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THE CRISIS IN HOUSING AND HOUSING FINANCE: WHAT CAUSED IT? WHAT DIDN'T? WHAT'S NEXT?

ELLEN HARNICK*

INTRODUCTION

The current economic crisis has escalated with surprising speed, and its impacts are so well known that they need hardly be recounted. No sector of American economic life has been left unaffected, and matters are expected to get worse. At the heart of the crisis lies the fundamental problem that too many homeowners have mortgages that are unsustainable.

The problem is not simply that people borrowed more than they could repay, but that loans were structured in a way that was inherently unstable. Outside the market for prime mortgages, the loans most frequently peddled required repeated and costly refinancing that was only possible while home prices continued rising. The same loan balances held in traditional thirty-year fixed-rate loans, or more traditionally structured adjustable-rate mortgages, would not have produced foreclosures on the scale now occurring.

Moreover, the crisis has been permitted to continue for so long that even homeowners who received soundly structured prime mortgages face heightened foreclosure risk because tight credit conditions and stalled housing markets have made it unusually difficult to sell, refinance, or obtain home equity credit. Unless distressed homeowners can restructure their mortgage payments, over eight million of them—one out of every six homeowners with a mort-

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gage—are forecasted to end up in foreclosure over the next five years.¹

These eight million families will be harmed for sure, but the pain will extend far beyond them. Foreclosures negatively affect whole neighborhoods, and the freefall in the housing sector strains the broader economy, as approximately one out of eight U.S. jobs is directly or indirectly related to housing.² Effective measures are urgently needed to help existing homeowners stay in their homes if they can afford to sustain a market-rate mortgage for the value of the home. As taxpayers are called upon to rescue the leaders of the American capital markets, it seems sensible to attempt a clear understanding of what went wrong so that the costly lessons can be properly learned.³

I. HOW WE GOT HERE

A. *Market Structure and Incentives*

The beginning of the twenty-first century saw the rise of a new kind of mortgage lender—mortgage “bankers” that are not actual banks. These companies raise the funds they lend, not through bank deposits, but by borrowing money from investment banks or commercial banks, and repaying that money by selling to investors the right to share in the proceeds of the mortgage payments received from borrowers. This process, known as “securitization,” has disrupted the traditional alignment of interests that formerly existed between borrower and lender.⁴

1. ROD DUBITSKY ET AL., CREDIT SUISSE, FORECLOSURE UPDATE: OVER 8 MILLION FORECLOSURES EXPECTED 1, 3 (2008), <http://www.chapa.org/pdf/ForeclosureUpdateCreditSuisse.pdf> (forecasting that 8.1 million foreclosures will occur over the next four years, corresponding to sixteen percent, or more than one out of seven homes with a mortgage, and further predicting that if the economic recession becomes more severe than forecasted, projected foreclosures will increase to 10.2 million, or one out of five homes with a mortgage).

2. Stevenson Jacobs, *For Bailout to Work, Housing Market Needs to Mend*, USA TODAY.COM, Oct. 5, 2008, http://www.usatoday.com/money/economy/housing/2008-10-04-bailout-housing_N.htm (“Housing is a critical component to the U.S. economy and by extension the availability of credit. Roughly one in eight U.S. jobs depends on housing directly or indirectly—from construction workers to bank loan officers to big brokers on Wall Street.”).

3. For an excellent summary of the current fiscal crisis, see CONG. OVERSIGHT PANEL, SPECIAL REPORT ON REGULATORY REFORM—MODERNIZING THE AMERICAN FINANCIAL REGULATORY SYSTEM: RECOMMENDATIONS FOR IMPROVING OVERSIGHT, PROTECTING CONSUMERS, AND ENSURING STABILITY (2009), <http://cop.senate.gov/documents/cop-012909-report-regulatoryreform.pdf>.

4. See generally Kathleen C. Engel & Patricia A. McCoy, *Turning a Blind Eye: Wall Street Finance of Predatory Lending*, 75 FORDHAM L. REV. 2083 (2007);

A generation ago, the lender held onto a mortgage loan until it was repaid, and so retained a relationship with the borrower and an interest in her financial wellbeing. In contrast, when loans are securitized, the lender has no long-term stake in the outcome. Most subprime loans of recent years were originated by a mortgage broker and remained on the books of the lender only long enough to be pooled with other loans and sold to investors. The originating lender and broker had no stake in the borrower's success or failure thereafter. Not surprisingly, the process has produced a surge in loans with elevated default risk—risks that were known to the broker and lender at the time the loan was originated.

Compounding the danger, market incentives motivated loan originators to make loans with the riskiest terms available. Investors paid loan originators *more* for making loans with high-risk features than they did for standard fixed-rate mortgages with full documentation of income. Explaining the impact of these incentives to the *New York Times*, the CEO of one such mortgage lender said: “The market is paying me to do a no-income-verification loan more than it is paying me to do the full documentation loans What would you do?”⁵ Even borrowers who provided the lender with their tax returns and other full documentation of income were put into “no documentation” loans, often completely unaware, and they paid higher mortgage rates for the privilege. When asked why lenders made so many risky loans, the chief economist of the Mortgage Bankers Association (MBA) replied: “Because investors continued to buy the loans.”⁶

Other market forces had a similarly corrosive effect. The secondary market gave price incentives to lenders and brokers to favor mortgages structured to require repeated refinances because each refinancing produced new origination fees and penalty payments. Similarly, mortgage lenders paid brokers a premium for putting

Christopher L. Peterson, *Predatory Structured Finance*, 28 CARDOZO L. REV. 2185 (2007); ELLEN SCHLOEMER ET AL., CTR. FOR RESPONSIBLE LENDING, *LOSING GROUND: FORECLOSURES IN THE SUBPRIME MARKET AND THEIR COST TO HOMEOWNERS* (2006), available at <http://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosure-paper-report-2-17.pdf>.

5. Vikas Bajaj & Christine Haughney, *More People with Weak Credit Are Defaulting on Mortgages*, N.Y. TIMES, Jan. 26, 2007, at C1.

6. Les Christie, *Subprime Loans Defaulting Even Before Resets*, CNNMONEY.COM, Feb. 20, 2008, http://money.cnn.com/2008/02/20/real_estate/loans_failing_pre_resets/index.htm.

borrowers into higher cost loans than they qualified for.⁷ Capping the array of misdirected incentives, investors have been permitted to disclaim liability for abuse and illegality in the loan origination process. As a result, when a loan is sold to investors, an abused homeowner generally loses the right to raise the abuse as a defense to foreclosure.⁸

The circle of disclaimed responsibility was thus complete—loan originators had little reason to care whether the loans could be sustained, and investors had little reason to care whether there was illegality or abuse in the loan origination. Lenders and investors were poised to profit most from loans whose sustainability was least, and they were shielded from the consequences. The result was exactly as could be expected—borrowers were put into loans that were far worse than was necessary or advisable.

For many years, this scheme proved highly profitable for lenders and investors alike. In this way, securitization facilitated a large transfer of wealth to lenders, Wall Street, and global investors, from the most vulnerable segment of the American middle class, who are now losing their homes to boot. The flood of foreclosures today goes beyond the typical foreclosures of years past, which were generally precipitated by catastrophic and unforeseen events such as job loss, divorce, illness, or death. Such factors, of course, continue to produce foreclosures, and will do so increasingly as job dislocations rise with declining economic conditions. But the striking feature of this crisis is that, at its core, it is driven by the very design of the loans at issue. The loan products at the heart of the crisis were structured in a way that made widespread failure virtually inevitable.

B. *The Loan Products at the Heart of the Crisis*

For the past five years, the most common loan made in the subprime mortgage market was a so-called “hybrid adjustable rate mortgage,” colloquially known as a “2/28” or “3/27” because its in-

7. See Lauren E. Willis, *Against Financial-Literacy Education*, 94 IOWA L. REV. 197, 247 (2008).

8. This is the result of the “holder in due course” doctrine, which protects purchasers of negotiable instruments who acquire title “for value, . . . in good faith, . . . [and] without notice” of any defect. See UNIF. COMMERCIAL CODE § 3-302, 2A U.L.A. 342 (2004). This is not a hard and fast rule—homeowners who are able to retain good counsel are sometimes able to overcome the doctrine. But typically the homeowner’s only recourse is to sue the loan originator. Few foreclosed homeowners have the resources to pursue this relief, and with many loan originators now in bankruptcy or closed, homeowners cannot recover in any event.

terest rate was fixed for two or three years out of a thirty-year term. The interest rate would increase sharply at the end of the fixed-rate period, generally without regard to whether interest rates in the economy stayed flat, or even fell. A typical loan originated in 2006, for example, would start at the rate of roughly eight percent, and two years later would rise to ten percent, and, depending upon the movement of interest rates generally, would continue to rise every six months up to a cap of roughly thirteen percent.⁹ To avoid this rate increase, a borrower would have to sell or refinance before the rate reset—and would pay a steep “prepayment penalty,” typically at least three percent of the loan balance, for doing so.¹⁰

Because the typical borrower did not have cash on hand sufficient to cover the prepayment penalties and refinancing fees, these would be paid from the proceeds of the new loan. Accordingly, the loan balance would grow with each refinancing. Of course, this stripped away much of the economic benefit of homeownership, but it was at least possible—and extremely lucrative for brokers, lenders, and investors—as long as home prices kept rising. Once home prices declined, a rise in foreclosures predictably followed.

Tragically, most borrowers who received these loans qualified for better, more sustainable loans. A study for the *Wall Street Journal* found that of the subprime loans originated in 2006 that were packaged into securities and sold to investors, sixty-one percent “went to people with credit scores high enough to often qualify for conventional [prime] loans with far better terms.”¹¹ And even those borrowers who did not qualify for prime loans could have received sustainable, thirty-year fixed-rate loans, for at most fifty to eighty basis points above the introductory rate on the unsustainable exploding adjustable rate mortgage (ARM) loans they were given.¹² This fifty to eighty basis point increase is modest compared with the three hundred basis point prepayment penalty (plus addi-

9. See Illustrations of Consumer Information for Hybrid Adjustable Rate Mortgage Products, 73 Fed. Reg. 30,997, 30,999 & n.7 (2008).

10. See John Farris & Christopher A. Richardson, *The Geography of Subprime Mortgage Prepayment Penalty Patterns*, 15 HOUSING POL’Y DEBATE 687, 689 (2004).

11. Rick Brooks & Ruth Simon, *Subprime Debacle Traps Even Very Credit-Worthy: As Housing Boomed, Industry Pushed Loans to a Broader Market*, WALL ST. J., Dec. 3, 2007, at A1; see also CONG. OVERSIGHT PANEL, *supra* note 3, at 31 n.51 (collecting sources for the proposition that a significant proportion of borrowers who received high-cost subprime loans qualified for prime-rate loans).

12. See Letter from the Coalition for Fair and Affordable Lending to Mark Pearce, Deputy Comm’r of Banks, Office of the Comm’r of Banks (Jan. 26, 2007) (on file with author).

tional refinancing fees) that the borrower had to pay to refinance the 2/28 loan before the end of the second year. Thus, even loans that did not end in foreclosure were far more costly to the borrower than the more sustainable loans that were available.

It is doubtful that most borrowers fully understood the actual cost of these loans—the rate increases were expressed as LIBOR (the London Interbank Offered Rate) plus a margin. It is even more doubtful that they appreciated the sheer irrationality of accepting these loans, given the other terms for which they qualified, but were not offered. Mortgage brokers and lenders, however, were fully aware that most of the borrowers who received these exploding loans could not sustain them once the rate reset, and that substantial home equity would be paid over to the lender with each refinancing. They also were aware that better loan terms were available. When federal regulators finally proposed in 2007 to require lenders to determine whether borrowers would be able to afford their loans once the monthly payments increased, the response from industry was telling. Rather than embrace this common sense standard, many industry leaders resisted it.¹³ In an argument that

13. Countrywide wrote to the Office of Thrift Supervision objecting to this requirement except in narrowly limited circumstances. Specifically, Countrywide argued that this standard should not apply to any loan (such as the subprime 3/27) whose fixed-rate period lasts for three years or more. Additionally, Countrywide said it should not apply to borrowers (even those with 2/28 loans) who fully document their income and have equity in the home equal to ten percent or more of the loan balance. It further claimed that the standard should not apply even to borrowers who received 2/28 loans and did *not* document their income, so long as the borrower had equity in the home equal to at least fifteen percent of the loan. Letter from Mary Jane M. Seebach, Managing Dir. for Public Affairs, Countrywide, to Office of Thrift Supervision, U.S. Dep't of the Treasury (May 7, 2007), *available at* <http://files.ots.treas.gov/comments/0dbce609-691d-456b-9b30-867f922c1b65.pdf>.

The American Securitization Forum (ASF) wrote to the Office of the Comptroller of the Currency urging against the imposition of such standards. Letter from George P. Miller, Executive Dir., Am. Securitization Forum, to Office of the Comptroller of the Currency, U.S. Dep't of the Treasury (May 7, 2007), *available at* <http://www.americansecuritization.com/uploadedFiles/ASFSubprimeProposalCommentLetter.pdf>.

The Mortgage Bankers Association wrote to the Federal Reserve Board in August 2007, that

Lenders have every incentive to properly underwrite a borrower's ability to repay a mortgage loan. . . .

MBA fears that promulgating rules under this authority to limit or restrict underwriting standards could have a detrimental and immediate impact on the cost and availability of residential mortgage credit across all market sectors. . . .

. . . .
Requiring that ARMS . . . be underwritten to the fully indexed and fully amortizing rate threatens their availability.

should have been recognized as an admission of irresponsible lending, Countrywide estimated that almost sixty percent of Countrywide borrowers who received subprime hybrid ARM loans in the last quarter of 2006 would not have met this standard.¹⁴

II. WHAT DIDN'T CAUSE THE CRISIS—SCAPEGOATS AND RED HERRINGS

One thing is certain: the flood of foreclosures was neither unforeseeable nor unforeseen. Housing finance experts, consumer advocates, academics, and economists had warned about the improprieties in the subprime mortgage market for the past five years.¹⁵ Arguing that misaligned market incentives were rewarding risky and frequently exploitive lending practices, the Center for Responsible Lending,¹⁶ and other consumer groups, urged Congress and federal banking regulators to step in and prohibit the most destructive of the practices then prevalent and growing in popularity, and to reintroduce the tenets of sound lending. These principles include establishing a borrower's ability to repay the loan, documenting the borrower's income, and prohibiting the payment of premiums to mortgage brokers as a reward for steering borrowers into more expensive loans than those for which they were qualified.

In fact, serious efforts to avert or mitigate the foreclosure crisis before it escalated were underway at least since 2006, and had they been implemented, the scale of the current crisis would have been substantially diminished. Sadly, these efforts were assiduously (and

Letter from John Robbins, Chairman, Mortgage Bankers Ass'n, to Jennifer J. Johnson, Sec'y, Bd. of Governors of the Fed. Reserve Sys. 21 (Aug. 15, 2007) (on file with author).

The American Bankers Association (ABA) and America's Community Bankers (ACB) objected to extending this requirement to mortgage loans other than subprime, which would exclude many of the Alt-A and payment-option ARMs that are failing today. See Letter from Mark Tenhundfeld, Dir., Office of Regulatory Policy, Am. Bankers Ass'n, and Robert Davis, Executive Vice President and Managing Director, Government Relations, America's Community Bankers, to Jennifer J. Johnson, Sec'y, Bd. of Governors of the Fed. Reserve Sys. (Aug. 15, 2007) (on file with author).

14. Letter from Mary Jane M. Seebach, *supra* note 13, at 6.

15. For full disclosure, I note that these include my employer, the Center for Responsible Lending, which, since 2006, has been warning of a coming foreclosure epidemic and has urged solutions to mitigate the crisis. See, e.g., ELLEN SCHLOEMER ET AL., *supra* note 4, at 15.

16. Center for Responsible Lending, <http://www.responsiblelending.org/> (last visited May 15, 2009).

successfully) opposed by the lending industry, and particularly the non-bank mortgage lenders at the heart of this calamity.¹⁷

At first, industry leaders claimed that their lending practices were sound, and that no foreclosure crisis was coming. As late as September 2006, a senior spokesman for the MBA testified to the Senate Committee on Banking, Housing and Urban Affairs that: “These products [i.e., hybrid adjustable rate mortgages] are being effectively underwritten and managed today. . . . Our simple message is that the mortgage market works and the data demonstrate that fact.”¹⁸ When this proved false, industry leaders claimed that even if there might be a rise in foreclosures, it would not extend beyond the subprime market, and certainly would not impact the broader economy. In May 2007, another senior member of the MBA announced: “As we can clearly see, this is not a macro-economic event. No seismic financial occurrence is about to overwhelm the U.S. economy.”¹⁹ When this claim became demonstrably unsustainable, industry leaders refocused their efforts toward pushing lawmakers to reject any proposed solution beyond “encouragement” to lenders to voluntarily modify failing loans, claiming that voluntary measures would suffice. In January 2008, the Chairman-elect of the MBA characterized as a “myth” the claim that “Congress Has Not Done Enough to Address the Sub-

17. See, e.g., *Growing Mortgage Foreclosure Crisis: Identifying Solutions and Dispelling Myths: Hearing Before the Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary*, 110th Cong. (2008) [hereinafter *Growing Mortgage Foreclosure Crisis*], (statement of David Kittle, Chairman-Elect, Mortgage Bankers Association), available at <http://judiciary.house.gov/hearings/pdf/Kittle080129.pdf>; *Straightening Out the Mortgage Mess: How Can We Protect Home Ownership and Provide Relief to Consumers in Financial Distress: Hearing Before the Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary*, 110th Cong. 13 (2007) [hereinafter *Straightening Out the Mortgage Mess*] (statement of Steve Bartlett, President and CEO, Financial Services Roundtable), available at <http://judiciary.house.gov/hearings/printers/110th/37978.PDF>; *Calculated Risk: Assessing Non-Traditional Mortgage Products: Hearing Before the Subcomm. on Housing and Transportation and Subcomm. on Economic Policy of the S. Comm. on Banking, Housing, and Urban Affairs*, 110th Cong. (2006) [hereinafter *Calculated Risk*] (statement of Robert D. Broeksmit, CMB Chairman, Mortgage Bankers Association), available at http://banking.senate.gov/public/_files/broeksmit.pdf; Peter G. Miller, *Foreclosures—No Worries, No Vision*, OURBROKER, Sept. 19, 2008, <http://www.ourbroker.com/?p=1879>.

18. *Calculated Risk*, *supra* note 17 (statement of Robert D. Broeksmit).

19. Miller, *supra* note 17 (statement of John Robbins, Chairman of the Mortgage Bankers Association); Press Release, Mortgage Bankers Ass'n, John M. Robbins, CMB, Chairman of Mortgage Bankers Association Delivers Newsmakers Speech at National Press Club Today on Need to Protect Consumers' Access to Credit (May 22, 2007), <http://www.mortgagebankers.org/NewsandMedia/PressCenter/54451.htm>.

prime Crisis.”²⁰ Along similar lines, the President and CEO of the Financial Services Roundtable testified in September 2007 that: “[t]he good news is there is good news on the home mortgage front. . . . Chapter 13 [of the Bankruptcy Code] is successful in stopping foreclosures in 97% of cases. . . . I am reminded of the old adage, ‘if it isn’t broke, don’t fix it.’”²¹

The spectacular falsity of these claims should undermine industry’s influence on such matters. Unfortunately, industry talking points on the causes of the crisis continue to gain traction. Industry spokespeople have identified three main culprits with whom, they claim, most of the responsibility resides. If the industry agenda is successful, legislative and regulatory responses will focus on these three scapegoats alone, sparing lenders and Wall Street the basic standard-setting that is so urgently needed. The scapegoats, discussed in turn, are greedy homeowners, the Community Reinvestment Act, and Fannie Mae and Freddie Mac.

A. *Homeowners Who Received Unfair and Deceptive Loans*

It is now frequently asserted that the housing crisis was caused by borrowers who took on mortgages when they never should have owned their homes in the first place. The industry’s primary error, it is said, was in lowering lending standards to enable people to buy homes beyond their reach. The fault was the excessive folly of extending homeownership to people who could not handle it. The primary culprits, then—or, at least equally culpable—were the homeowners who stretched for something they knew or should have known they could not achieve.

This claim misapprehends the way mortgages have been marketed to consumers in the United States. Former Federal Reserve Board Chairman Alan Greenspan concluded that the demand for risky, high-cost loans was driven by mortgage brokers and lenders—not by borrowers.²² No doubt there were borrowers who fully understood what they were getting into, who lied to their broker and lender, or who exploited the system for the chance of profit.

20. *Growing Mortgage Foreclosure Crisis*, *supra* note 17, at 12 (statement of David Kittle).

21. *Straightening Out the Mortgage Mess*, *supra* note 17, at 13 (statement of Steve Bartlett).

22. See Jon Meacham & Daniel Gross, *The Oracle Reveals All (The World According to Alan Greenspan)*, NEWSWEEK, Sept. 24, 2007, at 32, 33.

But like the supposedly high-living “welfare queen”²³ of the Reagan era, the stereotype of the reckless or fraudulent borrower helps to justify a harshness toward the individuals concerned. Yet, it does not fairly apply to most of the real people and transactions commonly involved.

Moreover, even the most unsympathetic borrower who received a 2/28 subprime loan could have received a less costly and more sustainable thirty-year fixed rate loan.²⁴ Even these borrowers were taken advantage of by mortgage brokers and lenders who were happy to pass the risks onto far-flung investors.

Contrary to the claim that most of the borrowers who received subprime loans did so to buy homes they could not afford is the fact that the overwhelming majority of subprime mortgages made from 1998 through 2006 went to borrowers who already owned their own homes—approximately sixty percent were refinances, and thirty percent were for families who were moving from one home to another.²⁵ Far from expanding homeownership to people who otherwise could not afford it, subprime lending actually resulted in a net *reduction* in homeownership.²⁶

Nor is there merit to the popular claim that distressed homeowners were borrowing aggressively to purchase oversized “McMansions.” Data collected under the Home Mortgage Disclosure Act shows that the average subprime loan amount (which includes loans made in high-priced housing markets like California) was \$205,700.²⁷ As the former Chair of the MBA subsequently acknowledged, the loans at issue were “extremely risky” and the lenders who made them were frequently more focused on money and commissions than on their customers’ interests.²⁸ The effort to shift the blame to borrowers overlooks the more significant market forces at work.

23. See, e.g., Paul Krugman, *Republicans and Race*, N.Y. TIMES, Nov. 19, 2007, at A23 (“Reagan repeatedly told the bogus story of the Cadillac-driving welfare queen—a gross exaggeration of a minor case of welfare fraud.”).

24. See *supra* note 11 and accompanying text.

25. See CTR. FOR RESPONSIBLE LENDING, SUBPRIME LENDING: A NET DRAIN ON HOMEOWNERSHIP 3 & n.4 (2007), <http://www.responsiblelending.org/mortgage-lending/research-analysis/Net-Drain-in-Home-Ownership.pdf>.

26. *Id.* at 3.

27. Based on data collected under the Home Mortgage Disclosure Act for loans made in 2006, the average subprime loan amount for owner-occupied, first lien, single-family homes was \$205,700. The median price was \$159,000.

28. Kate Berry, *Wachovia Alum Has Tips for an Industry Rebound*, AM. BANKER, Sept. 15, 2008, at 10.

B. *The Community Reinvestment Act*

The second scapegoat is the Community Reinvestment Act (CRA),²⁹ claimed to have produced the crisis by allegedly forcing lenders to make risky loans to low- and moderate-income families and in communities of color. This is not even a colorable claim. Most subprime lending was done by entities that *are not covered* by the CRA.

The subprime lending at the heart of the crisis was done primarily by non-bank lenders, which are not subject to CRA requirements.³⁰ In fact, a 2008 study revealed that “banks subject to CRA and their affiliates originated or purchased only six percent of the reported high cost loans made to lower-income borrowers within their CRA assessment areas.”³¹ In any event, the CRA was passed in 1977, and was in effect for more than two decades before subprime lending appeared.³² It had no role in creating the current crisis.

29. Community Reinvestment Act of 1977, Pub. L. No. 95-128, 91 Stat. 1147 (codified as amended at 12 U.S.C. §§ 2901-2908 (2006)).

30. Approximately eighty percent of subprime loans were made by players not covered under CRA. See *The Community Reinvestment Act: Thirty Years of Accomplishments, but Challenges Remain: Hearing Before the H. Comm. on Financial Services*, 110th Cong. 38 (2008) (statement of Michael Barr, Professor of Law, University of Michigan Law School), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=f:41181.pdf at 38 [hereinafter *Hearing on the Community Reinvestment Act*] (“More than half of subprime loans were made by independent mortgage companies, another 30 percent by affiliates of banks or thrifts, and the remaining 20 percent were made by banks and thrifts [covered by CRA].”).

31. Press Release, Office of the Comptroller of the Currency, Comptroller Dugan Says CRA Not Responsible for Subprime Lending Abuses (Nov. 19, 2008), <http://www.occ.treas.gov/ftp/release/2008-136.htm>. Indeed, the CRA seems to have had the opposite impact that its critics claim. A recent study found that CRA-covered banks were less likely than other lenders to make risky, high-cost loans, and were more likely to retain originated loans in their portfolio than to sell them to investors. See TRAIGER & HINCKLEY LLP, *THE COMMUNITY REINVESTMENT ACT: A WELCOME ANOMALY IN THE FORECLOSURE CRISIS—INDICATIONS THAT THE CRA DETERRED IRRESPONSIBLE LENDING IN THE 15 MOST POPULOUS U.S. METROPOLITAN AREAS* 3, 8 (2008), http://www.traigerlaw.com/publications/traiger_hinckley_llp_cra_foreclosure_study_1-7-08.pdf.

32. For further discussions of how CRA has aided rather than harmed communities, see *Hearing on the Community Reinvestment Act*, *supra* note 26, app. at 150 (statement of Ann Jaedicke, Deputy Comptroller for Compliancy Policy, Office of the Comptroller of the Currency) (noting that “over half of subprime mortgages of the last several years—and the ones with the most questionable underwriting standards—were originated through mortgage brokers for securitization by nonbanks, including major investment banks”); MICHAEL S. BARR, BROOKINGS INST., *CREDIT WHERE IT COUNTS: MAINTAINING A STRONG COMMUNITY REINVESTMENT ACT* 2 (2005), http://www.brookings.edu/~media/Files/rc/reports/2005/05metropolitanpolicy_barr/20050503_cra.pdf (“Encouraged by the law, banks and thrifts have developed expertise in serving

C. *Fannie Mae and Freddie Mac*

The third scapegoat is, collectively, the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), the government-sponsored mortgage entities (GSEs). Many in industry and government have claimed that the primary culprits were not private industry, but the GSEs. The basis of the argument is the decision of the GSEs to purchase subprime securities from the Wall Street firms that securitized subprime loans, and to follow Wall Street into purchasing so-called “Alt-A” loans, which fall between the categories of prime and subprime. According to this claim, there is no need to further regulate the Wall Street firms. Instead, it is necessary to regulate only Fannie Mae and Freddie Mac, long resented by many on Wall Street because of the competitive benefits they enjoy by virtue of their presumed government backing.³³ The claim is further made that the GSEs’ movement into these risky purchases was caused by the “affordable housing goals” imposed on them by Congress.³⁴

These claims are similarly unsustainable. While Fannie Mae and Freddie Mac should be strongly criticized for purchasing subprime mortgage-backed securities, their role in purchasing and securitizing problem loans was small in comparison to that of private industry. *All subprime mortgage-backed securities were created by Wall Street.*³⁵ Fannie Mae and Freddie Mac did not securitize any of these loans because the loans did not meet their standards.³⁶

low-income communities.”); Janet L. Yellen, President and CEO, Fed. Reserve Bank of S.F., Opening Remarks to the 2008 National Interagency Community Reinvestment Conference, (Mar. 31, 2008), <http://www.frbsf.org/news/speeches/2008/0331.pdf> (noting that “studies have shown that the CRA has increased the volume of responsible lending to low- and moderate-income households”).

33. See, e.g., Laura Mandaro, *Behind Anti-GSE Sentiment, Some Simple Math*, AM. BANKER, Mar. 30, 2001, at 1 (“Bankers and trade groups say their business is squeezed by the lower cost the agencies pay for capital.”).

34. See PETER J. WALLISON & CHARLES W. CALOMIRIS, AM. ENTER. INST. FOR PUB. POLICY RESEARCH, *THE LAST TRILLION-DOLLAR COMMITMENT: THE DESTRUCTION OF FANNIE MAE AND FREDDIE MAC* 1, 8 (2008), http://www.aei.org/docLib/20080930_Binder1.pdf.

35. See, e.g., Kevin Conner, NAT’L TRAINING & INFO. CTR. ET AL., *WALL STREET AND THE MAKING OF THE SUBPRIME DISASTER: HOW INVESTMENT BANKS FUELED THE SUBPRIME BOOM, MADE BILLIONS, AND CAUSED THE CURRENT FORECLOSURE CRISIS* (2007), http://www.northwestbronx.org/wallstreet_subprime.pdf; Michael Hudson, *Debt Bomb—Lending a Hand: How Wall Street Stoked the Mortgage Meltdown—Lehman and Others Transformed the Market for Riskiest Borrowers*, WALL ST. J., June 27, 2007, at A1.

36. See Aaron Pressman, *Fannie Mae and Freddie Mac Were Victims, Not Culprits*, BUSINESSWEEK, Sept. 26, 2008, <http://www.businessweek.com/investing/insights/>

While Fannie Mae and Freddie Mac *purchased* subprime mortgage-backed securities that Wall Street created, they were relative latecomers to a market that had been created by private sector firms. The government-sponsored entities did not create a market for unsellable securities. Rather, Fannie Mae and Freddie Mac purchased the least risky, most sellable tranches of these securities.³⁷ Had the GSEs not bought them, numerous other investors would have been eager to do so.

The source of both entities' losses, and the reason that they are no longer independent, are not these subprime loans to low-wealth borrowers. Rather, the fault lies with the so-called "Alt-A" loans that they purchased, which were made to relatively wealthy borrowers, without adequate documentation of income and savings.³⁸ Fannie Mae and Freddie Mac should be criticized for supporting these loans, but as with subprime loans, the GSEs followed Wall Street into this market.³⁹

blog/archives/2008/09/fannie_mae_and.html; see also ADAM B. ASHCRAFT & TIL SCHUERMANN, FED. RESERVE BANK OF N.Y., UNDERSTANDING THE SECURITIZATION OF SUBPRIME MORTGAGE CREDIT (2008), http://www.newyorkfed.org/research/staff_reports/sr318.pdf.

37. TIMOTHY P. FLYNN & PAUL A. RESTUCCIA, HOUSE COMM. ON THE BUDGET, ROOTS OF THE FINANCIAL CRISIS: THE ROLE OF GOVERNMENT POLICY 6 (2009), http://www.house.gov/budget_republicans/press/2007/pr20090108rootcauses.pdf. These securities are divided into tranches, with the AAA tranches being the least risky, and for this reason the easiest to sell to investors. Fannie Mae and Freddie Mac purchased only AAA tranches. The harder securities to sell are those from the subordinate tranches. These were made palatable to investors through the creation of collateralized debt obligations, which repackaged BBB tranches into, in part, a new set of AAA tranches, which helped to further market the securities. It is the author's understanding that the GSEs did not invest in collateralized debt obligations (CDOs). It was the ability to fund the riskiest portion of subprime mortgage loans that made possible the explosive growth of subprime lending. See PERSHING SQUARE CAPITAL MGMT., L.P., WHO'S HOLDING THE BAG (2007), <http://www.designs.valueinvestorinsight.com/bonus/pdf/IraSohnFinal.pdf>.

38. See FANNIE MAE, FANNIE MAE 2008 Q2 10-Q INVESTOR SUMMARY 36 (2008), http://www.fanniemae.com/media/pdf/newsreleases/2008_Q2_10Q_Investor_Summary.pdf. By the middle of 2008, Alt-A loans accounted for roughly eleven percent of Fannie Mae and Freddie Mac's risk exposure, but almost fifty percent of their combined losses. See FED. HOME LOAN MORTGAGE CORP., U.S. SEC. & EXCH. COMM'N, FORM 10-Q: QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934—FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2008, at 70-71, <http://www.sec.gov/Archives/edgar/data/1026214/000102621408000026/f58905e10vq.htm>; FED. NAT'L MORTGAGE ASS'N, U.S. SEC. & EXCH. COMM'N, FORM 10-Q: QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934—FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2008, at 6, <http://www.fanniemae.com/ir/pdf/earnings/2008/q22008.pdf>.

39. See Charles Duhigg, *Pressured to Take More Risk, Fannie Reached Tipping Point*, N.Y. TIMES, Oct. 4, 2008, at A1 (noting that in 2004, Angelo Mozilo, then chief

Nor can it be claimed that pressure to meet affordable housing goals drove the entities to invest in Alt-A mortgages. Because of the income characteristics of Alt-A borrowers, the entities' investment in these loans would have actually *diluted* their affordable housing ratios. Other pressures—to boost shareholder returns and keep up with industry—drove the decision. While the entities did seem to be eligible for affordable housing credit for their purchase of subprime securities, it seems likely that these other pressures were similarly responsible for this result as well.

Therefore, there is no merit to the claim that it was Fannie Mae and Freddie Mac, rather than Wall Street, which drove the irresponsible practices that produced the crisis. The entities can be fairly criticized for purchasing the subprime mortgage-backed securities created by industry and for purchasing “no doc” Alt-A loans. However, these criticisms are more aptly applied to the investment banks and private investors who enabled, drove, and deepened the crisis.

III. GETTING BACK ON TRACK

The economic crisis began with the foreclosure epidemic, and addressing the epidemic remains an essential part of our economic recovery. This requires that loan servicers—the companies that manage the loans for the investor pools—modify distressed loans to render them sustainable in those instances where the homeowner can afford a market-rate loan. This generally will entail reducing the interest rate to current market levels and writing down the principal balance to the current value of the home. Servicers are reluctant to reduce loan balances, and some popular sentiment views such a reduction as an undeserved gift. However, without this, the steady stream of foreclosures will not abate.

Despite broad bipartisan support for the view that loan modifications are essential to stemming the tide of foreclosures, and notwithstanding a series of government-led efforts over the last two years to encourage servicers to meaningfully modify failing loans, servicers have failed to modify more than a small percentage of fail-

executive at Countrywide, reportedly demanded that Fannie Mae buy the lender's riskier loans or be shut out of the market for its less risky loans).

ing mortgages.⁴⁰ This failure is largely attributable to several significant structural problems.⁴¹

First is the fear of investor lawsuits. Loan modifications will have different impacts on different classes of investors, and servicers will worry about being sued by someone no matter what type of modification the servicer chose.⁴² Additionally, the servicers may be limited by the so-called "Pooling and Servicing Agreements," which govern the servicers' rights and obligations with respect to the investors to provide adequate authority to modify loans. Some limit the types of modifications servicers can make, and some limit the number or percentage of loans that can be modified.⁴³

Second, between one-third and one-half of the homes purchased in 2006 with subprime mortgages have second mortgages,⁴⁴ and many more homeowners have opened home equity lines of credit secured by their home. The holder of the first mortgage will generally not provide modifications simply to free up homeowner resources to make payments on a formerly worthless junior lien or to modify loans where there is a second mortgage in default because the second mortgage-holder could force the home into foreclosure.⁴⁵

40. See ROD DUBITSKY ET AL., CREDIT SUISSE FIXED INCOME RESEARCH, SUBPRIME LOAN MODIFICATIONS UPDATE 2 (2008) (noting that new monthly loan modifications amount to only 3.5% of delinquent subprime loans, and even of these limited modifications, a significant proportion actually increase the homeowner's monthly payments).

41. See generally Larry Cordell et al., *The Incentives of Mortgage Servicers: Myths and Realities* (Fed. Reserve Bd. Working Paper 2008-46, 2008), <http://www.federalreserve.gov/Pubs/feds/2008/200846/revision/200846pap.pdf>.

42. See Vikas Bajaj & Barry Meier, *Some Hedge Funds Argue Against Proposals to Modify Mortgages*, N.Y. TIMES, Oct. 23, 2008, at B5.

43. See CREDIT SUISSE, THE DAY AFTER TOMORROW: PAYMENT SHOCK AND LOAN MODIFICATIONS (2007) (noting specific examples of PSAs with various modification restrictions, including five percent by balance, five percent by loan count, limits on frequency, and limits on interest rate); see also *Helping Families Save Their Homes: The Role of Bankruptcy: Hearing Before the S. Comm. on the Judiciary*, 110th Cong. (2008) (statement of Adam J. Levitin, Professor, Georgetown University Law Center), available at <http://www.law.georgetown.edu/faculty/levitin/documents/LevitinSenateJudiciaryTestimony.pdf>.

44. IVY L. ZELMAN ET AL., CREDIT SUISSE, MORTGAGE LIQUIDITY DU JOUR: UNDERESTIMATED NO MORE 5 (2007), <http://billcara.com/CS%20Mar%2012%202007%20Mortgage%20and%20Housing.pdf>.

45. As Credit Suisse reports, "it is often difficult, if not impossible, to force a second-lien holder to take the pain prior to a first-lien holder when it comes to modifications," which dooms the effort. ROD DUBITSKY ET AL., *supra* note 40, at 8.

Finally, there is the problem of perverse incentives and limited servicer staff and technology.⁴⁶ Although servicers are often not paid for modifications, they are reimbursed for foreclosure costs. Federal economists conclude, “loan loss mitigation is labor intensive and thus raises servicing costs, which in turn make it more likely that a servicer would forego loss mitigation and pursue foreclosure even if the investor would be better off if foreclosure were avoided.”⁴⁷

Largely due to these structural impediments, only a small percentage of failing loans have been modified. In October 2008, Credit Suisse reported that only 3.5% of delinquent subprime loans received modifications in August 2008. Of those modifications that have occurred, many actually *increased* the borrower’s monthly payments by adding past-due payments onto the outstanding loan balance.⁴⁸ A recent study of nearly four million subprime and alt-A mortgages found that forty-five percent of modifications increased the borrower’s monthly payment.⁴⁹

Loan servicers’ inability to overcome these impediments will doom any proposed solution that relies solely on servicers’ voluntary agreement to modify loan terms. Any effective solution must be capable of implementing an economically rational loan modification even where the servicer is unable to do so voluntarily. The Obama Administration recently announced its plan to encourage lenders and loan servicers to modify failing mortgages.⁵⁰ The Administration’s plan marks a significant improvement over earlier attempts to encourage lenders and servicers to voluntarily modify failing loans in that it addresses some of the major barriers to effective modifications. Specifically, the plan offers servicers certain incentive payments for modifications that meet particular affordability measures, and rewards them further for each year (up to three) that modification is sustained. This should counteract some of the misaligned incentives that have made servicers reluctant to modify loans to date. Another provision that offers payments to investors as well as servicers for qualifying loan

46. *Id.* at 3, 9, 23.

47. Cordell, *supra* note 41, at 15.

48. ROD DUBITSKY ET AL., *supra* note 40, at 2.

49. ALAN M. WHITE, *DELEVERAGING AMERICAN HOMEOWNERS: DECEMBER 18, 2008 UPDATE TO AUGUST 2008 REPORT 2* (2008), <http://www.hastingsgroup.com/Whiteupdate.pdf>.

50. *See Making Home Affordable*, <http://www.financialstability.gov/roadtostability/homeowner.html> (last visited May 15, 2009) (detailing the administration’s plan).

modifications made before an at-risk borrower has defaulted should offset some servicer concerns about investor objections.⁵¹ Indeed, recently, the Chairman of the MBA, whose members include the major servicers, has expressed the view that servicers will participate.⁵² However, as he also noted, in many cases servicers will remain unwilling or unable to modify the mortgage.⁵³

In such cases, the most effective way to break the deadlock is to empower a court to implement an economically rational solution when the parties cannot do so on their own.⁵⁴ A court order would resolve the servicers' fear of investor lawsuits because no liability can arise from compliance with a court order. Moreover, it would overcome servicers' misaligned financial incentives and lack of qualified staff, and would solve the problem of junior lien holders, whose cooperation can be compelled by the court. This is what bankruptcy courts do every day, for all manner of debts, except for mortgages on primary residences.

Currently, a loan on a family's primary residence is the only secured debt that cannot be restructured in a Chapter 13 bankruptcy payment plan.⁵⁵ The home mortgage exception dates to the enactment of the current bankruptcy code in 1978, and was included in the Code as an advantage to mortgage lenders. At the time, mortgage lending was a conservative business, and home mortgages were nearly all fixed-interest-rate instruments with low loan-to-value ratios. If a family ran into financial trouble, the home mortgage itself was rarely the source of the distress. Moreover, lenders held mortgages on their own books and so had the incentive and ability to modify loans when appropriate.

51. See generally Ellen Harnick, Testimony before the House Committee on Financial Services, Subcommittee on Housing and Community Opportunity, *Examining the Making Home Affordable Program* (Mar. 19, 2009), http://www.house.gov/apps/list/hearing/financialsvcs_dem/hr031909.shtml.

52. See *NewsHour with Jim Lehrer: Public, Bankers, Analysts Debate Merits of Obama's Foreclosure* (PBS television broadcast Feb. 19, 2009), available at http://www.pbs.org/newshour/bb/business/jan-june09/foreclosures_02-19.html (broadcasting statements by Mortgage Bankers Association President and CEO John Courson).

53. *Id.*

54. The administration's plan similarly calls for legislation to "allow judicial modifications of home mortgages during bankruptcy for borrowers who have run out of options." Press Release, U.S. Dep't of the Treasury, Homeowner Affordability and Stability Plan, Executive Summary (Feb. 18, 2009), <http://www.treasury.gov/press/releases/tg33.htm>.

55. The relevant provision is found at § 1322(b)(2) of the bankruptcy code, which empowers the court to "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of unsecured claims" 11 U.S.C. § 1322(b)(2) (2006).

Whatever the merits of the exclusion in 1978, the mortgage market has shifted considerably since then. In the current economic downturn, homeowners across the economic spectrum are more vulnerable to foreclosure because fallen property values and stressed credit markets limit the ability to sell or refinance homes. If borrowers cannot restructure these debts, they will be forced into foreclosure. Today, the home mortgage exception is contributing to the downward economic spiral.⁵⁶

There is clear precedent for eliminating the home mortgage exception. Congress implemented a similar measure in response to the farm crisis of the 1980s when an economic downturn and depressed land values were pushing family farmers into foreclosure. Congress enacted the Family Farmer Bankruptcy Act of 1986,⁵⁷ for the specific and express purpose of permitting bankruptcy judges to modify mortgages on family farms. The Act permitted adjustment of interest rates, and the reduction of principal to fair market value in order to help distressed farmers avoid foreclosure, including on their primary residence. Chapter 12 proved effective in helping farmers through the crisis. In fact, after being extended several times, the Act was made a permanent part of the Bankruptcy Code in 2005 with bipartisan support.⁵⁸

The current proposal provides protections for borrowers that go beyond those of the Family Farmer Bankruptcy Act.⁵⁹ Interest rates would be set at current market rates plus a reasonable risk premium; the loan term could not exceed forty years (less the number of years the borrower has already had the loan); and the principal balance could not be reduced below the current fair market

56. See, e.g., *Growing Mortgage Foreclosure Crisis*, *supra* note 17 (statement of Mark Zandi, Chief Economist and Co-founder, Moody's Economy.com) (discussing the need for legislation to eliminate Chapter 13's primary-residence exception and noting that "[t]here is no more efficacious way to short-circuit this developing cycle and forestall a severe recession than passing this legislation"). Lewis Ranieri, founder of Hiperion Equity Funds and generally considered the father of the securitized residential mortgage market, noted that allowing such relief is the only way to break through the problem posed by second mortgages. In a recent speech, he said that for this reason, even though he had advocated for the primary residence exception when the Bankruptcy Code was enacted in 1978, he "finally gave up" and now publicly supports permitting bankruptcy courts to modify mortgages on the primary residence. Lewis S. Ranieri, *Revolution in Mortgage Finance*, Ninth Annual John T. Dunlop Lecture at the Harvard Graduate School of Design (Oct. 1, 2008).

57. Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554, 100 Stat. 3088 (codified as amended in scattered sections of 11 U.S.C. AND 28 U.S.C.).

58. Family Farmer Bankruptcy Relief Act of 2004, Pub. L. No. 108-369, 118 Stat. 1749 (codified at 11 U.S.C. §§ 1201-1231 (2006)).

59. Family Farmer Bankruptcy Act of 1986.

value of the property. The solution would be available only where the borrower is in imminent risk of foreclosure, and would provide the mortgage-holder with as much as, or better than, what could be obtained through a foreclosure sale.

Industry critics, particularly the MBA, have claimed that permitting bankruptcy courts to restructure primary residence mortgages would increase lenders' costs and risks, and therefore increase the cost of mortgage credit or make such credit less available.⁶⁰ The Securities Industry Financial Markets Association and the American Bankers Association have offered the same concern.⁶¹ Academic and industry analysts have rejected this claim. In fact, Professor Adam Levitin of Georgetown University, who analyzed the data upon which the claim is based, concluded that, "there is statistically a zero percent chance that the MBA's . . . claim is correct."⁶² Professor Levitin conducted an empirical study to test the likely impact of the bankruptcy proposal on mortgage rates and availability. First, he compared interest rates on mortgages that currently *can* be restructured in bankruptcy—that is, mortgages on investor properties, vacation homes, and on multi-family buildings in which the owner occupies a unit—with the rates on primary residence mortgages. After controlling for other risk factors, for example that mortgages on investor or vacation homes are considered riskier for lenders because homeowners go to greater lengths to hold onto the home they live in, he found that there is no increase in interest rates or "risk premium" attributable to the availability of bankruptcy modification.⁶³ He concluded, "there is unlikely to be anything more than a *de minimis* effect on interest rates as a result of permitting bankruptcy modification."⁶⁴

The same conclusion was reached by the Fixed Income Research team at Credit Suisse. Estimating that, "the bankruptcy plan will provide about a 20% reduction in foreclosures," the report concluded, "we don't believe the bankruptcy reform will materially im-

60. Mortgage Bankers Association, <http://www.mbaa.org/default.htm> (last visited May 15, 2009).

61. American Bankers Association, <http://www.aba.com/default.htm> (last visited May 15, 2009); Securities Industry Financial Markets Association, <http://www.sifma.org/> (last visited May 15, 2009).

62. *Helping Families Save Their Homes*, *supra* note 43, at 16-17 (statement of Adam J. Levitin).

63. *Id.* at 12-14.

64. *Id.* at 17.

pact the pricing or availability of mortgage credit.”⁶⁵ Numerous economists have recommended this solution, which is the only solution under consideration that can address the intractable structural impediments to significant foreclosure relief. With 46,000 families losing their homes each week,⁶⁶ it is to be hoped that the new administration and Congress will act quickly to implement this relief.⁶⁷

CONCLUSION

Despite vast expenditures of taxpayer dollars, the current financial crisis will continue and the economy will not stabilize absent strong measures to stem the tide of residential foreclosures. Millions of current homeowners will lose their homes, and the downward spiral of declining home values, housing industry-related job losses, and economic dislocation will not abate. While policymakers consider the options, foreclosures march on, week by week.

The time for decisive action is now. Such action must include a mechanism for implementing economically rational modifications of failing but recoverable loans when loan servicers are unwilling or unable to do so themselves. While no solution is perfect, lifting the ban on judicial loan foreclosures is an essential part of the solution. It is the most cost-effective mechanism suggested to date, and should be implemented without further delay. Over the longer term, it is important to be clear about what did and what did not cause the current crisis. Only then can appropriate regulatory mechanisms be put into place to monitor and correct market abuses, consumer protection lapses, and the misaligned market incentives that produce them.

65. ROD DUBITSKY ET AL., CREDIT SUISSE, BANKRUPTCY LAW REFORM—A NEW TOOL FOR FORECLOSURE AVOIDANCE 1, 13 (2009), http://capwiz.com/nacanet/attachments/Credit_Suisse_Bankruptcy_Law_Reform.pdf.

66. The 46,000 figure is derived from the Mortgage Bankers Association’s third quarter 2008 National Delinquency Survey, which covers approximately eighty percent of the market. Grossed up to reflect the entire market, the data yields a forecast of 2,432,900 foreclosures in 2009, which works out to 46,787 per week. See Ctr. for Responsible Lending, Projected Foreclosures by State (2009), <http://www.responsiblelending.org/mortgage-lending/research-analysis/updated-foreclosure-and-spillover-brief-8-18.pdf>.

67. Bills to this effect, titled the “Helping Families Save Their Homes in Bankruptcy Act of 2009” have been introduced in both the House and Senate as Senate Bill 61 and House Bill 200. See S. 61, 111th Cong. (2009), http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s61is.txt.pdf; H.R. 200, 111th Cong. (2009), http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h200rh.txt.pdf.