotiated loan.

In evaluating the efficacy of foreclosure mitigation programs, it is important to recognize that there are some foreclosures that cannot be avoided. In some cases, foreclosure will result in a smaller loss than any viable modification. In other cases, however, loans could perform more profitably than foreclosure if they were sufficiently modified to be affordable on an on-going basis. The data are inadequate to say with any certainty how many loans are in either category.

Loan modification efforts to date have been insufficient to halt the downward spiral in housing. Three major loan modification efforts have been announced, in addition to whatever private arrangements lenders make with borrowers, yet the pace of foreclosures continues to rise. These efforts are the HOPE NOW Alliance, FDIC IndyMac modification program, and the GSE Streamlined Loan Modification Program.

The Major Previous Foreclosure Mitigation Programs

HOPE NOW Alliance is a private, voluntary mortgage industry association created in October 2007 to provide a centralized outreach conduit for loan modifications. While HOPE NOW consulted with the Treasury Department and the Department of Housing and Urban Development, it is not a government-sponsored program. HOPE NOW lacks any authority to mandate particular actions by its members; participation is purely voluntary and self-regulated. HOPE NOW Alliance members report having engaged in 2,911,609 workouts between July 2007 and November 2008.[68]

This number may substantially overstate the effectiveness of the HOPE NOW program. The majority (63 percent) of these workouts have been repayment plans that merely permit repayment of arrearages over time, rather than affecting the terms of the loan going forward. If a loan is in default because it is unaffordable due to anything other than a temporary decline in borrower income, a repayment plan is unlikely to be a sustainable solution. Today's foreclosure crisis is not primarily due to temporary declines in income due to illness or accidents, but to the underlying cost of mortgages relative to income. Repayment plans are the wrong solution in many cases.

Even for the 37 percent of HOPE NOW workouts that resulted in a modification of a loan, it is impossible to say what that actually means. A major study by Professor Alan White of Valparaiso

[68] HOPE NOW, *supra* note 13.

University School of Law has found that only 49 percent of loan modifications resulted in lower monthly payments; 17 percent had no effect and 34 percent resulted in *higher* monthly payments, raising very serious concerns about the effectiveness of the program.[69] Likewise, the Center for Responsible Lending estimates that less than 20 percent of HOPE NOW loan modifications result in lower monthly payments.[70] Not surprisingly, there is a high redefault rate on modified loans.[71] As the State Foreclosure Prevention Working Group has noted:

> [O]ne out of five loan modifications made in the past year are *currently* delinquent. The high number of previously-modified loans currently delinquent indicates that significant numbers of modifications offered to homeowners have not been sustainable . . . [M]any loan modifications are not providing any monthly payment relief to struggling homeowners . . . [U]nrealistic or “band-aid” modifications have only exacerbated and prolonged the current foreclosure crisis.[72]

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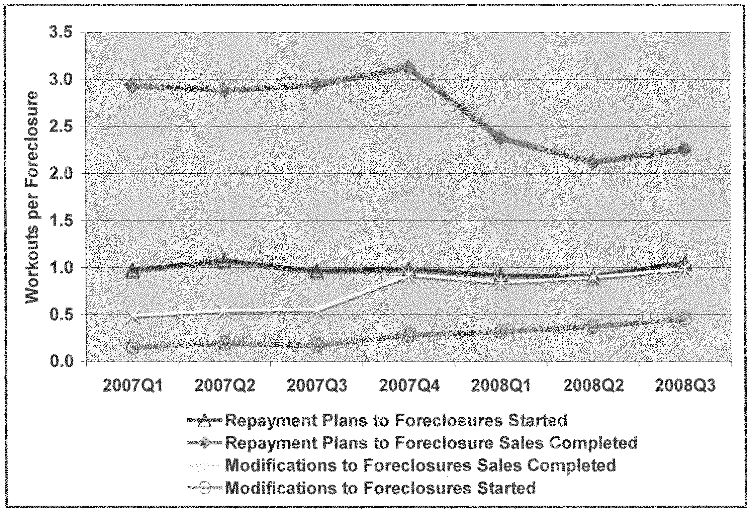
[69] Alan M. White, *Deleveraging American Homeowners: December 18, 2008 Update to August 2008 Report*, Valparaiso University School of Law (Dec. 18, 2008) (online at www.hastingsgroup.com/Whiteupdate.pdf) (hereinafter White, *Update to August 2008 Report*); Alan M. White, *Rewriting Contracts, Wholesale: Data on Voluntary Mortgage Modifications from 2007 and 2008 Remittance Reports*, Fordham Urban Law Journal (2009) (online at ssrn.com/abstract=1259538) (hereinafter White, *Rewriting Contracts*).

[70] Sonia Garrison et al., *Continued Decay and Shaky Repairs: The State of Subprime Loans Today*, Center for Responsible Lending (Jan. 2009) (online at www.responsiblelending.org/pdfs/continued_decay_and_shaky_repairs.pdf). *See also* House Committee on Financial Services, Testimony of Martha Coakley, *The Implementation of the Hope for Homeowners Program and A Review of Foreclosure Mitigation Efforts*, 110th Cong. (Sept. 17, 2008) (noting that “virtually none” of the loan modifications reviewed by her office reduced monthly payments).

[71] Office of the Comptroller of the Currency, *OCC & OTS Mortgage Metrics: Overall Redefault Rates*, at 1 (2008) (online at www.occ.treas.gov/ftp/release/2008-142b.pdf) (finding that over 50 percent of the mortgages that were modified in the first quarter of 2008 were delinquent within six months); Mortgage Bankers Association, *MBA Study: Industry Initiated More Than 235,000 Loan Modifications and Repayment Plans in 3rd Quarter* (Jan. 17, 2008) (online at www.mortgagebankers.org/NewsandMedia/PressCenter/59454.htm) (finding that 40 percent of subprime ARM borrowers in foreclosures had had repayment or loan modification plans in place).

[72] State Foreclosure Prevention Working Group, *Analysis of Subprime Mortgage Servicing Performance*, at 3 (Sept. 2008) (Data Report No. 3) (online at www.csbs.org/Content/NavigationMenu/Home/SFPWGReport3.pdf).

Chart 13: Workouts to Foreclosures by Type, HOPE NOW Alliance Members [73]



It is too early to offer a definitive evaluation of the other two major previous loan modification programs, the FDIC's IndyMac program and the GSE Streamlined Modification Program (SMP), but some observations are in order.

When the FDIC took over the failed IndyMac Federal Savings Bank, it began to offer loan modifications to borrowers in IndyMac's non-securitized portfolio. As of mid-December, only 7,200 of 65,000 eligible IndyMac borrowers had benefited from the FDIC's program.[74] The FDIC modified these loans by temporarily reducing payments to a 38 percent front-end debt (i.e. principal, interest, taxes and insurance)-to-income target. The FDIC did this through a combination of temporary interest rate reduction and principal forbearance. The long-term sustainability of these modifications is unknown, and the pace at which these modifications were accomplished has been quite slow.

The SMP adopted by the GSEs (in conservatorship) began November 2008. The SMP does not require any modifications. Instead, it merely sets a target for modified loan payments (principal, interest, taxes, insurance) to be no more than 38 percent of gross monthly income (front-end DTI) for the homeowner.[75]

The Panel has serious concerns about the potential efficacy of programs based solely on a 38 percent front-end DTI, a number which has not been justified as effective or even appropriate. About 85–90 percent of prime and Alt-A loans and 70–75 percent of

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[73] HOPE NOW, *supra* note 13.

[74] Charles Duhigg, *Fighting Foreclosures, F.D.I.C. Chief Draws Fire*, New York Times (Dec. 11, 2008).

[75] The SMP standard has also been adopted by the HOPE NOW Alliance of servicers and is an entirely voluntary program.

subprime loans are already below this threshold.[76] SMP thus has a standard so low that most troubled loans already officially complied with it at origination, and yet foreclosures are soaring. Moreover, it is not clear whether modifications should be based only on front-end DTI, as back-end DTI (total monthly debt payments to gross monthly income) is a better measure of overall affordability. On the other hand, back-end DTI is harder to verify and can rapidly change after closing of a modification. A borrower can load up on credit card debt the day after closing of a modification, making the back-end ratio much higher than at the time of the modification. In choosing between front-end and back-end ratios, there are important trade-offs between precision and the ability to administer any program involving DTI ratios. The proper DTI measure will likely depend on other factors in a loan modification program.

The trade-offs between front-end and back-end ratios raise the question of whether it is unaffordable mortgages that are causing distress in household finance or whether other debt, such as credit cards, auto loans, and student loans are also contributing to borrower distress. Consumer over-indebtedness has become remarkably acute in recent years. Consumers with unaffordable mortgages frequently face other financial problems, and there is a competition among creditors for limited consumer repayment capacity. To the extent that foreclosure mitigation programs encourage or require more generous reductions in mortgage payments, this is a boon to other consumer creditors and raises the question of why mortgage creditors, rather than say creditor card lenders, should forgive or forbear on debt, particularly when the opposite result would occur if the homeowner filed for bankruptcy. While this issue goes beyond the scope of the current report, the question of how the pain of a borrower's inability to repay should be shared among creditors is a topic for further consideration.

A 38 percent front-end DTI target has already been rejected as resulting in unsustainable loan modifications by leading elements of the mortgage servicing industry. Litton Loan Servicing, a Goldman Sachs affiliate, uses 31 percent front-end DTI as its initial target,[77] FDIC has proposed a general modification program using a 31 percent front-end DTI target,[78] and Bank of America/ Countrywide's settlement with the state Attorneys General requires use of a 25–34 percent front-end DTI standard.[79] Moreover, the GSEs' own initial underwriting guidelines suggest a maximum 25–28 percent front-end DTI.[80] If the GSEs do not believe that 38 percent DTI is prudent underwriting for a loan to begin with, it is

[76] Merrill Lynch, *supra* note 62, at 7. Reliance on DTI is itself questionable; loan performance seems to correlate better to loan-to-value ratio than front-end DTI. *Id*.

[77] Senate Committee on Banking, Housing, and Urban Affairs, Testimony of Gregory Palm, *Oversight of the Emergency Economic Stabilization Act: Examining Financial Institution Use of Funding Under the Capital Purchase Program*, 110th Cong. (Nov. 13 2008) (online at banking.senate.gov/public/index.cfm?FuseAction= Hearings.LiveStream&Hearing_id=1d38de7d-67db-4614-965b-edf5749f1fa3, at minutes 142-144).

[78] Federal Deposit Insurance Corporation, *FDIC Loss Sharing Proposal to Promote Affordable Loan Modifications* (Nov. 14, 2008) (online at www.fdic.gov/consumers/loans/loanmod/index.html).

[79] *People v. Countrywide Financial Corp*., Case No. LC083076, Stipulated Judgment and Injunction, 14 (Cal. Sup. L.A. County, NW District, Oct. 20, 2008) (online atag.ca.gov/cms_attachments/press/pdfs/n1618_cw_judgment.pdf).

[80] Freddie Mac Single-Family Seller/Servicer Guide, at 37.15 (online at www.freddiemac.com/sell/guide/#).

not clear why they would use 38 percent DTI as a modification target. Moreover, it seems that many loans *already* had a front-end DTI of less than 38 percent at time of origination.[81] Whether they currently have front-end DTIs of less than 38 percent is unclear, not least because of the declining incomes due to the general problems in the economy, layoffs, illness, death, and divorce. While it appears that past loan modification efforts are slowly improving, policy-makers need to determine whether these efforts are accomplishing enough in an acceptable timeframe.

An alternative to loan modification is refinancing. The difference between a modification and a refinancing is that in a refinancing a new lender picks up the credit risk on the loan, whereas in a modification the existing lender continues to hold the credit risk. Refinancing programs have been ineffective to date either because of restrictive eligibility requirements or because of negative equity.

Private refinancing is not possible, however, without dealing with the negative equity problem. Private lenders will not refinance a loan at more than 100 percent LTV. In a declining or uncertain housing market, private lenders are unlikely to refinance absent a larger equity cushion. Therefore, voluntary refinancing is not possible unless current lenders are willing to write-down loans to market value or are otherwise incentivized to refinance at above 100 percent LTV. Although it leaves the homeowner with a more affordable monthly payment, the difficulty with refinancing at much over 100 percent LTV is that because of the long-term risk, repayment incentives are diminished and the homeowner may abandon the property due to the negative equity overhang. A homeowner who faces any financial setback, such as a job loss or unexpected medical bills, may be less inclined to stretch to continue the home mortgage payments if the house is worth far less than the mortgage. Similarly, a homeowner who is offered a job in a distant location or who wants to downsize to a smaller place may decide it is easier to walk away from a home in which resale is impossible and the homeowner faces substantial negative equity.

The existence of junior mortgages also significantly complicates the refinancing process. Unless a junior mortgagee consents to subordination, the junior mortgage moves up in seniority upon refinancing. Out of the money junior mortgagees will consent to subordination only if they are paid. Thus, junior mortgages pose a serious holdup for refinancings, demanding a ransom in order to permit a refinancing to proceed.

The federal government has sponsored a pair of refinancing programs, FHASecure and HOPE for Homeowners. The 2007 Federal Housing Administration's FHASecure program allowed refinancing of adjustable rate mortgages into fixed-rate, FHA-insured mortgages. Unlike any private program, FHASecure permitted refinancing for delinquent and underwater borrowers. Thus, negative equity did not present a refinancing obstacle for FHASecure. However, delinquencies had to be attributable to the loan resetting, as borrowers could not generally show any delinquencies in the six month period prior to the rate reset.

[81] Admittedly, DTI reporting is of questionable accuracy. See Merrill Lynch, *supra* note 62.

FHASecure was closed down at the end of 2008. The program was predicted to help 240,000 homeowners.[82] The program processed 487,818 loans, but this number appears to be inflated because it includes a substantial number of loans that would normally have been placed in other FHA programs.[83] Only 4,128 of these FHASecure refinanced loans were delinquent at the time of refinancing.[84] FHASecure was quite restrictive in its eligibility requirements, however, which limited its potential effectiveness.[85] Had FHASecure been less restrictive, it would likely have refinanced many more loans, but at the cost of taxpayers insuring a large number of negative equity mortgages. FHA noted that maintaining the program past the original termination date would have had a negative impact on the MMI fund that would have required offsets by either substantial across-the-board single family premium increases or the suspension of FHA's single family insurance programs altogether.[86] In any case, the FHA's decision to shut down FHASecure testifies to the program's ultimate shortcomings in providing substantial foreclosure relief.[87]

The HOPE for Homeowners program was established by Congress in July 2008 to permit FHA insurance of refinanced distressed mortgages. While more loans were theoretically eligible for HOPE for Homeowners, the program does not guarantee negative equity loans. Instead, the program requires the refinancing to be at 96.5 percent LTV based on a new, independent appraisal.[88] This requires the current mortgagee to write down the principal outstanding on the loan.

HOPE for Homeowners was predicted to help 400,000 homeowners. As of January 3, 2009, it had attracted only 373 applications, and only closed 13 refinancings, none of which had yet been FHA-insured.[89] Many factors have contributed to the shortcomings of HOPE for Homeowners, including limitations on the program's

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[82] *See, e.g.*, U.S. Department of Housing and Urban Development, *Bush Administration to Help Nearly One-Quarter of a Million Homeowners Refinance, Keep Their Homes; FHA to Implement New "FHASecure" Refinancing Product* (Aug. 31, 2007) (online at www.hud.gov/news/release.cfm? content= pr07-123.cfm); U.S. Department of Housing and Urban Development, *FHA Helps 400,000 Families Find Mortgage Relief; Refinancing on Pace to Help Half-million Homeowners by Year's End* (Oct. 24, 2008) (online at www.hud.gov/news/release.cfm?content=pr08-167.cfm).

[83] Kate Berry, *HUD Mulling How to Widen FHA Refi Net*, American Banker (Feb. 15, 2008).

[84] Michael Corkery, *Mortgage 'Cram-Downs' Loom as Foreclosures Mount*, Wall Street Journal (Dec. 31, 2008).

[85] Berry, *supra* note 83.

[86] Letter from Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner, to All Approved Mortgagees (Dec. 19, 2008) (Mortgagee Letter 2008-41) (online at www.hud.gov/offices/adm/hudclips/letters/mortgagee/files/08-41ml.doc).

[87] The Panel understands that fraud concerns might have also driven HUD to shut down FHASecure. The program reportedly had a high level of defaults and there were indications, like the high rate of manual underwriting, that lenders and loan correspondents were massaging borrower information to fall within program guidelines.

[88] Housing and Economic Recovery Act of 2008, Pub. L. No. 100-298, at § 1402(e)(2)(B) (requiring a maximum 90 percent LTV ratio for FHA refinancing). This means that if the lender is perfectly secured, the lender will have to write down the principal by 10 percent. If the lender is undersecured, the lender will have the write down the principal by a greater amount. Additionally, all lenders are required to pay insurance premiums on the mortgage of 3 percent of the principal initially and 1.5 percent of the principal remaining on an annual basis. *Id*. at § 1402(i)(2).

[89] Letter from Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner, to Elizabeth Warren, Chairperson, Congressional Oversight Panel (Jan. 9, 2009). *See also* Dina ElBoghdady, *HUD Chief Calls Aid on Mortgages a Failure*, Washington Post (Dec. 17, 2008) (online at www.washingtonpost.com/wp-dyn/content/article/2008/12/16/AR2008121603177.html); Tamara Keith, *Despite Program, No Hope for Homeowners*, National Public Radio (Dec. 17, 2008) (online at www.npr.org/templates/story/story.php?storyId=98409330).

flexibility and its reliance on private market cooperation to do the voluntary principal write-downs required for the refinancing.[90] Lenders have been unwilling to take the principal write-down necessary to participate in the program.

With a few exceptions, lenders have been very reluctant to take principal write-downs in their modifications.[91] Both principal write-down or interest rate reductions can accomplish the same level of affordability in many cases. For a lender or investor, however, a principal write-down has a much greater impact. The loss from a principal write-down must be immediately recognized on the institution's books. Moreover, the lender or investor incurs the full loss from a principal write-down; if the loan is refinanced in ten years, the lender has already lost the principal it has forgiven.

If the lender reduces the interest rate, however, the monthly payment might be reduced in an amount that is equivalent to a principal reduction, but the lender is not required by accounting rules to recognize an immediate loss. An interest rate reduction's impact on the loan's net yield is spread out over the full term of the loan. If the loan is refinanced before term, as most loans are, then the lender will not incur the full cost of the interest rate reduction. Accordingly, lenders have been reluctant to write-down principal, despite calls to do so, including from the Chairman of the Federal Reserve Board of Governors.[92]

Moreover, so long as lenders believe that there will be a bailout from the taxpayers, they are reluctant to reduce interest, much less principal. Lenders who anticipate that a bailout might be coming down the road will not impair loans voluntarily themselves. So long as banks think TARP will cover their losses in full on loans no one will pay back, they have no incentive to make concessions to homeowners. For financial institutions that are at or near insolvency, the problem is particularly acute: recognizing losses in the loan portfolio, even if they produce greater prospects of long-term repayment, may produce immediate consequences that the banks wish to avoid at all costs. The consequences of this behavior are especially negative for taxpayers, as the losses that then have to be addressed through bank bailouts are larger than they would have been had the mortgage portfolios been managed in an economically rational way. To the extent that the mortgage situation continues to deteriorate, it may exacerbate funding requirements within the TARP programs.

Dealing with negative equity raises important questions about what happens if there is future appreciation of the home's value after principal reduction. To this end, proposals to deal with negative equity sometimes consider the possibility of shared appreciation plans in which borrowers, lenders, or even the government, agree on a manner in which they will share future increases in a home's value. Shared incentive plans might incentivize lenders to engage in voluntary principal reductions, although they would also

[90] Dina ElBoghdady, *HUD Chief Calls Aid on Mortgages A Failure*, Washington Post (Dec. 17, 2008).

[91] *See* White, *Rewriting Contracts, supra* note 699.

[92] Board of Governors of the Federal Reserve System, *Address by Ben S. Bernanke, Chairman, at the Independent Community Bankers of America Annual Convention in Orlando, Florida: Reducing Preventable Mortgage Foreclosures* (Mar. 4, 2008) (online at www.federalreserve.gov/newsevents/speech/bernanke 20080304a.htm).

require changes in accounting practices. It is also unclear how these programs would be administered over time.

Although affordability of monthly payments is critical to reductions in foreclosures, the sustainability of foreclosure mitigation efforts will require attention to be paid to the problem of negative equity.

2. Why Previous Programs Have Limited Success

The reasons for the limited success of past loan modification programs are many and complex. As an initial matter, however, it must be recognized that some foreclosures are not avoidable and some workouts may not be economical. This should temper expectations about the scope of any modification program. Nonetheless, there are many foreclosures that destroy value and that can and should be avoided. There are numerous obstacles—economic, legal, and logistical—that stand in the way of voluntary workouts. Removing these obstacles could greatly improve the circumstances of both homeowners and investors, help stabilize the housing market, and provide a sound foundation for rebuilding the economy.

a. Outreach problems

First, there are serious outreach problems. Many troubled borrowers are unaware that there may be options to save their home or prevent a foreclosure. But because lenders do not want to take losses unless they have no other choice, homeowners are rarely presented with modification offers *before* they default. When a financially distressed homeowner defaults on her mortgage, she does not typically receive a modification offer immediately. Instead, the homeowner receives dunning calls and dunning letters demanding payment. Often other creditors are also clamoring for repayment. The result is that financially distressed homeowners frequently avoid opening their mail or answering the phone because they wish to avoid the pain associated with aggressive debt collection. By the time a mortgagee recognizes that modification may be needed and invites the homeowner to workout the loan, the homeowner is unlikely to read the mortgagee's communications.[93] Even if the homeowner reads the offer, the homeowner is often suspicious of the mortgagee and fails to respond.

The result is that very few financially distressed homeowners are actually receiving loan modification offers that are sent. As the State Foreclosure Prevention Working Group has noted, "[n]early eight out of ten seriously delinquent homeowners are not on track for any loss mitigation outcome."[94] Whatever problems stand in the way of the actual modifications and in ensuring that they are meaningful, unless outreach to financially distressed homeowners improves, voluntary loan modification problems will only be able to prevent a very limited number of foreclosures.

Outreach problems are further compounded by unscrupulous vendors masquerading as government agencies or businesses prey-

[93] Some servicers have responded to this problem with impressive creativity, such as sending out fake wedding invitations or canisters of dice labeled "don't gamble with your home."

[94] State Foreclosure Prevention Working Group, *Analysis of Subprime Mortgage Servicing Performance,* at 2 (Sept. 2008) (Data Report No. 3) (online at www.csbs.org/Content/NavigationMenu/Home/SFPWGReport3.pdf).

ing on vulnerable homeowners by convincing them that their services are necessary to obtain a loan modification. Borrowers can be left wondering which entities can be trusted to assist them in obtaining foreclosure relief.

During the field hearing in Prince George's County, MD, the Panel explored the issue of mortgage fraud, a significant problem in that community. Witnesses at the hearing described a number of foreclosure rescue scams employed by con artists to deceive distressed homeowners. Mortgage swindlers in Prince George's County are known to misrepresent themselves as government housing officials and prey on the elderly and poorly educated. A typical scheme is reconveyance, a ploy in which a fraudulent mortgage broker promises to help a struggling homeowner avoid foreclosure and repair their damaged credit. The broker arranges conveyance of the property to a third party with the expectation that at a certain point in the future the property will be reconveyed to the homeowner. The homeowner is led to believe that the transfer is necessary in order to improve his or her credit rating and allow for more favorable mortgage terms when the title is returned. In reality, the homeowner has unwittingly relinquished the title, the property has been refinanced to strip out the existing equity and the third party, or "straw", purchaser ultimately defaults on the refinanced note and the original homeowner is evicted upon foreclosure. John Mitchell of Forestville, MD, testified at the Prince George's County field hearing and was the victim of such a scam. Mr. Mitchell was unaware that he had been defrauded until the local sheriff arrived at his home to evict his family.

The reconveyance scheme was the scam of choice for the Metropolitan Money Store, reputedly the most notorious perpetrator of mortgage fraud in Maryland history. The proprietor of the Metropolitan Money Store, Joy Jackson, a former exotic dancer with no prior experience in the credit industry, is currently facing Federal mail fraud and money laundering charges for allegedly defrauding Maryland homeowners out of $10 million in home equity.[95] At the field hearing, Maryland Secretary of Labor, Licensing and Regulation Thomas Perez said the Metropolitan Money Store scam illustrated "the absence of any meaningful barriers to entry" to the mortgage industry.[96]

b. Servicer capacity problems

Second, when homeowners try to contact their servicers to request a modification, they are often unable to reach them. Homeowners often have to wait on the phone for hours to get through to a servicer representative at a call center.[97] For working families in particular, the time involved in trying to contact the servicer can be prohibitive. Homeowners who are trying to deal with their mort-

[95] Ovetta Wiggins, *Md. Couple Indicted in Fraud Probe,* Washington Post (June 13, 2008).

[96] Congressional Oversight Panel, Testimony of Thomas Perez, Maryland Secretary of Labor, Licensing & Regulation, *Coping with the Foreclosure Crisis: State and Local Efforts to Combat Foreclosures in Prince George's County, MD* (Feb. 27, 2009) (online at cop.senate.gov/documents/testimony-022709-perez.pdf).

[97] Brian Ross and Avni Patel, *On Hold: Even Congresswoman Gets the Runaround on Bank Help Lines,* ABC News (Jan. 22, 2009) (online at abcnews.go.com/Blotter/Story?id=6702731&page=1).

gage during their lunch breaks or between two jobs often give up because they cannot get through to their servicers.

At the Prince George's County field hearing, Lisa McDougal, Co-Chair of the Coalition for Homeownership Preservation in Prince George's County, stated that several servicers have openly acknowledged that they simply were not prepared for the volume of loss mitigation requests that this crisis has generated.[98] Phillip Robinson of Civil Justice, Inc. noted that many borrowers are stymied by the inability to even get someone on the phone. "The number one thing that homeowners say to us when they get to any one of the different vehicles in the Maryland system is [that] they don't know what their roadmap is . . . they don't know what their options are," Mr. Robinson testified. "They're calling their servicers and can't get an answer. No one is answering the phones. No one is responding to them."[99] Ms. McDougal stressed that aggressive follow-up is necessary to get any response from most servicers. Many borrowers are ignored until they retain the assistance of a legal advocate or local public official.

Anne Balcer Norton of the St. Ambrose Housing Aid Center noted that poor staffing and a lack of accountability and oversight are to blame for the unresponsiveness of most servicers. "Servicers either lack the staffing to effectively respond to loss mitigation requests or have artificially ramped up capacity at a level that precludes training and oversight of staff," Ms. Norton told the Panel.[100] As a result, borrowers must often wait up to three to five months for a decision.

It is difficult for homeowners to initiate productive discussions with lenders because many servicers lack the capacity to deal with a large volume of modifications. Part of this is a staffing issue. Servicers are hired by the loan holders to manage the routine tasks associated with the mortgages. Previously, the majority of servicers' work centered on routine tasks, such as collecting mortgage payments, which are highly automated. As delinquencies have mounted, however, the business focus has shifted to loan mitigation, which is slower, more complex, and much less automated. Servicers are generally understaffed for handling a large volume of consumer loan workouts. Staffing is not simply a matter of manpower, but also of sufficiently trained personnel and adequate technological support. Servicer understaffing is a function of both servicers' cost-benefit analysis of hiring additional employees to handle loan workouts, the time it takes to train the employees, and the high turnover rates among consumer workout specialists.

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[98] Congressional Oversight Panel, Testimony of Lisa McDougal, Co-Chair of the Coalition for Homeownership Preservation in Prince George's County, *Coping with the Foreclosure Crisis: State and Local Efforts to Combat Foreclosures in Prince George's County, MD* (Feb. 27, 2009) (online at cop.senate.gov/documents/testimony-022709-mcdougal.pdf).

[99] Congressional Oversight Panel, Testimony of Phillip Robinson, Executive Director, Civil Justice, Inc., *Coping with the Foreclosure Crisis: State and Local Efforts to Combat Foreclosures in Prince George's County, MD* (Feb. 27, 2009) (online at cop.senate.gov/documents/testimony-022709-robinson.pdf).

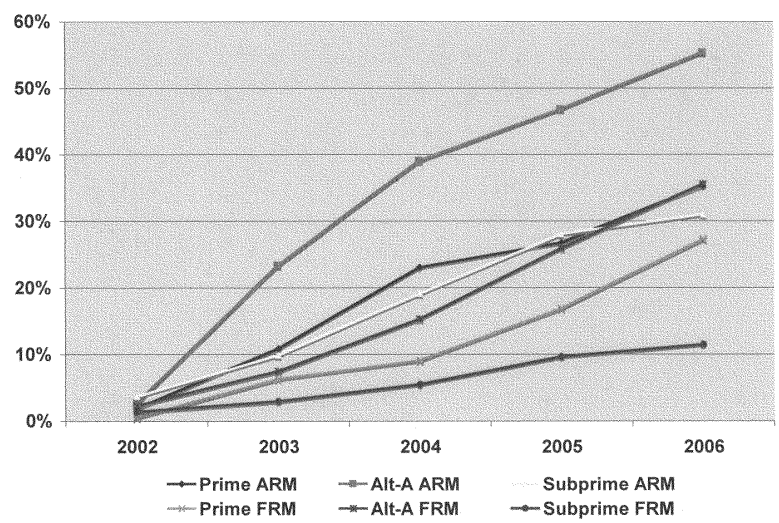
[100] Congressional Oversight Panel, Testimony of Anne Balcer Norton, Director of Foreclosure Prevention, St. Ambrose Housing Aid Center, *Coping with the Foreclosure Crisis: State and Local Efforts to Combat Foreclosures in Prince George's County, MD* (Feb. 27, 2009) (online at cop.senate.gov/documents/testimony-022709-norton.pdf).

c. Junior mortgages

There are multiple mortgages on many properties, particularly recent vintage mortgage originations. (See Chart 14, below.) Some second lien loans are "piggybacks" or 80/20s, structured to avoid private mortgage insurance. By 2006, more than half of Alt-A mortgages included a second mortgage at the time of original funding. Across a range of products, many second mortgages were originated entirely separately from the first mortgage and often without the knowledge of the first mortgagee. In addition, millions of homeowners took on second mortgages, often as home equity lines of credit. As Chart 14 shows, in recent years second mortgages have become far more common. Those debts also encumber the home and must be dealt with in any refinancing effort.

The prevalence of multiple mortgage homes creates a coordination problem for the homeowner and the mortgagees. It also means that senior mortgagees are reluctant to offer concessions because the benefits of better loan performance accrue first to the junior mortgagees. Junior mortgagees may recognize that they have no ability to collect in an immediate foreclosure, but they have the power to hold up any refinancing. These second mortgage lenders are reluctant to give up their leverage and agree to any concessions absent a payoff. Multiple mortgages on the same home present a serious obstacle for loan workouts.

Chart 14. Percentage of Mortgage Originations on Properties with a Junior Mortgage by Year [101]



d. Special problems with securitized mortgages

While outreach, staffing, and second mortgage problems present difficulties for the entire mortgage industry, there are special problems for securitized mortgage workouts. This is especially problematic because foreclosure rates are higher among securitized

[101] Abraham et al., *supra* note 44, at 11–12.

loans.[102] Over two-thirds of residential mortgages originated since 2001 are securitized.[103] For subprime, alt-A, and conforming loans, the securitization is over three-quarters in this period, and in 2007 it was over 90 percent.[104]

Residential mortgage securitization transactions are technical, complex deals, but the core of the transaction is fairly simple. A financial institution owns a pool of mortgage loans, which it either made itself or purchased from another source. Rather than hold these mortgage loans (and the credit risk) on its own books, the institution sells them to a specially created entity, typically a trust (SPV). The trust pays for the mortgage loans by issuing bonds. The bonds are collateralized (backed) by the loans now owned by the trust. These bonds are called residential mortgage-backed securities (RMBS). Typically the bonds are issued in tranches with a senior/subordinate structure.

Because the SPV trust is only a shell to hold the loans, a third-party, called a servicer, must be brought in to manage the loans. The servicer is required by contract to manage the loans for the benefit of the RMBS holders. The servicer performs the day-to-day tasks related to the mortgages owned by the SPV, such as collecting mortgage loan payments from the homeowners and remitting them to the trust, and handling loss mitigation efforts (including foreclosure) on defaulted loans. The servicer is often, but not always, a corporate affiliate of the originator of the mortgage loans. Once the trust receives the payments, a corporate trustee with limited duties is responsible for making distributions to the bondholders.

i. Contractual limitations on modification of securitized loans

Securitization creates contractual limitations on private mortgage modification. Servicers carry out their duties according to what is specified in their contracts with the SPV. This contract is known as a "pooling and servicing agreement" or PSA. As noted by the American Securitization Forum, most securitizations provide servicers with significant flexibility to engage in loan modifications and other loss mitigation techniques where the loan is in default or where default is imminent or reasonably foreseeable.[105] The decision to modify mortgages held by an SPV rests with the servicer, and servicers are instructed to manage loans as if for their own account and maximize the net present value of the loan.[106]

Nevertheless, some PSAs contain additional restrictions that can hamper servicers' ability to modify mortgages. Sometimes the modification is forbidden outright, sometimes only interest rates can be adjusted, not principal, and sometimes there are limitations on the amount by which interest rates can be adjusted. Other times

[102] Tomasz Piskorski et al., *Securitization and Distressed Loan Renegotiation: Evidence from the Subprime Mortgage Crisis*, at 3 (Dec. 2008) (University of Chicago Booth School of Business, Working Paper No. 09–02) (online at papers.ssrn.com/abstract=1321646) (finding a 19–33 percent decrease in the relative mean foreclosure rate among portfolio loans).

[103] Inside Mortgage Finance, *Mortgage Market Statistical Annual*, at 3 (2008) (Vol. 2).

[104] *Id*.

[105] House Committee on Financial Services, Testimony of Thomas Deutsch, *Private Sector Cooperation with Mortgage Modifications: Ensuring That Investors, Servicers and Lenders Provide Real Help for Troubled Homeowners*, at 5, 110th Cong. (Nov. 12, 2008).

[106] *See* 26 U.S.C. § 1860A *et seq.* (Real Estate Mortgage Investment Conduit (REMIC) treatment); SFAS No. 140 (off-balance sheet accounting treatment).

the total number of loans that can be modified is capped (typically at 5 percent of the pool), the number of times a loan may be modified will be capped, or the number of modifications in a year will be capped. Generally, the term of a loan cannot typically be extended beyond the last maturity date of any loan in the securitized pool. Additionally, servicers are sometimes required to purchase any loans they modify at the face value outstanding (or even with a premium).[107] This functions as an anti-modification provision.

The PSA is usually part of the indenture under which the MBS are issued. Under the Trust Indenture Act of 1939,[108] the consent of 100 percent of the MBS holders is needed in order to alter the PSA in a manner that would affect the MBS's cash flow, as any change to the PSA's modification rules would. Changes that do not affect cash flow require either a 51 percent or a 67 percent majority approval. It is arguable whether a change that allows more modifications affects cash flow; if so, the structure of the securitization becomes another factor to consider.

There can be thousands of MBS certificates from a single pool and these certificate holders might be dispersed world-wide. The problem is exacerbated by resecuritizations, second mortgages, and mortgage insurance. MBS issued by an SPV are typically tranched—divided into different payment priority tiers, each of which will have a different dividend rate and a different credit rating. Because the riskier tranches are not investment grade, they cannot be sold to entities like pension plans and mutual funds. Therefore, they are often resecuritized into what are known as CDOs. A CDO is a securitization in which the assets backing the securities are themselves mortgage-backed securities rather than the underlying mortgages. CDOs are themselves then tranched, and the senior tranches can receive investment grade ratings, making it possible to sell them to major institutional investors. The non-investment grade components of CDOs can themselves be resecuritized once again into what are known as CDO^{2}s. This process can be repeated, of course, an endless number of times. Thus it becomes virtually impossible for a servicer to get unanimous consent for any MBS issue or for a single holder to purchase 100 percent of the MBS in the issue.

In addition, many MBS holders would have no incentive to consent to a change in the PSA. The out-of-the-money junior tranches have no incentive to support the modification, and the senior most tranches have a substantial enough cushion of subordinated tranches that they have no incentive to support the modification.

The difficulty of modifying PSAs to permit modification on a wide scale is further complicated by the fact that many homeowners have more than one mortgage. Even when the mortgages are from the same lender, they are often securitized separately. If a homeowner is in default on two or three mortgages it is not enough to reassemble the MBS pieces to permit a modification of one of the mortgages. Modification of the senior mortgage alone only helps the junior mortgage holders, not the homeowner. In order for a loan

[107] *Greenwich Financial Services Distressed Mortgage Fund 3, LLC v. Countrywide Financial Corp.*, Index No. 650474–2008, Complaint (N.Y. Supr. Ct., N.Y. Co., Dec. 1, 2008) (online at iapps.courts.state.ny.us/iscroll/SQLData.jsp?IndexNo=650474-2008) .

[108] 15 U.S.C. § 77ppp(b).

modification to be effective for the first mortgage, it is necessary also to modify the junior mortgages, which means going through the same process. This process is complicated by the fact that senior lenders frequently do not know about the existence of the junior lien on the property.

A further complication comes from insurance. An SPV's income can exceed the coupons it must pay certificate holders. The residual value of the SPV after the certificate holders are paid is called the Net Interest Margin (NIM). The NIM is typically resecuritized separately into an NIM security (NIMS), and the NIMS is insured by a financial institution. This NIMS insurer holds a position similar to an equity holder for the SPV. The NIMS insurer's consent is thus typically required by contract both for modifications to PSAs and modifications to the underlying mortgages beyond limited thresholds. With nothing more to lose from foreclosure and the ability to hold up a refinancing as their only leverage, NIMS insurers' financial positions are very similar to out-of-the-money junior mortgagees. Like junior mortgagees, NIMS are also unlikely to cooperate absent a payoff.

Thus, the contractual structure and economic incentives of securitization can be an obstacle to private modifications of distressed and defaulted mortgages, even when that would be the most efficient outcome for the lenders and borrowers.[109]

While restrictive PSAs present an obstacle to foreclosure mitigation efforts, it is important not to overstate their significance. The Panel's examination of modifications in several securitized pools with a 5 percent cap on the percentage of loans that may be modified reveals that modifications have not approached the cap. This indicates that the cap is not the major obstacle to successful modifications.[110] Further, to date the Panel knows of no litigation against mortgage servicers for engaging in modifications that violate the terms of PSAs.[111]

Previous legislative remedies have been of indeterminate success. In order to provide servicers with an incentive to participate in the Hope for Homeowners program, Congress created a safe harbor from legal liability for refinancing owners into the Hope for Home-

[109] A fourth category—legal obstacles—in the form of REMIC tax provisions and Financial Accounting Board standards, are no longer a significant obstacle to modifying securitized loans. There are potentially adverse tax and accounting consequences if servicers engaging in too many voluntary modifications. Residential MBS are structured to enjoy pass-thru REMIC status under the Internal Revenue Code, 26 U.S.C. §§ 1860A *et seq.*, which enables the MBS to avoid double taxation of income. REMIC rules generally preclude wide-scale modification of securitized loans or their sale out of securitized pools, and these REMIC rules are further reflected in the contract with the servicer. The IRS has relaxed application of REMIC rules to mortgage loan modification programs. *See* Rev. Proc. 2008–28, 2008–23 I.R.B. 1054.

Likewise, accounting standards under SFAS 140 indicate that too many modifications would result in the servicer/originator having to take the securitized loans back onto its balance sheet. SEC Staff, however, have indicated that they do not believe that modifications of imminently defaulting loans would require on-balance sheet accounting. Letter from Christopher Cox, SEC Chairman to Rep. Barney Frank, Chairman of Committee on Financial Services, United States House of Representatives (July 24, 2008) (online at www.house.gov/apps/list/press/financialsvcs_dem/sec_response072507.pdf); Letter from Conrad Hewitt, Chief of Accounting, SEC to Mr. Arnold Hanish, Chairman of the Committee on Corporate Reporting, Financial Executives International and Mr. Sam Ranzilla, Chairman of the Professional Practice Executive Committee, The Center for Audit Quality, American Institute of Certified Public Accountants (Jan.8, 2008) (online at www.sec.gov/info/accountants/staffletters/hanish010808.pdf).

[110] *See* White, *Rewriting Contracts, supra* note 69.

[111] Litigation brought against Bank of America and Countrywide is for a declaratory judgment that Bank of America and Countrywide must repurchase modified mortgages at face, not for doing unauthorized modifications.

owners program as part of the Housing and Economic Recovery Act of 2008. Despite the safe harbor provision, the program has had very limited participation. Restrictive PSAs do not appear to be the main immediate obstacle to loan modifications, but they present a significant limitation on expanded modification efforts.

ii. Incentive problems created by securitization

Securitization can also create incentive misalignment problems that can lead to inefficient foreclosures. Servicers have a duty to service loans in the best interest of the aggregate investor and to maximize the net present value on loans. Nonetheless, mortgage servicer compensation structures can create a situation in which foreclosure is more profitable to servicers than loan modification, even if it imposes bigger losses on both the homeowners and the investors. As a result, even wealth-destroying foreclosures may occur in large numbers.[112]

Servicers receive three main types of compensation: a servicing fee, which is a percentage of the outstanding balance of the securitized mortgage pool; float income from investing homeowners' mortgage payments in the period between when the payments are received and when they are remitted to the trust; and ancillary fees. When a loan performs, the servicer has largely fixed-rate compensation. This is true also when a loan performs following a modification.

Thus, if a servicer modifies a loan in a way that reduces monthly payments, the servicer will also have a reduced income stream. This reduced income stream will last only so long as the loan is in the servicing portfolio. If the loan is refinanced or if it redefaults, the loan will leave the portfolio. Generally servicers do not expect loans to remain in their portfolios for long. For example, a 2/28 ARM is likely to be refinanced by year three, when the teaser rate expires, and move to another servicer's portfolio. Moreover, for non-GSE RMBS, servicers are not compensated for the sizeable costs of loan modification. Thus, when a servicer modifies a loan, the servicer loses servicing and float income (which it will not have long into the future anyhow) and incurs expenses.

By contrast, when a servicer forecloses, servicer compensation shifts to a cost-plus basis. The servicer does not receive any additional servicing fee or float revenue from the loan, but it does receive all expenses of the foreclosure, including any fees it tacks on, such as collateral inspection fees, process serving fees, etc., although it is unclear to what extent these fees produce profits. These fees are paid off the top from foreclosure recoveries, so it is the MBS holders that incur the losses in foreclosure, not the servicers.[113] This arrangement can also create an incentive for servicers to sell foreclosed properties at low prices.[114]

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[112] Archana Sivadasan, *The 800 Pound Gorrilla in the Room: Servicers Profit While Investors Face Losses*, RGE Monitor (Nov. 4, 2008) (online at www.rgemonitor.com/globalmacro-monitor/254261/the__800__pound__gorrilla__in__the__room__servicers__profit__while__investors__face__losses).

[113] Servicer income in foreclosure is offset in part by the time-value of advancing payments owed on defaulted loans to the trust until foreclosure. These payments are recoverable by the servicer, but without interest.

[114] Carrick Mollenkamp, Foreclosure *'Tsunami' Hits Mortgage-Servicing Firms*, Wall Street Journal (Feb. 11, 2009).

The fees servicers can add in foreclosure can be considerable, and there is effectively no oversight of their reasonableness or even whether the agreements authorize such fees.[115] MBS holders lack the ability to monitor servicer decisions, and securitization trustees do not have the responsibility to do so. Servicers essentially receive cost-plus-percentage-of-cost compensation when they foreclose. The incentive misalignments from this form of compensation are so severe that it is flatly prohibited for federal government contracts.[116]

Servicer incentives are further complicated by the requirement that servicers advance payments of principal, interest, taxes, and insurance on non-performing loans to the MBS holders typically through foreclosure and until the property is disposed of. This too can also create an incentive for servicers to sell foreclosed properties at low prices in order to sell the property quickly and stop making advances.[117] While servicers are able to recover all of their advances off the top of sale proceeds, they lose the time value of these advances, which can be considerable.[118] While the requirement of making advances creates an incentive to modify defaulted loans, if the loan redefaults, the servicer will find itself making the advances anyway after incurring the expenses of the modification.

The choice between modification and foreclosure is a choice between limited fixed-price income and a cost-plus contract arrangement with no oversight of either the costs or the plus components. For mortgage servicers, this can create an incentive to foreclose on defaulted loans rather than to modify them, even if modification is in the best interest of the MBS holders.[119] The contractual requirement to make advances may mitigate this incentive alignment somewhat. The specific dynamics of servicer incentives are not well understood, but they appear to be a factor inhibiting loan modifications.

iii. Servicer litigation risk aversion

Servicers may also be reluctant to engage in more active loan modification efforts because of litigation risk. Servicers face litigation risk both for the number of modifications they do as well as for the type of modifications. Servicers are contractually obligated to maximize the net present value of the loans they manage. Net present value calculations are heavily dependent upon the assumptions made in the calculation, such as what a foreclosure sale return will be, the likelihood and likely timing of redefault on a loan modification, and future trends in housing prices. Net present value calculations are usually done through computer software platforms, and there is no standardized system or set of inputs. Changes to the assumptions in net present value calculations can

[115] Katherine M. Porter, *Misbehavior and Mistakes in Bankruptcy Mortgage Claims*, Texas Law Review (2008).
[116] *See* 41 U.S.C. § 254(b); 10 U.S.C. § 2306(a).
[117] Mollenkamp, *supra* note 114.
[118] Taxes and insurance are sometimes recoverable from other loans in the pool.
[119] Alternatively, if a servicer modifies a loan in a way that guarantees a quick redefault, it might be even more profitable. This might explain why so many modifications have resulted in *higher* monthly payments and why a large percentage of foreclosures have been after failed modification plans. *See* Jay Brinkmann, Mortgage Bankers Association, *An Examination of Mortgage Foreclosures, Modifications, Repayment Plans, and Other Loss Mitigation Activities in the Third Quarter of 2007*, at 10 (Jan. 2008) (online at www.mortgagebankers.org/files/News/InternalResource/59454_LoanModificationsSurvey.pdf) (noting that nearly 30 percent of foreclosure sales in the third quarter of 2007 involved failed repayment plans).

shift whether a servicer will pursue foreclosure or a loan modification.

Servicers face potential scrutiny and litigation from investors based on their net present value calculations and whether they have adhered to those calculations. Investors in MBS are typically tranched in a senior/subordinate structure. This means that senior tranches will want the more certain and immediate recovery on a defaulted loan because they will be shielded from losses by the subordinated tranches. Therefore, the senior tranches are likely to push for quick foreclosure. By contrast, the subordinated tranches stand to lose significantly in foreclosure, and may push for the possibility of a larger recovery in a modification. The type of a modification a servicer engages in can also have a disparate impact on different tranches of MBS investors, as principal and interest payments are often allocated separately among investors. Thus, a reduction in interest rates affects different investors than a reduction in principal. The result is what is known as "tranche warfare," with the servicer caught in between competing groups of investors.[120]

A lawsuit was filed on December 1, 2008, by Greenwich Financial Services Distressed Mortgage Fund 3 LLC and QED LLC, against Bank of America.[121] While the lawsuit did not dispute that Bank of America and Countrywide Financial had the authority to modify mortgages, the plaintiff hedge fund claimed that modifications meant that Bank of America was required to repurchase mortgages originated by Countrywide Financial once those mortgages had been modified in settlement of a predatory lending lawsuit. House Financial Services Committee Chairman Barney Frank said of this lawsuit, "[O]f all the outrageous acts of social irresponsibility I have ever seen, it is the lead plaintiff in that lawsuit, who bought the paper solely for the purpose of doing it (filing the lawsuit)."[122]

Servicer conduct is evaluated under a deferential business judgment standard that shields servicers from a great deal of litigation risk. To date no litigation has been filed alleging that servicers have engaged in too many or too few modifications or the wrong type of modifications. Nonetheless, fear of litigation risk may be chilling some loan modification efforts. Clear industry standards and procedures for modifications would provide comfort to servicers in this regard, and the efforts of HOPE NOW, Treasury, HUD, FHFA, and the GSEs in creating the Streamlined Loan Modification Program represents important progress in this regard, although it does not technically affect the legal standard by which servicers are judged.

iv. Servicer business models

Finally, it is unlikely that mortgage servicers will be able to conduct mass loan modifications. Mortgage servicers perform two serv-

[120] Kurt Eggert, *Comment on Michael A. Stegman et al.'s 'Preventive Servicing Is Good for Business and Affordable Homeownership Policy': What Prevents Loan Modifications*, Housing Policy Debate, at 290-91 (2007).

[121] *Greenwich Financial Services Distressed Mortgage Fund 3, LLC* v. *Countrywide Financial Corp.*, Index No. 650474–2008, Complaint (N.Y. Supr. Ct., N.Y. Co., Dec. 1, 2008) (online at iapps.courts.state.ny.us/iscroll/SQLData.jsp?IndexNo=650474-2008).

[122] House Committee on Financial Services, Statement of Chairman Barney Frank, *Oversight Concerns Regarding Treasury Department Conduct of the Troubled Assets Relief Program*, 110th Cong. (Dec 10, 2008) (online at financialservices.house.gov/hearing110/hr121008.shtml).

ices that require very different skills and recourses. Servicers process transactions and engage in loss mitigation on defaulted loans. Transaction processing consists of sending out billing statements and receiving payments. It is a highly scalable and automatable business that involves little discretion, expertise, or manpower. Loss mitigation, in contrast, involves tremendous discretion, expertise, and manpower. It does not benefit from economies of scale and needs significant human labor to staff call centers, which have very high employee turnover rates.

When housing markets perform well and there are few defaults, servicers' business is largely transaction processing. When default rates rise, however, servicers' business is increasingly a loss mitigation enterprise. Mortgage servicers have not staffed or built their operations around handling defaults at current levels. They lack the trained personnel to handle mass modifications. They lack sufficient personnel to handle a large volume of customer contacts and the trained loan officers necessary to handle the volume of requested modifications, which are essentially the underwriting of a new loan. Servicers are simply in the wrong line of business for doing modifications en masse.

Given the special obstacles to loan modification caused by securitization, it is not surprising that non-securitized portfolio loans perform better in the first place,[123] are more likely to be modified, and are less likely to redefault after modification.[124] Portfolio loans superior performance might be in part because portfolio loans are of better quality initially.[125] Even when "hard" underwriting characteristics, like LTV, FICO scores, and DTI ratios are held constant, lenders who hold their own mortgages are able to engage in more customized underwriting for their portfolio loans than is practical for credit rating agencies and MBS investors.[126]

There are many practical, economic, and legal obstacles standing in the way of successful and sustainable large-scale loan modifications.

IV. CHECKLIST FOR SUCCESSFUL LOAN MODIFICATIONS

While Congress needs better information about foreclosure mitigation efforts, the urgency of the matter precludes delay. For a solution to be timely it is important that it be implemented promptly. Neither American homeowners nor the economy can afford another failed attempt at foreclosure mitigation.

A. DATA COLLECTION

Congress and the Administration cannot craft optimal policy responses to the mortgage crisis without sufficient information. The current state of federal government knowledge about mortgage loan performance and loss mitigation efforts is inadequate. The

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[123] Benjamin Keys, et al., *Did Securitization Lead to Lax Screening? Evidence From Subprime Loans* (2008) (University of Chicago Working Paper) (online at papers.ssrn.com/sol3/papers.cfm?abstract_id=1093137).

[124] Piskorski et al., *supra* note 102, at 3.

[125] Piskorski et al., *supra* note 1022, at 3.

[126] Yingjin H Gan and Christopher Mayer, *Agency Conflicts, Asset Substitution, and Securitization* (2006) (National Bureau of Economic Research, Working Paper No. 12359) (online at www.nber.org/papers/w12359).

Panel recommends that Congress initiate a national mortgage loan performance reporting requirement, similar to the reporting required under the Home Mortgage Disclosure Act, to provide a complete source of data. In addition, federal banking and housing regulators should be mandated to analyze these data and to make them publicly available, providing comprehensive information about mortgage loan performance and loss mitigation efforts.

B. METRICS

In order to evaluate the likely success of any foreclosure prevention effort, it is necessary to establish meaningful metrics. Based on the Panel's review of the evidence available, its consultation with experts, and its field hearing, the panel has developed a list of standards that will aid in the evaluation of any foreclosure mitigation plan. Some of these standards apply solely to voluntary or incentive-based modification or refinancing programs; others apply to all methods. The Panel recognizes that there are significant obstacles to voluntary mortgage loan restructuring, and believes involuntary restructuring programs are an essential option.

The Panel plans to evaluate any proposal's performance on these criteria using the following checklist.

CHECKLIST FOR MORTGAGE MITIGATION PROGRAM

Will the plan result in modifications that create affordable monthly payments?

Does the plan deal with negative equity?

Does the plan address junior mortgages?

Does the plan overcome obstacles in existing pooling and servicing agreements that may prevent modifications?

Does the plan counteract mortgage servicer incentives not to engage in modifications?

Does the plan provide adequate outreach to homeowners?

Can the plan be scaled up quickly to deal with millions of mortgages?

Will the plan have widespread participation by lenders and servicers?

1. Affordable Monthly Payments

Ensuring affordable monthly mortgage payments is the key to mitigating foreclosures. Any foreclosure mitigation plan must be based on a method of modifying or refinancing distressed mortgages into affordable ones. Clear and sustainable affordability targets achieved through interest rate reductions, principal writedowns, and/or term extensions should be a central component of foreclosure mitigation.

Affordability targets must be set low enough that consumers are not at risk for redefault shortly after the modification. The Panel is concerned that the DTI target of 38 percent in the Streamlined Modification Program is too high. The Panel also recognizes that affordability is part of a broader picture of consumer finances, and that efforts to make mortgages affordable must consider other sources of consumer debt burdens, such as credit cards, student loans, auto loans, and medical debt, along with declining household incomes.

2. Sustainable Mortgages

It may not be enough simply to make mortgages affordable. Mortgages must also be sustainable. Serious negative equity may undermine the sustainability of any restructured mortgage. While mortgage payments can generally be restructured to affordable levels through reduction of interest rates and increases in loan term, the long-term sustainability of loan workouts, be they through modification or refinancing, may depend upon the degree of negative equity.[127]

Homeowners with negative equity cannot sell their homes unless they can make the balloon payment that lurks in the background. Many homeowners will eventually need to move for jobs, for assisted living, for larger or smaller living spaces, or to be near family. If they can find rental housing at an equivalent monthly payment price, they will abandon homes burdened by negative equity. Significant negative equity raises the serious risk that foreclosures have merely been postponed, not prevented.

Negative equity will create significant distortions in the labor, elderly care, and housing markets. Moreover, negative equity will keep foreclosures above their historically low levels. These delayed foreclosures will continue to plague the US housing market and financial institutions' books for decades.

Attempts to deal with negative equity must also address the question of who bears the loss from any write-down of the mortgage to reduce negative equity and who should benefit from any future appreciation on written-down mortgage.[128] Although affordability is key for short-term success in foreclosure mitigation, sustainability is equally important in ensuring future economic stability.

3. Junior Mortgages

Junior mortgages pose a significant obstacle to restructurings of first mortgages because of junior mortgagees' ability to free ride on modifications and hold up refinancings. Any modification that reduces payments on the first mortgage benefits the junior mortgagee because the modification frees up income that is available to service the junior mortgage. Because of this free-riding problem, first mortgagees may be reluctant to engage in modifications.

Junior mortgagees are also able to stymie refinancings of first mortgages. Unless the junior mortgagee's consent is gained, the junior mortgagee gains priority over the refinancer. As a result, refinancing is extremely difficult unless the junior mortgagee agrees to remain subordinated, and junior mortgagees often seek a payment for this. The problem is particularly acute with totally underwater junior mortgagees, who only have hold-up value in their mortgage.

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[127] *See* Leonhardt, *supra* note 67.

[128] The experience of past housing bubbles suggests that it will be a decade or more before we see much housing price appreciation.

Attempts to restructure mortgages for affordability and sustainability must also have a clear method for dealing with junior mortgages.

4. Restrictive Pooling and Servicing Agreements (PSAs)

Restrictions on mortgage servicers' ability to modify loans are an obstacle that has contributed to foreclosures that destroy value for homeowners and investors alike. For private voluntary solutions to work on a large scale, mortgage servicers must be able to modify loans when doing so is value-enhancing. There are only a limited number of ways to deal with restrictive PSAs: either abandoning voluntary, servicer-initiated foreclosure mitigation for some form of involuntary loan modification or refinancing, including judicial modification in bankruptcy or narrowly tailored legislation that voids restrictions on modifying residential mortgage loans if the modified loan would have a net present value greater than the foreclosure recovery. Creation of a safe harbor from legal liability in addition to creating a market standard could provide an incentive for more workouts by servicers.[129] Restrictive PSAs must eventually be addressed to ensure prevention of uneconomic foreclosures.

5. Servicer Incentives

For private solutions to work on a large scale, mortgage servicers must have appropriate incentives to restructure loans. Incentives might come via sticks (e.g., loss of future GSE business, bankruptcy modification of mortgages, and eased investor and homeowner litigation) or carrots (e.g., per/modification bounties and litigation safe harbors) or a combination of both. Proper alignment of servicer incentives will be necessary to ensure that any foreclosure mitigation plan is smoothly implemented.

6. Borrower Outreach

The success of any foreclosure mitigation program depends not only on the quality of loan restructuring, but also on the number of preventable foreclosures it can help avoid. Key to maximizing the impact of any foreclosure mitigation program is putting financially distressed homeowners in contact with someone who can modify their mortgages. This contact is essential for any negotiated workout attempt. Servicer outreach efforts have been hobbled by financially distressed homeowners' suspicion of servicers and simple unresponsiveness to attempts to contact them due to repeated dunning. Moreover, many servicers are not skilled or experienced with outreach. The Panel believes that TARP funds could be used effectively to fund outreach efforts through community organizations or through direct federal efforts.

In addition, the government should consider devoting some portion of borrower outreach funds to prevention of "predatory modifications" in which businesses charge exorbitant fees to obtain loan modifications the borrowers could have obtained for free. Funding could be directed towards a public education campaign. Credible outreach directly from the government could tell homeowners what

[129] *See* Anna Gelpern and Adam J. Levitin, Rewriting *Frankenstein Contracts: Workout Prohibitions in Residential Mortgage-Backed Securities* (Feb. 2009) (Georgetown Public Law Research Paper No. 1323546) (online at papers.ssrn.com/sol3/papers.cfm?abstract__id=1323546).

sorts of mortgage help is available, and could be effectively targeted to high foreclosure zip codes. Specific security features in the communication could provide even further reassurance that the communication is not from one of the fraudsters impersonating the government. Further, the government should consider whether it has the necessary personnel, resources, and enforcement authority to crack down on the predators who misrepresent themselves as being a part of or acting on behalf of the federal government in negotiating or providing loan modifications, as well as those who use loan modifications as another opportunity to rip off vulnerable consumers.

7. Servicer Capacity

Servicers lack capacity to handle current demand for loan workouts, and they have no apparent ability to handle a greater volume of modifications. Foreclosure mitigation plans should consider methods that would assist servicers to move distressed homeowners through the system more quickly. For example, a federal pre-qualification conduit that could be combined with a temporary stay of foreclosure on pre-qualified loans to speed the process. While a pre-qualification conduit could take many forms, utilizing technology, such as a web portal, could provide even further efficiency and capacity enhancements. Technology could provide even greater expansion through use of an automated mitigation process, similar to the automated underwriting processes employed in making the initial loans.

Following prequalification by the conduit, a borrower could be put in touch with the servicer who would assign a date and time for meeting as well as tell the borrower what documentation is necessary. This orderly process could provide a temporary stay of foreclosure to people who meet basic qualifications. Mitigation efforts should also consider methods for encouraging efficient use of servicing resources, such as servicers with capacity constraints to enter into subservicing by servicers with excess capacity.

8. Industry Participation

Any foreclosure plan will ultimately succeed or fail based on whether millions of troubled loans are diverted from foreclosure to modification. Whether incentives, mandates, or some combination are used to drive enrollment, designers of the plan must always be conscious of the level of industry participation. Eligibility for borrowers must depend on the criteria set forth in the plan, rather than the willingness of the servicer or lender to participate in the foreclosure mitigation. Only broad servicer and lender participation can ensure that the plan reaches all or most of the borrowers who would need the relief offered by the mitigation initiative.

V. POLICY ISSUES

A. ALLOCATION OF LOSSES

Any attempt to address the policy issues involved with the housing crisis must start with recognition of losses. The housing crisis has already caused trillions of dollars in losses, spread among homeowners, financial institutions, and investors—with trillions more in losses imposed on third parties, such as neighbors, taxing authorities, and those whose livelihood are in housing or related industries. Worse, the losses will continue. Whether these losses are recognized immediately or loss recognition is delayed, the losses are real. It may be possible to mitigate some of the losses, but not all can be avoided. The central question is how to allocate those losses among various parties. There is no escaping the distributional question: Any solution to the housing crisis—including doing nothing—is a distributional decision. Ultimately, there are two basic distributional choices: letting the losses lie where they may, or bailing out investors.

1. Let Losses Lie Where They May

Investors and lenders who willingly assumed credit risk will be stuck with their losses. This is what they bargained for, no more and no less. Letting losses lie where they may means that some financial institutions may find themselves insolvent and need to either be liquidated or recapitalized, but the United States has well-established methods for doing so: business bankruptcy, FDIC proceedings, and state insurance insolvency proceedings. Homeowners, too, will suffer, as foreclosures will likely proceed apace. Because of other impediments to mortgage modification, some of these foreclosures may destroy value for both the investor and the homeowner. There will be the serious third-party spillover effects on neighbors, on communities, on local government, and on other lenders as foreclosures beget more foreclosures and result in lower foreclosure sale prices.

A second way to allocate losses among private parties would be to amend the bankruptcy laws to permit judicial modification of mortgages. This would give lenders and investors at least as much as the current market value of the property, an amount that typically exceeds by tens of thousands of dollars the value released in a foreclosure sale. Such an approach would also reduce the number of foreclosures, reducing the losses faced by homeowners and avoiding the deadweight economic loss and spillover effects imposed on third parties. Bankruptcy relief would not involve the use of any taxpayer funds to bail out investors, but it could allow for better outcomes than the foreclosure process.

Third, the government could seize mortgages and pay investors just compensation for them, halting the cycle of foreclosures and declining prices. This would allow the government to modify the mortgages at will, while providing investors and lenders with the value of their loans and nothing more.

a. Bankruptcy modification

It is also possible for mortgages to be modified without the consent of the mortgage investors. The principal mechanism to accomplish this would be through bankruptcy proceedings. Bankruptcy freezes all collection efforts temporarily, including foreclosures.[130] Businesses and consumers are able to restructure all types of loans in bankruptcy, rewriting mortgages on business properties, rental property and vacation homes. The sole exception is that mortgages

[130] 11 U.S.C. § 362(a).

secured by a person's principal residence cannot be modified.[131] There is presently legislation pending in Congress that would amend the Bankruptcy Code to permit judicially-supervised modification of all mortgage types in bankruptcy.[132]

The type of bankruptcy modifications proposed for mortgages on principal residences differs from the debt restructurings that are currently permitted for vacation homes or rental property, if they are modified in Chapter 13. In Chapter 13, all debts, including the reduced principal amount, must be repaid within the three-to-five years duration of the bankruptcy plan. In Chapter 11, by comparison, vacation homes, rental property and mortgages on all business property can be stretched over decades. The proposed bankruptcy modification would permit the modified loan on the principal residence to be held to maturity and repaid over as much as thirty years. The length of the anticipated repayment period in the proposed bankruptcy modification would be more like the treatment of mortgages on vacation homes, rental property and all business property in Chapter 11.

Bankruptcy modification would permit homeowners to bypass all of the obstacles to voluntary loan modification—practical outreach and staffing problems, restrictive pooling and servicing agreements, and improperly motivated mortgage servicers. It could be administered immediately through the existing bankruptcy court system. Mortgage modification in bankruptcy would not impose any direct costs to taxpayers.

Bankruptcy modification has some significant limitations. Because of strict income and property limitations, not all homeowners would qualify. Even among those who qualified, many homeowners might be unwilling to file for bankruptcy, either because of moral reservations or because they are unwilling to make extensive public declaration of their financial circumstances, commit all their disposable income for three to five years to repaying creditors, and commit to living on a court-supervised, IRS budget for those three-to-five years.

Several concerns have been raised about the adverse economic impact of permitting judicially-supervised modification of mortgages in bankruptcy: that it would result in higher costs of credit and/or less mortgage credit availability going forward; that it would trigger a flood of bankruptcy filings that the courts cannot handle; that the increase in filings would have adverse effects on other creditors such as credit card lenders; that it would create additional losses for mortgagees; and that it would force losses on AAA-rated mortgage-backed securities because of an unusual loss allocation feature in mortgage-securitization contracts.[133] Additionally, concerns have been expressed that judicial modification of mortgages would reward some homeowners who undertook cash-out refinances and purchased luxury goods or services.[134]

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[131] 11 U.S.C. § 1322(b)(2).

[132] Helping Families Save Their Homes in Bankruptcy Act of 2009, S. 61, 111th Cong. (2009); Helping Families Save Their Homes in Bankruptcy Act of 2009, H.R. 200, 111th Cong. (2009); Emergency Homeownership and Equity Protection Act, H.R. 225, 111th Cong. (2009).

[133] *See, e.g.,* Todd J. Zywicki, *Don't Let Judges Tear Up Mortgage Contracts,* Wall Street Journal (Feb. 13, 2009).

[134] *See, e.g., id.*

Although there has been significant discussion of the potential impact of judicial modifications on mortgage credit price and availability, unfortunately there is not a sizeable body of academic work that speaks to this point. Mortgage industry participants such as the Mortgage Bankers Association have said that permitting judicial modification would result in a 2 percent across the board increase in mortgage interest rates and a possible reduction in credit availability.[135] While they do not have empirical data, they cite the market-based need for lenders to price to increased risk, including new legal risk.

The only independent, empirical research on the effect of permitting judicial modification of home mortgages indicates the opposite: that it is unlikely to result in more than a *de minimis* increase in the cost of mortgage credit or reduction in mortgage credit availability.[136] The data show that when they price mortgages or mortgage insurance for non-homestead property where judicial modifications are allowed, lenders have not raised prices to deal with possible write downs in bankruptcy. This finding is consistent with basic economic theory: so long as lenders' losses from loan modification in bankruptcy would be smaller than those in foreclosure, lenders will not price against bankruptcy modification.

Making meaningful bankruptcy relief available to financially-distressed homeowners would, in the absence of another foreclosure mitigation option, likely result in an increase in bankruptcy filings. There is no reason, however, to believe that the bankruptcy courts would be overwhelmed by the rise of filings.[137] As Professor Michelle J. White, President of the American Law and Economics Association, has observed, there was a dramatic spike in filings in the fall of 2005, before the effective date of the Bankruptcy Abuse Prevention and Creditor Protection Act of 2005, and the bankruptcy court system successfully handled the filing volume with more limited staffing than currently exists.[138] Moreover, much of the workload in bankruptcy cases is not handled by judges, but rather by debtors' attorneys and Chapter 13 trustees; judges would not decide on the terms of a mortgage modification, but would merely approve or deny the requested modification depending on whether it conformed to statutory requirements. The valuations that are necessary in any proposal to modify home mortgages are similar to the work that bankruptcy courts do every day in valuing business real estate, equipment, cars, partnerships, and all other kinds of property.

[135] House Committee on the Judiciary, Subcommittee on Commercial and Administrative Law, Statement of David G. Kittle, Mortgage Bankers Association, *Straightening Out the Mortgage Mess: How Can We Protect Home Ownership and Provide Relief to Consumers in Financial Distress?—Part II: Hearing on H.R. 3609*, 110th Cong., at 3 (Oct. 30, 2007) (online at judiciary.house.gov/hearings/pdf/Kittle071030.pdf) (2 percent rate increase claim); Letter from Stephen A. O'Connor, Senior Vice President of Government Affairs, Mortgage Bankers Association, to Representative Brad Miller (Apr. 18, 2008) (providing alternative calculation and 1.5 percent rate increase claim).

[136] Levitin, *supra* note 14.

[137] *See* Alan Schwartz, *Don't Let Judges Fix Loans*, New York Times (Feb. 27, 2009). Likewise, Professor Schwartz's concerns about interminable valuation litigation are unfounded; after a handful of initial valuation decisions in each bankruptcy court, settlement parameters will become clear, so parties will settle on valuation rather than engage in expensive litigation.

[138] Michelle J. White, *Bankruptcy: Past Puzzles, Recent Reforms, and the Mortgage Crisis*, at 18 (Dec. 2008) (National Bureau of Economic Research Working Paper 14549) (online at www.nber.org/papers/w14549).

An increase in bankruptcy filings could create additional losses for credit card lenders. On the other hand, it is possible that families who can get some mortgage relief will be more stable economically and more able to pay off their credit cards and other loans.

Bankruptcy losses might not fall within the normal senior/subordinate tranching of MBS. But modification of mortgages in bankruptcy would not create mortgage losses where they otherwise do not exist. Instead, bankruptcy merely forces recognition of existing losses. Bankruptcy requires that a secured lender must receive at least the fair market value of the collateral.[139] In the case of a homeowner facing foreclosure, this amount is often far in excess of the amount the lender would receive through foreclosure. If bankruptcy is viewed as an alternative to foreclosure, it should not create new losses on mortgages and may, in fact, save mortgage lenders money.

As discussed in the section on moral hazard, *infra*, any foreclosure mitigation effort will inevitably create concerns about both spendthrift homeowners and irresponsible lenders abusing the system by socializing losses; there is nothing specific to bankruptcy in these important concerns. Unlike other bailout proposals, however, bankruptcy already has important safeguards against abuse by debtors.[140] As a further safeguard, some have suggested crafting bankruptcy modification to focus on situations in which borrowers have made a good faith effort to obtain a mortgage modification prior to filing for bankruptcy, and there is no evidence of borrower fraud.

Regardless of how these concerns about bankruptcy modification are resolved, bankruptcy modification by itself is unlikely to solve the foreclosure crisis. Credit Suisse estimates that permitting modification of mortgages in bankruptcy would prevent 20 percent of foreclosures.[141] The ability to declare bankruptcy to deal with a mortgage in default would, however, likely change the non-bankruptcy negotiations. Currently, homeowners who are unable to make their mortgage payments have few options other than to force the lender to go through foreclosure proceedings or to plead for the lender to modify the mortgage. A homeowner who could credibly threaten to file for bankruptcy might find that servicers were more responsive and that lenders were more willing to make modifications available.

In the absence of a convincing voluntary modification or refinancing program, bankruptcy modification presents one option for immediate foreclosure mitigation.

b. Takings

Another way of letting losses lie where they may while mitigating the impact of uneconomic foreclosures would be for the federal (or state) government to seize mortgages under eminent do-

[139] 11 U.S.C. § 1325(a)(5).

[140] *See* 11 U.S.C. §§ 1325(a)(3) (good faith filing of bankruptcy petition required), 1325(a)(7) (requiring good faith plan filing); 1325(b) (requiring all of a debtor's disposable income be paid to unsecured creditors); 1328(a) (exceptions to discharge).

[141] Credit Suisse Fixed Income Research, *Bankruptcy Law Reform: A New Tool for Foreclosure Avoidance* (Jan. 26, 2009) (online at www.affil.org/uploads/3r/NH/3rNHuGFNnZ2Of5BEwiAeqw/Credit-Suisse-1.29.09-Bankruptcy-Reform.pdf).

main power.[142] These takings are essentially government conversion of property, for which just compensation (not necessarily full face value) must be paid. If the government took mortgages, it could modify them at will. Although the costs of a large-scale takings of mortgages are unknown, it would at the very least implicate significant taxpayer funds and might raise Constitutional issues. Takings would not result in an investor bailout, however. Investors and lenders would get the value of their loans and nothing more. Thus, takings provides a way to mitigate the impact of wealth-destroying foreclosures while not changing contractual loss allocation rules.

2. A Bailout for Investors

Rather than leaving the losses among private parties, the government can bail out investors, as it has already done in the automotive, insurance, and banking sectors. A bailout of investors could be direct, such as through government purchases of troubled assets, guarantees of bank obligations, loans, or direct government investments. A bailout could be indirect, through foreclosure mitigation programs that facilitate restructuring troubled mortgages so as to maximize their value. There are many potential variations for how to construct a direct or indirect bailout, but they all aim toward socializing losses to some degree by shifting them from investors to the taxpayers.

Indirect bailouts of investors might involve helping homeowners and minimizing the third-party spillover effects of foreclosures as well, but whether money goes directly to homeowners to pay their mortgages or directly to investors holding the mortgages, the effect is to bail out the investors. A bailout of investors need not make them whole, of course. If investors are expecting 25 cents on the dollar (the price at which many RMBS are trading currently), then a program that gives them a return of 50 cents on the dollar gives them a significant bailout without making them whole. It is also possible for responses to the foreclosure crisis to split the difference between the options of letting losses lie where they may and bailing out investors. Unfortunately, it seems that many investors are dissatisfied with receiving only a partial bailout that would result in substantially higher returns than offered on the market currently because they are hoping that the taxpayers will give them a full bailout and not require them to recognize their losses.

3. Bailout for Homeowners

There has been a great deal of popular concern about bailouts of irresponsible homeowners. These are the people who purchased too much house and lived too large, those who cashed out home equity and squandered it on frivolous items, or those who used home equity to pay off credit card debts or medical bills. The culture of conspicuous consumption is an appropriately troubling issue for many Americans, and it goes far beyond home mortgages into every area

[142] Howell E. Jackson, *Build a Better Bailout*, Christian Science Monitor (Sept. 25, 2008) (online at www.csmonitor.com/2008/0925/p09s02-coop.html); Lauren E. Willis, *Stabilize Home Mortgage Borrowers, and the Financial System Will Follow* (Sept. 24, 2008) (Loyola-Los Angeles Legal Studies Paper No. 2008-28) (online at papers.ssrn.com/sol3/papers.cfm?abstract_id=1273268).

of the consumer economy. The Panel understands and sympathizes with the frustration and resentment of hard-working Americans who played by the rules and lived within their means. It is affirmatively unfair to ask these citizens to shoulder the expense of their neighbors' profligacy, just as it is unfair to ask taxpayers to shoulder the hundreds of billions of dollars of costs to bail out banks and insurance companies that reaped huge profits and took enormous risks and are now in shambles.

In the mortgage market, it is difficult to know where the just and the unjust sit. For every homeowner who used a second mortgage to finance a vacation, how many homeowners were tricked into signing documents they did not understand? How many were steered into more expensive mortgages so that a mortgage broker could pick up a few thousand dollars more? How many were told that they were refinancing so that their payments would fall, only to discover that they had signed on only for a teaser rate whose expiration would cost them their homes? As mortgage products got more dangerous and the housing market inflated, profligacy and scams traveled the same paths.

While it is tempting to see foreclosure mitigation programs as saving deserving homeowners while potentially rewarding irresponsible homeowners, the alternative is either a direct bailout of investors or letting losses lie where they may. The former may be even less palatable to many Americans, while the latter risks tremendous deadweight economic losses and powerful spillover costs. The enormous losses from the housing bubble can be allocated only one way or the other.

It is also important to acknowledge that neither of the two basic loss allocation options offers homeowners a bailout. Homeowners would not receive a windfall under any of the plans proposed. Under every proposal, if homeowners cannot pay at least the current market value of their homes, they will lose them. There is no proposal to assist homeowners without a source of income or those who bought a house that is simply more expensive than they can afford. They will lose their homes. Instead, the most generous proposals permit families to stay in place and pay the *current market value* for the home—the same way a new purchaser would. This is the result that would occur in a perfectly functioning market; lenders would restructure loans that could perform to market. Government programs that merely correct market failures are not bailouts. Insisting that homeowners make payments that were part of a bargain struck in a different financial universe would bind homeowners in a way that businesses are not bound. It would also turn the sanctity of contract into a social suicide pact with enormous spillover effects on neighbors, on communities, on local governments, and on the entire economy.

4. Moral Hazard and Externalities

a. Moral hazard

Moral hazard is an important issue for any foreclosure mitigation plan to address. Moral hazard arises when persons or institutions do not bear the full consequences of their actions, as they may act less carefully than otherwise. To the extent that homeowners or lenders are shielded from the consequences of ill-advised mortgages, it rewards past mistakes, while it sets a precedent that may encourage excessive risk-taking in the future.

Moral hazard concerns exist for both homeowners and lenders (including MBS investors). To the extent that government foreclosure mitigation efforts relieve homeowners who entered into poorly-considered mortgages, either out of failure to undertake proper diligence, unwarranted financial optimism, or outright borrower fraud, a moral hazard concern is created. Similarly, a moral hazard concern would exist with any reduction in negative equity for homeowners who engaged in cash out refinancings that tapped out their home equity, leaving them vulnerable to ending up in a negative equity position.

Moral hazard concerns also exist for lenders and investors. To the extent that government foreclosure mitigation efforts spare lenders and investors from losses that they would have otherwise incurred because of poorly underwritten loans, it rewards reckless past lending and encourages future irresponsibility. The originate-to-distribute lending system allowed lenders to “cash out” too, by selling securitized loans to capital market investors, taking the profits and running before the losses became apparent. Many of these lenders purchased the securitized loans themselves without due diligence or, worse, knowing that the assets were built on an unsustainable model. Relieving these lenders from losses on the MBS they purchased would shield them from the consequences of their actions.

Yet it is important to remember that moral hazard concerns exist only when homeowners or lenders do not bear the consequences of their actions. When a mortgage ends up in distress due to factors over which the homeowner or lender had no control, there is no moral hazard issue. The risks of complex, exotic mortgage products were not always properly explained to homeowners. Brokers and lenders encouraged homeowners to take out loans that they knew would become unaffordable by pushing low teaser rates and the promise of refinancing at the end of the teaser period. Other homeowners were fraudulently placed into mortgages that they could not afford. Likewise, many homeowners have found themselves deeply underwater because of the fall in housing prices, fueled in part by foreclosures. And no fault can be found with homeowners who find their income impaired because of unemployment due to a general economic turndown, illness, divorce, or death.

Similarly, lenders and investors who conducted proper diligence and sold safe mortgage products, such as traditional fixed-rate, fully-amortizing conventional loans, cannot be faulted for mortgage defaults which were not predictable and over which they had no control. These lenders and investors have been hurt by the downward spiral of housing prices fueled in part by *other* lenders’ and investors’ irresponsible lending and by *other* mortgagors’ irresponsible borrowing, as well as general economic factors.

b. Contagion fires

There is an important exception to moral hazard, one for so-called "contagion fires."[143] The contagion fire exception holds that when third parties bear the costs of ill-advised decisions, moral hazard concerns should give way to action. For example, when the fire department rescues people who cause fires by smoking in bed, it creates a moral hazard, because the smokers do not have to face the full consequences of their actions. But if there were no government intervention, the fires could easily spread and injure innocent neighbors.

While the actions of some homeowners and lenders and investors have proven irresponsible and troubling, the current foreclosure crisis bears many of the marks of a "contagion fire" that counsels for intervention. Foreclosures have tremendous third-party costs, as discussed, *supra*, in Part I. Like a contagion fire, a foreclosure can damage neighboring properties by depressing neighbors' property values.[144] In so doing, they depress property tax revenues that must be made up with higher tax rates or decreased services.[145] Foreclosures spur crime, fires and neighborhood blight.[146]

Foreclosures are also contributing to continued financial market instability. So long as they continue at unpredictably high levels, mortgage-backed securities and derivatives products will remain toxic, difficult to value and unattractive in any portfolio. These impaired assets, in turn, make the solvency of many financial institutions suspect. These third-party costs of foreclosures are not always apparent because they are not directly imposed, but they are real and very costly nonetheless, and they offset much of the moral hazard concerns associated with foreclosure mitigation efforts.

Ideally, a foreclosure mitigation program would be able to sort through borrowers and lenders, to help those honest but unfortunate ones who acted responsibly and to deny assistance to those who behaved strategically. Sorting between responsible and irresponsible borrowers and lenders is an inherently difficult process that is complicated by the inevitable trade-off between speed and precision. Foreclosure mitigation can be done slowly and precisely on an individualized basis or quickly through wholesale measures. While precision is desirable, time is also of the essence. The longer the foreclosure crisis drags on, the more injury is imposed on responsible homeowners and lenders and the longer and deeper the financial crisis will be.

Finally, there is no escaping the fact that there are serious losses in the mortgage market. Currently, those losses are allocated to homeowners, who lose their homes and any equity they have in them, and to mortgage lenders and their investors. There will be a good number of mortgages that cannot successfully be restructured on any reasonable economic terms. These include many investor-owned properties. For these mortgages, foreclosure is the only likely outcome.

[143] Lawrence Summers, *Beware Moral Hazard Fundamentalists*, Financial Times (Sept. 23, 2007).

[144] *See* Immergluck and Smith, *supra* note 22.

[145] *See, e.g.*, Johnston, *supra* note 23; Global Insight, *supra* note 23.

[146] *See* Immergluck and Smith, *supra* note 25; Apgar and Duda, *supra* note 25; Apgar et al. *supra* note 26.

But for foreclosures that can be averted on reasonable economic terms, loan restructuring inevitably involves some level of losses and an allocation of those losses. The distributional issues involved in the loss allocation are ultimately political questions. To be convincing, however, the answer must be clearly articulated and must relate to the risks that parties willingly and knowingly assumed and what the parties could expect to receive absent a foreclosure mitigation program. Some have suggested that attempts to deal with negative equity by mandating principal write down could be paired with plans for equity sharing plans, so that the distributional consequences are mirrored both as to losses and as to future gains. When businesses restructure loans, they are not required to share any future appreciation, which means this restriction would be imposed only on homeowners.

As Chart 10 shows, negative equity is the single best indicator that a property is likely to enter foreclosure, and the downward pressure on home prices from foreclosures begets more negative equity, which in turn begets more foreclosures. As Chart 12 shows, likelihood of default corresponds very strongly with loan-to-value ratios—the more deeply underwater a property is, the more likely a default and a foreclosure are. The problem of contagion fires is real—our neighbors' houses are on fire with foreclosures, and the fire is spreading to ours. In these circumstances, we should be concerned with putting out the fire, not questioning our neighbor's past financial judgments.

B. FORECLOSURE MORATORIUM

While the Panel does not make a specific recommendation, another policy option for consideration is a foreclosure moratorium. During the foreclosure crisis of the Great Depression, many states implemented foreclosure moratoria or took other steps to add delay to the foreclosure process.[147] These moratoria were upheld by the Supreme Court of the United States.[148] In the current crisis, a few states have changed their foreclosure laws to delay the process.[149] There have also been proposals for a federal foreclosure moratorium or other measures to slow down foreclosures.[150] The *Wash-*

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[147] D.P.K., Comment, *Constitutional Law—Mortgage Foreclosure Moratorium Statutes*, 32 University of Michigan Law Review, at 71 (1933) (noting that, in 1933, twenty-one states enacted legislation that functioned as foreclosure moratoria). Depression-era foreclosure-moratorium statutes seem to have either extended the period of redemption post-foreclosure, prohibited foreclosures unless the sale price was at some minimum percentage of property appraisal, or granted state courts the power to stay foreclosures. *Id*.

[148] *Home Building & Loan Association v. Blaisdell*, 290 U.S. 398, 437 (1934) (upholding Depression-era Minnesota foreclosure moratorium in face of contracts-clause challenge, and noting that economic conditions of the Depression "may justify the exercise of its continuing and dominant protective power notwithstanding interference with contracts").

[149] Cal. Civ. Code, at §§ 2923.5-6 (West 2008) (imposing delay and a net present value maximization requirement); Mass. Gen. Laws, at ch. 244, § 35A(a) (2008) (imposing ninety day pre-foreclosure cure period); Md. Code Ann., Real Prop., at §§ 3-104.1, 7-105.1 (LexisNexis 2008) (requiring post-default delay and specific form of service for foreclosure actions).

[150] *See, e.g.*, Home Retention and Economic Stabilization Act of 2008, H.R. 6076, 110th Cong., at § 128A(a)(2) (2008) (providing for deferral of foreclosure up to 270 days if, *inter alia*, minimum payments were made); Minnesota Subprime Foreclosure Deferment Act of 2008, H.F. 3612, 2008 Leg., 85th Sess. (Minn. 2008) (providing for foreclosure deferral up to one year if, *inter alia*, minimum payments were made) (online at www.revisor.leg.state.mn.us/bin/getbill.php?number=HF3612&session=ls85&version=list&session_number= 08session_year0); Senator Hillary Clinton, *Details on Senator Clinton's Plan to Protect American Homeowners* (Mar. 24, 2008) (online at 2008central.net/2008/03/24/clinton-press-release-clinton-calls-for-bold-action-to-halt-housing-crisis).

ington Post praised Maryland for passing "some of the nation's most ambitious legislation" in the wake of the foreclosure crisis, including foreclosure timetable extensions and a variety of other reforms.[151] Additionally, some local law enforcement officials charged with overseeing the foreclosure process, such as the Sheriffs of Cook County, Illinois and Philadelphia County, Pennsylvania, have refused to conduct foreclosure auctions or evictions.[152] By and large, however, states have not elected to change their laws to slow the foreclosure process.

There are three reasons to consider implementing steps to slow down the foreclosure process. First, delay could facilitate loan workouts by making the foreclosure process more costly for servicers and lenders. Delay means that lenders must carry non-performing loans on their books longer. Unless the property sells for more than the principal balance due, the lender will have, at best, a hard-to-collect, unsecured deficiency claim for the interest that accrued between the time the foreclosure was commenced and completed, and if the loan is non-recourse, then the lender will not even have a deficiency judgment. For servicers, delay imposes costs too because servicers must advance delinquent payments to MBS investors out of pocket. These advances are reimbursed off the top of foreclosure sale or REO sale proceeds, which reduces servicers' incentive to sell foreclosed and REO properties for top dollar, but the reimbursement does not include the time value of the money, which can be considerable if a foreclosure takes 18–24 months.

Second, to the extent that new foreclosure mitigation programs take time to implement, delay would allow the programs to help more homeowners. Thus, a foreclosure moratorium or other delay in the foreclosure process could be used to smooth the transition to a new foreclosure mitigation program.

Third, delay could also help ease some of the servicer capacity concerns, discussed *infra* section III. It is important to recognize that foreclosure moratoria or other delays in the foreclosure process need not be across-the-board solutions that apply to all homeowners. A foreclosure moratorium could be targeted to specific classes or loans or borrowers. For example, a targeted foreclosure moratorium could be used to facilitate servicer triage and ease capacity problems. To utilize servicer capacity with maximum efficiency, it is necessary to have a streamlined process for sorting and triaging modification requests. Many servicers have their own triaging methods, but a centralized triage system that would sort or pre-qualify homeowners for modifications might help ease servicer capacity issues, and could possibly be combined with a government outreach program. A prequalification program could be combined with a moratorium on foreclosures on prequalified loans until a good faith effort has been made to modify the loan. Government outreach would also allow servicers to focus resources on modification programs.

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[151] National Governors Association, Center for Best Practices, *State-by-State Listing of Actions to Tackle Foreclosures* (Feb. 22, 2009); Philip Rucker, *Sweeping Bills Passed to Help Homeowners*, Washington Post (Apr. 3, 2008).

[152] Ofelia Casillas and Azam Ahmed, *Sheriff: I Will Stop Enforcing Evictions*, Chicago Tribune (Oct. 9, 2008); Jeff Blumenthal, *Moratorium on Sheriff's Foreclosure Sales Draws Debate*, Philadelphia Business Journal (Apr. 4, 2008) (online at philadelphia.bizjournals.com/philadelphia/stories/2008/04/07/story10.html).

To the extent that delay from a *de facto* or *de jure* foreclosure moratorium is positive, it would function much like the current bankruptcy system: the automatic stay stops foreclosure proceedings, but unless the homeowner can cure and reinstate the mortgage, the stay will be lifted.[153] In other words, a foreclosure moratorium is only a temporary solution. The real problem of modifying the mortgage has been pushed down the line to be solved elsewhere—or not at all.

Any consideration of a foreclosure moratorium should be mindful, however, of the potential costs. It is possible that delay might merely create a greater backlog of modification requests and place greater strains on servicer capacity. Delay could also affect future mortgage-credit availability and cost.[154] Delay could prevent some economically efficient foreclosures.

Again, this raises the question of whether the economic efficiency of foreclosures should be viewed in the context of individual foreclosures or in the context of the macroeconomic impact of widespread foreclosures. If the former, then caution should be exercised about foreclosure moratoria and other forms of delay to the extent it prevents efficient foreclosures. But if the latter is the proper view, then it may well be that some individually efficient foreclosures should nonetheless be prevented in order to mitigate the macroeconomic impact of mass foreclosures.

VI. THE HOMEOWNER AFFORDABILITY AND STABILITY PLAN

A. DESCRIPTION

On February 18, 2009, President Obama announced the Homeowner Affordability and Stability Plan (the "Plan"), a proposal to prevent unnecessary foreclosures and to strengthen affected communities. The Panel is encouraged with the renewed emphasis on foreclosure mitigation. The financial crisis facing the nation cannot be resolved without effectively addressing the underlying problem of foreclosures.

The Administration released additional guidelines for the Plan on March 4, as this report was prepared for publication. Because some of the issues raised by the Plan may be addressed in these guidelines, the Panel will defer our follow-up questions until a review of the Plan guidelines has been completed. The Panel will promptly pursue any outstanding issues with the Treasury Department and will keep Congress and the American people advised of its ongoing evaluation of the Administration's Plan.

The Plan as initially described involves three main parts.

1. Refinancings

In the first part, borrowers with mortgages owned or guaranteed by Fannie Mae and Freddie Mac, estimated to be between one-third and half of all mortgages, will be able to refinance their mortgages to current low interest rates with Fannie Mae or Freddie

[153] 11 U.S.C. §§ 362(d), 1322(b)(5), 1322(c).
[154] Karen M. Pence, *Foreclosing on Opportunity: State Laws and Mortgage Credit*, Review of Economics and Statistics, at 180 (2006) (online at works.bepress.com/cgi/viewcontent.cgi?article=1001&context=karen__pence).

Mac. Refinancing will be authorized even if the ratio of the loan to the current market value of the home would be more than 80 percent, up to 105 percent. The Administration estimates that this will provide expanded access to refinancing and affordable payments for four to five million responsible homeowners. These refinancings will not be available to speculators, and will target support to working homeowners who have made every effort to remain current on their mortgages.

2. Modifications

The second part of the Plan is targeted at borrowers with high mortgage debt to current income, or whose mortgage is greater than the current value of the home, particularly subprime borrowers whose loans are held in private portfolios. The scope of the modification program is comprehensive, and includes early intervention for borrowers who are still current but are at risk of imminent default. This program will encourage lenders, investors and servicers to modify the mortgage to a more affordable rate.

The Administration projects that three to four million homeowners at risk of default would be helped by this aspect of the Plan, which involves the commitment of $75 billion in government funds. All institutions receiving Financial Stability Plan financial assistance going forward will be required to engage in loan modification efforts that are consistent with the Treasury guidelines released on March 4. The guidelines will also set new standards for all federally-supervised institutions. Based on the initial announcement of the Plan, the modification aspect will contain the following elements, to be expanded upon in the new guidelines:

• *Debt Ratios*. The lender would be expected to reduce the mortgage interest rate to an affordable level where front end DTI would be 38 percent. Thereafter, the Treasury Department will match further interest rate reductions on a dollar-for-dollar basis to a DTI of 31 percent. The Treasury would not subsidize interest rates below 2 percent. Lenders and servicers could reduce principal rather than interest and would receive the same matching funds that would have been available for an interest rate reduction.

• *Counseling*. If the borrower had a back-end debt ratio of 55 percent or more, he or she must enter a debt counseling program.

• *Incentives*. There are a number of incentives to encourage program participation and a focus on successful outcomes. First, servicers will receive an up-front fee of $1,000 for each modification. Second, servicers will receive “pay for success” fees as long as the borrower stays current on the loan. This fee will be paid monthly, up to $1,000 per year for three years. Borrowers will receive a monthly balance reduction up to $1,000 per year for five years, as long as they stay current on their payments. There will be an incentive payment of $1,500 to the mortgage holder and $500 to the servicer for modifications made while the loan is still current. Finally, incentive payments will be available to extinguish second liens.

• *Guarantees*. The Treasury Department will also provide $10 billion for the creation of a home price decline reserve fund. In this partial guarantee initiative, holders of modified mortgages under the Plan would be provided with insurance payments that could be used as reserves in the event that home prices fall and associated losses increase. The payments would be linked to declines in the home price index. The goal is to discourage lenders and servicers from pursuing foreclosure at the present due to weakening home prices.

• *Bankruptcy*. The Plan contains a narrow amendment to the bankruptcy laws to provide *in terrorem* encouragement for modifications. Under such an amendment, bankruptcy judges would have the authority to modify to a limited extent mortgages written in the past few years where the size of the loan is within the Fannie Mae/Freddie Mac conforming loan limits. The judge would be allowed to treat the amount of the mortgage loan in excess of the current value of the home as unsecured, and to develop an affordable repayment plan for the homeowner with respect to the balance. As a condition to receiving this reduction, the homeowner must first have asked the mortgage lender or servicer for a modification and certify to the judge that he or she has complied with reasonable requests from the lender or servicer to provide information about current income and expenses.

• *FHA and Housing Support*. The Plan includes enhancements to Hope for Homeowners, the existing FHA refinance program for troubled borrowers. Fees for participation will be reduced, and other program parameters such as debt ratios for qualification, will be expanded. Additionally, to address the community impact of foreclosures, HUD will provide $2 billion in competitive Neighborhood Stabilization Program grants and $1.5 billion in assistance to displaced renters.

The lender or servicer would have to keep the modified payment in place for five years. Thereafter, the rate could be increased gradually to the GSE conforming rate in place at the time of the modification. Loan modification would only be expected if the net cost of the reduction would be less than the net cost of a foreclosure.

3. Supporting Low Mortgage Interest Rates

A third part of the Plan focuses on supporting low mortgage interest rates by strengthening confidence in Fannie Mae and Freddie Mac. Using funds that Congress already authorized apart from the TARP, the Treasury Department will increase its purchase of preferred stock in these government-sponsored entities from $100 billion to $200 billion each. Additionally, the size of the GSEs' retained mortgage portfolios will be increased by $50 billion to $900 billion. The Treasury Department will also continue to purchase Fannie Mae and Freddie Mac mortgage-backed securities to provide liquidity and further instill market confidence. Collectively, this package of support to the GSEs is intended to support low mortgage interest rates and thereby provide more affordable payments to homeowners.

B. HOW DOES THE PLAN MEASURE UP AGAINST THE CHECKLIST?

Many of the details of the Homeowner Affordability and Stability Plan are scheduled to be announced on March 4, just two days before the Panel's March report. Consequently, the Panel will not be able to perform an assessment of the plan before the publication of the March report. Based on the Plan's initial term sheet to date, however, many of the Plan's elements address the major impediments to successful foreclosure mitigation and other recommendations that are highlighted in this report and specifically included in the checklist.

1. Affordability

The centerpiece of the Plan is encouraging more affordable mortgages where doing so would result in greater net present value to the mortgage lender or owner than a foreclosure. The GSE Plan would significantly reduce interest rates, which should result in significantly lower mortgage payments for certain eligible homeowners. The Loan Mod Plan will result in a borrower's front-end DTI ratio being reduced to 31 percent for eligible homeowners. Although the Loan Mod Plan measures affordability using front-end DTI, it would collect information on back-end DTI and a borrower with a back-end DTI of 55 percent or higher would have to agree to credit counseling.

2. Negative Equity

The Plan does not deal with mortgages that substantially exceed the value of the home. It allows homeowners with mortgages guaranteed by Fannie Mae or Freddie Mac to refinance to a lower rate only if the amount of the mortgage does not exceed 105 percent of the current appraised value.[155] In areas in which property values have dropped significantly, this limitation may prove highly constraining. In an area that has seen a 40 percent drop in home values, for example, a home that had been purchased three years ago for $200,000, might easily have a mortgage of $160,000 or more. But if current property values place the home at $120,000, the homeowner is not eligible for modification. In effect, the homeowners most at risk for foreclosure because of negative equity will be shut out of the program.

Additionally, in order to provide an incentive to lenders who are reluctant to modify mortgages because they fear further real estate price declines, the Administration and the FDIC have developed an insurance fund of up to $10 billion that will provide partial guarantees against further drops in real estate values by making payments to the lender based on declines in a home price index. The partial guarantee may mitigate the incentive for lenders to foreclose when prices are falling, creating negative equity.

[155] The Panel is concerned whether the GSEs have the statutory authority to carry out the refinancings called for by the Plan. The GSE cannot generally own or guarantee mortgages originated at above 80 percent LTV absent mortgage insurance. It is unclear whether existing insurance coverage would continue on refinanced loans or whether new insurance could be placed on the refinanced loans. The Panel inquired with FHFA on the matter and was sent a copy of an FHFA letter to the Executive Vice President of Mortgage Insurance Companies of America that did not resolve the matter or respond to all of the Panel's inquiries. The Panel intends to address this issue in future reports.

To the extent that the Plan also includes bankruptcy modification, the problem of negative equity could be addressed. Because the proposed amendment would give bankruptcy judges the power to write mortgages down to 100 percent of the value of the home, negative equity would disappear. As noted earlier, not all homeowners would be eligible for bankruptcy, and not all of those who are eligible would be willing to file. Nonetheless, the combination of the bankruptcy amendment and the Plan's mortgage modification options would help address negative equity.

3. Junior Mortgages

While the efforts to help homeowners are encouraging, it is important to note that the plan does not fully deal with second mortgages. While incentive payments will be available to extinguish junior mortgages when primary loans are modified, it is not clear whether the payments will be a sufficient enticement for the lien holder to agree. The high rate of second mortgages at the time of loan origination, combined with the unknown number of second mortgages added after the loans were completed, particularly by families under financial stress, suggest that the number of homes in foreclosure that are encumbered by two mortgages may be substantial. Those second mortgages must be paid, in full and on time, or the home will remain subject to foreclosure, this time by the holder of the second mortgage. These second mortgages can substantially impair affordability, undermining the effects of modifying first mortgages.

Further, even if the first mortgage can be refinanced because it fits within the Plan's 105 percent limitation, the failure to deal with the second mortgage may mean that the home continues to carry substantial negative equity. If the refinancing does not address the negative equity, then its benefits in preventing foreclosure may be sharply limited.

4. Dealing with Pooling and Servicing Agreements

The Plan does not deal with pooling and servicing agreements. There is no safe harbor for servicers of securitization pools who modify mortgages despite restrictive pool and servicing agreements. By providing uniform guidelines for loan modifications, the plan helps to establish a standard of reasonable conduct. Moreover, by paying mortgage holders $1,500 for each modification completed before a loan becomes delinquent, the servicer is better able to demonstrate that the net present value of a modification exceeds the value of foreclosure. Whether these modest adjustments will be adequate to deal with the impact of restrictive PSA agreements, and whether they will be adequate to offset the fear of mortgage servicers that they may incur legal liability if they modify securitized mortgages, is an open question.

5. Servicers Incentives

Under the Plan, servicers would receive a number of inducements to participate in the program. They will receive an up-front fee of $1,000 for each modification, with an additional $500 for each modification made on current loans. In addition, they will be eligible for "pay for success" fees so long as the borrower remains current on the loan. This fee will be paid monthly, up to $1,000 per year for three years. To address servicer or investor fears about the high re-default rates on previous modification, the Administration Plan adds incentives for borrowers to stay current. Borrowers will receive a monthly balance reduction up to $1,000 per year for five years, as long as they stay current on their payments. Again, whether these incentives are adequate to offset the current financial advantages to pursuing foreclosures remains an open question.

6. Borrower Outreach

The Plan also addresses the serious outreach problems facing any loan modification program. First, HUD will make unspecified funding available for non-profit counseling agencies to improve outreach and communications, although there is an absence of direct federal communication to homeowners. Second, it would avoid some of the difficulties in communication between servicers and borrowers by paying incentive fees of $1,500 to the mortgage holder and $500 to the servicer for modifications made while the loan is still current.

7. Capacity

To the extent that the Plan promotes more outreach and is effective, there will be a surge of borrowers seeking modifications and further straining capacity. The incentive fees might be used to help address some of this need, offsetting some of the capacity strain. On the other hand, to the extent that the incentive fees are consumed in greater operational costs, the power of the incentive declines, leaving servicers to continue their current practices of pursuing foreclosures.

8. Industry Participation

The Plan encourages industry participation through a combination of carrots and sticks. The various incentive and success fees should encourage lender participation. However, it remains to be seen whether the levels are sufficient to compel widespread servicer and lender participation, especially given the investments they will need to make to handle the expected business surge. The bankruptcy provisions could provide an incentive for lenders to engage in stronger foreclosure mitigation efforts. Treasury also announced that going forward, all financial institutions receiving assistance under TARP will be required to engage in loan modification efforts consistent with new Treasury guidelines. It is likely that this provision will provide the strongest incentive for lender participation in the near future.

Checklist for Mortgage Mitigation Program
Will the plan result in modifications that create affordable monthly payments?
Does the plan deal with negative equity?
Does the plan address junior mortgages?

Does the plan overcome obstacles in existing pooling and servicing agreements that may prevent modifications?
Does the plan counteract mortgage servicer incentives not to engage in modifications?
Does the plan provide adequate outreach to homeowners?
Can the plan be scaled up quickly to deal with millions of mortgages?
Will the plan have widespread participation by lenders and servicers?

In summary, the Plan focuses on payment affordability through an expanded refinancing program involving Fannie Mae and Freddie Mac and a modification program targeting a wide range of borrowers at risk. The Plan also includes financial incentives to encourage both lenders and borrowers to strive for sustainable outcomes. It also encourages servicers to modify mortgages for at risk homeowners before they are delinquent. There are additional incentives available to extinguish junior mortgages. The Administration estimates that the Plan's expanded refinancing opportunities for Fannie Mae and Freddie Mac mortgages could assist four to five million responsible homeowners, some of whom otherwise would likely have ended up in foreclosure.

While these projections are encouraging, the Panel has additional areas of concern that are not addressed in the original announcement of the Plan. In particular, the Plan does not include a safe harbor for servicers operating under pooling and servicing agreements to address the potential litigation risk that may be an impediment to voluntary modifications. It is also important that the Plan more fully address the contributory role of second mortgages in the foreclosure process, both as it affects affordability and as it increases the amount of negative equity. And while the modification aspects of the Plan will be mandatory for banks receiving TARP funds going forward, it is unclear how the federal regulators will enforce these new standards industry-wide to reach the needed level of participation. The Plan also supports permitting bankruptcy judges to restructure underwater mortgages in certain situations. Such statutory changes would expand the impact of the Plan. Without the bankruptcy piece, however, the Plan does not deal with mortgages that substantially exceed the value of the home, which could limit the relief it provides in parts of the country that have experienced the greatest price declines.

The Panel will continue to review the guidance issued by Treasury as this report went to publication and will pursue any outstanding issues with the Treasury Department and will keep Congress and the American people advised of its ongoing evaluation of the Administration's Plan.

C. DATA COLLECTION

The Plan addresses collection of data about modifications undertaken as part of the Plan. Every servicer participating in the program will be required to report standardized loan-level data on modifications, borrower and property characteristics, and outcomes. The data will be pooled so the government and private sector can measure success and make changes where needed. This is an important first step in the type of national mortgage loan performance data reporting requirement envisioned by the Panel.

D. CONCLUSION

The financial crisis we battle today has its origins in the collapse of the housing market. Since its establishment under the EESA and appointment by the Congress, the Congressional Oversight Panel has been among the many voices urging Treasury to offer a serious plan to address the foreclosure crisis. Treasury's initial focus on financial institutions and credit markets were essential steps towards recovery, but these programs did not address the problems facing homeowners directly. Taking on the foreclosure crisis addresses the root causes of the financial market downturn. With the release of the Obama Administration's foreclosure reduction plan, the Panel will continue to examine the federal government's efforts to revive the housing market.

This report, and the factors it identifies as essential to any sustainable foreclosure reduction, will serve as the Panel's framework for evaluating the success of the Administration's efforts. The challenges of crafting an effective and fair foreclosure prevention plan are daunting. But this is a task from which the Administration and Congress cannot shirk.

SECTION TWO: ADDITIONAL VIEWS

I. REP. JEB HENSARLING

A. INTRODUCTION

The topic of the March report of the Congressional Oversight Panel (COP) is an investigation of foreclosure mitigation efforts. This topic is not only timely given the recent TARP initiatives announced by the Obama Administration, but it is also one of the several areas explicitly mentioned in the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110–343, which states that the regular reports of the COP shall include the "effectiveness of foreclosure mitigation efforts." To that end, I believe that this month's report is an appropriate exercise and I welcome this opportunity to review what is being done to help address the large number of foreclosures that far too many borrowers are currently facing.

There is no question that we are witnessing an explosion in the number of foreclosures in our economy. According to a January report by RealtyTrac, an online foreclosure listing firm, more than 2.3 million properties were subject to foreclosure filings in 2008, an increase of more than 80 percent from 2007 levels.[156] Separately, the Mortgage Bankers Association's (MBA) National Delinquency Survey for the third quarter of 2008 found that the percentage of loans in the process of foreclosure—2.97 percent—set a new record, and the seasonally-adjusted total delinquency rate—6.99 percent—was the highest recorded in the history of the MBA survey.[157] For the millions of people facing foreclosure and the untold number of others who might be on the brink of housing trouble, the economic hardship and worry associated with potentially losing one's home are real, tangible, and pressing problems worthy of attention.

Any investigation into the effectiveness of foreclosure mitigation efforts should start by identifying all the factors that contributed to its cause, the borrowers who are directly affected, the relative costs and benefits of government-subsidized foreclosure mitigation efforts, and the possible policy alternatives that could help provide relief to borrowers in a fair, responsible, and taxpayer-friendly way. The answers to these questions will, I believe, help steer policymakers in the correct direction and provide help to those deserving of it, while preventing less deserving actors from benefitting from their own mistakes and ultimately preventing more taxpayer dollars from going to waste.

B. CONTRIBUTING CAUSES

Before we can address the foreclosure problem, we must first understand its cause. In his remarks to a joint session of Congress on February 24, President Obama stated, "it is only by understanding how we arrived at this moment that we'll be able to lift ourselves

[156] RealtyTrac, *Foreclosure Activity Increases 81 Percent in 2008* (Jan. 15, 2009) (online at www.realtytrac.com/ContentManagement/pressrelease.aspx?ChannelID=9&ItemID=5681&accnt=64847).

[157] Mortgage Bankers Association, *Delinquencies Increase, Foreclosure Starts Flat in Latest MBA National Delinquency Survey* (Dec. 5, 2008).

out of this predicament."[158] To that end, I could not agree with the President more.

One of the primary causes of the difficulties that some borrowers are facing has been the general federal objective of enabling and encouraging people to buy homes that were too expensive for them to otherwise afford. In a perfect world, the laws of supply and demand would be the fundamental driver of our mortgage markets, with qualified borrowers having reliable access to suitable mortgage products that best fit their needs. Yet, in reality, the cost of homeownership has in many places so thoroughly outpaced the ability of borrowers to afford a home that the government has chosen to intervene with various initiatives to defray parts of the cost of a mortgage. That intervention has taken many forms—affordable housing programs, federal FHA mortgage insurance, tax credits and deductions, interest rate policies, etc.—as part of a concerted effort to increase homeownership. For almost a decade, those efforts succeeded, pushing homeownership rates steadily up from 1994 through their all-time high in 2004. That increase in demand, in turn, contributed to a corresponding increase in home prices, which rose from the mid-1990s until hitting their peak in 2006. Yet those price increases created a cycle of government intervention—home price appreciation made homes less affordable, which in turn spurred further government efforts to defray more of their cost—and the involvement of the federal government in our housing markets only grew deeper.

Increased government involvement in our housing markets created significant distortions and disruptions. This increased involvement is contrary to the oft-repeated, now disproven claims of proponents of expanded government control of our economy that a "wave" of market deregulation over the last 20 years caused the current crisis. To the contrary, facts indicate that there were at least five key factors which contributed to our situation, at least four of which were a direct result of government involvement. Those four factors—highly accommodative monetary policy by the Federal Reserve, continual federal policies designed to expand home ownership, the congressionally-granted duopoly status of housing GSEs Fannie Mae and Freddie Mac, and an anti-competitive government-sanctioned credit rating oligopoly—are thoroughly discussed in the *Joint Dissenting Views* to the COP's "Special Report On Regulatory Reform" that I offered along with Senator John Sununu, along with a fifth factor (failures throughout the mortgage securitization process that resulted in the abandonment of sound underwriting practices).[159] As such, a thorough recitation of those points here would be redundant. However, a brief review of what I believe to be the two most relevant factors to the foreclosure debate—federal policies designed to expand home ownership and the market manipulations of Fannie and Freddie—may be instructive.

For well over twenty years, federal policy has promoted lending and borrowing to expand homeownership, through incentives such

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[158] The White House, *Remarks of President Barack Obama—Address to Joint Session of Congress* (Feb. 24, 2009) (online at http://www.whitehouse.gov/the__press__office/Remarks-of-President-Barack-Obama-Address-to-Joint-Session-of-Congress).

[159] Congressional Oversight Panel, *Special Report on Regulatory Reform: Modernizing the American Financial Regulatory System: Recommendations for Improving Oversight, Protecting Consumers, and Ensuring Stability*, at 54–89 (Jan. 29, 2009).

as the home mortgage interest tax exclusion, the Federal Housing Administration (FHA), discretionary HUD spending programs, and the infamous Community Reinvestment Act (CRA). CRA is a federal program created to encourage banks to extend credit to "underserved" populations by requiring that banks insured by the federal government "help meet the credit needs of its entire community." As noted in the *Joint Dissenting Views,* CRA has led to an increase in bank lending to low- and moderate-income families by 80 percent. However, to make these loans, banks were encouraged to relax their traditional underwriting practices to achieve and maintain compliance. Those reduced standards led to a surge in non-traditional loan products, particularly adjustable rate subprime and Alt-A loans, which are now largely seen to be risky products. Thus, mandates like CRA ended up becoming a significant contributor to the number of foreclosures that are occurring because they required lending institutions to abandon their traditional underwriting standards in favor of more subjective models to meet their government-mandated CRA obligations.

Perhaps even more important than the impact of federal policy mandates were the unparalleled market distortions of Fannie Mae and Freddie Mac, the two now-failed, trillion-dollar housing GSEs. Fannie and Freddie exploited their congressionally-granted charters to borrow money at discounted rates. They dominated the entire secondary mortgage market, wildly inflated their balance sheets and personally enriched their executives. Because market participants long understood that this government created duopoly was implicitly (and, now, explicitly) backed by the federal government, investors and underwriters chose to believe that if Fannie or Freddie touched something, it was safe, sound, secure, and most importantly "sanctioned" by the government. The results of those misperceptions have had a devastating impact on our entire economy.

Given Fannie and Freddie's market dominance, it should come as little surprise that once they dipped into the subprime and Alt-A markets, lenders quickly followed suit. In 1995, HUD authorized Fannie and Freddie to purchase subprime securities that included loans to low-income borrowers and allowed the GSEs to receive credit for those loans toward their mandatory affordable housing goals. Fannie and Freddie readily complied, and as a result, subprime and near-prime loans jumped from 9 percent of securitized mortgages in 2001 to 40 percent in 2006. In 2004 alone, Fannie and Freddie purchased $175 billion in subprime mortgage securities, which accounted for 44 percent of the market that year. Then, from 2005 through 2007, the two GSEs purchased approximately $1 trillion in subprime and Alt-A loans, and Fannie's acquisitions of mortgages with less than 10-percent down payments almost tripled. As a result, the market share of conventional mortgages dropped from 78.8 percent in 2003 to 50.1 percent by 2007 with a corresponding increase in subprime and Alt-A loans from 10.1 percent to 32.7 percent over the same period. These non-traditional loan products, on which Fannie and Freddie so heavily gambled as their congressional supporters encouraged them to "roll the dice a little bit more," now constitute many of the same non-performing loans which have contributed to our current foreclosure troubles.

C. NECESSARY CONSIDERATIONS IN EVALUATING FORECLOSURE MITIGATION PLANS

In evaluating the effectiveness of a government-subsidized foreclosure mitigation plan, there are several fundamental questions that must be asked. Perhaps the most salient questions are determining who you want to help, why you want to limit help to them, and who you might hurt by doing so. Those considerations are closely linked to questions of the inherent fairness and moral hazard of any government-subsidized foreclosure mitigation plan. For example, it is a fact even admitted by the majority report that some loan modifications are simply not economical and thus some foreclosures are inevitable. Even in the best of times, the MBA's National Delinquency Survey shows that between 4–5 percent of loans become delinquent and 1 percent go into foreclosure.[160] Those unpaid loans likely stem from many reasons including the uncomfortable truth that some people, try as the might, are simply not ready for the responsibility of homeownership. It follows that efforts to keep such individuals in their homes will be a costly losing battle, diverting time, attention, and critical resources away from those who might otherwise be worthy candidates for help. On the other end of the spectrum, policymakers need to determine where to draw the line to stop offering assistance to those who do not actually need it because they have other means at their disposal or the option to resolve their own difficulties without the expenditure of taxpayer funds.

In between the extremes of those who cannot be saved and those who should not be recipients of government-subsidized foreclosure mitigation assistance is a considerably diverse group of borrowers who might be technically eligible for a program but might have made decisions or behaved in ways that would call into question the desirability of expending taxpayer dollars to assist them. While a more thorough discussion of which specific undesirable decisions might merit exclusion is included below, one general characteristic worth considering involves the ability to pay. Without a doubt, in any loan mitigation program there will be some otherwise eligible borrowers who *can* pay their mortgages but who *choose* not to pay them or not to make the difficult decisions to sacrifice on other things because they want to get relief. Sorting this group of unwilling payers out from those who are unable to pay is a fundamental concern that *must* be addressed in every foreclosure mitigation plan. Unfortunately, this concern has been nearly universally omitted from previous government proposals on the subject. Until that concern is resolved, it is my great fear that we will continue to provide a tremendous incentive for borrowers on the bubble to opt not to fix (or, even worse, purposefully exacerbate) their own problems in hopes of gaining government assistance at a time when we ought to enact incentives to encourage the opposite behavior.

A closely related concern to who will receive assistance is the question of how much will that assistance cost. This fundamental concern is excluded from the majority's report. So far, over the last 16 months, the federal government has pledged more than $9 tril-

[160] Mortgage Bankers Association, *Delinquencies Increase, Foreclosure Starts Flat in Latest MBA National Delinquency Survey* (Dec. 5, 2008).

lion to address our economy's credit crisis between new initiatives undertaken by the Federal Reserve, the Treasury Department, the FDIC, and HUD.[161] Those commitments come on top of our existing $10.9 trillion national debt[162] and an estimated 2009 budget deficit of $1.8 trillion.[163] Given the unprecedented economic challenges we are now facing, the American people have an absolute right to be suspicious of the cost of developing new government-subsidized foreclosure mitigation programs. Those that dismiss such concerns as narrow-minded display how disconnected they are from the undeniable hypocrisy of asking hardworking Americans to do more with less while their government continues to run up massive debts that it will not be able to repay without substantial tax increases.

The question of cost is also significant because it helps further define the universe of deserving people to whom assistance could be directed. It should be clear that with an unlimited supply of money, you could prevent any foreclosure for every borrower if you did not care about their worthiness. But, given a limited amount of resources, it becomes critical that you focus your attention on those who are actual priorities and limit those who are less deserving. Budget concerns also raise another question: how much assistance is appropriate to commit to any one borrower? Clearly, with finite resources, the more money you use to help those with large financial needs, the fewer total number of people you can help. For example, the original Hope for Homeowners law limited the size of eligible single-family loans to no more than 132 percent of the 2007 conforming loan limits for Freddie Mac, or roughly $550,000 for most places. According to the U.S. Census Bureau, that amount was well more than double the median national purchase price of $234,991 for a newly constructed home built in the last four years.[164] Accordingly, all things being equal, you would be able to provide the same proportional amount of assistance to more than two borrowers at the median price for every one borrower at the upper limit. Thus, if the goal of a program is to help the maximum number of people possible, then it makes sense to target assistance towards people on the lower end of the income/loan scale; if the goal of a program is to provide the most robust assistance to borrowers, then the reverse would be true.

A further necessary consideration of the effectiveness of government-subsidized foreclosure mitigation plans is how successful they will be in keeping assisted borrowers out of future foreclosure difficulty. Unfortunately, there is strong evidence to suggest that despite recent loan modification efforts at various levels, a significant number of modified borrowers end up back in default anyway, often very quickly. A December 2008 joint report by the Office of the

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[161] Mark Pittman and Bob Ivry, *U.S. Taxpayers Risk $9.7 Trillion on Bailout Programs,* Bloomberg (Feb. 9, 2009) (online at news.yahoo.com/s/bloomberg/20090209/p__bloomberg/agq2b3xegkok).

[162] TreasuryDirect, *The Debt to the Penny and Who Holds It* (online at www.treasurydirect.gov/NP/BPDLogin?application=np) (accessed Mar. 5, 2009).

[163] Republican Caucus, House Committee on the Budget, *The President's Budget for Fiscal Year 2010: the Good, the Bad, and the Ugly* (Feb. 27, 2009) (online at http://www.house.gov/budget__republicans/press/2007/pr20090227potus.pdf).

[164] U.S. Census Bureau, *American Housing Survey National Tables: 2007* (2007) (Table 3–14: Value, Purchase Price, and Source of Down Payment—Owner-Occupied Units) (online at http://www.census.gov/hhes/www/housing/ahs/ahs07/tab3-14.pdf).

Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS) on the state of first lien residential mortgages serviced by national banks and federally regulated thrifts found that loan modifications were "associated with high levels of re-default." The report found that for "loans modified in the first quarter of 2008, more than 37 percent of modified loans were 30 or more days delinquent or in the process of foreclosure after three months [and a]fter six months, that re-default rate was more than 55 percent." [165] For loans modified in second quarter of 2008, the number of 30 or more days delinquent modified loans was even higher, coming in at 40.52 percent.[166] Such results seem to indicate that many of the current recipients of loan modification assistance might either fall into the category of those who have loans that are not economical to modify or those who are simply not ready for the responsibility of homeownership.

D. UNIVERSE OF PEOPLE

As mentioned earlier, there is little doubt that the sheer number of foreclosures we are experiencing is unprecedented in modern times. Caught up in this wave of foreclosures are certainly people who, through little fault of their own actions, now find themselves in distress. These are the borrowers who have suffered what industry professionals refer to as "life events," such as the involuntary loss of a job, the onset of an illness or disability, a divorce, or had some other unexpected hardship that has materially changed their living/earning circumstance. For those individuals, the commitment required for homeownership has shifted from a manageable responsibility to a crushing burden from which they may be powerless to resolve without third-party assistance.

These "life event" affected borrowers are noteworthy because relatively few object to efforts to find achievable solutions for trying to help keep these distressed borrowers in their current residences whenever possible. Similarly, another sympathetic group of distressed borrowers involves people who were legitimate victims of blatant manipulation or outright fraud by unscrupulous lenders who pressured them into homes they could not afford. To many, those legitimate victims are certainly equally deserving of assistance. Of course, such borrowers do have the added burden proving that they were indeed victims of actual wrongdoing. However, they also have a potential remedy of pursuing legal action against fraudulent lenders, an option which is not available to others.

If the universe of individuals in mortgage distress included only borrowers from "life event" and fraud victims groups, the task of crafting an acceptable government-subsidized foreclosure mitigation plan would be much easier. However, the number of individuals in mortgage distress stretches far beyond those groups to include a much larger section of people who, for a wide variety of reasons, are no longer paying their mortgage on time. While certainly not an exhaustive list, that larger group includes:

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[165] Comptroller of the Currency and Office of Thrift Supervision, *OCC and OTS Mortgage Metrics Report: Disclosure of National Bank and Federal Thrift Mortgage Loan Data* (Dec. 2008) (online at files.ots.treas.gov/482028.pdf).
[166] *Id.*

- people who took out large loans to purchase more house than they could have reasonably expected to afford;
- borrowers who lied about their income, occupancy, or committed other instances of mortgage fraud;
- speculators who purchased multiple houses for their expected value appreciation rather than a place to live;
- individuals who decided to select an exotic mortgage loan with fewer upfront costs, lower monthly payments, or reduced documentation requirements;
- borrowers who took advantage of refinance loans to strip much or all of the equity out of their house to finance other purchases;
- those who simply made bad choices by incorrectly gambling on the market or overestimating their readiness for homeownership; and
- borrowers who have made a rational economic decision and, given their particular circumstance, it no longer makes sense to them to continue paying their mortgage.

Borrowers who fall into those categories are much less sympathetic in the eyes of many, and attempting to develop a government-subsidized foreclosure mitigation plan to assist them will inevitably raise significant moral hazard questions for policymakers.

A fundamental measure of the effectiveness of a foreclosure mitigation program is what steps the program has taken to sort those risky borrowers out from their more deserving counterparts to avoid the moral hazard of rewarding people for their bad behavior. Although that risky group might be difficult to quantify, there has been ample anecdotal evidence in the media highlighting the types of risky borrowers who should not be treated in the same way as other, responsible borrowers. For example, a 2006 USA Today story reported on a 24-year-old former website designer in California who bought eight homes in four states with no money down in seven of the eight deals, and then quickly went broke.[167] The Wall Street Journal, in 2007, published an article telling the story of a Detroit woman who refinanced her mortgage with an adjustable rate subprime loan but soon fell into delinquency after she used the proceeds of the new loan to settle old department-store bills, subsidize out-of-work relatives, and pay off some of her back property taxes.[168] A 2008 Bloomberg article featured a 28-year-old self-employed Californian cabinetmaker who took out a mortgage loan with monthly payments of $6,900, and then almost instantly fell behind when his business revenue declined.[169]

There have also been several stories of the rich and famous falling behind on their mortgages, including former Major League Baseball player Jose Canseco,[170] former NBA player Latrell

[167] Noelle Knox, *10 Mistakes That Made Flipping a Flop,* USA Today (Oct. 22, 2006) (online at www.usatoday.com/money/economy/housing/2006-10-22-young-flipper-usat_x.htm).

[168] Mark Whitehouse, *'Subprime' Aftermath: Losing the Family Home,* Wall Street Journal (May 30, 2007) (online at online.wsj.com/article/SB118047548069017647.html).

[169] Kambiz Foroohar, *Vulture Fund Deals With Delinquent Homeowners Lost by Subprime,* Bloomberg (Feb. 28, 2009) (online at www.bloomberg.com/apps/news?pid=20601109&sid=aaKT9Z_X9okg&refer=home).

[170] *Jose Canseco: Former Slugger's Home Foreclosed,* Associated Press (May 5, 2008) (online at archives.chicagotribune.com/2008/may/05/sports/chi-jose-canseco-080505-ht).

Sprewell,[171] pop singers Whitney Houston[172] and Michael Jackson,[173] and even an elected Member of Congress.[174] Although the financial details of each situation may be unique, the fact remains that all of those borrowers probably earned far more than the $50,000 that the Census Bureau has determined was the median annual income for households in 2007.[175] Additionally, according to a 2008 report by the MBA, at least 18 percent of loans in foreclosure in 2007 were for non-owner occupied homes.[176] Separately, the National Association of Realtors in 2008 found that known second home sales accounted for 33 percent of all existing- and new-home sales in the previous year, a figure which was close to historic norms.[177] While the individual needs of the rich and famous and those who own multiple homes might be great, surely this collection of borrowers is not the universe of people on whom we ought to spend limited taxpayer dollars to extend government-subsidized foreclosure mitigation efforts.

Beyond those who made unwise borrowing decisions, attention must be paid to excluding individual borrowers who committed outright fraud in obtaining their mortgages. Many of these loans likely fall into the no-doc/low-doc category of Alt-A loans where borrowers were not required to provide real verification of their income to lenders. According to a February 2009 by the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN), reports of mortgage fraud have increased more than 1,600 percent from 2000 to 2008, and almost doubled since June 2006.[178] Despite heightened concerns and a depressed real estate market, the report found that the total number of suspected mortgage fraud reports filed in 2008 was 62,084, a 44 percent increase over 2007. FinCEN also reports that mortgage loan fraud remained the third most prevalent type of suspicious activity reported in 2008. Given the tremendous potential for fraud, it should be readily apparent to all that preventing taxpayer money from being used to aid these criminal borrowers must be a priority for any government-subsidized foreclosure mitigation plan.

Distinct from a moral hazard question, in any consideration of the effectiveness of a taxpayer-funded foreclosure mitigation program, there is an inherent question of fairness as those who are

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[171] *Federal Marshal Seizes Sprewell's Yacht,* Associated Press (Aug. 22, 2007) (online at http://www.usatoday.com/sports/basketball/2007-08-22-sprewell-yacht__N.htm).

[172] *Houston, We Have A Problem: Whitney's Foreclosure,* Associated Press (Nov. 15, 2006) (online at cbs2.com/local/Whitney.Houston.Mortgage.2.524392.html).

[173] Alex Veiga, *Records: Michael Jackson Late on Payments for Family Home,* Associated Press (Feb. 28, 2008) (online at www.usatoday.com/life/people/2008-02-28-jackson-home__N.htm?csp=34).

[174] *Report: Congresswoman's Homes Defaulted 6 Times,* Associated Press (May 31, 2008) (online at cbs2.com/politics/Laura.Richardson.Default.2.737694.html).

[175] U.S. Census Bureau, *Household Income Rises, Poverty Rate Unchanged, Number of Uninsured Down* (Aug. 26, 2008) (online at www.census.gov/Press-Release/www/releases/archives/income__wealth/012528.html).

[176] Jay Brinkmann, Mortgage Bankers Association, *An Examination Of Mortgage Foreclosures, Modifications, Repayment Plans and Other Loss Mitigation Activities in the Third Quarter of 2007* (Jan. 2008) (online at www.mortgagebankers.org/files/News/InternalResource/59454__LoanModificationsSurvey.pdf)

[177] National Association of Realtors, *Second-Home Sales Accounted for One-Third of Transactions in 2007* (Mar. 28, 2008) (online at www.realtor.org/press__room/news__releases/2008/03/second__home__sales__one__third__of__2007__transactions).

[178] Financial Crimes Enforcement Network, *supra* note 45; Financial Crimes Enforcement Network, *Mortgage Loan Fraud: An Update of Trends Based Upon an Analysis of Suspicious Activity Reports* (Apr. 2008) (online at www.fincen.gov/news__room/rp/files/MortgageLoanFraudSARAssessment.pdf)

not facing mortgage trouble are asked to subsidize those who are facing trouble. After all, why should a person be forced to pay for their neighbor's mortgages when he or she is struggling to pay his or her own mortgages and other bills? To many people, this question is the most important aspect of the public policy debate. On this point, despite the persistent externality admonitions of some economists, it is difficult to dismiss the concerns of those members of the ultimate "no fault of their own" demographic.

The evidence supporting the potential unfairness of current government-subsidized efforts is compelling. According to recent Census Bureau statistics, in 2007 there were roughly 110,692,000 occupied housing units in the United States.[179] Of those units, approximately 35,045,000 were occupied by people who were renters.[180] The remaining 75,647,000 housing units were occupied by people who were to some degree homeowners, both those with active mortgages and those who owned their homes outright with no mortgage. The latter group, those with no mortgage, totaled approximately 24,885,000.[181] Thus, the aggregate total of those who either rent their housing or own their homes outright is roughly 59,930,000 people, or more than 54 percent of the entire occupied housing unit market. That majority group, by definition, cannot be late on a mortgage payment, yet as taxpayers they are being asked to subsidize, at least in part, the mortgages of some of the minority 46 percent of the population that has an active mortgage.

The numbers become even more pronounced when you factor in which people from the active mortgage group are actually currently in delinquency. According to the MBA's National Delinquency Survey for the third quarter of 2008, which includes data on more than 85 percent of the active mortgages on the market, the non-seasonally adjusted total of loans beyond 30-days past due was percent 7.29, and the percent of loans in foreclosure was 2.97, for a combined total of 10.26 percent of loans not being paid on time.[182] Assuming that rate was consistent for all of the 50,762,000 active mortgages projected by the Census Bureau's statistics, that would mean that there were some 5,208,000 loans which were currently not being paid on-time versus 45,554,000 loans which are being paid on-time. Adding together the number of mortgages being paid on-time with the total of those who rent or own their homes outright, you get a total of 105,484,000 housing units that are not delinquent on a mortgage, or 95.3 percent of the 110,692,000 occupied housing units in the United States.

In light of these statistics, an essential public policy question that must be asked regarding the effectiveness of any taxpayer-subsidized foreclosure mitigation program is *"Is it fair to expect 19 out of every 20 people to pay more in taxes to help the 20th person maintain their current residence?"* Although that question is subject to individual interpretation, there is an ever-increasing body of

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[179] U.S. Census Bureau, *American Housing Survey National Tables: 2007* (2007) (Table 2-1: Introductory Characteristics—Occupied Units) (online at www.census.gov/hhes/www/housing/ahs/ahs07/tab2-1.pdf).

[180] *Id.*

[181] U.S. Census Bureau, *American Housing Survey National Tables: 2007* (2007) (Table 3-15: Mortgage Characteristics—Owner-Occupied Units) (online at www.census.gov/hhes/www/housing/ahs/ahs07/tab3-15.pdf).

[182] Mortgage Bankers Association, *Delinquencies Increase, Foreclosure Starts Flat in Latest MBA National Delinquency Survey* (Dec. 5, 2008).

popular sentiment that such a trade-off is indeed not fair. Given the massive direct taxpayer costs that have already been incurred through TARP and the potential costs that could be incurred through the assorted credit facilities and monetary policy actions of the Federal Reserve, I believe that it is difficult to justify asking those 19 out of 20 Americans to shoulder an even greater financial burden on yet another government foreclosure mitigation program that might not work.

Moreover, while the effect of the underlying credit crisis has been nationwide, statistics show that the bulk of the foreclosure wave has been concentrated in a few places where, admittedly, the problem is robust. According to the aforementioned January RealtyTrac report, nearly half (47.4 percent) of the 2.3 million properties with foreclosure filings in 2008 were concentrated in exactly four states: Nevada, Florida, Arizona, and California.[183] In fact, 15 of the top 16 and 18 of the top 22 metropolitan areas with the highest foreclosure rates were located in those four states. If you add to those four states the states with the five next highest foreclosure rates—Colorado, Michigan, Ohio, Georgia, and Illinois—the top nine foreclosure rate states contain more than two-thirds (66.9 percent) of all the properties with foreclosure filings in the country. Additionally, in its third quarter 2008 National Delinquency Survey, the MBA found that there were only nine total states which had rates of foreclosure starts above the national average (Nevada, Florida, Arizona, California, Michigan, Rhode Island, Illinois, Indiana and Ohio), while the remaining 41 states were all below the national average.[184] Clearly, these data show that the foreclosure problem is very real, but it is also very concentrated in select areas, so much so that a few states are skewing the statistical average for the preponderance of the other states. This fact must be taken into consideration when considering the effectiveness of any government-subsidized foreclosure mitigation effort.

E. VOLUNTARY MITIGATION ALTERNATIVES

In reviewing the effectiveness of government-subsidized foreclosure mitigation efforts, it is important to keep in mind that there is no single reason why borrowers decide to buy a home and there is no single reason why some borrowers go into foreclosure. Home buying and home owning, like any other activity, are the culminations of a wide variety of individual factors including cost, location, availability, and station in life. Different people can approach the decision in distinct ways, weigh competing factors differently and perhaps even make unwise, foolhardy, or bad choices despite every reason to the contrary. Nevertheless, because the factors that go into the decision to buy and keep a home can vary greatly, it stands to reason you cannot devise a single foreclosure mitigation program that will appeal to or benefit everyone who might be at risk. Thus, a more sensible approach would be to encourage a series of different mitigation programs and approaches instead of attempting to force all distressed borrowers into one massive government-subsidized foreclosure mitigation effort.

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[183] RealtyTrac, *supra* note 156.

[184] Mortgage Bankers Association, *Delinquencies Increase, Foreclosure Starts Flat in Latest MBA National Delinquencies Survey* (Dec. 5, 2008).

To that end, since the onset of the mortgage crisis the federal government has worked with banks and other private parties to develop a number of voluntary initiatives to assist borrowers in danger of foreclosure. While by no means perfect, these efforts have been helping borrowers to varying degrees without having to resort to government mandates or increased taxpayer risk. Some of these initiatives have included:

- HOPE NOW: In response to the downturn in the U.S. mortgage market in 2007, the Bush Administration helped broker an alliance of mortgage lenders, servicers, counselors, and investors called the HOPE NOW Alliance. The goals of HOPE NOW are to "maximize outreach efforts to homeowners in distress to help them stay in their homes" and to "create a unified, coordinated plan to reach and help as many homeowners as possible." HOPE NOW estimates that it has helped nearly 3.2 million homeowners avoid foreclosure since July 2007.[185]

- JP Morgan Chase: On October 31, 2008, JP Morgan Chase announced it would expand its mortgage modification program by undertaking multiple initiatives designed to keep more families in their homes, including extending its modification programs to customers of Washington Mutual, which Chase acquired in September, and EMC Mortgage, the lending arm of Bear Stearns, which Chase acquired in March 2008.[186] Chase will open regional counseling centers, hire additional loan counselors, introduce new financing alternatives, proactively reach out to borrowers to offer pre-qualified modifications, and commence a new process to independently review each loan before moving it into the foreclosure process. Chase has selected sites for 24 Chase Homeownership Centers in areas with high mortgage delinquencies where counselors can work face-to-face with struggling borrowers. Chase anticipated 13 of these centers—in California and Florida—open and serving borrowers by the end of February 2009. The other 11 around the country will be open by the end of March 2009. Chase expects these changes will help an additional 400,000 borrowers. While implementing these enhancements, Chase will not put any additional loans into the foreclosure process.

- Wells Fargo Home Mortgage Servicing: Over the past year and a half, through the Leading the Way Home program, Wells has provided more than 700,000 foreclosure prevention solutions.[187] Wells' program is designed to work with all its customers—including those not yet in default—to determine if they qualify for a modification. For example, since Wells acquired Wachovia and its unique Wachovia Pick-a-Payment option ARM loans, Wells will use more aggressive solutions through a combination of means including permanent principal reductions in geographies with substantial

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[185] HOPE Now, *Mortgage Lending Industry Prevented Almost 240,000 Foreclosures in December* (Jan. 29, 2009) (Online at www.hopenow.com/upload/press__release/files/HOPE%20NOW%20December%202008%20Data%20Release%20.pdf).

[186] JPMorgan Case, *Chase Further Strengthens Robust Programs to Keep Families in Homes* (Oct. 31, 2008) (online at files.shareholder.com/downloads/ONE/514430481x0x245621/b879b4eb-40c0-43f8-8614-6F2113759d0c/344473.pdf).

[187] *Wells Fargo and National Urban League Publish New Foreclosure Prevention Workbook: Advice from Foreclosure Experts Given to Homeowners Across the Country,* Business Wire (Feb. 28, 2009) (online at www.businesswire.com/portal/site/home/permalink/?ndmViewId=news__view&newsId=20090228005030&newsLang=en).

property declines. In total, Wells predicts 478,000 customers will have access to this program if they need it.[188] Wells has also extended a foreclosure moratorium on loans it owns through March 13, 2009.

• Bank of America: In early October, Bank of America announced the creation of a proactive home retention program that will systematically modify troubled mortgages with up to $8.4 billion in interest rate and principal reductions for nearly 400,000 Countrywide Financial Corporation customers nationwide.[189] (Bank of America acquired Countrywide July 1, 2008). The program was developed together with state attorneys general and is designed to achieve affordable and sustainable mortgage payments for borrowers who financed their homes with subprime loans or pay option adjustable rate mortgages serviced by Countrywide and originated prior to December 31, 2007. Bank of America has also implemented a foreclosure sale moratorium on mortgages it holds as well as mortgages owned by investors that have agreed to the moratorium for mortgages it services until final guidelines are issued by the Obama Administration on its foreclosure plan.

• Citigroup: In November 2008, Citigroup announced the Citi Homeowner Assistance Program for families particularly in areas of economic distress and sharply declining home values whose mortgages Citigroup holds.[190] In February, Citigroup also initiated a foreclosure moratorium effective through March 12 while awaiting implementation of the Obama Administration's foreclosure plan.

These initiatives, coupled with other efforts like the federal Hope for Homeowners law and the FDIC's IndyMac loan modification program, are providing options to distressed borrowers. However, some have complained that these programs are not doing enough to help more borrowers and are advocating for a larger government program to fill that void. Such calls seem to ignore the reality that loan modifications can be complicated, time consuming exercises and are of course dependent upon the borrower being willing and qualified to participate. As noted in the majority's report, foreclosures can cost lenders up to $70,000 in costs and fees, providing ample economic motivation for lenders to avoid such an outcome wherever possible.

Ultimately, instead of creating new government-subsidized programs, the best foreclosure mitigation program is having a strong economy, a job, and the freedom to keep more of what you earn. That's why I have supported legislation to encourage an economic turnaround, help preserve jobs, and spur widespread economic growth by lowering the tax burden that job-creators face, such as the Economic Growth Act of 2008. That legislation, introduced last year by Rep. Scott Garrett, would have provided for full, immediate

[188] *Wells Fargo, Wells Fargo Merger Gives 478,000 Wachovia Customers Access to New Wells Fargo Solutions if Their Mortgage Payments Become At-Risk* (Jan. 26, 2009) (online at www.wellsfargo.com/press/2009/20090126__Wachovia__HMS).

[189] Bank of America, *Bank of America Announces Nationwide Homeownership Retention Program for Countrywide Customers: Nearly 400,000 Countrywide Borrowers Could Benefit After Program Launches December* 1 (Oct. 6, 2008) (online at newsroom.bankofamerica.com/index.php?s= press__releases&item=8272).

[190] Citigroup, *Citi Announces New Preemptive Initiatives to Help Homeowners Remain in Their Homes* (Nov. 11, 2008) (online at www.citigroup.com/citi/press/2008/081111a.htm).

business expensing, a significant reduction in the top corporate tax rate, an end the capital gains tax on inflation, and simplification of the capital gains rate structure. Any one of those components would have increased our economic growth, and helped hard-working Americans keep their jobs and earn more money. For example, while reviewing the impact of just one component of the bill, Dr. Mihir Desai of the Harvard Business School has estimated cutting the corporate capital gains rate from 35 percent to 15 percent could unlock $1 trillion worth of wealth for the economy.[191] Even though such proposals might not contain a specific foreclosure mitigation program, the vast economic growth and prosperity that bills like the Economic Growth Act could unleash would help countless numbers of Americans pay their mortgages and other bills without government-subsidized foreclosure mitigation plans.

Additionally, providing tax relief to Americans instead of creating new government programs would help address some of the fairness concerns behind such programs because tax relief is unbiased towards home owners, borrowers, and renters. Additionally, tax relief proposals have the added benefit of being able to provide more relief to more people at a lower cost. For example, the tax reduction alternative offered by Reps. Dave Camp and Eric Cantor to the recently enacted $1.1 trillion stimulus bill contained several provisions that would help America's small businesses and employers.[192] Those provisions combined—creating a 20 percent deduction for small business income (which would affect 99.9 percent of the 27.2 million businesses in America), extending the favorable bonus depreciation rules for small businesses, extending the Net Operating Losses carryback rules for previously profitable companies to seek immediate cash refunds of past taxes paid, and repealing of 3 percent withholding requirement for government contractors—would have cost less than $83.1 billion over 11 years. That amount is slightly more than the one year cost of the $75 billion Homeowner Affordability and Stability Plan proposed by President Obama last month, which would affect fewer people.[193]

II. RICHARD NEIMAN, DAMON SILVERS AND ELIZABETH WARREN

The dissenting views offered by Congressman Jeb Hensarling raise a number of issues that the Panel intends to pursue in the course of its oversight. We all share the goals of ensuring that the government-sponsored entities (GSE) function in an optimal manner and targeting limited public foreclosure prevention resources to responsible borrowers. Part of the Panel's mission is to consider these and other important topics with the benefit of our diverse experiences and viewpoints.

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[191] Americans for Tax Reform, *America's Growth Agenda Part Four: Cut the Corporate Capital Gains Rate to 15%, Unlocking Wealth for Job Creation* (Jan. 21, 2008) (online at 74.6.239.67/search/cache?ei=UTF-8&p=%22Mihir +Desai%22+capital+gains &fr=my-myy&u=atr.org/content/html/2008/jan/012108pr-growthcorpcapgains.html&w=%22mihir+desai%22+capital+gains&d=AwxrU52uSUbL&icp= 1&.intl=us).

[192] House Committee on Ways and Means Republicans, *Summary of Camp-Cantor Substitute to H.R. 1* (Jan. 28, 2009) (online at republicans.waysandmeans.house.gov/showarticle.asp?ID=462).

[193] Federal Deposit Insurance Corporation, Homeowner Affordability and Stability Plan (online at www.fdic.gov/consumers/loans/hasp/index.html) (accessed Mar. 5, 2009).

One point mentioned in the dissent, however, is strikingly inaccurate and necessitates an immediate clarification to Congress and the American people. And that is the Congressman's statement concerning the Community Reinvestment Act (CRA):

> "Thus, mandates like CRA ended up becoming a significant contributor to the number of foreclosures that are occurring because they required lending institutions to abandon their traditional underwriting standards in favor of more subjective models to meet their government mandated CRA objectives."

This statement misinterprets both the nature of the CRA requirement and the positive impact that the CRA has had on the mortgage market over the past thirty years. But most disturbing is the suggestion that CRA has been a factor in the current financial meltdown, when the facts demonstrate just the opposite.

The CRA was passed in 1977 and requires banks to be responsive to the needs of the communities in which they accept deposits, especially low and moderate-income (LMI) neighborhoods. Banks are evaluated in terms of their lending and investment activities, as well as the innovative services they provide. The CRA was one response to the common practice of "red lining" or refusing to offer credit and other services in neighborhoods that were often communities of color.

While the CRA encourages banks to recognize emerging business opportunities in LMI areas, there is no "requirement to abandon traditional underwriting." Banks were never encouraged to provide loans that violated safety and soundness; they were encouraged to be creative in marketing and developing products that were tailored and appropriate for a group of consumers with unique needs.

The success of the CRA speaks for itself. Banks' CRA activities have leveraged infusions of public capital into LMI communities, perhaps by as much as 10 to 25 times, attracting additional private capital in the process.[194] And in the last ten years alone, CRA has contributed to bank lending to small businesses and farms in excess of $2.6 trillion, exactly the type of stimulus we need to preserve in these challenging economic times.[195]

But what about CRA's influence in the area of home mortgage lending- were CRA loans the culprit in the mortgage meltdown? The notion that CRA loans were somehow to blame in triggering the cascade of foreclosure is a false one that the facts quickly put to rest. Only six percent of higher-priced loans were originated by banks subject to the CRA.[196] Of course, originating loans is not the only way in which banks could be involved in higher-priced or subprime lending. In certain circumstances, banks may also receive consideration under the CRA for loans that they have purchased. However, less than two percent of the higher-priced, CRA-eligible

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[194] Office of the Comptroller of the Currency, *Remarks by John C. Dugan Comptroller of the Currency Before the Enterprise Annual Network Conference*, at 6 (Nov. 19, 2008) (online at www.occ.treas.gov/ftp/release/2008-136a.pdf).

[195] *Id.* at 4.

[196] Board of Governors of the Federal Reserve System, *Speech by Governor Randall S. Kroszner at the Confronting Concentrated Poverty Policy Forum* (Dec. 3, 2008) (online at www.federalreserve.gov/newsevents/speech/kroszner20081203a.htm).

loans originated by independent mortgage bankers were purchased by banks for CRA credit.[197]

We agree with Congressman Hensarling that the market excesses of the past decade led to lax underwriting standards and the origination of many dubious mortgages. But the CRA has been one of the few examples of what has worked, and provides a model for preserving responsible lending and homeownership as we work together to strengthen and reform the mortgage market.

[197] *Id.* at 10.

SECTION THREE: CORRESPONDENCE WITH TREASURY UPDATE

As Treasury reworks its efforts to combat the financial crisis and restore confidence in the economy, the Panel continues to review government actions, to study and investigate different aspects of the financial crisis and EESA programs, and to pose questions to Treasury on behalf of Congress and the American people. On January 28, 2009, the day after Treasury Secretary Timothy Geithner's confirmation by the U.S. Senate, the Panel sent a letter to the Treasury Department welcoming the Secretary and renewing its request for answers to the many unanswered questions from its December report with an emphasis on four categories: bank accountability, increased transparency, foreclosure reduction, and overall strategy. The Panel received a reply from Treasury on February 23rd. Both letters are attached in the appendices.

While this reply did not offer any direct answers to the Panel's questions as posed, some of Treasury's actions as described in the letter represent progress toward increased bank accountability, improved transparency and a plan to address the foreclosure crisis. The Panel recognizes this progress, but it also observes that Treasury left many questions unanswered. The Panel must insist that Treasury address outstanding questions from previous oversight reports.

While many questions remain open, the Panel is particularly interested in probing the strategy behind Treasury's new programs for the second tranche of EESA funds. Treasury has not yet offered Congress and the public its diagnosis of the causes of the current crisis nor explained how its program address the root causes of the crisis. Once Treasury articulates a clear and consistent strategy behind its actions, banks, businesses and consumers will be better-equipped to anticipate and plan for future government intervention.

On March 5, 2009, Chairwoman Elizabeth Warren replied to the Treasury Secretary's letter with a request for a direct response to the Panel's outstanding questions about Treasury's overall strategy for combating the financial crisis.[198] Future correspondence with Treasury will be discussed in subsequent oversight reports.

[198] *See* Appendix III, *infra.*

SECTION FOUR: TARP UPDATES SINCE PRIOR REPORT

The Obama Administration presented an outline of its Financial Stability Plan (the "FSP") on February 10. The FSP has five parts. More detailed outlines of the terms of the three of the five parts, the Homeowner Affordability and Stability Plan, the Capital Assistance Plan, and the Term Asset-Backed Loan Facility were published on February 18, February 25, and March 3, respectively.

On February 27, the Treasury Department announced a restructuring of its interests in Citigroup in order to increase Citigroup's tangible common equity. Three days later, on March 2, the Treasury Department and the Federal Reserve Board announced a restructuring of their interests in American International Group to increase their capital support for that company to provide more time for an orderly reorganization—including generation of cash through sale of substantial portions of that company.

On February 26, the President released his FY–2010 budget outline. The outline included a $250 billion contingent reserve for further efforts to stabilize the financial system and suggested that a reserve of that size" would support $750 billion in asset purchases."

The Administration's stimulus package included several amendments to the Emergency Economic Stabilization Act, including a tightening of limits on the compensation of the most senior officers of financial institutions that receive federal assistance and easing the way for repayment to the Treasury of capital infusions made under the Capital Purchase Program.

THE FINANCIAL STABILITY PROGRAM

The Financial Stability Program has five parts:

• **Financial Stability Trust.** This part of the plan alters the Treasury's program of direct bank assistance. It was fleshed out in a set of documents issued on February 25 regarding the new Capital Assistance Program (the "CAP"). It described the CAP as having two related objectives, namely "to help banking institutions absorb larger than expected future losses, should they occur, and to support lending to creditworthy borrowers during the economic downturn." It also outlined a two-pronged strategy to accomplish these objectives. The first is the so-called "bank stress test," what Treasury refers to as "forward looking capital assessment of major institutions." The second is the provision of "contingent common capital" to institutions whose economic situations justify assistance.

Full implementation of the CAP would alter the economic relationship between Treasury and the institutions that receive financial assistance. Although the complete terms are complex, the key element would allow those institutions to convert Treasury's investment in them to common stock—bolstering their capital but also bolstering the risk for taxpayer dollars—if the institutions' financial condition makes additional capital necessary.

The CAP appears to be aimed primarily at institutions whose financial condition is not yet critical but could become so as economic conditions worsen. Institutions that are already experiencing critical capital deterioration may receive greater assistance with "individually-negotiated" terms and timing. For either set of institutions, the Treasury strategy candidly anticipates a substantial—at least temporary—increase in the public ownership of major financial institutions.

- **Affordable Housing Support and Foreclosure Prevention Plan.** The Obama Administration announced its Homeowner Affordability and Stability Plan on February 18. This plan has three components.[199] First, the plan targets between four and five million homeowners with conforming loans owned or guaranteed by Fannie Mae and Freddie Mac who are currently ineligible to refinance at today's low interest rates to refinance their loans. Second, it will devote $75 billion to a system of incentives and payments to help an estimated three and four million homeowners and their servicers modify their mortgages. Third, it will increase Treasury's purchase of preferred stock in Fannie Mae and Freddie Mac to $200 billion each (from $100 billion) and increase the size of their retained mortgage portfolios (and allowable debt outstanding) to up to $900 billion. The housing plan will take effect March 4, when the Administration will publish detailed rules governing the programs.

- **Public-Private Investment Fund (PPIF).** The PPIF is intended to deal with the politically sensitive issue of valuing the "legacy" toxic assets that have plummeted in value since the beginning of the crisis. The federal government will provide public financing to the Fund in order to leverage $500 billion to $1 trillion in private capital to make "large-scale" purchases of the previously illiquid assets.[200]

- **Consumer and Business Lending Initiative.** This initiative expanded the size and scope of the joint Treasury-Federal Reserve Term Asset-Backed Securities Loan Facility (TALF). Treasury will now provide $100 billion of credit protection to leverage $1 trillion in Federal Reserve financing. This facility will provide non-recourse loans collateralized by asset-backed securities of auto loans, student loans, credit cards, SBA loans and commercial real estate mortgages. The inclusion of commercial mortgage-backed securities represents an expansion of the program.[201] Treasury has indicated that the program may be expanded further to include non-agency residential mortgage-backed securities.

- **New Equity Injections into Citigroup and AIG.** On February 27, Treasury announced that it would convert up to $25 billion of its preferred Citigroup shares into common stock, giving the company a large new injection of tangible common equity. Other holders of preferred stock were expected to make similar conversions, diluting the existing shareholders by as much as 74 percent. Although this move did not require an additional infusion of TARP funding, it substantially increased the risk that taxpayers will not be paid back. On March 2, Treasury announced a similar effort to shore up AIG's balance sheet. Treasury converted the $40 billion in AIG preferred stock that it owns into securities that have more

[199] U.S. Department of the Treasury, *Homeowner Affordability and Stability Plan Executive Summary* (Feb. 18, 2009) (online at www.financialstability.gov/initiatives/eesa/homeowner-affordability-plan/ExecutiveSummary.pdf).
[200] U.S. Department of the Treasury, *Fact Sheet* (Feb. 10, 2009) (online at www.financialstability.gov/docs/fact-sheet.pdf).
[201] *Id.*

of the characteristics of common stock, giving Treasury 77.9 percent of AIG's equity. In addition, Treasury made available to AIG an additional $30 billion in TARP funding as needed, in exchange for non-cumulative preferred stock. The AIG move was prompted by an impending credit rating downgrade on AIG debt, in response to AIG's record $62 billion quarterly loss.

SECTION FIVE: OVERSIGHT ACTIVITIES

The Congressional Oversight Panel was established as part of EESA and formed on November 26, 2008. Since then the Panel has issued three oversight reports, as well as a special report on regulatory reform which came out on January 29, 2009.

Since the release of the Panel's February oversight report, the following developments pertaining to the Panel's oversight of the TARP took place:

- On February 4, 2009, the Panel sent a survey requesting mortgage performance data to Fannie Mae, Freddie Mac, FDIC, the Federal Reserve, FHFA, HUD, OCC, OTS, and Treasury.[202] The Panel received responses from FHFA (on behalf of Fannie Mae and Freddie Mac), NCUA, OCC/OTS and the Federal Reserve during the week of February 16, 2009, and HUD, FDIC, and Treasury during the week of February 23, 2009.
- Treasury Secretary Timothy Geithner sent a response letter on February 23, 2009[203] to the Panel in response to a letter from Elizabeth Warren sent January 28, 2009.[204] Both letters are attached as appendices.
- On behalf of the Panel, Elizabeth Warren sent a reply to Secretary Geithner on March 5, 2009.[205] This letter acknowledged positive steps taken by Treasury under the Secretary's tenure but pressed for answers to the questions posed by the Panel in previous reports and letters. In particular, the Chair posed a set of strategic questions for Secretary Geithner to answer in advance of the Panel's April report on overall TARP strategy.
- The Panel held a field hearing in Largo, MD on February 27, 2009 entitled, "Coping with the Foreclosure Crisis: State and Local Efforts to Combat Foreclosures in Prince George's County, Maryland." Following opening remarks from Congressman Chris Van Hollen and Congresswoman Donna Edwards, the Panel heard from two panels of witnesses. The first panel consisted of homeowners affected by the foreclosure crisis while the second panel featured community leaders and policymakers.

UPCOMING REPORTS AND HEARINGS

In April 2009, the Panel will release its fifth oversight report. The April report will focus on assessing TARP strategy, and the Panel will hold a hearing during the month of March to explore this topic in greater detail. That report will also update the public on the status of its TARP oversight activities. The Panel will continue to release oversight reports every 30 days.

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[202] *See* Appendix IV, *infra*.
[203] *See* Appendix II, *infra*.
[204] *See* Appendix I, *infra*.
[205] *See* Appendix III, *infra*.

SECTION SIX: ABOUT THE CONGRESSIONAL OVERSIGHT PANEL

In response to the escalating crisis, on October 3, 2008, Congress provided the U.S. Department of the Treasury with the authority to spend $700 billion to stabilize the U.S. economy, preserve home ownership, and promote economic growth. Congress created the Office of Financial Stabilization (OFS) within Treasury to implement a Troubled Asset Relief Program. At the same time, Congress created the Congressional Oversight Panel to "review the current state of financial markets and the regulatory system." The Panel is empowered to hold hearings, review official data, and write reports on actions taken by Treasury and financial institutions and their effect on the economy. Through regular reports, the Panel must oversee Treasury's actions, assess the impact of spending to stabilize the economy, evaluate market transparency, ensure effective foreclosure mitigation efforts, and guarantee that Treasury's actions are in the best interests of the American people. In addition, Congress has instructed the Panel to produce a special report on regulatory reform that will analyze "the current state of the regulatory system and its effectiveness at overseeing the participants in the financial system and protecting consumers."

On November 14, 2008, Senate Majority Leader Harry Reid and the Speaker of the House Nancy Pelosi appointed Richard H. Neiman, Superintendent of Banks for the State of New York, Damon Silvers, Associate General Counsel of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), and Elizabeth Warren, Leo Gottlieb Professor of Law at Harvard Law School to the Panel. With the appointment on November 19 of Congressman Jeb Hensarling to the Panel by House Minority Leader John Boehner, the Panel had a quorum and met for the first time on November 26, 2008, electing Professor Warren as its chair. On December 16, 2008, Senate Minority Leader Mitch McConnell named Senator John E. Sununu to the Panel, completing the Panel's membership.

ACKNOWLEDGEMENTS

The Panel thanks Adam J. Levitin, Associate Professor of Law at the Georgetown University Law Center, for the significant contribution he made to this report. Special thanks also go to Tai C. Nguyen for research assistance, Professor John Genakopolos, Professor Susan Koniak, and Ellington Management Group, LLC for generously sharing data, and Jesse Abraham, Professor William Bratton, Thomas Deutsch, Rod Dubitsky, Professor Anna Gelpern, Dr. Benjamin Lebwohl, Mark Kaufman, Professor Patricia McCoy, Mark Pearce, Eric Stein, Professor Susan Wachter, Professor Michael Walfish, and Professor Alan White for their thoughts and suggestions.

APPENDIX I: LETTER FROM CONGRESSIONAL OVERSIGHT PANEL CHAIR ELIZABETH WARREN TO TREASURY SECRETARY MR. TIMOTHY GEITHNER, DATED JANUARY 28, 2009

Congressional Oversight Panel
732 North Capitol Street, NW
Rooms C-320 and C-617
Mailstop: COP
Washington, DC 20401

January 28, 2009

Mr. Timothy F. Geithner
Secretary of the Treasury
U. S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Geithner:

Congratulations on your successful confirmation as Treasury Secretary. I am writing as Chair of the Congressional Oversight Panel to affirm the Panel's commitment to working with you as we carry out the duties assigned to us by Congress in Section 125 of the Emergency Economic Stabilization Act of 2008, Public Law 110-343.

In your opening statement to the Senate Finance Committee during your confirmation hearing on January 21, 2009, you committed to ensuring that Troubled Asset Relief Program (TARP) funding be allocated "with tough conditions to protect the taxpayer and the necessary transparency to allow the American people to see how and where their money is being spent and the results those investments are delivering." The Panel was encouraged by this statement and by your emphasis on transparency and accountability in your answers to the written follow-up questions you received from the Finance Committee after the hearing. Many of your proposed changes to TARP reflect the concerns we have expressed in both of our oversight reports.

In our first oversight report, we sent your predecessor ten questions consisting of forty-six sub-questions, seeking more information on behalf of the American public on Treasury's strategy, the selection process for TARP recipients, the uses to which this funding is being put, Treasury's plan to help families through this crisis, and any metrics Treasury may have as evidence of TARP's effectiveness. Your predecessor replied, but twenty-six of those sub-questions had no response. Among the nineteen remaining sub-questions, some open questions remain as well.

Our second report addressed your predecessor's response to our original questions, and identified four key areas of critical concern for Treasury to implement TARP in accordance with the will of Congress. We focus particularly on: 1) more bank accountability for the use of funds, 2) increased transparency, 3) a plan for foreclosure mitigation, and 4) the articulation of a clear overall strategy.

While we understand that this is a time of transition for your department, economic events are unfolding rapidly. We ask that you address these key areas of concern by Wednesday,

Mr. Timothy F. Geithner
January 28, 2009
Page 2

February 18, 2009. We also urge you to keep the American public informed on the uses and effects of TARP money and the steps being taken to safeguard the taxpayers' investments in financial institutions.

We look forward to working with you to meet the challenges posed by this crisis. If I can be of any assistance, please do not hesitate to contact me or have a member of your staff contact the Panel's Executive Director, Naomi Baum, at [redacted] or [redacted].

Sincerely,

Elizabeth Warren
Chair
Congressional Oversight Panel

cc: Rep. Jeb Hensarling

Sen. John E. Sununu

Mr. Richard H. Neiman

Mr. Damon A. Silvers

APPENDIX II: LETTER FROM TREASURY SECRETARY MR. TIMOTHY GEITHNER TO CONGRESSIONAL OVERSIGHT PANEL CHAIR ELIZABETH WARREN, DATED FEBRUARY 23, 2009

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

February 23, 2009

Ms. Elizabeth Warren
Chair
Congressional Oversight Panel
732 North Capitol Street, NW
Rooms C-320 and C-617
Mailstop: COP
Washington, DC 20401

Dear Chair Warren:

Thank you for your letters dated January 28 and February 4, 2009. This letter serves as a response to both of these letters. As you know, this Administration shares many of the concerns raised in your letters and recent reports. I am committed to working closely with the oversight entities to ensure that the specific programs that we announced as part of our broader *Financial Stability Plan* (FSP) are in the best interest of taxpayers. In fact, we used many of the Panel's constructive suggestions in designing our new programs. In particular, as part of the FSP, we are instituting a new system of accountability and transparency through tough conditions applied to the federal funds being invested during this challenging time. In order to address the issues raised in your recent letters, this letter describes the overall FSP, including our new *Homeowner Affordability and Stability Plan*. Additionally, attached are the public statements we released on our programs (Joint Regulators' Statement on the *Financial Stability Plan* and *Homeowner Affordability and Stability Plan:* Fact Sheet).

The Financial Stability Plan

Regarding your question on the overall strategy, the FSP provides a broad framework for effectively addressing the major financial challenges facing our nation. As you know, this financial crisis has touched Americans in many ways. For ordinary families – even those with strong credit – it has become difficult to get student loans, car loans, and credit to finance every day needs. Frozen credit markets are largely to blame. For our financial institutions, uncertainty, troubled assets and capital constraints have combined to undermine confidence in the strength and stability of our financial sector. For homeowners, the housing crisis has reduced home values and made it difficult for many responsible borrowers to meet their mortgage payments and stay in their homes. We believe that these problems cannot be addressed in a piecemeal fashion. Instead, we have introduced our FSP, a broad and comprehensive set of initiatives designed to help American families and businesses by restarting the critical flow of credit, stabilizing our financial institutions, and helping homeowners.

Each of these goals requires a multi-pronged approach. To restore lending and get credit flowing again, we are taking a comprehensive approach to both restart the frozen secondary lending markets and improve the balance sheets and capital positions of financial institutions in order to jumpstart their lending. Our efforts to restore confidence in the financial sector will include these steps and will go further to ensure that major financial institutions have adequate capital to meet potential challenges and to help them remove "legacy" assets from their balance sheets.

Over the past two weeks, we laid out details of the plan, including the following components: the *Homeowner Affordability and Stability Plan* (HASP) to stabilize the housing markets and help homeowners; our *Capital Assistance Program* (CAP) to ensure that major financial institutions have adequate capital to meet the challenges ahead and jumpstart lending activities; our *Consumer Business Lending Initiative* (CBLI) to unfreeze consumer and business lending by boosting the secondary lending markets, bringing down borrowing costs and getting credit flowing again; and a *Public-Private Investment Fund* (PPIF) to use private and government capital to purchase legacy assets for removal from bank balance sheets in order to help jumpstart the market for the private real-estate-related assets that are at the core of our financial crisis.

Capital Assistance Program

The CAP is designed to help ensure that our banking institutions have sufficient capital to withstand the challenges ahead. As an essential part of restoring confidence in U.S. banking institutions, this process will begin with the federal supervisory agencies undertaking a coordinated and consistent capital planning exercise with each of the major U.S. banking institutions. This process will include a forward-looking "stress test" to assess whether the institutions have the capital necessary to continue lending and to absorb potential losses that could result from a more severe decline in the economy than projected. Banks will be encouraged to access private markets to raise any additional capital needed, but will also have access to a "capital buffer" provided by Treasury to help absorb losses and serve as a bridge to receiving increased private capital.

Consumer & Business Lending Initiative

Addressing our credit crisis on all fronts means going beyond simply dealing with banks. Full restoration of credit flows to households and businesses will require restarting critical segments of our financial markets, particularly securitization markets. When those markets freeze up, the impact on lending for consumers and businesses – small and large – can be devastating. Unable to sell loans into secondary markets, lenders freeze up, leading those seeking credit, like car loans, to face high interest rates. The Term Asset-Backed Securities Lending Facility (TALF) combines funding from the Emergency Economic Stabilization Act (EESA) and the Federal Reserve in order to promote lending by increasing investor demand for securitized loans. Through the CBLI, we will be dramatically increasing the size of the TALF from $200 billion to as much as $1 trillion and will also be expanding the eligible asset classes.

Public-Private Investment Fund

One aspect of a comprehensive approach is the need to provide greater means for financial institutions to cleanse their balance sheets of what are often referred to as "legacy" assets. Many proposals designed to achieve this outcome are complicated both by their sole reliance on public purchasing and the difficulties in pricing assets. Working together in partnership with the FDIC and the Federal Reserve, the Treasury Department will initiate a PPIF that takes a new approach.

- Public-Private Capital: This new program will be designed with a public-private financing component, which will involve putting public and private capital side-by-side and using public financing to leverage private capital on an initial scale of up to $500 billion, with the potential to expand up to $1 trillion.

- Private Sector Pricing of Assets: Because the new program is designed to bring private sector equity contributions to make large-scale asset purchases, it not only minimizes public capital and maximizes private capital, it allows private sector buyers to determine the price for currently troubled and previously illiquid assets.

Homeowner Affordability and Stability Plan

Your January 28 letter asked about a plan for foreclosure mitigation. As noted, a critical component of the overall FSP plan, the *Homeowner Affordability and Stability Plan,* addresses the current housing crisis. This plan offers assistance to many homeowners suffering at the present time and includes the following critical elements:

1. Refinancing for responsible homeowners suffering from falling home prices
2. A comprehensive $75 billion homeowner stability initiative
   - A loan modification plan to reach 3 to 4 million homeowners
     - Shared effort with lenders to reduce interest payments
     - Incentives to servicers and borrowers
   - Clear and consistent guidelines for loan modifications
   - Required participation by FSP participants

- Modifications of home mortgages during bankruptcy
- Strengthen *Hope for Homeowners* and other FHA loan programs
- Support local communities and help displaced renters

3. Supporting low mortgage rates by strengthening confidence in Fannie Mae and Freddie Mac

Attached to this letter, we have provided a fact sheet that provides descriptions and explanations of the intended impact of the initiatives we have proposed. I want to emphasize that all recipients of capital investments under the new FSP initiatives will be required to commit to participate in mortgage foreclosure mitigation programs consistent with our new guidelines. Our new plan for foreclosure mitigation is vital to our efforts to repair our financial system, and we are extremely focused on the successful implementation of this plan to help millions of homeowners.

I also want to respond to your letter dated February 4, 2009 that requested information to evaluate the effectiveness of foreclosure mitigation efforts using an enclosed Mortgage Foreclosure Mitigation Survey. At this time, the Treasury Department does not track mortgage delinquencies, foreclosures and mortgage loss modifications that would allow us to respond to your request and therefore we cannot answer your questions. However, we have talked with the staffs of the government's bank regulatory agencies, and it is my understanding that these regulators are working to answer your questions. Going forward under the *Homeowner Affordability and Stability Plan*, we will maintain strong oversight requirements included in our homeownership plan and ensure robust data reporting from participating mortgage servicers. From this data, we will be able to answer your questions and evaluate the success of our mortgage modification and foreclosure mitigation programs. Full details of Treasury's oversight measures and reporting requirements will be available by March 4, 2009.

Bank Accountability for the Use of Funds

We share your concerns about bank accountability for the use of government funding. Public funds invested in private institutions should be directed only towards the public interest in strengthening our economy by stabilizing our financial system and not toward inappropriate private gain. We therefore have articulated a series of requirements for all institutions accepting funds under the FSP.

First, we will require financial institutions that receive funds under the FSP to demonstrate how the funds they receive will support lending. The core of the new monitoring requirement is to require recipients of exceptional assistance or capital buffer assistance to show how every dollar of capital they receive is enabling them to preserve or generate new lending compared to what would have been possible without government capital assistance. Each recipient must submit a plan for how it intends to use that capital to preserve and strengthen its lending capacity. This report will be submitted during the application process, and the Treasury Department will make these reports public upon completion of the capital investment in the firm.

Second, we will limit common dividends, stock repurchases and acquisitions to provide additional assurance to taxpayers that all of the capital invested by the government will go to improving banks' capital bases and enabling lending during this economic downturn. All banks that receive new capital assistance will be subject to the following terms:

- *Restricted from paying quarterly common dividend payments in excess of $0.01 a share until the government investment is repaid:* Banks that receive exceptional assistance can only pay $0.01 a share quarterly. That presumption will be the same for firms that receive generally available capital. The Treasury Department and a bank's primary regulator may approve a higher dividend based on an assessment if doing so is consistent with reaching the bank's capital planning objectives.
- *Restricted from repurchasing shares:* All banks that receive capital assistance are restricted from repurchasing any privately-held shares until the government's investment is repaid, except with the approval of the Treasury Department and their primary regulator.
- *Restricted from pursuing acquisitions*: All banks that receive capital assistance are restricted from pursuing cash acquisitions of healthy firms until the government investment is repaid. Exceptions will be made for explicit supervisor-approved restructuring plans.

Third, firms will be required to comply with appropriate and enhanced executive compensation restrictions. As you know, Congress recently passed legislation and Treasury recently issued guidelines. We are studying this legislation in concert with our guidelines in order to design implementing regulations.

All of these requirements attempt to ensure that those institutions receiving public support are acting in the public interest.

Increased Transparency

The Treasury Department launched a monthly bank lending survey and snapshot that we are sending to the top 20 recipients of EESA investments. The Treasury Department published the first lending snapshot on February 17, 2009. These snapshots are designed to provide new, more frequent and more accessible information on banks' lending activities to help taxpayers easily assess the lending and other activities of banks receiving government investments.

To improve transparency associated with all aspects of the FSP, all information disclosed or reported to the Treasury Department by recipients of capital assistance will be posted on *FinancialStability.gov* because we believe taxpayers have the right to know whether these programs are succeeding in creating lending and preserving financial stability. The Treasury Department will post redacted investment contracts under the FSP on *FinancialStability.gov* within five to ten business days of their completion. Whenever the Treasury Department makes a capital investment under these new initiatives, it will make public the value of the investment, the quantity and strike price of warrants received, and the schedule of required payments to the government. The terms of pricing of these investments will be compared to terms and pricing of recent market transactions during the period the investment was made, if available, and those prevailing under more normal market conditions.

In addition, the reports describing the use of FSP funds will be published to provide the public with a way to track the effectiveness of the FSP. In monthly reports submitted to the Treasury Department, firms will need to detail their lending results broken out by category and showing change in the amount of loans they provided to businesses and consumers and assets purchased, accompanied by a description of the lending environment in the communities and markets they serve. This report will also include a comparison to estimates of what their lending would have been in the absence of government support. For public companies, similar reports will be filed with an 8-K simultaneous with the filing of their 10-Q or 10-K reports. Additionally, the Treasury Department will – in collaboration with banking agencies – publish and regularly update key metrics showing the impact of the FSP on credit markets. These reports will be put on the Treasury Department's *FinancialStability.gov* website, so that they can be subject to scrutiny by outside and independent experts.

Finally, in the interest of full transparency, the Treasury Department has announced measures to ensure that lobbyists do not influence applications for, or disbursements of, FSP funds, and will certify that each investment decision is based only on investment criteria and the facts of the case.

Together, I believe this comprehensive set of measures will help restore confidence in the strength of U.S. financial institutions, boost lending to households and businesses, and lay the groundwork for restoring the critical flows of credit necessary to support the recovery of our economy.

As you can see from the plans that have been announced, we are deeply committed to ensuring that taxpayers' funds are used in their best interest and that the FSP upholds that standard in every regard.

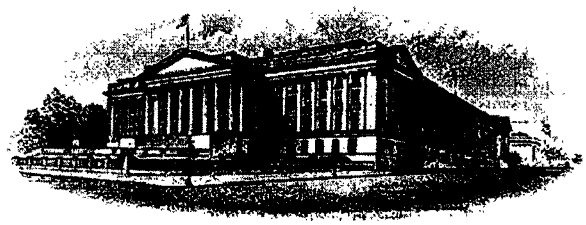
Thank you again for your inquiries, and I look forward to a close and cooperative working relationship with the Panel.

Sincerely,

Timothy F. Geithner

Attachments:
Joint Regulators' Statement on the Financial Stability Plan, February 10, 2009
Homeowner Affordability and Stability Plan: Fact Sheet, February 19, 2009

cc: Rep. Jeb Hensarling
Sen. John E. Sununu
Mr. Richard H. Neiman
Mr. Damon A. Silvers
Mr. John M. Reich
Mr. John Dugan



JOINT STATEMENT

BY

SECRETARY OF THE TREASURY TIMOTHY F. GEITHNER, CHAIRMAN OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM BEN S. BERNANKE, CHAIRMAN OF THE FEDERAL DEPOSIT INSURANCE CORPORATION SHEILA BAIR, COMPTROLLER OF THE CURRENCY JOHN C. DUGAN, AND DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION JOHN M. REICH

Financial Stability Plan – February 10, 2009

Today, the Department of the Treasury, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision are announcing a comprehensive set of measures to restore confidence in the strength of U.S. financial institutions and restart the critical flow of credit to households and businesses. This program will help lay the groundwork for restoring the flows of credit necessary to support recovery.

The core program elements include:

- A new Capital Assistance Program to help ensure that our banking institutions have sufficient capital to withstand the challenges ahead, paired with a supervisory process to produce a more consistent and forward-looking assessment of the risks on banks' balance sheets and their potential capital needs.
- A new Public-Private Investment Fund on an initial scale of up to $500 billion, with the potential to expand up to $1 trillion, to catalyze the removal of legacy assets from the balance sheets of financial institutions. This fund will combine public and private capital with government financing to help free up capital to support new lending.
- A new Treasury and Federal Reserve initiative to dramatically expand – up to $1 trillion – the existing Term Asset-Backed Securities Lending Facility (TALF) in order to reduce credit spreads and restart the securitized credit markets that in recent years supported a substantial portion of lending to households, students, small businesses, and others.
- An extension of the FDIC's Temporary Liquidity Guarantee Program to October 31, 2009.

- A new framework of governance and oversight to help ensure that banks receiving funds are held responsible for appropriate use of those funds through stronger conditions on lending, dividends and executive compensation along with enhanced reporting to the public.

Alongside this program, the Administration will launch a comprehensive program to help address the housing crisis.

We will begin immediately a process of consultation designed to solicit further input from key public and private stakeholders. Details on all programs will be posted on ***FinancialStability.gov*** over the course of the next several weeks.

Congress has already allocated substantial resources and authority for this program through the Emergency Economic Stabilization Act (EESA). We will move ahead quickly and carefully to use the authorities provided. As we do so, we will continue to consult closely with Congress to ensure we have the resources to make this program work effectively over time. We anticipate adapting the program as we move forward.

New Financial Stability Trust

The program will consist of three elements: (1) a forward-looking assessment of the risks on bank balance sheets and their capital needs, (2) a capital program to help banks establish an additional buffer that strengthens both the amount and quality of the capital and (3) efforts to improve the disclosure of exposures on bank balance sheets. In conducting these exercises, supervisors recognize the need not to adopt an overly conservative posture or take steps that could inappropriately constrain lending.

Capital Assistance Program (CAP)

While the vast majority of U.S. banking institutions continue to exceed regulatory requirements for being well-capitalized, the highly uncertain economic environment has eroded confidence in the amount and quality of capital held by some banks.

As an essential part of restoring confidence in U.S. banking institutions, the supervisory agencies will undertake a coordinated and consistent capital planning exercise with each of the major U.S. banking institutions. As part of this process, supervisors will conduct a special forward-looking "stress" assessment of the losses that could occur across a range of economic scenarios, including conditions more severe than currently anticipated or than are typically used in the capital planning process.

This stress testing exercise will allow supervisors to determine whether an additional buffer, particularly one that strengthens the composition of capital, is needed for the bank to comfortably absorb losses and continue lending, even in a more adverse environment. Banks will be encouraged to access private markets to raise any additional capital needed to establish this buffer. However, in light of the current challenging market environment, the Treasury will make a new capital facility generally available to eligible banking institutions as a bridge to private capital until market conditions normalize.

This additional capital buffer is designed to help absorb larger than expected future losses and to support lending to creditworthy borrowers during an economic downturn.

Our expectation is that the capital provided under the CAP will be in the form of a preferred security that is convertible into common equity, with a dividend rate to be specified and a conversion price set at a modest discount from the prevailing level of the institution's stock price up to February 9th, 2009. This security would serve as a source of "contingent" common equity, convertible solely at the issuer's option for an extended period of time.

The instrument will be designed to give banks the incentive to replace USG-provided capital with private capital or to redeem the USG capital when conditions permit. In addition, with supervisory approval, banks will be allowed to apply to exchange the existing CPP preferred stock for the new CAP instrument.

By reassuring investors, creditors, and counterparties of financial institutions—as well as the institutions themselves—that there is a sufficient amount and quality of capital to withstand even a considerably weaker-than-expected economic environment, the CAP instrument should improve confidence and increase the willingness of financial institutions to lend.

Any capital investments made by Treasury under the CAP will be placed in a separate entity set up to manage the government's investments in US financial institutions.

Eligible U.S. banking institutions with assets in excess of $100 billion on a consolidated basis will be required to participate in the coordinated supervisory review process, and may access the CAP as a means to establish any necessary additional buffer. Eligible US banking institutions with consolidated assets below $100 billion may also obtain capital from the CAP. Eligibility will be consistent with the criteria and deliberative process established for identifying Qualifying Financial Institutions (QFIs) in the existing Capital Purchase Program (CPP).

The U.S. government has a range of other tools available for use in extraordinary circumstances to help mitigate the strains facing banks and restore confidence during this period of significant uncertainty. These tools include the provision of credit loss protection for specified asset pools held on the balance sheets of institutions as well as the guaranteeing of liabilities.

In pursuit of its commitment to restore and maintain the strength and stability of the U.S. financial system, the U.S. government remains committed to preventing the failure of any financial institution where that failure would pose a systemic risk to the economy.

Enhancing public disclosure

Increased transparency will facilitate more effective market discipline in financial markets. We will work with bank regulatory agencies and the Securities and Exchange Commission and accounting standard setters in their efforts to improve public disclosure by banks. This process will aim to increase the publicly available information about the range of exposures on bank balance sheets.

New Public-Private Investment Fund (PPIF)

As a complement to the CAP, the Treasury, working with the Federal Reserve, FDIC, and private investors, will create a new Public-Private Investment Fund to acquire real-estate related "legacy" assets. By selling to PPIF, financial institutions will be able to reduce balance sheet risk, support new lending and help improve overall market functioning. The PPIF facility will be sized up to $500 billion and we envision expanding the program to up to $1 trillion over time.

This PPIF will combine a mix of government and private capital with financing supported by the Federal Reserve and the FDIC. Designing this structure in an efficient manner will require a careful balance between the interests of taxpayers, investors, and the financial institutions, and we will continue to consult with market participants to design the best structure. The participation of private investors will help promote competitive prices that will sufficiently compensate and protect taxpayers, while providing additional risk capital to support the purchase program.

Temporary Financing and Direct Purchase Facilities

Full restoration of credit flows to households and businesses will require restarting critical segments of our financial markets, particularly securitization markets. The facilities described below are designed to improve the functioning of markets where dislocation is most acute and most detrimental to economic activity.

Expansion of the Term Asset-Backed Securities Lending Facility (TALF)

The Term Asset-Backed Securities Lending Facility (TALF) combines capital provided by the TARP with funding from the Federal Reserve in order to promote lending by increasing investor demand for securitized loans. The TALF will significantly expand the availability and reduce the cost of term financing for investors in asset-backed securities (ABS), which will stimulate demand for ABS and thereby allow originators of securitized loans to lower the cost and increase the availability of credit to consumers and businesses.

The Treasury and Federal Reserve have agreed to dramatically increase the size of the TALF from $200 billion to as much as $1 trillion and to expand the eligible asset classes from the current newly issued 'AAA' rated ABS collateralized by credit card, auto, student, and Small Business Administration loans to include newly issued 'AAA' commercial mortgage-backed securities (CMBS). In addition, the Treasury will continue to consult with the Federal Reserve regarding possible further expansion of the TALF program to include other asset classes, such as non-Agency residential mortgage-backed securities (RMBS) and assets collateralized by corporate debt.

This facility is designed in a way that gradually reduces its attractiveness and scale as the economy and financial conditions recover.

Ongoing mortgage-backed securities (MBS) and Agency Debt Purchases

The Federal Reserve will continue its current purchase program of Agency debt and mortgage-backed securities (MBS) on a total scale of at least $600 billion. The Federal Reserve and the Treasury stand ready to expand their MBS purchase programs as conditions warrant. These purchase programs should help to stimulate economic activity by reducing mortgage rates, thereby improving housing affordability and the demand for houses, as well as reducing interest payments and freeing up funds for households that refinance.

Additional tools for the Federal Reserve

In order for the Federal Reserve to manage monetary policy over time in a way consistent with maximum sustainable employment and price stability, it must be able to manage its balance sheet, and in particular, to control the amount of reserves that the Fed provides to the banking system. The amount of reserves is the key determinant of the interest rate that the Federal Reserve uses to pursue its monetary policy objectives. Treasury and the Federal Reserve will seek legislation to give the Federal Reserve the additional tools to enable it to manage more effectively the level of reserves.

Extension of Temporary Liquidity Guarantee Program (TLGP)

The FDIC's Temporary Liquidity Guarantee Program has contributed importantly to the gradual easing of liquidity strains on our financial institutions. Though funding conditions have eased somewhat, this temporary program will be extended for an additional four months to provide liquidity to our banks as part of this overall strategy to move our economy forward.

With that in mind, for an additional premium, the FDIC will extend the TLGP program through October 2009.

Stronger Conditions on Lending, Executive Compensation, and Reporting

Going forward, the Financial Stability Plan will call for a new level of transparency, accountability and conditionality with tougher standards for firms receiving exceptional assistance. These stronger conditions were informed by recommendations made by formal oversight groups – the Congressional Oversight Panel, the Special Inspector General, and the Government Accountability Office -- as well as Congressional banking oversight leaders.

Use of government-provided capital and impact on lending

Recipients of capital provided under the CAP will be required to submit a plan for how they intend to use this capital to preserve and strengthen their lending capacity – specifically, they will commit to increase lending activities above levels relative to what would have been possible without government support. This plan will be submitted during the application process, and the Treasury Department will make these plans public upon distribution of the capital investment to the firm.

These firms must submit to Treasury monthly or quarterly reports on their lending by category. This report will also include a comparison to estimates of what their lending would have been in the absence of government support. For public companies, similar reports will be filed on an 8K simultaneous with the filing of their 10Q and 10K reports. All these reports will be put on the Treasury website ***FinancialStability.gov***.

Taxpayers' Right to Know

Information disclosed or reported to Treasury by recipients pursuant to the conditions and requirements announced today will be posted on ***FinancialStability.gov***. [redacted]

Committing recipients to mortgage foreclosure mitigation

All recipients of Capital Assistance Program (CAP) funds shall commit to participate in mortgage foreclosure mitigation programs consistent with guidelines we will release on industry standard best practices.

Restricting dividends, stock repurchases and acquisitions

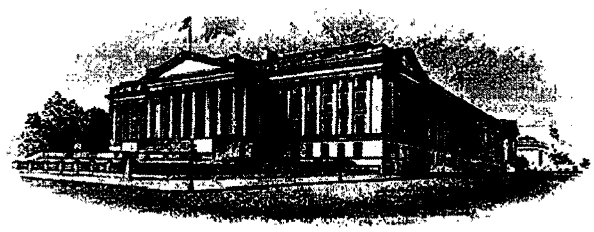
Limiting dividends, stock repurchases and acquisitions provides assurance to taxpayers that all of the capital invested by the government under the CAP goes to improving banks' capital bases and promoting lending. Until an institution repays all funds provided to it under the CAP, it shall be:

- Restricted from paying quarterly common stock dividend payments in excess of $0.01 per share unless approved by Treasury and the primary regulator as consistent with the firm reaching its capital planning objectives.
- Restricted from repurchasing shares. Special approval for share repurchases may be granted by the Treasury Department and the banking institution's primary regulator.
- Restricted from pursuing acquisitions. Banking institutions that receive CAP funds are restricted from pursuing cash acquisitions of healthy firms until the government investment is repaid. Exceptions will be made for regulator-approved restructuring plans.

Limiting executive compensation

Firms receiving CAP funds will be required to comply with final version of the executive compensation restrictions announced February 4th.

###



HOMEOWNER AFFORDABILITY AND STABILITY PLAN

Fact Sheet

The deep contraction in the economy and in the housing market has created devastating consequences for homeowners and communities throughout the country. Millions of responsible families who make their monthly payments and fulfill their obligations have seen their property values fall, and are now unable to refinance to lower mortgage rates. Meanwhile, millions of workers have lost their jobs or had their hours cut, and are now struggling to stay current on their mortgage payments. As a result, as many as 6 million families are expected to face foreclosure in the next several years, with millions more struggling to stay current on their payments.

The present crisis is real, but temporary. As home prices fall, demand for housing will increase, and conditions will ultimately find a new balance. Yet in the absence of decisive action, we risk an intensifying spiral in which lenders foreclose, pushing home prices still lower, reducing the value of household savings, and making it harder for all families to refinance. In some studies, foreclosure on a home has been found to reduce the prices of nearby homes by as much as 9 percent – creating the potential that even borrowers who make every payment suffer from an increase in foreclosures in their community.

The Obama Administration's Homeowner Affordability and Stability Plan ***will offer assistance to as many as 7 to 9 million homeowners*** making a good-faith effort to stay current on their mortgage payments, while attempting to prevent the destructive impact of foreclosures on families and communities. It will not provide money to speculators, and it will target support to the working homeowners who have made every possible effort to stay current on their mortgage payments. Just as the American Recovery and Reinvestment Act works to save or create several million new jobs and the Financial Stability Plan works to get credit flowing, the Homeowner

Affordability and Stability Plan will support a recovery in the housing market and ensure that these workers can continue paying off their mortgages.

By supporting low mortgage rates by strengthening confidence in Fannie Mae and Freddie Mac, providing up to 4 to 5 million homeowners with new access to refinancing and enacting a comprehensive stability initiative to offer reduced monthly payments for up to 3 to 4 million at-risk homeowners, this plan – which draws off the best ideas developed within the Administration, as well as from Congressional housing leaders and Federal Deposit Insurance Corporation Chair Sheila Bair – brings together the government, lenders and borrowers to share responsibility towards ensuring working Americans can afford to stay in their homes.

Homeowner Affordability and Stability Plan

1. **Refinancing for Responsible Homeowners Suffering From Falling Home Prices**

2. **A Comprehensive $75 Billion Homeowner Stability Initiative**

   - A Loan Modification Plan To Reach 3 to 4 Million Homeowners
     - Shared Effort with Lenders to Reduce Interest Payments
     - Incentives to Servicers and Borrowers
   - Clear and Consistent Guidelines for Loan Modifications
   - Required Participation By Financial Stability Plan Participants
   - Modifications of Home Mortgages During Bankruptcy

1. **Provide Access to Low-Cost Refinancing for Responsible Homeowners Suffering From Falling Home Prices:**

   - ***Provide the Opportunity for Up to 4 to 5 Million Responsible Homeowners Expected to Refinance:*** Mortgage rates are currently at historically low levels, providing homeowners with the opportunity to reduce their monthly payments by refinancing. But under current rules, most families who owe more than 80 percent of the value of their homes have a difficult time securing refinancing. (For example, if a borrower's home was worth $200,000, he or she would have limited refinancing options if he or she owed more than $160,000.) Yet millions of responsible homeowners who put money down and made their mortgage payments on time have – through no fault of their own – seen the value of their homes drop low enough to make them unable to access these lower rates. As a result, the Obama Administration is announcing a new program that will provide the opportunity for 4 to 5 million responsible homeowners who took out conforming loans owned or guaranteed by Freddie Mac and Fannie Mae to refinance through the two institutions over time.

- ***Reducing Monthly Payments:*** For many families, a low-cost refinancing could reduce mortgage payments by thousands of dollars per year. For example, consider a family that took a 30-year fixed rate mortgage of $207,000 with an interest rate of 6.50% on a house worth $260,000 at the time. Today, that family has $200,000 remaining on their mortgage, but the value of that home has fallen 15 percent to $221,000 – making them ineligible for today's low interest rates that generally require the borrower to have 20 percent home equity. Under this refinancing plan, that family could refinance to a rate near 5.16% – reducing their annual payments by over $2,300.

2. **A $75 Billion Homeowner Stability Initiative to Prevent Foreclosures and Help Responsible Families Stay in Their Homes:** The Treasury Department, working with the GSEs, FHA, the FDIC and other federal agencies, will undertake a comprehensive multi-part strategy to prevent millions of foreclosures and help families stay in their homes. This strategy includes the following five features:

- ***A Homeowner Stability Initiative to Reach Up to 3 to 4 Million At-Risk Homeowners***
- ***Clear and Consistent Guidelines for Loan Modifications***
- ***Requiring That Financial Stability Plan Recipients Use Guidance for Loan Modifications***
- ***Allowing Judicial Modifications of Home Mortgages During Bankruptcy When A Borrower Has No Other Options***
- ***Require Strong Oversight, Reporting and Quarterly Meetings with Treasury, the FDIC, the Federal Reserve and HUD to Monitor Performance***
- ***Strengthening FHA Programs and Providing Support for Local Communities***

A. ***A Homeowner Stability Initiative to Reach Up to 3 to 4 Million At-Risk Homeowners:*** This initiative is intended to reach millions of responsible homeowners who are struggling to afford their mortgage payments because of the current recession, yet cannot sell their homes because prices have fallen so significantly. In the current economy, in which 3.6 million jobs have been lost over the past 14 months, millions of hard-working families have seen their mortgage payments rise to 40 or even 50 percent of their monthly income – particularly if they received subprime and exotic loans with exploding terms and hidden fees. The Homeowner Stability Initiative operates through a shared partnership to temporarily help those who commit to make reasonable monthly mortgage payments to stay in their homes, providing families with security and neighborhoods with stability. This plan will also help to stabilize home prices for homeowners in neighborhoods hardest hit by foreclosures. Based on estimates concerning the relationship between foreclosures and home prices, with the average house in the U.S. valued around $200,000, **the average homeowner could see his or her home value stabilized against declines in price by as much as $6,000** relative to what it would otherwise be absent the Homeowner Stability Initiative.

Who the Program Reaches:

- ***Focusing on Homeowners At Risk:*** Anyone with high combined mortgage debt compared to income or who is "underwater" (with a combined mortgage balance higher than the current market value of his house) may be eligible for a loan modification. This initiative will also include borrowers who show other indications of being at risk of default. Eligibility for the program will sunset at the end of three years.

- ***Reaching Homeowners Who Have Not Missed Payments:*** Delinquency will not be a requirement for eligibility. Rather, because loan modifications are more likely to succeed if they are made before a borrower misses a payment, the plan will include households at risk of imminent default despite being current on their mortgage payments.

- ***Common Sense Restrictions:*** Only owner-occupied homes qualify; no home mortgages larger than the Freddie/Fannie conforming limits will be eligible. *This initiative will go solely to supporting responsible homeowners willing to make payments to stay in their home – it will not aid speculators or house flippers.*

- ***Special Provisions for Families with High Total Debt Levels:*** Borrowers with high total debt qualify, but only if they agree to enter HUD-certified consumer debt counseling. Specifically, homeowners with total "back end" debt (which includes not only housing debt, but other debt including car loans and credit card debt) equal to

55% or more of their income will be required to agree to enter a counseling program as a condition for a modification.

How the Program Works

- The Homeowner Stability Initiative has a simple goal: reduce the amount homeowners owe per month to sustainable levels. This program will bring together lenders, servicers, borrowers, and the government, so that **all stakeholders share in the cost** of ensuring that responsible homeowners can afford their monthly mortgage payments – helping to reach up to 3 to 4 million at-risk borrowers in all segments of the mortgage market, reducing foreclosures, and helping to avoid further downward pressures on overall home prices. The program has several key components:

    i. ***Shared Effort to Reduce Monthly Payments:*** Treasury will partner with financial institutions to reduce homeowners' monthly mortgage payments.

    - The lender will have to first reduce interest rates on mortgages to a specified affordability level (specifically, bring down rates so that the borrower's monthly mortgage payment is no greater than 38% of his or her income).

    - Next, the initiative will match further reductions in interest payments dollar-for-dollar with the lender, down to a 31% debt-to-income ratio for the borrower.

    - To ensure long-term affordability, lenders will keep the modified payments in place for five years. After that point, the interest rate can be gradually stepped-up to the conforming loan rate in place at the time of the modification. *Note: Lenders can also bring down monthly payments to these affordability targets through reducing the amount of mortgage principal. The initiative will provide a partial share of the costs of this principal reduction, up to the amount the lender would have received for an interest rate reduction.*

    ii. ***"Pay for Success" Incentives to Servicers:*** Servicers will receive an up-front fee of $1,000 for each eligible modification meeting guidelines established under this initiative. Servicers will also receive "pay for success" fees –

awarded monthly as long as the borrower stays current on the loan – of up to $1,000 each year for three years.

iii. ***Responsible Modification Incentives:*** Because loan modifications are more likely to succeed if they are made before a borrower misses a payment, the plan will include an incentive payment of $1,500 to mortgage holders and $500 for servicers for modifications made while a borrower at risk of imminent default is still current.

iv. ***Incentives to Help Borrowers Stay Current:*** To provide an extra incentive for borrowers to keep paying on time under the modified loan, the initiative will provide a monthly balance reduction payment that goes straight towards reducing the principal balance on the mortgage loan. As long as the borrower stays current on his or her payments, he or she can get up to $1,000 each year for five years.

v. ***Home Price Decline Reserve Payments:*** To encourage lenders to modify more mortgages and enable more families to keep their homes, the Administration -- together with the FDIC -- has developed an innovative partial guarantee initiative. The insurance fund – to be created by the Treasury Department at a size of up to $10 billion – will be designed to discourage lenders from opting to foreclose on mortgages that could be viable now out of fear that home prices will fall even further later on. This initiative provides lenders with the security to undertake more mortgage modifications by assuring that if home price declines are worse than expected, they have reserves to fall back on. Holders of mortgages modified under the program would be provided with an additional insurance payment on each modified loan, linked to declines in the home price index. These payments could be set aside as reserves, providing a partial guarantee in the event that home price declines – and therefore losses in cases of default – are higher than expected.

How It Will Be Effective

- ***Protecting Taxpayers:*** To protect taxpayers, the Homeowner Stability Initiative will focus on sound modifications. If the total expected cost of a modification for a lender taking into account the government payments is expected to be higher than the direct costs of putting the homeowner through foreclosure, that borrower will not be eligible. For those borrowers unable to maintain homeownership, even under the affordable terms offered, the plan will provide incentives to encourage families and lenders to avoid the costly foreclosure process and minimize the damage that foreclosure imposes on lenders, borrowers and communities alike. Moreover, Treasury will not provide subsidies to reduce interest rates on modified loans to levels below 2%.

- ***Counseling and Outreach to Maximize Participation:*** Under the plan, the Department of Housing and Urban Development will also make available funding for non-profit counseling agencies to improve outreach and communications, especially to disadvantaged communities and those hardest-hit by foreclosures and vacancies.

- ***Creating Proper Oversight and Tracking Data to Ensure Program Success:*** Fannie Mae and Freddie Mac will be responsible – subject to Treasury's oversight and the Federal Housing Finance Agency's conservatorship – for monitoring compliance by servicers with the program. Every servicer participating in the program will be required to report standardized loan-level data on modifications, borrower and property characteristics, and outcomes. The data will be pooled so the government and private sector can measure success and make changes where needed. Treasury will meet quarterly with the FDIC, the Federal Reserve, the Department of Housing and Urban Development and the Federal Housing Finance Agency to ensure that the program is on track to meeting its goals.

- ***Limiting the Impact of Foreclosure When Modification Doesn't Work:*** Lenders will receive incentives to take alternatives to foreclosures, like short sales or taking of deeds in lieu of foreclosure. Treasury will also work with the GSEs to provide data on foreclosed properties to streamline the process of selling or redeveloping them, thereby ensuring that they do not remain vacant and unsold.

B. ***Clear and Consistent Guidelines for Loan Modifications:*** A lack of common standards has limited loan modifications, even when they are likely to both reduce the chance of foreclosure and raise the value of the securities owned by investors. Mortgage servicers – who should have an interest in instituting common-sense loan modifications – often refrain from doing so because they fear lawsuits. Clear and consistent guidelines for modifications are a key component of foreclosure prevention.

- ***Developing Clear and Consistent Guidelines for Loan Modifications:*** Working with the FDIC, other federal banking and credit union regulators, the FHA and the Federal Housing Finance Agency, the Administration is in process of developing guidelines for sustainable mortgage modifications for all federal agencies and the private sector – bringing order and consistency to foreclosure mitigation. The guidelines will include detailed protocols for loss mitigation as well for identifying borrowers at risk of default; the Administration expects to announce these guidelines by Wednesday, March 4th

- ***Applying Guidelines Across Government and the Private Sector:*** Treasury will develop uniform guidance for loan modifications across the mortgage industry by working closely with the FDIC and other bank agencies and building on the FDIC's pioneering role in developing a systematic loan modification process last year. The Guidelines – to be posted online – will be used for the Administration's new foreclosure prevention plan. Moreover, all financial institutions receiving Financial Stability Plan financial assistance going forward will be required to implement loan modification plans consistent with Treasury guidance. Fannie Mae and Freddie Mac will use these guidelines for loans that they own or guarantee, and the Administration will work with regulators and other federal and state agencies to implement these guidelines across the entire mortgage market. The agencies will seek to apply these guidelines when permissible and appropriate to all loans owned or guaranteed by the federal government, including those owned or guaranteed by Ginnie Mae, the Federal Housing Administration, Treasury, the Federal Reserve, the FDIC, Veterans' Affairs and the Department of Agriculture. In addition, these guidelines will apply to loans owned or serviced by insured financial institutions supervised by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve, the Federal Deposit Insurance Corporation and the National Credit Union Administration.

C. ***Requiring All Financial Stability Plan Recipients to Use Guidance for Loan Modifications:*** As announced last week, the Treasury Department will require all Financial Stability Plan recipients going forward to participate in foreclosure mitigation plans consistent with Treasury's loan modification guidelines.

D. ***Allowing Judicial Modifications of Home Mortgages During Bankruptcy for Borrowers Who Have Run Out of Options:*** The Obama administration will seek careful changes to personal bankruptcy provisions so that bankruptcy judges can modify mortgages written in the past few years when families run out of other options.

- ***How Judicial Modification Works:*** When an individual enters personal bankruptcy proceedings, his mortgage loans in excess of the current value of his property will now be treated as unsecured. This will allow a bankruptcy judge to develop an affordable plan for the homeowner to continue making payments. To receive judicial modifications in bankruptcy, homeowners must first ask their servicers/lenders for a modification and certify that they have complied with reasonable requests from the servicer to provide essential information. *This provision will apply only to existing mortgages under Fannie Mae and Freddie Mac conforming loan limits, so that millionaire homes don't clog the bankruptcy courts.*

- ***Bolster FHA and VA Authority to Protect Investors and Ensure Loan Modifications Occur:*** Legislation will provide the FHA and VA with the authority they need to provide partial claims in the event of bankruptcy or voluntary modification so that holders of loans guaranteed by the FHA and VA are not disadvantaged.

E. ***Strengthening FHA Programs and Providing Support for Local Communities***

- ***Ease Restrictions in Federal Housing Administration Programs, Including Hope for Homeowners:*** The Hope for Homeowners program offers one avenue for struggling borrowers to refinance their mortgages. In order to ensure that more homeowners participate, the FHA will reduce fees paid by borrowers, increase flexibility for lenders to modify troubled loans, permit borrowers with higher debt loads to qualify, and allow payments to servicers of the existing loans.

- ***Strengthening Communities Hardest Hit by the Financial and Housing Crises:*** As part of the recovery plan signed by the President, the Department of Housing and Urban Development will award $2 billion in competitive Neighborhood Stabilization Program grants for innovative programs that reduce foreclosure. Additionally, the recovery plan includes an additional $1.5 billion to provide renter assistance, reducing homelessness and avoiding entry into shelters

3. Support Low Mortgage Rates By Strengthening Confidence in Fannie Mae and Freddie Mac:

- ***Ensuring Strength and Security of the Mortgage Market:*** Today, using funds already authorized in 2008 by Congress for this purpose, the Treasury Department is increasing its funding commitment to Fannie Mae and Freddie Mac to ensure the strength and security of the mortgage market and to help maintain mortgage affordability.

  - ***Provide Forward-Looking Confidence:*** The increased funding will enable Fannie Mae and Freddie Mac to carry out ambitious efforts to ensure mortgage affordability for responsible homeowners, and provide forward-looking confidence in the mortgage market.

  - Treasury is increasing its Preferred Stock Purchase Agreements to $200 billion each from their original level of $100 billion each.

- ***Promoting Stability and Liquidity:*** In addition, the Treasury Department will continue to purchase Fannie Mae and Freddie Mac mortgage-backed securities to promote stability and liquidity in the marketplace.

- ***Increasing The Size of Mortgage Portfolios:*** To ensure that Fannie Mae and Freddie Mac can continue to provide assistance in addressing problems in the housing market, Treasury will also be increasing the size of the GSEs' retained mortgage portfolios allowed under the agreements – by $50 billion to $900 billion – along with corresponding increases in the allowable debt outstanding.

- ***Support State Housing Finance Agencies:*** The Administration will work with Fannie Mae and Freddie Mac to support state housing finance agencies in serving homebuyers.

- ***No EESA or Financial Stability Plan Money:*** The $200 billion in funding commitments are being made under the Housing and Economic Recovery Act and **do not use any money from the Financial Stability Plan or Emergency Economic Stabilization Act/TARP.**

APPENDIX III: LETTER FROM CONGRESSIONAL OVERSIGHT PANEL CHAIR ELIZABETH WARREN TO TREASURY SECRETARY MR. TIMOTHY GEITHNER, DATED MARCH 5, 2009

Congressional Oversight Panel
732 North Capitol Street, NW
Rooms C-320 and C-617
Mailstop: COP
Washington, DC 20401

March 5, 2009

Hon. Mr. Timothy F. Geithner
Secretary of the Treasury
U. S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Geithner:

Thank you for your February 23, 2009 letter. During your brief tenure, Treasury has taken important steps towards improving accountability and increasing transparency in its financial stabilization programs, and starting to implement a plan of relief for struggling home owners.

Your letter and, more important, your actions as Secretary of the Treasury, have addressed many of the Congressional Oversight Panel's concerns. I am writing, however, as part of our ongoing oversight obligations under the Emergency Economic Stabilization Act of 2008 because of the Panel's concern that many of the questions we raised remain unanswered. The Panel cannot fulfill its obligations to the Congress unless it can obtain complete and candid answers to its questions in a timely fashion. We understand that you and your staff face many immediate challenges, and we are willing to work with you to set a reasonable timetable for a response to the Panel's open questions. But meaningful answers are essential.

There are many questions that we believe must be addressed in coming weeks, but we ask you to focus your attention on one immediate issue. Treasury has not explained how its financial stabilization programs fit together to address the problems that caused this crisis. This failure to connect specific programs to a clear strategy aimed at the root causes of the crisis has produced uncertainty and drained your work of public support. Financial institutions, businesses, and consumers will not return to healthy investment in the economy if they fear that the federal government is careening from one crisis to another without an intelligible road map.

For these reasons, we ask that you provide answers to the following questions about Treasury's current views and the approach outlined in the Administration's recently-issued

Mr. Timothy F. Geithner
March 6, 2009
Page 2

Financial Stability Plan. Please answer each question in detail and please indicate the economic or other evidence on which your each answer rests:

1. What do you believe the primary causes of the financial crisis to have been? Are those causes continuing? How does your overall strategy for using Treasury authority and taxpayer funds address those causes?

2. What is the best way to recapitalize the banking system? How does your answer relate to your assessment of the causes of the financial crisis?

3. What is your view of the economic status of the American consumer and the amount that constitutes a healthy debt burden for the consumer? The Consumer and Business Lending Initiative and elements of the Homeowner Affordability and Stability Plan are designed to restart consumer purchases of homes and automobiles, but the success of these programs depends on the ability of consumers to absorb more debt. Has Treasury developed any data to determine whether consumers can shoulder the additional debt to power these initiatives?

In order to advance our understanding of Treasury's strategic plan, I request that, in addition to providing the Panel with written answers by March 20, you share the core of those answers in a Panel hearing on Financial Stability Program strategy on March 12 or March 19, 2009.

The Panel looks forward to working with you in its oversight capacity as you address the economic crisis. If we can be of any assistance, please do not hesitate to contact me or have a member of your staff contact the Panel's Executive Director, Naomi Baum, at [redacted] or [redacted].

Sincerely,

Elizabeth Warren
Chair
Congressional Oversight Panel

cc: Sen. John E. Sununu
cc: Rep. Jeb Hensarling
cc: Mr. Richard H. Neiman
cc: Mr. Damon A. Silvers

APPENDIX IV: MORTGAGE SURVEY LETTER FROM CONGRESSIONAL OVERSIGHT PANEL CHAIR ELIZABETH WARREN TO TREASURY SECRETARY MR. TIMOTHY GEITHNER, DATED FEBRUARY 4, 2009

Congressional Oversight Panel
732 North Capitol Street, NW
Rooms: C-320 and C-617
Mailstop: COP
Washington, DC 20401

February 4, 2009

Mr. Timothy Geithner
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Mr. Geithner:

I am writing to request that the U.S. Department of the Treasury (Treasury Department) assist the Congressional Oversight Panel (Panel) in its oversight over federal efforts at foreclosure mitigation.

The Panel was created pursuant to section 125 of the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343 (EESA). EESA vested the Panel with broad oversight authority and duties, including the requirement to make regular reports to Congress on the effectiveness of foreclosure-mitigation efforts. Congress also empowered the Panel to "secure directly from any department or agency of the United States information necessary to enable it to carry out" its oversight responsibilities.

As part of its effort to evaluate the effectiveness of foreclosure mitigation efforts, the Panel requests that the Treasury Department respond to the following survey about foreclosure-mitigation efforts.

The Panel recognizes that the Treasury Department may not possess data sufficient to answer all the questions in the survey. If the Treasury Department does possess such data, however, the Panel is requesting that the Treasury Department perform the data analysis necessary to answer the questions in the survey, even if the Treasury Department does not routinely perform such analysis of the data.

The Panel is concurrently sending the Office of Thrift Supervision (OTS) and the Office of the Comptroller of the Currency (OCC) the identical survey that is attached here. The Panel requests that the Treasury Department coordinate with OTS and OCC and only provide information based on mortgage data that is not kept by either OTS and OCC and thus will not be part of either of these agencies' survey responses.

The Panel requests that you provide this information as soon as possible, but in no case later than **5:00 p.m. on Wednesday, February 18, 2009.**

If you have any questions or would like additional information, please contact Charlie Honig at [redacted] or [redacted].

Thank you for your attention to this request.

Sincerely,

Elizabeth Warren
Chairperson
Congressional Oversight Panel

cc: Mr. John M. Reich

Ms. Julie L. Williams

Rep. Jeb Hensarling

Sen. John E. Sununu

Mr. Richard H. Neiman

Mr. Damon A. Silvers

APPENDIX V: MORTGAGE SURVEY FROM CONGRESSIONAL OVERSIGHT PANEL TO NUMEROUS RECIPIENTS

CONGRESSIONAL OVERSIGHT PANEL
MORTGAGE FORECLOSURE MITIGATION SURVEY

Please answer the following questions regarding information that you directly collect regarding mortgage delinquencies, foreclosures, and modifications.

PART I. AGENCY INFORMATION GATHERING

1. Does your agency collect information on mortgage delinquencies? (Y/N)

2. Does your agency collect information on mortgage foreclosures? (Y/N)

3. Does your agency collect information on mortgage loss mitigation efforts (repayment plans, modifications, short sales, etc.)? (Y/N)

4. If the answer to any of the three previous questions was yes, please detail the information collected, including the source of the data and a listing of all data fields. Please be sure to explain if the data is collected directly from regulated entities or via data vendors like First American/Loan Performance or McDash, and whether it is loan-level or survey-level data. Please also detail any estimates of the data's market coverage.

5. If you collect data on delinquencies, foreclosures, mitigations and/or modifications, please submit any data code books or data dictionaries.

6. Please detail any coordination your agency has taken to date with other federal or state regulatory agencies in collecting information on mortgage delinquencies, foreclosures, and loss mitigation, including any steps taken to standardize data collection or to collect or analyze data jointly.

If your agency directly collects information on mortgage delinquencies, foreclosures, mitigations and/or modifications, please answer the questions in Parts II-VI as of December 31, 2008, unless otherwise directed. Please indicate if your agency does not possess the information necessary to answer the particular question..

If your agency uses multiple data sources, please be sure to indicate the data sources used in replying to each question.

Also, if your sample includes government-insured (FHA/VA) loans, please run the analysis separately for those loans.

Please indicate if you are unable to respond to the questions on a numeric basis, but can respond on a percentage basis, and then provide a respond on a percentage basis.

PART II. THE MORTGAGE LOANS

7. How many mortgage loans are in the data that you collect?

8. How many of these loans are classified as subprime? Please note if the reporting institution makes this classification or, if the classification is made by your agency, what definition of subprime you use.

9. How many of these loans are alt-A? Please note if the reporting institution makes this classification or, if the classification is made by your agency, what definition of alt-A you use.

10. How many of these loans are:
    a. Government-insured (FHA/VA) loans?
    b. Jumbos?
    c. Junior mortgages?
    d. 2-4 family residences?

11. How many of these loans have a junior mortgage attached to the same property?

12. How many of these loans were identified as "owner-occupied" at origination?

13. How many of these loans are currently listed as "owner-occupied"?

14. How many of these loans were "low doc" or "no doc"?

15. How many of these loans, when originated, had front-end debt ratio (monthly housing debt, as PITI, to income) of:
    a. Greater than or equal to 38%?
    b. Greater than 31% and less than 38%?
    c. Greater than 28% and less than 31%?
    d. Less than or equal to 28%?

16. How many of these loans, when originated, had back-end debt ratio (total monthly debt to income) of
    a. Greater than 65%?
    b. Greater than 55% and less than or equal to 65%?
    c. Greater than 45% and less than or equal to 55%?
    d. Less than or equal to 45%?

17. How many loans had a CLTV at origination of ≥90%?

18. How many loans currently have negative equity?

19. How many loans are:
    a. ARMs (including hybrid 2/28s and 3/27s)?
    b. Interest only?

c. Negatively amortizing (including pay-option ARMs)?

20. How many of the ARMs:
    a. Are currently at a teaser rate?
    b. Will reset for the first time in the next 12 months?
    c. Have already reset?

21. How many loans have prepayment penalties?

22. How many of the loans are securitized and how many are portfolio?

23. How many of the securitized loans are agency and how many are private-label?

24. How many of these loans were refinancings and how many were purchase-money?

PART III. DELINQUENCIES

Please exclude modified loans from your answers to this section. If this is not possible given your data set, please indicate so.

25. How many of the loans you track are:
    a. 30+ days delinquent?
    b. 60+ days delinquent?
    c. 90+ days delinquent?
    d. In foreclosure?

26. How many foreclosure sales, short sales or deeds-in-lieu occurred over the last quarter for the loan pool your agency tracks?

27. How many of the 60+ days delinquent loans:
    a. Had a CLTV at origination of $\geq$90%?
    b. Are currently negative equity (current CLTV$\geq$100%)?
    c. Are ARMs?
    d. Are ARMs where the interest rate has reset?
    e. Are hybrid ARMs (2/28s, 3/27s, etc.)?
    f. Are hybrid ARMs where the teaser rate has reset?
    g. Have prepayment penalties?
    h. Are jumbos?
    i. Are subprime?
    j. Are alt-A?
    k. Are interest only?
    l. Negatively amortizing (including pay-option ARMs)?
    m. Have a junior mortgage?
    n. Are 2-4 family residences?
    o. Were listed as owner-occupied at origination?
    p. Are owner-occupied currently?

q. Are low-doc or no-doc?
r. Had front-end debt ratio (monthly housing debt, as PITI, to income) when originated of:
   i. Greater than or equal to 38%?
   ii. Greater than 31% and less than 38%?
   iii. Greater than 28% and less than 31%?
   iv. Less than or equal to 28%?
s. Had back-end debt ratio (total monthly debt to income) when originated of
   i. Greater than 65%?
   ii. Greater than 55% and less than or equal to 65%?
   iii. Greater than 45% and less than or equal to 55%?
   iv. Less than or equal to 45%?
t. Were refinancings?
u. Were purchase-money mortgages?

Part IV. Modifications

If your data permits, please answer the questions in this section separately for: (1) securitized and non-securitized loans; and (2) modifications occurring before October 1, 2008, and modifications occurring between October 1, 2008 and December 31, 2008.

28. How many loans have been modified or placed into a repayment plan?
    a. How many have been modified?
    b. How many have been placed in were repayment plans?

29. Of the modifications reported in question 28, how many resulted in the following (monthly payment inclusive of P&I):
    a. A lowering of the monthly payment for life of the loan?
    b. A temporary lowering of the monthly payment?
    c. A lowering of the monthly payment by more than 10% for life of the loan?
    d. A temporary lowering of the monthly payment by more than 10%?
    e. An increase of the monthly payment for the life of the loan?
    f. A temporary increase in the monthly payment?
    g. Monthly payment remaining the same for life of the loan?
    h. A temporary freeze of the monthly payment?

30. Of the modifications reported in question 28, above, how many resulted in:
    a. A fully amortizing loan?
    b. A loan with less than full amortization (some additional payment at conclusion)?
    c. Loss/profit sharing arrangements?

31. Of the modifications reported in question 28,that reduced monthly payments, inclusive of principal and interest, how many involved:
    a. Solely a deferral (forbearance) on some amount of principal or arrearage?
    b. Solely a write-down of principal?

c. Solely a reduction in interest rates?
d. Solely an increase in the loan's term with a reamortization (tenor)?
e. Solely a change to the loan's amortization schedule?
f. A combination of (a) and (c) (above)?
g. A combination of (a) and (d)?
h. A combination of (b) and (c)?
i. A combination of (b) and (d)?
j. A combination of (b) and (e)?
k. A combination of (c) and (e)?
l. A combination of (a), (c), and (d)?
m. A combination of (b), (c), and (d)?
n. A combination of (b), (c), and (e)?

32. Of the modifications reported in question 28, how many involved
    a. An up-front payment of fees?
    b. An up-front payment of arrearages?
    c. A waiver of fees?
    d. Changing a variable rate loan into a fixed rate loan?

33. Of the modifications reported in question 28, how were on properties with junior mortgages?

34. Of the modifications reported in question 28, how many that had junior mortgages at the time of origination still have a junior mortgage?

35. Of the modifications reported in question 28, how many are negative equity post-modification?

36. Of the modifications reported in question 28, what is the average origination CLTV loans?

37. Of the modifications reported in question 28, above, what is the average post-modification CLTV of modified loans?

38. Of the modifications reported in question 28, how many were no-doc or low-doc loans?

39. Of the modifications reported in question 28, how many were jumbos?

40. Of the modifications report in question 28, how many were on mortgages with private mortgage insurance?

PART V. REDEFAULTS

If your data permits, please answer the questions in this section separately for:

(1) securitized and non-securitized loans; and (2) modifications occurring between July 1, 2008 and September 30, 2008, and modifications occurring between October 1, 2008 and December 31, 2008.

41. How many modified loans (including modifications conditional on successful payments) redefaulted before making their first modified payment?

42. How many modified loans are:
    a. 30+ days delinquent (including "rolling 30s")?
    b. 60+ days delinquent?
    c. 90+ days delinquent?

43. How many modified loans are 60+ days delinquent and for which:
    a. Monthly payments were reduced?
    b. Monthly payments were *not* reduced?
    c. Monthly payments were reduced by less than 10%?
    d. Monthly payments were reduced by 10% or more?

44. How many modified loans are 60+ days delinquent and for which:
    a. There was a principal write-down (regardless of interest rate reduction)?
    b. There was an interest rate reduction (but not a principal reduction)?
    c. CLTV on the loan is currently $\geq$100%?
    d. CLTV on the loan is currently $\geq$95%?
    e. There is a junior mortgage on the property?
    f. The original loan was no-doc or low-doc?

45. How many modified loans are 60+ days delinquent for which the front-end debt ratio (monthly housing debt, as PITI, to income) immediately post-modification is:
    a. Greater than or equal to 38%?
    b. Greater than 31% and less than 38%?
    c. Greater than 28% and less than 31%?
    d. Less than or equal to 28%?

46. How many modified loans are 60+ days delinquent for which the back-end debt ratio (total monthly debt to income) immediately post-modification is:
    a. Greater than 65%?
    b. Greater than 55% and less than or equal to 65%?
    c. Greater than 45% and less than or equal to 55%?
    d. Less than or equal to 45%?

PART VI. LOSS SEVERITIES

47. In the fourth quarter of 2008, what was the mean and the median loss severity, after accounting for insurance recoveries, (both in absolute dollar terms and as a percentage of loan value) for:

a. Mortgages that were foreclosed?
b. Mortgage that were modified (assuming no future redefaults)?
c. Mortgages that were modified previously (including modifications contingent upon successful payments), but redefaulted and were foreclosed?

APPENDIX VI: MORTGAGE SURVEY DATA FROM THE OFFICE OF THE COMPTROLLER OF THE CURRENCY AND THE OFFICE OF THRIFT SUPERVISION

Office of the Comptroller of the Currency
Office of Thrift Supervision

February 20, 2009

Elizabeth Warren
Chair, Congressional Oversight Panel
732 North Capital Street, N.W.
Rooms C-320 and C-617
Mailstop: COP
Washington, D.C. 20401

Dear Professor Warren:

We are writing in response to your letter of February 4, 2009, on behalf of the Congressional Oversight Panel (Panel), in which you asked that the Office of the Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS) provide a coordinated response to a survey from the Panel by providing certain mortgage performance data. This letter and the enclosed chart and data dictionary respond to the Panel's request.

Last year, the OCC and OTS contracted with McDash Analytics, LLC, to aggregate and validate loan-level data the agencies have required to be submitted by the largest national bank and thrift mortgage servicers. Our quarterly *Mortgage Metrics Report* presents this information, covering approximately 90 percent of the first-lien mortgages serviced by loan servicers supervised by OCC and OTS, representing over 60 percent of all mortgages in the United States. The *Report* is based on loan-level data, with standardized definitions and data elements to ensure consistency. The information contained in the *Report* is subject to a validation process and the scope of the *Report* is uniquely comprehensive.

As of September 2008, the 34.9 million first-lien mortgage loans serviced by these institutions totaled more than $6.1 trillion in principal balances. The data collected on these mortgage loans includes key performance data, including mortgage delinquencies and foreclosures, and loan modifications. As requested in Part I of your request, we have enclosed our data element dictionary, which documents the scope and detail of the information being submitted. This document, which defines the loan-level data elements collected and used in preparing our *Mortgage Metrics Report,* should facilitate your understanding of our responses to your request.

Our *Report* for the third quarter of 2008 gathered a vast amount of data on the effectiveness of loan modifications, and it showed that an unexpectedly high percentage of borrowers receiving loan modifications in the first and second quarter of 2008 were past due on the new loan modification payment terms. An examination of these results led to our decision that more detailed information was required to enhance our analysis. Since then, we have been working to gather additional details on how different types of modifications have changed monthly principal and interest payments resulting from modifications. We plan to present substantially expanded information on actual changes in monthly principal and interest payments resulting from loan modifications in the next quarterly *Mortgage Metrics Report* due out in March. Further details on modifications are planned for subsequent *Reports*.

In Part II of your request, you asked for the volume of loans in the agencies' collected data with various characteristics. We have provided you with the requested aggregate figures, including the volumes of loans classified as subprime and Alt-A; loans identified as "low doc" or "no doc"; loans with the specified levels of back-end debt ratios when originated; and loans identified as ARMs and interest-only.

Part III of your request asked for data on mortgage loan delinquencies, excluding modified loans. We have provided the requested figures, including the number of loans at 30, 60, and 90 days delinquent and numerous characteristics of loans 60days delinquent. These figures are based on data as of September 30, 2008. Additional updated data, as of year end 2008, will be reported in the next edition of the Mortgage Metrics Report, scheduled for release in late March. We will provide this information to the Panel. Other mortgage loan characteristics, including front-end debt ratios for mortgage loans at the time of origination, are now being collected and will become available as we receive data for the first quarter of 2009.

Parts IV and V of the survey requested data on mortgage loan modifications and redefaults on modified loans. Based upon the data currently available, we have provided the aggregate number of loans modified or placed into a repayment plan, and the delinquency rates for these loans. As noted above, we recently expanded the scope of the mortgage performance data gathered to include more information on the nature and sustainability of loan modifications. This additional data, which will become available next month, will demonstrate how loan modifications changed the total amount of borrowers' monthly principal and interest payments in 2008, grouping the modifications into four categories. We will report this updated data in the next edition of the Mortgage Metrics Report, and, as noted above, will provide this information to the Panel. Even more specific information on new loan modifications is now being collected and will become available as we receive data for the first quarter of 2009. We intend to release this additional data with the June *Mortgage Metrics Report*.

Finally, in Part VI of the survey request, you asked for information on loss severities for modified and for foreclosed upon mortgage loans. This is not part of the data collected in the *Mortgage Metrics* project. However, examiners on an institution-by-institution basis will review and determine the availability of such data as part of their supervisory examinations.

We trust that you will find the attached responses to your survey request to be useful in your efforts to evaluate the effectiveness of foreclosure mitigation efforts. We share your appreciation for the importance of this type of data. It can be used to encourage loan modifications that are more likely to be effective and sustainable. As we provide more detailed information in the future, supervisors, lenders, servicers and policymakers can use this information to improve the sustainability of loan modifications and develop additional strategies to respond to the problems facing homeowners, mortgage servicers, and the broader economy.

If you have any questions, please do not hesitate to contact us.

Sincerely,

John C. Dugan
Comptroller of the Currency

John M. Reich
Director
Office of Thrift Supervision

Enclosures

cc: Rep. Jeb Hensarling

Sen. John E. Sununu

Mr. Richard H. Neiman

Mr. Damon A. Silvers

OCC/OTS MORTGAGE METRICS – LOAN LEVEL DATA COLLECTION:

FIELD DEFINITIONS

1/7/2009

McDash Analytics, LLC, Denver, CO

This document describes the Loan Level Data Elements and Definitions used to prepare OCC/OTS quarterly Mortgage Metrics Reports.

This document lists and defines the loan level data elements the OCC and OTS requested servicers to provide in conjunction with Mortgage Metrics Reporting. System limitations and a lack of information resulting from acquisitions, mergers, etc. may result in certain elements not being available for all loans. Data elements and definitions have been expanded and revised to support the Agencies need for additional information on loan modifications. The most recent revision, dated January 7, 2009, will go into effect with the scheduled January 2009 data submission. These expanded data elements, highlighted in the table below, will apply to active loans and or modifications initiated beginning January 1, 2009 on a go-forward basis.

Table 1

30 – Workout Type Completed/Executed: Reaged/Deferred/Extended	43 – Modification Type: Updated values to include FHFA, FDIC, Proprietary Systematic Program and Proprietary Other. All other values (a-g) will be tracked using fields 69-74 beginning January 2009 data submission.
69 – Principal Deferred	70 – Principal Writedown
71 – Capitalization of Delinquent Amount	72 – Interest Rate Reduced
73 – Interest Rate Frozen	74 – Term Extended
75 – Duration of Modification	76 – Refreshed DTI Ratio (Front-end)
77 – Refreshed DTI Ratio (Back-end)	78 – Step Modification Flag
79 – Principal Deferred Amount	80 – Delinquent Amount Capitalized
81 – Refreshed CLTV After Modification	82 – Property Valuation Method at Modification
83 – Principal and Interest Amount at Origination	84 – Principal and Interest Amount Current
85 – Escrow Amount at Origination	86 – Escrow Amount Current
87 – DTI Ratio (Front-end) at Origination	88 – Remaining Term
89 – ARM Margin at Origination	90 – ARM Margin Current
91 – ARM Index	92 – P&I Amount Before Modification
93 – P&I Amount After Modification	94 – Escrow Amount Before Modification
95 – Escrow Amount After Modification	96 – Interest Rate Before Modification
97 – Interest Rate After Modification	98 – Remaining Term Before Modification
99 – Remaining Term After Modification	

Loss Mitigation Loan-Level Data Collection Field Definitions

FIELD DEFINITIONS

1. Loan Number – A unique identifier for the loan record that will be the same month to month. Reference numbers may be used in lieu of actual loan numbers as long as it meets this criteria

2. Lien Position at Origination – The position of this mortgage relative any additional liens on the property. If there are no additional liens, the mortgage is in first position.

3. Credit Grade – Servicer defined.

4. Investor – Identifies the owner of the mortgage
   a. FNMA – Serviced mortgages that are owned by FNMA
   b. FHLMC – Serviced mortgages that are owned by FHLMC
   c. GNMA – Serviced mortgages that are owned by GNMA
   d. Private – Loans securitized by private-label (non-Government, non-GSE) issuers.
   e. Portfolio – Mortgages owned and held on the bank's balance sheet. Include both Held for Sale or Held for Investment in this category.

5. Product Group
   a. FHA – Loans insured by the Federal Housing Administration
   b. VA – Loans insured by the Department of Veteran's Affairs
   c. Conventional with PMI – Non-government insured mortgages insured by a private (non-government) insurer.
   d. Conventional w/o PMI – Mortgages with neither government nor private mortgage insurance.

6. Interest Type at Origination
   a. Fixed – Mortgages where the interest rate is fixed for the life of the mortgage. Hybrid ARMS should not be included in this category.
   b. ARM – Mortgages where the interest rate fluctuates based on a spread to an index. Include all variable rate loans regardless of whether there is an initial fixed period.

7. Interest Type in Current Month – Identifies the interest type in the reporting month. This field will be the same as field number 6 unless the loan has had its interest type modified.

8. Loan Closing Date – The date on which the original loan funding was disbursed to the borrower.

9. Original Loan Amount – The dollar amount of the funds disbursed to the borrower at the time of loan closing.

10. Unpaid Principal Balance – The total principal amount outstanding as of the end of the month. The UPB should not reflect any accounting based write-downs and should only be reduced to zero when the loan has been liquidated – either paid-in-full, charged-off, REO sold or Service transferred (see field 28).

11. Original Interest Rate – The annual percentage rate as specified on the mortgage note at the time of origination.

12. Current Interest Rate – The annual percentage rate of the mortgage as of the last day of the reporting month.

13. Original LTV – The original loan-to-value (LTV) ratio is the original loan amount divided by the less r of the selling price or the appraised value of the property securing the mortgage at origination or upon initial transfer into the servicing portfolio.

14. Refreshed LTV – The refreshed LTV refers to the servicer periodically updating the estimate of value to recalculate loan-to-value using the current loan balance. Do not report where the refreshed property value was not obtained within the last year.

15. Original FICO – The statistically calculated credit score of all borrowers developed by the Fair Isaac Corporation used to evaluate the creditworthiness of the borrower. The FICO score can be based on the credit bureau service the institution uses as its source. Original FICO reflects the score upon which the mortgage underwriting decision was based.

16. Current FICO – The Current FICO reflects the refreshed score based on the Fair Isaac calculation.

17. Product Description – Identifies the product type of the mortgage including the interest type, amortization term and initial fixed period for hybrid products.

18. Option ARM at Origination – A payment Option ARM is a nontraditional mortgage that allows the borrower to choose from a number of different payment options. For example, each month, the borrower may choose: a minimum payment option based on a "start" or introductory interest rate, an interest-only payment option based on the fully indexed interest rate, or a fully amortizing principal and interest payment option based on a 15-year or 30-year loan term, plus any required escrow payments. Payments on the minimum payment option can be less than the interest accruing on the loan, resulting in negative amortization. The interest-only option avoids negative amortization, but does not provide for principal amortization. After a specified number of years, or if the loan reaches a certain negative amortization cap, the required monthly payment amount is recast to require payments that will fully amortize the outstanding balance.

19. Option ARM in Reporting Month – Identifies whether a mortgage allows a borrower a choice of payment options in the reporting month. For full definition of payment Option ARMs, see #18.

20. Interest Only at Origination - An interest only (IO) mortgage is a nontraditional mortgage which allows the borrower to pay only the interest due on the loan for a specified number of years (e.g., three or five years), and whose interest rate may fluctuate or be fixed. After the interest-only period, the rate may be fixed or fluctuate based on the prescribed index, with payments including both principal and interest.

21. Interest Only in Reporting Month – Identifies whether the minimum mortgage payment in the reporting month represents only the interest due on the loan.

22. Documentation – Describes how the borrower's income levels were documented at time of origination.
    a. Full – The borrower provided full verification of income levels via W2, pay stubs, tax r turns, etc.
    b. Alt / Low - Alternative or Low Doc loans refers to the mortgages qualified and underwritten under lender programs designed without requiring verification of employment, assets, mortgage/rental history and/or DTI of the borrower. This categorization applies to any combination of the aforementioned limited documentation standards, excluding Stated Income programs.
    c. Stated - Stated income includes all mortgages where the borrower was qualified for approval based on representation of income, without direct verification of either the source or amount of said income by the lender.

23. Property State – The state in which the property is located. Please be sure to provide the state where the property is located and not the billing address as the two may differ for non-Owner Occupied properties.

24. Property ZIP Code – The nine or five digit zip code of the property, whichever is available.

25. Loss Mitigation Performance Status – Identifies whether a loan is being actively handled by the servicer's loss mitigation department. Refers to all loans where the servicer has initiated loss mitigation procedures whether or not a particular course of action or workout type has been executed...
    a. Active and performing – Refers to any mortgage that is currently in loss mitigation and is performing to the terms of a selected plan.
    b. Active and Non-performing – Refers to instances where a servicer is actively pursuing loss mitigation with a borrower who is not currently making all payments on the mortgage.
    c. Broken – Populated for situations where the borrower has defaulted on the terms of loss mitigation plan and the servicer has removed the loan from loss mitigation and is proceeding with the default process.

26. Foreclosure Status – Identifies the current foreclosure status as of the end of the reporting month.
    a. In foreclosure, pre-sale – Coded for any mortgage that has been referred to an attorney for loss mitigation proceedings but has not yet gone to foreclosure sale.
    b. Post-sale Foreclosure – Coded for any loan where the bank has obtained title at foreclosure sale, but the property is not yet actively being marketed. Typically this will include loans that are in redemption or being repaired. If this information is not available, please code the loan as OREO.
    c. OREO – Coded for any mortgage where the bank has obtained title at foreclosure sale and the property is on the market and available for sale. Also code instances where the bank has obtained title but the availability for sale is not known.

27. Foreclosure Referral Date – Provide the date that the mortgage was referred to an attorney for the purpose of initiating foreclosure proceedings. This date should reflect the referral date of currently active foreclosure process. Loans cured from foreclosure should not have a referral date.

28. Liquidation Status – Provide the liquidation method for any loan that was liquidated during the reporting month.
    a. Voluntary Payoff – Code all instances where the loan has been paid in full by the borrow r either through refinance of the mortgage, sale of the property or principal payment in full.
    b. Involuntary Liquidation – Code all instances where the mortgage has been liquidated either through foreclosure proceedings or another settlement option resulting in incomplete repayment of principal. Include short-sales, charge-offs, as well as OREO liquidations.
    c. Servicing Transfer – Code all instances where the servicing of the mortgage has been transferred or sold to another institution during the reporting month.

29. Foreclosure Sale Date – The date of the foreclosure sale (or sheriff's sale), please populate the date for any loan that has completed foreclosure sale whether or not the title was acquired by the bank.

30. Workout Type Completed – This field should be coded for any loan where a loss mitigation effort has been successfully completed in the current month. Successful completion is defined as the closing of loss mitigation activities where the borrower has no remaining delinquent obligations to the servicer. The field should be coded in only the reporting month when the workout type was completed and not in subsequent months. For Code 13 – Reaged/Deferred/Extended – include loans where there has been an agreement with the borrower to defer principal and interest but with no other terms to enhance affordability.

31. Next payment due date – The due date for the next outstanding payment on the mortgage. For delinquent loans this date will be in the past.

32. Bankruptcy flag – Flag all loans where the servicer has been notified of the borrower's bankruptcy declaration.

33. Active Repayment Plan Flag – Code as 1 all loans that are active and performing according to the terms of a repayment plan as of the end of the reporting month. Do not code as active any loan currently operating under a stip-to-mod plan where the loan is scheduled to be modified if the terms of the stipulated repayment plan are met.

34. Loss Mitigation Letter Sent – RESERVED FOR FUTURE USE.

35. Reason for Default – Identifies the reason that the borrower has defaulted on their mortgage payment obligations.

36. Loan Source – Identifies the source by which the servicer originated or otherwise acquired the mortgage. At the servicer's discretion, acquired servicing may be reported as retail, broker, or correspondent originations to the extent the information is available.
    a. Retail – Report all mortgages originated through the reporting institution's retail, including branch or internet, production channel.
    b. Wholesale (Broker) - Report all mortgages originated through the reporting institution's wholesale/broker production channel. Report as broker originated all third-party originated loans where the bank cannot distinguish between broker and correspondent originated.

c. Correspondent - Mortgages acquired through the reporting institution's correspondent production channel. This includes all mortgage whole loans purchased on a recurring basis (flow) from another correspondent institution, eligible for securitization into the secondary markets or portfolio retention on the bank's balance sheet. Report as broker originated all third-party originated loans when the bank cannot distinguish between broker and correspondent originated.
d. Bulk Purchase – Pools of mortgage whole loans purchased from a third party originator for the right to securitize or retention in the bank-owned portfolio. Residential Mortgages acquired for the Servicing Portfolio in this manner are typically negotiated as one-time transactions between a Mortgage Institution and an independent third party originator (Mortgage Company or Correspondent). Report all bulk acquisitions and correspondent flow acquisitions as correspondent originated when the institution cannot distinguish between these categories. Also, include loans acquired by the Servicer through a corporate transaction involving the merger or acquisition of another non-affiliated corporation.
e. Servicing Rights Purchased - Refers to a separately negotiated purchase of mortgage servicing rights (PMSR) from a third party. When the servicer cannot distinguish between bulk whole loan and bulk servicing acquisitions, the servicer should report all of these acquisitions consistently in the category that represents the majority of the servicer's acquisitions. Note: This reporting category applies exclusively to the Servicing Portfolio.

37. Owner Occupancy Flag – Report all mortgages where the borrower owns and occupies the property securing the mortgage.

38. Notice of Default – Please provide the date for all loans where the servicer has issued a formal notice of default, breach letter or similar communication notifying the borrower that the loan is in default.

39. Third Party Sale Flag – Identify any loan where the title has transferred to a party other than the servicer at the time of foreclosure sale. If the loan was not sold to a third party or is not currently in foreclosure this field should be coded with a zero.

40. Credit Class – Servicer defined Prime, Alt-A and Non-prime designation.

41. Property Type – Provide the number of units of the property, if the actual number of units is not available for multi-family properties please code this field with a 9.

42. ARM Initial Rate Period – Identifies the term, in months, from the time of origination to the first interest rate change date for ARM s.

43. Modification Type – This field should be populated for any loan that is currently operating under modified terms and identifies the specific terms that were altered through loss mitigation efforts.

The following elements (a-g) were modification type options for data submissions October 2007 – December 2008.

a. Rate reduction – The interest rate on the mortgage was lowered to reduce borrower payments.

b. Term – A term modification is one in which there was a change to the rate reset date balloon feature and/or maturity date. Do not include loan modifications made pursuant to the ASF's December 6, 2007 "Streamlined Foreclosure and Loss Avoidance Framework for Securitized Subprime Adjustable Rate Mortgage Loans."
c. Principal Write-down – Report all loans where an adjustment to the unpaid principal balance was the only modified term of the mortgage.
d. Capitalization – Capitalization is defined as instances where accrued and/or deferred principal, interest, servicing advances, expenses, fees, etc. are capitalized into the unpaid principal balance of the modified loan
e. Combination – Report all loans modified using any combination of the above options.
f. ASF Streamline - Report all loan modifications in conformance with the ASF's December 6, 2007 "Streamlined Foreclosure and Loss Avoidance Framework for Securitized Subprime Adjustable Rate Mortgage Loans."
g. Other – Report any modification type not covered by the previous categories.

The following modification type options (h-m) will be available beginning with the January 2009 data submission. Items (a-g) will be reported in fields 69-74.

h. Loan has not been modified.
i. ASF Streamline - Report all loan modifications in conformance with the ASF's December 6, 2007 "Streamlined Foreclosure and Loss Avoidance Framework for Securitized Subprime Adjustable Rate Mortgage Loans."
j. FHFA Streamline – Report all loan modifications pursuing to the FHFA streamline modification program "SMP).
k. FDIC Streamline ("Mod in a Box") – Report all loan modifications that include any third party investor and/or proprietary systematical modifications that are patterned on the FDIC program.
l. Proprietary Systematic Program – Report all other proprietary systematic programs target at applicable segments of mortgage borrowers.
m. Proprietary Other – Report any modification type not covered by the previous categories.

44. Original Loan Term – The term in months between the loans closing date and maturity date.

45. Loss / Write-down Amount – Report all write-downs and reversals of loan principal and interest recorded as charge-offs against the Allowance for Loan and Leases Losses (ALLL) pursuant to FFIEC Call Report instructions. Also include all reversals of accrued but not collected interest, not directly changed against the ALLL.

46. Loss / Write-down Date – The date on which a loss or write-down occurred.

47. Debt to Income (DTI) - This ratio is the percent of a borrower's total monthly debt payments (including proposed housing expenses) divided by his or her gross monthly income, used to determine the mortgage amount that qualifies a borrower.

48. Foreclosure Suspended – Report all loans where foreclosure activities are being suspended due to loss mitigation or bankruptcy proceedings.

49. Prepayment Penalty Waived This Month – Code all loans where the servicer waived a prepayment penalty on the mortgage (regardless of whether the loan liquidated). Only code this field if the prepayment penalty was waived during the reporting month.

50. ARM Last Reset Date – Provide the most recent date on which the interest rate on the mortgage adjusted (do not include loss mitigation adjustment, only scheduled rate resets based on the original terms).

51. ARM Next Reset Date – Provide the next date on which the interest rate of the mortgage is scheduled to adjust.

52. Prepayment Penalty Waived Amount – The total dollar amount of any prepayment penalty waived by the servicer.

53. Last Modified Date – Provide the date on which the loan terms were most recently modified. Should only be populated for loans that have a value in Field 43, Modification Type.

54. Troubled Debt Restructure – A flag designating whether a loan was modified as a Troubled Debt Restructuring (TDR). All TDRs must be evaluated for impairment under Statement of Financial Accounting Standards No. 114 (Accounting by Creditors for Impairment of a Loan), as part of the Allowance for Loan and Lease Losses analysis.

55. FHA Secure Refinance – Identify all loans originated as FHA Secure Refinances, regardless of whether the loan was serviced in-house prior to refinance.

56. Remodified Flag – Code with a "Y" any loan that has been modified more than once in the last 24 months.

57. Balloon Term – For mortgages with a final balloon payment, the term in months between the loan closing date and the due date for the final payment.

58. Repayment Plan Performance Status – This field tracks the performance of repayment and stip-to-mod plans. If a repayment plan or stip-to-mod was completed successfully during the month it should be coded as such in the work-out type completed field (#30) and under the following:
    a. Stip-to-Mod Active – The borrower is performing as scheduled on a stipulated repayment agreement that, if successful will result in a modification.
    b. Stip-to-Mod Broken – The borrower has broken the terms specified by a stip-to-mod agreement and the modification was not executed.
    c. Repayment Plan Active – The borrower is performing as scheduled according to the terms of an executed repayment plan.
    d. Repayment Plan Broken – The borrower has defaulted on the terms of an executed repayment plan during the month.
    e. Repayment Plan Cancelled by Servicer – The borrower was on a repayment plan that was cancelled by the mortgage servicer during the month.

f. Repayment Plan Cancelled at Borrower's Request – The borrower was on a repayment plan that was cancelled at their request during the month.

59. Servicer Advances – Total delinquent advances made by the servicer on past due mortgages. Include both corporate (including maintenance and property preservation costs) and escrow advances in this amount.

60. Original Property Value – The property value in dollars at the time the loan was originated, defined as the lesser of selling price or the appraised value of the property securing the mortgage at origination or upon initial transfer into the servicing portfolio.

61. Refreshed property value – Provide the most current property value if updated subsequent to loan origination. Only provide a refreshed value when it is based on a property-specific valuation method (i.e., do not provide a refreshed property value based solely on applying a broad valuation ind x to all properties in geographic area.).

62. Property Valuation Method at Origination – Identifies the method by which the value of the property was determined at the time the loan was originated. Options are:
    a. Full appraisal – Prepared by a certified appraiser
    b. Limited appraisal – Prepared by a certified appraiser
    c. Broker Price Opinion "BPO" – Prepared by a real estate broker or agent
    d. Desktop Valuation – Prepared by bank employee
    e. Automated Valuation Model "AVM"

63. Refreshed Property Valuation Method – The valuation method for any refreshed values in field #59. Identifies the method by which the value of the property was determined. Options are:
    a. Full appraisal – Prepared by a certified appraiser
    b. Limited appraisal – Prepared by a certified appraiser
    c. Broker Price Opinion "BPO" – Prepared by a real estate broker or agent
    d. Desktop Valuation – Prepared by bank employee
    e. Automated Valuation Model "AVM"

64. Most Recent Property Valuation Date – The date on which the most recent refreshed property value was obtained.

65. FNMA Home Saver Advance Date – The date on which the most recent FNMA Home Saver Advance was completed. The FNMA Home Saver Advance program involves the GSE advancing new unsecured personal loans of up to $15,000 to pay arrearages on an existing first mortgage. Proceeds of these advances go directly to the servicer, who returns the first mortgage to a current and performing status.

66. FNMA Home Saver Advance Amount – The amount of the most recent FNMA Home Saver Advance.

67. Alternative Home Liquidation Loss Mitigation Strategy Date – Report the date on which the most recent Alternative Loss Mitigation strategy was executed. Alternative Home Liquidation Loss Mitigation Strategies include the new and evolving strategies that are designed to minimize loan losses and

avert loan foreclosures. These strategies include, but are not limited to, other alternative programs intended to limit the costs and losses related to the sale of the home, deed in lieu, or foreclosure, but which result in the borrower forfeiting ownership of the home. These new strategies are in addition to traditional home liquidation loss mitigation strategies, such as short sales and deeds in lieu of foreclosure.

68. Alternative Home Retention Loss Mitigation Strategy Date – Report the date on which the most rec nt Alternative Loss Mitigation strategy was executed. Alternative Home Retention Strategies include the various new and evolving loss mitigation strategies that are designed to minimize loan losses, avert loan foreclosures, and enable borrowers to retain their residence. These strategies include, but are not limited to, "short refinances" (servicer facilitates a loan refinance, with the investor accepting a short payoff of the existing first mortgage), and other refinance or alternative programs intended to prevent the sale of the home, a deed in lieu, or a foreclosure.

69. Principal Deferred – Report whether a loan had principal deferred through loss mitigation. This field should only be populated for loans with a value in Field 43.

70. Principal Write-down – Report whether principal was forgiven through loss mitigation. This field should only be populated for loans with a value in Field 43.

71. Capitalization – Report whether a delinquent amount (PITI or fees) were capitalized and added to the outstanding principal balance. This field should only be populated for loans with a value in Field 43.

72. Interest Rate Reduced – Report whether the interest rate has been reduced to be less than the scheduled value through loss mitigation. This field should only be populated for loans with a value in field 43.

73. Interest Rate Frozen – Report whether the interest rate was frozen and a lower reate than if allowed to adjust through loss mitigation. This field should only be populated for loans with a value in field 43.

74. Term Extended – Report whether the remaining term of the loan was extended through loss mitigation. This field should only be populated for loans with a value in field 43.

75. Duration of Modification – Report the number of months the modified terms will be in effect. Populate field 53 – Last Modified Date – for calculation of remaining term.

76. Refreshed DTI Ratio (Front-end) – Report the refreshed Front-end DTI (PITI Housing Ratio).

77. Refreshed DTI Ratio (Back-end) – Report the refreshed Back -end DTI Ratio.

78. Step Modification Flag – Report whether a rate modification has a "stepped" or gradual return to non-modified rate.

79. Principal Deferred Amount: Report the total amount in dollars of the principal that was deferred through loss mitigation.

80. Delinquent Amount Capitalized – Report the total amount in dollars of the delinquent amount that was capitalized and added to the principal balance through loss mitigation.

81. Refreshed CLTV After Modification – Report the calculated combined loan-to-value ratio after the modification.

82. Property Valuation Method at Modification – Report the method used to determine the property value prior to loan modification. This field should only be populated for loans with a value in Field 43.

    a. Full appraisal – Prepared by a certified appraiser
    b. Limited appraisal – Prepared by a certified appraiser
    c. Broker Price Opinion "BPO" – Prepared by a real estate broker or agent
    d. Desktop Valuation – Prepared by bank employee
    e. Automated Valuation Model "AVM"

83. Principal and Interest (P&I) Amount at Origination – Report the scheduled principal and interest amount at the origination of the loan.

84. Principal and Interest (P&I) Amount Current – Report the scheduled principal and interest due from the borrower in the reporting month.

85. Escrow Amount at Origination – Report the escrow amount (including taxes and insurance) due from the borrower at origination of the loan.

86. Escrow Amount Current – Report the scheduled escrow amount (including taxes and insurance) due from the borrower in the reporting month.

87. DTI Ratio (Front-end) at Origination – Report the Front-end DTI (PITI Housing Ratio) at origination of the mortgage. Alternatively, gross monthly income – refreshed at modification.

88. Remaining Term – Report the remaining term of the loan in months.

89. ARM Margin at Origination – Report the rate that is added to the index to determine the monthly interest rate at origination of the loan.

90. Arm Margin – Current – Report the rate that is added to the index to determine the monthly interest rate.

91. Arm Index – Report the index used as the basis for determining the monthly interest rate.

92. P&I Amount Before Modification – Report the scheduled principal and interest amount in the month prior to loan modification.

93. P&I Amount After Modification – Report the scheduled principal and interest amount in the month following loan modification.

94. Escrow Amount Before Modification – Report the escrow amount in the month prior to loan modification.

95. Escrow Amount After Modification – Report the escrow amount in the month after loan modification.

96. Interest Rate Before Modification – Report the interest rate in the month prior to loan modification.

97. Interest Rate After Modification – Report the interest rate in the month after loan modification.

98. Remaining Term Before Modification – Report the remaining term in the month prior to loan modification.

99. Remaining Term After Modification – Report the remaining term in the month after loan modification.

CONGRESSIONAL OVERSIGHT PANEL MORTGAGE FORECLOSURE MITIGATION SURVEY Please answer the following questions regarding information that you directly collect regarding mortgage delinquencies, foreclosures, and modifications. **PART I. AGENCY INFORMATION GATHERING**		
Question	**OCC/OTS Aggregate Response**	**Comments**
1. Does your agency collect information on mortgage delinquencies? (Y/N)	Y	**NRA** indicates values that are Not Readily Available at the time of this response, but are expected to be available beginning with the March or June *Mortgage Metrics Report*. **N/A** indicates values that are not collected as part of OCC/OTS mortgage metrics.
2. Does your agency collect information on mortgage foreclosures? (Y/N)	Y	
3. Does your agency collect information on mortgage loss mitigation efforts (repayment plans, modifications, short sales, etc.)? (Y/N)	Y	
4. If the answer to any of the three previous questions was yes, please detail the information collected, including the source of the data and a listing of all data fields. Please be sure to explain if the data is collected directly from regulated entities or via data vendors like First American/Loan Performance or McDash, and whether it is loan-level or survey-level data. Please also detail any estimates of the data's market coverage.	The responses to this survey are derived from the OCC/OTS Mortgage Metrics data collection initiative. All information is provided at the individual loan-level by the fourteen largest mortgage servicers regulated by the OCC/OTS. The data fields are described in the Field Definitions, enclosed separately. At the end of September 2008, the 34.9 million first lien mortgage loans serviced by these institutions totaled more than $6.1 trillion in principal balances. The combined servicing portfolio constituted more than 60%	

	of all mortgages outstanding in the United States. About 88%of the mortgages in the total servicing portfolio were held by third parties as a result of loans sales and securitization by government-sponsored enterprises, the originating banks, and other financial institutions. The OCC and the OTS require monthly submission of the Mortgage Metrics data, and the data is collected by and validated on behalf of the agencies by LPS/Applied Analytics (formally McDash) under contracts to the OCC and OTS. However, OCC and OTS continue to work with servicers to collect data fields which have not yet been sufficiently populated. We expect this to improve over time as servicers make system changes to more fully automate data collection efforts.	
5. If you collect data on delinquencies, foreclosures, mitigations and/or modifications, please submit any data code books or data dictionaries.	Data Dictionary attached	
6. Please detail any coordination your agency has taken to date with other federal or state regulatory agencies in collecting information on mortgage delinquencies, foreclosures, and loss mitigation, including any steps taken to standardize data collection or to collect or analyze data jointly.	The OCC and OTS use an identical loan level format and definitions in collecting the Mortgage Metrics information. In addition, the OCC and OTS use the same third-party vendor to collect, validate, and aggregate data used in joint OCC/OTS quarterly Mortgage Metrics Reports.	

	The OCC/OTS Data Dictionary also has been made available to the Conference of State Bank Supervisors, Federal Reserve, HopeNow Alliance, Mortgage Bankers Association, Treasury Department, and other interested parties. All information in this survey represents combined OCC and OTS data.	

If your agency directly collects information on mortgage delinquencies, foreclosures, mitigations and/or modifications, please answer the questions in Parts II-VI as of December 31, 2008, unless otherwise directed. Please indicate if your agency does not possess the information necessary to answer the particular question. If your agency uses multiple data sources, please be sure to indicate the data sources used in replying to each question. Also, if your sample includes government-insured (FHA/VA) loans, please run the analysis separately for those loans. Please indicate if you are unable to respond to the questions on a numeric basis, but can respond on a percentage basis, and then provide a respond on a percentage basis. **PART II. THE MORTGAGE LOANS** 2		All information in this response is as of September 30, 2008. December 31 data is not yet available. Modification and repayment plan data are presented for both the second and third quarters of 2008. Data for the fourth quarter will be available in the March *Mortgage Metrics Report.* Modification re-default data is presented only for mortgages modified during the second quarter. Re-default information is provided at three months subsequent to the modification. Three month re-default data for mortgages modified during the third quarter will be available in the March *Mortgage Metrics Report.* Separate information on FHA/VA loans other than the total number of loans is not readily available (NRA) at the time of this response.
7. How many mortgage loans are in the data that you collect?	34,877,891	
8. How many of these loans are classified as subprime? Please note if the reporting institution makes this classification or, if the classification is made by your agency, what definition of subprime you use.	3,123,256	Subprime is defined by OCC/OTS Mortgage Metrics as a borrower credit bureau score (calibrated to a FICO scale) at time of loan origination of less than 620. Approximately 14% of the loans in the combined data base do not have a readily available origination credit score.
9. How many of these loans are alt-A? Please note if the reporting institution makes this classification or, if the classification is made by your agency, what definition of alt-A you use.	3,630,385	Alt-A is defined by OCC/OTS Mortgage Metrics as a borrower credit bureau score (calibrated to a FICO scale) at time of loan origination of 620-659.
10. How many of these loans are:		
a. Government-insured (FHA/VA) loans?	3,998,256	

b. Jumbos?	2,464,053	A material number of loans in the data base are not coded as Jumbo or not-Jumbo. OCC/OTS continue to work with the servicers to collect data for unpopulated fields.
c. Junior mortgages?	N/A	
d. 2-4 family residences?	590,442	
11. How many of these loans have a junior mortgage attached to the same property?	N/A	
12. How many of these loans were identified as "owner-occupied" at origination?	29,589,484	
13. How many of these loans are currently listed as "owner-occupied"?	N/A	
14. How many of these loans were "low doc" or "no doc"?	10,541,900	A material number of loans in the data base are not coded for documentation type. OCC/OTS continue to work with the servicers to collect data for unpopulated fields.
15. How many of these loans, when originated, had front-end debt ratio (monthly housing debt, as PITI, to income) of:	NRA	The agencies have started collecting data on front-end debt ratio for loans at origination. We expect that this data will be available in the June *Mortgage Metrics Report*.
a. Greater than or equal to 38%?	NRA	
b. Greater than 31% and less than 38%?	NRA	
c. Greater than 28% and less than 31%?	NRA	
d. Less than or equal to 28%?	NRA	
16. How many of these loans, when originated, had back-end debt ratio (total monthly debt to income) of		
a. Greater than 65%?	404,492	
b. Greater than 55% and less than or equal to 65%?	594,417	

c. Greater than 45% and less than or equal to 55%?	2,430,474	
d. Less than or equal to 45%?	13,285,192	A material number of loans in the data base do not record a back-end debt ratio. OCC/OTS continue to work with the servicers to collect data for unpopulated fields.
17. How many loans had a CLTV at origination of ≥90%?	7,048,048	OCC/OTS Mortgage Metrics does not include CLTV data. This response represents loans with an original LTV equal to or greater than 90%.
18. How many loans currently have negative equity?	702,494	OCC/OTS Mortgage Metrics does not include CLTV data. This response is based on refreshed LTV. A material number of loans in the data base do not have a refreshed LTV. OCC/OTS continue to work with the servicers to collect data for unpopulated fields.
19. How many loans are:		
a. ARMs (including hybrid 2/28s and 3/27s)?	5,872,628	Hybrid 2/28 and 3/27 ARMs total 1,154,705.
b. Interest only?	2,381,277	A material number of loans in the data base are not coded for IO-currently. OCC/OTS continue to work with the servicers to collect data for unpopulated fields.
c. Negatively amortizing (including pay-option ARMs)?	1,073,656	Response represents loans currently coded as a Pay-Option Arms. These loans may or may not be negatively amortizing.
20. How many of the ARMs:		
a. Are currently at a teaser rate?	N/A	
b. Will reset for the first time in the next 12 months?	NRA	
c. Have already reset?	NRA	
21. How many loans have prepayment penalties?	N/A	
22. How many of the loans are securitized and how many are portfolio?	31,655,947 Serviced for Others 3,221,944 Portfolio	OCC/OTS Mortgage Metrics records whether the loan is held in portfolio or serviced for others. Loans

		serviced for others are generally, but not always securitized. Some of these mortgages may be loans owned by investors.
23. How many of the securitized loans are agency and how many are private-label?	21,623,151 FNMA/FHLMC 3,312,486 GNMA 5,343,786 Private	
24. How many of these loans were refinancings and how many were purchase-money?	N/A	

PART III. DELINQUENCIES Please exclude modified loans from your answers to this section. If this is not possible given your data set, please indicate so.		Excluded modified loans total 191,467. Unmodified loans total 34,686,424.
25. How many of the loans you track are:		
a. 30+ days delinquent?	1,102,193	Mortgages 30-59 days delinquent, excluding foreclosures in process.
b. 60+ days delinquent?	592,420	Mortgages 60-89 days delinquent, excluding foreclosures in process.
c. 90+ days delinquent?	555,775	Mortgages 90+ days delinquent, excluding foreclosures in process.
d. In foreclosure?	603,450	
26. How many foreclosure sales, short sales or deeds-in-lieu occurred over the last quarter for the loan pool your agency tracks?	Foreclosure Sales – 80,426; Short Sales –7,004; Deeds in lieu - 469	Third quarter 2008 data.
27. How many of the 60+ days delinquent loans:		Responses to question #27 exclude loans in process of foreclosure.
a. Had a CLTV at origination of ≥90%?	417,879	OCC/OTS Mortgage Metrics does not include CLTV data. Response based on the LTV at origination.
b. Are currently negative equity (current CLTV≥100%)?	140,829	OCC/OTS Mortgage Metrics does not include CLTV data. This response is based on refreshed LTV. A material number of loans in the data base do not have a refreshed LTV. OCC/OTS continue to work with the servicers to collect data for unpopulated fields.
c. Are ARMs?	451,512	
d. Are ARMs where the interest rate has reset?	NRA	
e. Are hybrid ARMs (2/28s, 3/27s, etc.)?	194,422	Hybrid 2/28 and 3/27 ARMs included in response to #27c. Other, longer-term hybrid ARMS are also included in #27c.
f. Are hybrid ARMs where the teaser rate has reset?	N/A	
g. Have prepayment penalties?	N/A	
h. Are jumbos?	105,961	A material number of delinquent loans are not coded as Jumbo or not-Jumbo. OCC/OTS continue to work with the servicers to collect data for unpopulated fields.
i. Are subprime?	382,022	Credit score less than 620.

j. Are alt-A?	236,644	Credit score 620-659.
k. Are interest only?	132,364	
l. Negatively amortizing (including pay-option ARMs)?	78,344	Response represents loans currently coded as a Pay-Option Arms. These loans may or may not be negatively amortizing.
m. Have a junior mortgage?	N/A	
n. Are 2-4 family residences?	21,857	
o. Were listed as owner-occupied at origination?	995,598	
p. Are owner-occupied currently?	N/A	
q. Are low-doc or no-doc?	384,893	A material number of delinquent loans are not coded for documentation type. OCC/OTS continue to work with the servicers to collect data for unpopulated fields.
r. Had front-end debt ratio (monthly housing debt, as PITI, to income) when originated of:	NRA	The agencies have started collecting data on front-end debt ratio for loans at origination. We expect that this data will be available in the June *Mortgage Metrics Report*.
i. Greater than or equal to 38%?	NRA	
ii. Greater than 31% and less than 38%?	NRA	
iii. Greater than 28% and less than 31%?	NRA	
iv. Less than or equal to 28%?	NRA	
s. Had back-end debt ratio (total monthly debt to income) when originated of		
i. Greater than 65%?	30,385	
ii. Greater than 55% and less than or equal to 65%?	19,619	
iii. Greater than 45% and less than or equal to 55%?	116,044	
iv. Less than or equal to 45%?	410,266	A material number of delinquent loans do not record a back-end debt ratio. OCC/OTS continue to work with the servicers to collect data for unpopulated fields.

t. Were refinancings?	N/A	
u. Were purchase-money mortgages?	N/A	

PART IV. MODIFICATIONS If your data permits, please answer the questions in this section separately for:		
(1) securitized and non-securitized loans; and (2) modifications occurring between July 1, 2008 and September 30, 2008, and modifications occurring between October 1, 2008 and December 31, 2008.		OCC/OTS Mortgage Metrics records whether the loan is held in portfolio or serviced for others (SFO). Loans serviced for others are generally, but not always securitized. Some of these mortgages may be loans owned by investors. Responses are for second and third quarter 2008. Data on fourth quarter 2008 modifications and repayment plans will be included in the March *Mortgage Metrics Report.*
28. How many loans have been modified or placed into a repayment plan?		
a. How many have been modified?	April – June 86,827 SFO 23,865 Portfolio July - September 92,369 SFO 39,870 Portfolio	
b. How many have been placed in were repayment plans?	April – June 118,208 SFO 14,445 Portfolio July - September 129,989 SFO 18,086 Portfolio	
29. Of the modifications reported in question 28, how many resulted in the following (monthly payment inclusive of P&I):		Change in monthly payments subsequent to a modification will be available in the March *Mortgage Metrics Report*. The agencies have started collecting data on the duration of the modified term(s), and we expect that this data will be available beginning with the June *Mortgage Metrics Report*.

a. A lowering of the monthly payment for life of the loan?	NRA	
b. A temporary lowering of the monthly payment?	NRA	
c. A lowering of the monthly payment by more than 10% for life of the loan?	NRA	
d. A temporary lowering of the monthly payment by more than 10%?	NRA	
e. An increase of the monthly payment for the life of the loan?	NRA	
f. A temporary increase in the monthly payment?	NRA	
g. Monthly payment remaining the same for life of the loan?	NRA	
h. A temporary freeze of the monthly payment?	NRA	
30. Of the modifications reported in question 28, above, how many resulted in:		
a. A fully amortizing loan?	NRA	
b. A loan with less than full amortization (some additional payment at conclusion)?	NRA	
c. Loss/profit sharing arrangements?	N/A	
31. Of the modifications reported in question 28,that reduced monthly payments, inclusive of principal and interest, how many involved:		The agencies expect that this additional level of detail will be available for modifications initiated after January 1, 2009, beginning with the June *Mortgage Metrics Report*.
a. Solely a deferral (forbearance) on some amount of principal or arrearage?	NRA	
b. Solely a write-down of principal?	NRA	
c. Solely a reduction in interest rates?	NRA	
d. Solely an increase in the loan's term with a reamortization (tenor)?	NRA	
e. Solely a change to the loan's amortization schedule?	NRA	
f. A combination of (a) and (c) (above)?	NRA	
g. A combination of (a) and (d)?	NRA	
h. A combination of (b) and (c)?	NRA	
i. A combination of (b) and (d)?	NRA	
j. A combination of (b) and (e)?	NRA	
k. A combination of (c) and (e)?	NRA	

l. A combination of (a), (c), and (d)?	NRA	
m. A combination of (b), (c), and (d)?	NRA	
n. A combination of (b), (c), and (e)?	NRA	
32. Of the modifications reported in question 28, how many involved		
a. An up-front payment of fees?	N/A	
b. An up-front payment of arrearages?	N/A	
c. A waiver of fees?	N/A	
d. Changing a variable rate loan into a fixed rate loan?	NRA	
33. Of the modifications reported in question 28, how were on properties with junior mortgages?	N/A	
34. Of the modifications reported in question 28, how many that had junior mortgages at the time of origination still have a junior mortgage?	N/A	
35. Of the modifications reported in question 28, how many are negative equity post-modification?	NRA	
36. Of the modifications reported in question 28, what is the average origination CLTV loans?	82.91% SFO 80.60% Portfolio	OCC/OTS Mortgage Metrics does not include CLTV data. Response based on the LTV at origination.
37. Of the modifications reported in question 28, above, what is the average post-modification CLTV of modified loans?	NRA	
38. Of the modifications reported in question 28, how many were no-doc or low-doc loans?	26,379 SFO 6,348 Portfolio	A material number of modified loans are not coded for documentation type. OCC/OTS continue to work with the servicers to collect data for unpopulated fields.
39. Of the modifications reported in question 28, how many were jumbos?	8,758 SFO 3,597 Portfolio	A material number of modified loans are not coded Jumbo or not-Jumbo. OCC/OTS continue to work with the servicers to collect data for unpopulated fields.
40. Of the modifications report in question 28, how many were on mortgages with private mortgage insurance?	7,109 SFO 732 Portfolio	A material number of modified loans are not coded for PMI. OCC/OTS continue to work with the servicers

		to collect data for unpopulated fields.

PART V. REDEFAULTS If your data permits, please answer the questions in this section separately for:		
(2) securitized and non-securitized loans; and (2) modifications occurring between July 1, 2008 and September 30, 2008, and modifications occurring between October 1, 2008 and December 31, 2008.		Modification re-default data is presented only for mortgages modified during the second quarter of 2008. Re-default information is provided at three months subsequent to the modification. Three month re-default data for mortgages modified during the third quarter will be available in the March *Mortgage Metrics Report*.
41. How many modified loans (including modifications conditional on successful payments) redefaulted before making their first modified payment?	NRA	
42. How many modified loans are:		The full number of delinquent loans in response to #42 a, b, and c is not readily available. The response instead reflects the applicable percentage of delinquent mortgages at three months subsequent to the modification as calculated by the data aggregator. The table should be read as "30 or more days delinquent"; "60 or more days delinquent"; and "90 or more days delinquent."
a. 30+ days delinquent (including "rolling 30s")?	41.47% SFO 34.43% Portfolio	
b. 60+ days delinquent?	21.53% SFO 18.03% Portfolio	
c. 90+ days delinquent?	10.82% SFO 8.79% Portfolio	
43. How many modified loans are 60+ days delinquent and for which:		
a. Monthly payments were reduced?	NRA	
b. Monthly payments were *not* reduced?	NRA	
c. Monthly payments were reduced by less than 10%?	NRA	
d. Monthly payments were reduced by 10% or more?	NRA	

44. How many modified loans are 60+ days delinquent and for which:	NRA	
a. There was a principal write-down (regardless of interest rate reduction)?	NRA	
b. There was an interest rate reduction (but not a principal reduction)?	NRA	
c. CLTV on the loan is currently ≥100%?	NRA	
d. CLTV on the loan is currently ≥95%?	NRA	
e. There is a junior mortgage on the property?	N/A	
f. The original loan was no-doc or low-doc?	NRA	
45. How many modified loans are 60+ days delinquent for which the front-end debt ratio (monthly housing debt, as PITI, to income) immediately post-modification is:	NRA	
a. Greater than or equal to 38%?	NRA	
b. Greater than 31% and less than 38%?	NRA	
c. Greater than 28% and less than 31%?	NRA	
d. Less than or equal to 28%?	NRA	
46. How many modified loans are 60+ days delinquent for which the back-end debt ratio (total monthly debt to income) immediately post-modification is:		
a. Greater than 65%?	NRA	
b. Greater than 55% and less than or equal to 65%?	NRA	
c. Greater than 45% and less than or equal to 55%?	NRA	
d. Less than or equal to 45%?	NRA	

PART VI. LOSS SEVERITIES		
47. In the fourth quarter of 2008, what was the mean and the median loss severity, after accounting for insurance recoveries, (both in absolute dollar terms and as a percentage of loan value) for:	N/A	Verifiable data on loss severities is currently not available.
a. Mortgages that were foreclosed?	N/A	
b. Mortgage that were modified (assuming no future redefaults)?	N/A	
c. Mortgages that were modified previously (including modifications contingent upon successful payments), but redefaulted and were foreclosed?	N/A	

APPENDIX VII: MORTGAGE SURVEY DATA FROM THE FEDERAL DEPOSIT INSURANCE CORPORATION

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

February 24, 2009

Ms. Elizabeth Warren
Chairperson, Congressional Oversight Panel
732 North Capitol Street, N.W., Room C-320
Washington, D.C. 20401

Dear Ms. Warren:

This letter is in response to your request for information regarding federal efforts at foreclosure mitigation.

Per your request, we have structured our response in six parts: Part I discusses the FDIC's and IndyMac Federal Bank's collection of data on troubled and modified loans, while Part II through Part IV pertain solely to IndyMac Federal Bank. Specifically, Part II discusses the makeup and status of IndyMac Federal Bank's loans serviced; Part III discusses delinquencies; Part IV discusses modification efforts; Part V addresses redefault experience to date; and Part VI discusses loss severities.

As you know, IndyMac Bank, F.S.B., was closed on July 11, 2008, by the Office of Thrift Supervision and the Federal Deposit Insurance Corporation was appointed conservator. As conservator, the FDIC has operated IndyMac Federal Bank to maximize the value of the institution for sale, including identifying best practices in reducing unnecessary foreclosures.

Should you or your staff have additional questions, you may contact me at 202-898-6974 or Mr. Mike Krimminger, Special Advisor to the Chairman for Policy, at 202-898-8950.

Sincerely,

Sheila C. Bair

Sheila C. Bair

Enclosure

cc: Senator John E. Sununu
Congressman Jeb Hensarling
Mr. Richard H. Neiman
Mr. Damon A. Silvers

Congressional Oversight Panel

Mortgage Foreclosure Mitigation Survey

Response by the
Federal Deposit Insurance Corporation

Part I – Agency Information Gathering

The following responses by the Federal Deposit Insurance Corporation are based on the residential mortgage loan data that the FDIC collects from FDIC-supervised banks in the Consolidated Reports of Condition and Income (Call Report) as of the end of each calendar quarter. The Office of the Comptroller of the Currency (OCC) and the Federal Reserve Board (FRB) collect these same data from the banks under their supervision in the Call Report. Residential mortgage loan data is reported in the Call Report as aggregate dollar amounts at the institution level, not at the individual loan level. No data is collected on numbers of residential mortgage loans.

Additional data, as specified below, has been provided from IndyMac Federal Bank, in FDIC Conservatorship.

For clarity, responses will be labeled "Call Report" or "IndyMac Federal."

1. Does your agency collect information on mortgage delinquencies? (Y/N)

Call Report: Yes. In responses for the Call Report, each bank reports the dollar amount of (1) loans past due 30 through 89 days and still accruing, (2) loans past due 90 days or more and still accruing, and (3) nonaccrual loans for the following categories of residential mortgages held as assets for purposes other than trading:

- Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit
- Closed-end loans secured by first liens on 1-4 family residential properties
- Closed-end loans secured by junior liens on 1-4 family residential properties

In addition, for the three past due and nonaccrual categories, each bank separately reports the dollar amount of loans secured by 1-4 family residential properties that have undergone troubled debt restructurings that are included in the three residential mortgage categories identified above, but without a breakdown of such loans into these three categories. This data collection began March 31, 2008.

For residential mortgage loans that a bank has sold and securitized with servicing retained or with recourse or other seller-provided credit enhancements, the bank reports the dollar amount of securitized loans that are (1) 30 through 89 days past due and (2) 90 days or more past due. For each of these two past due categories, the bank separately reports the dollar amount of (1) closed-end loans secured by 1-4 family residential properties and (2) revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit.

IndyMac Federal: The Bank does collect data on delinquencies as part of its risk management and servicing operations.

2. Does your agency collect information on mortgage foreclosures? (Y/N)

Call Report: No. However, beginning March 31, 2008, each bank began to report the dollar amount of (1) loans held as assets for purposes other than trading that are secured by 1-4 family residential properties and are in process of foreclosure and (2) loans serviced for others that are secured by 1-4 family residential properties and are in process of foreclosure.

IndyMac Federal: Yes

3. Does your agency collect information on mortgage loss mitigation efforts (repayment plans, modifications, short sales, etc.)? (Y/N)

Call Report: No.
IndyMac Federal: Yes

4. If the answer to any of the three previous questions was yes, please detail the information collected, including the source of the data and a listing of all data fields. Please be sure to explain if the data is collected directly from regulated entities or via data vendors like First American/Loan Performance or McDash, and whether it is loan-level or survey-level data. Please also detail any estimates of the data's market coverage.

Call Report: See the introductory comments before Question 1 and the responses to Questions 1 and 2 above.

IndyMac Federal: The information is retrieved from various sources including the Servicer Portfolio Analytics System ("SPA"), Lender Processing Services ("LPS" f/k/a Fidelity), and SBO 2000.

5. If you collect data on delinquencies, foreclosures, mitigations and/or modifications, please submit any data code books or data dictionaries.

Call Report: As noted above, the Call Report collects aggregate dollar amounts at the institution level. The specific Call Report schedule and line item references and MicroData Reference Manual numbers for the data items identified in the responses to Questions 1 and 2 above are available on request.

IndyMac Federal: Attached is a copy of the current Investor Report, which provides detail on delinquencies and loss mitigation actions.

6. Please detail any coordination your agency has taken to date with other federal or state regulatory agencies in collecting information on mortgage delinquencies, foreclosures, and loss mitigation, including any steps taken to standardize data collection or to collect or analyze data jointly.

Call Report: The Call Report is a uniform interagency report shared by the FDIC, the OCC, and the FRB. The three agencies jointly determine the data that banks report in the Call Report in accordance with the Paperwork Reduction Act.

If your agency directly collects information on mortgage delinquencies, foreclosur s, mitigations and/or modifications, please answer the questions in Parts II-VI as of December 31, 2008, unless otherwise directed. Please indicate if your agency does not possess the information necessary to answer the particular question.

Call Report: As noted above, the FDIC collects only aggregate dollar amounts for residential mortgage loan data at the institution level in the Call Report, not data on numbers of residential mortgage loans. Therefore, the Call Report does not provide the FDIC with the data necessary to answer any of the questions in Parts II-VI of this survey. This information is maintained by IndyMac Federal Bank, FSB (IndyMac) as provided below for Parts II - VI.

If your agency uses multiple data sources, please be sure to indicate the data sources used in replying to each question.

Also, if your sample includes government-insured (FHA/VA) loans, please run the analysis separately for those loans.

Please indicate if you are unable to respond to the questions on a numeric basis, but can respond on a percentage basis, and then provide a respond on a percentage basis.

Part II. The Mortgage Loans

7. How many mortgage loans are in the data that you collect?

IndyMac Federal: IndyMac Federal Bank's portfolio consists of 708,766 loans with a UPB of $174.4 billion with Alt-A loan count of 653,679 representing the majority of the portfolio.[1]

8. How many of these loans are classified as subprime? Please note if the reporting institution makes this classification or, if the classification is made by your agency, what definition of subprime you use.

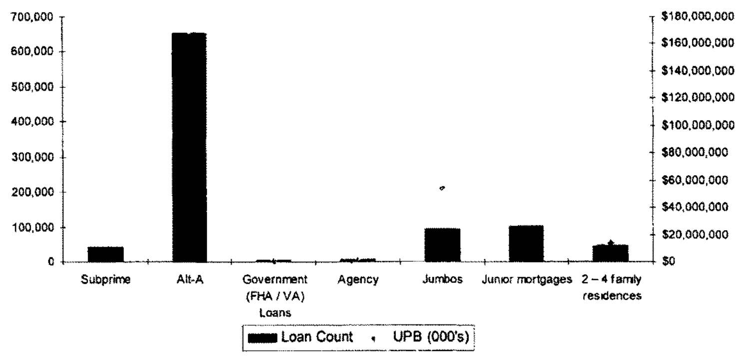
9. How many of these loans are alt-A? Please note if the reporting institution makes this classification or, if the classification is made by your agency, what definition of alt-A do you use.

10. How many of these loans are:
- **a. Government-insured (FHA/VA) loans?**
- **b. Jumbos?**
- **c. Junior mortgages?**
- **d. 2-4 family residences?**

---

[1] The population excludes Financial Freedom Senior Funding Corporation (a subsidiary of IndyMac Federal Bank, FSB specializing in reverse mortgages) and charged off HELOC loans as of 12/31/08

IndyMac Federal: Combined answers to Questions 8-10 below.



Refer to Appendix for Product Definitions	Loan Count [2]	UPB (000's) [2]	% of Total UPB
Subprime	42,672	$5,436,937	3.12%
Alt-A	653,679	$166,387,645	95.41%
Government-insured (FHA / VA) Loans	4,467	$1,026,530	0.59%
Agency	7,948	$1,544,545	0.89%
Total	***708,766***	***$174,395,657***	100.00%

Jumbos [3]	92,744	$54,840,881	31.45%
Junior Mortgages	100,779	$5,702,867	3.27%
2 – 4 family residences	46,018	$13,693,327	7.85%

[2] Data is as of 12/31/08.
[3] Jumbo balance as of origination date, not as of 12/31/08.

11. How many of these loans have a junior mortgage attached to the same property?

12. How many of these loans were identified as "owner-occupied" at origination?

13. How many of these loans are currently listed as "owner-occupied"?

14. How many of these loans were "low doc" or "no doc"?

Questions 15 & 16 are reproduced and answered following the responses to Questions 11-24.

17. How many loans had a CLTV at origination of ≥90%?

18. How many loans currently have negative equity?

19. How many loans are:
- **a. ARMs (including hybrid 2/28s and 3/27s)?**
- **b. Interest only?**
- **c. Negatively amortizing (including pay-option ARMs)?**

20. How many of the ARMs:
- **a. Are currently at a teaser rate?**
- **b. Will reset for the first time in the next 12 months?**
- **c. Have already reset?**

21. How many loans have prepayment penalties?

22. How many of the loans are securitized and how many are portfolio?

23. How many of the securitized loans are agency and how many are private-label?

24. How many of these loans were refinancings and how many were purchase-money?

Responses to Questions 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 23, & 24

	Loan Count	UPB (000's)	% of UPB
Properties with junior mortgages attached	185,735	$56,456,228	32.37%
Originated as "Owner-Occupied"	555,466	$149,586,178	85.87%
Currently Listed as Non-Vacant Status [1]	698,082	$171,392,551	98.27%
"Low Doc" or "No Doc"? [2]	425,141	$114,419,229	65.61%
Have Prepayment Penalties	234,346	$67,714,754	38.83%
In Securitizations [3]	629,610	$157,570,179	90.35%
In Portfolio	70,192	$14,123,678	8.10%
In Agency	292,225	$62,922,790	36.08%
In Private Label	337,385	$94,647,389	54.27%
Refinancings	449,371	$113,025,432	64.81%
Purchase-Money	259,395	$61,370,225	35.19%
CLTV ≥ 90%	243,364	$53,509,250	30.68%
Negative Equity (current CLTV ≥ 100%)	190,724	$59,640,757	34.20%
ARMs (including hybrid 2/28s and 3/27s)	347,240	$98,560,065	56.51%
Currently at a Teaser Rate or Initial Rate [4]	287,644	$82,196,729	83.39%
Reset For the First Time in the Next 12 Months [4]	25,344	$7,711,936	7.82%
Have Already Reset [4]	34,241	$8,661,400	8.79%
Interest Only	210,786	$69,316,801	39.75%
Negatively Amortizing (including pay-option ARMs)	81,833	$30,625,956	17.56%

[1] Properties are tracked for vacancies for the 60+ day delinquencies
[2] Includes Limited Doc, Stated Doc, Streamline, No Ratio, NINA, No Doc loans.
[3] Includes Agency, IMB REMICS and Non-IMB REMICS
[4] % is % UPB of total ARM Loans (including hybrid 2/28s and 3/27s)

15. How many of these loans, when originated, had front-end debt ratio (monthly housing debt, as PITI, to income) of:

- **a. Greater than or equal to 38%?**
- **b. Greater than 31% and less than 38%?**
- **c. Greater than 28% and less than 31%?**
- **d. Less than or equal to 28%?**

16. How many of these loans, when originated, had back-end debt ratio (total monthly debt to income) of

- **a. Greater than 65%?**
- **b. Greater than 55% and less than or equal to 65%?**
- **c. Greater than 45% and less than or equal to 55%?**
- **d. Less than or equal to 45%?**

Responses to Questions 15 & 16:

IndyMac Federal: Following the launch of the FDIC loan modification program on August 20, 2008, IndyMac Federal has verified incomes for loan modification proposals that have been accepted by borrowers who have forwarded income information for verification by IndyMac Federal. IndyMac staff have compared verified incomes with the incomes at origination (either stated or verified if full doc loans). However, prior to the appointment of the FDIC as Conservator on July 11, 2008, IndyMac Bank predominantly originated no or low documentation loans. As a result, the origination DTIs are not considered reliable except for full documentation loans.

This is illustrated by the information in the following tables for the entire population of loans. The tables compare the origination DTI with the actual verified DTI completed during the FDIC loan modification process. In the first table, the numbers highlighted in yellow are the percentages of loans that stayed in the DTI bucket originally reported once their income was verified for a modification. For example, while 57.7% of the loans reported a <31% DTI at origination (shown in 3rd Table), only 36.02% had verified income at the time of a modification that gave the borrowers a <31% DTI. The first table also shows that only 26.77% of the borrowers had DTIs <31% once their incomes were verified for a modification. While there are likely to be changes in income from origination to the date of a modification, these variations are not consistent with accurate reporting of origination incomes.

DOCUMENTATION TYPE CODE	(All)

% of Each Original Bucket

Count of SERVICER LOAN NUMBER	Verified DTI Bucket			
Orig DTI Bucket	<31%	31 - 40%	>40%	Grand Total
<31%	36.02%	17.98%	46.00%	100.00%
31 - 40%	16.66%	22.05%	61.29%	100.00%
>40%	10.16%	17.43%	72.41%	100.00%
Grand Total	26.77%	18.95%	54.29%	100.00%

DOCUMENTATION TYPE CODE	(All)

 # Loans

Count of SERVICER LOAN NUMBER	Verified DTI Bucket			
Orig DTI Bucket	<31%	31 - 40%	>40%	Grand Total
<31%	1,188	593	1,517	3,298
31 - 40%	247	327	909	1,483
>40%	95	163	677	935
Grand Total	1,530	1,083	3,103	5,716

DOCUMENTATION TYPE CODE	(All)

% of Total Population

Count of SERVICER LOAN NUMBER	Verified DTI Bucket			
Orig DTI Bucket	<31%	31 - 40%	>40%	Grand Total
<31%	20.78%	10.37%	26.54%	57.70%
31 - 40%	4.32%	5.72%	15.90%	25.94%
>40%	1.66%	2.85%	11.84%	16.36%
Grand Total	26.77%	18.95%	54.29%	100.00%

Essentially, the bottom chart shows that at origination, 57.7% of IndyMac loans were originated with a housing ratio below 31%, an additional 25.94% were between 31-40% and 16.36% were above 40%. However, once IndyMac verified the income at the back-end under modifications, only 26.77% had a front-end ratio below 31%, an additional 18.95% were between 31- 40% and 54.29% were above 40%. Interestingly, the migration patterns depicted in the top chart indicate that a full 46% of the loans that originally claimed to have a front-end ratio of below 31%, ended up having verified front-end ratios above 40%.

As expected full documentation loans are more consistent within their original buckets:

DOCUMENTATION TYPE CODE	F			
% of Each Original Bucket				
Count of SERVICER LOAN NUMBER	Verified DTI Bucket			
Orig DTI Bucket	<31%	31 - 40%	>40%	Grand Total
<31%	59.54%	16.27%	24.19%	100.00%
31 - 40%	25.06%	29.80%	45.14%	100.00%
>40%	12.46%	20.98%	66.56%	100.00%
Grand Total	38.15%	21.44%	40.41%	100.00%

DOCUMENTATION TYPE CODE	F			
# Loans				
Count of SERVICER LOAN NUMBER	Verified DTI Bucket			
Orig DTI Bucket	<31%	31 - 40%	>40%	Grand Total
<31%	721	197	293	1,211
31 - 40%	196	233	353	782
>40%	76	128	406	610
Grand Total	993	558	1,052	2,603

DOCUMENTATION TYPE CODE	F			
% of Total Population				
Count of SERVICER LOAN NUMBER	Verified DTI Bucket			
Orig DTI Bucket	<31%	31 - 40%	>40%	Grand Total
<31%	27.70%	7.57%	11.26%	46.52%
31 - 40%	7.53%	8.95%	13.56%	30.04%
>40%	2.92%	4.92%	15.60%	23.43%
Grand Total	38.15%	21.44%	40.41%	100.00%

Here, 46.52% were originally <31% front-end DTI, and a full 38.15% were verified to be below 31% front-end DTI. You can see here, that almost 60% of the loans originated below a 31% front-end ratio maintained that ratio through the modification process.

PART III. DELINQUENCIES

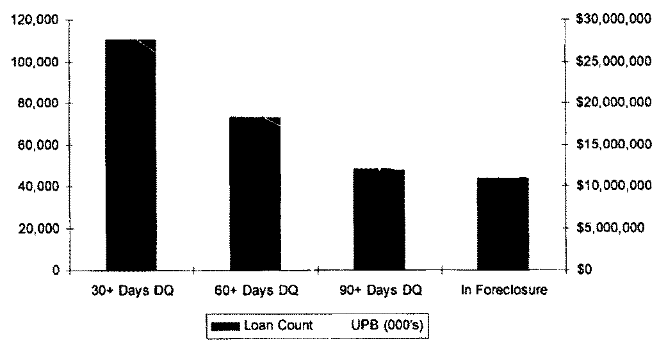
Please exclude modified loans from your answers to this section. If this is not possible given your data set, please indicate so.

25. How many of the loans you track are:

- **a. 30+ days delinquent?**
- **b. 60+ days delinquent?**
- **c. 90+ days delinquent?**
- **d. In foreclosure?**

IndyMac Federal:

Delinquencies	Loan	UPB (000's)	% of UPB
30+ Days DQ	110,254	$28,092,035	16.11%
90+ Days DQ	47,937	$12,301,441	7.05%
In foreclosure	43,422	$13,733,852	7.88%



26. How many foreclosure sales, short sales or deeds-in-lieu occurred over the last quarter for the loan pool your agency tracks?

IndyMac Federal:

	Loan Count	UPB (000's)	% of UPB
Foreclosure Sales [1]	6,917	$2,108,190	77.90%
Short Sales	1,897	$582,125	21.51%
Deeds-in-Lieu	59	$15,829	0.59%

[1] Includes only properties sold at foreclosure sale to 3rd parties.

27. How many of the 60+ days delinquent loans:

- **a. Had a CLTV at origination of ≥90%?**
- **b. Are currently negative equity (current CLTV≥100%)?**
- **c. Are ARMs?**
- **d. Are ARMs where the interest rate has reset?**
- **e. Are hybrid ARMs (2/28s, 3/27s, etc.)?**
- **f. Are hybrid ARMs where the teaser rate has reset?**
- **g. Have prepayment penalties?**
- **h. Are jumbos?**
- **i. Are subprime?**
- **j. Are alt-A?**
- **k. Are interest only?**
- **l. Negatively amortizing (including pay-option ARMs)?**
- **m. Have a junior mortgage?**
- **n. Are 2-4 family residences?**
- **o. Were listed as owner-occupied at origination?**
- **p. Are owner-occupied currently?**
- **q. Are low-doc or no-doc?**
- **t. Were refinancings?**
- **u. Were purchase-money mortgages?**

IndyMac Federal:

	Loan Count	UPB	% of 60+ DQ UPB
60+ Day Delinquent Loans [1]	116,477	$32,624,116	18.71%
Originated with a CLTV ≥ 90%?	58,325	$14,929,168	45.76%
Negative Equity (current CLTV ≥ 100%)	56,698	$17,588,671	53.91%
60+ day delinquent ARMs:	**71,558**	**$23,106,994**	**70.83%**
Hybrid ARMs [2]	47,049	$14,752,056	63.84%
Monthly Adjustable Option ARMs [2]	20,376	$8,037,945	34.79%
HELOCs [2]	4,133	$316,933	1.37%
Interest rate reset	9,713	$2,544,676	7.80%
Hybrid ARM Loans (2/28s, 3/27s, etc)	1,619	$707,016	2.17%
Hybrid ARMs where the teaser rate has reset	8,777	$2,155,557	6.61%
Negatively amortizing Loans (including pay-option ARMs)	30,463	$11,384,261	34.90%
Loans with prepayment penalties	56,986	$17,455,683	53.50%
Jumbo Loans	18,202	$10,652,828	32.65%
Subprime Loans	12,279	$1,943,140	5.96%
Alt-A Loans	102,338	$30,205,583	92.58%
Interest Only Loans	43,396	$14,171,312	43.44%
Have junior mortgages	43,202	$14,092,352	43.19%
2-4 family residences	7,345	$2,409,596	7.39%
Originated as "Owner-Occupied"	98,267	$29,024,616	88.97%
Currently classified as Non-Vacant	8,312	$2,395,363	7.34%
Low-Doc or No-Doc?	87,959	$26,397,754	81.90%
Refinances	64,472	$19,125,244	58.62%

[1] % is % of total servicing UPB as of 12/31/08
[2] % is % of 60+ day delinquent ARM UPB as of 12/31/08

27. (continued)

r. Had front-end debt ratio (monthly housing debt, as PITI, to income) when originated of: i. Greater than or equal to 38%?

ii. Greater than 31% and less than 38%?

iii. Greater than 28% and less than 31%?

iv. Less than or equal to 28%?

s. Had back-end debt ratio (total monthly debt to income) when originated of

i. Greater than 65%?

ii. Greater than 55% and less than or equal to 65%?

iii. Greater than 45% and less than or equal to 55%?

iv. Less than or equal to 45%?

IndyMac Federal: The Bank's data on front-end and back-end DTIs at origination is heavily skewed by the predominant number of low and no-documentation loans originated. As shown above, 81.9% of the 60+ day delinquent loans were no or low doc loans. The origination data is inconsistent with the DTI data revealed during the FDIC loan modification process, which relied on verification of income based on Internal Revenue Service information or other third party information. Accordingly, the FDIC places no reliance on the Bank's origination DTI data and does not believe it to be accurate.

A more accurate assessment of the front-end and back-end DTIs at origination is provided by the responses to Questions 15 and 16.

PART IV. MODIFICATIONS

If your data permits, please answer the questions in this section separately for: (1) securitized and non-securitized loans; and (2) modifications occurring before October 1, 2008, and modifications occurring between October 1, 2008 and December 31, 2008.

28. How many loans have been modified or placed into a repayment plan?
a. How many have been modified?
b. How many have been placed in were repayment plans?

IndyMac Federal: On August 20, 2008, IndyMac Federal implemented a streamlined loan modification program under the direction of the FDIC, as Conservator for IndyMac Federal. The FDIC loan modification program achieves an affordable, sustainable mortgage payment for eligible borrowers by reducing their first mortgage debt-to-income ratio (principal, interest, taxes, and insurance) to as low as 31% through a combination of interest rate reductions, term or amortization extensions, and deferment of payments on portions of the principal. Experience to date demonstrates that converting nonperforming mortgages into stable performing mortgages will return greater value than foreclosure. All modifications are subject to the terms of existing contracts governing servicing of the mortgages. In addition, all aspects of the modifications must provide a positive net present value compared to foreclosure alternatives.

As of 12/31/09, IndyMac Federal had completed, fully verified income information, and updated into the reporting system 5,225 FDIC loan modifications. As of that date an additional 1,877 had been completed and fully verified income information, but had not been updated into the reporting system. This provides a total of 7,417 completed and verified loan modifications. As of that date, an additional 3,305 FDIC loan modifications had been accepted by the borrowers and IndyMac Federal was in the process of verifying the borrowers' income. As of February 17, 2009, a total of 10,422 FDIC loan modifications had been completed with fully verified income information.

An additional 11,907 non-FDIC loan modifications were completed between January 1, 2008 and the launch of the FDIC's loan modification program on August 20, 2008.

Prior to the FDIC's Conservatorship, which initiated on July 11, 2008, IndyMac Bank relied extensively on repayment plans as a central feature of its loss mitigation program. In addition, forms of repayment plans were a focus of loss mitigation for the many loans owned by Freddie

Mac and Fannie Mae, but serviced by IndyMac. As a result, during 2008, IndyMac Bank implemented 73,236 repayment plans.

While repayment plans continue to be used for temporary interruptions in income, the FDIC loan modification program is focused on providing a long-term sustainable loan modification for the life of the loan and not towards shorter term repayment plans.

29. Of the modifications reported in question 28, how many resulted in the following (monthly payment inclusive of P&I):

a. A lowering of the monthly payment for life of the loan?
b. A temporary lowering of the monthly payment?
c. A lowering of the monthly payment by more than 10% for life of the loan?
d. A temporary lowering of the monthly payment by more than 10%?
e. An increase of the monthly payment for the life of the loan?
f. A temporary increase in the monthly payment?
g. Monthly payment remaining the same for life of the loan?
h. A temporary freeze of the monthly payment?

30. Of the modifications reported in question 28, above, how many resulted in:

a. A fully amortizing loan?
b. A loan with less than full amortization (some additional payment at conclusion)?
c. Loss/profit sharing arrangements?

IndyMac Federal:

FDIC Loan Modifications	Non-Securitized	Securitized	Total
Lower Monthly Payments for Life of Loan	934	6,040	6,974
Temporary Lower Payment	0	0	0
Life of Loan Payment Reduction > 10%	480	2,855	3,335
Payment Reduction > 10% (for first 5 years)	272	1,496	1,768 [2]
Payment Reductions Between 0% & 10%	182	1,689	1,871 [3]
Life of Loan Increase in the Monthly Payment	1	26	27 [4]
Temporary Increase in the Monthly Payment	0	0	0
No Payment Change	29	387	416 [5]
Temporary Freeze of the Monthly Payment	0	0	0
Fully Amortized Loans	N/A	N/A	5,656
Less Than Full Amortization	N/A	N/A	1,761 [6]
Loss/Profit Sharing Arrangements	N/A	N/A	0

Footnotes for preceding table:

[1] FDIC Modifications completed between 10/01/08 and 12/31/08

[2] 1,768 loans have a temporary payment reduction > 10%. For these, interest rates go as low as 3% for 5 years followed by gradual 100 bps. annual increases until capped at the FHLMC survey rate.

[3] Beginning October 2008, all FDIC modification offers required a 10% minimum payment reduction.

[4] Borrowers for 27 loans accepted a small (<10%) payment increase as part of a pilot program for Pay Option ARMs. The modification capped the interest rate at the Freddie Mac rate and provided life of loan stable, sustainable payments, rather than the potentially large increase under the original loan.

[5] These 416 loans did not have a payment decrease, but received a sustainable payment for the life of the loan by eliminating any future interest rate variations by capping the rate at the Freddie Mac Weekly Survey Rate.

[6] These modifications involve extension of the loan term to 40 years, but due to restrictions in the servicing agreements must be payable in 30 years and, consequently, have a balloon due on sale, refi, or maturity.

31. Of the modifications reported in question 28,that reduced monthly payments, inclusive of principal and interest, how many involved:

- **a. Solely a deferral (forbearance) on some amount of principal or arrearage?**
- **b. Solely a write-down of principal?**
- **c. Solely a reduction in interest rates?**
- **d. Solely an increase in the loan's term with a reamortization (tenor)?**
- **e. Solely a change to the loan's amortization schedule?**
- **f. A combination of (a) and (c) (above)?**
- **g. A combination of (a) and (d)?**
- **h. A combination of (b) and (c)?**
- **i. A combination of (b) and (d)?**
- **j. A combination of (b) and (e)?**
- **k. A combination of (c) and (e)?**
- **l. A combination of (a), (c), and (d)?**
- **m. A combination of (b), (c), and (d)?**
- **n. A combination of (b), (c), and (e)?**

Response to Question 31:
IndyMac Federal:

	Non-Securitized	Securitized	Total
Forbearance	-	-	-
Principal Write Down	-	-	-
Interest Rate Reduction	663	4,777	5,440
Term Extension	-	-	-
Amortization Extension	-	-	-
Forbearance and Interest Rate Reduction	-	-	-
Forbearance and Term Extension	-	-	-
Write Down and Interest Rate Reduction	-	-	-
Write Down and Term Extension	-	-	-
Write Down and Amortization Extension	-	-	-
Interest Rate Reduction and Amortization Extension	-	1,000	1,000
Forbearance, Interest Rate Reduction and Term	148	-	148
Write Down, Interest Rate Reduction and Term	-	-	-
Write Down, Interest Rate Reduction and Amortization	-	-	-
Additional Modification Combinations:			
Interest Rate Reduction and Term Extension	153	63	216
Interest Rate Reduction, Amortization Extension	-	613	613
Total FDIC Modifications through 12/31/08	964	6,453	7,417

32. Of the modifications r ported in question 28, how many involved
- **a. An up-front payment of fees?**
- **b. An up-front payment of arrearages?**
- **c. A waiver of fees?**
- **d. Changing a variable rate loan into a fixed rate loan?**

IndyMac Federal: None of the FDIC loan modifications involve an up-front payment of fe s or arrearages. All past due amounts are capitalized into the principal balance of the modified mortgage.

Unpaid fees due to IndyMac Federal or any related entity are waived.

All modifications involve an interest rate capped for the life of the loan at the Freddie Mac Weekly Survey Rate, so the modifications do change any variable rate loan into a loan with an interest rate cap.

33. Of the modifications reported in question 28, how were on properties with junior mortgages?

34. Of the modifications reported in question 28, how many that had junior mortgag at the time of origination still have a junior mortgage?

35. Of the modifications reported in question 28, how many are negative equity post-modification?

36. Of the modifications reported in question 28, what is the average origination CLTV loans?

37. Of the modifications reported in question 28, above, what is the average post-modification CLTV of modified loans?

IndyMac Federal: Since IndyMac Federal's loan modifications are not based on the loan to value ratio of the mortgage after modification, the Bank does not maintain comprehensive CLTV data on the modified mortgages.

38. Of the modifications reported in question 28, how many were no-doc or low-doc loans?

39. Of the modifications reported in question 28, how many were jumbos?

40. Of the modifications report in question 28, how many were on mortgages with private mortgage insurance?

Respons s to Qu stions 33, 34, 35, 36, 38, and 40:

Please note that the following table includes both FDIC and non-FDIC loan modifications completed during 2008.

Of the modifications reported in Response to Question 28:	Securitized	Non-Securitized	Total
Properties with Jr. Mortgages	2,367	1,197	3,564
Loans originated with junior mortgages that still have a junior mortgage	2,065	967	3,032
Loans with negative equity post-modification	601	115	716
Average origination CLTV?	79.73%	85.90%	N/A
"No-Doc" or "Low Doc" Loans	6,726	3,810	10,536
Jumbo Loans	1,898	754	2,652
Mortgages with private mortgage insurance	1,389	1,053	2,442

PART V. REDEFAULTS

If your data permits, please answer the questions in this section separately for:
(1) securitized and non-securitized loans; and (2) modifications occurring between July 1, 2008 and September 30, 2008, and modifications occurring between October 1, 2008 and December 31, 2008.

41. How many modified loans (including modifications conditional on successful payments) redefaulted before making their first modified payment?

42. How many modified loans are:
- **a. 30+ days delinquent (including "rolling 30s")?**
- **b. 60+ days delinquent?**
- **c. 90+ days delinquent?**

43. How many modified loans are 60+ days delinquent and for which:
- **a. Monthly payments were reduced?**
- **b. Monthly payments were *not* reduced?**
- **c. Monthly payments were reduced by less than 10%?**
- **d. Monthly payments were reduced by 10% or more?**

44. How many modified loans are 60+ days delinquent and for which:
- **a. There was a principal write-down (regardless of interest rate reduction)?**
- **b. Th re was an interest rate reduction (but not a principal reduction)?**

c. CLTV on the loan i currently ≥100%?
d. CLTV on the loan is currently ≥95%?
e. There is a junior mortgage on the property?
f. The original loan was no-doc or low-doc?

45. How many modified loans are 60+ days delinquent for which the front-end debt ratio (monthly housing debt, as PITI, to income) immediately post-modification is:

a. Greater than or equal to 38%?
b. Greater than 31% and less than 38%?
c. Greater than 28% and less than 31%?
d. Less than or equal to 28%?

46. How many modified loans are 60+ days delinquent for which the back-end debt ratio (total monthly debt to income) immediately post-modification is:

a. Greater than 65%?
b. Greater than 55% and less than or equal to 65%?
c. Greater than 45% and less than or equal to 55%?
d. Less than or equal to 45%?

Responses to Questions 41, 42, 43, 44, 45, and 46:

IndyMac Federal: For performance data on **FDIC modifications**, please refer to the attached IndyMac Federal Investor Report, as of December 31, 2008.

Non-FDIC [2]	Jul 1 - Sep 30				Oct 1 - Dec 31			
	Securitized		Non-Securitized		Securitized		Non-Securitized	
	Count	%	Count	%	Count	%	Count	%
Current	2,559	67.9%	479	52.5%	1,884	89.2%	234	70 3%
60+	1,209	32.1%	434	47.5%	229	10 8%	99	29 7%
90+	706	18 7%	310	34 0%	107	5 1%	78	23 4%
Total	**3,768**		**913**		**2,113**		**333**	
RE-defaults prior to 1st Mod Pmt	331	8 80%	142	15.60%	455	21 50%	101	30.30%
Reduction of Monthly Payment	712	28 00%	221	42.70%	133	8.40%	29	16 10%
No Reduction of Monthly Payment	497	40 50%	213	53 80%	96	18 20%	70	45.80%
Payment Reduced by < 10%	96	23 10%	36	0.00%	13	7 10%	0	0 00%
Payment Reduced by > 10%	616	29.00%	185	46.50%	120	8.60%	29	17 90%
Principal Writedowns	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Interest Rate Reduction	776	29.80%	234	40.40%	130	7.80%	70	26 90%
CLTV currently ≥ 100%	693	34.60%	206	51 00%	123	10.10%	68	40 20%
CLTV currently ≥ 95%	789	34.60%	260	51.70%	146	10.60%	75	35 00%
Junior mortgages attached	422	36 20%	105	52 00%	84	5.20%	8	4.60%
"No Doc" or "Low Doc"	904	33 30%	320	46.80%	165	10.00%	78	29 80%
Had front-end debt ratio (monthly housing debt, as PITI, to income) immediately post-modification of								
Greater than or equal to 38%	87	36.7%	24	0 0%	26	21.7%	5	62.5%
Greater than 31% and less than 38%	109	33 4%	24	50 0%	21	12 1%	2	40.0%
Greater than 28% and less than 31%	76	33.0%	18	51.4%	16	14.4%	0	0.0%
Less than or equal to 28%	937	31.5%	368	46.9%	166	9 7%	92	28.8%
Had back-end debt ratio (total monthly debt to income) immediately post-modification of								
Greater than or equal to 65%	1		1		0		0	
Greater than 55% and less than or equal to 65%	3		3		3		1	
Greater than 45% and less than or equal to 55%	299		109		29		23	
Less than or equal to 45%	976		321		197		75	

[1] % is % of category that was 60+ days delinquent as of 12/31/08
[2] The high number of early payment defaults for non-FDIC mods is influenced by requirements of some owners to use repayment plans, such as Fannie Mae's "Home Saver Advance" which do not reduce payments.

PART VI. LOSS SEVERITIES

47. In the fourth quarter of 2008, what was the mean and the median loss severity, after accounting for insurance recoveries, (both in absolute dollar terms and as a percentage of loan value) for:

a. Mortgages that were foreclosed?

b. Mortgage that were modified (assuming no future redefaults)?

c. Mortgages that were modified previously (including modifications conting nt upon successful payments), but redefaulted and were foreclosed?

IndyMac Federal: The following table reflects the total servicing portfolio and modifications to REO only for non-FDIC modifications. None of the FDIC loan modifications have redefaulted and resulted in REO.

Description	Type	Loss	Severity
Total Servicing Portfolio	Simple Mean	137,240	46.1%
	Weighted Avg.	n/a	43.1%
	Median	161,551	45.8%
Mod to REO	Simple Mean	110,302	45.5%
	Weighted Avg.	n/a	44.2%
	Median	91,424	43.3%

For FDIC modifications at IndyMac Federal, the net present value of the 5,225 modifications completed, with fully verified income information, and updated into the reporting system exceeded the net present value of foreclosure by an average of 35.6%. The modifications provided aggregate estimated net savings of $187,275,236.

Indymac Federal Bank
Bond Investor Relations and Structured Finance

FDIC Loan Modification Program
Investor Summary Report as of 12/31/2008

Prepared by Tom Roeschlein
626-535-5280
tom.roeschlein@imb.com

FDIC Loan Modification Program Summary Report for Indymac MBS & ABS Investors - Data as of December 31, 2008 Cutoff for January 2009 Distribution

Deal Information at Settlement							*Current Period Deal Information*						*FDIC Mod Campaign Info*		*FDIC Modifications Completed in Current Period*					*Total FDIC Modifications Completed Since Program Inception*				
Sale #	Securitization Name	Underlying Loan Type	Closing Date	Original Loan Count	Original UPB	Original WAC	Current Loan Count	Current UPB	Pool Factor	60+ DQ Loan Count	60+ Day Delinquent Loan UPB	60+ DQ Loan %	Total Mod Offers Mailed & Awaiting Borrower Response	Total Mod Offers Accepted by Borrowers	Type I: Interest Rate Reduction Only	Type II. Interest Rate Reduction + Amortization Extension	Type III: Int Rate Red + Amort Ext + Principal Forbearance	Total New Mods in Current Period (Count)	Total New Mods in Current Period (UPB)	Type I Interest Rate Reduction Only	Type II Interest Rate Reduction + Amortization Extension	Type III: Int Rate Red + Amort Ext + Principal Forbearance	Total All Mods Completed (Count)	Total All Mods Completed (UPB)
271	RAST 2000-A8	Fixed	8/28/2000	1,046	$ 301,342 065	9 39%	65	$ 6 010 190	2%	15	$ 1 578 028	26 28%	5	0	0	0	0	0	$ -	0	0	0	0	$ -
321	RAST 2002-A12	Fixed	9/27/2002	1,187	$ 399,999,977	6 85%	82	$ 20 059,803	5%	3	$ 999,788	4 98%	3	0	0	0	0	0	$ -	0	0	0	0	$ -
322	RAST 2002-A13	Fixed	10/30/2002	660	$ 245,063 218	6 04%	97	$ 18,455,465	8%	1	$ 298 910	1 62%	0	0	0	0	0	0	$ -	0	0	0	0	$ -
323	RAST 2002-A14J	Fixed	11/27/2002	883	$ 401,273,859	6 33%	149	$ 58 436 048	15%	1	$ 769,695	1 32%	0	0	0	0	0	0	$ -	0	0	0	0	$ -
324	RAST 2002-A15	Fixed	11/26/2002	1 269	$ 399,999,328	6 80%	116	$ 24 899 318	6%	10	$ 2,225,872	8 94%	5	0	0	0	0	0	$ -	0	0	0	0	$ -
325	RAST 2002-A16	Fixed	12/27/2002	1 033	$ 350,565 239	6 56%	126	$ 40,381,727	12%	3	$ 758,319	1 88%	3	1	0	0	0	0	$ -	1	0	0	1	$ 467,388
326	RAST 2003-A1	Fixed	1/30/2003	1 152	$ 400,936 537	6 51%	164	$ 54 674 878	14%	7	$ 1 983 711	3 63%	2	0	0	0	0	0	$ -	0	0	0	0	$ -
327	RAST 2003-A2	Fixed	2/27/2003	1 344	$ 451,999,950	6 48%	224	$ 70,358,666	16%	10	$ 3 099 782	4 41%	1	0	0	0	0	0	$ -	0	0	0	0	$ -
329	RAST 2003-A4	Fixed	3/27/2003	1 045	$ 349,999,381	6 43%	213	$ 67 509 566	19%	8	$ 2 227,527	3 30%	1	0	0	0	0	0	$ -	0	0	0	0	$ -
330	RAST 2003-A5	Fixed	4/29/2003	747	$ 301 836 348	6 07%	266	$ 108 465,545	36%	9	$ 3 083 341	2 82%	1	0	0	0	0	0	$ -	0	0	0	0	$ -
331	RAST 2003-A6	Fixed	5/29/2003	805	$ 296 693 807	6 11%	276	$ 97 260 462	33%	8	$ 2,243 066	2 31%	5	3	0	0	0	0	$ -	1	0	0	1	$ 423,107
333	RAST 2003-A7	Fixed	6/27/2003	1,310	$ 499,999,289	6 25%	459	$ 164,783,533	33%	27	$ 9,468 268	5 75%	8	2	0	0	0	0	$ -	1	1	0	2	$ 787,257
332	RAST 2003-A8	Fixed	6/16/2003	1 066	$ 474,899 169	5 52%	426	$ 126,811,716	27%	4	$ 1,028,377	0 81%	0	0	0	0	0	0	$ -	0	0	0	0	$ -
334	RAST 2003-A9	Fixed	7/28/2003	611	$ 303 398 029	6 10%	282	$ 100,201,122	33%	10	$ 3,568,791	3 56%	1	0	0	0	0	0	$ -	0	0	0	0	$ -
335	RAST 2003-A10	Fixed	8/28/2003	1 382	$ 507 483 643	5 95%	588	$ 226 633 535	45%	17	$ 4 404 436	1 94%	4	2	0	0	0	0	$ -	0	1	0	1	$ 638 155
337	RAST 2003-A11	Fixed	9/29/2003	771	$ 301 093,568	6 48%	187	$ 67,871,214	23%	12	$ 3 603 040	5 30%	2	1	0	0	0	0	$ -	0	0	0	0	$ -
338	RAST 2003-A12	Fixed	9/26/2003	451	$ 174,998.126	5 38%	238	$ 67 731 243	39%	0	$ -	0 00%	0	0	0	0	0	0	$ -	0	0	0	0	$ -
340	RAST 2003-A13	Fixed	11/24/2003	603	$ 253,857 722	6 33%	203	$ 78,052,948	31%	13	$ 3,706 075	4 75%	3	0	0	0	0	0	$ -	0	0	0	0	$ -
341	RAST 2003-A14	Fixed	12/29/2003	775	$ 286 398 554	5 46%	401	$ 115 450 392	40%	6	$ 1,544,860	1 34%	0	0	0	0	0	0	$ -	0	0	0	0	$ -
342	RAST 2003-A15	Fixed	12/29/2003	835	$ 310,233 031	6 47%	251	$ 90,606,882	29%	10	$ 2 992,745	3 30%	7	0	0	0	0	0	$ -	0	0	0	0	$ -
343	RAST 2004 A1	Fixed	2/26/2004	576	$ 250,421,670	6 52%	162	$ 68,470,541	27%	10	$ 2 986,583	4 36%	2	1	0	0	0	0	$ -	0	0	0	0	$ -
345	RAST 2004-A2	Fixed	3/30/2004	1 012	$ 284,769,937	6 65%	309	$ 86,706,452	30%	15	$ 3,338 980	3 85%	6	2	0	0	0	0	$ -	2	0	0	2	$ 715,463
347	RAST 2004-A3	Fixed	4/29/2004	771	$ 255 123 765	6 04%	335	$ 119 616 158	47%	12	$ 3,199,842	2 68%	8	1	0	0	0	0	$ -	0	0	0	0	$ -
405	RAST 2004-A4	Fixed	6/29/2004	780	$ 254,900,539	6 28%	321	$ 108 429,589	43%	11	$ 2 679 160	2 47%	4	1	0	0	0	0	$ -	0	0	0	0	$ -
406	RAST 2004-A5	Fixed	6/28/2004	991	$ 202,138 590	5 78%	518	$ 96 803,698	48%	20	$ 3,394,952	3 51%	4	3	0	0	0	0	$ -	1	0	0	1	$ 236 596
401	RAST 2004-A6	Fixed	6/28/2004	452	$ 205 250,819	5 29%	303	$ 103,999,692	51%	9	$ 4,061 056	3 90%	0	0	0	0	0	0	$ -	0	0	0	0	$ -
409	RAST 2004-A7	Fixed	8/30/2004	597	$ 235,153,603	6 56%	200	$ 71 618 247	30%	9	$ 3 970,346	5 54%	3	0	0	0	0	0	$ -	0	0	0	0	$ -
415	RAST 2004-A8	Fixed	9/29/2004	716	$ 253,737 725	6 39%	288	$ 92,029,921	36%	13	$ 3 833 148	4 17%	5	2	0	0	0	0	$ -	1	0	0	1	$ 389 121
417	RAST 2004-A9	Fixed	10/28/2004	552	$ 247 500 029	6 29%	240	$ 103 800 961	42%	20	$ 9 629,170	9 28%	7	2	0	0	0	0	$ -	0	0	0	0	$ -
602	RAST 2004-A10	Fixed	12/29/2004	779	$ 260 166,105	6 32%	368	$ 117,765 068	45%	18	$ 5 257 111	4 46%	16	2	0	0	0	0	$	0	1	0	1	$ 172,904
608	RAST 2005-A1	Fixed	2/27/2005	1,144	$ 404 227 242	6 30%	565	$ 200,803 299	50%	38	$ 11 952 899	5 95%	14	4	0	0	0	0	$ -	1	0	0	1	$ 408 041
605	RAST 2005-A2	Fixed	1/28/2005	1 430	$ 276 813 769	6 12%	768	$ 135,986,232	49%	52	$ 8 946 412	6 58%	18	1	0	0	0	0	$ -	0	0	0	0	$ -
612	RAST 2005-A3	Fixed	3/30/2005	1 383	$ 252 254 560	6 11%	762	$ 131 682 492	52%	55	$ 9,843 436	7 48%	23	4	0	0	0	0	$ -	0	0	0	0	$ -
611	RAST 2005-A4	Fixed	3/28/2005	852	$ 202 014 229	5 99%	582	$ 114,823,704	57%	52	$ 9,438,717	8 21%	22	9	0	0	0	0	$ -	1	0	0	1	$ 112 281
614	RAST 2005-A5	Fixed	4/26/2005	1 682	$ 401 252 718	6 22%	936	$ 213,748,397	53%	87	$ 21,148,032	9 89%	37	12	0	0	0	0	$ -	0	0	0	0	$ -
619	RAST 2005-A6CB	Fixed	5/27/2005	2,758	$ 548 346 229	6 05%	1,689	$ 319,405,907	58%	128	$ 25 246 198	7 90%	56	15	0	0	0	0	$ -	2	1	0	3	$ 475 421
618	RAST 2005-A7	Fixed	5/27/2005	541	$ 274 676 716	6 14%	330	$ 163 898 616	60%	24	$ 11,004,033	6 71%	9	2	0	0	0	0	$ -	1	0	0	1	$ 420 360
628	RAST 2005-A8CB	Fixed	6/29/2005	2 527	$ 526,614 425	6 06%	1,560	$ 314 497 658	60%	126	$ 26,401,543	8 39%	66	22	0	0	0	0	$ -	5	0	0	5	$ 1,181,934
629	RAST 2005-A9	Fixed	6/29/2005	380	$ 197 644,728	6 22%	246	$ 123 426,550	62%	21	$ 9,677 563	7 84%	6	1	0	0	0	0	$ -	0	1	0	1	$ 481,699
635	RAST 2005-A10	Fixed	8/30/2005	646	$ 350 401 830	6 14%	471	$ 246 530,401	70%	37	$ 20,532 233	8 33%	20	6	0	0	0	0	$ -	2	0	0	2	$ 1 118 322
642	RAST 2005-A11	Fixed	9/28/2005	2 351	$ 477 211,135	6 12%	1 625	$ 320,528,798	67%	163	$ 31,673,535	9 88%	74	13	0	0	0	0	$ -	3	0	1	4	$ 1,177 361
644	RAST 2005-A12	Fixed	9/29/2005	701	$ 372,259,359	6 13%	508	$ 258 641 629	69%	40	$ 19,470,531	7 53%	19	4	0	0	0	0	$ -	1	0	0	1	$ 417,111
641	RAST 2005-A13	Fixed	8/29/2005	1,029	$ 312,227,661	6 09%	717	$ 222,695 584	71%	82	$ 24,087,687	10 82%	31	7	0	0	0	0	$ -	0	1	0	1	$ 618,442
645	RAST 2005-A14	Fixed	10/28/2005	466	$ 254 414 613	6 16%	369	$ 195 564 592	77%	30	$ 15 537,297	7 94%	14	2	0	0	0	0	$	0	0	0	0	$ -
656	RAST 2005-A15	Fixed	12/28/2005	5 981	$ 1 668,362 720	6 38%	4 382	$ 1,232,530 046	74%	556	$ 151,969 261	12 33%	274	69	0	0	0	0	$ -	26	1	3	30	$ 7 632 201
657	RAST 2005-A16	Fixed	12/29/2005	460	$ 249,967,762	6 33%	353	$ 180 158,499	76%	27	$ 14,277 393	7 51%	11	0	0	0	0	0	$ -	0	0	0	0	$ -
652	RAST 2006-A1	Fixed	2/27/2006	2 141	$ 818 856 852	6 65%	1,630	$ 600,814,220	74%	190	$ 74,634,806	12 42%	99	26	0	0	0	0	$ -	7	0	0	7	$ 3,453,652
663	RAST 2006-A2	Fixed	3/30/2006	677	$ 406 999 033	6 61%	519	$ 298,964,834	73%	63	$ 34,323 891	11 48%	53	12	0	0	0	0	$ -	4	1	0	5	$ 2,677,614
668	RAST 2006-A3CB	Fixed	3/30/2006	1 959	$ 402,626 347	6 92%	1,404	$ 282 387 092	70%	283	$ 54 175 019	19 18%	134	28	0	0	0	0	$ -	13	0	0	13	$ 2 669,304
664	RAST 2006-A4IP	Fixed	3/30/2006	2,529	$ 637,882,216	6 94%	1,748	$ 440,526,159	69%	428	$ 106,885 889	24 26%	176	33	0	0	0	0	$ -	4	1	1	6	$ 1,432 676
670	RAST 2006-A5CB	Fixed	4/27/2006	2 264	$ 455,295,337	6 85%	1,727	$ 338 690 852	74%	343	$ 70,977,085	20 96%	233	45	0	0	0	0	$ -	12	2	1	15	$ 3,084,659
675	RAST 2006-A6	Fixed	5/30/2006	894	$ 402 101,160	6 86%	495	$ 276,291,145	69%	65	$ 46,249 960	16 74%	46	10	0	0	0	0	$ -	6	0	0	6	$ 3,300,501
681	RAST 2006-A7CB	Fixed	5/30/2006	2 326	$ 454 578 412	6 95%	1 693	$ 326 128 056	72%	336	$ 67,474,814	20 69%	246	70	0	0	0	0	$ -	30	1	0	31	$ 6,042,138
684	RAST 2006-A8	Fixed	6/28/2006	1,708	$ 641,665,755	6 73%	1,347	$ 483 460 121	75%	243	$ 98,819,631	20 44%	142	27	0	0	0	0	$ -	4	3	0	7	$ 2,753,753
693	RAST 2006-A9CB	Fixed	7/27/2006	2 016	$ 425,502,190	7 17%	1,638	$ 341,339,542	80%	368	$ 80 960 316	23 72%	264	66	0	0	0	0	$ -	21	1	0	22	$ 5 709 917
694	RAST 2006-A10	Fixed	7/27/2006	429	$ 252 544 726	7 06%	290	$ 166,298,296	66%	66	$ 37 523 903	22 56%	36	13	0	0	0	0	$ -	0	1	1	2	$ 1,175,569
698	RAST 2006-A11	Fixed	8/29/2006	745	$ 327,717,164	7 05%	524	$ 207 574 895	63%	141	$ 61 263,137	29 51%	45	7	0	0	0	0	$ -	2	0	0	2	$ 964,242
6003	RAST 2006-A12	Fixed	9/27/2006	611	$ 374,074 923	7 11%	424	$ 248,204 730	66%	87	$ 48 191 931	19 42%	81	21	0	0	0	0	$ -	3	0	1	4	$ 1,864,812
6006	RAST 2006-A13	Fixed	10/27/2006	674	$ 402 104 815	7 04%	513	$ 296 341 416	74%	106	$ 60 924 345	20 56%	61	18	0	0	0	0	$ -	6	0	0	6	$ 3 070 339
6008	RAST 2006-A14CB	Fixed	11/3/2006	1 645	$ 366,327,577	7 06%	1 386	$ 306 890 352	84%	296	$ 71 188,660	23 19%	189	47	0	0	0	0	$ -	17	2	0	19	$ 4,102 952
6013	RAST 2006-A15	Fixed	11/28/2006	786	$ 478 765 559	7 03%	612	$ 357,890,329	75%	126	$ 71,875,215	20 08%	76	23	0	0	0	0	$ -	6	1	0	7	$ 3 538,185
6022	RAST 2006-A16	Fixed	12/28/2006	1,128	$ 675 594 745	6 95%	897	$ 521 363,352	77%	183	$ 105 304 616	20 20%	101	28	0	0	0	0	$ -	4	2	1	7	$ 4,093,381
6028	RAST 2007-A1	Fixed	1/30/2007	636	$ 386 577 357	6 69%	538	$ 321,079 626	83%	98	$ 58 270,462	18 15%	58	15	0	0	0	0	$ -	4	0	2	6	$ 2 955,120
6034	RAST 2007-A2	Fixed	2/27/2007	1 115	$ 683 787,868	6 69%	957	$ 575,517 431	84%	159	$ 93,450,416	16 24%	84	28	0	0	0	0	$ -	4	0	1	5	$ 2 671 236
6035	RAST 2007-A3	Fixed	2/27/2007	1 380	$ 366,845 590	6 65%	1 227	$ 329 969 446	90%	211	$ 60 076,749	18 21%	149	43	0	0	0	0	$ -	11	2	1	14	$ 4,251 391
6040	RAST 2007-A5	Fixed	3/29/2007	1 275	$ 802,675 185	6 68%	1 127	$ 694 135 088	86%	193	$ 111,573,373	16 07%	103	26	0	0	0	0	$ -	3	1	1	5	$ 2,631,840
6047	RAST 2007-A6	Fixed	4/30/2007	798	$ 509 687,002	6 69%	712	$ 448 581 930	88%	125	$ 77 723 132	17 33%	63	19	0	0	0	0	$ -	3	1	0	4	$ 2 340,192
6052	RAST 2007-A7	Fixed	5/30/2007	701	$ 454,452,428	6 72%	651	$ 416,766,637	92%	100	$ 55,611 640	13 34%	68	20	0	0	0	0	$ -	4	1	1	6	$ 3 357,281
6058	RAST 2007-A8	Fixed	6/29/2007	890	$ 458,881 135	6 75%	803	$ 406 325 646	89%	120	$ 66,032 654	16 25%	80	14	0	0	0	0	$ -	2	2	0	4	$ 1 788 100
6065	RAST 2007-A9	Fixed	7/26/2007	520	$ 306 993 673	7 08%	485	$ 283 778,248	92%	106	$ 58 332 076	20 56%	52	12	0	0	0	0	$ -	4	0	0	4	$ 1,760,414
6063	IMJA 2007-A1	Jumbo A Fixed	6/28/2007	407	$ 262 509 068	6 44%	365	$ 232 112,940	88%	19	$ 11 018,251	4 75%	8	4	0	0	0	0	$ -	0	1	0	1	$ 452,832
6072	IMJA 2007-A2	Jumbo A Fixed	8/30/2007	535	$ 376 641,477	6 72%	476	$ 332,544,119	88%	41	$ 25 976,295	7 81%	23	8	0	0	0	0	$ -	1	0	0	1	$ 461,798
6073	IMJA 2007-A3	Jumbo A Fixed	9/25/2007	314	$ 222 336 824	6 87%	281	$ 194,186,230	87%	23	$ 15 198 353	7 83%	16	3	0	0	0	0	$ -	0	0	0	0	$ -
6077	IMJA 2007-A4	Jumbo A Fixed	12/28/2007	273	$ 182 707,573	7 12%	248	$ 163 654 370	90%	38	$ 23,242,103	14 20%	28	10	0	0	0	0	$ -	1	0	0	1	$ 432 389

FDIC Loan Modification Program
Investor Summary Report as of 12/31/2008

Prepared by Tom Roeschlein
626-535-5260
tom.roeschlein@imb.com

Deal Information at Settlement							Current Period Deal Information						FDIC Mod Campaign Info		FDIC Modifications Completed in Current Period					Total FDIC Modifications Completed Since Program Inception				
Sale #	Securitization Name	Underlying Loan Type	Closing Date	Original Loan Count	Original UPB	Original WAC	Current Loan Count	Current UPB	Pool Factor	60+ DQ Loan Count	60+ Day Delinquent Loan UPB	60+ DQ Loan %	Total Mod Offers Mailed & Awaiting Borrower Response	Total Mod Offers Accepted by Borrowers	Type I Interest Rate Reduction Only	Type II Interest Rate Reduction + Amortization Extension	Type III Int Rate Red + Amort Ext. + Principal Forbearance	Total New Mods in Current Period (Count)	Total New Mods In Current Period (UPB)	Type I: Interest Rate Reduction Only	Type II. Interest Rate Reduction + Amortization Extension	Type III. Int Rate Red + Amort Ext + Principal Forbearance	Total All Mods Completed (Count)	Total All Mods Completed (UPB)
6048	IMSC 2007-F1	Fixed--Conduit	5/29/2007	488	$ 280,474,979	6.89%	422	$ 239,236,240	85%	94	$ 53,769,054	22.48%	49	9	0	0	0	0	$ -	4	0	0	4	$ 2,025,535
6062	IMSC 2007-F2	Fixed--Conduit	6/28/2007	669	$ 336,010,290	6.78%	596	$ 294,008,153	87%	102	$ 51,834,905	17.63%	51	14	0	0	0	0	$ -	1	0	0	1	$ 67,111
6071	IMSC 2007-F3	Fixed--Conduit	8/30/2007	2,007	$ 547,001,363	7.19%	1,793	$ 480,565,946	88%	404	$ 109,214,810	22.73%	259	85	0	0	0	0	$ -	25	2	2	29	$ 6,122,866
344	RAST 2004-IP1	Hybrid ARM	2/24/2004	1,054	$ 516,507,172	5.46%	119	$ 57,181,507	11%	17	$ 8,618,873	15.08%	0	0	0	0	0	0	$ -	0	0	0	0	$ -
423	RAST 2004-IP2	Hybrid ARM	12/17/2004	1,505	$ 507,248,939	5.89%	373	$ 115,199,281	23%	30	$ 9,441,523	8.20%	7	3	0	0	0	0	$ -	0	1	0	1	$ 284,062
404	INDX 2004-AR4	Hybrid ARM	6/30/2004	2,800	$ 784,381,458	6.34%	591	$ 154,442,056	20%	78	$ 19,504,802	12.63%	34	8	0	0	0	0	$ -	3	0	0	3	$ 720,898
410	INDX 2004-AR6	Hybrid ARM	8/31/2004	3,265	$ 949,334,839	5.97%	648	$ 170,545,603	18%	122	$ 31,297,627	18.33%	49	12	0	0	0	0	$ -	4	1	0	5	$ 1,197,324
413	INDX 2004-AR9	Hybrid ARM	9/30/2004	1,128	$ 354,586,275	5.77%	225	$ 67,745,129	19%	49	$ 15,208,148	22.45%	19	2	0	0	0	0	$ -	1	0	0	1	$ 536,469
419	INDX 2004-AR11	Hybrid ARM	11/30/2004	1,066	$ 332,783,520	6.09%	239	$ 68,235,150	21%	56	$ 16,565,077	24.28%	35	8	0	0	0	0	$ -	2	0	0	2	$ 450,458
420	INDX 2004-AR13	Hybrid ARM	11/29/2004	965	$ 297,955,714	5.68%	216	$ 64,873,595	22%	49	$ 14,837,986	22.87%	27	4	0	0	0	0	$ -	0	0	0	0	$ -
601	INDX 2004-AR15	Hybrid ARM	12/29/2004	1,270	$ 441,266,388	5.69%	431	$ 150,153,618	34%	86	$ 29,417,777	19.59%	40	4	0	0	0	0	$ -	1	1	0	2	$ 908,950
603	INDX 2005-AR1	Hybrid ARM	1/28/2005	2,691	$ 702,083,526	5.77%	823	$ 193,558,890	28%	179	$ 44,694,574	23.09%	74	22	0	0	0	0	$ -	9	0	0	9	$ 1,896,209
607	INDX 2005-AR3	Hybrid ARM	2/25/2005	1,690	$ 576,085,348	5.86%	621	$ 188,772,784	33%	119	$ 35,109,138	18.60%	56	8	0	0	0	0	$ -	1	0	0	1	$ 164,455
613	INDX 2005-AR5	Hybrid ARM	3/30/2005	1,871	$ 526,104,842	5.87%	700	$ 189,917,351	36%	163	$ 45,590,616	24.01%	82	16	0	0	0	0	$ -	5	1	1	7	$ 2,201,349
615	INDX 2005-AR7	Hybrid ARM	4/28/2005	2,629	$ 760,621,114	5.83%	1,118	$ 315,592,154	41%	217	$ 62,241,541	19.72%	26	6	0	0	0	0	$ -	1	2	1	4	$ 1,632,675
620	INDX 2005-AR9	Hybrid ARM	5/27/2005	2,590	$ 720,747,050	5.94%	1,116	$ 306,713,376	43%	207	$ 56,636,632	18.47%	88	16	0	0	0	0	$ -	7	1	0	8	$ 2,135,846
625	INDX 2005-AR11	Hybrid ARM	6/29/2005	1,091	$ 330,272,231	6.18%	622	$ 187,289,027	57%	107	$ 31,656,040	16.90%	47	8	0	0	0	0	$ -	2	1	0	3	$ 1,235,625
628	INDX 2005-AR13	Hybrid ARM	6/29/2005	2,680	$ 722,051,896	5.94%	1,250	$ 321,261,340	44%	232	$ 60,928,359	18.97%	95	15	0	0	0	0	$ -	3	1	1	5	$ 1,265,999
631	INDX 2005-AR17	Hybrid ARM	7/29/2005	1,660	$ 473,231,859	5.90%	891	$ 252,388,673	53%	142	$ 41,449,634	16.42%	60	19	0	0	0	0	$ -	2	4	0	6	$ 2,263,995
632	INDX 2005-AR15	Hybrid ARM	7/29/2005	1,857	$ 814,765,527	6.00%	1,192	$ 395,941,231	64%	195	$ 60,224,819	15.21%	85	13	0	0	0	0	$ -	1	2	1	4	$ 1,852,349
633	INDX 2005-AR19	Hybrid ARM	8/31/2005	1,305	$ 420,103,349	5.95%	859	$ 289,004,314	69%	140	$ 41,205,186	14.26%	55	11	0	0	0	0	$ -	1	0	0	1	$ 265,916
634	INDX 2005-AR21	Hybrid ARM	6/30/2005	2,852	$ 800,184,589	5.83%	1,573	$ 440,190,441	55%	251	$ 69,896,055	15.88%	116	22	0	0	0	0	$ -	2	6	0	8	$ 2,048,958
643	INDX 2005-AR23	Hybrid ARM	9/7/2005	3,560	$ 1,125,017,172	6.02%	2,089	$ 671,203,143	60%	374	$ 115,620,119	17.23%	160	30	0	0	0	0	$ -	4	2	0	6	$ 2,103,922
647	INDX 2005-AR25	Hybrid ARM	10/31/2005	1,231	$ 495,434,014	6.14%	850	$ 350,301,182	71%	111	$ 39,658,168	11.32%	57	8	0	0	0	0	$ -	2	0	0	2	$ 341,156
646	INDX 2005-AR27	Hybrid ARM	10/28/2005	2,282	$ 680,091,215	6.01%	1,325	$ 397,704,151	58%	235	$ 69,210,930	17.40%	112	25	0	0	0	0	$ -	2	2	0	4	$ 1,320,793
648	INDX 2005-AR29	Hybrid ARM	11/30/2005	777	$ 340,776,505	6.13%	561	$ 249,443,941	73%	67	$ 28,706,315	11.51%	35	6	0	0	0	0	$ -	4	1	0	5	$ 1,786,439
649	INDX 2005-AR31	Hybrid ARM	11/29/2005	3,543	$ 1,001,067,538	6.11%	2,066	$ 570,805,799	57%	411	$ 113,377,496	19.86%	163	25	0	0	0	0	$ -	6	2	1	9	$ 2,884,654
655	INDX 2005-AR33	Hybrid ARM	12/29/2005	1,994	$ 609,017,105	6.36%	1,175	$ 347,550,984	57%	324	$ 98,854,243	28.44%	158	28	0	0	0	0	$ -	6	6	1	13	$ 3,712,971
658	INDX 2005-AR35	Hybrid ARM	12/29/2005	591	$ 271,397,604	6.29%	430	$ 196,850,554	73%	83	$ 36,611,064	18.60%	39	8	0	0	0	0	$	2	0	1	3	$ 1,547,266
660	INDX 2006-AR3	Hybrid ARM	2/28/2006	2,557	$ 789,959,968	6.75%	1,444	$ 434,383,817	55%	438	$ 130,704,640	30.09%	197	36	0	0	0	0	$ -	4	2	2	8	$ 2,193,520
666	INDX 2006-AR5	Hybrid ARM	3/28/2006	1,478	$ 635,227,686	6.32%	1,108	$ 474,982,351	75%	199	$ 77,377,128	16.29%	106	24	0	0	0	0	$ -	2	3	2	7	$ 3,255,860
667	INDX 2006-AR7	Hybrid ARM	3/29/2006	2,839	$ 852,985,603	6.63%	1,859	$ 540,268,809	63%	599	$ 173,219,034	32.06%	320	53	0	0	0	0	$ -	13	4	2	19	$ 5,558,848
669	INDX 2006-AR9	Hybrid ARM	4/27/2006	1,658	$ 693,801,091	6.44%	1,262	$ 518,660,714	75%	228	$ 94,739,329	18.27%	126	27	0	0	0	0	$ -	6	1	2	9	$ 3,628,788
673	INDX 2006-AR11	Hybrid ARM	4/27/2006	2,972	$ 880,251,208	6.70%	1,944	$ 563,103,001	64%	634	$ 187,791,733	33.35%	347	67	0	0	0	0	$ -	13	11	2	26	$ 8,680,323
674	INDX 2006-AR13	Hybrid ARM	5/30/2006	969	$ 400,476,817	6.49%	776	$ 317,385,587	79%	120	$ 47,295,045	14.90%	68	12	0	0	0	0	$ -	3	3	2	8	$ 3,088,475
680	INDX 2006-AR15	Hybrid ARM	5/30/2006	4,129	$ 1,269,421,177	6.79%	2,825	$ 863,272,877	68%	914	$ 287,005,580	33.25%	510	82	0	0	0	0	$ -	13	12	2	27	$ 8,357,873
688	INDX 2006-AR19	Hybrid ARM	6/29/2006	3,373	$ 1,099,227,090	6.79%	2,375	$ 758,979,609	69%	678	$ 211,822,247	27.91%	396	76	0	0	0	0	$ -	14	5	2	21	$ 6,846,511
685	INDX 2006-AR21	Hybrid ARM	6/27/2006	890	$ 257,528,874	7.12%	676	$ 194,896,073	76%	277	$ 81,839,811	41.99%	168	32	0	0	0	0	$ -	9	3	1	13	$ 3,192,073
695	INDX 2006-AR23	Hybrid ARM	7/25/2006	472	$ 199,418,410	6.54%	378	$ 164,795,162	83%	52	$ 19,839,925	12.04%	41	11	0	0	0	0	$ -	4	1	0	5	$ 2,259,964
697	INDX 2006-AR25	Hybrid ARM	7/27/2006	3,667	$ 1,238,584,905	6.70%	2,694	$ 882,138,525	71%	726	$ 233,428,290	26.46%	432	79	0	0	0	0	$ -	16	7	3	26	$ 8,956,157
6001	INDX 2006-AR27	Hybrid ARM	8/29/2006	2,839	$ 962,424,665	6.73%	2,064	$ 692,333,684	72%	543	$ 175,251,045	25.32%	326	57	0	0	0	0	$ -	17	4	2	23	$ 8,175,822
6011	INDX 2006-AR29	Hybrid ARM	9/26/2006	2,464	$ 835,631,507	6.75%	1,867	$ 628,801,128	75%	634	$ 215,548,640	34.28%	381	67	0	0	0	0	$ -	12	10	1	23	$ 7,273,027
6004	INDX 2006-AR31	Hybrid ARM	9/27/2006	682	$ 301,954,365	6.51%	567	$ 249,560,419	83%	67	$ 29,653,481	11.88%	43	13	0	0	0	0	$ -	2	2	0	4	$ 940,105
6015	INDX 2006-AR33	Hybrid ARM	11/28/2006	916	$ 518,768,223	6.29%	745	$ 407,222,220	78%	67	$ 32,152,624	7.90%	42	13	0	0	0	0	$ -	2	3	1	6	$ 2,971,245
6014	INDX 2006-AR35	Hybrid ARM	11/29/2006	2,872	$ 1,061,639,887	6.82%	2,155	$ 781,881,475	74%	724	$ 266,199,637	34.05%	467	98	0	0	0	0	$ -	22	8	4	34	$ 10,140,526
6021	INDX 2006-AR37	Hybrid ARM	12/27/2006	716	$ 364,841,207	6.56%	608	$ 309,413,794	85%	95	$ 40,356,941	13.04%	57	15	0	0	0	0	$ -	3	3	0	6	$ 1,917,088
6020	INDX 2006-AR39	Hybrid ARM	12/28/2006	1,864	$ 693,916,198	6.50%	1,498	$ 553,646,424	80%	427	$ 151,803,269	27.42%	250	51	0	0	0	0	$ -	13	5	3	21	$ 7,831,480
6023	INDX 2006-AR41	Hybrid ARM	12/28/2006	1,421	$ 452,601,017	7.17%	1,067	$ 337,090,149	74%	432	$ 142,565,413	42.29%	271	69	0	0	0	0	$ -	23	6	2	31	$ 8,776,827
6032	INDX 2007-AR1	Hybrid ARM	2/21/2007	1,718	$ 714,964,886	6.41%	1,441	$ 588,305,692	82%	425	$ 166,165,629	28.24%	242	61	0	0	0	0	$ -	7	6	2	15	$ 4,789,171
6038	INDX 2007-AR5	Hybrid ARM	3/29/2007	2,925	$ 1,272,327,844	5.62%	2,555	$ 1,093,813,755	86%	771	$ 314,308,455	28.74%	395	95	0	0	0	0	$ -	20	4	5	29	$ 10,215,873
6044	INDX 2007-AR7	Hybrid ARM	4/27/2007	1,089	$ 512,936,089	6.68%	935	$ 426,752,070	83%	348	$ 156,018,678	36.56%	192	40	0	0	0	0	$ -	8	4	1	13	$ 4,887,212
6045	INDX 2007-AR9	Hybrid ARM	4/27/2007	871	$ 419,863,853	6.41%	770	$ 365,706,403	87%	104	$ 44,200,387	12.09%	66	16	0	0	0	0	$ -	0	0	0	0	$ -
6046	INDX 2007-AR11	Hybrid ARM	4/27/2007	544	$ 278,186,659	6.74%	467	$ 232,837,937	84%	193	$ 94,359,907	40.53%	99	21	0	0	0	0	$ -	3	1	0	4	$ 2,364,034
6051	INDX 2007-AR13	Hybrid ARM	5/30/2007	1,219	$ 541,436,783	6.80%	1,079	$ 474,397,027	88%	348	$ 159,522,842	33.63%	167	37	0	0	0	0	$ -	8	2	0	10	$ 3,406,073
6060	INDX 2007-AR15	Hybrid ARM	6/28/2007	815	$ 455,284,714	6.73%	722	$ 399,625,380	88%	175	$ 91,044,505	22.78%	85	23	0	0	0	0	$ -	5	1	3	9	$ 3,833,467
6064	INDX 2007-AR17	Hybrid ARM	6/27/2007	899	$ 367,180,347	7.05%	818	$ 331,956,448	90%	286	$ 118,724,861	35.77%	163	52	0	0	0	0	$ -	8	2	2	12	$ 4,911,336
6069	INDX 2007-AR19	Hybrid ARM	7/30/2007	643	$ 337,798,607	7.00%	577	$ 295,098,301	87%	138	$ 67,412,678	22.84%	86	34	0	0	0	0	$ -	7	0	2	9	$ 3,656,967
6054	INDX 2007-AR21IP	Hybrid ARM	11/5/2007	4,037	$ 2,043,787,412	6.06%	3,428	$ 1,734,544,371	85%	490	$ 226,246,682	13.04%	259	56	0	0	0	0	$ -	4	6	1	11	$ 5,768,552
640	INDA 2005-AR1	Jumbo A ARM	9/7/2005	506	$ 242,205,006	5.81%	386	$ 180,133,517	74%	16	$ 7,223,289	4.01%	5	0	0	0	0	0	$ -	0	0	0	0	$ -
650	INDA 2005-AR2	Jumbo A ARM	11/29/2005	599	$ 306,656,698	5.55%	462	$ 231,828,685	76%	23	$ 10,895,255	4.70%	6	3	0	0	0	0	$ -	0	0	1	1	$ 440,118
686	INDA 2006-AR1	Jumbo A ARM	6/28/2006	377	$ 201,229,690	6.35%	304	$ 161,447,099	80%	15	$ 8,013,608	4.96%	7	2	0	0	0	0	$ -	0	0	0	0	$ -
699	INDA 2006-AR2	Jumbo A ARM	8/29/2006	1,045	$ 498,890,044	6.36%	729	$ 340,531,018	68%	87	$ 37,866,924	11.12%	46	7	0	0	0	0	$ -	0	1	2	3	$ 1,146,048
6007	INDA 2006-AR3	Jumbo A ARM	10/30/2006	682	$ 356,371,739	6.29%	527	$ 269,924,372	76%	55	$ 28,541,937	10.57%	28	7	0	0	0	0	$ -	0	1	0	1	$ 1,406,994
6027	INDA 2007-AR1	Jumbo A ARM	1/30/2007	675	$ 464,536,085	6.11%	571	$ 377,581,549	81%	25	$ 18,189,042	4.82%	12	1	0	0	0	0	$ -	0	0	0	0	$ -
6042	INDA 2007-AR2	Jumbo A ARM	4/27/2007	337	$ 240,632,727	6.15%	273	$ 190,140,486	79%	35	$ 22,739,105	11.96%	13	2	0	0	0	0	$	0	0	0	0	$ -
6050	INDA 2007-AR3	Jumbo A ARM	5/30/2007	424	$ 319,937,432	6.26%	362	$ 261,578,690	82%	32	$ 21,804,108	8.34%	10	0	0	0	0	0	$ -	0	0	0	0	$ -
6056	INDA 2007-AR4	Jumbo A ARM	6/27/2007	489	$ 344,206,489	6.37%	425	$ 292,930,694	85%	37	$ 28,383,278	9.69%	13	2	0	0	0	0	$ -	0	0	0	0	$ -
6067	INDA 2007-AR5	Jumbo A ARM	7/27/2007	449	$ 372,597,103	6.50%	394	$ 309,895,105	83%	38	$ 24,916,830	8.04%	17	3	0	0	0	0	$ -	0	0	1	1	$ 429,834
6070	INDA 2007-AR6	Jumbo A ARM	8/30/2007	499	$ 425,207,123	6.64%	418	$ 340,756,630	80%	29	$ 23,731,717	6.96%	11	3	0	0	0	0	$ -	1	0	1	2	$ 899,777
6075	INDA 2007-AR7	Jumbo A ARM	9/27/2007	851	$ 709,190,825	6.66%	714	$ 567,007,047	80%	70	$ 54,025,953	9.53%	36	3	0	0	0	0	$ -	0	0	0	0	$ -
6074	INDA 2007-AR8	Jumbo A ARM	11/29/2007	948	$ 719,103,335	6.73%	846	$ 624,531,685	87%	76	$ 54,813,886	8.78%	45	10	0	0	0	0	$ -	1	0	0	1	$ 647,290
6076	INDA 2007-AR9	Jumbo A ARM	12/27/2007	508	$ 382,212,193	6.76%	459	$ 335,656,328	88%	62	$ 40,916,003	12.19%	40	8	0	0	0	0	$ -	2	0	0	2	$ 996,351
6061	IMSC 2007-AR1	Hybrid ARM--Conduit	6/28/2007	1,963	$ 696,127,517	6.93%	1,649	$ 579,818,251	83%	627	$ 223,495,719	38.55%	359	83	0	0	0	0	$ -	16	4	1	21	$ 7,778,457
6066	IMSC 2007-AR2	Hybrid ARM--Conduit	7/30/2007	978	$ 317,719,336	7.18%	820	$ 262,330,123	83%	305	$ 100,335,840	38.25%	188	29	0	0	0	0	$ -	6	0	2	8	$ 2,579,875
346	INDX 2004-AR1	Option ARM	3/15/2004	1,996	$ 549,810,578	3.05%	187	$ 45,647,892	8%	45	$ 12,072,459	26.45%	9	3	0	0	0	0	$ -	0	0	1	1	$ 317,056
349	INDX 2004-AR2	Option ARM	6/4/2004	3,153	$ 900,032,462	3.78%	327	$ 84,362,139	9%	65	$ 20,540,214	24.35%	19	6	0	0	0	0	$ -	6	0	0	6	$ 2,193,229

Indymac Federal Bank
Bond Investor Relations and Structured Finance

FDIC Loan Modification Program
Investor Summary Report as of 12/31/2008

Prepared by Tom Roeschlein
626-535-5289
tom.roeschlein@imb.com

Deal Information at Settlement							Current Period Deal Information						FDIC Mod Campaign Info		FDIC Modifications Completed in Current Period					Total FDIC Modifications Completed Since Program Inception				
Sale #	Securitization Name	Underlying Loan Type	Closing Date	Original Loan Count	Original UPB	Original WAC	Current Loan Count	Current UPB	Pool Factor	60+ DQ Loan Count	60+ Day Delinquent Loan UPB	60+ DQ Loan %	Total Mod Offers Mailed & Awaiting Borrower Response	Total Mod Offers Accepted by Borrowers	Type I Interest Rate Reduction Only	Type II. Interest Rate Reduction + Amortization Extension	Type III Int Rate Red + Amort Ext + Principal Forbearance	Total New Mods in Current Period (Count)	Total New Mods in Current Period (UPB)	Type I Interest Rate Reduction Only	Type II Interest Rate Reduction + Amortization Extension	Type III Int Rate Red + Amort Ext + Principal Forbearance	Total All Mods Completed (Count)	Total All Mods Completed (UPB)
402	INDX 2004-AR3	Option ARM	8/29/2004	3,077	$ 601,049,014	4.24%	245	$ 39,707,728	7%	43	$ 8,091,061	20.38%	9	1	0	0	0	0	$ -	0	0	0	0	$ -
407	INDX 2004-AR5	Option ARM	8/5/2004	4,100	$ 1,180,683,496	4.45%	479	$ 133,812,422	11%	122	$ 40,806,385	30.50%	52	8	0	0	0	0	$ -	2	0	0	2	$ 486,408
408	INDX 2004-AR7	Option ARM	8/31/2004	2,387	$ 686,106,823	2.38%	292	$ 80,169,455	12%	72	$ 23,330,863	29.10%	41	8	0	0	0	0	$ -	3	0	0	3	$ 652,519
412	INDX 2004-AR8	Option ARM	9/23/2004	4,850	$ 1,400,000,144	2.11%	788	$ 225,161,818	16%	202	$ 65,488,548	29.08%	107	25	0	0	0	0	$ -	3	1	0	4	$ 1,489,358
414	INDX 2004-AR10	Option ARM	9/30/2004	1,520	$ 481,027,918	4.49%	119	$ 33,055,360	7%	28	$ 10,497,529	31.76%	10	2	0	0	0	0	$ -	0	2	0	2	$ 878,514
418	INDX 2004-AR12	Option ARM	11/5/2004	1,382	$ 403,541,728	4.52%	210	$ 63,856,646	16%	54	$ 19,134,103	29.96%	25	6	0	0	0	0	$ -	2	0	0	2	$ 595,594
421	INDX 2004-AR14	Option ARM	12/6/2004	2,806	$ 800,418,241	4.40%	550	$ 158,390,505	20%	165	$ 56,300,728	35.55%	60	16	0	0	0	0	$ -	5	0	0	5	$ 1,288,101
604	INDX 2005-AR2	Option ARM	1/27/2005	4,034	$ 1,195,282,310	3.43%	867	$ 267,082,727	22%	265	$ 91,959,591	34.43%	116	23	0	0	0	0	$ -	7	1	0	8	$ 2,519,437
606	INDX 2005-AR4	Option ARM	2/7/2005	2,056	$ 600,074,866	3.97%	460	$ 149,765,438	25%	143	$ 49,898,525	33.32%	87	20	0	0	0	0	$ -	6	0	0	6	$ 1,887,841
610	INDX 2005-AR6	Option ARM	3/18/2005	3,440	$ 1,002,854,210	3.54%	927	$ 296,908,362	30%	278	$ 93,901,330	31.63%	133	37	0	0	0	0	$ -	9	1	2	12	$ 4,231,319
616	INDX 2005-AR8	Option ARM	4/28/2005	3,027	$ 906,910,607	2.60%	931	$ 301,917,954	33%	283	$ 98,979,584	32.78%	127	33	0	0	0	0	$ -	8	2	2	12	$ 4,217,811
617	INDX 2005-AR10	Option ARM	5/6/2005	3,346	$ 1,002,727,016	3.72%	1,060	$ 343,069,207	34%	303	$ 105,852,785	30.80%	139	29	0	0	0	0	$ -	9	1	0	10	$ 2,576,908
622	INDX 2005-AR12	Option ARM	6/6/2005	3,972	$ 1,281,413,918	4.33%	1,419	$ 481,467,162	38%	386	$ 141,202,862	29.33%	191	45	0	0	0	0	$ -	11	4	3	18	$ 6,057,774
627	INDX 2005-AR14	Option ARM	8/29/2005	3,371	$ 1,002,298,838	1.40%	1,331	$ 433,844,792	43%	410	$ 143,722,976	33.13%	194	41	0	0	0	0	$ -	8	1	3	12	$ 3,937,007
630	INDX 2005-AR16IP	Option ARM	7/11/2005	1,706	$ 769,428,546	4.98%	455	$ 198,850,595	26%	126	$ 54,310,502	27.59%	50	12	0	0	0	0	$ -	2	1	2	5	$ 1,542,860
636	INDX 2005-AR18	Option ARM	9/7/2005	7,434	$ 2,411,782,116	5.01%	3,207	$ 1,114,897,156	48%	944	$ 354,884,098	31.83%	407	78	0	0	0	0	$ -	15	4	7	26	$ 9,468,222
659	INDX 2006-AR2	Option ARM	2/28/2006	5,311	$ 1,750,572,021	4.78%	2,811	$ 1,021,290,730	58%	1,062	$ 413,707,366	40.51%	402	78	0	0	0	0	$ -	16	1	8	25	$ 8,436,863
665	INDX 2006-AR4	Option ARM	3/31/2006	4,574	$ 1,512,796,251	4.11%	2,401	$ 884,086,980	58%	944	$ 368,577,200	41.69%	351	64	0	0	0	0	$ -	9	1	4	14	$ 4,564,821
672	INDX 2006-AR6	Option ARM	4/27/2006	5,321	$ 1,872,248,207	4.40%	2,916	$ 1,139,296,558	61%	1,090	$ 458,760,417	40.27%	358	68	0	0	0	0	$ -	13	3	6	22	$ 8,469,447
676	INDX 2006-AR8	Option ARM	5/30/2006	2,218	$ 744,809,073	4.41%	1,280	$ 463,512,919	62%	457	$ 183,191,682	39.52%	144	22	0	0	0	0	$ -	0	1	2	3	$ 973,085
696	INDX 2006-AR12	Option ARM	7/27/2006	897	$ 307,761,379	3.62%	570	$ 215,839,315	70%	199	$ 80,112,119	37.15%	56	13	0	0	0	0	$ -	2	2	1	5	$ 1,940,305
6009	INDX 2006-AR14	Option ARM	10/30/2006	3,123	$ 1,112,080,185	7.22%	2,190	$ 851,184,497	77%	837	$ 347,455,145	40.82%	189	39	0	0	0	0	$ -	1	2	3	6	$ 2,142,796
6012	INDX 2006-FLX1	FlexPay ARM	9/27/2006	834	$ 353,984,217	7.24%	644	$ 292,846,237	83%	147	$ 71,887,414	24.55%	22	5	0	0	0	0	$ -	0	0	2	2	$ 800,715
6029	INDX 2007-FLX1	FlexPay ARM	1/31/2007	999	$ 400,894,405	6.96%	856	$ 358,550,961	89%	187	$ 83,961,676	23.42%	29	7	0	0	0	0	$ -	0	0	1	1	$ 390,456
6033	INDX 2007-FLX2	FlexPay ARM	2/28/2007	840	$ 346,132,240	6.75%	744	$ 317,229,900	92%	130	$ 58,562,005	18.46%	27	8	0	0	0	0	$ -	0	0	2	2	$ 731,655
6043	INDX 2007-FLX3	FlexPay ARM	4/27/2007	977	$ 403,645,670	6.77%	865	$ 380,857,197	94%	151	$ 69,700,773	18.30%	21	6	0	0	0	0	$ -	0	0	1	1	$ 127,673
6049	INDX 2007-FLX4	FlexPay ARM	5/30/2007	1,323	$ 509,573,579	6.74%	1,136	$ 462,896,876	91%	156	$ 67,287,464	14.54%	19	7	0	0	0	0	$ -	0	0	2	2	$ 438,145
6057	INDX 2007-FLX5	FlexPay ARM	6/27/2007	1,337	$ 566,323,568	6.74%	1,227	$ 545,210,035	96%	173	$ 78,536,355	14.40%	11	7	0	0	0	0	$ -	0	0	1	1	$ 344,248
6058	INDX 2007-FLX6	FlexPay ARM	7/30/2007	1,201	$ 506,497,666	6.90%	1,114	$ 494,146,429	98%	158	$ 68,450,040	13.85%	18	6	0	0	0	0	$ -	0	0	2	2	$ 556,531
6059	IMSC 2007-HOA1	Option ARM--Conduit	8/29/2007	1,321	$ 434,344,776	6.95%	1,088	$ 383,854,005	88%	179	$ 71,142,008	18.53%	17	3	0	0	0	0	$ -	0	1	0	1	$ 307,918
639	INDB 2005-1	Alt-B Hybrid ARM	9/21/2005	1,205	$ 299,994,591	6.53%	483	$ 118,466,276	39%	224	$ 57,848,163	48.83%	141	32	0	0	0	0	$ -	15	4	1	20	$ 3,884,399
690	INDB 2006-1	Alt-B Hybrid ARM	6/22/2006	1,629	$ 388,322,093	7.25%	1,049	$ 254,766,032	64%	498	$ 129,483,067	50.82%	343	78	0	0	0	0	$ -	33	5	2	40	$ 9,344,004
403	INDYL 2004-L1	Lot Loan	6/17/2004	1,047	$ 192,654,392	6.80%	156	$ 22,423,000	12%	25	$ 3,382,631	15.09%	3	2	0	0	0	0	$ -	2	0	0	2	$ 310,223
424	INDYL 2004-LH1	Lot Loan	12/17/2004	1,267	$ 190,012,006	7.33%	290	$ 36,231,911	19%	46	$ 6,863,958	18.94%	5	2	0	0	0	0	$ -	2	0	0	2	$ 193,261
623	INDYL 2005-L1	Lot Loan	6/14/2005	1,553	$ 249,999,084	6.60%	476	$ 65,728,659	26%	114	$ 18,301,127	27.84%	5	1	0	0	0	0	$ -	1	0	0	1	$ -
638	INDYL 2005-L2	Lot Loan	9/16/2005	1,387	$ 249,953,599	6.49%	518	$ 82,142,295	33%	167	$ 31,125,375	37.89%	16	3	0	0	0	0	$ -	3	0	0	3	$ 429,019
654	INDYL 2005-L3	Lot Loan	12/16/2005	1,367	$ 250,772,133	6.84%	564	$ 90,185,015	36%	181	$ 33,510,738	37.16%	14	5	0	0	0	0	$	4	0	0	4	$ 577,987
662	INDYL 2006-L1	Lot Loan	3/17/2006	1,320	$ 244,995,637	7.03%	608	$ 100,445,682	41%	224	$ 41,428,181	41.24%	13	2	0	0	0	0	$ -	2	0	0	2	$ 256,858
678	INDYL 2006-L2	Lot Loan	6/14/2006	1,215	$ 225,503,708	7.23%	607	$ 96,621,852	43%	205	$ 38,669,548	40.02%	22	1	0	0	0	0	$	1	0	0	1	$ 127,230
6002	INDYL 2006-L3	Lot Loan	9/20/2006	867	$ 168,855,310	7.50%	494	$ 89,337,238	53%	146	$ 30,675,086	34.34%	17	4	0	0	0	0	$	3	0	0	3	$ 656,572
6019	INDYL 2006-L4	Lot Loan	12/21/2006	845	$ 159,997,434	7.28%	517	$ 89,987,278	56%	125	$ 27,040,494	30.05%	14	5	0	0	0	0	$ -	4	0	0	4	$ 646,857
6037	INDYL 2007 L1	Lot Loan	3/27/2007	593	$ 109,988,864	7.26%	396	$ 69,471,084	63%	105	$ 22,118,059	31.84%	6	0	0	0	0	0	$ -	0	0	0	0	$ -
671	INDS 2006-1	Second Liens	4/27/2006	4,988	$ 315,132,194	9.07%	2,484	$ 149,134,651	47%	415	$ 25,536,302	17.12%	0	0	0	0	0	0	$ -	0	0	0	0	$ -
679	INDS 2006-A	Second Liens	5/19/2006	7,038	$ 370,019,261	11.10%	3,099	$ 148,530,975	40%	641	$ 33,296,166	22.42%	0	0	0	0	0	0	$ -	0	0	0	0	$
687	INDS 2006-2B	Second Liens	8/14/2006	9,504	$ 585,242,488	10.73%	5,378	$ 313,137,584	54%	1,211	$ 77,067,056	24.61%	0	0	0	0	0	0	$ -	0	0	0	0	$ -
6017	INDS 2006-3	Second Liens	12/7/2006	8,267	$ 574,999,621	10.49%	4,754	$ 307,623,189	53%	729	$ 50,549,127	16.43%	0	0	0	0	0	0	$ -	0	0	0	0	$ -
6030	INDS 2007-1	Second Liens	2/14/2007	6,970	$ 449,999,689	10.82%	4,140	$ 247,175,112	55%	632	$ 41,030,858	16.60%	0	0	0	0	0	0	$ -	0	0	0	0	$ -
6024	INDS 2007-2	Second Liens	3/20/2007	3,856	$ 249,999,949	10.87%	2,397	$ 138,579,390	55%	374	$ 24,043,701	17.35%	0	0	0	0	0	0	$ -	0	0	0	0	$ -
5502	INABS 2004-H2	Heloc	9/29/2004	9,601	$ 508,707,360	5.79%	5,580	$ 244,036,263	48%	603	$ 20,053,667	8.22%	0	0	0	0	0	0	$ -	0	0	0	0	$ -
5503	INABS 2004-LH1	Heloc	12/22/2004	7,814	$ 518,234,505	6.74%	5,779	$ 262,489,138	51%	604	$ 17,238,274	6.57%	0	0	0	0	0	0	$ -	0	0	0	0	$ -
5504	INABS 2006-H1	Heloc	3/31/2006	8,012	$ 502,306,681	8.76%	4,164	$ 197,697,413	39%	484	$ 21,417,795	10.83%	0	0	0	0	0	0	$ -	0	0	0	0	$ -
5505	INABS 2006-H2	Heloc	6/27/2006	6,535	$ 499,902,120	8.61%	4,081	$ 250,298,171	50%	458	$ 28,449,973	11.37%	0	0	0	0	0	0	$ -	0	0	0	0	$ -
5506	INABS 2006-H3	Heloc	9/29/2006	6,735	$ 501,804,955	9.52%	4,612	$ 272,412,371	54%	567	$ 37,874,253	13.90%	0	0	0	0	0	0	$ -	0	0	0	0	$ -
5507	INABS 2006-H4	Heloc	12/21/2006	9,594	$ 650,002,683	7.69%	7,282	$ 443,584,818	68%	783	$ 52,386,761	11.81%	0	0	0	0	0	0	$ -	0	0	0	0	$ -
5508	INABS 2007-H1	Heloc	3/23/2007	8,989	$ 650,071,680	6.43%	7,389	$ 467,575,978	72%	795	$ 58,817,747	12.58%	0	0	0	0	0	0	$ -	0	0	0	0	$ -
265	INABS 2000-A	Subprime	4/27/2000	1,787	$ 275,000,000	10.04%	138	$ 9,646,533	4%	44	$ 4,076,194	42.26%	8	3	0	0	0	0	$ -	1	0	0	1	$ 164,583
269	INABS 2000-B	Subprime	7/28/2000	1,991	$ 300,000,000	10.74%	144	$ 9,813,646	3%	47	$ 3,792,893	38.65%	15	8	0	0	0	0	$ -	2	0	0	2	$ 153,881
300	INABS 2000-C	Subprime	11/21/2000	3,695	$ 449,973,077	10.66%	244	$ 16,235,825	4%	81	$ 6,918,030	42.61%	38	14	0	0	0	0	$ -	12	0	0	12	$ 832,462
302	INABS 2001-A	Subprime	2/28/2002	2,991	$ 349,717,445	10.68%	217	$ 14,595,507	4%	99	$ 7,442,661	50.99%	30	11	0	0	0	0	$ -	6	0	0	6	$ 532,085
305	INABS 2001-B	Subprime	6/28/2001	2,479	$ 348,664,047	9.81%	120	$ 10,840,675	3%	50	$ 4,611,905	42.54%	25	11	0	0	0	0	$ -	9	0	0	9	$ 775,273
307	INABS 2001-C	Subprime	11/3/2001	4,479	$ 480,001,482	9.74%	238	$ 17,790,688	4%	74	$ 7,019,485	39.46%	46	14	0	0	0	0	$ -	10	0	0	10	$ 1,069,194
312	INABS 2002-A	Subprime	4/4/2002	2,435	$ 275,000,718	9.31%	184	$ 13,727,634	5%	44	$ 3,653,818	26.62%	22	7	0	0	0	0	$ -	4	0	0	4	$ 473,559
320	INABS 2002-B	Subprime	9/30/2002	3,735	$ 399,897,855	8.80%	389	$ 29,816,521	7%	73	$ 6,944,876	23.29%	42	17	0	0	0	0	$ -	14	1	0	15	$ 1,929,532
336	INABS 2003-A	Subprime	8/28/2003	2,874	$ 399,977,268	7.83%	420	$ 38,527,837	10%	58	$ 6,751,703	17.52%	38	17	0	0	0	0	$ -	10	0	0	10	$ 1,772,824
346	INABS 2004-A	Subprime	6/8/2004	2,665	$ 450,018,182	7.18%	471	$ 58,613,897	13%	137	$ 19,836,272	33.85%	92	35	0	0	0	0	$ -	27	0	0	27	$ 3,394,757
416	INABS 2004-B	Subprime	9/30/2004	5,092	$ 999,971,206	7.22%	954	$ 163,097,718	16%	224	$ 36,947,016	22.65%	203	74	0	0	0	0	$ -	51	1	0	52	$ 8,585,522
422	INABS 2004-C	Subprime	12/13/2004	3,919	$ 749,950,355	7.36%	729	$ 123,746,154	17%	213	$ 36,819,321	29.75%	161	46	0	0	0	0	$ -	29	1	0	30	$ 4,489,450
609	INABS 2005-A	Subprime	3/11/2005	5,084	$ 999,968,228	7.20%	1,255	$ 225,489,690	23%	386	$ 68,794,545	30.51%	326	105	0	0	0	0	$ -	59	1	0	60	$ 10,520,690
624	INABS 2005-B	Subprime	6/17/2005	4,235	$ 849,999,571	7.15%	1,292	$ 251,799,747	30%	424	$ 77,350,198	30.72%	364	132	0	0	0	0	$ -	70	2	0	72	$ 11,742,172
637	INABS 2005-C	Subprime	9/29/2005	3,889	$ 699,969,380	7.38%	1,470	$ 264,907,716	38%	546	$ 99,385,096	37.52%	465	148	0	0	0	0	$ -	72	0	1	73	$ 12,806,766
653	INABS 2005-D	Subprime	12/23/2005	4,621	$ 899,998,685	7.64%	2,002	$ 373,439,425	41%	826	$ 164,569,766	44.07%	752	242	0	0	0	0	$ -	140	4	3	147	$ 26,294,458
651	INABS 2006-A	Subprime	2/9/2006	2,819	$ 559,999,839	7.64%	1,266	$ 234,944,785	42%	534	$ 117,857,019	50.18%	459	118	0	0	0	0	$ -	75	2	3	80	$ 15,901,080
661	INABS 2006-B	Subprime	3/14/2006	3,714	$ 699,998,598	8.14%	1,884	$ 330,961,492	47%	754	$ 149,745,975	45.25%	655	205	0	0	0	0	$ -	108	4	2	114	$ 19,286,910
677	INABS 2006-C	Subprime	6/15/2006	4,287	$ 766,040,759	8.49%	2,366	$ 407,648,317	53%	876	$ 171,466,452	42.06%	731	253	0	0	0	0	$ -	129	3	5	137	$ 24,045,968
683	INABS 2006-D	Subprime	9/13/2006	4,600	$ 949,997,358	8.47%	3,062	$ 615,223,958	65%	1,210	$ 274,599,421	44.63%	437	178	0	0	0	0	$ -	153	6	8	167	$ 35,896,795
6018	INABS 2006-E	Subprime	12/8/2006	6,275	$ 1,299,922,247	8.38%	4,437	$ 926,529,107	71%	1,755	$ 408,831,892	44.13%	623	263	0	0	0	0	$ -	228	14	4	246	$ 52,114,587

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Indymac Federal Bank
Bond Investor Relations and Structured Finance

FDIC Loan Modification Program
Investor Summary Report as of 12/31/2008

Prepared by Tom Roeschlein
626-535-5290
tom roeschlein@imb com

Deal Information at Settlement							Current Period Deal Information					
Sale #	Securitization Name	Underlying Loan Type	Closing Date	Original Loan Count	Original UPB	Original WAC	Current Loan Count	Current UPB	Pool Factor	60+ DQ Loan Count	60+ Day Delinquent Loan UPB	60+ DQ Loan %
6031	INABS 2007-A	Subprime	3/13/2007	6,518	$ 1 299,661 637	8 42%	5 032	$ 1 012 020 001	78%	1,800	$ 400 780,234	39 80%
6053	INABS 2007-B	Subprime	6/12/2007	5,131	$ 999,969 962	9 07%	3 983	$ 780 478 776	78%	1 543	$ 341 888 877	43 81%
256	INDMH 1997-1	Manufactured Housing	7/30/1997	3,553	$ 149,132 399	10 06%	521	$ 18 165 359	12%	55	$ 2 048 761	11 28%
257	INDMH 1998-1	Manufactured Housing	3/13/1998	3,634	$ 148,228 941	10 30%	700	$ 23 140,228	16%	75	$ 2 847 061	12 30%
258	INDMH 1998-2	Manufactured Housing	7/16/1998	3,425	$ 144,376,984	10 19%	1,006	$ 30,944,651	13%	110	$ 3,561,419	11 51%
IMB MBS	Total			500,392	$ 125,375,744,639	N/A	259,139	$ 66,340,289,912	65%	55,914	$ 15,573,110,730	22 79%
IMB MBS	IMB MBS	[redacted]										
HFI	IMB Owned											
Agency	Fannie Mae											
Agency	FHLMC											
Agency	Total											
Whole Loan	Lehman											
Whole Loan	Other											
Whole Loan	Total											
Re-REMIC	Lehman											
Re-REMIC	Wells Fargo											
Re-REMIC	Other											
Re-REMIC	Total											
ALL	Grand Total											

		FDIC Mod Campaign Info		FDIC Modifications Completed In Current Period					Total FDIC Modifications Completed Since Program Inception				
Sale #	Securitization Name	Total Mod Offers Mailed & Awaiting Borrower Response	Total Mod Offers Accepted by Borrowers	Type I Interest Rate Reduction Only	Type II Interest Rate Reduction + Amortization Extension	Type III Int Rate Red + Amort Ext. + Principal Forbearance	Total New Mods in Current Period (Count)	Total New Mods in Current Period (UPB)	Type I. Interest Rate Reduction Only	Type II Interest Rate Reduction + Amortization Extension	Type III Int Rate Red + Amort Ext + Principal Forbearance	Total All Mods Completed (Count)	Total All Mods Completed (UPB)
6031	INABS 2007-A	757	339	0	0	0	0	$ -	291	7	8	306	$ 64 238,323
6053	INABS 2007-B	694	283	0	0	0	0	$ -	230	13	10	253	$ 48 308 637
256	INDMH 1997-1	0	0	0	0	0	0	$ -	0	0	0	0	$ -
257	INDMH 1998-1	0	0	0	0	0	0	$ -	0	0	0	0	$ -
258	INDMH 1998-2	0	0	0	0	0	0	$ -	0	0	0	0	$ -
IMB MBS	Total	23,732	6,468	0	0	0	0	$ -	2,550	289	183	3,021	$ 734,434,095
IMB MBS	IMB MBS	0	0	0	0	0	0	$ -	0	0	0	0	$ -
HFI	IMB Owned	6,583	170	8	2	2	12	$ 4,093,772	22	3	3	28	$ 9,532,225
Agency	Fannie Mae												
Agency	FHLMC												
Agency	Total	4,314	78	4	0	0	4	$ 1,044,925	5	0	0	5	$ 1,274,037
Whole Loan	Lehman												
Whole Loan	Other												
Whole Loan	Total	0	0	0	0	0	0	$ -	0	0	0	0	$ -
Re-REMIC	Lehman												
Re-REMIC	Wells Fargo												
Re-REMIC	Other												
Re-REMIC	Total	1,812	4,308	1,160	273	198	1,631	$ 436,385,923	1,557	344	270	2,171	$ 584,116,809
ALL	Grand Total	36 441	10,722	1,172	275	200	1 647	$ 441,524 621	4 134	635	456	5,225	$1,329 357 166

FDIC Modification Campaign Tracking Information

	Total Loans Eligible for Mod (as of 12/31/2008)	Total Cumulative Mod Offers Mailed Awaiting Response	Total Cumulative Mod Offers Accepted*
IMB MBS	13,030	23,732	6,168
IMB Owned	4,722	6 583	170
Agency	3 296	4,314	78
Whole Loan	0	0	0
Re-Remic	2,268	1,812	4,308
Total	23,316	36,441	10,722

*Note "Accepted" includes completed modifications with income verified and modification offers accepted with income verification in process

FDIC Loan Modificat

Deal Information at Settlement		Performing/Current FDIC Loan Modifications					Delinquent/Re-Defaulted FDIC Loan Modifications (If 60+ DQ after Mod Completion Date)								Impact of FDIC Modifications			Estimated Economics of FDIC Modifications			
Sale #	Securitization Name	Current or 30 DQ FDIC Mods	Mods Paid in Full (Count)	Total Performing Loan Mods (Count)	Total Performing Loan Mods (UPB)	Performing Mod % (Includes PIF Mods)	Type I Interest Rate Reduction Only	Type II Interest Rate Reduction + Amortization Extension	Type III Int Rate Red + Amort Ext + Principal Forbearance	Mods Liquidated (Count)	Realized Loss on LIQ Mods ($ Loss)	Total Redefaulted Mods (Count)	Total Redefaulted Mods (UPB)	Redefault Mod % (Includes LIQ Mods)	Current WAC of Active Loans	Current WAC of Mod Loans	Total Principal Forbearance Outstanding ($)	Est/Model NPV Cost of Foreclosure (Avoided) at Time of Mod	Est/Model NPV Cost of Mod (Incurred) at Time of Mod	Net Est/Model Benefit at Time of Mod	Net Est/Model Benefit at Time of Mod %
271	RAST 2000-A6	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	9.11%	N/A	$ -	$ -	$ -	$ -	0.0%
321	RAST 2002-A12	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	6.41%	N/A	$ -	$ -	$ -	$ -	0.0%
322	RAST 2002-A13	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	5.76%	N/A	$ -	$ -	$ -	$ -	0.0%
323	RAST 2002-A14J	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	6.18%	N/A	$ -	$ -	$ -	$ -	0.0%
324	RAST 2002-A15	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	6.62%	N/A	$ -	$ -	$ -	$ -	0.0%
325	RAST 2002-A16	1	0	1	$ 467,386	100%	0	0	0	0	$ -	0	$ -	0%	6.20%	6.50%	$ -	$ 77,676	$ 31,070	$ 46,606	60.0%
326	RAST 2003-A1	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	6.27%	N/A	$ -	$ -	$ -	$ -	0.0%
327	RAST 2003-A2	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	6.23%	N/A	$ -	$ -	$ -	$ -	0.0%
329	RAST 2003-A4	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	6.16%	N/A	$ -	$ -	$ -	$ -	0.0%
330	RAST 2003-A5	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	5.94%	N/A	$ -	$ -	$ -	$ -	0.0%
331	RAST 2003-A6	1	0	1	$ 423,107	100%	0	0	0	0	$ -	0	$ -	0%	5.95%	4.13%	$ -	$ 73,500	$ 55,893	$ 17,608	24.0%
333	RAST 2003-A7	2	0	2	$ 787,257	100%	0	0	0	0	$ -	0	$ -	0%	6.01%	3.46%	$ -	$ 130,637	$ 112,967	$ 17,670	13.5%
332	RAST 2003-A8	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	5.31%	N/A	$ -	$ -	$ -	$ -	0.0%
334	RAST 2003-A9	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	5.93%	N/A	$ -	$ -	$ -	$ -	0.0%
336	RAST 2003-A10	1	0	1	$ 638,155	100%	0	0	0	0	$ -	0	$ -	0%	5.68%	3.25%	$ -	$ 261,357	$ 172,629	$ 88,728	33.9%
337	RAST 2003-A11	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	6.23%	N/A	$ -	$ -	$ -	$ -	0.0%
338	RAST 2003-A12	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	5.22%	N/A	$ -	$ -	$ -	$ -	0.0%
340	RAST 2003-A13	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	6.00%	N/A	$ -	$ -	$ -	$ -	0.0%
341	RAST 2003-A14	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	5.25%	N/A	$ -	$ -	$ -	$ -	0.0%
342	RAST 2003-A15	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	6.05%	N/A	$ -	$ -	$ -	$ -	0.0%
343	RAST 2004-A1	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	6.24%	N/A	$ -	$ -	$ -	$ -	0.0%
345	RAST 2004-A2	2	0	2	$ 715,463	100%	0	0	0	0	$ -	0	$ -	0%	6.25%	6.50%	$ -	$ 50,595	$ 30,569	$ 20,026	39.6%
347	RAST 2004-A3	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	5.86%	N/A	$ -	$ -	$ -	$ -	0.0%
405	RAST 2004-A4	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	6.06%	N/A	$ -	$ -	$ -	$ -	0.0%
406	RAST 2004-A5	1	0	1	$ 236,596	100%	0	0	0	0	$ -	0	$ -	0%	5.74%	4.38%	$ -	$ 26,309	$ 23,398	$ 2,911	11.1%
401	RAST 2004-A6	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	5.22%	N/A	$ -	$ -	$ -	$ -	0.0%
409	RAST 2004-A7	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	6.31%	N/A	$	$ -	$ -	$ -	0.0%
415	RAST 2004-A8	1	0	1	$ 369,121	100%	0	0	0	0	$ -	0	$ -	0%	6.17%	3.13%	$ -	$ 95,486	$ 71,708	$ 23,778	24.9%
417	RAST 2004-A9	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	6.19%	N/A	$ -	$ -	$ -	$ -	0.0%
602	RAST 2004-A10	1	0	1	$ 172,604	100%	0	0	0	0	$ -	0	$ -	0%	6.17%	3.00%	$ -	$ 24,603	$ 22,687	$ 1,917	7.7%
608	RAST 2005-A1	1	0	1	$ 408,041	100%	0	0	0	0	$ -	0	$ -	0%	6.17%	4.50%	$ -	$ 106,980	$ 69,015	$ 37,965	35.5%
605	RAST 2005-A2	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	6.07%	N/A	$ -	$ -	$ -	$ -	0.0%
612	RAST 2005-A3	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	6.08%	N/A	$ -	$ -	$ -	$ -	0.0%
611	RAST 2005-A4	1	0	1	$ 112,281	100%	0	0	0	0	$ -	0	$ -	0%	5.94%	5.25%	$ -	$ 6,969	$ 6,700	$ 269	3.9%
614	RAST 2005-A5	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	6.09%	N/A	$ -	$ -	$ -	$ -	0.0%
619	RAST 2005-A6CB	3	0	3	$ 475,421	100%	0	0	0	0	$ -	0	$ -	0%	5.99%	4.78%	$ -	$ 92,127	$ 66,788	$ 25,339	27.5%
616	RAST 2005-A7	1	0	1	$ 420,360	100%	0	0	0	0	$	0	$ -	0%	6.01%	6.13%	$ -	$ 16,681	$ 10,676	$ 6,005	36.0%
628	RAST 2005-A8CB	4	0	4	$ 1,010,562	80%	1	0	0	0	$ -	1	$ 171,372	20%	6.02%	4.40%	$ -	$ 215,121	$ 152,010	$ 63,111	29.3%
629	RAST 2005-A9	1	0	1	$ 481,699	100%	0	0	0	0	$ -	0	$ -	0%	6.15%	3.00%	$ -	$ 234,591	$ 173,630	$ 60,962	26.0%
635	RAST 2005-A10	2	0	2	$ 1,118,322	100%	0	0	0	0	$ -	0	$ -	0%	6.08%	4.54%	$ -	$ 249,578	$ 168,619	$ 80,958	32.4%
642	RAST 2005-A11	4	0	4	$ 1,177,361	100%	0	0	0	0	$ -	0	$ -	0%	6.02%	4.29%	$ 2,323	$ 355,108	$ 253,968	$ 101,140	28.5%
644	RAST 2005-A12	1	0	1	$ 417,111	100%	0	0	0	0	$ -	0	$ -	0%	6.01%	4.13%	$ -	$ 246,593	$ 125,292	$ 121,301	49.2%
641	RAST 2005-A13	1	0	1	$ 618,442	100%	0	0	0	0	$ -	0	$ -	0%	6.03%	3.00%	$ -	$ 139,918	$ 129,091	$ 10,827	7.7%
645	RAST 2005-A14	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	6.10%	N/A	$ -	$ -	$ -	$ -	0.0%
656	RAST 2005-A15	29	0	29	$ 7,512,233	97%	1	0	0	0	$ -	1	$ 119,969	3%	6.27%	4.65%	$ 89,243	$ 2,172,222	$ 1,454,979	$ 717,244	33.0%
657	RAST 2005-A16	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	6.25%	N/A	$ -	$ -	$ -	$ -	0.0%
652	RAST 2006-A1	7	0	7	$ 3,453,652	100%	0	0	0	0	$ -	0	$ -	0%	6.47%	5.22%	$ -	$ 1,246,447	$ 687,624	$ 558,823	44.8%
663	RAST 2006-A2	5	0	5	$ 2,677,614	100%	0	0	0	0	$ -	0	$ -	0%	6.54%	4.75%	$ -	$ 974,226	$ 585,423	$ 388,803	39.9%
668	RAST 2006-A3CB	12	0	12	$ 2,536,480	92%	1	0	0	0	$ -	1	$ 132,624	8%	6.81%	5.32%	$ -	$ 798,050	$ 479,991	$ 318,058	39.9%
664	RAST 2006-A4IP	6	0	6	$ 1,432,676	100%	0	0	0	0	$ -	0	$ -	0%	6.75%	3.62%	$ 14,213	$ 743,168	$ 521,581	$ 221,586	29.8%
670	RAST 2006-A5CB	14	0	14	$ 2,845,766	93%	1	0	0	0	$ -	1	$ 238,894	7%	6.75%	5.23%	$ 15,153	$ 1,303,518	$ 685,365	$ 618,152	47.4%
675	RAST 2006-A6	5	0	5	$ 2,626,928	83%	1	0	0	0	$ -	1	$ 673,573	17%	6.70%	5.41%	$ -	$ 1,030,323	$ 542,294	$ 488,029	47.4%
681	RAST 2006-A7CB	28	0	28	$ 5,324,748	90%	2	1	0	0	$ -	3	$ 717,390	10%	6.81%	5.16%	$ -	$ 1,800,190	$ 1,005,427	$ 794,764	44.1%
684	RAST 2006-A8	7	0	7	$ 2,753,753	100%	0	0	0	0	$ -	0	$ -	0%	6.62%	4.85%	$ -	$ 1,132,867	$ 680,875	$ 451,992	39.9%
693	RAST 2006-A9CB	22	0	22	$ 5,709,917	100%	0	0	0	0	$ -	0	$ -	0%	7.02%	5.23%	$ -	$ 1,648,037	$ 918,457	$ 729,580	44.3%
694	RAST 2006-A10	2	0	2	$ 1,175,569	100%	0	0	0	0	$ -	0	$ -	0%	6.93%	3.00%	$ 7,102	$ 471,663	$ 363,841	$ 107,822	22.9%
698	RAST 2006-A11	2	0	2	$ 964,242	100%	0	0	0	0	$ -	0	$ -	0%	6.91%	3.93%	$	$ 560,667	$ 291,363	$ 269,303	48.0%
6003	RAST 2006-A12	4	0	4	$ 1,864,612	100%	0	0	0	0	$ -	0	$ -	0%	6.96%	5.61%	$ 167,441	$ 978,723	$ 656,360	$ 322,363	32.9%
6006	RAST 2006-A13	3	0	3	$ 1,492,691	50%	3	0	0	0	$ -	3	$ 1,577,648	50%	6.90%	4.74%	$ -	$ 1,480,536	$ 773,293	$ 707,243	47.8%
6008	RAST 2006-A14CB	18	0	18	$ 3,817,751	95%	0	1	0	0	$ -	1	$ 285,201	5%	6.92%	5.41%	$ -	$ 1,526,490	$ 805,672	$ 720,818	47.2%
6013	RAST 2006-A15	6	0	6	$ 3,001,492	86%	1	0	0	0	$ -	1	$ 536,693	14%	6.86%	4.92%	$ -	$ 1,286,273	$ 690,733	$ 595,539	46.3%
6022	RAST 2006-A16	6	0	6	$ 3,236,667	86%	1	0	0	0	$ -	1	$ 858,694	14%	6.80%	4.17%	$ 27,091	$ 1,786,890	$ 1,207,862	$ 579,028	32.4%
6028	RAST 2007-A1	6	0	6	$ 2,955,120	100%	0	0	0	0	$ -	0	$ -	0%	6.61%	3.62%	$ 107,286	$ 1,392,292	$ 1,000,366	$ 391,926	28.1%
6034	RAST 2007-A2	5	0	5	$ 2,671,236	100%	0	0	0	0	$ -	0	$ -	0%	6.59%	4.20%	$ 132,441	$ 1,263,611	$ 762,874	$ 500,737	39.6%
6035	RAST 2007-A3	13	0	13	$ 4,074,525	93%	1	0	0	0	$ -	1	$ 176,867	7%	6.59%	4.00%	$ 24,574	$ 1,722,507	$ 1,161,684	$ 560,823	32.6%
6040	RAST 2007-A5	4	0	4	$ 2,109,310	80%	0	1	0	0	$ -	1	$ 522,531	20%	6.60%	4.05%	$ 61,404	$ 963,629	$ 665,698	$ 297,932	30.9%
6047	RAST 2007-A6	4	0	4	$ 2,340,192	100%	0	0	0	0	$ -	0	$ -	0%	6.63%	4.85%	$ -	$ 792,440	$ 442,321	$ 350,119	44.2%
6052	RAST 2007-A7	5	0	5	$ 2,708,979	83%	1	0	0	0	$ -	1	$ 648,302	17%	6.63%	3.93%	$ 122,652	$ 1,602,168	$ 1,075,981	$ 526,187	32.8%
6058	RAST 2007-A8	3	0	3	$ 1,446,240	75%	0	1	0	0	$ -	1	$ 339,860	25%	6.70%	3.94%	$ -	$ 641,054	$ 393,333	$ 247,721	38.6%
6065	RAST 2007-A9	3	0	3	$ 1,237,091	75%	1	0	0	0	$ -	1	$ 523,323	25%	6.99%	4.62%	$ -	$ 551,705	$ 325,338	$ 226,367	41.0%
6063	IMJA 2007-A1	1	0	1	$ 452,632	100%	0	0	0	0	$ -	0	$ -	0%	6.42%	3.00%	$ -	$ 240,791	$ 173,382	$ 67,410	28.0%
6072	IMJA 2007-A2	1	0	1	$ 481,798	100%	0	0	0	0	$ -	0	$ -	0%	6.70%	3.00%	$ -	$ 189,216	$ 118,024	$ 71,192	37.6%
6073	IMJA 2007-A3	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	6.65%	N/A	$ -	$ -	$ -	$ -	0.0%
6077	IMJA 2007-A4	1	0	1	$ 432,389	100%	0	0	0	0	$ -	0	$ -	0%	7.06%	6.50%	$ -	$ 116,461	$ 46,584	$ 69,876	60.0%

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Prepared by Tom Roeschlein
626-535-5280
tom.roeschlein@imb.com

Deal Information at Settlement		Performing/Current FDIC Loan Modifications					Delinquent/Re-Defaulted FDIC Loan Modifications (if 60+ DQ after Mod Completion Date)								Impact of FDIC Modifications			Estimated Economics of FDIC Modifications			
Sale #	Securitization Name	Current or 30 DQ FDIC Mods	Mods Paid in Full (Count)	Total Performing Loan Mods (Count)	Total Performing Loan Mods (UPB)	Performing Mod % (Includes PIF Mods)	Type I Interest Rate Reduction Only	Type II Interest Rate Reduction + Amortization Extension	Type III Int Rate Red + Amort Ext + Principal Forbearance	Mods Liquidated (Count)	Realized Loss on LIQ Mods ($ Loss)	Total Redefaulted Mods (Count)	Total Redefaulted Mods (UPB)	Redefault Mod % (Includes LIQ Mods)	Current WAC of Active Loans	Current WAC of Mod Loans	Total Principal Forbearance Outstanding ($)	Est/Model NPV Cost of Foreclosure (Avoided) at Time of Mod	Est/Model NPV Cost of Mod (Incurred) at Time of Mod	Net Est/Model Benefit at Time of Mod	Net Est/Model Benefit at Time of Mod %
6048	IMSC 2007-F1	3	0	3	$ 1,524,760	75%	1	0	0	0	$ -	1	$ 500,775	25%	6.78%	4.27%	$ -	$ 789,563	$ 512,036	$ 277,527	35.1%
6062	IMSC 2007-F2	1	0	1	$ 67,111	100%	0	0	0	0	$ -	0	$ -	0%	6.72%	6.13%	$ -	$ 9,763	$ 6,248	$ 3,515	36.0%
6071	IMSC 2007-F3	26	0	26	$ 5,601,141	90%	3	0	0	0	$ -	3	$ 521,725	10%	7.08%	5.21%	$ 27,118	$ 1,929,805	$ 1,210,259	$ 719,545	37.3%
344	RAST 2004-IP1	0	0	0	$ -	0%	0	0	0	0	$ -	0	$	0%	4.98%	N/A	$ -	$ -	$ -	$ -	0.0%
423	RAST 2004-IP2	1	0	1	$ 284,062	100%	0	0	0	0	$ -	0	$ -	0%	5.60%	3.00%	$ -	$ 107,468	$ 70,456	$ 37,012	34.4%
404	INDX 2004-AR4	1	0	1	$ 313,698	33%	2	0	0	0	$	2	$ 406,999	67%	5.28%	4.96%	$ -	$ 176,378	$ 110,882	$ 65,515	37.1%
410	INDX 2004-AR6	4	0	4	$ 1,093,116	80%	1	0	0	0	$ -	1	$ 104,208	20%	5.87%	4.90%	$ -	$ 517,647	$ 264,605	$ 253,043	48.9%
413	INDX 2004-AR9	1	0	1	$ 536,489	100%	0	0	0	0	$	0	$ -	0%	5.80%	5.00%	$ -	$ 133,438	$ 74,492	$ 58,943	44.2%
419	INDX 2004-AR11	2	0	2	$ 456,458	100%	0	0	0	0	$ -	0	$ -	0%	5.77%	6.50%	$ -	$ 158,495	$ 63,398	$ 95,097	60.0%
420	INDX 2004-AR13	0	0	0	$ -	0%	0	0	0	0	$	0	$ -	0%	5.68%	N/A	$ -	$ -	$ -	$ -	0.0%
601	INDX 2004-AR15	2	0	2	$ 908,950	100%	0	0	0	0	$	0	$ -	0%	5.68%	3.64%	$ -	$ 267,670	$ 198,554	$ 69,116	25.8%
603	INDX 2005-AR1	9	0	9	$ 1,896,209	100%	0	0	0	0	$ -	0	$ -	0%	5.75%	5.17%	$ -	$ 409,890	$ 244,579	$ 165,311	40.3%
607	INDX 2005-AR3	1	0	1	$ 164,455	100%	0	0	0	0	$ -	0	$ -	0%	5.88%	4.50%	$ -	$ 67,114	$ 26,846	$ 40,269	60.0%
613	INDX 2005-AR5	7	0	7	$ 2,201,349	100%	0	0	0	0	$ -	0	$ -	0%	5.80%	4.00%	$ 31,244	$ 821,713	$ 561,398	$ 260,315	31.7%
615	INDX 2005-AR7	4	0	4	$ 1,632,675	100%	0	0	0	0	$ -	0	$ -	0%	5.63%	3.57%	$ 17,088	$ 513,946	$ 373,934	$ 140,012	27.2%
620	INDX 2005-AR9	7	0	7	$ 1,755,307	88%	1	0	0	0	$ -	1	$ 380,539	13%	5.66%	4.21%	$ -	$ 604,624	$ 389,078	$ 215,547	35.6%
625	INDX 2005-AR11	3	0	3	$ 1,235,625	100%	0	0	0	0	$ -	0	$ -	0%	6.05%	3.56%	$ -	$ 350,679	$ 251,310	$ 99,369	28.3%
626	INDX 2005-AR13	5	0	5	$ 1,265,998	100%	0	0	0	0	$ -	0	$ -	0%	5.57%	3.77%	$ 44,420	$ 460,094	$ 321,689	$ 138,404	30.1%
631	INDX 2005-AR17	5	0	5	$ 1,599,538	83%	0	1	0	0	$ -	1	$ 664,457	17%	5.69%	3.48%	$ -	$ 563,008	$ 452,339	$ 110,669	19.7%
632	INDX 2005-AR15	4	0	4	$ 1,852,349	100%	0	0	0	0	$ -	0	$ -	0%	5.91%	3.21%	$ 63,802	$ 670,209	$ 522,441	$ 147,769	22.0%
633	INDX 2005-AR19	1	0	1	$ 265,916	100%	0	0	0	0	$ -	0	$ -	0%	5.86%	3.75%	$ -	$ 141,900	$ 75,346	$ 66,554	46.9%
634	INDX 2005-AR21	8	0	8	$ 2,048,958	100%	0	0	0	0	$ -	0	$ -	0%	5.69%	3.21%	$ -	$ 687,583	$ 506,445	$ 181,138	26.3%
643	INDX 2005-AR23	5	0	5	$ 1,945,360	83%	1	0	0	0	$ -	1	$ 156,562	17%	5.89%	3.60%	$ -	$ 830,543	$ 504,171	$ 326,373	39.3%
647	INDX 2005-AR25	2	0	2	$ 341,156	100%	0	0	0	0	$ -	0	$ -	0%	6.06%	3.66%	$ -	$ 58,264	$ 46,287	$ 12,976	21.9%
646	INDX 2005-AR27	4	0	4	$ 1,320,793	100%	0	0	0	0	$ -	0	$ -	0%	5.83%	3.30%	$ -	$ 415,886	$ 315,820	$ 100,066	24.1%
648	INDX 2005-AR29	5	0	5	$ 1,796,439	100%	0	0	0	0	$ -	0	$ -	0%	6.05%	3.95%	$ -	$ 560,870	$ 369,406	$ 191,463	34.1%
649	INDX 2005-AR31	9	0	9	$ 2,884,654	100%	0	0	0	0	$ -	0	$ -	0%	5.93%	3.94%	$ 33,177	$ 1,101,821	$ 699,725	$ 402,097	36.5%
655	INDX 2005-AR33	12	0	12	$ 3,605,728	92%	1	0	0	0	$ -	1	$ 107,244	8%	6.07%	3.82%	$ 15,147	$ 1,370,700	$ 924,471	$ 446,230	32.6%
658	INDX 2005-AR35	3	0	3	$ 1,547,268	100%	0	0	0	0	$ -	0	$ -	0%	6.20%	3.32%	$ 30,264	$ 709,046	$ 466,120	$ 242,926	34.3%
660	INDX 2006-AR3	8	0	8	$ 2,193,520	100%	0	0	0	0	$	0	$ -	0%	6.57%	3.91%	$ 128,544	$ 914,758	$ 694,295	$ 220,463	24.1%
666	INDX 2006-AR5	6	0	6	$ 2,441,329	86%	1	0	0	0	$ -	1	$ 814,531	14%	6.21%	3.37%	$ 91,142	$ 1,163,610	$ 887,934	$ 275,677	23.7%
667	INDX 2006-AR7	18	0	18	$ 5,271,352	95%	1	0	0	0	$ -	1	$ 287,487	5%	6.46%	4.00%	$ 99,509	$ 2,227,431	$ 1,499,704	$ 727,727	32.7%
669	INDX 2006-AR9	8	0	8	$ 2,962,718	89%	1	0	0	0	$ -	1	$ 666,070	11%	6.35%	3.50%	$ 180,753	$ 1,380,115	$ 1,059,472	$ 320,643	23.2%
673	INDX 2006-AR11	24	0	24	$ 7,880,052	92%	2	0	0	0	$ -	2	$ 800,271	8%	6.52%	3.88%	$ 25,578	$ 3,656,630	$ 2,444,669	$ 1,211,961	33.1%
674	INDX 2006-AR13	7	0	7	$ 2,754,637	88%	1	0	0	0	$ -	1	$ 333,838	13%	6.41%	3.17%	$ 28,168	$ 1,415,024	$ 1,028,847	$ 386,177	27.3%
680	INDX 2006-AR15	25	0	25	$ 7,785,542	93%	2	0	0	0	$ -	2	$ 572,232	7%	6.62%	3.61%	$ 231,060	$ 3,494,060	$ 2,473,088	$ 1,020,971	29.2%
688	INDX 2006-AR19	19	0	19	$ 5,710,928	90%	2	0	0	0	$ -	2	$ 1,135,583	10%	6.63%	4.46%	$ 45,737	$ 2,565,682	$ 1,680,176	$ 885,507	34.5%
685	INDX 2006-AR21	11	0	11	$ 2,909,832	85%	2	0	0	0	$ -	2	$ 282,241	15%	6.91%	4.42%	$ 21,557	$ 1,255,915	$ 771,156	$ 484,759	38.6%
685	INDX 2006-AR23	4	0	4	$ 1,895,847	80%	1	0	0	0	$ -	1	$ 364,117	20%	6.45%	4.18%	$ -	$ 923,124	$ 599,948	$ 323,176	35.0%
687	INDX 2006-AR25	25	0	25	$ 8,586,195	96%	0	1	0	0	$ -	1	$ 369,963	4%	6.55%	4.09%	$ 132,853	$ 4,003,611	$ 2,680,924	$ 1,322,688	33.0%
6001	INDX 2006-AR27	23	0	23	$ 8,175,822	100%	0	0	0	0	$ -	0	$ -	0%	6.59%	3.95%	$ 37,991	$ 2,899,687	$ 1,893,072	$ 1,006,615	34.7%
6011	INDX 2006-AR29	21	0	21	$ 6,836,761	91%	1	1	0	0	$ -	2	$ 436,267	9%	6.57%	3.84%	$ 21,712	$ 2,597,938	$ 1,829,140	$ 768,798	29.6%
6004	INDX 2006-AR31	4	0	4	$ 940,105	100%	0	0	0	0	$ -	0	$ -	0%	6.47%	4.03%	$ -	$ 402,669	$ 256,511	$ 146,158	36.3%
6015	INDX 2006-AR33	5	0	5	$ 2,489,544	83%	1	0	0	0	$ -	1	$ 481,701	17%	6.22%	3.39%	$ 43,454	$ 1,236,582	$ 878,566	$ 358,016	29.0%
6014	INDX 2006-AR35	31	0	31	$ 8,988,165	91%	2	1	0	0	$ -	3	$ 1,152,361	9%	6.63%	4.01%	$ 137,106	$ 3,800,939	$ 2,563,821	$ 1,237,118	32.5%
6021	INDX 2006-AR37	6	0	6	$ 1,917,088	100%	0	0	0	0	$ -	0	$ -	0%	6.50%	3.51%	$ -	$ 712,898	$ 490,949	$ 221,949	31.1%
6020	INDX 2006-AR39	21	0	21	$ 7,831,480	100%	0	0	0	0	$ -	0	$ -	0%	6.36%	3.63%	$ 74,845	$ 3,310,687	$ 2,262,908	$ 1,047,779	31.6%
6023	INDX 2006-AR41	31	0	31	$ 8,776,827	100%	0	0	0	0	$ -	0	$ -	0%	6.93%	4.18%	$ 123,603	$ 3,037,263	$ 2,024,262	$ 1,013,001	33.4%
6032	INDX 2007-AR1	15	0	15	$ 4,769,171	100%	0	0	0	0	$ -	0	$ -	0%	6.30%	3.53%	$ 8,083	$ 1,809,198	$ 1,213,349	$ 595,849	32.9%
6038	INDX 2007-AR5	24	0	24	$ 8,402,788	83%	3	2	0	0	$ -	5	$ 1,813,085	17%	6.51%	3.82%	$ 216,293	$ 4,242,658	$ 2,907,733	$ 1,334,925	31.5%
6044	INDX 2007-AR7	12	0	12	$ 4,547,140	92%	1	0	0	0	$ -	1	$ 340,072	8%	6.56%	3.99%	$ 122,231	$ 1,871,638	$ 1,331,794	$ 539,844	28.8%
6045	INDX 2007-AR9	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	6.37%	N/A	$ -	$ -	$ -	$ -	0.0%
6046	INDX 2007-AR11	3	0	3	$ 1,441,129	75%	1	0	0	0	$ -	1	$ 922,905	25%	6.61%	4.57%	$ -	$ 1,066,344	$ 717,382	$ 348,962	32.7%
6051	INDX 2007-AR13	9	0	9	$ 3,292,539	90%	1	0	0	0	$ -	1	$ 113,534	10%	6.74%	3.98%	$ -	$ 1,145,508	$ 753,022	$ 392,486	34.3%
6060	INDX 2007-AR15	9	0	9	$ 3,833,467	100%	0	0	0	0	$ -	0	$ -	0%	6.65%	3.79%	$ 203,785	$ 1,568,281	$ 1,122,182	$ 446,099	28.4%
6064	INDX 2007-AR17	12	0	12	$ 4,911,336	100%	0	0	0	0	$ -	0	$ -	0%	6.95%	4.65%	$ 41,892	$ 1,952,103	$ 1,308,798	$ 643,305	33.0%
6069	INDX 2007-AR19	9	0	9	$ 3,656,967	100%	0	0	0	0	$ -	0	$ -	0%	6.93%	4.40%	$ 109,273	$ 1,405,445	$ 1,004,538	$ 400,907	28.5%
6054	INDX 2007-AR21IP	10	0	10	$ 4,810,583	91%	1	0	0	0	$ -	1	$ 857,969	9%	6.11%	3.57%	$ 38,707	$ 2,519,754	$ 1,659,354	$ 860,401	34.1%
640	INDA 2005-AR1	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	5.58%	N/A	$ -	$ -	$ -	$ -	0.0%
650	INDA 2005-AR2	1	0	1	$ 440,118	100%	0	0	0	0	$ -	0	$ -	0%	5.52%	3.00%	$ 27,842	$ 256,547	$ 204,271	$ 52,276	20.4%
686	INDA 2006-AR1	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	6.31%	N/A	$ -	$ -	$ -	$ -	0.0%
699	INDA 2006-AR2	3	0	3	$ 1,148,048	100%	0	0	0	0	$ -	0	$ -	0%	6.25%	3.00%	$ 30,018	$ 395,587	$ 316,818	$ 78,769	19.9%
6007	INDA 2006-AR3	1	0	1	$ 1,406,994	100%	0	0	0	0	$ -	0	$ -	0%	6.20%	3.00%	$ -	$ 266,245	$ 248,941	$ 17,304	6.5%
6027	INDA 2007-AR1	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	6.07%	N/A	$ -	$ -	$ -	$ -	0.0%
6042	INDA 2007-AR2	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	6.11%	N/A	$ -	$ -	$	$ -	0.0%
6050	INDA 2007-AR3	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	6.23%	N/A	$ -	$ -	$ -	$ -	0.0%
6056	INDA 2007-AR4	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	6.34%	N/A	$ -	$ -	$	$ -	0.0%
6067	INDA 2007-AR5	1	0	1	$ 429,834	100%	0	0	0	0	$ -	0	$ -	0%	6.47%	3.00%	$ 21,219	$ 290,559	$ 221,197	$ 69,362	23.9%
6070	INDA 2007-AR6	2	0	2	$ 699,777	100%	0	0	0	0	$ -	0	$ -	0%	6.60%	4.02%	$ 106,422	$ 478,693	$ 374,498	$ 104,394	21.8%
6075	INDA 2007-AR7	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	6.63%	N/A	$ -	$ -	$ -	$ -	0.0%
6074	INDA 2007-AR8	1	0	1	$ 647,290	100%	0	0	0	0	$ -	0	$ -	0%	5.67%	3.50%	$ -	$ 393,425	$ 209,543	$ 183,882	46.7%
6076	INDA 2007-AR9	2	0	2	$ 996,361	100%	0	0	0	0	$ -	0	$ -	0%	6.71%	4.18%	$ -	$ 236,187	$ 172,170	$ 64,017	27.1%
6061	IMSC 2007-AR1	19	0	19	$ 6,721,703	90%	2	0	0	0	$ -	2	$ 1,056,754	10%	6.80%	4.47%	$ 74,972	$ 3,355,997	$ 2,114,563	$ 1,241,434	37.0%
6066	IMSC 2007-AR2	6	0	6	$ 1,923,465	75%	2	0	0	0	$ -	2	$ 656,409	25%	7.03%	4.78%	$ 139,802	$ 1,034,801	$ 755,337	$ 279,465	27.0%
346	INDX 2004-AR1	1	0	1	$ 317,056	100%	0	0	0	0	$ -	0	$ -	0%	5.26%	3.00%	$ 7,181	$ 93,374	$ 82,759	$ 10,616	11.4%
349	INDX 2004-AR2	4	0	4	$ 1,647,640	67%	2	0	0	0	$ -	2	$ 545,589	33%	5.26%	4.94%	$ -	$ 838,596	$ 456,764	$ 381,831	45.5%

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Prepared by Tom Roeschlein
626-535-5280
tom roeschlein@imb com

Deal Information at Settlement		Performing/Current FDIC Loan Modifications					Delinquent/Re-Defaulted FDIC Loan Modifications (if 60+ DQ after Mod Completion Date)								Impact of FDIC Modifications			Estimated Economics of FDIC Modifications			
Sale #	Securitization Name	Current or 30 DQ FDIC Mods	Mods Paid In Full (Count)	Total Performing Loan Mods (Count)	Total Performing Loan Mods (UPB)	Performing Mod % (Includes PIF Mods)	Type I Interest Rate Reduction Only	Type II. Interest Rate Reduction + Amortization Extension	Type III Int Rate Red. + Amort Ext + Principal Forbearance	Mods Liquidated (Count)	Realized Loss on LIQ Mods ($ Loss)	Total Redefaulted Mods (Count)	Total Redefaulted Mods (UPB)	Redefault Mod % (Includes LIQ Mods)	Current WAC of Active Loans	Current WAC of Mod Loans	Total Principal Forbearance Outstanding ($)	Est/Model NPV Cost of Foreclosure (Avoided) at Time of Mod	Est/Model NPV Cost of Mod (Incurred) at Time of Mod	Net Est/Model Benefit at Time of Mod	Net Est/Model Benefit at Time of Mod %
402	INDX 2004 AR3	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	5 27%	N/A	$ -	$ -	$ -	$ -	0 0%
407	INDX 2004-AR5	2	0	2	$ 486,408	100%	0	0	0	0	$ -	0	$ -	0%	5 41%	5 07%	$ -	$ 78,329	$ 43,941	$ 34,388	43 9%
408	INDX 2004-AR7	2	0	2	$ 352,835	67%	1	0	0	0	$ -	1	$ 299 684	33%	5 40%	6 42%	$ -	$ 161,852	$ 81 080	$ 80 772	49 9%
412	INDX 2004-AR8	4	0	4	$ 1,489,358	100%	0	0	0	0	$ -	0	$ -	0%	5 40%	4 96%	$ -	$ 440 477	$ 272,266	$ 168 211	38 2%
414	INDX 2004-AR10	2	0	2	$ 878,514	100%	0	0	0	0	$ -	0	$ -	0%	5 22%	3 00%	$ -	$ 198,400	$ 178,469	$ 19 931	10 0%
418	INDX 2004-AR12	2	0	2	$ 595,594	100%	0	0	0	0	$ -	0	$ -	0%	5 34%	5 88%	$ -	$ 148,941	$ 68 991	$ 78 951	53 0%
421	INDX 2004-AR14	4	0	4	$ 1 090 692	80%	1	0	0	0	$ -	1	$ 197 209	20%	5 36%	6 04%	$ -	$ 612 764	$ 261,694	$ 351 070	57 3%
604	INDX 2005-AR2	7	0	7	$ 2 108 580	88%	1	0	0	0	$ -	1	$ 410 857	13%	5 27%	5 69%	$ -	$ 644,581	$ 328,907	$ 315 674	49 0%
606	INDX 2005-AR4	5	0	5	$ 1 582 291	83%	1	0	0	0	$ -	1	$ 305,550	17%	5 38%	5 64%	$ -	$ 939,134	$ 476 238	$ 462,895	49 3%
610	INDX 2005-AR6	11	0	11	$ 3 893 211	92%	1	0	0	0	$ -	1	$ 338 108	8%	5 27%	5 14%	$ 70,047	$ 1,859 160	$ 1 105 706	$ 753,455	40 5%
616	INDX 2005-AR8	9	0	9	$ 3 120 780	75%	3	0	0	0	$ -	3	$ 1 097 031	25%	5 24%	4 69%	$ 55,812	$ 1 955,304	$ 1 187 993	$ 767 311	39 2%
617	INDX 2005-AR10	9	0	9	$ 2,440 021	90%	1	0	0	0	$ -	1	$ 136,887	10%	5 26%	4 68%	$ -	$ 1 059 390	$ 613,451	$ 445,939	42 1%
622	INDX 2005-AR12	17	0	17	$ 5,731,015	94%	1	0	0	0	$ -	1	$ 326,759	6%	5 25%	4 58%	$ 149,540	$ 3,037 124	$ 1,985,560	$ 1,051 564	34 6%
627	INDX 2005-AR14	10	0	10	$ 3,511,849	83%	2	0	0	0	$ -	2	$ 425 157	17%	5 27%	4 16%	$ 81,168	$ 1,786 235	$ 1,124 839	$ 661,396	37 0%
630	INDX 2005-AR16IP	5	0	5	$ 1,542,860	100%	0	0	0	0	$ -	0	$ -	0%	5 13%	3 75%	$ 74 654	$ 927 455	$ 636,374	$ 291,081	31 4%
636	INDX 2005-AR18	24	0	24	$ 8,727,507	92%	1	0	1	0	$ -	2	$ 740,715	8%	5 21%	4 56%	$ 469 523	$ 4 276 564	$ 2 855,063	$ 1 421 501	33 2%
659	INDX 2006-AR2	22	0	22	$ 7 130 206	88%	2	0	1	0	$ -	3	$ 1 306 657	12%	5 53%	4 77%	$ 552 294	$ 4 978,535	$ 3 197,595	$ 1,780,940	35 8%
665	INDX 2006-AR4	14	0	14	$ 4 564,921	100%	0	0	0	0	$ -	0	$ -	0%	5 60%	5 32%	$ 321,798	$ 2 572,415	$ 1,513,262	$ 1,059,152	41 2%
672	INDX 2006-AR6	21	0	21	$ 8,255,420	95%	1	0	0	0	$ -	1	$ 214,027	5%	5 55%	4 15%	$ 331 128	$ 4 215 743	$ 2 635 021	$ 1,580,722	37 5%
676	INDX 2006-AR8	2	0	2	$ 551,017	67%	0	1	0	0	$ -	1	$ 422,068	33%	5 55%	3 00%	$ 107,909	$ 662 733	$ 501,504	$ 161 228	24 3%
696	INDX 2006-AR12	5	0	5	$ 1 840 308	100%	0	0	0	0	$ -	0	$ -	0%	5 58%	4 18%	$ 154 227	$ 1 065,808	$ 760,346	$ 305 462	28 7%
6009	INDX 2006-AR14	6	0	6	$ 2 142,796	100%	0	0	0	0	$ -	0	$ -	0%	5 58%	3 49%	$ 355 673	$ 1,521,351	$ 1,255,214	$ 266 137	17 5%
6012	INDX 2006-FLX1	2	0	2	$ 800,715	100%	0	0	0	0	$ -	0	$ -	0%	7 16%	3 00%	$ 36,577	$ 335,238	$ 263 509	$ 71 728	21 4%
6029	INDX 2007-FLX1	1	0	1	$ 390,456	100%	0	0	0	0	$ -	0	$ -	0%	6 91%	3 00%	$ 61,802	$ 288,209	$ 215 332	$ 72 877	25 3%
6033	INDX 2007-FLX2	2	0	2	$ 731,655	100%	0	0	0	0	$ -	0	$ -	0%	6 71%	3 00%	$ 57,666	$ 596,520	$ 453 190	$ 143 329	24 0%
6043	INDX 2007-FLX3	1	0	1	$ 127 673	100%	0	0	0	0	$ -	0	$ -	0%	6 75%	3 00%	$ 32,437	$ 88 984	$ 79 017	$ 9 967	11 2%
6049	INDX 2007-FLX4	2	0	2	$ 436 145	100%	0	0	0	0	$ -	0	$ -	0%	6 71%	3 00%	$ 136,870	$ 352,377	$ 319 025	$ 33 351	9 5%
6057	INDX 2007-FLX5	1	0	1	$ 344 248	100%	0	0	0	0	$ -	0	$ -	0%	6 72%	3 00%	$ 77,098	$ 270,960	$ 216 319	$ 54,641	20 2%
6068	INDX 2007-FLX6	2	0	2	$ 556 631	100%	0	0	0	0	$ -	0	$ -	0%	6 67%	3 00%	$ 91 091	$ 390,888	$ 328 683	$ 62,204	15 9%
6059	IMSC 2007-HOA1	1	0	1	$ 307 918	100%	0	0	0	0	$ -	0	$ -	0%	5 93%	3 00%	$ -	$ 192 962	$ 138 025	$ 54,938	28 5%
639	INDB 2005-1	20	0	20	$ 3 884 399	100%	0	0	0	0	$ -	0	$ -	0%	5 97%	5 28%	$ 98 506	$ 1 658 497	$ 972,275	$ 686,222	41 4%
690	INDB 2006-1	37	0	37	$ 8 406 002	93%	3	0	0	0	$ -	3	$ 938 002	8%	6 96%	4 99%	$ 94 784	$ 3,034,414	$ 1 909 435	$ 1 124,979	37 1%
403	INDYL 2004-L1	1	0	1	$ 240,533	50%	1	0	0	0	$ -	1	$ 69 690	50%	7 99%	6 50%	$ -	$ 86 168	$ 34 467	$ 51 701	60 0%
424	INDYL 2004-LH1	2	0	2	$ 193 261	100%	0	0	0	0	$ -	0	$ -	0%	7 93%	6 50%	$ -	$ 46 338	$ 19,335	$ 29,003	60 0%
623	INDYL 2005-L1	0	1	1	$ -	100%	0	0	0	0	$ -	0	$ -	0%	7 19%	N/A	$ -	$ 27 723	$ 11 089	$ 16,634	60 0%
638	INDYL 2005-L2	3	0	3	$ 429 019	100%	0	0	0	0	$ -	0	$ -	0%	7 13%	6 50%	$ -	$ 254 306	$ 101 722	$ 152 584	60 0%
654	INDYL 2005-L3	3	0	3	$ 492 618	75%	1	0	0	0	$ -	1	$ 85 369	25%	7 44%	6 50%	$ -	$ 213 111	$ 85 244	$ 127 867	60 0%
662	INDYL 2006-L1	0	0	0	$ -	0%	2	0	0	0	$ -	2	$ 258 858	100%	7 61%	6 50%	$ -	$ 104 149	$ 41 659	$ 62 489	60 0%
678	INDYL 2006-L2	1	0	1	$ 127,230	100%	0	0	0	0	$ -	0	$ -	0%	8 10%	6 50%	$ -	$ 15,593	$ 6 237	$ 9 356	60 0%
6002	INDYL 2006-L3	2	0	2	$ 342 630	67%	1	0	0	0	$ -	1	$ 313 742	33%	7 83%	7 22%	$ -	$ 239 773	$ 95 909	$ 143 864	60 0%
6019	INDYL 2006-L4	4	0	4	$ 646 857	100%	0	0	0	0	$ -	0	$ -	0%	7 75%	6 50%	$ -	$ 319 127	$ 179 254	$ 139 873	43 8%
6037	INDYL 2007-L1	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	7 87%	N/A	$ -	$ -	$ -	$ -	0 0%
671	INDS 2006-1	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	8 73%	N/A	$ -	$ -	$ -	$ -	0 0%
679	INDS 2006-A	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	10 71%	N/A	$ -	$ -	$ -	$ -	0 0%
687	INDS 2006-2B	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	10 30%	N/A	$ -	$ -	$ -	$ -	0 0%
6017	INDS 2006-3	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	10 20%	N/A	$ -	$ -	$ -	$ -	0 0%
6030	INDS 2007-1	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	10 49%	N/A	$ -	$ -	$ -	$ -	0 0%
6024	INDS 2007-2	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	10 56%	N/A	$ -	$ -	$ -	$ -	0 0%
5502	INABS 2004-H2	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	5 52%	N/A	$ -	$ -	$ -	$ -	0 0%
5503	INABS 2004-LH1	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	6 16%	N/A	$ -	$ -	$ -	$ -	0 0%
5504	INABS 2006-H1	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	3 00%	N/A	$ -	$ -	$ -	$ -	0 0%
5505	INABS 2006-H2	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	4 46%	N/A	$ -	$ -	$ -	$ -	0 0%
5506	INABS 2006-H3	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	4 05%	N/A	$ -	$ -	$ -	$ -	0 0%
5507	INABS 2006-H4	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	4 60%	N/A	$ -	$ -	$ -	$ -	0 0%
5508	INABS 2007-H1	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	4 09%	N/A	$ -	$ -	$ -	$ -	0 0%
265	INABS 2000-A	1	0	1	$ 164 583	100%	0	0	0	0	$ -	0	$ -	0%	10 03%	6 50%	$ -	$ 36 053	$ 23 074	$ 12 979	36 0%
269	INABS 2000-B	1	0	1	$ 119 761	50%	1	0	0	0	$ -	1	$ 34,119	50%	9 98%	6 50%	$ -	$ 31,146	$ 19 933	$ 11,213	36 0%
300	INABS 2000-C	11	0	11	$ 797 568	92%	1	0	0	0	$ -	1	$ 34,894	8%	10 03%	6 50%	$ -	$ 217 763	$ 94 399	$ 123 364	56 7%
302	INABS 2001-A	6	0	6	$ 532,085	100%	0	0	0	0	$ -	0	$ -	0%	10 33%	6 44%	$ -	$ 135,639	$ 61,933	$ 73 706	54 3%
305	INABS 2001-B	8	0	8	$ 745,621	89%	1	0	0	0	$ -	1	$ 29 652	11%	9 52%	6 32%	$ -	$ 142 872	$ 62 379	$ 80,493	56 3%
307	INABS 2001-C	9	0	9	$ 981,151	90%	1	0	0	0	$ -	1	$ 108 043	10%	9 53%	6 47%	$ -	$ 193 454	$ 79 208	$ 114,246	59 1%
312	INABS 2002-A	3	0	3	$ 344,458	75%	1	0	0	0	$ -	1	$ 129,090	25%	9 16%	6 44%	$ -	$ 126 266	$ 59 715	$ 66 551	52 7%
320	INABS 2002-B	15	0	15	$ 1,929,532	100%	0	0	0	0	$ -	0	$ -	0%	8 44%	6 18%	$ -	$ 445,371	$ 266 471	$ 178,900	40 2%
336	INABS 2003-A	10	0	10	$ 1 772 824	100%	0	0	0	0	$ -	0	$ -	0%	7 77%	6 50%	$ -	$ 504 738	$ 214,603	$ 290 134	57 5%
348	INABS 2004-A	26	0	26	$ 3 186,666	96%	1	0	0	0	$ -	1	$ 226 092	4%	7 61%	6 43%	$ -	$ 692 450	$ 310,201	$ 382 249	55 2%
416	INABS 2004-B	52	0	52	$ 8 585,522	100%	0	0	0	0	$ -	0	$ -	0%	7 04%	6 21%	$ -	$ 2 478 086	$ 1 181 224	$ 1,296 863	52 3%
422	INABS 2004-C	29	0	29	$ 4 366 484	97%	1	0	0	0	$ -	1	$ 122 966	3%	7 38%	6 33%	$ -	$ 1,227,234	$ 621,163	$ 606 071	49 4%
609	INABS 2005-A	60	0	60	$ 10,520 690	100%	0	0	0	0	$ -	0	$ -	0%	7 26%	6 02%	$ -	$ 2,672 406	$ 1,269,983	$ 1 402 423	52 5%
624	INABS 2005-B	72	0	72	$ 11 742 172	100%	0	0	0	0	$ -	0	$ -	0%	7 15%	6 13%	$ -	$ 2 914,240	$ 1 401 702	$ 1 512,538	51 9%
637	INABS 2005-C	71	0	71	$ 12,271,989	97%	2	0	0	0	$ -	2	$ 534,778	3%	7 62%	6 12%	$ 64,096	$ 4 003 287	$ 1,922,151	$ 2 081,136	52 0%
653	INABS 2005-D	145	0	145	$ 25,418,089	99%	2	0	0	0	$ -	2	$ 876 369	1%	8 02%	5 95%	$ 61,387	$ 9 107,593	$ 4 654,981	$ 4 452 612	48 9%
651	INABS 2006-A	73	0	73	$ 14,370,956	91%	7	0	0	0	$ -	7	$ 1 530 125	9%	8 07%	5 82%	$ 169 651	$ 5 943 061	$ 3 114 708	$ 2 828 353	47 6%
661	INABS 2006-B	113	0	113	$ 19 132 862	99%	1	0	0	0	$ -	1	$ 153 048	1%	8 10%	6 10%	$ 189 663	$ 6,170 326	$ 3 193 078	$ 2 977 248	48 3%
677	INABS 2006-C	133	0	133	$ 23 196,706	97%	4	0	0	0	$ -	4	$ 849,262	3%	8 00%	6 02%	$ 171 848	$ 8 896 207	$ 4 399 429	$ 4 296,778	49 4%
683	INABS 2006-D	166	0	166	$ 35,698 504	99%	1	0	0	0	$ -	1	$ 198,292	1%	8 15%	5 65%	$ 261,442	$ 12,345,259	$ 6 473 502	$ 5,871 757	47 6%
6018	INABS 2006-E	243	0	243	$ 51 817 482	99%	3	0	0	0	$ -	3	$ 297 106	1%	8 29%	5 61%	$ 173,000	$ 22 094 455	$ 11 141 286	$ 10 953 170	49 6%

Indymac Federal Bank
Bond Investor Relations and Structured Finance

FDIC Loan Modification Program
Investor Summary Report as of 12/31/2008

Prepared by Tom Roeschlein
626-535-5280
tom.roeschlein@imb.com

Deal Information at Settlement		Performing/Current FDIC Loan Modifications					Delinquent/Re-Defaulted FDIC Loan Modifications (If 60+ DQ after Mod Completion Date)								Impact of FDIC Modifications			Estimated Economics of FDIC Modifications			
Sale #	Securitization Name	Current or 30 DQ FDIC Mods	Mods Paid in Full (Count)	Total Performing Loan Mods (Count)	Total Performing Loan Mods (UPB)	Performing Mod % (Includes PIF Mods)	Type I Interest Rate Reduction Only	Type II Interest Rate Reduction + Amortization Extension	Type III Int Rate Red + Amort Ext + Principal Forbearance	Mods Liquidated (Count)	Realized Loss on LIQ Mods ($ Loss)	Total Redefaulted Mods (Count)	Total Redefaulted Mods (UPB)	Redefault Mod % (Includes LIQ Mods)	Current WAC of Active Loans	Current WAC of Mod Loans	Total Principal Forbearance Outstanding ($)	Est/Model NPV Cost of Foreclosure (Avoided) at Time of Mod	Est/Model NPV Cost of Mod (Incurred) at Time of Mod	Net Est/Model Benefit at Time of Mod	Net Est/Model Benefit at Time of Mod %
6031	INABS 2007-A	302	0	302	$ 62,698,339	99%	4	0	0	0	$ -	4	$ 1 539,985	1%	8 02%	5 77%	$ 252 656	$ 24 627 904	$ 12 199 083	$ 12 428,821	50 5%
8053	INABS 2007-B	246	0	246	$ 47 473 530	97%	7	0	0	0	$ -	7	$ 635,107	3%	8 65%	5 76%	$ 214 280	$ 17,375 827	$ 8,932 824	$ 8,443 003	48 6%
256	INDMH 1997-1	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	9 28%	N/A	$ -	$ -	$ -	$ -	0 0%
257	INDMH 1998-1	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	9 02%	N/A	$ -	$ -	$ -	$ -	0 0%
258	INDMH 1998-2	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	8 77%	N/A	$ -	$ -	$ -	$ -	0 0%
IMB MBS	Total	2,890	1	2,891	$ 694,678,176	96%	117	11	2	0	$ -	130	$ 39,755,919	4%	6 46%	4 30%	$ 8,594,243	$277,310,148	$ 163,201,476	$114,108,673	41 1%
IMB MBS	IMB MBS	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	N/A	N/A	$ -	$ -	$ -	$ -	0 0%
HFI	IMB Owned	28	0	28	$ 9,532,225	100%	0	0	0	0	$ -	0	$ -	0%	N/A	4 75%	$ -	$ 3,940,618	$ 2,675,457	$ 1,265,161	32 1%
Agency	Fannie Mae																				
Agency	FHLMC																				
Agency	Total	5	0	5	$ 1,274,037	100%	0	0	0	0	$ -	0	$ -	0%	N/A	4 87%	$ -	$ 353,315	$ 235,983	$ 117,331	33 2%
Whole Loan	Lehman																				
Whole Loan	Other																				
Whole Loan	Total	0	0	0	$ -	0%	0	0	0	0	$ -	0	$ -	0%	N/A	N/A	$ -	$ -	$ -	$ -	0 0%
Re-REMIC	Lehman																				
Re-REMIC	Wells Fargo																				
Re-REMIC	Other																				
Re-REMIC	Total	2,082	0	2,082	$ 557,214,734	96%	67	21	1	0	$ -	89	$ 26,902,076	4%	N/A	4 35%	$ -	$244,828,906	$ 173,044,835	$ 71,784,071	29 3%
ALL	Grand Total	5,005	1	5 006	$1 262,699 172	96%	184	32	3	0	$ -	219	$ 66,657,994	4%	N/A	N/A	$ 8,594 243	$526,432 986	$ 339,157,750	$187 275 236	35 6%