

The Continuing Chasm Between Words and Deeds III

Lenders' Failure to Stall Foreclosures at Odds with Public
Pronouncements



Illustration by Daryl Cagle of MSNBC.com



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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 who are on the front lines of the foreclosure crisis, and who are working hard to help keep families in their homes. The previous reports, released earlier in 2007 and in March 2008, focused on counselors' experiences in August and December of 2007, at a time when relatively little data on foreclosure prevention outcomes were publicly available. The first two 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 were most likely to foreclose on borrowers.

This third report, *The Continuing Chasm between Words and Deeds*, focuses on loan counselors' experiences in April 2008, a time when government officials, industry associations, and individual companies were representing publicly that great strides were being made to help borrowers in distress. Sadly, after months of public discourse about the growing foreclosure crisis and the need for loan modifications, this new survey demonstrates that while responding agencies do report a modest increase in loan modifications, loan servicers' failures to meaningfully respond to the crisis continue as follows:

- Servicers are not modifying home loans on any scale;
- Services are not conducting sufficient outreach to borrowers facing rising payments; and
- Servicers continue to turn to foreclosure as their most common response to borrowers in distress.

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 and wealth in California communities.

This report was prepared by Kevin Stein, with valuable edits and assistance from Alan Fisher, Victoria Leon Guerrero and Kimberly Jones. CRC would like to thank Christi Baker (Chrysalis Consulting), Maeve Elise Brown (Housing and Economic Rights Advocates), Norma Garcia (Consumers Union), Sharon Kinlaw (Fair Housing Council of the San Fernando Valley), and Paul Leonard (Center for Responsible Lending) for their helpful comments on earlier versions of this report. Special thanks to Jeff Schrage (No Homeowner Left Behind in Fresno) for putting the survey online and providing significant technical assistance. Any errors or omissions are solely 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 250 nonprofit organizations and public agencies across the State.



The Continuing Chasm Between Words and Deeds Lenders Failing to Stall Foreclosures At Odds with Public Pronouncements

“The Continuing Chasm Between Words and Deeds III”

EXECUTIVE SUMMARY

With foreclosure filings on 71,930 properties in May, California documented the highest number of foreclosure filings, and the most properties in some stage of foreclosure in the nation, according to Realtytrac. Additionally, seven of the nation's top ten foreclosure rates were in California metro areas.¹

Yet home loan servicers are subject to virtually no obligations, no accountability, and no transparency when it comes to helping working families avoid foreclosure. Amidst these record defaults and foreclosures, a key question for policy makers is whether loan servicers are doing enough to work with borrowers to avoid foreclosure. Despite industry reports to the contrary, the outcomes for California families and neighborhoods are unacceptable. **Foreclosures continue to be the most common outcome for borrowers in distress, according to housing counseling agencies.**

This report is the third in a series that examines the extent to which home loan servicers are modifying loans and working with borrowers to preserve homeownership, as lenders purport they are doing. **Sadly, since the last report, not much has changed.** CRC conducted this third survey of 42 mortgage counseling agencies and legal service offices statewide to determine the level of assistance lenders are offering borrowers now, and whether things have improved since the last survey. As in 2007, counselors reported similarly frustrating experiences in the past four months trying to negotiate good outcomes for their clients. For the month of April 2008, counselors again report the most common outcome for their borrowers is foreclosure.

The consequences of these growing foreclosure numbers are being felt by families who have lost their largest asset; unsuspecting tenants who have been abruptly and sometimes illegally evicted by banks that took over investor-owned homes; neighborhoods that have witnessed a further decline in property values; local governments that have suffered costs and decreased tax revenue; and the broader California economy which has taken a huge hit due to its dependence on the housing market.

The California housing counseling agencies surveyed confirm that more needs to be done. Key findings include:

Lenders are not responsive. Agencies were asked if servicers consistently modify loans by fixing interest rates for the life of the loan. 17 groups responded that the industry as a whole is not consistently modifying loans for long-term affordability. No group reported that the industry as a whole was modifying loans for the long term.

Longer term loan modifications still lag, though they are increasing. In general, for borrowers in early delinquency or facing unaffordable interest rate resets, responding agencies still are more likely to say that loans are modified for only 1 or 2 years, as opposed to 5 years or longer, though the gap is narrowing.

¹ "Foreclosure Activity Increases 7 percent in May," Realtytrac. June 13, 2008.

Borrowers are experiencing devastating outcomes. Counseling agencies were asked how common different loss mitigation outcomes were for their borrowers. Despite a reported increase in servicer willingness to offer loan modifications, the responses to this critical question were as bleak as those a few months ago.

- *Foreclosures still lead.* Groups were most likely to report foreclosure a “very common” outcome for borrowers. A shocking 26 groups, or 68.4% of those reporting, said that foreclosures are a very common outcome for their clients.
- *Loan modifications not happening.* Only 9 agencies—less than one quarter of those responding—said that loan modifications were a “very common” outcome for borrowers. Loan modification is a relatively good outcome for borrowers facing foreclosure, because they allow them to stay in their homes.

Outreach to borrowers in trouble is generally poor. Despite lenders’ assertions about reaching out to borrowers BEFORE they face problems from rising interest rates and higher monthly payments, most counseling and legal service agencies do not see this happening. Only 30% of groups responding reported that the industry as a whole was conducting outreach to borrowers before rates reset.

Servicers are unwilling to work with borrowers to prevent problems. Some of the lowest marks servicers received in this survey were in response to the question, are lenders/servicers consistently willing to work with borrowers BEFORE they are in default? This was the case despite the fact that both the federal and state servicer agreements commit the servicers to work with borrowers before they are in default². Only 1 agency reported that the industry as a whole was working with borrowers before default. Individual servicers did not fare much better.

So, how did we get here? Counseling and legal service agencies were asked to assess the circumstances that led their clients to their offices. The results were sobering.

- *The vast majority of loans should not have been made.* A shocking 90% of respondents reported it was “very common” for their clients to have received loans that were unaffordable to them at the time the loan was made.
- *Family incomes are not keeping pace with mortgage payments.* Nearly three quarters of responding agencies said that change in family income was a very common scenario for their clients.
- *Industry fraud and abuse of immigrants are substantial concerns.* Nearly 60% of responding groups reported that non-English speakers were sold loans in their native language, but provided English-only documents. This is a recipe for abuse, and flies in the face of California state law requiring translation of certain documents in certain transactions. Relatedly, 55% of groups responding cited lender/broker abuse as a very common problem.
- *Countrywide as bad example.* California Attorney General Jerry Brown recently sued California’s largest lender, Countrywide, alleging a broad scheme of deception in selling risky, costly and complex loans to borrowers, whether or not those loans were appropriate for the

² California Subprime Loan Agreement, November 21, 2007 (<http://www.corp.ca.gov/press/news/SubprimeLending.asp>); “HOPE NOW Hails Broad Effort to Refinance and Modify Mortgage Loans,” HOPE NOW press release, December 6, 2007, available at www.hopenow.com.

borrower, and placing California borrowers at greater risk of foreclosure.

Principal write downs are not happening. Federal Reserve Chairman Ben Bernanke and FDIC Chair Sheila Bair have both called on loan servicers to write down loan principal. This is especially needed in California where so many loans were unaffordable at origination, and where housing values have nosedived. 44.5% of agencies responding said that the need and appropriateness for a principal write down was a very common or somewhat common occurrence. No group reported that principal write downs were a very common occurrence, while only 2 groups reported it as a somewhat common occurrence.

Tenants are being impacted. Perhaps the most compelling victims of all in the foreclosure crisis are tenants living in non-owner occupied housing. Often tenants will pay their rent one day, only to find soon thereafter that the property has been foreclosed upon, and they are being forced to leave. CRC is concerned that tenants are being illegally evicted, left to finish out their tenancies in uninhabitable conditions (no water, no electricity), are not given security deposits back, and are forced to leave foreclosed homes that will sit vacant on the market for months. A majority of responding agencies (57.9%) said that tenants are a somewhat common presence in properties they are trying to save.

Counseling agencies are frustrated. When asked to comment on companies that are especially difficult to work with, counseling agencies had a lot to say. Respondents continued to express frustration with companies that do not offer any real solutions and that provide poor customer service. Below is a sampling of comments made by counseling agencies. (The text of all comments submitted is set forth in Appendix I.)

- "...willing to modify but only if being sued."
- "...they make it very difficult to remedy the situation before they start defaulting, they wait until all the attorney fees, late fees, workout fees are added to the loan, and it takes 2 months before they even have a negotiator from the bank contact them or come up with a resolution."
- "Confusing telephone prompts with hold times exceeding 45 minutes."
- "Overall, we are STILL not seeing significant changes from our lenders on assisting clients."
- "They refuse to negotiate at all, and have hung up on our counselors and/or clients several times. Further, they threaten the clients with foreclosure, and have refused to hold three way conversations while the client is in our office, even after we have faxed authorization, many many times!... All of the modification requests we have submitted have been denied..."

Respondents are comprised of diverse group of counseling agencies. The groups that took the time to fill out this survey represent a cross section of counseling agencies in the state. Groups came from various parts of California, including northern California, the San Francisco Bay Area, the Central Valley, greater Los Angeles, the Inland Empire, and the San Diego region. Groups work in rural and urban areas. The groups that responded to this CRC survey served approximately 11,062 consumers in the month of April alone. This was an increase of 4,629 consumers from December of 2007.

FALSE HOPE: HOPE NOW QUESTIONED

The HOPE NOW Alliance, a Washington, D.C.-based coalition of mortgage servicing companies, industry trade groups and housing counseling agencies, has been collecting its own data and publicly releasing it in the aggregate. The group reported in April that HOPE NOW servicers provided nearly 1.2 million loan workouts since July '07, and later that month, that HOPE NOW servicers provided nearly 503,000 loan workouts for homeowners in the first quarter of 2008.³ As with most such press releases, CRC has difficulty reconciling the public pronouncements with real world outcomes on the ground. The failures of the industry cannot be adequately addressed by voluntary compliance of self imposed commitments and unverified and aggregate data reporting. HOPE NOW data have come under increasing scrutiny, most recently from Comptroller John C. Dugan. To be effective, HOPE NOW servicers must be held accountable for their statements, and they must report loss mitigation data to a government agency or third party that can verify its accuracy and release it to the public, broken out for each reporting servicer.

SUMMARY OF RECOMMENDATIONS (Full Recommendations Appear in Body of Report)

What we have in place is not working. CRC's goal is to work towards solutions to obstacles that are frustrating efforts to keep borrowers in their homes.

In order to keep borrowers in their homes, and to address the concerns of housing counseling agencies and legal service offices, CRC urges lenders, the California Legislature and Governor Schwarzenegger to take the following key steps:

I. INDUSTRY MUST STEP UP AND TAKE OWNERSHIP OF THIS CRISIS AND ITS SOLUTIONS:

- Write down principal to make more loans more affordable to more borrowers.
- Aggressively and creatively pursue long-term, affordable loan modifications.
- Protect tenants who are often given insufficient time and resources to relocate by respecting local tenant rights laws, and by developing best practices to ensure that tenant families have the time and resources needed to make a smooth transition to a new living arrangement, and not be forced into homelessness.

2. CALIFORNIA LEGISLATURE MUST ENSURE THAT HOMEOWNERS IN DISTRESS HAVE A CHANCE TO REMAIN IN THEIR HOMES AND ARE PROTECTED AGAINST ABUSES AND A FUTURE CRISIS:

- Reform the foreclosure process to ensure borrowers are given real alternatives to foreclosure and to minimize the broader impacts of foreclosure as a last resort.
- Pass a strong anti-predatory lending bill that ends abusive lending practices, such as prepayment penalties, broker kickbacks, steering borrowers into higher cost loans, and broker misconduct.
- Require that all key mortgage documents are in the language used when negotiating the loan, and do not force borrowers to unknowingly waive their rights.

³ HOPE NOW press releases: "HOPE NOW: Servicers Provided Nearly 1.2 million Loan Workouts Since July '07," April 10, 2008; and "HOPE NOW Mortgage Servicers Provided Nearly 503,000 Loan Workouts For Homeowners in First Quarter of 2008," April 28, 2008, available at www.hopenow.com

- Require loan servicers to publicly report detailed servicing data for California for each company and to observe basic obligations to treat borrowers fairly.

3. GOVERNOR SCHWARZENEGGER MUST HOLD LOAN SERVICERS ACCOUNTABLE TO KEEP THEIR WORD AND HELP CALIFORNIA HOMEOWNERS AND COMMUNITIES:

- Hold servicers accountable to promises made and agreements signed.
- Use the bully pulpit to promote better outcomes by convening servicers, investors and counseling agencies for constructive dialogue, and pushing servicers to commit to aiding more distressed homeowners.
- Sign bills that effectively and directly regulate lending and servicing abuses which emerge from the Legislature. All parties and all branches of government must come together to find solutions to our current crisis.

INTRODUCTION

Hundreds of thousands of California homeowners are at risk of losing their homes. Most of these borrowers want to remain in their homes and could do so, if only their loan servicer was ready, willing and able to work with them. This survey of nonprofit home loan counseling agencies in California suggests that home loan servicers are largely failing their borrowers - foreclosing too quickly and too often. Record foreclosures plague the state, and the crisis threatens to worsen.

What happened? Over the last few years, lenders and brokers aggressively sold loans to borrowers that they could not understand or afford to repay. Many of these loans were the result of fraud and misrepresentation by brokers and lenders. Wall Street firms collected large fees to pool these loans and sell them to unsuspecting investors. Likewise, ratings agencies collected large fees to bless these securitized loan pools and deem them to be not too risky, thereby giving many investors the confidence to put their money in subprime loans.

Many of the lenders that originated these toxic loans are no longer in business. Yet their loans remain in our communities. Many of these loans have already pushed borrowers to foreclosure, and many others remain at risk of doing so.⁴ Other lenders remain and fight efforts to reign in abusive lending and servicing practices.

As a result, many borrowers are stuck with loans they struggle to pay now, and that have resetting interest rates that will make the loans impossible to repay in the future. The growing foreclosure rates harm working families, unsuspecting tenants, neighborhoods, local governments, and the broader California economy. Yet a key question remains - was and is foreclosure the only option?

For the past several months, industry groups and government officials continue to issue press releases saying that thousands of borrowers are receiving help.

But lenders are still not required to verify that they are keeping their promises and, as an industry, have offered no meaningful and verifiable reporting to show that they are working with borrowers to prevent foreclosure.

CRC conducted this second survey of 42 mortgage counseling agencies across the state to determine what assistance lenders are offering borrowers now, and whether things have improved since the last survey. Sadly and tragically, counselors continue to report similarly frustrating experiences in trying to negotiate good outcomes for their clients. For the month of April 2008, counselors again report the most common outcomes for their borrowers were foreclosures.

SURVEY OF HOME LOAN COUNSELING AGENCIES: FINDINGS

⁴ "Paying More for the American Dream: The Subprime Shakeout and Its Impact on Lower-Income and Minority Communities," California Reinvestment Coalition, Community Reinvestment Association of North Carolina, Empire Justice Center, Massachusetts Affordable Housing Alliance, Neighborhood Economic Development Advocacy Project, Ohio Fair Lending Coalition, and Woodstock Institute. March 2008, available at www.calreinvest.org.

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 often act as intermediaries between borrowers and their lenders. In California, there are roughly 80 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 and post-purchase counseling. The 42 groups that responded to this third CRC survey served 11,062 consumers during April 2008. The groups collectively saw 4,629 more clients in April 2008 than they did in December 2007, confirming the widespread belief that things are only getting worse for homeowners, and that counseling agencies are seen as one of the only places to turn.

As with the last two surveys, the state's largest servicers were selected for consideration: Bank of America, Citibank, Countrywide, HSBC, JPMorgan Chase, Merrill Lynch (Wilshire, HLS), Washington Mutual, and Wells Fargo. The following servicers were added because they signed on to Governor Schwarzenegger's Subprime Loan Agreement:⁵ Carrington, GMAC, HomeEq, Litton, Ocwen and Option One. A category of "all lenders" was again included to survey counselors on their impressions of industry performance as a whole. Wachovia was added as well, since it has become a large player in California in light of its purchase of Oakland based mortgage lender and servicer, Worlds Savings. Unfortunately, World Savings was inadvertently omitted from some of the survey questions and therefore does not appear in the survey results for those questions.

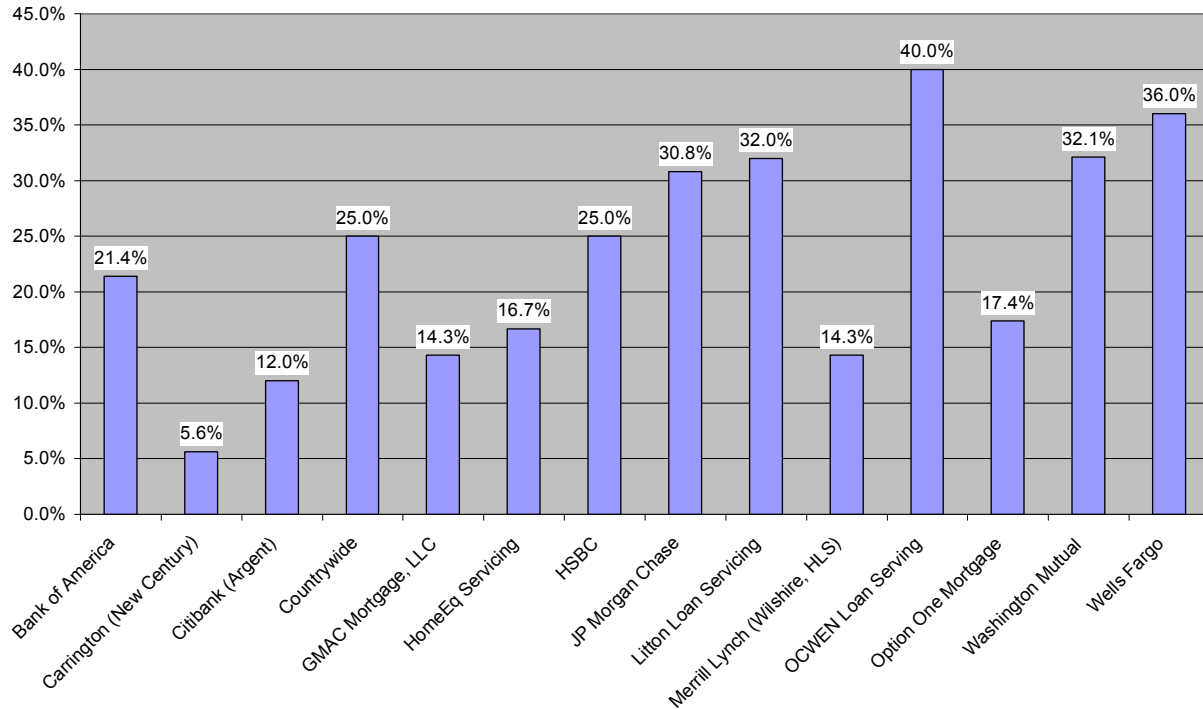
The California housing counseling agencies surveyed confirm that more needs to be done to help borrowers at risk of foreclosure. Key findings include:

Lenders are not responsive. Agencies were asked if particular servicers, and the industry as a whole, consistently modify loans by fixing interest rates for the life of the loan.

- *No long-term loan modifications.* 17 groups responded that the industry as a whole is not consistently modifying loans for long-term affordability. Zero groups reported that the industry as a whole was modifying loans for the long term.
- *Worst performer.* Carrington received the lowest marks. Only 5.6% of respondents reported that Carrington was modifying loans for the long term.
- *Best performer.* While no servicer received a majority of respondents stating they were modifying loans for the long term, Ocwen fared the best of its peers, with 40% of responding groups stating that Ocwen was modifying loans for the long term.

⁵ For a description of the Governor's Subprime Loan Agreement, which was designed to promote loan modifications for borrowers facing unaffordable interest rate resets, see, www.corp.ca.gov/press/news/SubprimeLending/asp

Long Term Loan Modifications: % Respondents Reporting Servicers are Offering Long Term Loan Modifications: California 2008

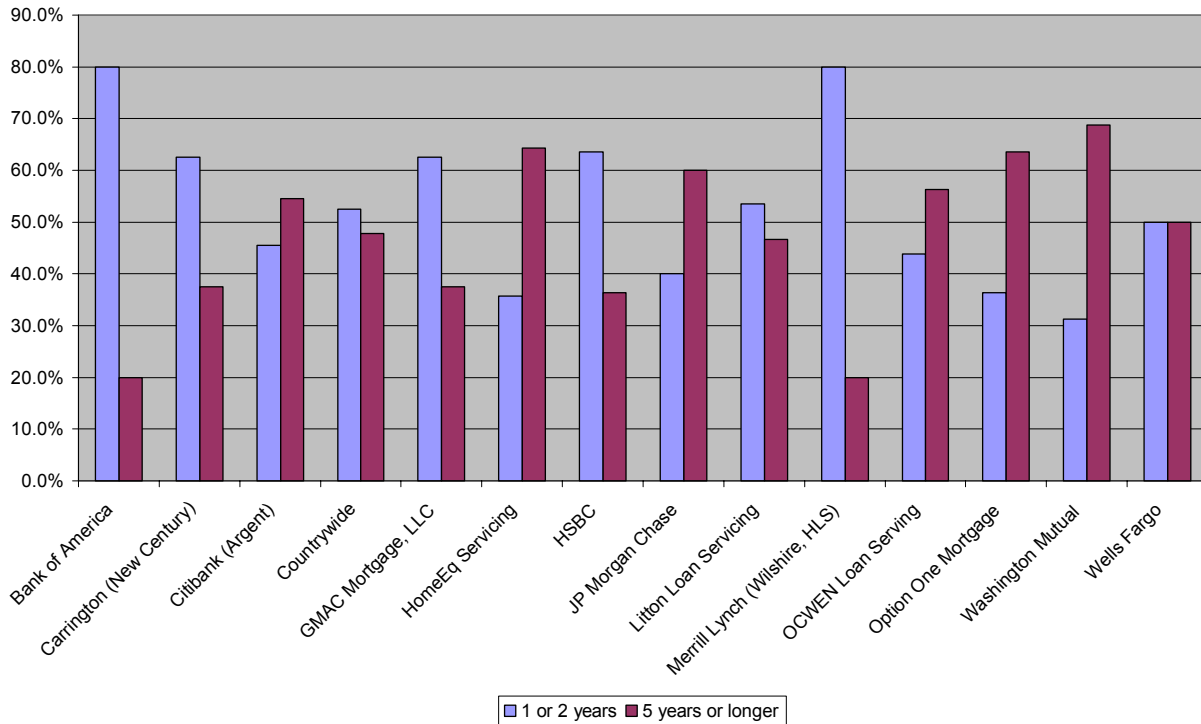


Longer term loan modifications still lag, though are increasing. In general, for borrowers in early delinquency or facing unaffordable interest rate resets, responding agencies still are more likely to say that loans are modified for only 1 or 2 years, as opposed to 5 years or longer, though the gap is narrowing. Groups were asked if individual servicers, and servicers as a whole, were fixing interest rates for 1 year, 2 years, 5 years, or more.

- *Short-term “fixes.”* Counseling groups were most likely to respond that when servicers were willing to modify loans, they were only willing to fix interest rates for one or two years at a time. This was true for seven of the fourteen servicers considered in the survey. Rather than provide a sustainable solution for borrowers in distressed loans, servicers offer short-term modifications of one to two years which only delay the problem. The result for borrowers is akin to giving borrowers another bad loan with a short period of affordability, followed by increasing payments that may remain hard to make. Though the responses relating to long term loan modifications remain inadequate, more groups reported better success in obtaining loan modifications lasting for five years or longer as compared to four months ago.
- *Worst performers.* Only 20% of responding agencies reported that Bank of America and Merrill Lynch were willing to modify loans for 5 years or longer.

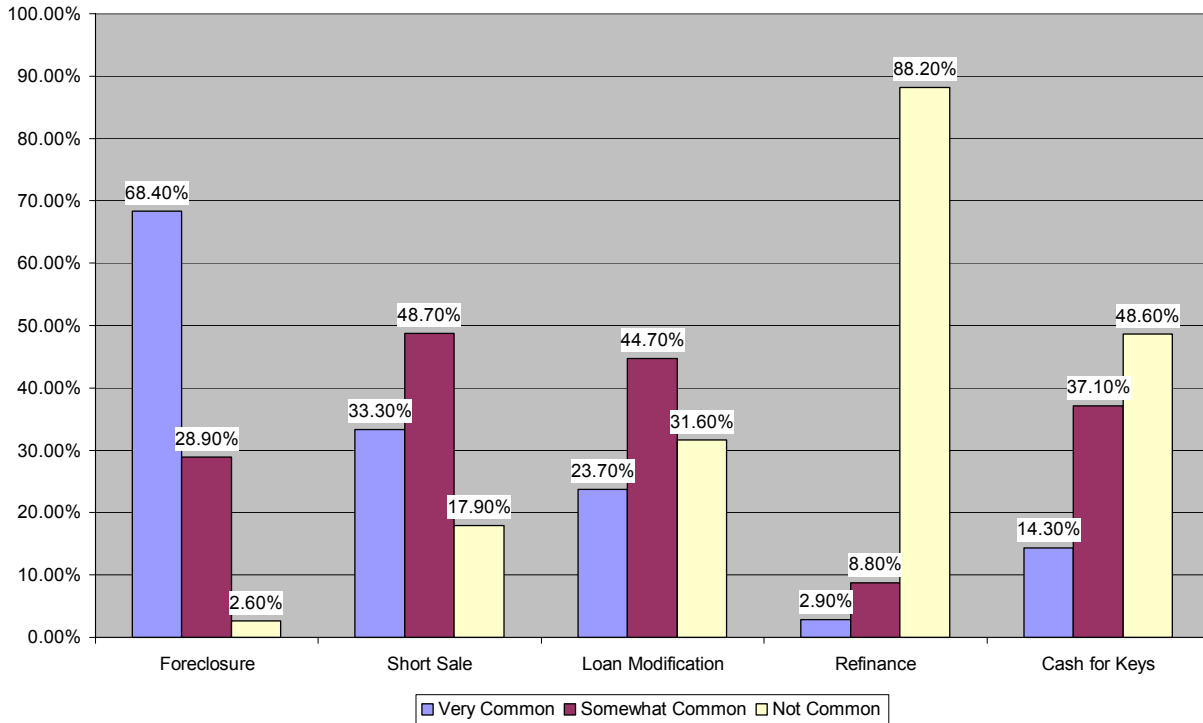
- *Best performer.* Nearly 70% of groups responding reported that Washington Mutual modifies loans for 5 years or longer.

Duration of Modifications When Given: % of Responding Agencies That Say Servicers Modify Loans for 1-2 Years Versus 5 Years or Longer: California 2008



Borrowers are experiencing devastating outcomes. Counseling agencies were asked how common the following different loss mitigation outcomes were for their borrowers: loan modification, forbearance agreement, refinance loan, short sale, foreclosure, or “other.” Despite a reported increase in servicer willingness to offer loan modifications, the responses to this critical question were as bleak as those a few months ago.

**Borrower Outcomes: % of Agencies Reporting Frequency of Various Loss Mitigation Outcomes:
California April 2008**



- Foreclosures still lead.* Groups were most likely to report foreclosure a “very common” outcome for borrowers. A shocking 26 groups, or 68.4% of those reporting, said that foreclosures are a very common outcome for their clients. This was roughly the same as the 26 groups, or 72% of respondents, so reporting four months ago.
- Short sales still next.* 13 groups, or 33.3% of those reporting, cited short sales – where servicers minimize their losses by allowing homeowners to sell their property for less than the amount of money owed – as a “very common” outcome for borrowers, down slightly from December. An additional 19 agencies reported short sales as “somewhat common,” meaning that for the month of April 2008, 82% of groups responding reported that short sales were “very common” or “somewhat common.” While preferable to foreclosure, short sales still leave the borrower without a home or any equity, and may result in a higher tax bill.
- Loan modifications and refinances are not happening.* Only 9 agencies—less than one quarter of those responding—said that loan modifications were a “very common” outcome for borrowers, up from 6 groups so reporting in the last survey. Meanwhile, only 1 group, or 2.9% of respondents, reported that refinancings were a “very common” outcome for borrowers. Conversely, 12 groups, or 31.6% of those reporting, said that loan modifications were “not common,” and a large 30

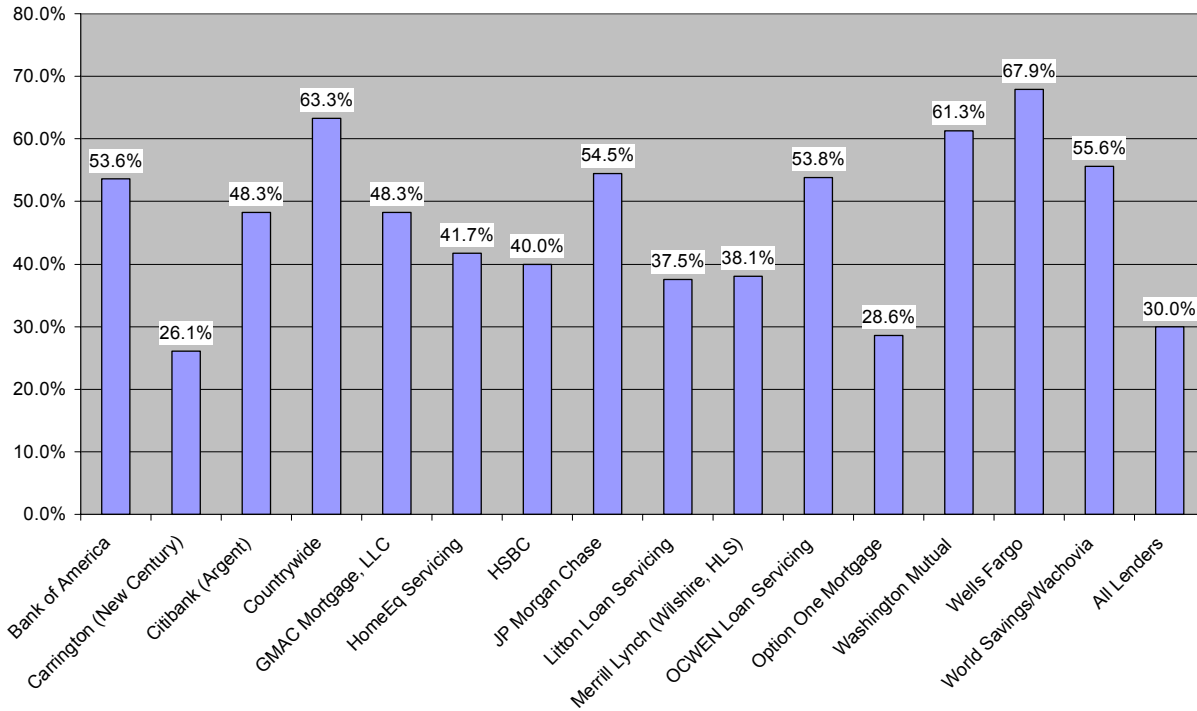
groups, or 88.2% of those reporting, said that refinancings were “not common.” Refinances and loan modifications are relatively good outcomes for borrowers facing foreclosure because they allow them to stay in their homes. It is distressing that these positive outcomes are not occurring on the ground on a larger scale.

- *Forbearance agreements present a mixed picture.* They were listed as “very common” by 5 groups (13.2% of respondents), “somewhat common” by 20 groups (52.6% of respondents), and “not common” by 13 groups (34.2% of respondents). Forebearance agreements may help borrowers deal with a temporary setback, but do nothing to address long term affordability, and may merely delay foreclosure and prolong financial strain.
- *Cash-for-keys – a soft landing?* More than half of those responding said that “cash-for-keys” was a “very common” or “somewhat common” outcome for their clients. Cash for keys suggests families are forced to leave their homes, but are given financial assistance to make the transition to a new living situation. It is doubtful that the amount of cash given to borrowers is sufficient to help them successfully make that transition in California’s high-cost housing market.

Outreach to borrowers in trouble is generally poor. Despite lenders’ assertions about reaching out to borrowers BEFORE they face problems from rising interest rates and higher monthly payments, most counseling and legal service agencies do not see this happening. Most counseling agencies reporting noted that loan servicers were failing to conduct outreach prior to interest rate resets. A large 70% of groups responding reported that the industry as a whole was NOT conducting outreach to borrowers before rates reset.

A disturbing but continuing anecdote is that borrowers who affirmatively reach out to loan servicers BEFORE they are in default are often told they cannot be helped until they are in default. So, far from helping borrowers who are being proactive, loan servicers are often encouraging borrowers to fall behind on their payments, hastening foreclosures and ruining borrowers’ credit.

Outreach to Borrowers Facing Rising Payments: % of Agencies Reporting Early Contact by Servicer: California April, 2008



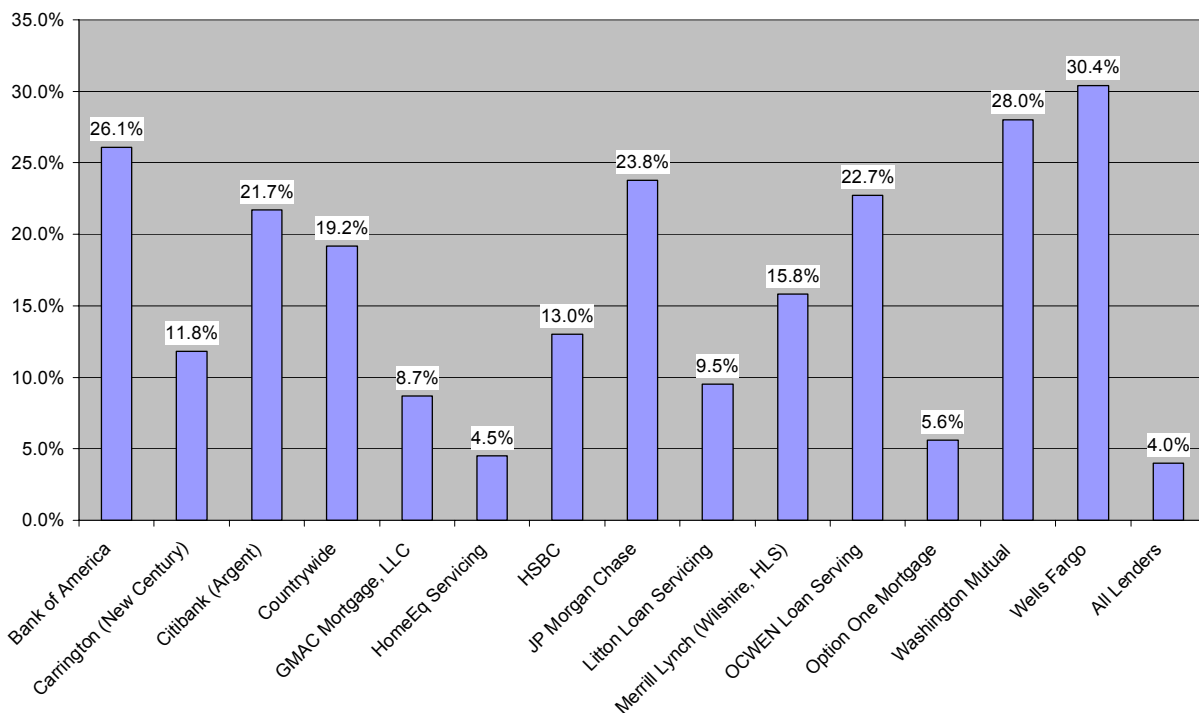
- *No early contact.* For the industry as a whole, only 6 respondents, or 30% of those responding, said that in their experience, lenders were making contact with borrowers before delinquency. Though low, these numbers are higher than those reported by groups in December 2007.
- *Worst performers* Carrington and Option One each received only 6 responses stating that they reached out to borrowers before delinquency. Yet 17 respondents, or 73% of groups reporting, said that Carrington does NOT make contact with borrowers before delinquency, as did 15 respondents, or 71% of groups reporting, for Option One.

Servicers are unwilling to work with borrowers to prevent problems, regardless of whether they outreach to borrowers before delinquency. Some of the lowest marks servicers received in this survey were in response to the question, are lenders/servicers consistently willing to work with borrowers BEFORE they are in default? This was the case despite the fact that both the federal and state servicer agreements commit the servicers to work with borrowers before they are in default.⁶

⁶ California Subprime Loan Agreement, November 21, 2007 (<http://www.corp.ca.gov/press/news/SubprimeLending.asp>) and “HOPE NOW Hails Broad Effort to Refinance and Modify Mortgage Loans,” HOPE NOW press release, December 6, 2007, available at www.hopenow.com.

- *Industry not working with borrowers before default.* Only 1 agency reported that the industry as a whole was working with borrowers before default. Individual servicers did not fare much better.
- *Worst performers.* Only 1 agency responded that both HomeEq and Option One were working with borrowers prior to default. Carrington, GMAC and Litton each only received two responses that they were working with borrowers before default.

Servicers Not Proactive: % of Agencies Reporting Servicers Willing to Work with Borrowers Before Default: California April 2008



So, how did we get here? Counseling and legal service agencies were asked to assess the circumstances that led their clients to come to their offices seeking assistance. The results were sobering.

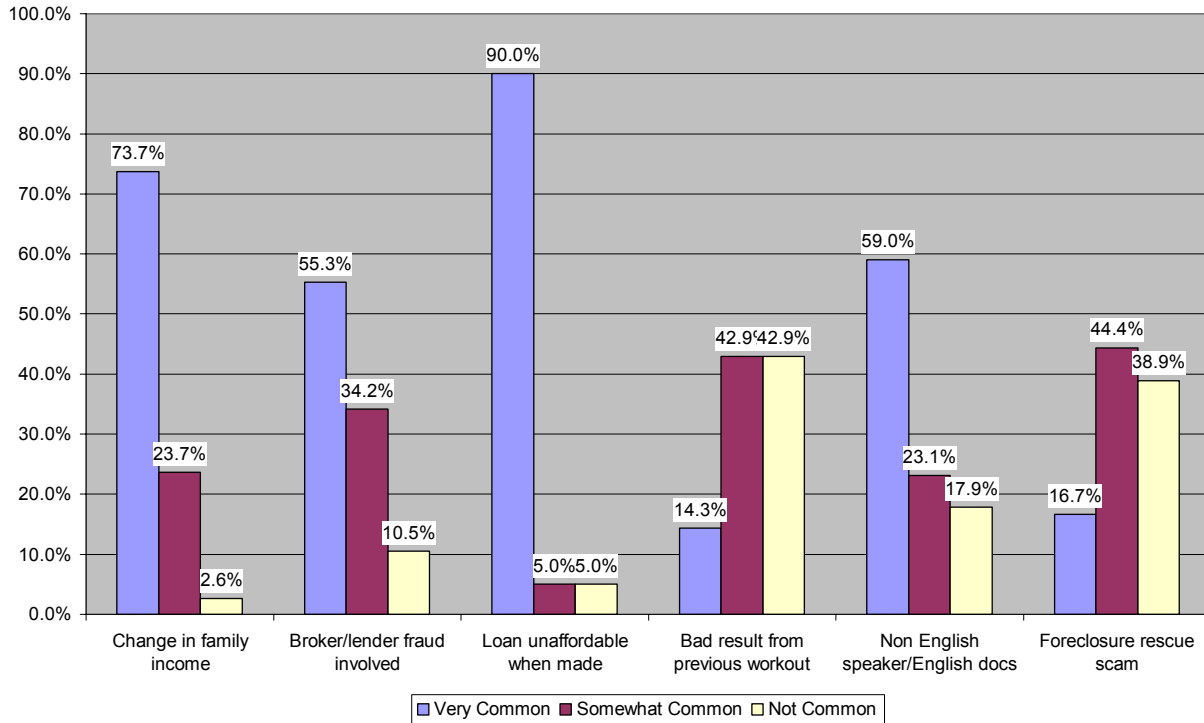
- *The vast majority of loans should not have been made.* A shocking 90% of respondents reported it was “very common” for their clients to have received loans that were unaffordable to them at the time the loan was made. 36 groups responded this was a very common problem, while 2 additional groups reported this was somewhat common. Only 2 groups said this was not common.

- *Family incomes are not keeping pace with mortgage payments.* Nearly three quarters of responding agencies said that change in family income was a very common scenario for their clients. Only 1 group reported that this was not a common occurrence.
- *Industry fraud and abuse of immigrants are substantial concerns.* Nearly 60% of responding groups reported that non-English speakers were sold loans in their native language, but provided English-only documents. This is a recipe for abuse, and flies in the face of California state law requiring translation of certain documents in certain transactions.⁷ Similarly, 55% of groups responding cited lender/broker abuse as a very common problem.
- *Borrowers falling out of loan workouts or into foreclosure rescue scams are significant.* While fewer groups highlighted these outcomes, a majority of respondents noted that bad results from prior loan workouts (57%) and foreclosure rescue scams (61%) were either very or somewhat common.
- *Countrywide epitomizes a market plagued by deception and abuse.* The recent complaint filed by Attorney General Jerry Brown against Countrywide, the state's largest lender, reflects the prevalence of a culture of abuse run amok in California that has broad negative repercussions for the state and its ability to preserve homeownership for many families. The complaint alleges a broad scheme to mislead and deceive borrowers into taking out risky, costly and complex subprime and option ARM loans that were not appropriate for all homeowners.⁸ This case argues for better legislative protections for California homeowners, and for loan modifications to ease the pain of families victimized by unlawful and predatory lending practices.

⁷ California Civil Code §1632

⁸ For the full complaint, visit, http://ag.ca.gov/cms_attachments/press/pdfs/n1582_draft_cwide_complaint2.pdf.

**Borrower Challenges: % of Agencies Reporting Frequency of Various Factors Affecting Clients:
California April 2008**



Principal write downs are not happening. With borrowers owing more than they can afford at the same time housing values have plummeted, Federal Reserve Chairman Ben Bernanke and FDIC Chair Sheila Bair have both called on loan servicers to write down loan principal. This is especially needed in California where so many loans were unaffordable at origination, and where housing values have nosedived. California’s Corporations Commissioner, Preston Dufauchard, was quoted as saying, “Declining prices are the current threat, and people upside down on their homes (owing more than a house is worth) are the big issue.”⁹

Credit Suisse estimates that by the end of 2007, 31% of subprime loans had negative home equity, meaning that borrowers owed more than their homes were worth and would potentially benefit from a principal write down. Credit Suisse notes, “Rapid declines in home prices and rising foreclosures are creating a strong downward spiral in the housing market, which greatly diminishes borrowers’ confidence in prospects for a quick housing market recovery. . . . We believe that any effective plan to stop the future flood of foreclosures has to focus on stabilizing the housing market and slowing down or reversing home price declines and equity deterioration.”¹⁰

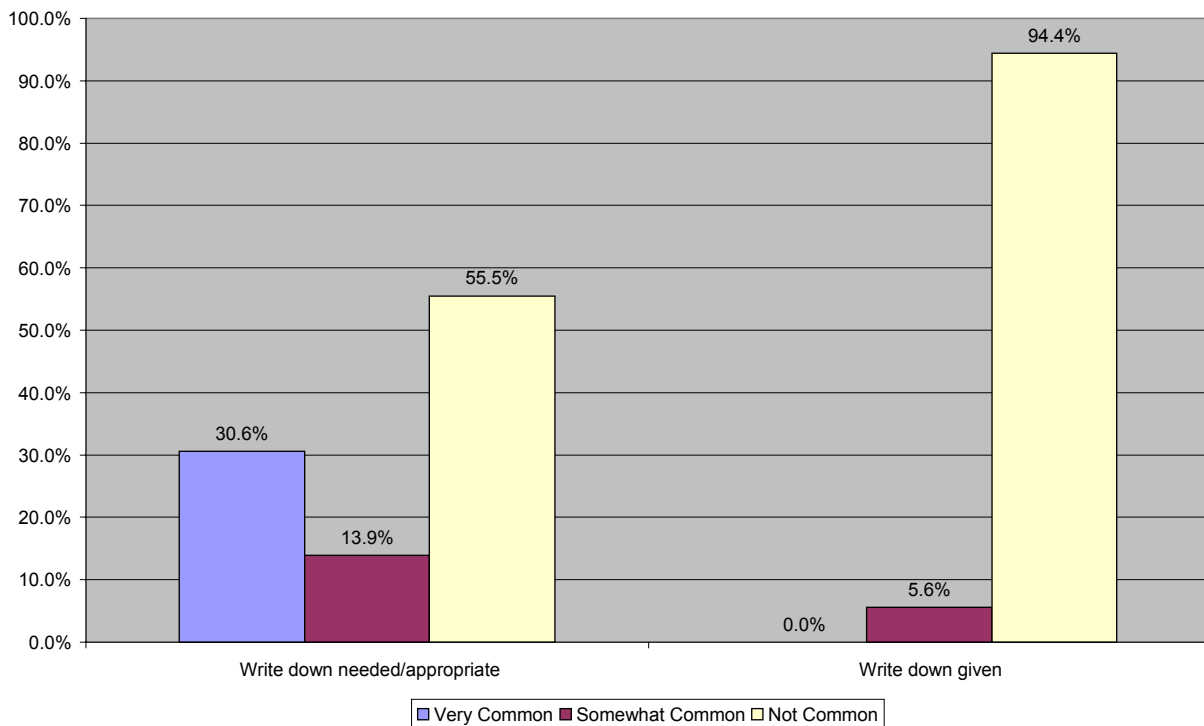
⁹ “Schwarzenegger’s subprime accord didn’t cut foreclosures,” Jim Wasserman, Sacramento Bee, May 22, 2008.

¹⁰ “Foreclosure trends – a sobering reality,” Credit Suisse, April 23, 2008, available at <http://www.credit-suisse.com/researchandanalytics>.

The issue of principal write downs came up at a meeting between Treasury Secretary Henry Paulson and top lenders and servicers. “Some lenders in the meeting argued that the ability to write down the principal of the mortgage to its market value provided more incentive to keep borrowers in their homes than lowering the loan’s interest rate.”¹¹

- *Counselors report that principal write downs could aid a number of clients.* 44.5% of agencies responding said that the need and appropriateness for a principal write down were a very common or somewhat common occurrence.
- *Write downs virtually nonexistent.* No group reported that principal write downs were a very common occurrence, while only 2 groups reported it as a somewhat common occurrence. A whopping 34 groups report that principal write downs are not common.

What is Needed and What is Given: % of Agencies that Say Principal Write Downs Are Needed and Are Given: California April 2008



Tenants are being impacted. Perhaps the most forgotten and compelling victims of all in the foreclosure crisis are tenants living in non-owner occupied housing. Often tenants will pay their rent one day, only to

¹¹ “Paulson to Lenders: Fix Has to Come From You,” Cheyenne Hopkins, American Banker, April 25, 2008.

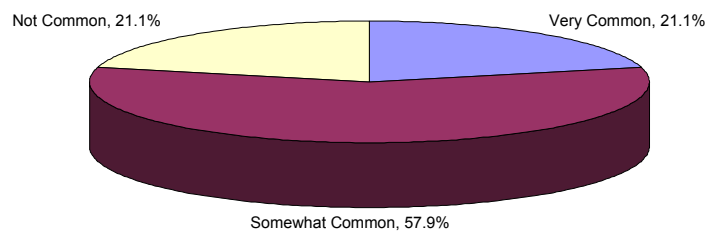
find soon thereafter that the property has been foreclosed upon, and they are being forced to leave. CRC is concerned that tenants are being illegally evicted, forced to live in uninhabitable conditions (no water, no electricity), are denied the return of their security deposits, and could be allowed to remain in foreclosed homes while these properties sit vacant on the market.

One fair housing council recently reported a tenant who lost a \$5,600 security deposit when the home she was renting went into foreclosure, and another who lost an \$1,800 security deposit after she was locked out of a foreclosed home a mere 2 months after the owner leased her the property. These anecdotes most likely are representative of countless stories of tenants who are being impacted by the foreclosure crisis.

According to a recent report by the National Coalition for the Homeless, 74% of California groups responding to a survey said that they witnessed an increase in homelessness in the state as a result of the foreclosure crisis. In response to the question, “where are people staying?” several answers were given, including shelters and doubling up with friends, with 16% saying people affected by the foreclosure crisis were living on the street.¹²

- *Tenants are living in many distressed homes.* A majority of responding agencies (57.9%) said that tenants are a somewhat common presence in properties they are trying to save. Another 21% of responding agencies reported that tenants are very common in affected properties.

**Prevalence of Tenants: % of Agencies Reporting Frequency of Tenants in Affected Properties:
California April 2008**



¹² “Foreclosure to Homelessness: the Forgotten Victims of the Subprime Crisis: a national call to action,” Bob Erlenbush, Kelly O’Connor, Sherrie Downing and Sue Watlov Phillips. National Coalition for the Homeless, April 15, 2008.

Servicers are still hard to work with. Counseling agencies were asked, “in your experience, which lenders/servicers are the most difficult to work with in trying to keep borrowers in their homes? Why?”

- A total of 24 companies were named as servicers that are difficult to work with.
- Countrywide and GMAC were named most often, with over 15 groups reporting Countrywide as difficult to work with, and over 10 groups reporting GMAC as difficult to work with. Washington Mutual, World Savings/Wachovia, and Litton Servicing were named frequently as well.

Counseling agencies are frustrated. When asked to comment on companies that are especially difficult to work with, counseling agencies had a lot to say. Respondents continued to express frustration with companies that do not offer any real solutions and that provide poor customer service. Below is a sampling of comments made by counseling agencies. (The full text of all comments submitted is set forth in Appendix I.)

- “...willing to modify but only if being sued.”
- “...they make it very difficult to remedy the situation before they start defaulting, they wait until all the attorney fees, late fees, workout fees are added to the loan, and it takes 2 months before they even have a negotiator from the bank contact them or come up with a resolution.”
- “Confusing telephone prompts with hold times exceeding 45 minutes.”
- “Overall, we are STILL not seeing significant changes from our lenders on assisting clients. We are seeing an increase in the number of clients suffering from short-term disabilities that allow them to get behind just enough to start the ball rolling. In these cases, lenders are seeking repayment plans rather than forbearances which would allow clients to get back on their feet. This counseling still remains a struggle and as homeowners are catching on to available services, we are having to seek out the services of mental health groups to help them deal with the depressive disorders that are following the sessions. ”
- “...the solutions they propose do not make sense and the solutions that I propose are rejected because they are unwilling to see the big California picture. The majority of the representatives are either out of state or out of the country.”
- “They refuse to negotiate at all, and have hung up on our counselors and/or clients several times. Further, they threaten the clients with foreclosure, and have refused to hold three way conversations while the client is in our office, even after we have faxed authorization, many many

times!... All of the modification requests we have submitted have been denied..."

- "The worst part is that they are constantly 'losing' faxed documents, and so we are not able to move forward in many cases."
- "rarely willing to modify a loan, and modifications offered do not result in lower payments...- gives homeowners the run-around, claiming they have not received workout packets or other documents from homeowners who have sent/faxed repeatedly. Do not seem open to negotiating on loans generally."
- "It is difficult to get to the loss modification department or collection department. They never give you the correct phone lines or fax numbers. Lenders continue calling the borrowers from different areas of the continent. We spoke with a loss mitigation office in Central America who had no idea what Housing and Urban Development represented here in the U.S.A."
- "They also pressure to do transaction right then, when client calls into inquire or they contact borrower. They also pressure to pay refi fee on credit card in that conversation."

Respondents represented a diverse group of counseling agencies. The groups that took the time to fill out this survey represent a cross section of counseling agencies in the state.

- Groups came from various parts of California, including northern California, the San Francisco Bay Area, the Central Valley, greater Los Angeles, the Inland Empire, and the San Diego region. Groups work in rural and urban areas.
- There was a fairly even distribution of the number of clients served by respondents. Over half of the responding groups saw between 1 and 50 clients in the month of April. Six additional groups saw between 50 and 100 clients; 2 groups saw between 100 and 200 clients; and 1 group saw up to 1,000 clients in the month of April. Additionally, 4 groups reported they saw over 1,000 clients in the month of April. A few agencies did not answer this question.
- Most groups reported a large increase in the number of clients served over the last 6 months. The groups that responded to this CRC survey served approximately 11,062 consumers in the month of April alone. This was an increase of 4,629 consumers from December of 2007.

FALSE HOPE: HOPE NOW PRONOUNCEMENTS QUESTIONED

The HOPE NOW Alliance, a Washington, D.C.-based coalition of mortgage servicing companies, industry trade groups and housing counseling agencies, has been collecting its own data and publicly releasing it in the aggregate. The group reported in April that HOPE NOW servicers provided nearly 1.2 million loan workouts since July 2007, and later that month, that HOPE NOW servicers provided nearly

503,000 loan workouts for homeowners in the first quarter of 2008.¹³ As with most such press releases, CRC has difficulty reconciling the public pronouncements with real world outcomes on the ground.

CRC is not alone in questioning the accuracy of HOPE NOW statements and data. John Dugan, Comptroller of the Currency, recently noted that “virtually none of the (HOPE NOW) data had been subject to a rigorous process to check for consistency and completeness – they were typically responses to surveys that produced aggregate, unverified results from individual firms. That lack of loan-level data validation raised real questions about the precision of the data, at least for our supervisory purposes.”

Subprime loss mitigation shows great variance depending on the data source. For the first quarter of 2008, HOPE NOW reported 131,522 subprime loan modifications for the entire industry. Extrapolating the OCC’s subprime loan modifications for the quarter suggests 67,632 were completed.¹⁴ And contrary to HOPE NOW press releases, Comptroller Dugan found short term payment plans outnumbered loan modifications in March by more than four to one.¹⁵ Even industry observers have been critical of HOPE NOW’s prior data releases.¹⁶

More recently, HOPE NOW issued a press release touting new homeowner friendly servicing guidelines. As with other HOPE NOW initiatives, the proposal is less than ambitious and relies on voluntary industry compliance. The word “should” appears in the Guidelines 30 times, usually to describe the obligations of servicers. In contrast, the word “must” appears only 4 times, and is used to describe requirements that must be in place for a borrower to get certain assistance. On the substance of the guidelines, “the guidelines are not particularly groundbreaking as Wells Fargo Home Mortgage noted that the guidelines mirror many of the lender’s ‘long standing’ loss mitigation practices.”¹⁷

Even a one time supporter of HOPE NOW, Congressman Barney Frank, is raising questions. “I supported the HOPE NOW program when it came out, and I continue to think it is worth trying. But it is now clear that much more aggressive action is needed,” he said.¹⁸

The failures of the industry cannot be adequately addressed by voluntary compliance of self imposed commitments and unverified and aggregated data reporting. To be effective, HOPE NOW servicers must be held accountable for their statements, and they must report loss mitigation data to a government agency or third party that can verify its accuracy and release it to the public, broken out for each reporting servicer.

Even looking at the HOPE NOW data for California is not encouraging. Estimated foreclosure starts adjusted for all HOPE NOW Servicers in California appear to be rising rapidly, with 49,992 foreclosure

¹³ HOPE NOW press releases: “HOPE NOW: Servicers Provided Nearly 1.2 million Loan Workouts Since July ’07,” April 10, 2008; and “HOPE NOW Mortgage Servicers Provided Nearly 503,000 Loan Workouts For Homeowners in First Quarter of 2008,” April 28, 2008, available at www.hopenow.com

¹⁴ “Subprime Loss Mitigation a Battleground for OCC, Hope Now,” Inside B&C Lending, June 20, 2008, p. 1.

¹⁵ OCC Press Release, “Comptroller Dugan Unveils New OCC Mortgage Metrics Report,” June 11, 2008.

¹⁶ Cheyenne Hopkins, “Hope Now Under Fire – Even From Within; Infighting, Flawed Statistics, and Other Problems are Cited.” American Banker, February 20, 2008.

¹⁷ “Subprime Loss Mitigation a Battleground for OCC, Hope Now,” Inside B&C Lending, June 20, 2008, p. 3.

¹⁸ David Cho and Renae Merle, “Data on Housing Relief Questioned,” Washington Post, June 13, 2008; D01.

starts in Q4 2007; 77,701 foreclosure starts in Q1 2008; and an alarming 34,468 foreclosure starts for the month of April alone (the last month for which data was reported). The figures for completed foreclosures are similarly staggering: 21,436 in Q4 2007; 32,030 in Q1 2008; and 16,468 in April. Thus, completed foreclosures by HOPE NOW Servicers run 2 xs as high as loan modifications completed (7,530 in Q4 2007; 11,511 in Q1 2008; and 6,722 in April). And there is no information to suggest that these “modifications” are long term, affordable, and in the borrower’s interest. Further, loan modifications reported by HOPE NOW are fewer in number than short term repayment plans established (19,695 in Q4 2007; 20,500 in Q1 2008; and 8,154 in April). While press releases present a rosy picture, the data for California is sobering.

STATE OF CALIFORNIA DEPARTMENT OF CORPORATIONS DATA: HELPFUL BUT NOT ENCOURAGING

The California Department of Corporations has been collecting loan servicing data from state-licensed servicers, and making aspects of that data available to the public in aggregate form. Data collected has been fairly detailed, and the Commissioner of the Department reported an increase in loan modifications in comments accompanying the data report. The Commissioner is “overall...encouraged by the trends in the data compiled...The data shows that the efforts by the state, by industry and consumer groups are having marked success in mitigating the impacts of the decline in the housing market and in preserving homeownership in difficult times.”¹⁹

But the state data show that for the month of March 2008, the most recent for which data is reported, foreclosure sales (18,777) exceeded loan modifications (8,993) by 2:1. The Commissioner references the increase in foreclosures, without citing the actual number, and notes “three principal reasons” for the increase: 1) speculators exiting the market; 2) overstretched borrowers who expected increasing home values or future refinances; and 3) borrowers walking away from their homes because they owe more than their homes are worth.²⁰

The recent complaint filed by the state’s attorney general against the state’s largest lender, alleging widespread abusive and deceptive practices suggests that predatory lending practices explain much of the current foreclosure crisis.

¹⁹Cover memo to state data, Preston Dufauchard, California Corporations Commissioner, May 19, 2008, p. 3, available at <http://www.corp.ca.gov/press/news/SPL/ServicerSurvey0508.pdf>

²⁰ Id. at p. 2.

RECOMMENDATIONS

What we have in place is not working. CRC's goal is to work towards solutions to obstacles that are frustrating efforts to keep borrowers in their homes.

Action is needed now as the crisis will only get worse before it gets better. Credit Suisse estimates that 6.5 million loans will fall into foreclosure over the next five years, with the peak in 2008.²¹

In order to keep borrowers in their homes, and to address the concerns of housing counseling agencies and legal service offices, CRC urges lenders, the California Legislature and Governor Schwarzenegger to take the following key steps:

I. INDUSTRY MUST STEP UP AND TAKE OWNERSHIP OF THIS CRISIS AND ITS SOLUTIONS:

- Write down principal. Servicers must greatly expand the use of principal write downs to facilitate affordable loan modifications for borrowers who are in severe distress, including the numerous California borrowers who were stuck with unaffordable and inappropriate pay option ARM loans who are now in a negative equity position. Ocwen is reportedly doing more principal write downs.²²
- Aggressively and creatively pursue long-term, affordable loan modifications. Merrill Lynch has committed to CRC that it will allocate \$4 million to facilitate affordable loan modifications for borrowers who cannot cover certain costs associated with loan modification, such as paying back taxes.

Residential Funding Company (RFC/GMAC) reportedly sought and received a determination from Ratings Agency Moody's that RFC could modify subprime loans beyond the limits of its MBS's pooling and servicing agreement. These pooling and servicing agreements, which may limit loan modifications to approximately 5% of the loan pool before investor approval is needed, are often cited as a reason why so few loan modifications are approved.²³

- Protect tenants. Tenants are the most forgotten and compelling of victims in the foreclosure crisis. Servicers and trustees should work to ensure that tenants in owner occupied homes are able to live out their tenancies in habitable conditions; are allowed to remain in foreclosed homes that are not selling in this down market; are given reasonable notice and opportunity to leave; have their

²¹ "Foreclosure trends – a sobering reality," Credit Suisse, April 23, 2008, available at <http://www.credit-suisse.com/researchandanalytics>.

²² "Ocwen Steps Up Loan Mods, Confounds MBS Investors," Paul Jackson, Housing Wire, June 20, 2008, available at <http://www.housingwire.com/2008/06/20/ocwen-steps-up-loan-mods-confounds-mbs-investors/>

²³ "Moody's Allows RFC's Subprime MBS Mods," Inside B&C Lending, June 6, 2008.

security deposits returned; and are given adequate cash-for-keys to ease their transition to new housing. Bank of America, during its application to purchase Countrywide Financial, has committed to give tenants 60 days notice before being forced to leave foreclosed homes, and will offer tenants funds if they are able to vacate the premises within a quick timeframe. US Bank, as a large trustee on pools of mortgage backed securities, has agreed to act within legal constraints to encourage loan servicers to act responsibly so as to minimize litigation risk to investors (for unlawful evictions, for example) and to minimize the negative community impact, where possible. In no instance should servicers or trustees allow tenants to be evicted in violation of local ordinances and state law.

2. THE CALIFORNIA LEGISLATURE MUST ENSURE THAT HOMEOWNERS IN DISTRESS ARE GIVEN A CHANCE TO STAY IN THEIR HOMES AND MUST PROTECT CALIFORNIANS FROM LENDING ABUSE AND A FUTURE CRISIS:

- Implement foreclosure reform to ensure borrowers are given alternatives and to minimize community impacts. Servicers should not foreclose on homeowners without exploring alternatives to foreclosure, especially in light of the lending abuses of the past few years that have placed many borrowers into unaffordable and improper loans. If foreclosure is the last resort, it should be carried out in a way that minimizes the burden on tenants who are forced to leave their homes, and on communities which face the prospect of blight, crime and lowered property values.

SB1137 (Perata) would reform the foreclosure process by requiring loan servicers to take reasonable steps to contact borrowers and discuss alternatives to foreclosure BEFORE beginning the foreclosure process; give tenants 60 days to leave foreclosed properties; and allow local governments to fine financial institutions for failure to maintain foreclosure properties so as to avoid blight. This bill was a priority bill for community and consumer groups and is not opposed by the lending industry.

- Pass a strong anti predatory lending bill. As the Attorney General's action against Countrywide highlights, many lending practices of the last few years were characterized by abuse and deception. California residents deserve to join the residents of other states in obtaining protection against certain abusive practices, including: prepayment penalties, broker kickbacks (YSPs), lending when the borrower has no reasonable chance to repay the loan, allowing brokers to inflate borrower incomes (stated income loans), loans where minimal but accepted payments actually increase the amount of money owed (negative amortizing and option ARM loans), and brokers acting in their own interests and not the interests of their borrower clients, amongst other abusive practices. To be meaningful, these protections should bind Wall Street investors who own most of the loans, and allow for victimized borrowers to sue to enforce their rights.

The state Senate Banking Committee gutted ABI830 (Lieu), this year's anti predatory lending bill. Similarly, the state Senate Banking Committee voted down AB2359 (Jones) which would have held investor-owners of problematic loans responsible for predatory lending. The Senate and Assembly leadership should come together to work out a compromise that will prohibit subprime prepayment penalties and yield spread premiums, impose steep penalties on wayward mortgage brokers, ensure borrowers have a reasonable ability to repay the loan, and allow consumers to vindicate their rights against the holders of problematic loans, amongst other provisions.

- Require that all key mortgage documents are in the language of the borrower and do not include an unknowing waiver of rights. The underlying principle behind contracts is that people come together and voluntarily and knowingly agree to certain terms that they feel will serve their interests. Allowing brokers and lenders to negotiate a deal in one language, but then memorialize that agreement in a document in another language not understood by the borrower makes a mockery of our system. These problematic agreements are likely a daily feature of California's mortgage market, and should be prohibited. So, too, are problematic waivers of rights that lenders put before subprime and distressed borrowers who are seeking a loan or a loan modification.

The state Senate Banking Committee killed 2 bills that addressed these issues. Many borrowers are being sold loans in non English languages but receiving English-only documents which they cannot understand. Likewise, many borrowers in distress are able to negotiate loan workouts in their first language, but the agreements are all in English and may include provisions whereby the borrower broadly and unknowingly waives her rights.

- Require loan servicers to report detailed servicing data by company and to observe basic obligations. Currently, borrowers in distress are receiving bad outcomes because loan servicers are under very little obligation to do much of anything for borrowers to help them avoid foreclosure. Further regulation of loan servicers is needed to ensure that they act reasonably and fairly with borrowers, not charge excessive fees for services rendered, and not require borrowers to pay fees for services NOT rendered, such as the possibility of a loan modification that may never materialize.²⁴ Without substantive regulation, the only way we will see better performance from loan servicers is if we shed light on their activities. Current loan servicing data reporting requirements fail to do this, as the data is aggregated and the public and policymakers are unable to see which companies are working to avoid foreclosure and which are not. Treasury Secretary Paulson reportedly made a similar observation, expressing frustration with existing aggregate data on the pace of loan modifications, saying it was impossible to determine which lenders were successful at modifications and which were lagging behind.²⁵ A notable and commendable exception is Citigroup, which has been voluntarily reporting some loss mitigation data and making that data available to the public.²⁶

²⁴ See, "Need to Modify Your Countrywide Loan? Pay Now, Talk Later," Investors Business Daily, May 22, 2008, revealing that Countrywide charges some borrowers large upfront fees before it will even discuss a loan modification.

²⁵ "Paulson to Lenders: Fix Has to Come From You," Cheyenne Hopkins, American Banker, April 25, 2008.

²⁶ See, "Citi U.S. Mortgage Lending Data and Foreclosure Prevention Efforts," Q1 2008.

The Commissioner for the Department of Corporations has been collecting servicer data from the state's largest servicers. But this data is aggregated and does not allow the public to see which companies are working with borrowers to avoid foreclosure and which are not. AB69 (Lieu) had required loan servicers to report California data which would be made available to the public, but the key servicer-specific reporting provision was deleted by the author in light of concerns from the state Senate Banking Committee. Additionally, AB2740 would have imposed minimal requirements on loan servicers who are not currently obligated to do much for home loan borrowers. This bill was not even voted on by the state Senate Banking Committee.

3. GOVERNOR SCHWARZENEGGER MUST HOLD LOAN SERVICERS ACCOUNTABLE TO KEEP THEIR WORD AND HELP CALIFORNIA HOMEOWNERS AND COMMUNITIES

- Hold servicers accountable. The Schwarzenegger Administration must hold loan servicers accountable to the public, especially those companies that have publicly signed on to the Governor's Subprime Loan Agreement. These servicers participated in press events touting their participation. If they are now failing to live up to the principles of the Agreement, or otherwise not doing enough to help California homeowners, they should be publicly held to account.

1) A simple, user-friendly complaint process must be developed to assist consumers and counseling agencies that are struggling to realize the benefits of the Governor's agreement to report difficulties with loan servicers. Complaints filed relating to servicing difficulties will help inform the state's response to poor borrower outcomes.

2) The Department must report data on the performance and compliance of servicers that have publicly signed on to the Governor's Subprime Loan Agreement.

- Use bully pulpit to promote better outcomes. The Governor has taken a few positive steps to address these issues, but could more effectively blunt the impacts of this crisis by becoming more fully engaged.

1) The Administration should convene loan servicers and housing counseling agencies to constructively work through challenges to loan modification and other loss mitigation outcomes. Services and counselors could achieve far better results for more borrowers if they could address issues relating to logistics, communication and transparency. Such issues include: the use of common forms, expectations around response time from servicers to requests from counseling agencies, clear parameters that let counselors know under what circumstances a borrower can expect to receive a loan modification, a way to prioritize time-sensitive cases, benchmarks for what constitutes a long-term loan modification, an agreement not to charge borrowers for the mere

possibility of getting a loan modification, and hiring more loan servicers to deal with the increasing case volume²⁷ amongst other issues.²⁸

2) The Administration should convene investors to encourage their active participation in a solution to the foreclosure crisis. Servicers all too frequently cite investor demands as the reason they do not approve more loan modifications or workouts. Yet as the housing market continues to go down, the economics of investors turning to foreclosure over a loan modification make less sense. The Governor should attempt to convene the largest investors in home loans in California to urge them to agree to loan modifications, where their agreement is required, and to understand better what their concerns are. Additionally, the Administration should seek clarity from loan servicers how often investor approval is truly required to approve a loan modification.

3) The Governor should expand the current Subprime Loan Agreement to include more borrowers. Such an expansion of the Agreement could include streamlined long-term loan modifications for borrowers who have fallen behind on their loans as a result of an interest rate reset, a focus on modifications with principal write downs, and concrete plans on how to address the impending resetting of option ARM loans. A goal of the Administration's efforts in this regard should be for long term, affordable loan modifications to exceed the number of foreclosures each month.²⁹

- The Governor must sign bills that emerge from the Legislature which effectively and directly regulate lending and servicing abuses. All political parties and all branches of government must come together to find solutions to our current crisis. Californians deserve no less.

²⁷ Many third party servicers have loss mitigators work on 500 to 1,000 files, as compared to the 125 files that some start-ups may allow. See, "Servicer Offers a Deal to Banks Clinging to Assets," Kate Berry, American Banker, June 23, 2008.

²⁸ The Corporations Commissioner has agreed to convene a meeting to discuss related issues.

²⁹ These concepts have been raised with Administration staff by the California Reinvestment Coalition and the Center for Responsible Lending.

APPENDIX I: COMMENTS OF COUNSELING AGENCIES AND LEGAL SERVICE OFFICES

Counseling agencies were asked, "In your experience, which lenders/servicers are the most difficult to work with in trying to keep borrowers in their homes? Why?" Their responses follow:

"HomeEq, Countrywide, Homecoming Financial (GMAC), Washington Mutual, OCWEN, and Wells Fargo, they make it very difficult to remedy the situation before they start defaulting, they wait until all the attorney fees, late fees, workout fees are added to the loan, and it takes 2 mo. before they even have a negotiator from the bank contact them or come up with a resolution. We have stated many times to the bank if the house won't appraise for the loan amount, why don't you reduce the balance to current market and qualify them based on the appraised value. They are going to turn around and sell it for the new value anyways. But they don't allow it, and in most cases the clients can't afford to stay in the home. Their excuse is, "the investor doesn't allow it." I am also hearing about companies promising loan modifications but fulfilling nothing, but they charge the client for these services. As a counselor, I can immediately tell who has a good foundation for a loan modification and unfortunately I can also tell who should not have bought the home based on their take home income. These people are already struggling; they don't need to be lied to, too."

"Bank of America is currently the company we have had difficulties in getting a hold of them to work with two of our families who have a 1st and a HELOC with BofA. While the first is affordable, the HELOCs are leading my clients into foreclosure. Another is Option One who for months clients have tried to work with them to find a resolution and they have taken even longer to approve or decline a modification. The only solution we have been given in the past is a reinstatement which ends up being very expensive due to how long it is taking to get a decision."

"Countrywide and GMAC have been the most difficult, the solutions they propose do not make sense and the solutions that I propose are rejected because they are unwilling to see the big California picture. The majority of the representatives are either out of state or out of the country."

"Wells Fargo, ASC, and PHH they are all Wells Fargo and they really delay and delay and will not do workouts"

"Argent/CitiMortgage/ CitiResidential is absolutely the worst. They refuse to negotiate at all, and have hung up on our counselors and/or clients several times. Further, they threaten the clients with foreclosure, and have refused to hold three way conversations while the client is in our office, even after we have faxed authorization, many many times! Absolutely the worst offender. All of the modification requests we have submitted have been denied by this trio."

"With Washington Mutual, we have had mixed results. The worst part is that they are constantly 'losing' faxed documents, and so we are not able to move forward in many cases. We actually get a rep on the phone, they are helpful, but the documents don't always seem to get to them. This is a shame, because they have a very big presence in our community."

"Countrywide, Wilshire, Washington Mutual."

"Countrywide...had an obviously perfect borrower for a forbearance and the loan mitigation person said, ""we don't do forbearances""...yet that same day BofA came out with a news conference saying they would be doing forbearances, while discussing the CW takeover."

"Wachovia- rarely willing to modify a loan, and modifications offered do not result in lower payments. WAMU- gives homeowners the run-around, claiming they have not received workout packets or other documents from homeowners who have sent/faxed repeatedly. Do not seem open to negotiating on loans generally."

"IndyMac Bank, Ocwen, American Home Servicing"

"None stand out. They are all responsive but still unwilling to agree to solutions."

"Wachovia, Countrywide, WAMU, Wells Fargo"

"All servicers and Countrywide, Washington Mutual, Citibank (Citi Residential Lending), HSBC, Option One, Saxon Mortgage, First Federal Bank of California, Downey"

"ASC, World Savings, Option One, HSBC, Countrywide, WaMu and all lenders in second position. It is difficult to get to the loss modification department or collection department. They never give you the correct phone lines or fax numbers. Lenders continue calling the borrowers from different areas of the continent. We spoke with a loss mitigation office in Central America who had no idea what Housing and Urban Development represented here in the U.S.A."

"IndyMac, Wells Fargo. IndyMac doesn't cooperate. Wells Fargo is too big and loses anything sent to them. Litton will not cooperate"

"American Servicing and Homecomings because they do not provide one person to talk with so there is no consistency in negotiating; they also seem to lose paperwork more frequently than other lenders, meaning negotiations have to start over again."

"Accredited Home Finance, Homecomings, GMAC, Wachovia/World Savings, Litton Loan Servicing"

"AHM, HomeQ, GMAC"

"GMAC; HomeEq; Wilshire; Saxon; Option One; Litton."

"I think more lenders have seen the need to help but Countrywide, Chase seems to have a lot of requirements and make it harder for the borrower"

"All lenders. There are so many different people in the team that don't know who is really take care for the client."

"Countrywide. Encumbered notes that are securitized, slow responses on postponing trustee sales, slow response on short sales, and modification request."

"Select Portfolio- Their system automatically calculates 20% into ones monthly budget for emergencies weather they use it or not which forces customers to falsify their budgets in order to be reviewed for a workout."

"Accredited, Homecomings, GMAC, Wachovia-World Savings, Litton. In common, they push refinancing into very short term loans with the thought that they will address a long term refinance at end of the short term refi. They also pressure to do transaction right then, when client calls into inquire or they contact borrower. They also pressure to pay refi fee on credit card in that conversation."

"We do not currently keep individual statistics on lenders, so that is why the questions above are all answered for ""all lenders."" If we had more grant funding we might have more staff resources to track more data like that."

"Litton, Homeq, and GMAC/ Homecomings are the most difficult to work with from the list of major servicers above. They are difficult because it is often hard to get a response from them; they tend to blame the borrower for payment history rather than looking at the borrower's circumstances that caused them to miss payments; and they more often rely on payment plans as the first and sometimes only option offered to the delinquent borrower."

"Countrywide is extremely difficult to work with. when trying to assist a client with a workout, calls are consistently transferred from department to department with no discernible reason or outcome."

"Litton-lack of communication and options"

"1. Countrywide - it's hard to get through to them and once we do its hard to get the right person.
2. GMAC (and HSBC) - not willing to lower principal or even give a better rate. Same for HSBC.
3. WaMu - They are willing to modify but not to a good rate or long enough. Tried to work down principal but unwilling. They claim property prices will go up.
4. Wachovia/World Savings - willing to modify but only if being sued."

"World Savings/Wachovia - Once servicer will tell us a loss mitigation option then when we call back another servicer tells us something different or that W does not offer this option. Also, there seems to be a commission that W's servicers receive and the amount seems to be different depending on the servicer."

"Countrywide - They keep changing their phone numbers. It takes time to approve or get authorization in the borrower's file. One good case."

“GMAC Mortgage, LLC - We have trouble reaching a servicer.”

“Wachovia - was not willing to make loan modifications when the borrower is already paying interest only/less than interest only.”

“Ocwen Servicers were extremely difficult because of their shifting demands. Many were located overseas. It was difficult conversing with those with heavy accents. Others did not understand budgeting realities faced by seniors who were not able to get "second jobs," reduce medical expenses, etc. One servicer yelled that if the borrower did not accept an unacceptable modification, she would lose her house and it would be my fault if she did. The servicer also demanded a payment equal to what was owed under the original loan terms, but he claimed it would be applied as the first payment of the modification. Unfortunately, Ocwen's deadline to accept the modification had passed before the borrower received it. Yet Ocwen refused to give confirmation that the payment would be applied to the modification and left open the possibility that Ocwen could apply the payment to the existing loan and still foreclose on the borrowers.”

"Countrywide, why because they are under staffed. GMAC Mortgage, HSBC, HomEq Servicing. You get a recorded message. Washington Mutual, Option One Mortgage you get an answering machine."

"We are told by BofA and Countrywide that if the investor pool involved with the client's loan has not approved loan modifications OF ANY TYPE, these clients will not be helped. These loans are easy to spot because contact with the lender produces ZERO assistance. If the investor pool is amicable toward this process, assistance occurs. The difficulty comes in determining which pool is which, from a client standpoint. If this thinking forms the foundation of all such lender pools, then our task is far more problematic than before. Overall, we are STILL not seeing significant changes from our lenders on assisting clients. We are seeing an increase in the number of clients suffering from short-term disabilities that allow them to get behind just enough to start the ball rolling. In these cases, lenders are seeking repayment plans rather than forbearances which would allow clients to get back on their feet. This counseling still remains a struggle and as homeowners are catching on to available services, we are having to seek out the services of mental health groups to help them deal with the depressive disorders that are following the sessions. ”

"All of them; their phone systems are not very friendly for us counselors to talk to their loss mitigation department."

"It is the net income for all homeowners/clients that remains the same, it is the marketplace adjustments that can no longer be attainable to even pay therefore foreclosure are on the rise. Even the courts (Unlawful detainer actions) favor the lenders. The Courts are not prepared to handle unlawful detainers. No timely representation or legal services available in San Diego. Usually no response from the lender. I agree that all lenders have taken unfair advantage of homeowners 1) by their failure to abide by due process (notification) under law; 2) the overriding factor is that under law the homeowner borrower has breached their contract therefore making it appear as if it's the homeowners fault when in essence they were defrauded in the process by some apparent workout planned only to fail leading to foreclosure of the property; 3) The big cover up is that they are successfully getting the homeowner to leave their home. The

homeowner has relinquished civil rights to undo the harm done by the lenders. Everyone loses. Within a 7 day period, San Diego County alone, Notices of Default were issued to 1267 families who are 2 months behind and later on their mortgage."

"In my opinion, there are only three lending institutions really striving to work with clients. Those are Washington Mutual, GMAC and Schools First Credit Union (formerly OCTFCU). JP Morgan Chase is willing to help once you climb the ranks, Homeeq also follows suit. However, the rest will not do any type of preemptive modification, and with regard to early communication, the most common preemptive contact made during a rate reset is to refinance. In our area, this is not a viable solution as the trend of those needing this help purchased or refinanced during 2005-2007 and are in a negative equity position. Countrywide and Green point Mortgage. Very difficult to reach lenders."

"Countrywide - unresponsive, allow hardship requests to 'fall thru the cracks.' Option One - Once modifications are approved while accepting the ""new"" payments, monthly statements reporting unadjusted amount resulting in erroneous credit reporting. GMAC - Confusing telephone prompts with hold times exceeding 45 minutes. Litton - 6+ months for hardship approvals. HomeEq - Not recording discharged bankruptcy. Counselor/client unable to begin loss mitigation process."

"Countrywide, Litton, SPS, GMAC, ChevyChase, Citi, Aurora Loans, Saxon, Downey Savings"