

The Ongoing Chasm Between Words and Deeds V

Abusive Practices Continue to Harm Families and Communities in California



Illustration by Daryl Cagle of MSNBC.com



**CALIFORNIA
REINVESTMENT
COALITION**

PREFACE

The *Chasm Between Words and Deeds* reports provide snapshots of whether mortgage loan servicing companies are living up to their public commitments to help borrowers avoid foreclosure. These reports reflect the experiences of nonprofit home loan counseling agencies and legal service offices in California that are on the front lines of the foreclosure crisis, working hard to keep families in their homes. The previous reports focused on counselors' experiences in the months of August and December of 2007, and May and September of 2008. The first four surveys found that loan servicers were not modifying loans to any significant degree, were not conducting early outreach to borrowers facing rising mortgage payments, and that their most likely response to borrowers in distress was foreclosure.

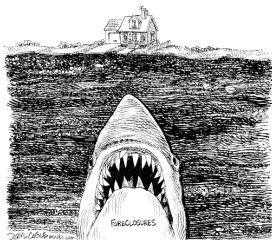
This fifth report, *The Ongoing Chasm Between Words and Deeds*, focuses on loan counselors' experiences in March of 2009, after the release of the Obama Administration's Home Affordable Plan. After a series of voluntary foreclosure moratoria and new federal and state initiatives, this latest survey demonstrates that the banking industry continues to fail to adequately address the crisis, with dire consequences for homeowners, tenants, and communities. This survey focuses on four trends:

- Predatory and deceptive lending practices propelled homeowners into distress.
- Loan servicers are not doing enough to keep families in their homes.
- A cottage industry of fee for service companies are preying on homeowner desperation.
- Tenants in foreclosed properties are suffering as national banks force them out of their homes.

The California Reinvestment Coalition hopes these reports will inform the public dialogue around foreclosure prevention and loss mitigation, and will promote sound policies and business practices that will help preserve homeownership, wealth, tenancies and community stability in California communities.

This report was prepared by Kevin Stein, with valuable edits and assistance from Alan Fisher and Tram Nguyen. CRC would like to thank Maeve Elise Brown (Housing and Economic Rights Advocates), Ronald Coleman (ACORN), Norma Garcia (Consumers Union) and Jeff Schragger (No Homeowner Left Behind) for their helpful comments on earlier versions of this report. Any errors or omissions are those of the primary author.

California Reinvestment Coalition advocates for the right of low-income communities and communities of color to have fair and equal access to banking and other financial services. CRC has a membership of 275 nonprofit organizations and public agencies across the State.



The Ongoing Chasm Between Words and Deeds Abusive Practices Continue to Harm Families and Communities in CA

EXECUTIVE SUMMARY

Two years into the crisis, foreclosures show no sign of abating as homeowners, tenants and communities in California continue to suffer. Notices of Default increased 29.3 percent in March of 2009 over February, to a record 54,268 filings. This is a 26.3 percent increase over March 2008, according to ForeclosureRadar.com.¹

This report is the fifth in a two-year series that examines the extent to which home loan servicers are modifying loans and working with borrowers to preserve homeownership. **Sadly, since the last report, and countless statements from servicers that they are helping borrowers, little has changed.**² In fact, new arenas for abuse of consumers and households are now thriving.

CRC surveyed 54 nonprofit mortgage counselors and legal service attorneys statewide to determine the level of assistance that mortgage servicers are offering borrowers now. The survey sought to determine whether loan modification opportunities have improved for California communities since the last survey period in September of 2008. But as in 2008, counselors reported similarly frustrating experiences in trying to negotiate successful outcomes for their clients. **For the month of March 2009, counselors again report that the most common outcome for borrowers is foreclosure.**

California housing counselors confirm that more needs to be done. Key findings include:

1. Fraudulent and deceptive lending practices fueled the current crisis, and have driven distressed homeowners to seek assistance to save their homes.

- Nearly half of counselors surveyed cited broker or lender fraud in loans they are seeing.
- Three-quarters of counselors reported it very common to see loans that the borrowers could not afford.
- 65% say non-English speakers were given English-only documents which the borrowers could not understand.

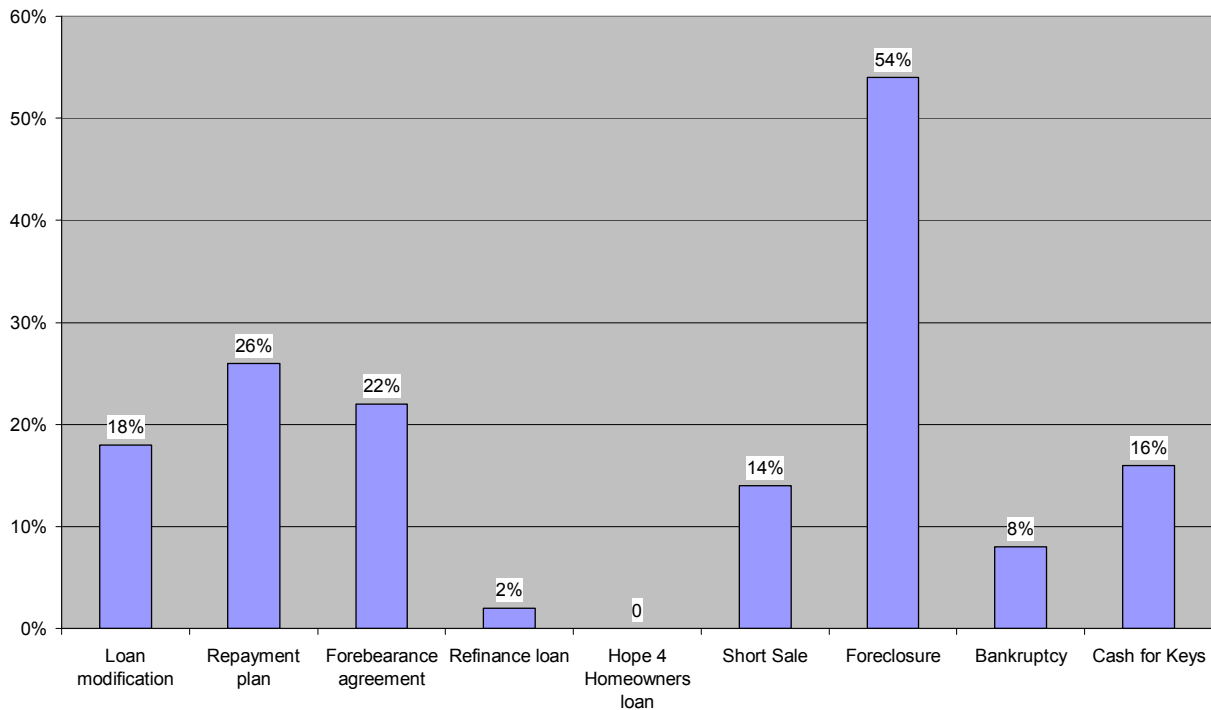
2. Loan servicers are still not working to solve borrowers' problems and modify their loans.

¹ ForeclosureRadar, "Foreclosure Notices Soar, Foreclosure Sales Drop," Press Release, April 14, 2009.

² The other "Chasm between Words and Deeds" reports can be found at www.calreinvest.org.

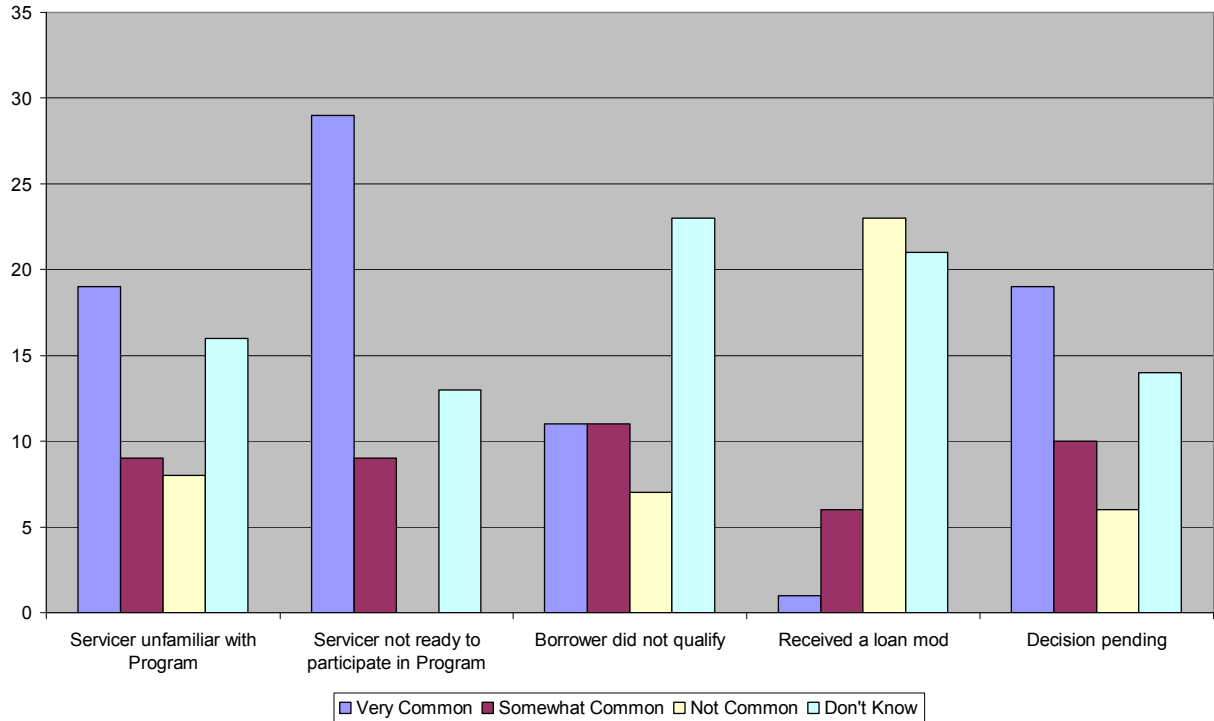
- Homeowners are in severe distress. Borrowers are under water, stuck with option ARM loans, and often faced with a loss of income.
- Foreclosure is still the most common outcome reported. More than half of counselors responding (54%) cited foreclosure as a very common outcome for their clients. In contrast, only 18% of counselors cite loan modification as very common.

**Borrower Outcomes: % of Counselors Reporting Various Outcomes as Very Common: California
March 2009**



- Loan modifications, when they occur, are more likely to be short term in duration.
- Principal reductions are needed, but are not being offered by mortgage servicers. 23 counselors reported the strong need for principal reductions for their clients, while 47 counselors said that such reductions are not common.
- It is unclear if federal or state plans are working. Early returns on both the Obama Home Affordable Modification Program, and the state's implementation of SB1137 which requires a pre-foreclosure meeting between servicer and borrower, are not positive. This is true, despite the fact that loan servicers have already received \$15 billion from the Obama Administration to offer loan modifications.

**Counselors' Early Experiences with President's Home Affordable Modification Program:
California March 2009**



3. The desperation felt by California households has fueled a new predatory industry of high-cost loan modification “specialists” who are charging desperate homeowners thousands of dollars with the promise to save their homes, but providing little to no service. In contrast, nonprofit housing counselors help borrowers for free and, anecdotally, with greater success.

- The loan mod scam problem is growing. 68% of counselors report seeing more loan modification scams than six months ago.
- Most counselors reported that clients received little or no service from these for-profit providers, and that the outcomes for clients were poor. Nearly half of counselors reported that their clients were instructed by scam artists not to contact their loan servicer. 29% of counselors report that ads for these companies reference the President’s new Home Affordable Modification Program.

4. The impacts of the foreclosure crisis are severe for tenants who are innocent victims of the foreclosure crisis.

- Nearly three-quarters of counselors responding noted that tenants living in homes subject to foreclosure are very common or somewhat common.

- Most counselors reported that tenants appeared unaware of their rights.
- Most counselors reported it is very common for tenants to be denied their security deposits.

RECOMMENDATIONS

What we have in place at the federal and state level is not significantly helping homeowners or tenants. In order to keep them in their homes, and to minimize the impacts of foreclosure on California communities, CRC urges the following key steps:

1. To address concerns about predatory lending and steering, and the prospect of a future crisis:
 - **Outlaw abusive loan practices.** Congress and the California Legislature should pass strong anti-predatory lending legislation that prohibits abusive lending practices.
 - **Translate loan documents.** The Federal Reserve should require that if loans are sold in a non-English language, the borrower must be given loan documents translated in that language.
 - **Modernize CRA.** Congress should pass the CRA Modernization Act to strengthen the one law that has been helpful in modifying bank practices.
2. To address concerns about poor loan servicing and increasing foreclosures:
 - **Pass Bankruptcy cramdown.** The single most important thing that Congress can do to prevent foreclosures is to give Bankruptcy judges the ability to modify loans and reduce principal on owner-occupied home loans.
 - **Require principal write downs.** Federal and state foreclosure prevention initiatives should require principal reduction as part of the waterfall of options servicers must consider before foreclosure.
 - **Impose a foreclosure moratorium.** To ensure that all borrowers will have equal access to the federal and state foreclosure prevention initiatives, a 180-day foreclosure moratorium should be imposed.
 - **Require transparency.** Data collected should be detailed enough to show which companies are helping which borrowers and how. This data should be made publicly available.
 - **Create an ombudsman position.** Borrowers who are not dealt with fairly under the new federal Home Affordable Modification Program should have a place to go for help.
 - **Require proof of ownership.** No one should lose their home unless the party bringing the foreclosure can prove that it has the right to do so.
3. To address concerns about scam artists bilking desperate homeowners based on false promises:
 - **Pass strong consumer protection legislation.** The California legislature must pass strong legislation that limits fee collection to those cases where the borrower has received a tangible benefit.

- **Support nonprofit counselors.** All parties must step up efforts to support the capacity of housing counseling agencies and legal service offices to help distressed homeowners.
4. To address concerns about the unfair and disproportionate impacts of foreclosure on tenants:
- **Rent foreclosed homes to tenants.** All banks should have a policy of re-renting foreclosed homes to tenants living there.
 - **Pass strong state bills protecting tenants in foreclosed homes, including AB603 and SB120.**

SURVEY OF HOME LOAN COUNSELING AGENCIES: FINDINGS

Mortgage counseling agencies are often the only place for borrowers to turn when they are faced with foreclosure. Counselors help borrowers understand their options and act as intermediaries between borrowers and their lenders. In California, there are roughly 80 nonprofit mortgage counseling offices approved by the Department of Housing and Urban Development (HUD) to provide services that include loss mitigation, mortgage delinquency and default resolution, predatory lending prevention and post-purchase counseling. The 54 counselors and attorneys that responded to this fifth CRC survey served 14,796 consumers during March 2009. The groups collectively saw 6,601 more clients in March 2008 than they did in September 2008, confirming that things continue to get worse for homeowners in California. Counselors are increasingly playing a broader role as front line support for consumers dealing with various abuses and impacts from the foreclosure crisis.

This survey tells a story of the life cycle of abuse stemming from the mortgage and foreclosure crisis gripping California:

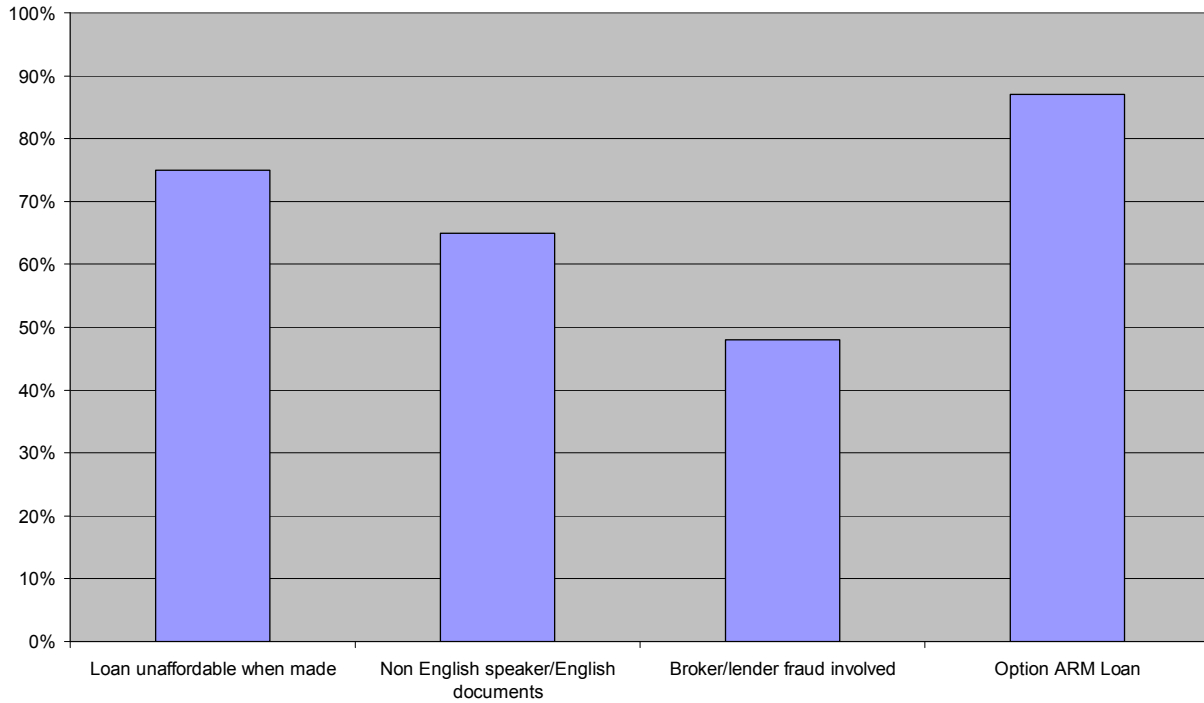
1. Fraudulent and deceptive lending begins a downward spiral.
2. Lack of responsiveness by servicers forces homeowners into distress.
3. Scam artists prey on those desperate for relief.
4. Tenants, the most innocent of victims, suffer as national banks seek to clear out foreclosed homes.

The California housing counseling agencies and legal services offices surveyed confirm that more needs to be done to help borrowers at risk of foreclosure, tenants and communities.

1. ABUSIVE LENDING BEGINS A DOWNWARD SPIRAL

A. Borrowers in distress show signs of abuse. Much has been made of the abusive lending practices of the last several years. Housing counselors report that many of the borrowers seeking to avoid foreclosure today show signs of these poor lending practices from years gone by.

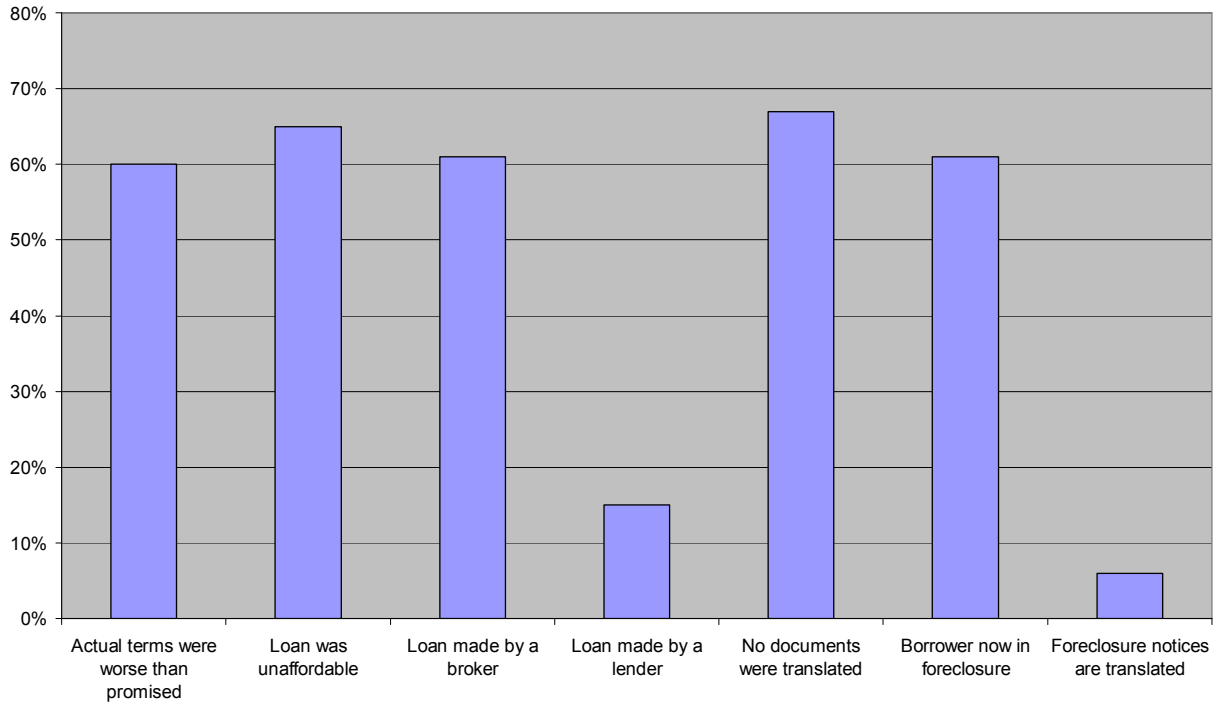
Reasons for Current Borrower Distress: % of Counselors Reporting Various Conditions as Very Common: California March 2009



Counselors speak: “Most clients under water had a fraudulent loan or did not understand the Option Arm loan or lost their jobs. Others were okay until job problems came into place.”

B. Targeting non-English speakers. One unfair and abusive practice prevalent in California is the selling of loans to non-English speakers in the borrowers’ primary, non-English language, but with loan and other documents that are all in English. Counselors throughout the state note the extent of this problem in the origination of loans that have led borrowers into loan default and foreclosure.

Targeting Non English Speakers for Loans: % of Counselors Reporting the Following as Very Common for Non English Speaking Clients: California March 2009

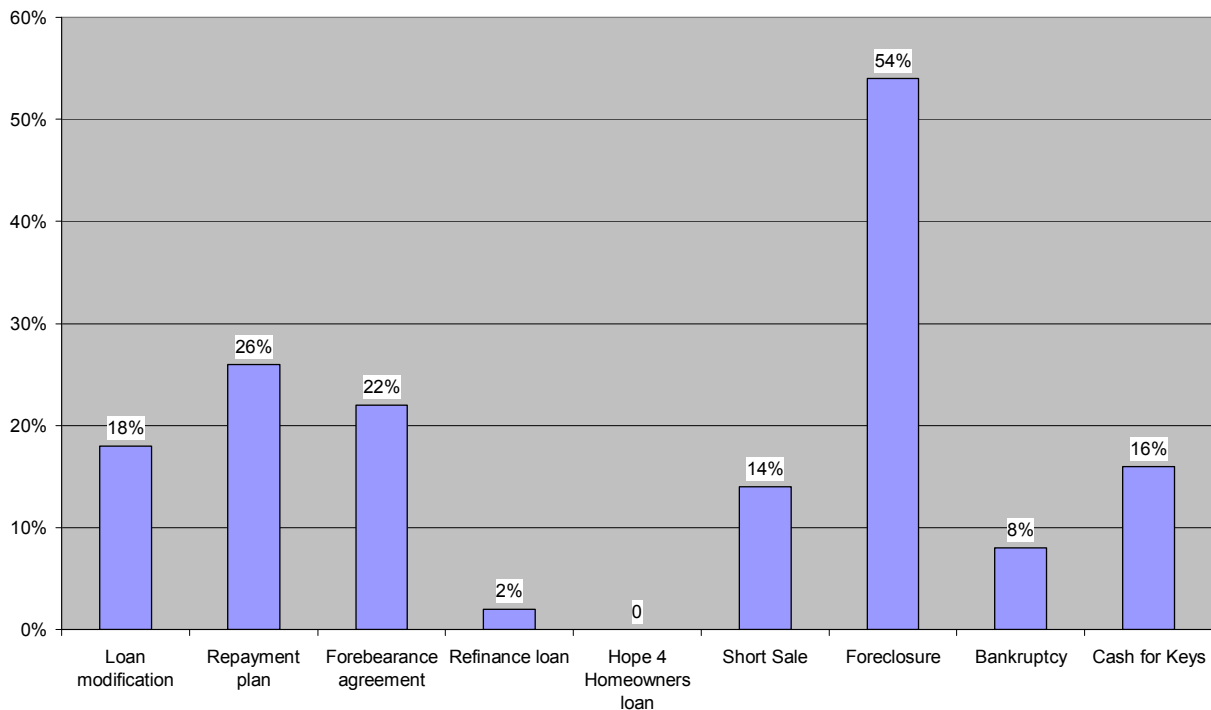


Counselors speak: “We have a large Spanish-speaking population, those that are our clients, have loan documents that have not been translated.”

2. LACK OF RESPONSIVENESS BY SERVICERS FORCES HOMEOWNERS INTO DISTRESS

A. Borrowers experience bad outcomes. With growing numbers of homeowners at risk of losing their homes, the servicing industry has not responded adequately to prevent unnecessary foreclosures. Counseling agencies continue to report that outcomes for borrowers seeking to avoid foreclosure are appalling, with foreclosure still the most common reported outcome. 54% of counselors reported foreclosure as a very common outcome for clients, compared to 18% of counselors reporting loan modification as very common. These findings are consistent with industry data.³

**Borrower Outcomes: % of Counselors Reporting Various Outcomes as Very Common: California
March 2009**

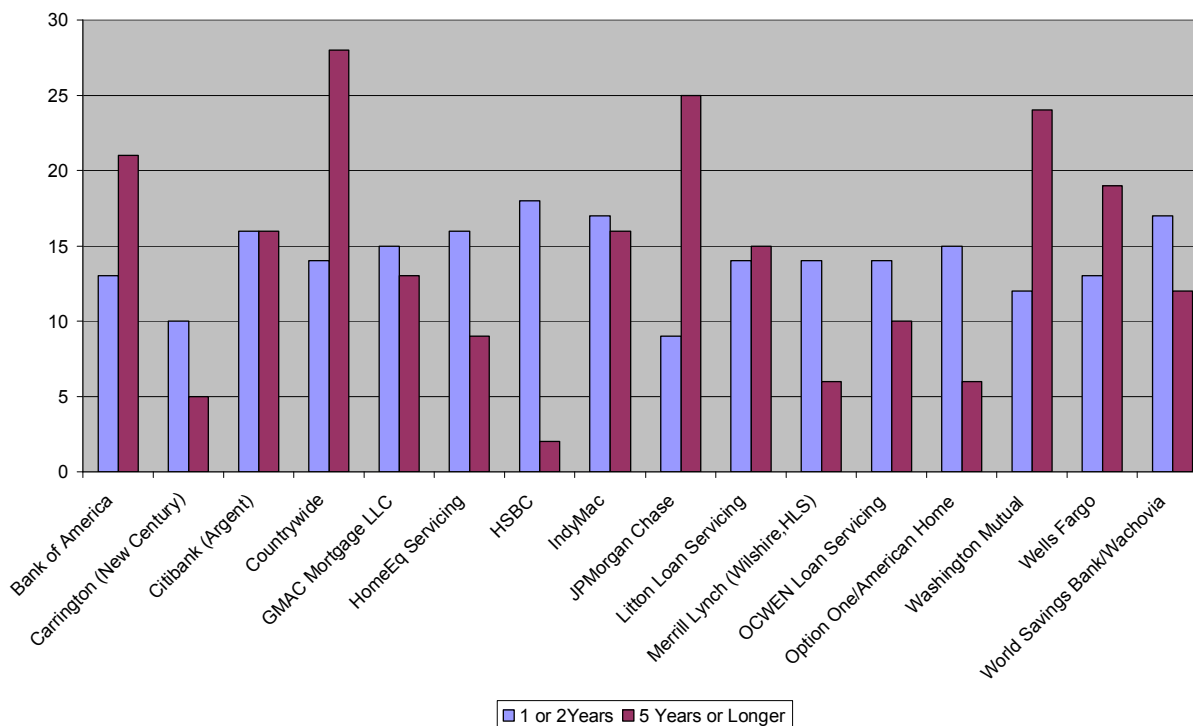


Counselors speak: “I had more success with loan modifications during Dec. 08 and Jan. 09. Then the lenders were waiting until March 4th for President Obama's plan. Now they are not doing anything except foreclosing.”

³ “Lack of Originations Harming Subprime Servicers’ Loss Mitigation Efforts,” Inside B&C Lending, Volume 14, Issue 13, June 19, 2009. (“As of the end of April, 18.0 percent of outstanding subprime mortgages had been modified, according to Fitch Ratings.”)

B. Short-term fixes. Even when loan modifications occur, counselors report that most loan servicers are still offering short-term solutions of one or two years. These loan modifications are not sustainable for the long term, and may just defer foreclosure, a resolution that does not serve the interest of the borrower, community, or even the investor/owner of the loan.

Long Term Solutions or Short Term Fixes: Counselors Reporting on Loan Mod Duration by Servicer: California March 2009



Counselors speak: “Lately haven't received loan modifications since March 4th, it seems that the lenders would rather foreclose than do a loan modification.”

C. Servicers are difficult to work with. When asked to identify which servicers are most difficult to work with, counselors had a lot to say. Thirty-five loan servicers were named as companies that are difficult to work with. The five servicers named most often as difficult to work with were large servicers of many loans, and include:

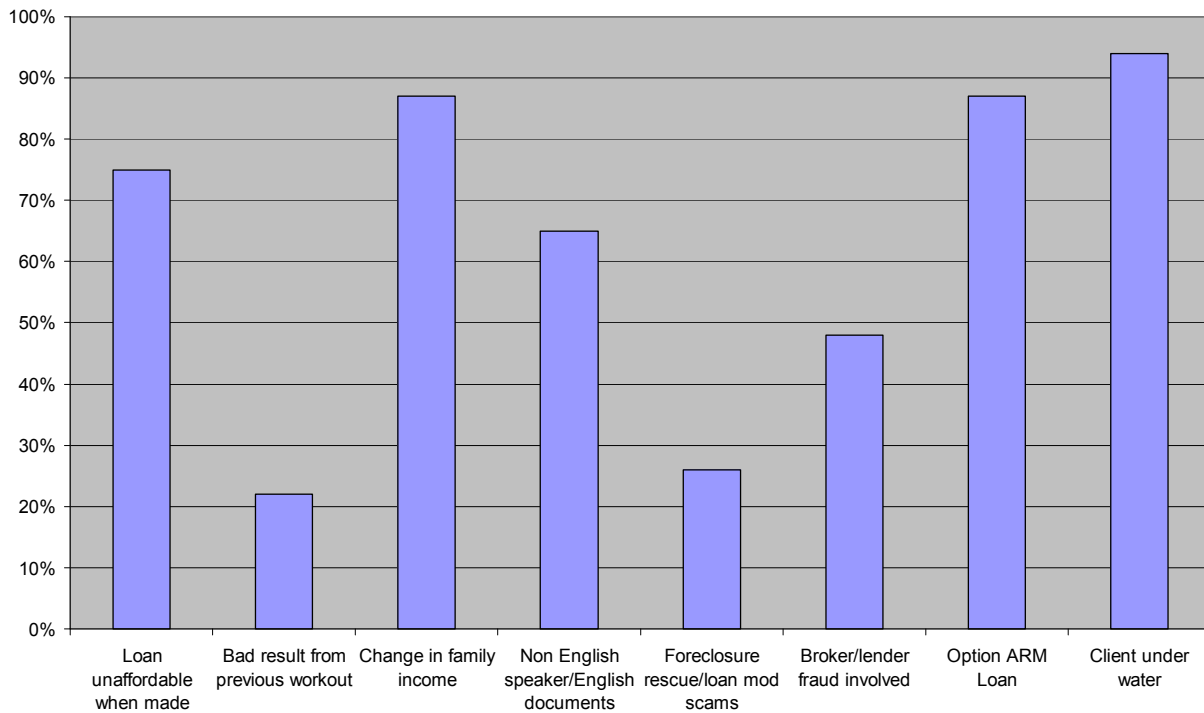
- Wachovia/World Savings (now owned by Wells Fargo)
- Wells Fargo and ASC, a subsidiary of Wells Fargo
- Countrywide (now owned by Bank of America)
- Litton
- Washington Mutual (now owned by JPMorgan Chase)

Counselors speak: There are “unclear procedures, inconsistent information, unwillingness to correct their own errors, unwillingness to try to work with borrowers....multiple lost authorizations lead to delays in getting any information; inconsistent information; failure to communicate internally between departments, leading to many errors and miscommunications re modifications and foreclosure status....uninformed representatives, wildly inconsistent information about even the most basic protocols and contact numbers; refusal to communicate by email (now corrected); incredible delays in decision-making; misrepresentations to borrowers leading to expectation of modification that never comes and makes them fall more and more behind.”

(See Appendix I for the full text of all counselor responses to this question).

D. Borrower profiles reveal financial distress. Borrowers seeking to avoid foreclosure by reaching out to counseling and legal service agencies reflect problematic loans, family financial distress and a worsening economy. Over 80% of responding counselors cited underwater clients, option ARM loans, and change in family income as very common outcomes.

Borrowers Seeking to Avoid Foreclosure: % of Counselors Reporting Characteristics as Very Common: California March 2009



E. Principal loan reductions: the missing piece of the puzzle. According to Moody's, 15.4 million borrowers, or 20% of all single family homeowners, owed more than their homes are worth.⁴ Federal Reserve Board Chairman Ben S. Bernanke has spoken in favor of principal reduction as an "effective means of avoiding delinquency and foreclosure," and the Federal Reserve has reportedly sought to reduce principal loan amounts on the Bear Stearns and American International Group mortgage loans it now controls.⁵ Additionally, a University of North Carolina study found that allowing homeowners to reduce their monthly mortgage payments and write down their loan balances significantly lowered the chance that the borrower would re-default on their loan.⁶ Industry analysis further suggests principal reductions may lead to more successful modifications that are less likely to re-default, but these principal reduction mods are rare.⁷

Given the large number of Californians who are underwater with their loans, in order to truly stem the tide of foreclosures and displacement in our state, principal loan reductions are needed. Unfortunately, servicers are not offering principal writedowns.

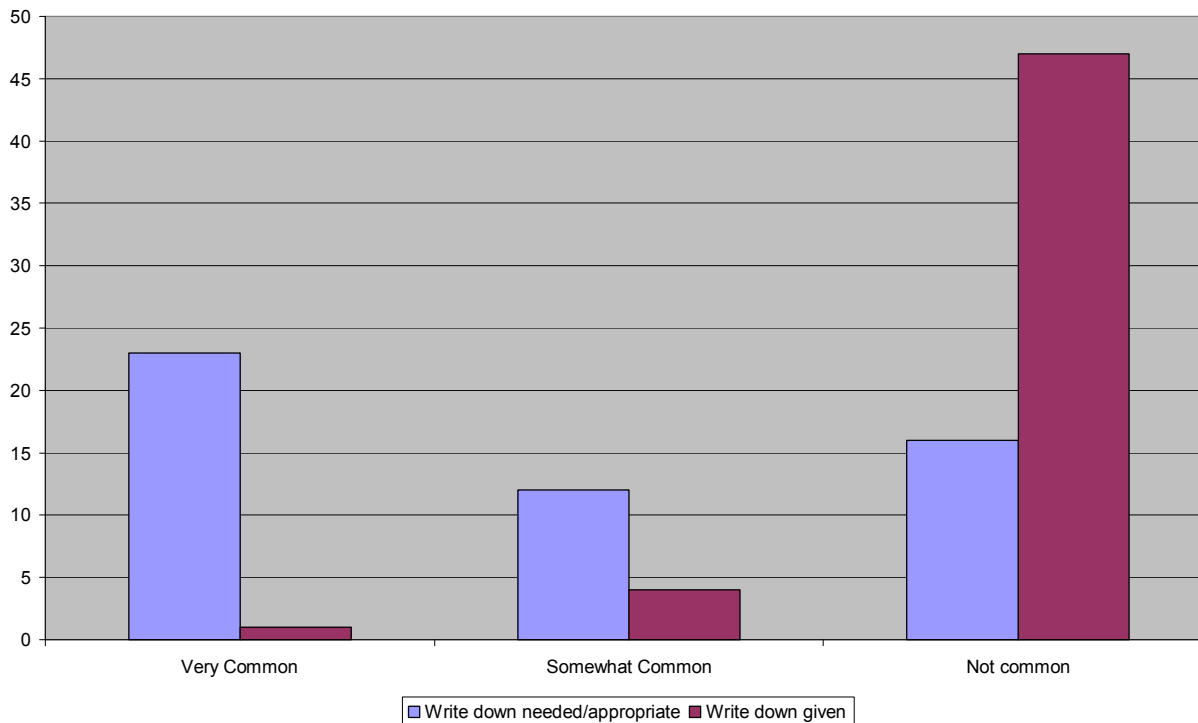
⁴ Tara Siegel Bernard, "Losing Homes in the Wait for a Rescue," New York Times, May 14, 2009

⁵ Neil Irwin and Renae Merle, "Fed Adopts Program to Stem Foreclosures: Mortgage Renegotiation to Focus On Reducing Amount of Principal Owed," The Washington Post, January 28, 2009.

⁶ Dr. Roberto Quercia, UNC Center for Community Capital, "UNC study shows lower payments, write-downs can reduce mortgage foreclosures, Press Release, March 11, 2009.

⁷ ⁷"Lack of Originations Harming Subprime Servicers' Loss Mitigation Efforts," Inside B&C Lending, Volume 14, Issue 13, June 19, 2009. ("Loan modifications that include debt forgiveness have shown slightly better performance. But only a few servicers, including Litton Loan Servicing, National City, and Select Portfolio Servicing, have focused on such mods, according to analysts at Barclays Capital.")

**Principal Reductions: Counselors Reporting Need for and Receipt of Reductions: California
March 2009**



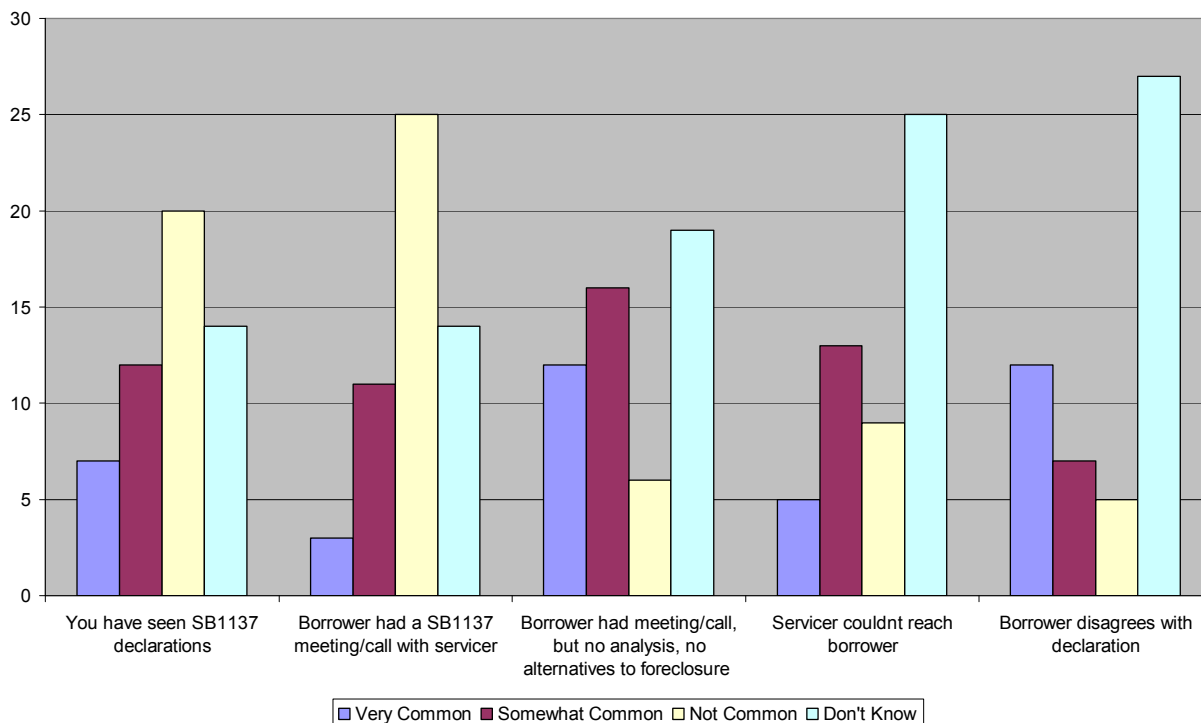
F. Early returns on state efforts are disappointing. The California Legislature has recognized the dramatic impacts that foreclosures have had on families, businesses, local economies, communities, and the state budget as a whole. In 2008, the legislature passed SB1137, a bill designed to reduce the number of unnecessary foreclosures, protect tenants, and preserve neighborhoods from blight.⁸ The bill was developed with substantial input from ACORN and supported by community and advocacy groups, including the California Reinvestment Coalition, CALPIRG, the California Labor Federation, Center for Responsible Lending, Consumer Action and Consumers Union.

Yet as the foreclosure crisis deepens, it is not clear if the bill has had the desired effect. The state law creates a new pre-foreclosure meeting intended to promote increased loan modifications. Loan servicers are required to submit a declaration that they have met by phone or in person with the borrower to discuss alternatives to foreclosure, or have conducted reasonable due diligence to

⁸ See, SB1137, 2007-2008 legislative session, at www.leginfo.ca.gov.

do so. Though it is difficult to monitor compliance with the law, reports from counseling agencies raise serious questions about whether servicers are following the law’s prescriptions.

**Compliance with SB1137: Counselors Reporting Frequency of Observed Compliance: California
March 2009**



Counselors speak:

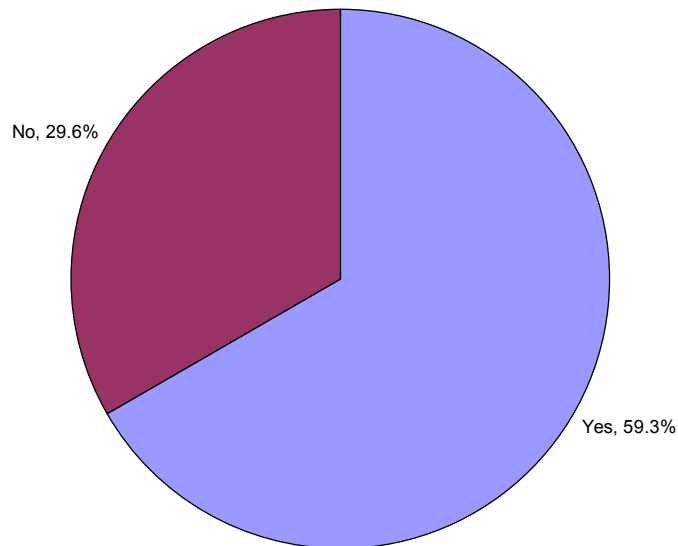
- “Servicers are completing these in a perfunctory manner; I have challenged every one I’ve seen where the client says no one responded to their calls.”
- “It is hard to tell whether a meaningful negotiation took place. Mandatory mediation could force a meaningful conversation.”
- “Some loss mitigation personnel knew nothing of this bill.”

It should be noted that despite the passage of SB1137, in late 2008 and early 2009, Governor Schwarzenegger called the Legislature back into special session to work on budget and foreclosure issues. The Legislature ultimately passed, and the Governor ultimately signed, the California Foreclosure Prevention Act which further encourages loan modifications. This bill, which is being implemented at the time of this report’s release, was supported by most consumer and community groups, but opposed by California Reinvestment Coalition and California PICO as not requiring enough responsiveness of the servicers. While CRC opposed the bill, we hope

the law will prove helpful to homeowners and communities seeking to stave off foreclosures. Key to the success of the Act will be the resolve of state agencies to aggressively monitor and enforce the Act's provisions.

G. Early returns on the President's Home Affordable Modification Program are disappointing. On the federal level, President Obama has unveiled the Home Affordable Modification Program, estimated to help three to four million homeowners avoid foreclosure.⁹ This proposal is the most promising initiative that has been offered to date. Yet, CRC has some concerns that the Plan will not be fully and successfully implemented in a manner that avoids preventable foreclosures and stabilizes communities. At the heart of the Plan is the creation of incentives to servicers and investors to modify home loans so that they are affordable to borrowers (at 31% of borrower's income) and sustainable (fixed payments for five years, with caps on potential interest rate increases over the life of the loan). See Appendix III for CRC's early critique of the Obama Home Affordable Modification Program.

**% Counselors Who Have Attempted to Use President's Home Affordable Modification Program:
California March 2009**



Counselors speak: “No one seems to be ready for it yet.” “Seems we know more than the lenders.”

⁹ See, makinghomeaffordable.gov for details.

Early experiences with the Obama loan modification program as reported by counselors suggest that borrowers may be falling through the cracks as loan servicers and counselors work to become familiar with the program's requirements.

The early experience of counselors appears corroborated by recent media accounts of borrowers having difficulty getting through to their servicers to access the HAMP,¹⁰ as well as data from Professor Alan White showing that mortgage modifications were down in May based on investor data he has been analyzing.¹¹

This failure to modify loans is happening despite the fact that loan servicers have already received \$15 billion from the Obama Administration in order to offer borrowers HAMP loan modifications.¹² As of May 14, 2009, an estimated 55,000 borrowers were extended loan modification offers, though serious concerns remain about the effectiveness of a loan modification program that doesn't call for principal reductions.¹³

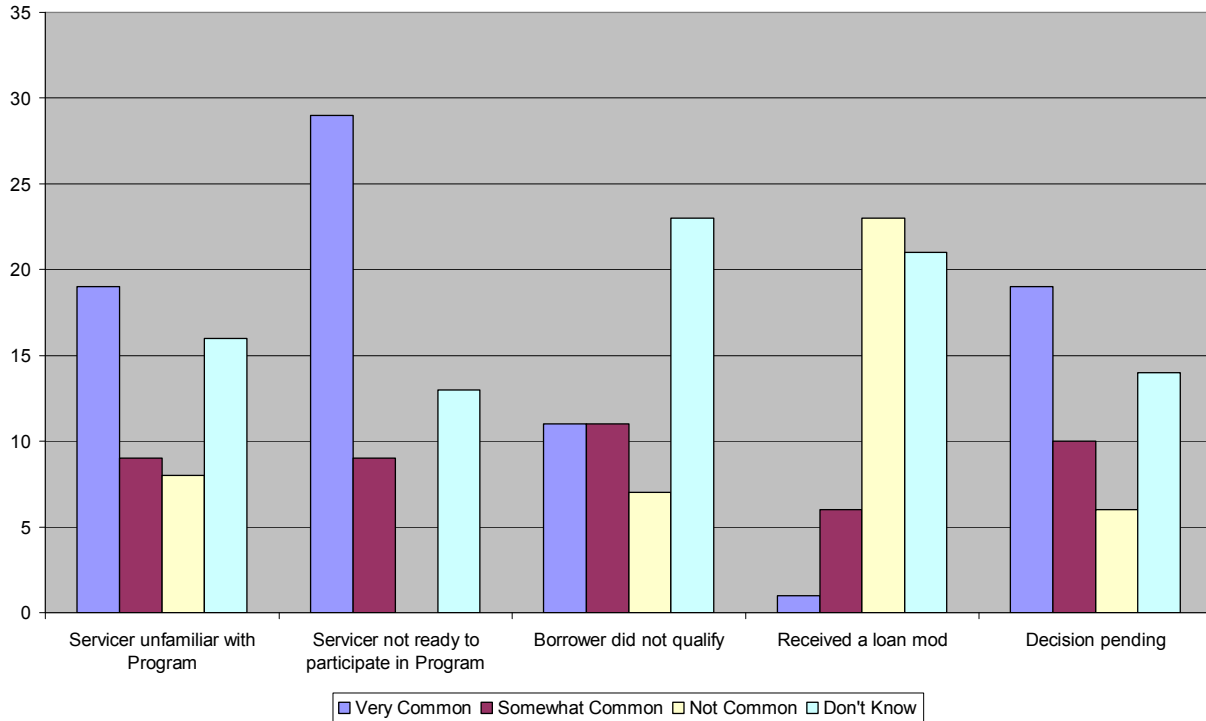
¹⁰ See, Stephanie Armour, "Foreclosures grind on as lenders fail to modify loans," USA Today, June 19, 2009; Chana Joffe-Walt, "Homeowners Find Mortgage Program Not So Easy" NPR, June 12, 2009; Peter S. Goodman, "Promised Help Is Elusive for Some Homeowners," New York Times, June 3, 2009.

¹¹ Alan M. White and Jonas Herrell, "May 26, 2009 Wells Fargo Columbia Collateral File Summary," Valparaiso University.

¹² Brian Collins, "Servicers to Get \$15B for Loan Mods," Mortgage Servicing News, June 2009.

¹³ Tara Siegel Bernard, "Losing Homes in the Wait for a Rescue," New York Times, May 14, 2009.

**Counselors' Early Experiences with President's Home Affordable Modification Program:
California March 2009**



H. Unequal access to loan modifications: subprime servicing? A major concern is that as people and neighborhoods of color were more likely to be sold problematic subprime and option ARM loans in the recent past, these groups and communities will suffer greater numbers of foreclosures. A recent analysis by the Pew Hispanic Center finds that counties with higher shares of immigrant residents than the average county had elevated rates of foreclosure.¹⁴

In addition, a working paper by researchers from the Federal Reserve Bank of San Francisco notes, “the continued importance of race as a variable deserves further exploration. In all of the models, African Americans were significantly more likely to be in foreclosure than whites. While some of this is likely due to differences in assets and wealth (which we cannot control for), additional research that can tease out the underlying reasons for this disparity may have important implications for fair lending regulations.”¹⁵

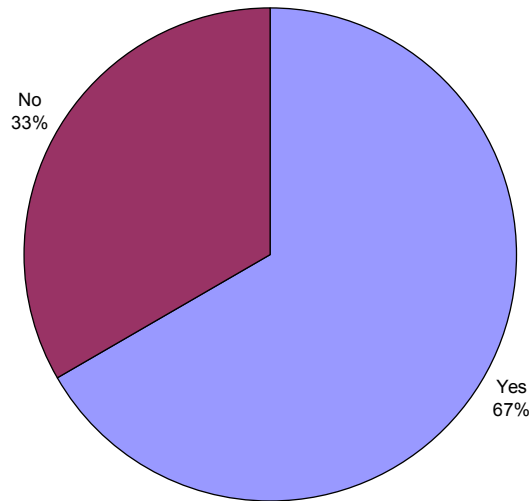
¹⁴ Rakesh Kochhar, Ana Gonzalez-Barrera and Daniel Dockterman, “Through Boom and Bust: Minorities, Immigrants and Homeownership,” Pew Hispanic Center, May 12, 2009.

¹⁵ Elizabeth Laderman and Carolina Reid, “Lending in Low and Moderate Income Neighborhoods in California: The Performance of CRA Lending During the Subprime Meltdown,” Federal Reserve Bank of San Francisco, November 2008, Working Paper 2008-05, <http://frbsf.org/community>.

The Administration appears concerned about this dynamic as well. HUD Secretary Shaun Donovan recently commented that the mortgage crisis has had a disparate impact in minority communities. “If we have modifications that are not implemented effectively in minority communities, we are not going to solve this crisis,” he said.¹⁶

Anecdotal evidence from counselors seems to confirm this neo-redlining dynamic may be all too real. Validation for these concerns and the possibility for addressing them and ensuring that the HAMP affirmatively furthers fair housing got a boost when the Administration announced its intent to require loan servicers to report on the race, ethnicity and gender of borrowers, where that information is available.¹⁷ This data must be made publicly available and the reporting requirements extended to include all servicers.

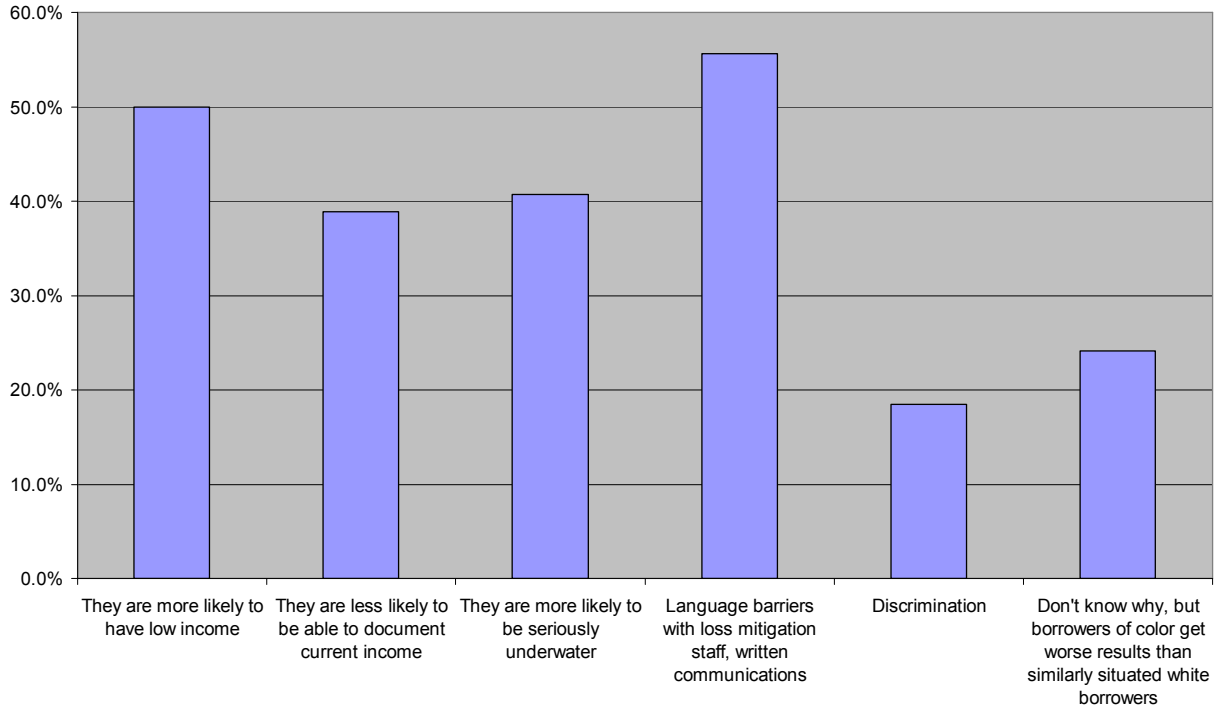
Fair Housing Concerns: % of Counselors Who Feel People of Color Receive Worse Outcomes in Foreclosure Prevention: California March 2009



¹⁶ Brian Collins, “Obama Reaches Out to Minorities,” National Mortgage News, June 15, 2009.

¹⁷ Starting October 1st, servicers will be required to report this data, though the data is to be provided by borrowers on a voluntary basis. See, <http://www.hmpadmin.com/docs/HMPServiceReportingRequirements.pdf>

Why Would Foreclosure Prevention Disparities Exist for People of Color: % of Counselors Reporting: California March 2009

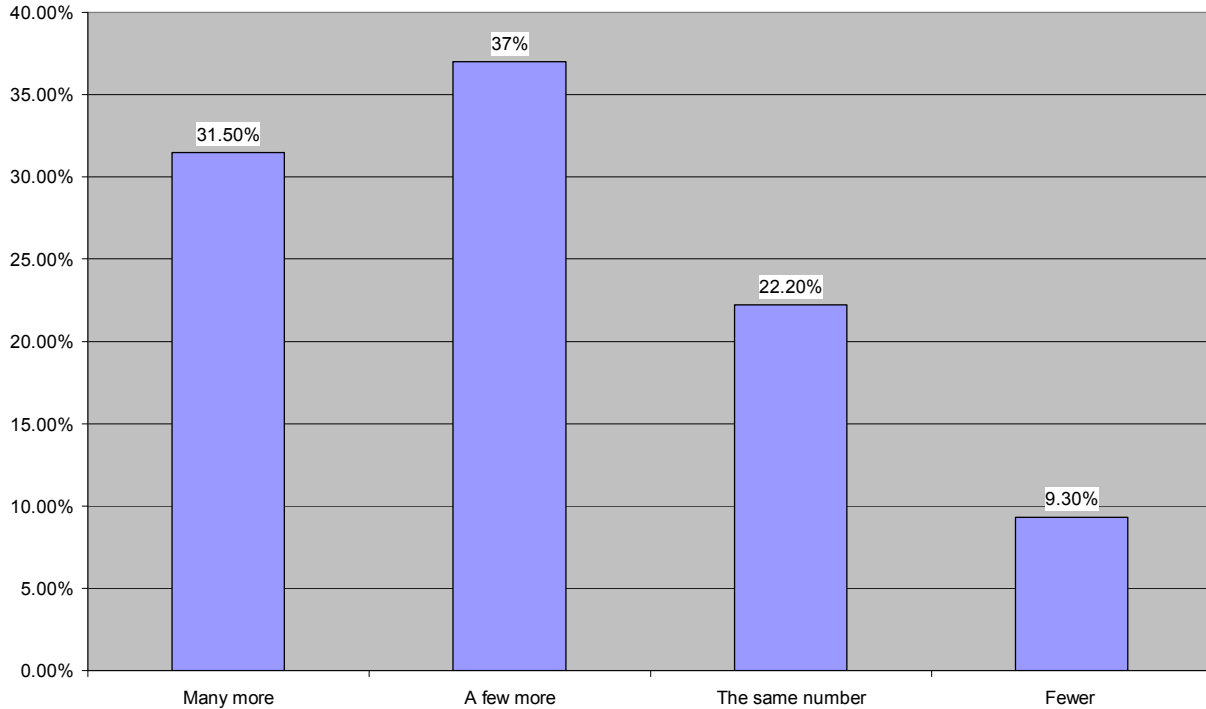


Counselors speak: “The knowledge and service level of the servicers’ reps that speak Spanish is lower than those serving whites.”

3. SCAM ARTISTS PREY ON THOSE DESPERATE FOR RELIEF

A. Loan modification scams: a growing problem. As an increasing number of homeowners fall towards foreclosure and in desperation seek any sign of hope, they are easy prey for predatory scam artists who promise to modify home loans – for a fee. These businesses, often the same ones that put borrowers into unaffordable loans in the first place, cannot guarantee any result and often fail to deliver. A whole cottage industry has developed of companies advertising aggressively on radio, TV and in print media that they can help borrowers avoid foreclosure. In fact, nonprofit housing counselors can offer homeowners better service, deliver better outcomes, and do so for free.

**Change in # of Borrowers Who Paid For Loan Mod Servicers Compared to 6 Months Ago:
California March 2009**

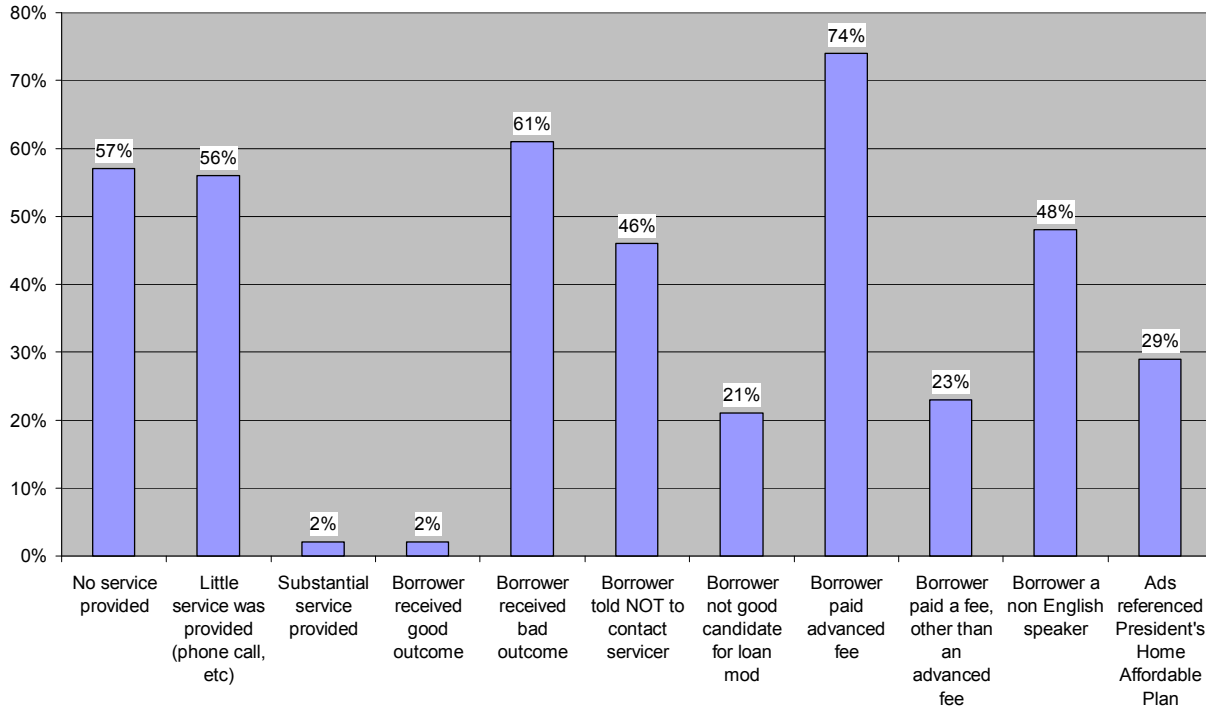


Counselors speak: “Almost everyone who calls us has either paid someone for modification assistance or is considering doing so.”

B. You don’t always get what you pay for. Counselors report these for-profit companies often do little to nothing for the client, except to urge the borrower to stop calling the loan servicer, further propelling the borrower towards foreclosure. Reported results of these for-profit companies are poor, and any work done is process-oriented. One contract for services goes so far as to note that, “The services as contained in this agreement will be completed in full when one or more of the following goals have been completed, 1) Forbearance 2) Loan Modification 3) Short-sale 4) Foreclosure 5) Other _____.”

Currently, the California Legislature is considering two bills that seek to address various problems associated with fee-for-service loan modification providers (AB764 and SB94). One of these bills, AB764, expressly attempts to prohibit the collection of fees by these providers unless an actual loan modification is obtained.

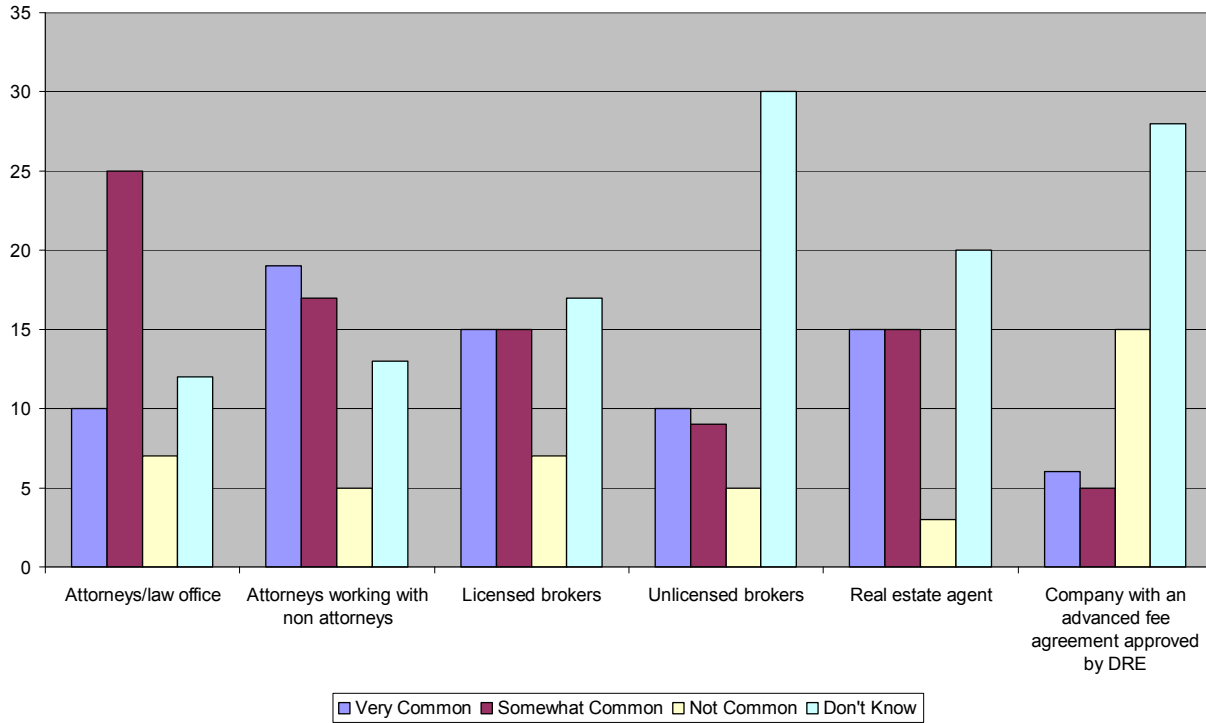
What was Done: % of Counselors Reporting Various Fee for Service Performance Measures as Very Common: California March 2009



Counselors speak: “This is making our work much more challenging due to families being told one thing and then organizations like ours telling them something else.” “Advance fees are paid in addition to a monthly fee of approx \$800.”

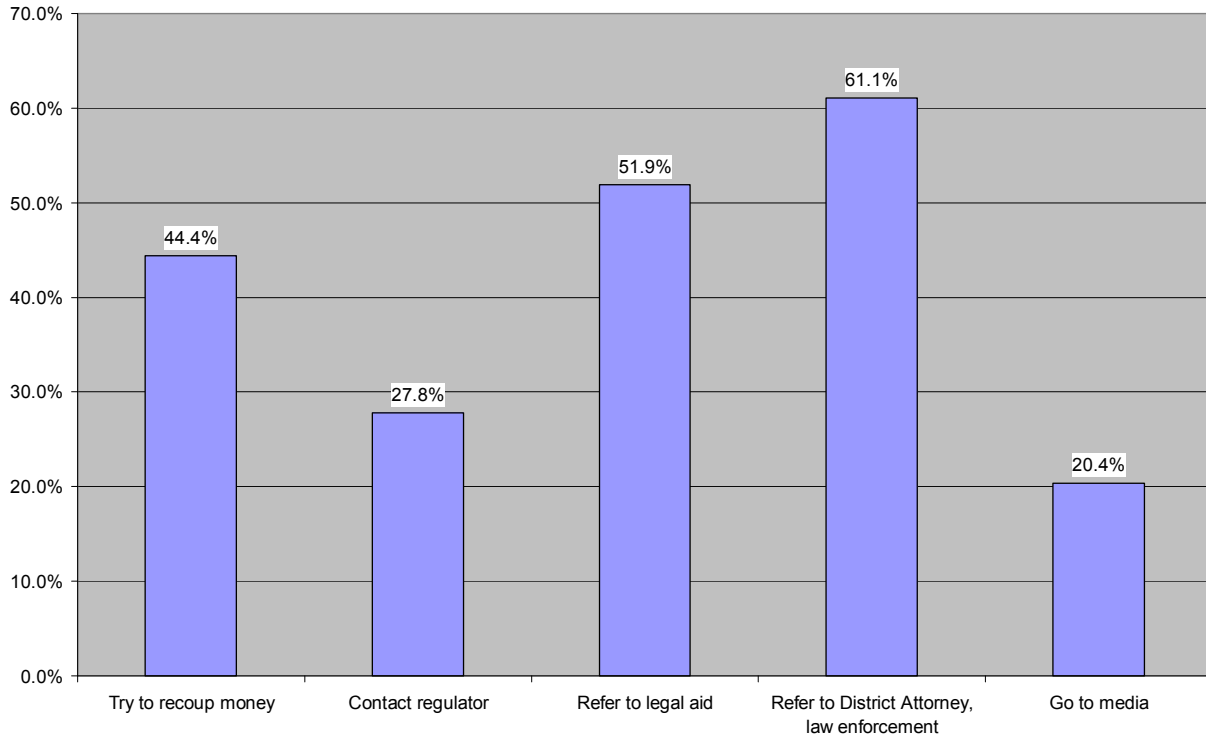
C. A cast of characters. Current state legislative efforts have sought to address the problem by looking at who is involved, and when they charge their fees. The reality, however, is that various fees are charged at various times by various actors. A broad solution is needed.

**The Players: # of Counselors Reporting Various Parties Observed in Fee for Service Loan
 Mods: California March 2009**



In response to this growing predatory activity, counselors have followed different paths in trying to address it on behalf of their clients. While referrals to law enforcement agencies have led to increased prosecutions, and media work has led to greater public awareness of the problem, the problem persists and continues to threaten Californians with economic ruin.

Counselors Response to Loan Mod Scams: California March 2009



Counselors speak: “Suggest they send letter to regulator. Sometimes we will share with media if they are asking for such a story.”

4. TENANTS, INNOCENT VICTIMS, SUFFER AS BANKS SEEK TO CLEAR OUT FORECLOSED HOMES.

A. Tenants face a host of problems as a result of foreclosures. Often a tenant's first effective notice that something is wrong is when the water stops working, or the electricity is shut off because the landlord has stopped paying for utilities. Tenants are then often forced off of the property by real estate agents hired by national banks to clear out the property. Tenants Together, a statewide tenants' advocacy organization, estimates that one-third of all residential units in foreclosure in California are rentals. Renters are facing utility shut-offs, eviction, loss of security deposits, and other related problems when their homes go into foreclosure because their landlords fail to pay the mortgage. Due to loopholes in tenant protection laws and lax enforcement of existing laws, renters are living through nightmare situations - even basic rights like the right to running water cannot be taken for granted by renters in foreclosed properties. Banks routinely evict all renters after foreclosure.¹⁸

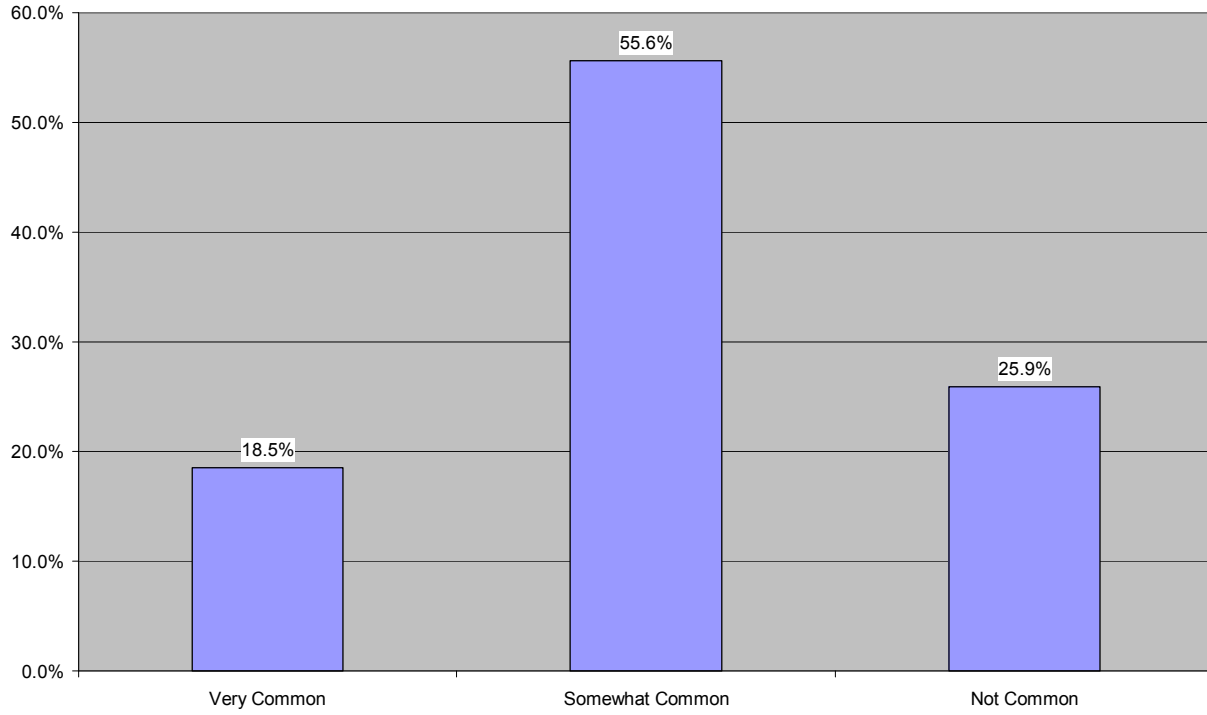
Aside from uprooting families with little notice and few prospects to relocate, eviction also makes little sense for the new owners of the property – the investors on the original mortgage that went into foreclosure. National banks acting as trustees on large pools of securitized subprime and option ARM loans are now bringing foreclosure and eviction actions to clear out properties on behalf of investors who would be better served by allowing the tenants to remain in the property. For one, considerable rental income is being relinquished when trustees and servicers choose to force out good tenants. One estimate suggests that servicers in California could have collected \$1 billion in rental income had they leased out to tenants all of the rental units that went through foreclosure in 2008, charging market-rate rents.¹⁹ Further, tenants living in otherwise vacant properties can maintain the properties and prevent blight, discourage gang and criminal activity from moving in, and create a better value for a property the investor wishes to sell. Even industry groups are starting to recognize this.²⁰

¹⁸ Tenants Together, "Hidden Impact: California Renters in the Foreclosure Crisis," March 2009.

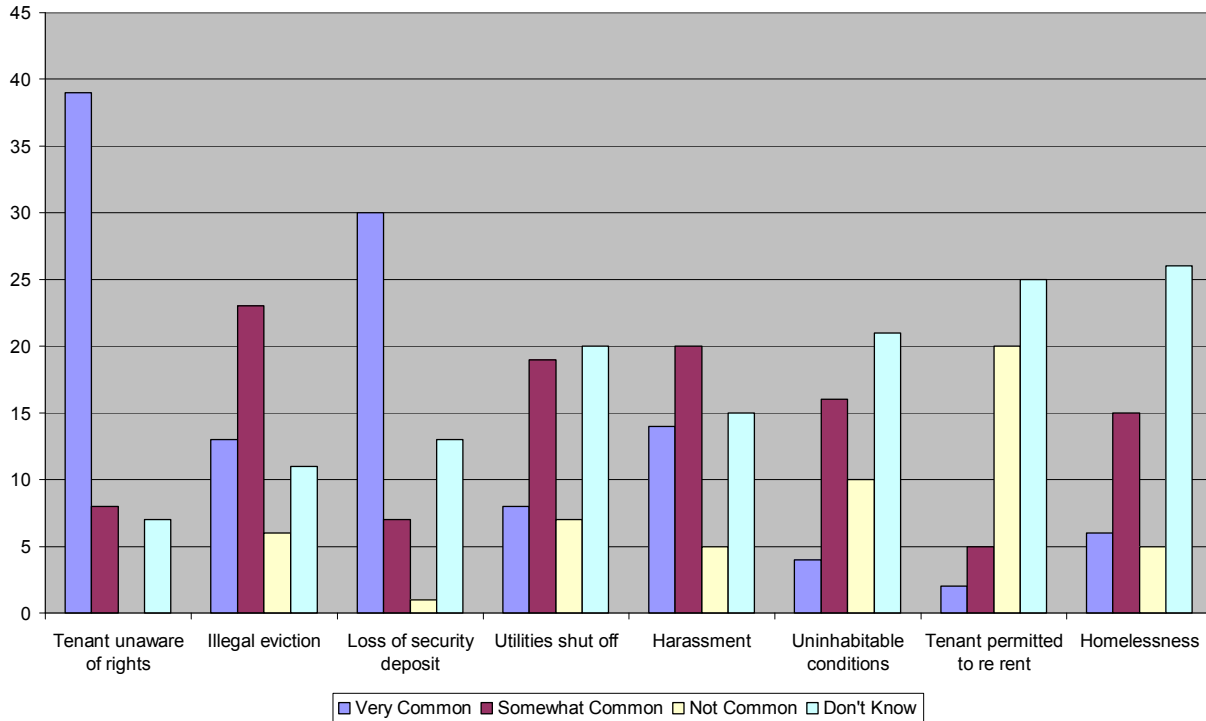
¹⁹ Ari Levy and Dan Levy, "California Foreclosures Jeopardize Renters as Banks Seize Homes," Bloomberg, April 6, 2009.

²⁰ Jennifer Harmon, "Tenants Maintain Homes," Mortgage Servicing News, June 2009 (quoting Gerald Alt as saying, "Having a responsible tenant is the better choice in keeping these properties safe and secure and in good shape while the lender sells the property,"), and "Website Aims to Turn Vacant Houses in Model Homes," Mortgage Servicing News, June 2009 (describing a for-profit website that links on site home managers with owners of vacant properties to prevent the negative impacts of vacant homes on the value of the home and the neighborhood).

**% of Counselors Reporting Presence of Tenants in Properties At Risk of Foreclosure: California
March 2009**



**Tenants in Foreclosed Homes: # Counselors Observing Various Tenant Challenges: California
March 2009**



Last year Governor Schwarzenegger vetoed two bills that would have aided tenants in foreclosed homes experiencing some of these problems. AB2585 (Torrico) clarified that tenants are entitled to recover their security deposits even after foreclosure of their home. AB1333 (Hancock) sought to address the problem of tenants having their utilities shut off when their landlords stop paying those bills. These vetoes by the Governor left displaced tenants struggling to find and relocate to affordable rental housing without the cash needed for first month’s rent and security deposit, and left many others effectively evicted when their utilities were shut off and they were forced to leave their homes despite any existing rights and protections they may have enjoyed had they been able to remain in their homes.

Some progress comes from the recently enacted Helping Families Save Their Homes Act which contains provisions that require owners of foreclosed homes to honor existing tenant leases, and give tenants 90-days notice before eviction if they have no lease or if the new owner wishes to live in the home. But even with these new rights, thousands of California families face a terrible predicament should their landlord go into foreclosure. Tenants need and deserve greater protections from various forms of abuse they are experiencing through no fault of their own.

V. RECOMMENDATIONS

What is in place at the federal and state levels is not working. In order to keep borrowers and tenants in their homes, and to address the concerns of housing counseling agencies and legal services offices, CRC urges lenders, the California Legislature, Governor Schwarzenegger, federal banking regulators, Congress and the Obama Administration to take the following key steps:

1. To address concerns about predatory lending and steering, and the prospect of a future crisis, CRC urges:

- **Outlaw abusive loan practices.** Congress and the California Legislature should pass strong anti-predatory lending legislation that prohibits abusive lending practices, such as steering of borrowers into higher cost loan products, yield spread premiums, prepayment penalties and subprime option ARM loans. Brokers, lenders, and Wall Street firms and investors should all be subject to liability for abusive lending.
- **Translate loan documents.** The Federal Reserve should deem as “unfair and deceptive” the practice of selling loans in a non-English language, but having the borrower sign English-only loan documents. The Federal Reserve is currently developing mortgage disclosure regulations, and it should there clearly require all companies to translate documents where they market and/or negotiate loans in non-English languages.
- **Modernize CRA.** Congress should pass the CRA Modernization Act to strengthen the one law that has been helpful in modifying bank practices. The CRA should be expanded to take into account the race and ethnicity of customers and neighborhoods, to cover mortgage companies and credit unions, and to require that financial firms meet the credit needs of all communities in which they are conducting business.

2. To address concerns about poor loan servicing and increasing foreclosures, CRC urges:

- **Pass Bankruptcy cramdown.** Congress must pass Bankruptcy cramdown legislation. The single most important thing that Congress can do to prevent foreclosures is to give Bankruptcy judges the ability to modify and reduce principal on loans for homeowners living in their homes, as they currently can do for yacht loans and loans on second homes. This would for the first time give consumers some leverage in their negotiations with servicers, and encourage more sustainable loan workouts even for families not in Bankruptcy court.
- **Force principal write downs.** President Obama and Governor Schwarzenegger should expand the Home Affordable Modification Plan and the California Foreclosure Prevention Act to require principal reduction as part of the waterfall of options servicers

must consider before foreclosure. Principal reductions are key to keeping Californians in their homes given the large number of borrowers who currently owe more than their homes are worth.

- **Impose a foreclosure moratorium.** No foreclosure should be permitted to take place until servicers certify they have fully analyzed a borrower’s eligibility for the Home Affordable Modification Program or the servicer’s state certified loan modification program. To ensure that all borrowers will have equal access to the federal and state foreclosure prevention initiatives, a 180-day moratorium on foreclosures must be imposed. Today, servicers are taking months to respond to borrower loan modification requests. A moratorium will ensure no one falls through the cracks into foreclosure while servicers are processing applications, it will give servicers time to fully implement and train staff on the new Home Affordable Modification Program, and it will give borrowers additional time to improve their employment and financial profiles.
- **Require transparency.** CRC is concerned that all borrowers will not benefit equally from the federal and state foreclosure prevention plans. Data collected should be detailed enough to show which companies are modifying loans, on what terms, and the race and ethnicity of borrowers. This data should be made publicly available.
- **Create an ombudsman position.** The Home Affordable Modification Program provides no grievance process or place for homeowners to go if they have been unfairly denied assistance or been mistreated by their loan servicer. A contact person should be appointed to look into complaints from consumers who otherwise have no recourse if they are wrongly denied a loan modification and wind up losing their homes.
- **No foreclosures without proof of ownership.** No homeowners should lose their homes unless the bank, lender or company processing the foreclosure can establish beforehand that it has the right to foreclose on behalf of the true owner of the loan. This is simply a question of basic fairness and due process. Increasing stories of foreclosure proceedings that were improperly brought are a reflection of the chaotic and unregulated way in which mortgages have been bought and sold over the last few years, and are an indictment of our current minimal protections for homeowners in foreclosure. Some relief will come from an amendment to the Helping Families Save Their Homes Act, authored by Senator Boxer which requires the disclosure of the identity of the true owner of a mortgage in certain circumstances. Now, the California Legislature should make it unlawful for anyone to begin foreclosure proceedings in our state unless they can establish they have the right to do so on behalf of the owner of the loan.

3. To address the concern that scam artists are bilking desperate homeowners of thousands of dollars on false promises of hope, CRC urges:

- **Pass strong consumer protection legislation.** The California State Legislature must pass strong legislation that bans advanced fees, restricts back-end payments to those cases where the borrower has received a tangible benefit, and includes strong enforcement provisions such as jail time for offenders and a private right of action for victimized consumers.
- **Support nonprofit counselors.** Congress, the California legislature, industry groups and private foundations should step up efforts to support the capacity of housing counseling agencies and legal service offices. The best antidote to foreclosure rescue scams is the presence of a strong healthy, nonprofit counseling infrastructure that has the capacity to conduct outreach and advertise its services.

4. To address concerns about the unfair and disproportionate impact of foreclosure on tenants, CRC urges:

- **Rent foreclosed homes to tenants.** All banks should have a policy of re-renting foreclosed homes to existing tenants. Servicers should develop non-eviction policies on all REO properties so that existing tenants are only evicted for just cause. National banks which serve as trustees for large pools of securitized loans, and in whose name foreclosure actions are brought, must be part of the solution by working with investors to pursue non eviction policies. The Office of the Comptroller of the Currency, which regulates the national banks, must take a proactive stance in encouraging national banks to minimize the impacts of foreclosure on tenants.
- **Pass strong state bills protecting tenants in foreclosed homes.** AB603, which would require REO properties to be rented out to tenants for up to a year, and SB120, which would clarify the law regarding the obligation of banks to pay tenants their security deposits and to work towards keeping the utilities on, should be passed by the Legislature and signed by the Governor.

APPENDIX I: COMMENTS OF COUNSELING AGENCIES AND LEGAL SERVICE OFFICES

Washington and litton loan servicer

Litton- On various occasions, I've been told that I can't be connected to the loss mitigation or foreclosure department; I had one occasion where I waited on hold for 48 minutes trying to reach Litton's executive resolution office....AHMSI- very difficult to get return phone calls. Wamu-clients are routed by their loan #, so can be very difficult to get to the right dept. if their phone system routes you to the wrong dept based on loan number. Downey- won't accept faxed modification packages. Countrywide- It is a very slow process for modifications with them.

Don't know

Wachovia, OCWEN, Litton, HomeEq, Citibank, Wells Fargo,

Not enough data

NationStar, Countrywide, WaMu

Aurora Loan Service, Wells Fargo, Bank of America, Litton, Wachovia, Ocwen

Citi - Very unorganized, continue to tell us to wait until their infrastructure is improved.

Litton - Has frozen modifications and are unresponsive

WAMU - Very unorganized, continue to tell us to wait until their infrastructure is improved.

Indymac, Washington Mutual, Wachovia

Litton loan servicing. Wachovia, Home Eq Servicing

na

Countrywide because they want the homeowner to be about \$350. in the positive every month after paying all of their expenses.

Aurora Loan Servicing -- unclear procedures, inconsistent information, unwillingness to correct their own errors, unwillingness to try to work with borrowers

American Home Mortgage Servicing Inc. (AHMSI) -- multiple lost authorizations lead to delays in getting any information; inconsistent information; failure to communicate internally between departments, leading to many errors and miscommunications re modifications and foreclosure status.

Countrywide (until very recently when we got a higher level contact on the advocacy team) --

uninformed representatives, wildly inconsistent information about even the most basic protocols and contact numbers; refusal to communicate by email (now corrected); incredible delays in decision-making; misrepresentations to borrowers leading to expectation of modification that never comes and makes them fall more and more behind

First Federal -- requires original signed authorization sent to a street address, then loses it and requires a new signed authorization to work with us. Major delays.

WaMu -- repeated lost documents, lengthy delays in reviewing modifications, poor communication among diff departments and w/ third party contractors leading to foreclosures on homes that the borrower could have afforded to keep while modification still under review or even after a modification agreement was sent back to WaMu.

Wells Fargo -- very inflexible; seem to give forbearance agreements only w/no guarantee of modification if borrowers pay in good faith and show necessary income.

Wachovia does not have modification longer than 1 Or 2 years, only provides a temporary solution. Central Mortgage the communication is very difficult. Citigroup and Wells Fargo the timeframe for review and resolution has been a challenge.

Most of them but especially those not participating in the new Home Affordable Modification Plan. Most don't write down or defer a portion of the principal balance owed.

Argent, Carrington - not willing to provide affordable options; proposed forbearances are unrealistic and permanent modifications after the end of the forbearance period appear to be carrot-dangling, not real promise. otherwise, why not put the terms of the modification and the forbearance in the same agreement so the client clearly knows what will happen at the end of the forbearance period?

World Savings

Beneficial - Only offer a one-time 6-month mod

National City - Only offer 6-month mod

Flagstar - Only offer forbearance for 6 months

Saxon, Carrington, Wachovia, Chase, Bank of America

Countrywide is easiest. They make decisions quickly, & the decisions are reasonable. Wells: exceedingly bureaucratic; Chase: very, very slow to make decisions; repeatedly lose documents & claim borrowers never sent

1. Wachovia.
2. Wachovia.

3. Wachovia (unless the borrower's situation fits its canned mod program exactly).

Since the CRC meeting a couple months ago, Wachovia and Wells have been GREAT, NFH is doing some joint workshops with Wells Fargo loss mitigation. Litton was doing horrible until CRC referred us to AG's office that has helped in turning a twice declined file into an approval for a "trial" modification.

IndyMac, uncooperative representatives, inflexible

CIT Group, uncooperative representatives, inflexible, sold property at trustee sale for half of loan balance rather than approve a loan mod.

Downey Savings/Bank United, not offering any loan mods period, repayment plans that are "useless"

Generally, uninformed representatives, internally reps provide conflicting info.

Wilshire (refused ALL my clients) AHMSI, Saxon, Vanderbuilt (does nothing) Cntrywd. stated they must go 'strictly by the numbers' & can no longer do it case-by-case, as they're too busy, they're rude & won't budge, awful. IndyMac states they can do what they want, bad results. Different answers from different people. Downey: loans are sold right smack in the middle of a loan mod work out and have to begin again with new servicer, which puts them further behind. WF says not enough money, income changes & then states, too much surplus to qualify!

All servicers tend to be reluctant to proceed with loan modifications, versus other workout options such as repayment plans, forbearance etc.

Wachovia had been difficult until recent. They did not have any real workable solutions until Wells Fargo's profitability allowed them to start modifying under new programs. Most of the subprime servicers are still difficult due to the high yields they committed to on origination. These would include AHM, Ocwen, Litton, Carrington, HSBC. Although we are seeing improvements especially from Litton Loans.

Countrywide due to lack of response and long review time. Bank of America is difficult to work with and offer very little modification options

Countrywide/B of A -- very difficult to get consistent attention to a client's file across such a huge company

Until recently Wachovia was difficult. I have seen great improvement recently.

Saxon, Wells Fargo - don't want to modify loans

HSBC

US Bank

PFF Bank
Downey Savings

America's Servicing Company: their process is only for short-term changes (repayment plans).
Wells Fargo: the modification process is really long, there are a lot of "departments" which are supposed to be helping clients, but are really outsourced companies...this makes it so that the left hand doesn't know what the right hand is doing, and a long time can elapse before they even register that they have received a mod package.

Countrywide: modification process is way too long, too many departments participating, few mods actually approved, reps refuse to escalate calls to supervisors and lock files so that if you call back, no one can help you.

Servicers in general (Litton, Aurora, ASC, American Home, SunTrust) only offer repayment plans which increase the borrower's payment amount and do not provide lasting change which will help the borrower be successful. They do not offer assistance in reducing the mortgage payment or putting the client into a loan they can successfully handle.

Countrywide, Wells Fargo

Wells Fargo, Wachovia, Litton, HomeEq. They don't respond, ignore case or come up with modifications that do not help borrowers.

Wells Fargo, Home Eq, Contact efforts are ridiculously time consuming, Most of their records don't reflect paperwork received, prior conversations are not documented and are even denied, They discourage Homeowner from working with the non-profit and request that they begin to deal directly with servicer because they can help them better.

credit unions, WAMU (now Chase), Wachovia (now WFB)

Countrywide

No response

do not know

Deutsche Bank, Countrywide

N/A

I hear of complaints from clients about Wachovia.

Saxon Mortgage Services is nearly impossible to reach by phone, unreasonable with loan mods, does not respond to QWRs, staff is unskilled, not knowledgeable, and unprofessional

N/A

N/A

Wachovia and GMAC have been our most difficult lenders. In the majority of cases they will not offer any solutions even when the loan mod pkg looks solid.

Have not worked with enough to be able to say by my own experience. I have heard that: BofA has been difficult. I have had single complaints regarding GMAC,

Wachovia takes forever to get answer
AHMSI will not do a mod. for any of my clients

Not sure.

Saxon...basically extremely uncooperative

Do not have these statistics

Countrywide, Wells Fargo, Washington Mutual, World Savings

America's Servicing Company - it appears that the investor is typically Wells Fargo Home Mortgage - and Wells Fargo doesn't seem to be interested in making modifications affordable.

Deutsche Bank; attorneys, realtors, & bank not communicating well

APPENDIX II: CRC Response to Federal Policy Efforts



HOUSING

The details of the Making Home Affordable (MHA) plan presented by the Obama Administration in March 2009 were a significant step in the right direction towards stabilization of the housing market. But foreclosures continue to be a significant problem for the nation. According to RealtyTrac, one of every 374 housing units received a foreclosure filing in April 2009. The news is more dire for Californians in April 2009 because the state still posted the nation's third highest state foreclosure rate, with one in every 138 housing units receiving a foreclosure filing during the month. Total foreclosure activity in California was up 42 percent from April 2008. As a result, for many California homeowners, MHA is either too little or too late. Homeowners are struggling to prevent the loss of their properties, either due to foreclosure or the eviction of tenants about to be displaced because of the negligence or malfeasance of the investor-owners. Regardless of how the issues were created, the collateral damage of this housing crisis creates significant long- and short-term implications for our communities. Neighborhoods become blighted, petty crime rates rise, children shuffled about throughout the school year, and increased rates of homelessness escalate due to the slow and, often, inadequate, response to the housing crisis.

It is too soon to tell whether the MHA, which is largely voluntary, will help save our communities in the numbers projected when the plan was first announced. We hope it does, but the shortcomings of programs like Hope for Homeowners leave us cautious. Congress and the Obama Administration should not believe that MHA has solved the various problems of the housing crisis in order to move on to resolve other pressing economic issues. Communities remain destabilized, which will trickle-up to reach each individual and every level of government.

Mortgage Counselor Surveys

For over a year, CRC has been surveying housing counselors throughout the state of California to establish trends with borrowers and how mortgage loan servicers have been behaving. In our most recent survey, which looks at March 2009, the news continues to be disappointing for California

homeowners and tenants. The results of the survey have helped determine housing issues where the policy demands re-examination.

- Foreclosure scams are an increasingly frequent problem in this housing crisis.
- Tenants are a significantly large aspect of those displaced in the housing crisis. Almost three-fourths of survey respondents replied that tenants were living in foreclosed homes.
- The small number of affordable, sustainable mortgage loan modifications continues to be problematic.
- Due to the poor quality of the modifications, subsequent default is a serious and emerging issue.
- Two-thirds of survey respondents reported that borrowers who receive subprime loans often receive subprime modifications.
- Foreclosure is still the most common outcome for borrowers.
- Refinance and Hope for Homeowners remain uncommon outcomes for most borrowers.
- Borrowers remain significantly “under water.”
- Although principal reduction would be an important tool for loan modification, it is rarely used.
- Language issues are a prominent problem, especially in California where there are a number of mono-linguistic, non-English speaking borrowers. Non-English speaking borrowers are more vulnerable to foreclosure scams, due to the inability to comprehend loan documents.
- The MHA plan isn’t having a significant impact on Californians at this point. Among 55 counselors from 40 of the state’s 80 counseling agencies, only one loan modification took place as a result of MHA. A majority of servicers contacted by the counselors surveyed were either unfamiliar with the plan, or the servicer wasn’t ready to implement the program.

Tenants

Our survey results confirm the National Low Income Housing Coalition’s (NLIHC) findings in its *Out of Reach 2007-2008* report, which is that the foreclosure crisis is placing a strain on the inadequate stock of affordable rental housing. Displaced homeowners and tenants must turn to rental housing, which is in short supply. Servicers are unwilling to negotiate and

create a standard program for tenants displaced by a defaulting investor, which is troubling because according to NLIHC, 40 percent of foreclosure evictions are tenants. The recently enacted “Protecting Tenants at Foreclosure Act of 2009” does assure tenants residing in foreclosed properties that they will receive 90 days prior to a notice to vacate the premises. It is also encouraging that a bona fide tenant has the right to remain in the premises until the end of the remaining term of the lease, unless the unit is sold as a primary residence to an owner-occupier. However, many tenants affected do not have leases and are not likely to be helped. We also remain concerned that although the legislative framework is in place, the rights provided by the Protecting Tenants at Foreclosure Act aren’t well known. As a result, many tenants will still fall prey to those have been unethically evicting tenants from their homes. Further, the law does not address the return of security deposits. Tenants are often unable to secure subsequent rental housing because of an inability to replace the funds of the lost security deposit.

Recommendations:

- Need for a national housing policy that will create and protect more, safe, decent affordable housing.
- The trustees responsible for the foreclosed properties are in the best position to resolve the security deposit issue. After the trustee sale of the property, the trustee should be required to return a substantial portion, if not all, of the security deposit to the tenants with the proceeds of the sale. The tenant should, in effect, take a position analogous to a lien holder, which should help assure the rightful return of the security deposit.
- All banks, servicers and trustees, must develop no-eviction policies that allow tenants to continue renting foreclosed homes for the benefit of tenants, communities, and the investor owners of the foreclosed properties.

Loan Modifications/Making Home Affordable/Principal Reductions

The details of the President’s Making Home Affordable Plan have only been public since March 4, 2009. CRC remains concerned that the MHA plan will not have a significant impact on Californians. One prime reason for our concern is that financial institutions’ participation is voluntary. Only those institutions taking TARP money and Fannie Mae and Freddie Mac loans must comply with the MHA plan. CRC remains concerned that a voluntary plan, regardless of good intentions and thoughtful procedures, will not reach the millions of troubled Americans projected when the plan was announced. We fear outcomes similar to those of the well-intentioned Hope for Homeowners program. Although there is no such thing as a typical troubled California borrower, we have observed some commonalities. Unfortunately, the

similarities prevent these Californians from being able to utilize MHA to keep their home. Many of California's troubled borrowers aren't able to refinance because their loan to value ratio exceeds the plan's limits, or they are ineligible for a modification because they cannot get their housing costs to fall into the FDIC's waterfall model.

The one aspect of the plan that doesn't get much attention, but could result in markedly improved outcomes, would be principal reductions. In a February 20, 2009 speech to the American Bankers Association, Federal Reserve Governor Elizabeth Duke noted that in order to make modifications sustainable and affordable, principal reduction and a lower interest rate may be required. In a state where property values have fallen by as much as 60 percent, and a majority of troubled borrowers are "under water," principal reductions would make the previously ineligible borrower able to receive assistance from the MHA plan.

Recommendations:

- The outcomes of the MHA should be very closely tracked. If there are inadequate numbers of borrowers receiving modification and/or refinancing by July 2009, or after one fiscal quarter from announcement, then Congress should revisit the issue to make compliance less voluntary. Since every major financial institution has received TARP funds, the mandatory compliance could be predicated on the previous receipt of taxpayer money.
- Establishment of an ombudsman as a place where homeowners can go if they are having problems accessing the benefits of the MHA plan. Right now, there is nowhere for borrowers to turn if they are dealt with unfairly and erroneously by the servicer.
- Principle reductions should be required as part of the waterfall of options servicers must consider before foreclosure.

Subprime Modifications

According to HousingWire.com, new data released in March 2009 by the HOPE NOW coalition of servicers, lenders and investors displayed a continued disparity between the modification help given to prime borrowers over subprime borrowers. There is anecdotal, as well as some measure of empirical, data to substantiate the argument that borrowers who received subprime mortgage loans, primarily low-to-moderate income borrowers and borrowers of color, now receive subprime alternatives as they attempt to modify their loans. The subprime borrower is more likely to be offered a modification that is neither sustainable nor affordable, which often results in

re-default. But it is difficult to make this case with empirical certainty due to the absence of data. Although a great deal of data has been collected about and around this housing crisis, there are flaws. The Helping Families Save Their Home Act (HFSTHA) begins to demand more of the data necessary to determine whether America is successfully fighting this housing crisis. But more must be done. It is CRC's position that all data for mortgage loan modifications collected should include information categorized by race and census tract. Additionally, the information should be disaggregated and identify individual financial institutions in order to hold each financial institution publicly accountable.

Recommendations:

- Although the Office of the Comptroller of the Currency has begun issuing the *Mortgage Metrics Report*, which covers the Fourth Quarter of 2008, our concerns are unchanged about the collection of modification data that isn't tracking the potential emergence of an economically and socially dangerous phenomenon, which would be the re-redlining of communities of color and working families. We recommend that the mortgage modification data and collection section of the HFSTHA be enhanced to address these concerns.
- Congress and the applicable regulatory agencies should not wait the 120 days provided in the act to review the data collected. A damaging trend could be identified in 90 days, the resolution of which would be extremely beneficial to troubled and destabilized communities. All data collected should be available for public review.

Foreclosure Scams

The Fraud Enforcement and Recovery Act of 2009 is a significant piece of legislation, which should be applauded. With the marked increase in foreclosure scams, some of which use the image and words of President Obama, it is necessary for every possible resource to be directed to limit the proliferation of these criminal enterprises. The fortification of the role of federal prosecutors and regulators provided in the act may help turn the tide in favor of troubled borrowers seeking assistance. The extension of prosecutorial reach to cover private mortgage companies is also a positive development. According to the White House, as much as 50 percent of subprime loans originated in 2005 were made by private mortgage companies. Since many of these companies have either dissolved or been acquired by larger banks, it is worth considering the extent to which a successor-in-interest should be liable for the monetary damages created by the malfeasance of the private mortgage company. It is worth noting that HUD-certified counselors and legal service attorneys should also be fortified in the fight against foreclosure scams. If

these agencies had more resources, they would be in a better position to help more borrowers in a timely manner. The good work of these agencies should receive more publicity, praise and funding.

Recommendations:

- Regulators need to take more significant actions in prevention, regulation, and enforcement/punishment for scams, to the extent that a nationally chartered financial institution is involved. Also local law enforcement needs more resources to fight foreclosure scams.
- New protections that ban advance fees and prohibit back-end fees unless the borrower gets a tangible benefit from the for-profit loan mod specialist.

Mortgage Reform and Anti-Predatory Lending Act – H.R. 1728

CRC supports the Mortgage Reform and Anti-Predatory Lending Act that is currently under consideration by Congress. It appears that this bill will take steps to ensure that borrowers avoid overly costly mortgages, can pay back their creditors and receive better disclosures, among other actions. There are many protections in the bill that are crucial to strong responsible lending. It is our view that a number of states legislatures, such as California, have been less aggressive than appropriate in the creation of consumer protection laws to fight predatory lending due to concerns about federal preemption. CRC hopes that a strong federal law to address predatory lending will encourage states to follow with legislation that is at least as strong as this federal bill.

Major provisions in the legislation would ensure that consumers have a reasonable ability to repay mortgages; prohibit compensation for steering consumers into overly pricey or risky loans; and require new federal rules to direct creditors to retain an interest in the credit risk of certain loans. Some in the banking industry are concerned that the legislation could inappropriately limit borrowers' access to loans and increase prices. CRC staff believes that this is the same scare tactic that the banking industry has successfully used numerous times to fight legislation that would protect the customer. Forcing lenders to retain part of the credit risk of certain mortgages would help to appropriately spread the risk and cost of lending, without having a significantly negative impact on the ability to lend for smaller non-depositories with warehouse lines of credit, and force larger lenders to increase their capital.

The Federal Reserve has said rules approved last summer address many of the practices in which Congress is now interested, and warned about imprecise new restrictions. The Fed banned various risky mortgage practices, such as

prohibiting lenders from making higher-priced loans on a principal dwelling without regard to a consumer's ability to repay. The Fed also approved rules to prohibit coercing appraisers to misrepresent a home's value and ban misleading advertising practices, on the issue. We have concerns that the Federal Reserve created a time frame for implementation of their new rules that is too long.

Recommendation:

- Americans and Californians, in particular, do not have the luxury of protracted implementation of rules to protect consumers. CRC encourages Congress to move with all due haste to send this legislation to President Obama's desk for his signature.

Judicial Modification

Although the judicial modification sections were not successfully incorporated into the Helping Families Save Their Homes Act, the House of Representatives understood the need for this important change to assist troubled homeowners. The reasons for our support of the bill remain unchanged: judicial modification would be a meaningful tool to restore balance as borrowers struggle with financial institutions in their negotiations to modify their loans and stay in their homes.

Recommendation:

- CRC supports a speedy reintroduction of another, more rigorous bill to enable judicial modification of mortgage loans for a borrower filing for Chapter 13 bankruptcy.

Neighborhood Stabilization Program

With the same excessive optimism that accompanied Hope for Homeowners, the Neighborhood Stabilization Program (NSP) was also widely promoted as part of the Housing and Economic Recovery Act of 2008. Although the funds haven't been in the hands of municipalities for long enough to make a clear assessment of the program, there are signs that we should all be concerned about the eventual outcomes. As with Hope for Homeowners and MHA, NSP has a voluntary component for banks that may ultimately limit the positive stabilizing impact of the program. Although the feedback is anecdotal, what we have heard is disappointing. There is a very limited time frame for committing the funds. NSP also appears troubled by the fact that banks must voluntarily discount the property by 20 percent of the current appraised value.

We have received reports that investors, who have no incentive to participate in the program, are unwilling to permit the requisite discount

Recommendation:

- NSP, like Hope for Homeowners, may require significant retooling in order to begin to provide projected positive outcomes that our communities desperately need.

Foreclosure Moratorium Provision

It is encouraging to see in the HFSTHA that it is the “sense of Congress” that a foreclosure moratorium is appropriate while the MHA, Hope for Homeowners and the NSP are being implemented. However, it is disappointing that Congress did not take a more forceful stand on this issue. CRC has consistently received feedback from housing counselors that the policies announced by financial institutions are often at odds with the information dispensed by loss mitigation representatives of the same institutions. It is in the best interests of all involved to legislatively create a 180-day foreclosure moratorium, which would give the government sponsored enterprises, the regulators, the financial institutions, and the defaulting or at-risk borrower the opportunity to find their footing so that no American homeowner is left behind and receives the appropriate assistance.

Recommendation:

- Convert the “sense of Congress” into an act of Congress, which would require a foreclosure moratorium.

Multi-Family Affordable Housing

One of the least discussed, but most obvious, reasons for the subprime housing crisis was the shortage of permanent affordable housing. A great deal of what was constructed during the housing bubble was single-family housing, often at market rates. Multi-family permanent affordable housing was a virtual after-thought, outside of the non-profit housing developers who have always focused on this type of project. Now during the foreclosure crisis, with millions of displaced Americans looking for housing, affordable housing is in very short supply. The problem is exacerbated by the fact that housing subsidy contracts are expiring on thousands of privately owned multifamily properties with federally insured mortgages. The expiration of these subsidies means that the stock of affordable housing will shrink further as many of these housing units will be converted to market rates. Fannie Mae has announced plans to preserve and further advance affordable housing, by the design of products and the creation of favorable underwriting enhancements for affordable housing properties. We remain concerned as to whether this is sufficient.

Recommendations:

- Financial institutions should bring their lending for affordable housing development back to the 2006 level.
- There is a need to bolster the Low Income Housing Tax Credit in order to increase the supply of affordable housing. We also recommend that the cash exchange program for tax credits (the TCAP program) be extended for 12 more months. The exchange program is good for only one year, and the tax credit market continues to be soft.
- California needs guarantees for its bonds that will allow the completion of affordable housing developments.
- Dedicated sources of funding are needed for the National Housing Trust Fund to generate revenue for the production or preservation of 1.5 million homes to meet affordable housing needs for the next ten years.

APPENDIX III: CRC critique of Obama Plan



The California Reinvestment Coalition is encouraged by President Obama's recent announcement of the Homeowner Affordability and Stability Plan. Under the initiative, \$75 billion from the bailout fund will be used to help homeowners avoid foreclosure and stabilize neighborhoods. The government stepping in to help not just banks but homeowners and communities is a step in the right direction.

There are many positive elements to the Obama plan, including that it:

- Reaches out to borrowers who are not yet in default.
- Promotes loan modifications that are affordable (31% of income) and sustainable (lowers interest rates for the long term).
- Expresses support for bankruptcy "cramdown" legislation which will help hundreds of thousands get their loans modified by bankruptcy judges, but also help countless others who will benefit from loan servicers having a strong incentive to work with borrowers to avoid bankruptcy.
- Includes resources for tenants and communities.
- Proposes to develop uniform loan modification standards to be used by all servicers, which should help borrowers and counselors negotiate affordable and sustainable loan modifications.
- Includes incentives to help borrowers stay current with payments on modified mortgages.

There are also critical weaknesses in the plan:

- Our main concern is that it does not require participation. The Administration estimates 3-4 million people will be helped to avoid foreclosure. We hope that is the case, and the financial incentives may help. But all prior voluntary efforts to solve the crisis have failed. For example, the Hope 4 Homeowners refinance loan was predicted to help 400,000 borrowers. It has helped 30 to date.
- Most of the \$75 billion that was set aside for homeowners actually goes into paying servicers and investors to do what they should have been doing all along.
- There is no foreclosure moratorium to keep borrowers in their homes while the plan is being adopted. A few lenders have agreed to stop foreclosures until early March, but this is clearly not enough time to implement the plan and ensure that borrowers don't fall through the cracks into foreclosure.
- Principal reductions are not promoted enough, even though this is what is needed most by the millions of Californians who now owe more than their homes are worth.

We urge the Obama Administration to take further action to strengthen the housing plan:

- Include a six-month moratorium on foreclosures to keep families in their homes while giving the plan time to work.
- Urge Congress to pass bankruptcy reform legislation allowing bankruptcy judges the power to modify loans and “cram down” loan principals.
- Require loan servicers to report detailed data about loan modifications so that policymakers and the public can track their progress and hold them accountable. The data should reveal which banks are doing loan modifications, what those loan modifications look like, and which racial, ethnic and income groups are getting the modifications.