RACE TO THE BOTTOM:

AN ANALYSIS OF HAMP LOAN MODIFICATION OUTCOMES BY RACE AND ETHNICITY FOR CALIFORNIA

A Report by the California Reinvestment Coalition

HAMP Data Analysis Provided by Urban Strategies Council

July 2011

EXECUTIVE SUMMARY

Since 2007, California's families and neighborhoods have been devastated by the foreclosure crisis. Despite the objectives of the current federal Home Affordable Modification Program (HAMP) and state and local efforts, millions of Californians have suffered as their mortgages have become increasingly unaffordable, as their housing values crashed, and as banks failed to modify mortgages to keep people in their homes.

Foreclosures are harming families who are losing the biggest asset they will likely ever own. However, the impact of foreclosure is even broader and deeper than one family's home loss. Children are forced to relocate to new schools, local property tax revenue is lost, properties are left vacant and blighted, small businesses owners are hurt, tenants are displaced, and neighborhood property values drop substantially.

In order to craft effective solutions to our current foreclosure and housing crises, policy makers and regulators need access to good data about how loan servicers are treating homeowners struggling to avoid foreclosure and stay in their homes. Yet such data on mortgage performance and foreclosure are scarce and incomplete.[1] In fact, all of the relevant information is in the hands of the very companies that brought down the American economy. These banks consistently and knowingly made risky loans, and now are deciding every day to foreclose on working families. The few sources of information that exist are considered "proprietary" by the banks, and are even shielded from public access by federal regulators.

This report uses the limited information that is publicly available in order to assess the extent and reach of loan modifications at banks. This report analyzes bank loan modification performance using two data sets: 1) recently released data from the Treasury Department on loan modification applications submitted as part of HAMP (HAMP data); and 2) CRC's April/May 2011 survey of fifty-five housing counselors working at forty-eight nonprofit agencies serving thousands of Californians at risk of losing their homes each month.

This analysis demonstrates the enormous problems with loan servicer practices and suggests that these practices are severely damaging the economic prospects of neighborhoods in our state, and in particular, neighborhoods of color. All homeowners face significant challenges in trying to get a fair review for a loan modification. For California's diverse, multilingual population, obstacles to modification are amplified.

The main findings of this report include:

- <u>HAMP needs to be fixed and enforced</u>. 65% of housing counselors in California believe that HAMP is not working as currently implemented by loan servicers. Many counselors cite the lack of enforcement of HAMP's rules as a major problem.

- <u>Borrowers continue to receive bad outcomes despite HAMP</u>. At-risk borrowers continue to struggle to obtain permanent modifications and remain in their homes.

[1] "Should Loan Servicing Data Be a Public Utility?" Alex Ulam, American Banker, May 16, 2011.

- **Stuck in trial modifications**. 78% of housing counselors reported that borrowers were stuck in trial modifications "always" or "almost always."
- **Borrowers are denied permanent modifications**. 72% of housing counselors reported that borrowers are denied permanent HAMP loan modifications "always" or "almost always."
- **"Dual track" problems are endemic**. An astonishing 94% of housing counselors reported working with clients who have lost their homes while they were working with their loan servicer on a loan modification.
- **Principal reduction is needed, but very rare**. Fewer than 5% of borrowers in the Fresno and Los Angeles Metropolitan Statistical Areas (MSA) received loan modifications that included a reduction in principal, according to HAMP data.
- **HAMP excludes many**. 46% of borrowers requesting loan modifications in California never even made it to the initial trial modification stage, presumably because they didn't meet HAMP eligibility criteria, according to HAMP data.

- <u>Servicers fail to report all data</u>. Servicers' failure to collect key data is a violation of HAMP contracts, thwarts transparency, and obscures whether anti-discrimination laws are being followed. This is yet another example of servicer noncompliance with HAMP.
  - **No race data**. 43% of loan modification records in four California MSAs do not include the race or ethnicity of the borrower. Servicer non-reporting accounted for 10% of all records lacking race and ethnicity data.

- <u>Inadequate data perpetuates lack of transparency and inadequate oversight</u>. The Treasury Department has failed to require more detailed data collection and reporting, but worse still, it has declined to release all of the data in its possession.
  - **Not servicer-specific**. Treasury refuses to release servicer-specific data, so the public cannot evaluate the performance of individual companies who may be helping or hurting local residents and communities.
  - **Not local data**. Treasury does not allow for local data reporting and analysis, instead lumping together the loan modification activity in five San Francisco Bay Area counties into one large MSA, for example.

- <u>Racial disparities exist</u>. Even with the HAMP data's limitations, there are disparities in the experiences of borrowers along racial and ethnic lines. Housing counselor surveys provide further context for the HAMP data.
  - **"Incomplete applications**." In all four MSAs, "incomplete modification request" was the main reason cited by loan servicers for trial modification cancelations. In Fresno, Latinos and African-Americans had the highest share of trial mod cancelations due to incomplete requests, at 47% and 44%, respectively, compared to 37% for white borrowers, according to HAMP data.
  - **Lost documents**. Most housing counselors report that the large loan servicers "always" or "almost always" lose documents. Several counselors reported that Limited English Proficient borrowers have the most obstacles to overcome. One housing counselor reported that a loan servicer discarded the loan modification application of a client who submitted her documents in Spanish. One has to wonder whether the large category of "incomplete requests" is due to borrowers

failing to submit documents, or servicers' chronic inability to maintain the documents they receive.

  - **Modifications not accepted**. In the Los Angeles and Sacramento MSAs, African Americans had the highest share of trials canceled for the reported reason "not accepted by the borrower," according to HAMP data. A high rate of non-acceptance is curious, as these struggling borrowers have taken the many affirmative steps needed to apply for a loan modification through HAMP. This points to another explanation - 88% of housing counselors report that servicers are steering borrowers into generally less favorable non-HAMP modifications.

- <u>Counselor responses confirm different outcomes</u>. These differences in loan modification outcomes are confirmed by housing counselors.
  - **Worse outcomes**. 42% of housing counselors reported that borrowers of color are receiving worse outcomes than white borrowers seeking to avoid foreclosure. Other counselors felt that loan modifications outcomes are poor for all borrowers, but since borrowers of color were most affected by predatory lending, foreclosure and job loss, these borrowers are more likely to be affected by weaknesses in HAMP and other foreclosure prevention efforts.

The report concludes with a few recommendations:

- **The State Attorneys General investigation must provide relief for victimized homeowners and those at-risk of foreclosure**.

- **The new Consumer Financial Protection Bureau must improve data reporting, write stronger foreclosure prevention rules, and increase oversight of loan servicers**.

- **Bank regulators need to finally hold banks accountable by imposing penalties and exposing bank practices and regulatory oversight to greater transparency**.

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INTRODUCTION

This report analyzes bank loan modification performance using recently released federal data in conjunction with the California Reinvestment Coalition's (CRC) latest survey of housing counselors. This analysis demonstrates that loan servicers are performing poorly when it comes to reworking distressed loans to help borrowers avoid foreclosure.

Bank practices have harmed California communities through a cycle of abuse that began with the redlining of low-income neighborhoods and neighborhoods of color. These neighborhoods, starved for access to home loans, were later flooded with subprime and option ARM loans. Predictably, these communities are now concentrated with foreclosures and empty homes. While servicers have generally failed to help homeowners stay in their homes, CRC and other consumer advocates have been concerned that neighborhoods of color and borrowers of color are having greater difficulty in obtaining sustainable loan modifications.

In February 2009, two years into the foreclosure crisis, President Obama announced the guidelines of the federal government's response to the foreclosure crisis, the Home Affordable Modification Program (HAMP). Under this program, the federal government provides incentives to loan servicers to modify the terms of home loans for certain homeowners who are delinquent, or in imminent risk of default, on their mortgages. The goal of the program was to stem the tide of foreclosures and save 3-4 million Americans from losing their homes by making mortgages more affordable for qualified homeowners.

The day after President Obama's announcement, CRC issued a response that noted the positive features of the plan while also calling for necessary changes, including a requirement to collect data on the race, ethnicity and neighborhood of borrowers seeking to avoid foreclosure through HAMP. Given the disproportionate effect of the foreclosure crisis on communities of color, CRC was concerned about access to loan modifications for communities of color. The Treasury Department later made reporting of race and ethnicity data a requirement of the program, citing the obligation of the HAMP program to operate in compliance with the Fair Housing Act, a federal law prohibiting discrimination in housing and lending.

Yet while the Treasury Department required loan servicers to report this data for borrowers in the HAMP program, it was very slow to release any of the data to the public, despite calls from advocates to do so. Without access to this information, advocates found it impossible to hold banks accountable for non-compliance with the HAMP program. In the absence of any enforcement whatsoever by Treasury or other governmental actors, this has meant an absolute lack of accountability.[2]

On January 31, 2011, almost two years after the program was first announced, the Treasury Department released HAMP data sets containing race and ethnicity information to the public. CRC worked with Urban Strategies Council to review and analyze this new data set and to explore the fair housing implications for the HAMP program, and foreclosure prevention more broadly. Unfortunately, there were many limitations to the data, including missing race and ethnicity data and overly aggregated geographic information.

Over the last four years, CRC has conducted seven surveys of nonprofit housing counselors in California who are on the front lines of the foreclosure crisis regarding their experiences with servicers' loan modification efforts. In the last three surveys, a significant percentage of responding counselors reported that borrowers of color were getting worse loan modification outcomes than white borrowers, though there wasn't consensus on why this was so.[3] There has been a paucity of data to confirm these concerns, but nonetheless the surveys demonstrate that while modifications are hard to come by for all borrowers, certain borrowers and certain neighborhoods may have an even more difficult time.

Given the limitations of the HAMP data, this report combines initial findings from the HAMP data with the results of CRC's most recent survey of housing counseling agencies to shed light on what is happening to working families in California fighting to stay in their homes. The HAMP data can help identify trends for large areas of the state, while the survey data help paint a picture of what is happening on the ground.

METHODOLOGY

Recently Released HAMP Data. CRC worked with Urban Strategies Council to analyze HAMP loan modification data for four California Metropolitan Statistical Areas (MSAs)—Fresno, Los Angeles, San Francisco/Oakland, and Sacramento.[4] These MSAs were chosen for analysis due to their location in various regions of the state, as well as the presence of ethnically diverse populations that have been affected by problematic lending and foreclosures. Each of these

[2] To their credit, on June 9, 2011, Treasury and the Department of Housing and Urban Development announced that Bank of America, JPMorgan Chase, and Wells Fargo would no longer receive payments tied to their participation in HAMP until they improve their performance. See "Federal payments halted to 3 mortgage servicers," Dina ElBoghdady, Washington Post, June 9, 2011. Such action by Treasury, while welcome, is long overdue.

[3] In CRC's fifth survey, 67% of counselors responding reported that borrowers of color were receiving worse outcomes ("The Ongoing Chasm Between Words and Deeds V," California Reinvestment Coalition, March 2009, available at www.calreinvest.org). In CRC's sixth survey, 64.2% of housing counselors reported that borrowers of color obtained worse loss mitigation outcomes (these data were not included in any publication). In CRC's seventh survey, 42% of housing counselors reported that borrowers of color received worse outcomes "sometimes" or "often."

[4] For additional analysis of HAMP data that is not included in this report, contact Urban Strategies Council at www.urbanstrategies.org.

MSAs represent large geographical regions ranging from 3,424 square miles (San Francisco/Oakland MSA) to over 6,000 square miles (Fresno), and represent between 890,750 people in the Fresno MSA to over 12 million people in the Los Angeles MSA.

Modification success rates, reasons for denial, and other data points were analyzed to illuminate whether any disparities exist between white borrowers and borrowers of color trying to obtain loan modifications. Ultimately, the detailed data set yielded more questions than answers.

The data analyzed here come from the initial data release, and cover loan modification activity through November 31, 2010. The Treasury Department has uploaded additional data as of March 2011, and plans to continue to do so on a monthly basis.

Recent CRC Survey of Housing Counselors. Additionally, CRC conducted its seventh survey of fifty-five (55) housing counselors and legal advocates working at forty-eight different offices in California collectively serving thousands of borrowers every month. These groups are working every day on the front lines of the foreclosure crisis, trying to help families avoid foreclosure and stabilize communities. The six previous surveys have shed light on how people are affected by foreclosures, the success of policies put forth to address foreclosures, and the industry response to this crisis. This survey was sent to housing counselors in April 2011 and completed in the months of April and May.

Public data disclosure can shed light on otherwise hidden industry practices, encouraging better practices and alerting regulators and legislators when enforcement actions and policy change are in order. Inadequate data reporting frustrates these goals. While the HAMP data set raises more questions than it answers, the CRC survey of housing counselors is useful in filling in some of the gaps in the data.

The findings from the two data sets are grouped into four sections:

- An Overview of HAMP Performance
- Limitations of the HAMP Data
- Fair Housing and Other Concerns
- An Assessment of Individual Loan Servicer Performance

In each section, there will be a discussion of relevant findings from the HAMP data and/or CRC housing counselor survey.

The findings are followed by a brief conclusion and a list of policy recommendations.

FINDINGS

- **An Overview of HAMP Performance**

A. *HAMP Data*. The HAMP data provide information about how the program has been performing and, as such, enhance the public's understanding of the program's impact at a regional level. High-level findings from the HAMP data include:

Permanent modifications. To date, 61,277 permanent modifications have been made in the four target California MSAs; 94% (57,524) of these modifications remain in active payment, while only 3,720 have been disqualified, presumably for failure to maintain payments.[5]

Payment reductions. On average, HAMP has significantly reduced monthly home loan payments for modification recipients. Among all active permanent and active trial modifications in the four MSAs, there was an average 35.1% reduction in total monthly housing payments for borrowers (see Figure 1, below).

HAMP excludes many. Of 568,630 California homeowners seeking a HAMP modification, 46% could not even get to the trial modification stage, presumably because they did not meet HAMP's basic program eligibility requirements. Another 31% of California applicants were stuck in a trial modification or had been kicked out at the trial modification stage. Only a fraction of California applicants—a mere 23%— had received a permanent modification (see Figure 2, below).

Few loan principal reductions. Principal reduction is critical to stemming the foreclosure and housing crises, as it provides an effective way to keep borrowers in their homes and stabilize communities. Among all loan modifications in the four MSAs, only 5.9% came with principal reduction. Eleven percent of borrowers in the San Francisco/Oakland MSA received some degree of principal forgiveness as a part of their modification, compared to less than 5% of borrowers in Fresno and Los Angeles (see Figure 3, below).

Aged trial modifications. According to the HAMP program guidelines, after three months of successful trial modification payments, borrowers are entitled to permanent HAMP modifications. However, sixteen percent of trial modifications in the four MSAs have been active for more than six months. Being stuck in a trial modification for extended periods is not only inconsistent with HAMP directives, but it is potentially harmful to the homeowner, as many will have struggled to make multiple monthly trial modification payments, only to be later denied a permanent loan modification. These families are left facing foreclosure with decreased funds and increased frustration.

[5] All data are from Treasury's January 31, 2011 release and are for data collected through November 31, 2010.

Figure 1: Mortgage payment reductions under HAMP in 4 California MSA's

	Fresno MSA			Los Angeles MSA			Sacramento MSA			SF/Oakland MSA			All Four MSAs		
	Before	After	% Change	Before	After	% Change	Before	After	% Change	Before	After	% Change	Before	After	% Change
Official Mod	$1,710	$1,131	-33.8	$2,667	$1,704	-36.1	$2,195	$1,480	-32.6	$2,913	$1,870	-35.8	$2,573	$1,660	-35.5
Trial Mod	$1,759	$1,194	-32.1	$2,700	$1,778	-34.2	$2,245	$1,535	-31.6	$2,907	$1,925	-33.8	$2,618	$1,736	-33.7
Total	$1,720	$1,144	-33.5	$2,674	$1,721	-35.7	$2,206	$1,492	-32.4	$2,911	$1,884	-35.3	$2,583	$1,677	-35.1

(Source: HAMP Data Set)

Figure 2: Total HAMP Activity in the State of California

		Count	%
Modification Requests	Not Approved/Accepted	261,824	46.0
Trial Period Modifications	Active	35,296	6.2
	Cancelled	101,867	17.9
	Disqualified	36,569	6.4
Official Modifications	Active Payment	124,243	21.8
	Disqualified	8,764	1.5
	Paid Off	67	0.01
Grand Total		**568,630**	**100**

(Source: HAMP Data Set)

Figure 3: HAMP Loan Modifications by Inclusion of Principal Reduction and MSA

	Modifications Include Principal Reduction	Official Modification: Active Payment		Official Modification: Disqualified		Official Modification: Paid Off		Trial Period Modification: Active		Trial Period Modification: Cancelled		Trial Period Modification: Disqualified		Grand Total	
		Count	%	Count	%	Count	%	Count	%	Count	%	Count	%	Count	%
Fresno MSA	No	2,842	93.5	241	99.2	2	100.0	529	92.6	1,586	99.3	814	98.7	6,014	95.8
	Yes	197	6.5	2	0.8	0	0.0	42	7.4	11	0.7	11	1.3	263	4.2
Los Angeles MSA	No	28,390	92.8	1,704	98.2	14	93.3	6,142	92.0	16,462	98.9	7,499	98.7	60,211	95.2
	Yes	2,195	7.2	32	1.8	1	6.7	531	8.0	190	1.1	98	1.3	3,047	4.8
Sacramento MSA	No	7,046	92.2	588	98.0	5	100.0	1,458	91.6	3,843	98.9	1,860	97.9	14,800	94.8
	Yes	593	7.8	12	2.0	0	0.0	133	8.4	42	1.1	39	2.1	819	5.2
SF/Oakland MSA	No	6,777	83.2	364	97.3	1	100.0	1,707	84.5	3,805	98.2	1,694	97.5	14,348	88.8
	Yes	1,373	16.8	10	2.7	0	0.0	313	15.5	68	1.8	43	2.5	1,807	11.2

(Source: HAMP Data Set)

B. *CRC Counselor Survey***.** Housing counselor survey findings provide a fuller picture regarding the successes and failures of the HAMP program. Specifically, responses from fifty-five housing counselors suggest:

HAMP Needs To Be Fixed. A clear majority, 65% of housing counselors responding to the survey felt that the HAMP program was *not* working, 20% felt that it was working, and another 15% were somewhere in the middle (see Chart 1, below). Counselor comments on this question included the following:

> *"Lenders or investors are not following guidelines and if they say 'NO' there is nothing that will make them change and apparently no consequences to their actions."*

> *"The HAMP program is not working because the regulators who are supposed to monitor the lenders/servicers for compliance are not following their own mandate. The Supplemental Directives are a total waste of time because the lenders/servicers are not adhering to the changes in the Supplemental Directives... The bank negotiators sit on paperwork which results in lengthy and negative results."*

> *"I feel that the 50% success rate that I have with the clients I have serviced would not have been possible if it had not been for the HAMP program. These clients would not have received a modification. I do feel because of the time it takes for the servicers to do the process, we do not have a higher success rate. Many clients get so tired of sending documents and working to get a modification for over 1 year that sometimes they give up and just let the home go. They need to make some adjustment to the processing of this program by the servicers, but it has worked."*

Although the federal HAMP program has helped far fewer homeowners than predicted, CRC is calling for improvements to HAMP, not its abolition. For those few people who do obtain permanent HAMP modifications, their payments are significantly reduced (see Figure 1, above). HAMP has suffered more from the failure of industry to comply, and the failure of the Treasury Department to enforce it, than from poor policy.

Bad Outcomes. Two years after its start date, outcomes for borrowers continue to be poor. In CRC's first five surveys of housing counselors, "foreclosure" was the most common outcome for clients reported by housing counselors. In the last survey, "foreclosure" was named second most often; however, the outcome which has replaced it—namely, borrowers being "stuck in trial modifications"—is not a desirable one. While trial modifications under HAMP are only supposed to last three months before becoming permanent, many homeowners are stuck in trial modifications for months on end. And languishing in this trial modification limbo, sadly, does not guarantee a permanent modification. This pattern of borrowers stuck in trial modifications held true in this most recent survey (see Chart 2, below).

- More counselors—78% of those responding—cited "stuck in trial mod" as "always" or "almost always" occurring as compared to other possible borrower outcomes.
- Next came "denied a permanent HAMP modification" with 73% of counselors reporting this "always" or "almost always" occurs.
- 53% of counselors noted borrowers "always" or "almost always" are denied non-HAMP modifications.
- 47% of counselors felt that clients "always" or "almost always" experience foreclosure.

- A mere 6% of counselors felt that clients “always” or “almost always” receive HAMP modifications.

“Dual Track” Worsens. One of the most discouraging aspects of servicers’ poor foreclosure prevention performance is the persistent and pernicious “dual track” problem. “Dual track” refers to a major bank servicing problem, whereby loan servicers proceed with foreclosure processes against a homeowner while the homeowner is working in good faith with their servicer to negotiate a loan modification. The dual track problem has received much media attention, but no policy solution has been forthcoming. An astonishing 94% of housing counselors report that their clients have experienced negotiating for a loan modification or other foreclosure alternative, but the loan servicer continued with the foreclosure process and sold the client’s home (see Chart 3, below). Homeowners should receive a yes or no decision on their loan modification before foreclosure proceedings continue against them. Comments by housing counselors include:

> *“The homeowner is almost always caught off-guard. In some instances, lenders have sold homes which they promised would not be sold if the homeowner complied with specific requests.”*
>
> *“Sometimes it has not mattered that we have intervened. Lenders simply do not always honor what they verbally promise.”*
>
> *“I had two clients call me yesterday who were foreclosed on that morning. Both clients told me that they thought they were being considered for a loan modification and were surprised by the foreclosure sale.”*
>
> *“Denial letters are only sent about half the time, leaving homeowners with the impression that they are still in a modification process when actually [bank] is rapidly moving towards a trustee sale.”*

Given the severity of the dual track problem, this year CRC, Housing and Economic Rights Advocates, Center for Responsible Lending and California Labor Federation sponsored SB729 (Leno, Steinberg) in the California State Legislature. If passed, the bill would have clarified loan servicer obligations relating to dual track, require that borrowers who are denied loan modifications receive a detailed explanation as to why they were denied, and provide dual track victims a remedy for violations. Amidst strong industry opposition and despite strong community support, the bill was defeated in its first committee hearing.

Principal Reductions Not Happening. Over a third of California homeowners owe more on their homes than they are worth.[6] Home prices hit new lows in March 2011, with prices in Los Angeles 1.7% lower than last year, 4% lower in San Diego, and 5% lower in San Francisco.[7] Some economists predict that a full recovery in parts of the West's "foreclosure belt," including California, won't occur until at least 2030.[8] Reducing the principal on a loan can help borrowers by making their mortgage payments more affordable and in line with the actual value of their home. President Obama recently expressed support for more homeowners receiving loan modifications with principal reduction.[9]

Consistent with the HAMP data findings, housing counselors report servicers rarely reduce loan principal. Over 80% of responding counselors report that all of the large loan servicers fail to reduce principal "always" or "almost always" (see Chart 4, below). While principal reduction benefits homeowners, neighbors, and even investors, they may not benefit loan servicers that get paid based on the size of outstanding loans. This may account for the fact that servicers rarely offer them. In fact, principal reductions appear much more common where servicers are also the investor/owner on particular loans.[10] This suggests that in the majority of cases where the loan servicer does not own the loan (and where the servicer rarely reduces loan principal), the loan servicer may not be acting in the interest of the loan investor, as it should.[11]

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[6] http://www.corelogic.com/uploaded/Files/Pages/About_Us/ResearchTrends/CL_Q4_2010_Negative_Equity_FINAL.pdf

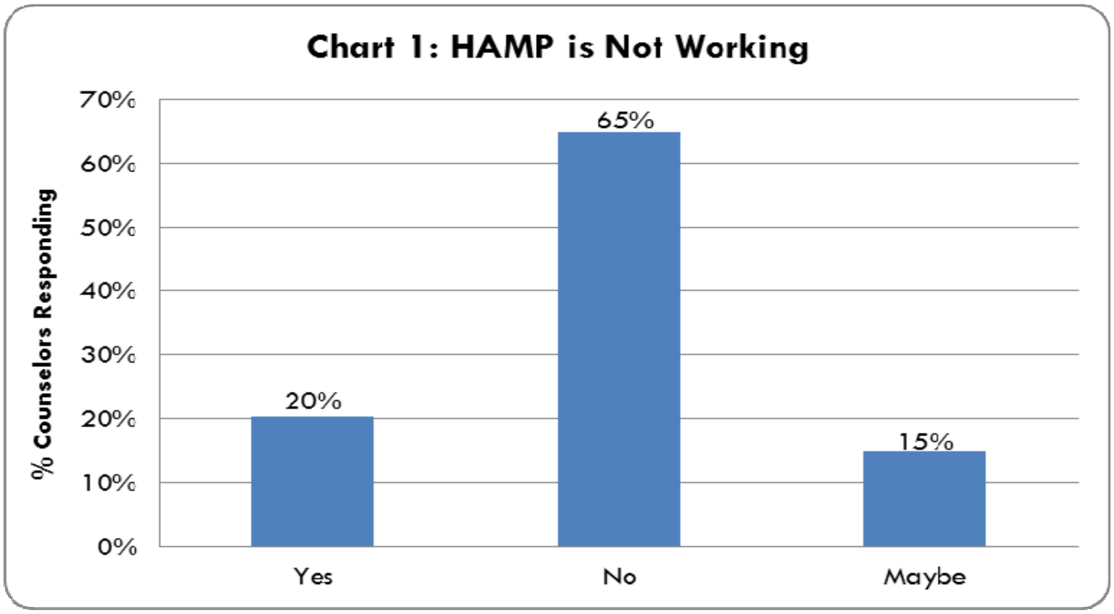
[7] "Home Prices Hit New Low in March," Alejandro Lazo and Don Lee, Los Angeles Times, May 31, 2011.

[8] "Leaving North Las Vegas no option for many 'underwater' homeowners," Ashley Powers and Alejandro Lazo, Los Angeles Times, May 31, 2011.

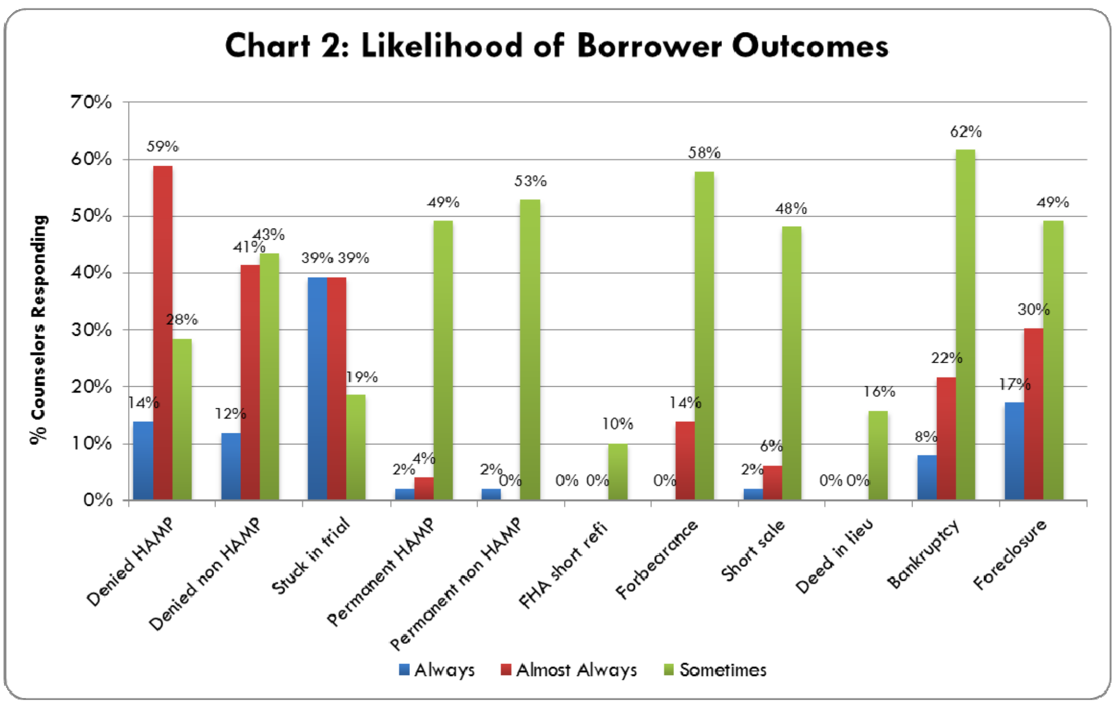
[9] "Obama Wants Principal Reduction on Mortgages," Brian Collins, American Banker, May 13, 2011.

[10] Inside Non Conforming Markets, April 8, 2011, noting that in the fourth quarter of 2010, 17.8% of mods on mortgages held in portfolio included principal reduction, compared to 1.8% where servicers were servicing loans for other investors (citing OCC/OTS data). And JPMorgan Chase noted in its 2010 Annual Report to Shareholders that "[f]or the 54,500 on-balance sheet loans modified under HAMP and the Firm's other loss mitigation programs since July 1, 2009 … 22% (of permanent loan modifications) have included principal reduction." In fact, a JPMorgan Chase Shareholder Resolution this year called upon Chase to ensure more uniform policies and loan modification methods, whether Chase is the investor or merely the servicer of the loan. Chase Management urged shareholders to oppose the Resolution and it failed.

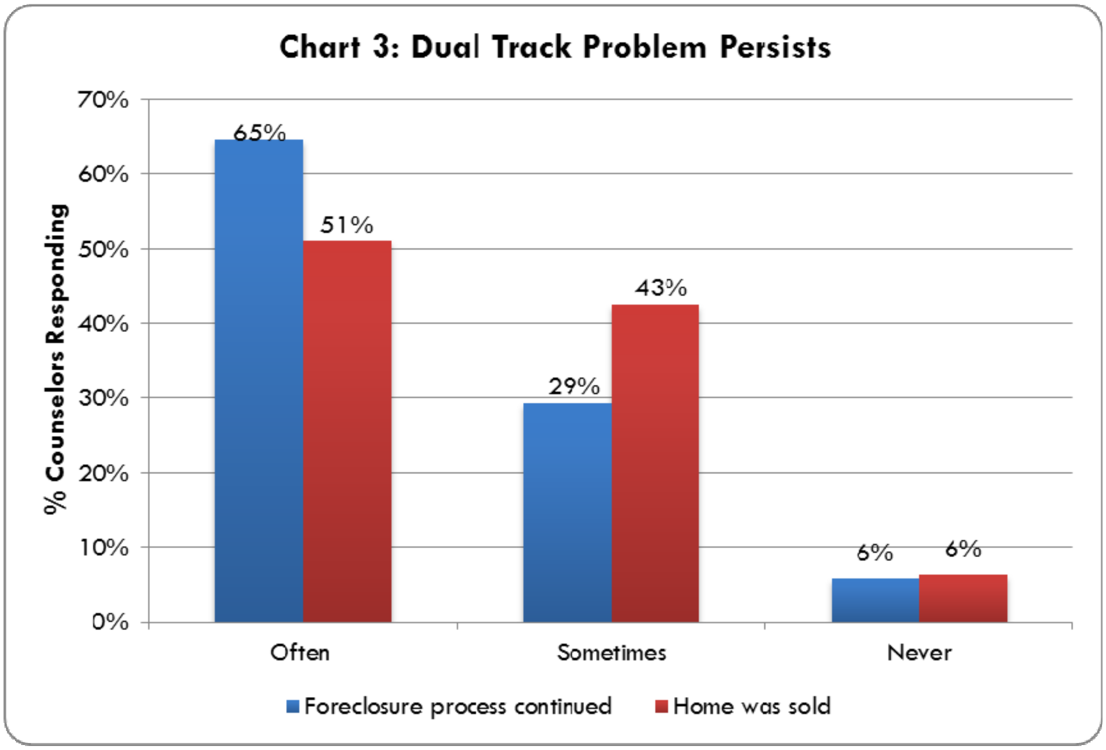
[11] Services have argued that they have more flexibility to reduce principal on loans that they own. While this may be true for Fannie Mae and Freddie Mac owned loans, where the GSEs have taken an unfortunate position against principal reductions, CRC believes that servicers generally overstate the restrictions imposed upon them by other investors. Servicers can and should do more to offer loan modifications that reduce principal loan balances, for the benefit of homeowners and loan investors.



(Source: CRC Counselor Survey June 2011)



(Source: CRC Counselor Survey June 2011)



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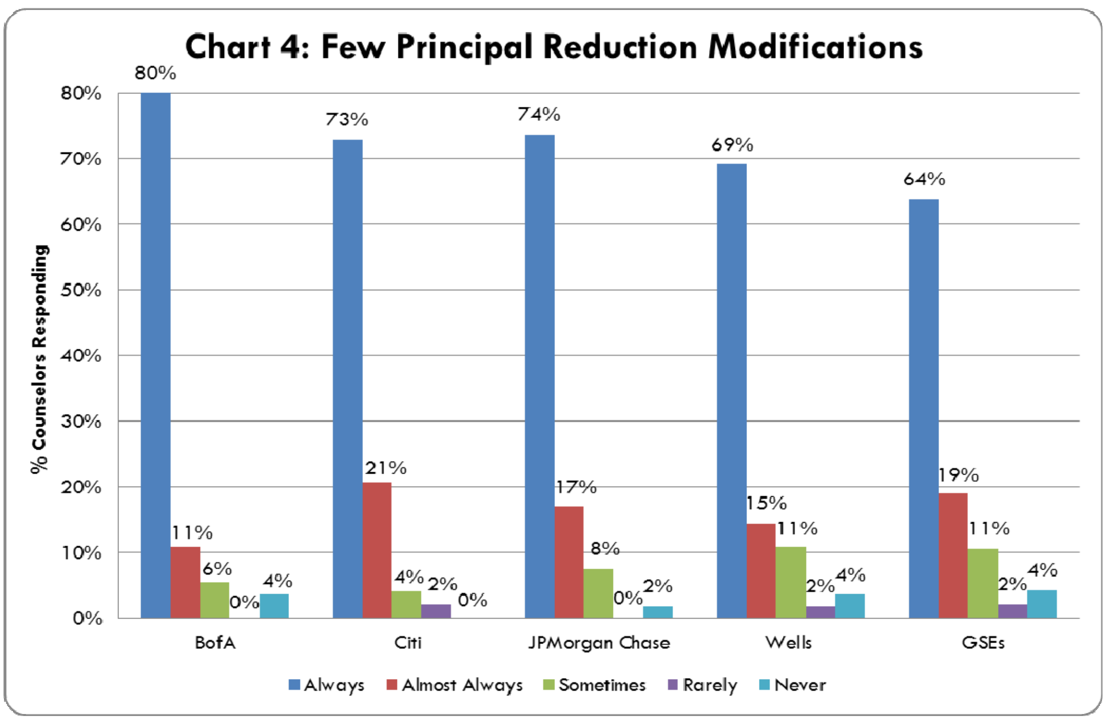

(Source: CRC Counselor Survey June 2011)

➢ Limitations of the HAMP Data

There are four significant shortcomings of the recently released HAMP data, namely:

1. **Not servicer-specific**. The data is not broken out by loan servicer, but instead aggregated for the whole banking industry.[12] Without this information, the public cannot determine how Bank of America customers, for example, are faring under HAMP, as compared to customers of JPMorgan Chase. Not having information about how individual servicers are performing makes it impossible to assess whether servicers are complying with fair housing laws, and whether federal regulators are doing enough to enforce these laws and require banks to take corrective action where needed.[13]

2. **Not local data**. The data is not broken out by census tract, zip code, or city. Instead, broad multi-county MSAs are used as the smallest geography for analysis. This completely ignores the fact that local housing markets are distinct from one another and need to be viewed separately. Without more granular data, the public and regulators have no way of determining, for example, whether homeowners experienced different outcomes in the low-to-moderate income and minority neighborhood of West Oakland, compared to neighboring Piedmont, a wealthier and more homogenous community.

3. **The data are even less local for loan modification requests**. Countless homeowners are denied entrance into the HAMP program. Yet for those in the initial stages of seeking a loan modification —known as "Requests for Modifications"—no MSA is provided in the data. This is a significant omission. "Requests for Modifications" account for nearly half of all records in the data file (309,728 out of 667,096 records in the Pacific region modification file). So, all the data tell us is that there were 309,728 homeowners in the Pacific Region whose requests were denied, 261,824 of whom were in California. There is no way to determine the demographic information for these borrowers unless the Treasury releases more detailed information (see Figure 4, below).

4. **Little race data reported**. 21,684 out of 56,063 (or 38.7% of) active permanent modification records for the four MSAs, and 45.5% of active trial modification records for the four MSAs, lack information identifying the race or ethnicity of the borrower. This lack of data on race and ethnicity for trial modifications is particularly problematic given that a significant percentage of the total number of trial period modifications were either cancelled or disqualified. While borrowers are able to opt out of disclosing their race and ethnic identity, servicers failed to report race and ethnicity data on 3.4% of permanent modifications and 13.2% of trial modifications (see Figure 5, below).[14]

[12] In trying to entice loan servicers to participate in HAMP, Treasury agreed in HAMP contracts to aggregate all servicer-specific public data reporting. This concession frustrates fair lending enforcement and is especially disappointing in light of apparent large-scale servicer non-compliance with HAMP's contractual provisions.

[13] We attempt to fill in this gap in servicer-specific data by including responses to our survey of housing counselors.

[14] For the purpose of this discussion on race and ethnicity data reporting only, the data analyzed is loan modification activity after December 2009, the date on which such data reporting was required by Treasury, according to

Problematic data reporting in the HAMP data files amounts to an unfortunate, yet very significant finding. The lack of MSA geographic identifiers reported with "Requests for Modifications," the enormous gaps in reporting of race and ethnicity, and the withholding of bank and servicer information all run counter to the "commitment to transparency" touted by the federal government. These large holes in the data prohibit a thorough analysis by the public of the HAMP program's ability to ensure equal access to loan modifications for borrowers, regardless of their race or ethnicity. The public expects the Treasury Department and the Department of Housing and Urban Development to be more proactive in ensuring data are properly collected and reported in order to ensure needed transparency.

Figure 4: Overview of Official Modifications and Requests in the Pacific Region HAMP Data File (AK, CA, HI, OR, WA)

	Pacific Region File (AK, CA, HI, OR, WA)	4 MSAs (Fresno, Sac, LA, SF/Oak)
Official Modification	**153,001**	**61,277**
Active Payment	**142,253**	**57,524**
Disqualified	**10,650**	**3,720**
Paid Off	**98**	**33**
Request	**309,728**	**?**
Not Approved or Not Accepted	**309,728**	MSA Not Recorded for ***Requests***
B/K Court Declined	76	
Default Not Imminent	39,503	
Excessive Forbearance	27,869	
Ineligible Borrower - Current DTI Less than 31%	44,563	
Ineligible Mortgage	45,326	
Investor Guarantor Not Participating	8,482	
Loan Paid off or Reinstated	1,806	
Negative NPV	26,691	
Offer Not Accepted by Borrower / Request Withdrawn	27,594	
Other Ineligible Property	557	
Previous Official HAMP Modification	475	
Property Not Owner Occupied	22,444	
Request Incomplete	64,316	
Unemployment Forbearance Plan	26	
Trial Period Modification	**204,367**	**64,836**
Active	**40,782**	**16,753**
Cancelled	**120,964**	**33,116**
Disqualified	**42,621**	**14,967**
Grand Total	**667,096**	**126,113**

(Source: HAMP Data Set)

Supplemental Directive 09-06. The rest of the data analysis in this report looks at all HAMP data reported, including modification activity occurring before December 2009, so that a larger universe of transactions can be reviewed.

Figure 5: HAMP Modification Data by Race

Official Modification* (Total Active + Disqualified + Paid Off)

	Fresno MSA		Los Angeles MSA		Sacramento MSA		SF/Oakland MSA		Grand Total	
	Count	%	Count	%	Count	%	Count	%	Count	%
American Indian or Alaska Native	18	0.5%	98	0.3%	49	0.6%	38	0.4%	203	0.4%
Asian	183	5.2%	1,745	5.0%	527	6.0%	899	9.9%	3,354	6.0%
Black or African American	128	3.7%	2,683	7.7%	603	6.9%	886	9.7%	4,300	7.7%
Hispanic/Latino	1,346	38.5%	11,632	33.5%	1,356	15.5%	1,712	18.8%	16,046	28.6%
Native Hawaiian or Other Pacific Islander	21	0.6%	358	1.0%	128	1.5%	162	1.8%	669	1.2%
White	666	19.1%	4,477	12.9%	2,956	33.7%	1,512	16.6%	9,611	17.1%
Multi-Race	6	0.2%	39	0.1%	25	0.3%	19	0.2%	89	0.2%
Information not provided by borrower	1,009	28.9%	12,420	35.8%	2,823	32.2%	3,507	38.6%	19,759	35.2%
Not Applicable	9	0.3%	70	0.2%	18	0.2%	10	0.1%	107	0.2%
Blank: Not Reported by Servicer	109	3.1%	1,187	3.4%	283	3.2%	346	3.8%	1,925	3.4%
Total	**3,495**	100.0%	**34,709**	100.0%	**8,768**	100.0%	**9,091**	100.0%	**56,063**	100.0%

Trial Period Modification* (Total Active + Disqualified + Cancelled)

	Fresno MSA		Los Angeles MSA		Sacramento MSA		SF/Oakland MSA		Grand Total	
	Count	%	Count	%	Count	%	Count	%	Count	%
American Indian or Alaska Native	13	0.5%	45	0.2%	40	0.6%	17	0.2%	115	0.3%
Asian	118	4.2%	1,550	5.5%	443	6.2%	733	10.0%	2,844	6.2%
Black or African American	81	2.9%	1,653	5.8%	380	5.3%	600	8.2%	2,714	5.9%
Hispanic/Latino	907	32.6%	8,560	30.2%	885	12.3%	1,228	16.7%	11,580	25.4%
Native Hawaiian or Other Pacific Islander	8	0.3%	191	0.7%	80	1.1%	121	1.6%	400	0.9%
White	463	16.6%	3,360	11.9%	2,154	30.0%	1,163	15.8%	7,140	15.6%
Multi-Race	5	0.2%	25	0.1%	13	0.2%	13	0.2%	56	0.1%
Information not provided by borrower	820	29.5%	9,254	32.6%	2,264	31.5%	2,396	32.6%	14,734	32.3%
Not Applicable	0	0.0%	20	0.1%	4	0.1%	5	0.1%	29	0.1%
Blank: Not Reported by Servicer	368	13.2%	3,695	13.0%	916	12.8%	1,064	14.5%	6,043	13.2%
Total	**2,783**	100.0%	**28,353**	100.0%	**7,179**	100.0%	**7,340**	100.0%	**45,655**	100.0%

* Data represents Official and Trial Modifications started after December 1, 2009.

(Source: HAMP Data Set)

➢ <u>Fair Housing and Other Concerns</u>

A. ***HAMP Data.*** Despite the limitations of the HAMP data, the available race and ethnicity data suggest some troubling dynamics, including:

"Incomplete Requests." Loan servicers report that the most common reason that borrowers requesting loan modifications are denied is for "incomplete requests," which accounts for 20% of all loan modification request denials in California. In all 4 MSAs, "incomplete modification request" was the reason most often cited by loan servicers for why they cancelled trial modifications under which borrowers were making agreed-upon reduced monthly payments.

This reason—which implies that borrowers have failed to provide necessary information or documentation to the servicers on a large scale—is highly questionable, since all of these borrowers had taken the affirmative step of seeking a loan modification. What seems more likely is that servicers have been the cause of "incomplete requests"; a chronic complaint of homeowners is that servicers repeatedly lose submitted documents and request the same documents over and over again. In a prior CRC survey of housing counselors, 100% of counselors noted it was "very common" for servicers to lose documents.[15]

Disparities in "incomplete requests." Further, denials due to incomplete requests were distributed unequally. In Fresno, where a high percentage of borrowers had trials cancelled for incomplete modification requests, trial cancelations for Latinos and African-Americans were more likely due to "incomplete requests" (47% and 44% denials, respectively), than was the case for white borrowers (37% of trial mod cancelations for white borrowers were due to "incomplete requests"). The same pattern was present for Hispanics and African-Americans in Los Angeles and San Francisco/Oakland. In Sacramento, 41% of Asian borrowers with canceled trial modifications reportedly did not complete their modification requests. Bank regulators must further examine these disparities to ensure that borrowers aren't being wrongly denied for loan modifications due to servicer error in losing documents (see Figure 6, below).

"Not accepted by borrower?" Another red flag revealed by the HAMP data was a surprisingly high incidence of trial modification cancellations (9% of all cancellations) reported as "not accepted by borrower." Again, borrowers need to apply to receive modifications; it seems highly suspicious that those seeking help would simply refuse a lower payment. Anecdotal reports have shown us that some borrowers are being steered into non-HAMP loan modifications which generally have less favorable terms than modifications that are provided under HAMP. [16]

Even more concerning is the fact that in the Los Angeles and Sacramento MSAs, African Americans had the highest share of trials canceled for the reported reason "not accepted by the borrower," representing 5.2% and 7.2% of all African American trial modification cancelations, compared to 3.9% and 5.1% for white borrowers. In Fresno, Asian borrowers had the highest share of "not accepted by borrower", representing 7.5% of Asian borrower cancelations. In the San Francisco/Oakland MSA, 5.8% of Latino trial modification cancelations were "not accepted by borrower." Federal regulators must investigate this further. There is reason to be concerned

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[15] "Chasm Between Words and Deeds VI: HAMP Is Not Working," California Reinvestment Coalition, July 2010, available at www.calreinvest.org.

[16] HAMP modifications come without payment changes for at least the first five years, prohibit the servicer from requiring the borrower to bring cash to the table or require a waiver of legal rights, allow borrowers to receive $1,000 annual payments for successfully making modified payments for the first three years, and come with limited oversight by the federal government. These benefits and protections are lost with non-HAMP loan modifications. Data show that borrowers with HAMP modifications are less likely to re-default than borrowers with non-HAMP modifications.

that servicer steering is happening more than just anecdotally and that it has discriminatory consequences (See Figure 6, below).

When positive is negative. Every borrower screened for HAMP eligibility is subjected to a Net Present Value (NPV) test. The NPV test is designed to evaluate whether the investor/owner of the loan is economically better off when a loan is modified or if it is left to default. If the NPV test result is positive, servicers are generally required to proceed with a modification; otherwise, they are generally not required to offer a loan modification. Curiously, a significant share of canceled trial modifications with a positive NPV were canceled due to "negative NPV," suggesting the servicer later changed its NPV analysis for some reason (or that there was an error in data reporting). Trial modification plans for Latinos and Asians were disproportionately canceled for this reason (34% for Latinos and 28% for Asians, compared to 22% and 23% for Blacks and Whites, respectively) (see Figure 7, below).

Net Present Value formulas used by servicers are not required to be made public, so there is no meaningful way to determine if servicers are correctly and fairly computing NPV.[17] However, there is mounting evidence that they may not be; for example, a report by the Center for Responsible Lending found that banks and loan servicers often foreclose when investors have more to gain from a loan modification (when the NPV test should be positive).[18]

White borrowers saw larger decreases in their debt burdens. The purpose of loan modifications is to make mortgage payments more affordable for borrowers who are struggling with falling incomes, higher mortgage payments, or both. A borrower's debt to income (DTI) ratio is a reflection of how much of her income is obligated to mortgage-related payments (front-end DTI = monthly mortgage payments/monthly income). For active official modifications, white borrowers had a noticeably larger share of loan modifications that more dramatically reduced the amount of income needed to cover mortgage payments. Approximately 45% of white borrowers receiving official modifications had a change in front-end DTI of more than 20%, whereas only 33% of Asian borrowers, 32% of Latino borrowers and 37% of African American borrowers saw similar decreases in mortgage debt burdens after active loan modifications. This is significant, as approximately half of borrowers of all races and ethnicities who were disqualified from permanent loan modifications (presumably due to inability to make modified mortgage payments), had tront-end ratio decreases of 10% or less (See Figure 8, below).

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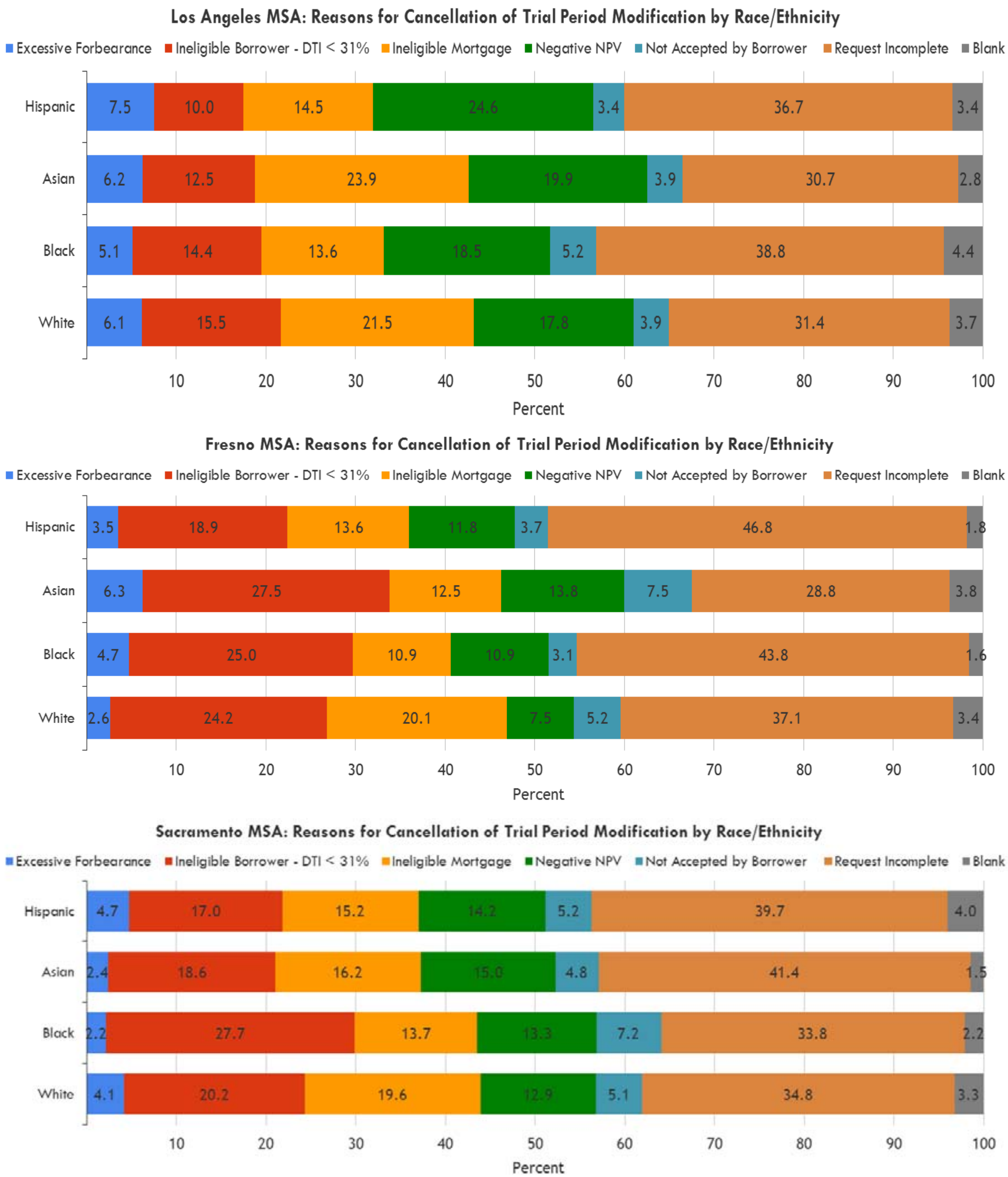
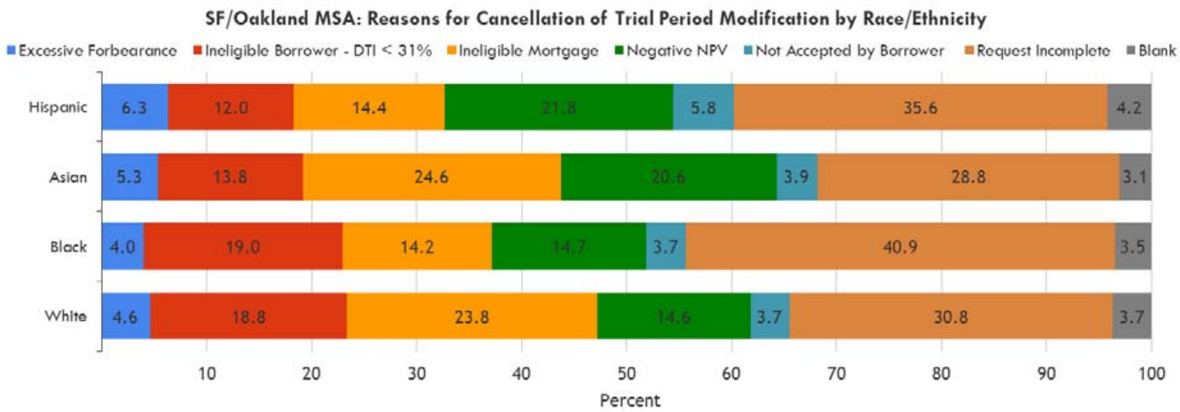
[17] The Treasury Department recently created a website, www.checkmynpv.com, where homeowners can get an estimate of their servicers' NPV evaluations, though not the formula or the inputs used by the servicer.
[18] "Fix or Evict: Loan Modifications Return More Value than Foreclosures," Wei Li and Sonia Garrison, Center for Responsible Lending, March 22, 2011.

Figure 6: Reasons for Cancellation of Trial Modification by Race and MSA





(Source: HAMP Data Set)

Figure 7: Cancelled Trial Mods with Positive NPV Results by Reason for Cancellation and Race/Ethnicity in all four MSA's

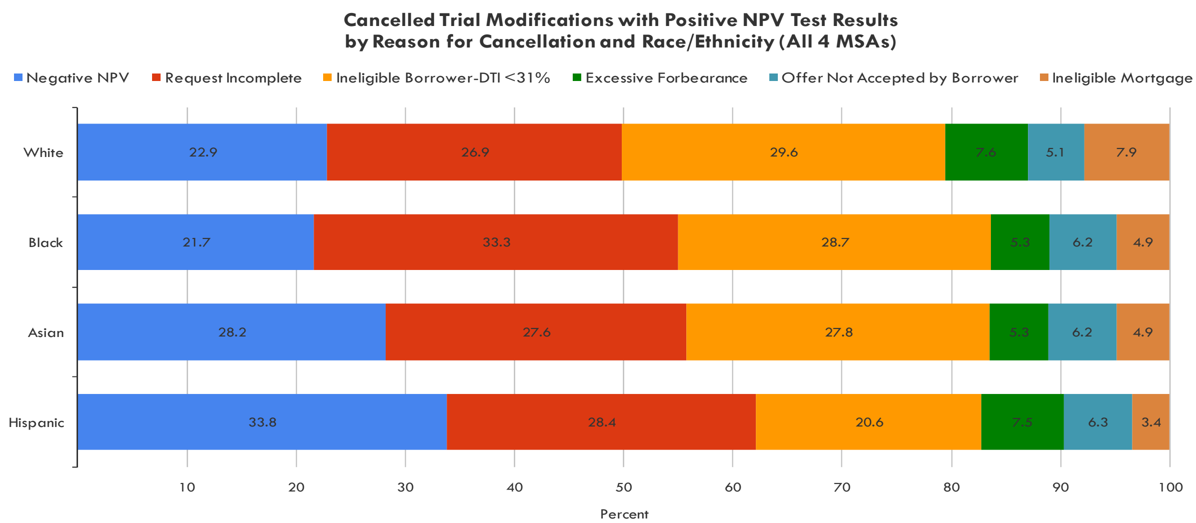
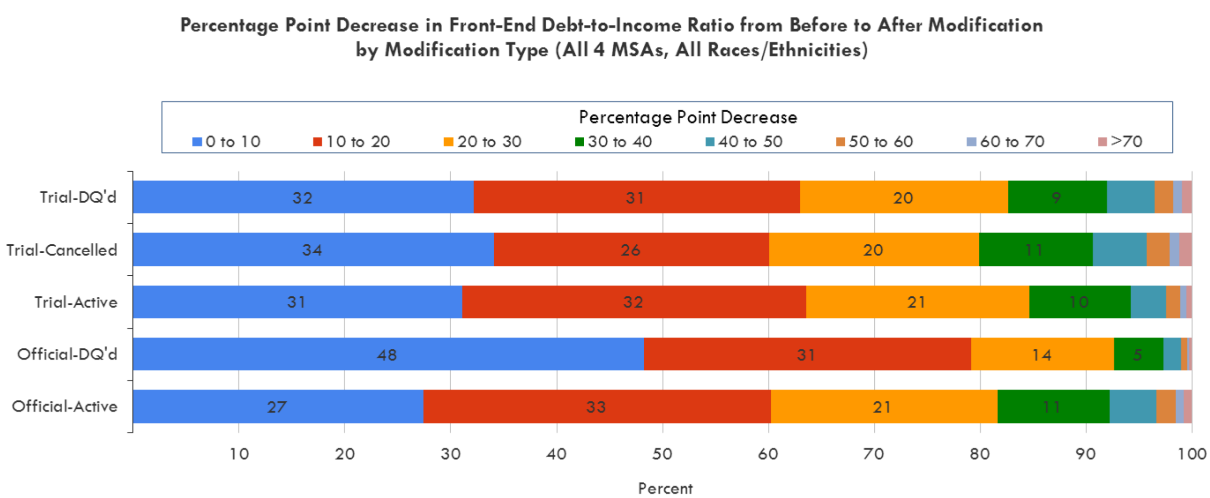
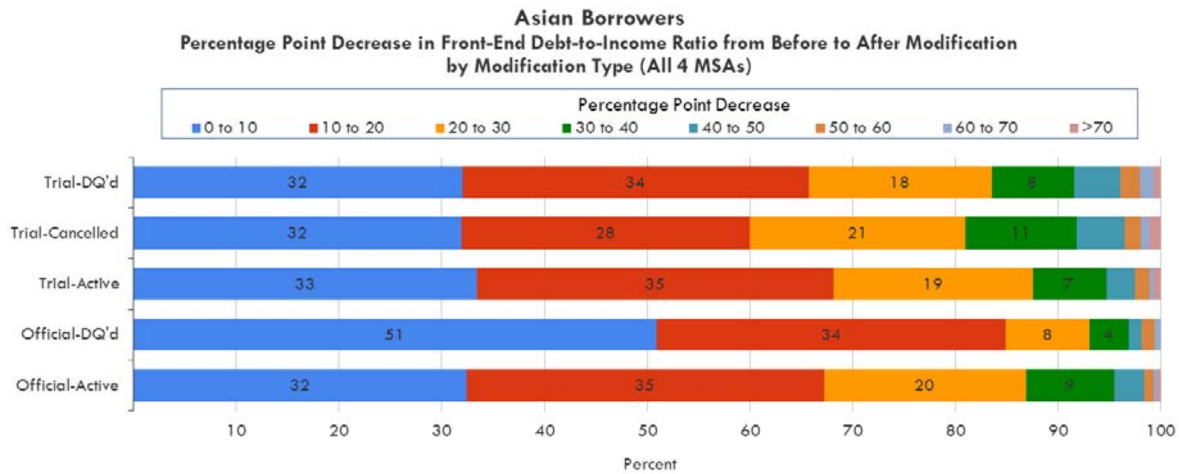
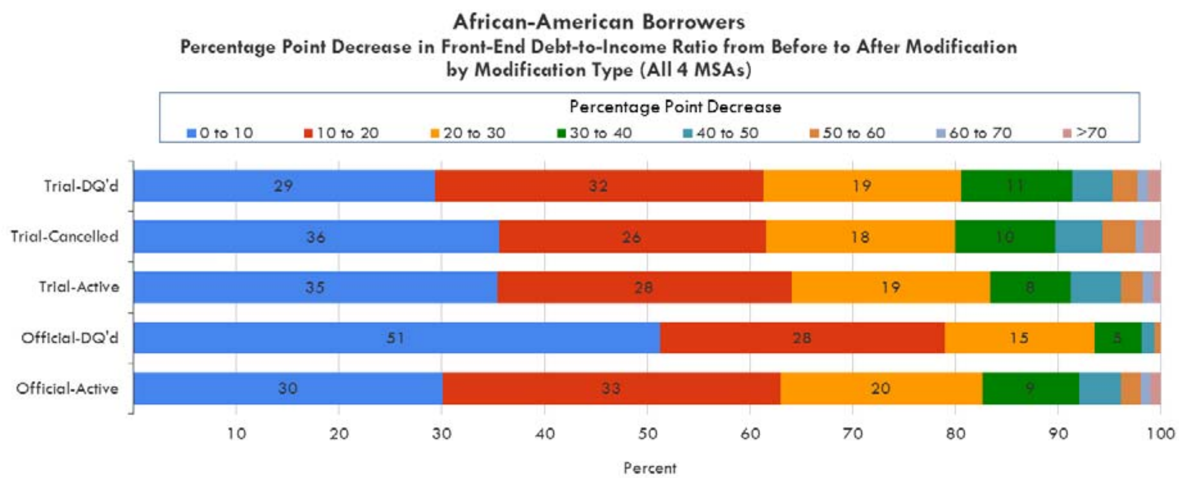
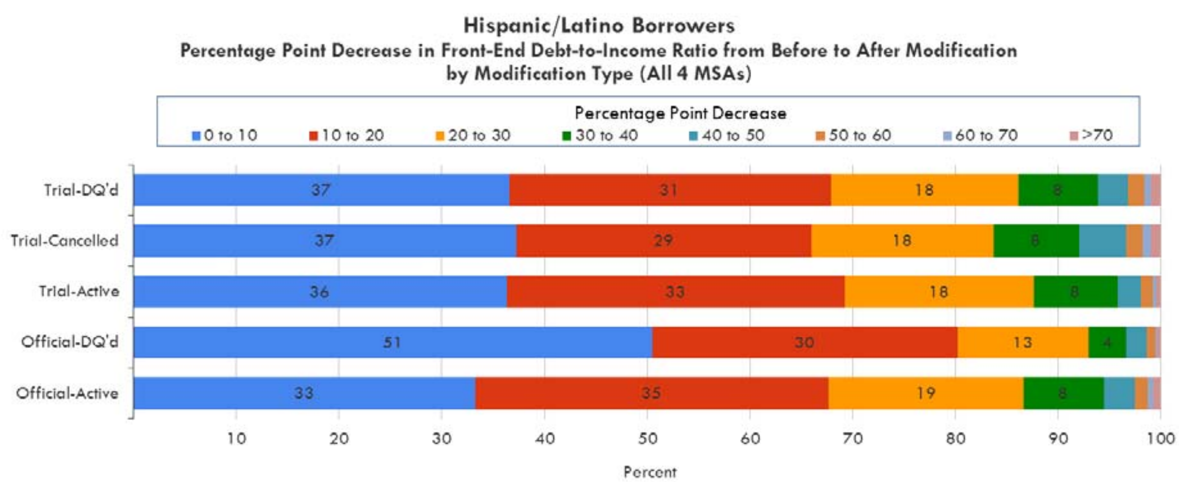


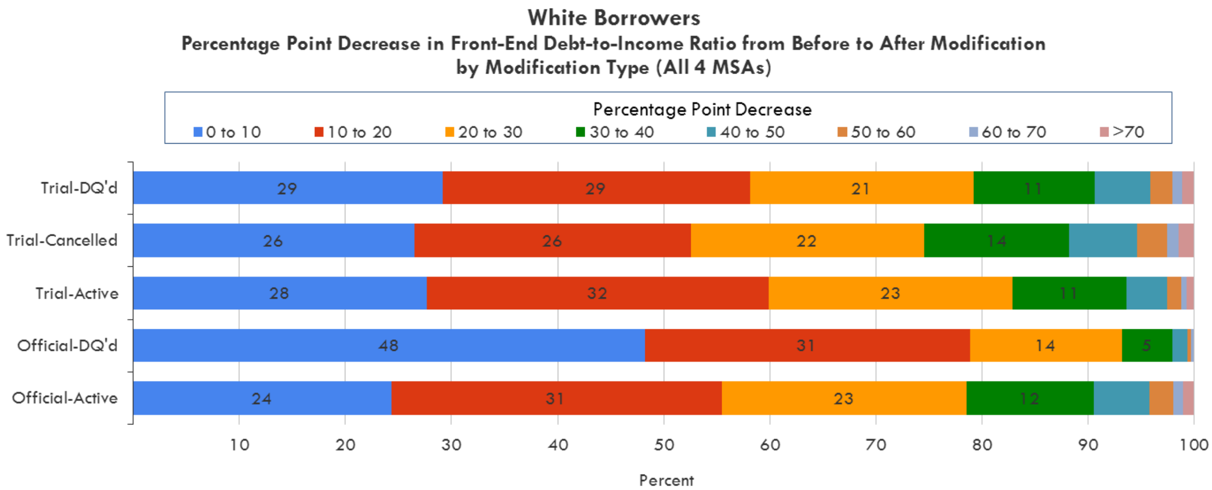
Figure 8: Front end debt to income ratio decrease by Modification Type in all four MSA's , and by Race




Asian Borrowers
Percentage Point Decrease in Front-End Debt-to-Income Ratio from Before to After Modification
by Modification Type (All 4 MSAs)
Percentage Point Decrease
0 to 10
10 to 20
20 to 30
30 to 40
40 to 50
50 to 60
60 to 70
>70
Trial-DQ'd
Trial-Cancelled
Trial-Active
Official-DQ'd
Official-Active
Percent


African-American Borrowers
Percentage Point Decrease in Front-End Debt-to-Income Ratio from Before to After Modification
by Modification Type (All 4 MSAs)
Percentage Point Decrease
0 to 10
10 to 20
20 to 30
30 to 40
40 to 50
50 to 60
60 to 70
>70
Trial-DQ'd
Trial-Cancelled
Trial-Active
Official-DQ'd
Official-Active
Percent


Hispanic/Latino Borrowers
Percentage Point Decrease in Front-End Debt-to-Income Ratio from Before to After Modification
by Modification Type (All 4 MSAs)
Percentage Point Decrease
0 to 10
10 to 20
20 to 30
30 to 40
40 to 50
50 to 60
60 to 70
>70
Trial-DQ'd
Trial-Cancelled
Trial-Active
Official-DQ'd
Official-Active
Percent



B. ***Counselor Survey*****.** Housing counselor responses provide additional context, and may help explain some of the disparities suggested by the HAMP data. Relevant findings from the survey include:

"Incomplete Requests" or Lost Documents? There is a huge disconnect between reports from loan servicers and housing counselors. Loan servicers claim that borrowers are not getting loan modifications because they do not submit all relevant documents. Housing counselors report that loan servicers frequently lose or fail to timely act on documents submitted. A recent Government Accountability Office (GAO) survey of housing counselors found that nearly three-fourths of the five hundred counselors responding said servicers lost documentation.[19]

In fact, a majority of counselors responding to CRC's latest survey of housing counselors noted that each of the Big 4 Servicers, as well as GSE (Fannie and Freddie) loan servicers generally, are losing documents "always" or "almost always" (see Chart 5, below).

Borrower Application Failures or Battle Fatigue? The survey also reveals a growing level of borrower frustration with the loss mitigation process, causing many homeowners to give up amidst the anxiety and uncertainty of working for a loan modification that may never come. A number of counselors reported that borrowers are giving up after months—or even years—of struggling to obtain a loan modification in the face of servicer incompetence and delay. These borrowers are no doubt being counted by servicers as borrowers who left their homes "voluntarily" and/or borrowers who "did not submit all of their paperwork." Something larger and more troubling is at play.

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[19] "HAMP disappoints most homeowners, housing counselors say," Jon Prior, HousingWire, May 26, 2011, at www.housingwire.com/2011/05/26/housingcounselors-report.

"People are walking away after dealing with the lenders for1-3 years now. They tell me that they are 'battle weary' and just want to know if they are liable for any deficiencies after foreclosure. They don't care anymore. They're done. Worn out. These are people who had the means and the willingness to go through the motions but the idiots at the lenders jacked them around too many times. What a waste."

English Language Access a Big Barrier. Limited English Proficient (LEP) borrowers face additional hurdles in trying to secure loan modifications.

"The bank informed me that they have discarded the borrower's paperwork because it is in Spanish. To fix it I had to translate documents. I have been speaking to the counselors here on staff and they have mentioned that with the Spanish-speaking clients they are working with they find they have to translate these items before they are sent to the lender. As lenders all across the board have said that documents need to be in English."

LEP borrowers are especially vulnerable to having difficulty in navigating the complex loss mitigation process. A recently released report on the impact of the foreclosure crisis on Southeast Asian Americans in California's Central Valley confirms this dynamic.[20]

Servicers Deny Qualified Borrowers. Similarly, counselors report that borrowers who appear qualified for the HAMP program are often denied. A majority of housing counselors responding noted that the Big 4 Servicers are "always" or "almost always" denying loan modifications to seemingly qualified borrowers (see Chart 6, below).

"Qualified borrowers are almost always denied loan mods until counselors challenge and escalate the denial."

Indeed, the Federal Reserve Bank of New York is reportedly investigating Litton, the mortgage servicing arm of Goldman Sachs, to assess whether it systematically rejected borrowers' efforts to lower their loan payments through government programs. The inquiry arose from a letter sent by an anonymous employee who accused Litton of denying loans without properly reviewing applications. The whistle blower reportedly said he examined loans that qualified for government modifications but were consistently denied.[21]

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[20] "Without access to housing counseling services, the majority of Southeast Asian Americans are completely unaware of the foreclosure process, their rights as homeowners, and the programs that could potentially help them…. Language barriers and lower literacy rates among community members also make it more challenging for them to navigate complicated loan modification processes when they do reach out to their lenders for assistance." Quotes are taken from "Untold Stories of the Foreclosure Crisis: Southeast Asian American in the Central Valley," National Coalition for Asian Pacific American Community Development and Southeast Asia Resource Action Center, April 2011.

[21] "Goldman lending unit scrutinized," New York Times, May 26, 2011.

Steering to Less Favorable Non-HAMP Mods. Advocates are concerned that non-HAMP proprietary modifications now greatly outnumber HAMP modifications; these proprietary modifications are generally less favorable to borrowers than HAMP modifications.[22] For example, while interest rates on HAMP modifications are fixed for five years, the share of proprietary loan modifications with a fixed interest rate of at least five years has declined each month since the end of 2010, from 92% in December of 2010 to 76% in March 2011.[23]

One possible explanation for why certain borrowers appear more likely to decline HAMP loan modifications is that loan servicers are seemingly pushing borrowers into non-HAMP, proprietary loan modifications, instead of utilizing the HAMP program for qualified homeowners as required by the Treasury Department. Of the responding housing counselors, 88% report that consumers are being encouraged to take non-HAMP modifications when they might qualify for HAMP loan modifications (see Chart 7, below).

> *"I think it is in the best interest of the servicer/lender if the homeowner takes the proprietary modification prior to being offered the HAMP modification. Some servicers are now requiring that the borrower sign a statement that they waive their right to being reviewed for a HAMP modification prior to being considered for a proprietary modification."*

This issue was highlighted at a recent meeting of the Board of Governors of the Federal Reserve System's Consumer Advisory Council. According to Patricia Garcia Duarte, President and CEO of Neighborhood Housing Services of Phoenix, Inc., and Chair of the CAC Housing and Committee Development committee:

> *"I know the HAMP program hasn't been perfect, but I do see a trend of a lot of families being coached out of the HAMP option. They're being advised that in order to get a quick answer they need to opt out to get the in-house mortgage. In part, it's good because then this family is going to know they're going to be put in a modification. But I can't help wonder why – why is the in-house modification better than HAMP? I know that the family is going to be out of that incentive if they stay on track. They're not going to get the $1,000 payment. But it just boggles my mind, if this program was set up to help families."*[24]

Disparate Outcomes for Borrowers of Color. When asked more broadly about whether borrowers of color were receiving different loan modification outcomes than white borrowers,

[22] See footnote 16 for ways in which non HAMP modifications are less favorable for homeowners than HAMP modifications.

[23] Hope Now, "News Briefs," Inside Nonconforming Markets, May 6, 2011.

[24] Comments by Patricia Garcia Duarte before the Board of Governors of the Federal Reserve System Consumer Advisory Council meeting, March 10, 2011, at http://www.federalreserve.gov/aboutthefed/cac_20110310.pdf, p. 16.

the results were mixed. In this latest survey, a majority of counselors felt that all borrowers were receiving poor outcomes, not just borrowers of color. Other counselors felt strongly that disparities exist for borrowers of color, and in particular, LEP borrowers. These findings are consistent with those from a survey of consumers by the National Community Reinvestment Coalition which found that loan servicers foreclose more quickly on delinquent Black or African American borrowers, and that HAMP-eligible white borrowers are almost 50% more likely to receive a modification than HAMP-eligible African American borrowers.[25] In the latest CRC survey of housing counselors, 42% of responding counselors feel outcomes differ for borrowers of color (see Chart 8, below).

> *"People of color, especially non English speakers, get no help at all."*
>
> *"I think it is equally difficult for all. However, we find borrowers of color are in need of our service because they were targeted in the origination phase of this crisis."*
>
> *"Basic communication. Servicers are staffed with more English-speaking operators. Spanish-speaking operators seem to be less willing to look for solutions and more likely to presume issues for disqualifications."*
>
> *"There are many borrowers of color who have a dominant language other than English. I find that when that is the case, the translators of the lender are often in the collection department and are just attempting to collect. The clients are transferred from loss mitigation to the collection department just because of language."*

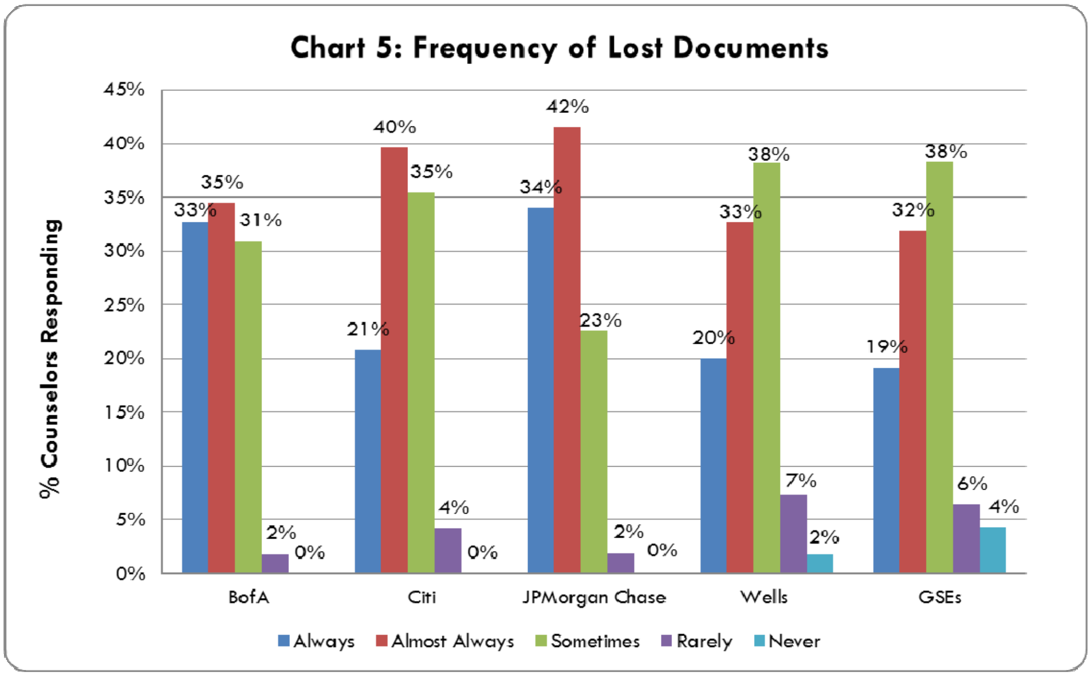
The National Consumer Law Center and others have pointed out that the way servicers are compensated incentivizes them to pursue additional fees and foreclosures at times when a loan modification could and should have been completed instead.[26]

Non HAMP modifications may provide greater financial benefit to servicing companies, and are probably easier for loss mitigation staff to complete, than HAMP modifications. The concern is that, just like in years past when mortgage brokers put prime borrowers into subprime loans because it was easier and more lucrative to do so, loss mitigation staff is putting HAMP-qualified borrowers into non HAMP modifications.

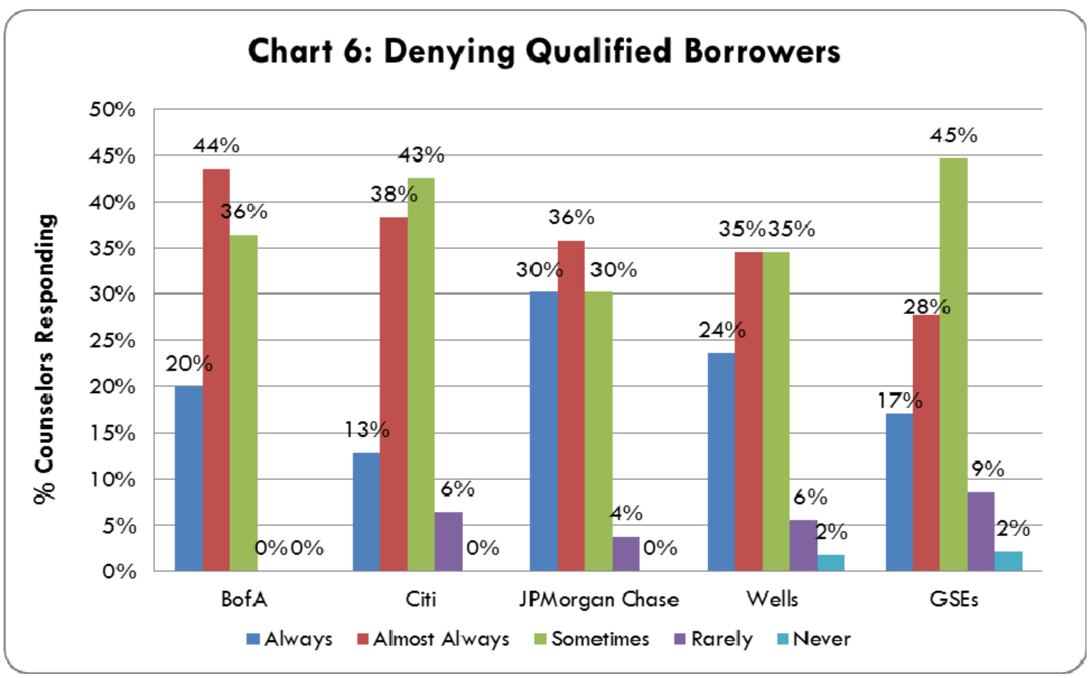
[25] "HAMP Mortgage Modification Survey 2010," National Community Reinvestment Coalition, Washington, D.C., 2010.

[26] For more on servicer incentives, see Diane E. Thompson, "Why Servicers Foreclose When They Should Modify and Other Puzzles of Servicer Behavior," National Consumer Law Center, October 2009.

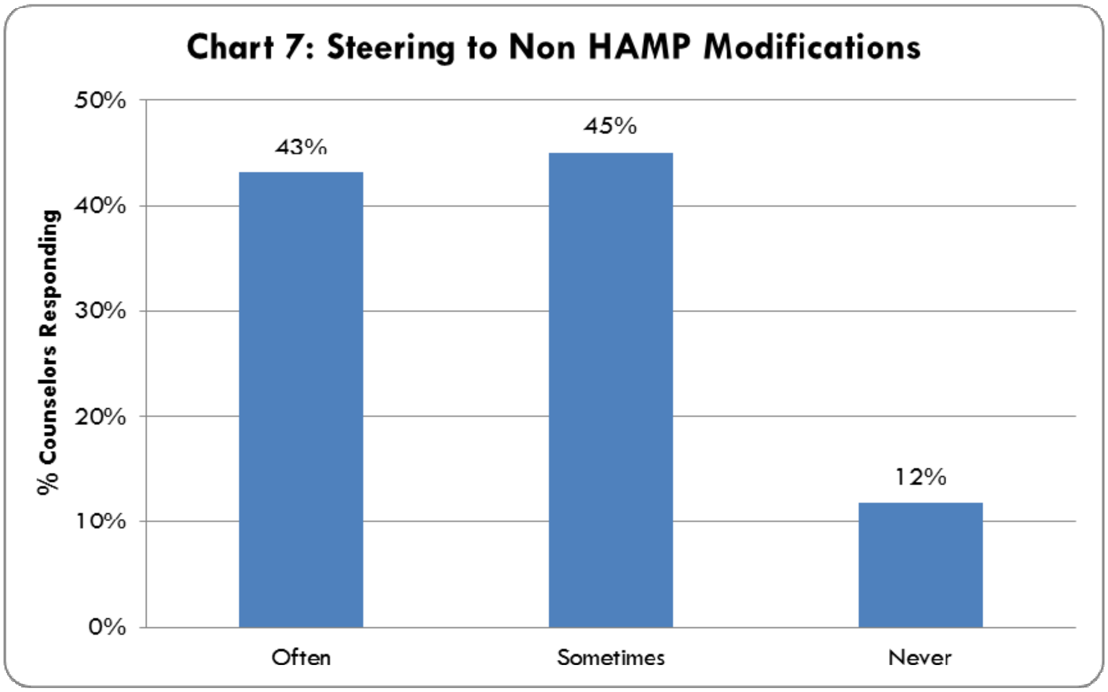
Bank regulators have started discussions about the proper compensation structure for servicers in order to prevent conflicting economic interests from unduly harming borrowers and investors. Regulators should scrutinize compensation structures at the servicer level to ensure that loss mitigation staff has no incentive to steer qualified HAMP borrowers to non-HAMP loan modifications.



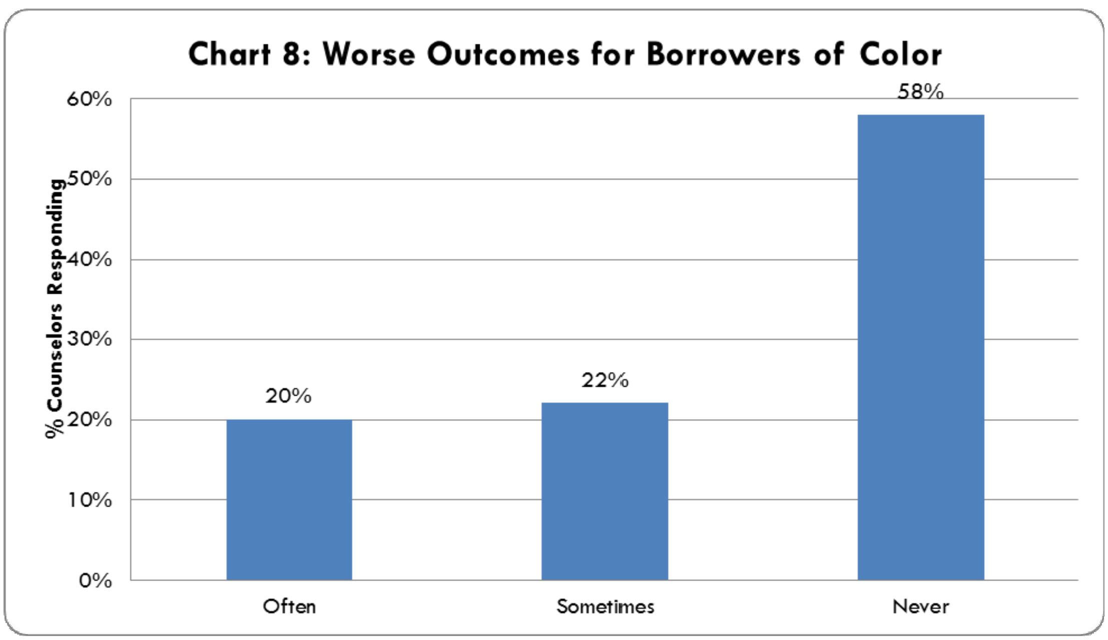
(Source: CRC Counselor Survey June 2011)



(Source: CRC Counselor Survey June 2011)



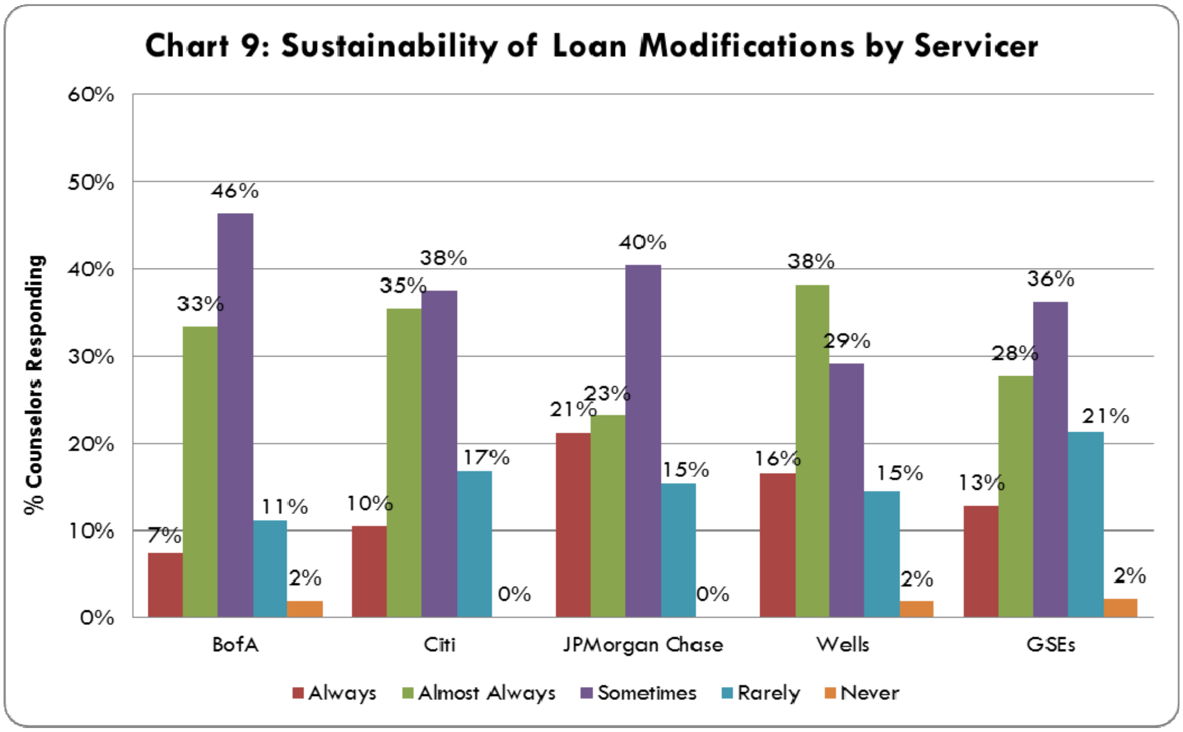
(Source: CRC Counselor Survey June 2011)



(Source: CRC Counselor Survey June 2011)

➢ An Assessment of Individual Loan Servicer Performance

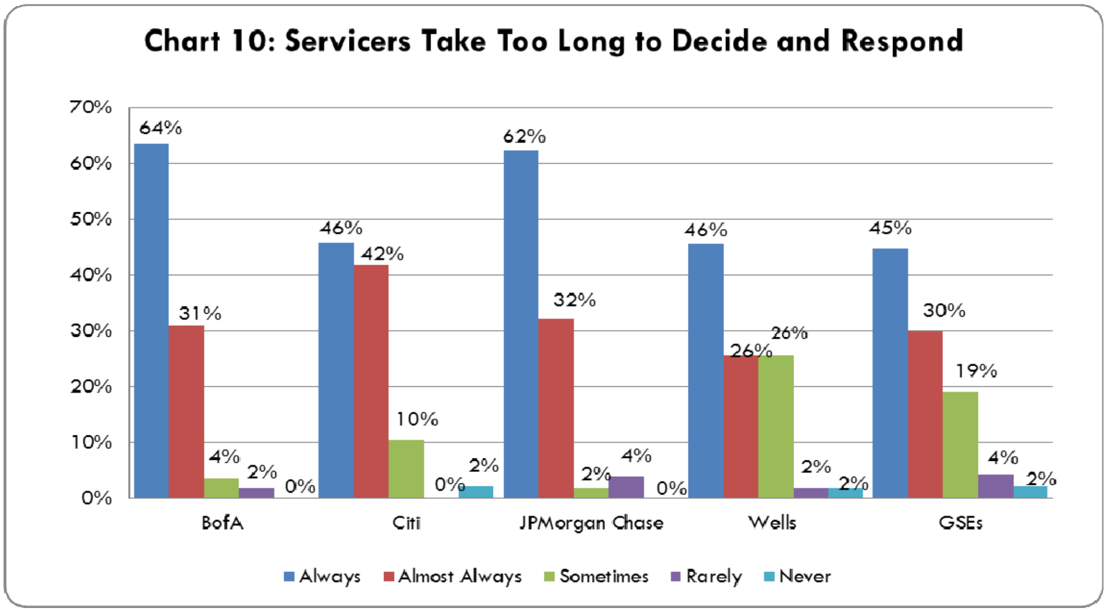
Although the HAMP data do not include servicer-specific performance, housing counselors did rate the relative performance of the larger servicers on a few key indicators, including: offering unsustainable loan modifications, taking too long to respond and make decisions, and putting up barriers to short sales, which can provide a softer landing for borrowers who cannot qualify for a loan modification.



(Source: CRC Counselor Survey June 2011)

- JPMorgan Chase was cited by 21.2% of housing counselors as "always" offering loan modifications that are not sustainable for the long term.
- Wells Fargo was cited by 54.6% of counselors as "always" or "almost always" offering loan modifications that are unsustainable to borrowers.

"In my opinion/experience, this servicer baits borrowers with the MHA programs, then switches them to private modification products which usually do not provide long term affordable payments for the life of the loan." (JPMorgan Chase)



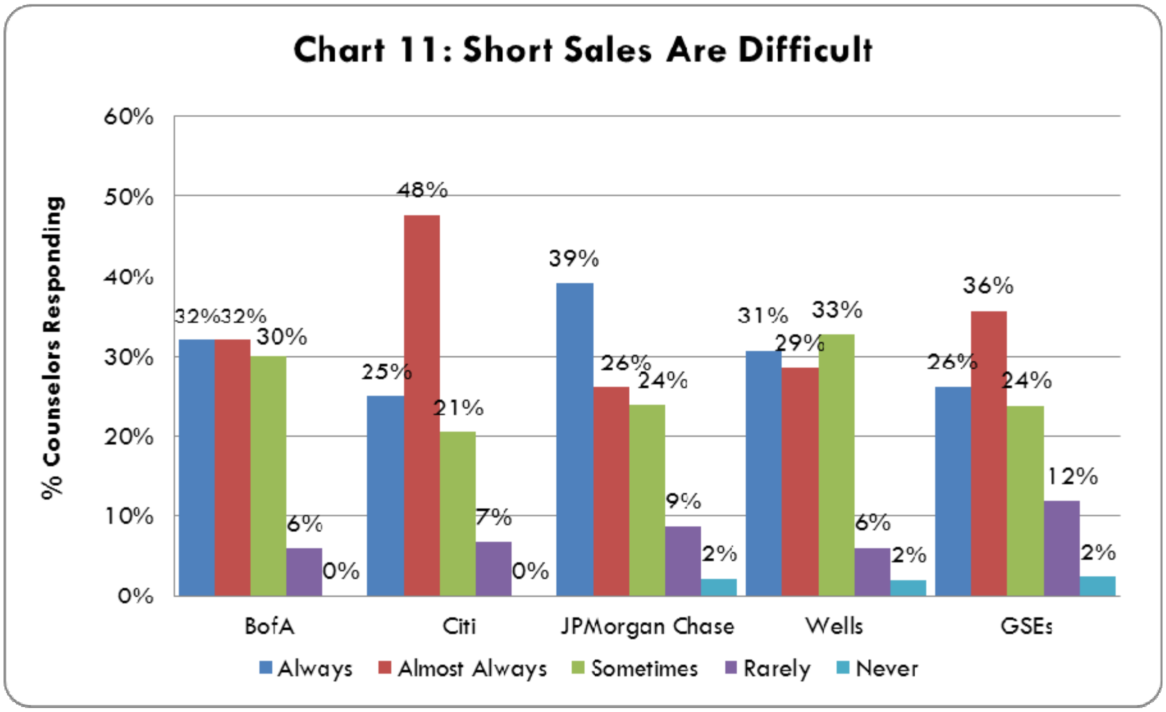
(Source: CRC Counselor Survey June 2011)

- Bank of America was cited by 95% of counselors as "always" or "almost always" taking too long to respond and make decisions on borrower loan modification applications.
- JPMorgan Chase was cited by 94% of counselors as "always" or "almost always" taking too long to respond and make decisions on borrower loan modification applications.

"One case the borrower has been requesting a deed in lieu for over a year with the servicer approval orally over the phone that agreement will be sent but never comes. The cycle is about every 3 months for the past year." (Bank of America)

"Hard to get a response from them. Usually no response to modification offers or other offers for months." (Wells Fargo)

"Fannie Mae representatives do not respond to emails or phone messages. Terribly difficult to get ahold of a Fannie Mae representative."

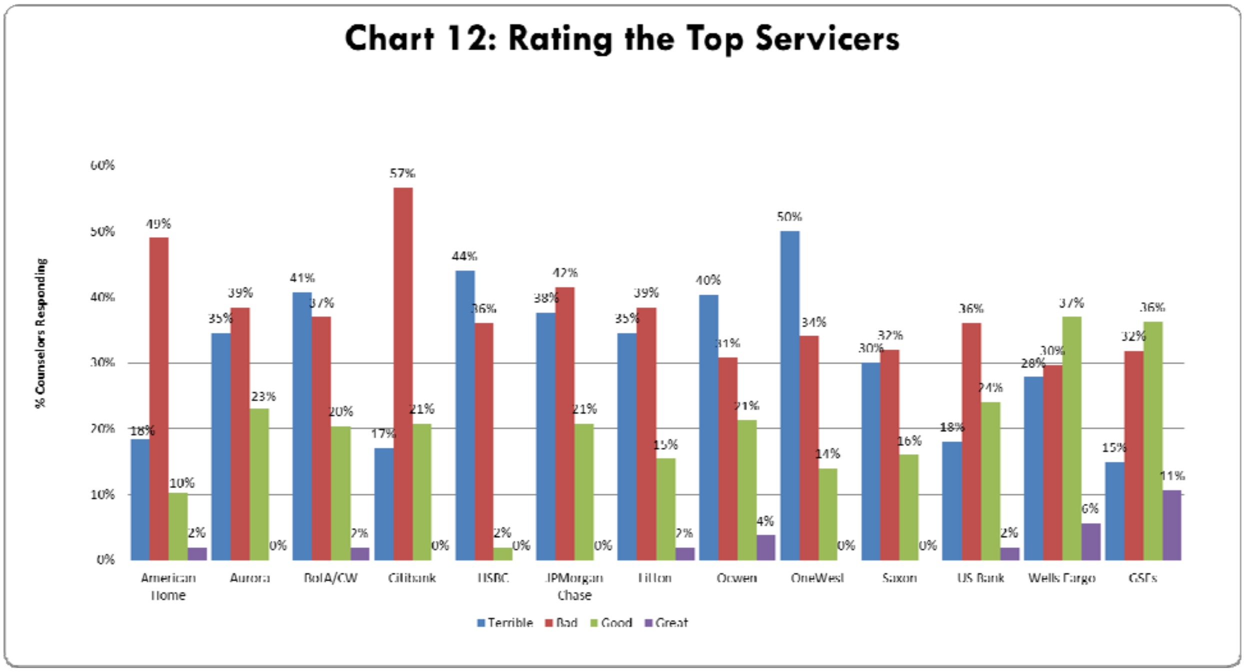


(Source: CRC Counselor Survey June 2011)

- JPMorgan Chase was cited by 39% of counselors as "always" having a difficult short sale process.
- Citibank was cited by 73% of counselors as "always" or "almost always" having a difficult short sales program.

Counselors were asked to rate loan servicers for their ability to keep borrowers in their homes where the counselor thought this should have been possible. Over 75% of responding counselors rated the following servicers as "terrible" or "bad" in this regard:

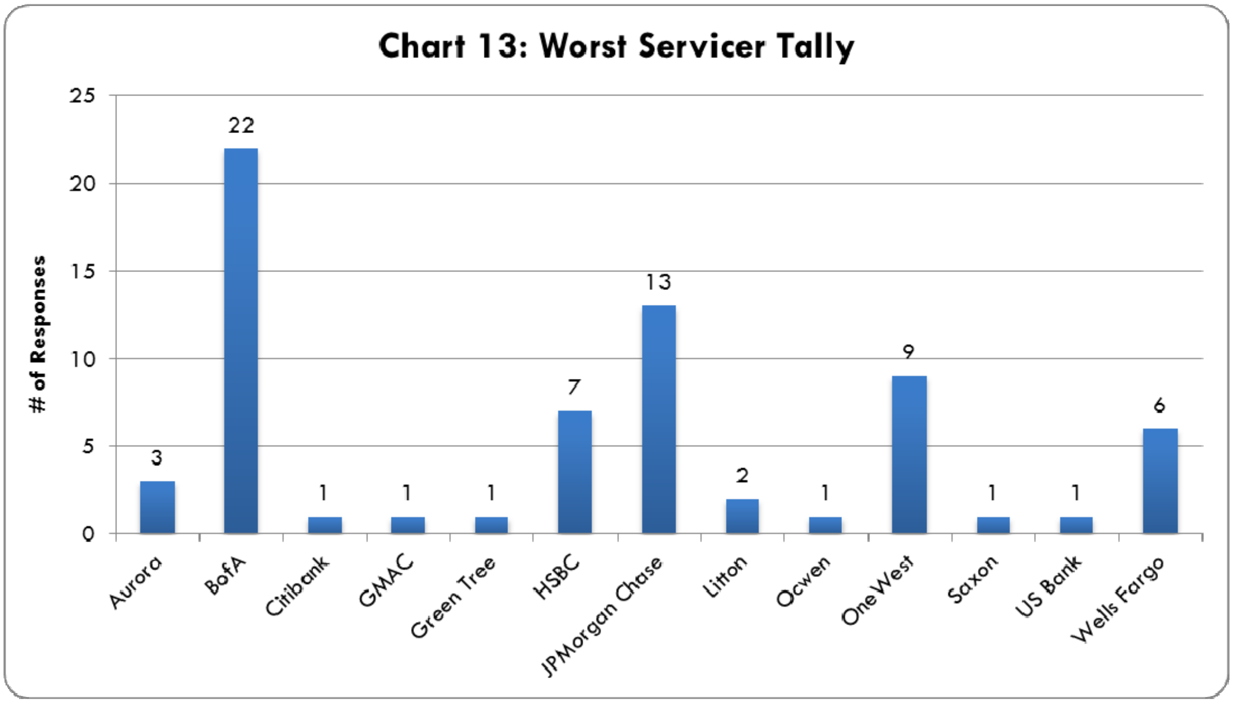
- OneWest (84% of responding counselors rated the bank "terrible" or "bad")
- HSBC (80%)
- JPMorgan Chase (79.2%)
- Bank of America (77.7%)



(Source: CRC Counselor Survey June 2011)

"What is worse than terrible? Because Chase and Wells are both worse than terrible. We have a mediation program at Orange County Superior Court for loan modifications. Wells Fargo attorneys regularly stand up in court and say to the Judge, 'Wells Fargo paid back the TARP funds so we don't have to participate in the HAMP program any longer.' Wells Fargo attorneys refuse to give homeowners a loan modification even when a housing counselor from a HUD-approved agency testifies to the Judge that the homeowner is eligible for the HAMP program. Every Friday morning in the OC Superior Court I witness Wells Fargo refusing to offer modifications to eligible homeowners."

Housing counselors were asked which servicer is most difficult to work with and why. Counselors named a total of 13 servicers. Bank of America was named most often, cited by 22 counselors. JPMorgan Chase was named second most often, named by 13 counselors. Some counselors opted to name just one servicer; others opted to name more than one.[27]



(Source: CRC Counselor Survey June 2011)

"Bank of America. They are by far the worst in every way: unnecessary and/or accidental foreclosures, interminable delays in TPPs, wrongful denial, blatant failures to comply with HAMP rules (i.e. not giving borrowers reasons for denial); failure to honor modifications they already offered; repeatedly contacting deceased borrowers; wrongfully charging late fees; pressuring borrowers to 'opt out' of HAMP. You name it, I have an example. Also, Bank of America, unlike many of the servicers, seems to be getting worse not better."

[27] See Appendix A for a compendium of all comments from housing counselors in response to the question, "which servicers is the most difficult to work with, and why?"

CONCLUSION

Analysis of HAMP data reveal the limited knowledge we still have regarding servicers' performance under HAMP. HUD and the Treasury placed a significant emphasis on the accurate collection of Government Monitoring Data (GMD) related to race, ethnicity, and sex of borrowers interacting with HAMP. However, the serious limitations and omissions of the HAMP data file seem to indicate a lack of compliance on the part of servicers and a lack of oversight on the part of regulators over this important program that profoundly impacts so many American families. Sadly, these data failings may be emblematic of servicers' and government's failures vis-à-vis the HAMP program as a whole. Housing counselors continue to report widespread failure on the part of loan servicers to follow HAMP guidelines and to help borrowers stay in their homes.

Due in significant part to the lack of widespread access to loan modifications, Californians have lost 1.2 million homes to foreclosure since 2008.[28] Various economic forecasts estimate an additional 2 million foreclosures in California by 2012. If regulators are not going to enforce the provisions of their programs and banks are not going to comply, homeowners are going to continue to suffer. With the disproportionate effect of the foreclosure crisis on communities of color, this lack of oversight is even more concerning, and highlights the need for more strenuous enforcement of historic fair housing laws that are intended to prevent redlining and disparate treatment. Federal and state policymakers and regulators must ensure that everyone has fair access to loan modifications that can save their homes.

RECOMMENDATIONS

California's homeowners, neighborhoods and economy cannot wait another three years for servicers and lenders to voluntarily or gradually correct their dysfunctional loan modification processes. The financial industry has fought every meaningful federal and state effort to create protections for families trying to keep their homes.

In order to address the unmitigated consequences of the foreclosure crisis and its disproportionate impact on people and neighborhoods of color, CRC calls for the following recommendations to be implemented:

Improve HAMP

- *End the Dual Track.* Despite much media attention to the problem of dual track, housing counselors in California report the problem remains a major obstacle for clients. Bank lobbyists in Sacramento succeeded in killing SB729 which would have stopped the dual

[28] "Home Wreckers: How Wall Street Foreclosures Are Devastating Communities," ACCE, PICO, CRC and SEIU, March 2011, p. 1 http://www.homedefendersleague.org/wp-content/uploads/2011/03/Home-Wreckers-Report-March-16-2011.pdf

track practice and provided a private right of action as a remedy to victimized homeowners. This HAMP loophole must finally be closed.

- *Mandate principal reductions.* At a minimum, all loan servicers should participate in the Principal Reduction Alternative component of HAMP, as well as state Hardest Hit Fund programs, such as the Keep Your Home California principal reduction program. To date, only Bank of America and GMAC among large servicers have agreed to participate in this particular program.
- *Meaningful review and appeal.* Currently, there is no meaningful way to appeal an incorrect loan modification decision by loan servicers. The Treasury Department and bank regulators must create a meaningful appeals process where borrowers (or their representatives) who disagree with a servicer's decision can present evidence to a neutral third party. This process must be predicated on the understanding that under HAMP, borrowers have the right to access information about loan modification denials, including the precise reason for the denial, the net present value test formula and all inputs used, and that servicers may not begin foreclosure proceedings while a case is subject to homeowner appeal.
- *Transparent NPV tests.* All servicers must publicly disclose their Net Present Value tests so that homeowners and the public can be assured these tests are being applied fairly and consistently with fair housing laws. Recently, the Treasury Department created an online net present value calculator which partially addresses this concern.

Investigate and enforce fair housing violations. The Department of Justice has been very engaged in pursuing fair housing violations. Attention should be turned to potential fair lending violations in the loan modification and foreclosure prevention context. California Attorney General Kamala Harris recently announced the creation of a Mortgage Fraud Strike Force to protect homeowners in the state from a variety of unscrupulous lending practices. This strike force should investigate the disparate impact of foreclosures and loss mitigation failures in communities of color.

Make implementation of federal regulatory consent decrees a priority and more transparent. Unfortunately, the federal bank regulatory agencies broke off from the 50 state Attorneys General and entered into consent decrees with the largest loan servicers regarding robo-signing and related abuses. The consent decrees are disappointing in their limited reach and in the possibility that they will undermine the Attorneys General in their investigation, both politically and legally. The bank regulators should now be aggressive in imposing fines on servicers for violations, and in ensuring that the terms of the consent decrees, such as they are, are enforced. Servicer action plans, audits, processes for complaints, and regulatory responses should be transparent and reported to the public.

HMDA for loan modifications. All loan modification data, HAMP and non-HAMP, should be reported to the public by servicer and by neighborhood, similar to loan origination reporting under the Home Mortgage Disclosure Act (HMDA). A federal rule-making process to amend HMDA is already underway; the new Consumer Financial Protection Bureau could and should make this change. In the meantime, HAMP data must be strengthened to provide more localized data by providing a separate data set (with more limited personal data so as to maintain the privacy of borrowers, if necessary). Further, loan servicers who are regularly violating the terms of their HAMP contracts should not be able to hide behind the terms of those same HAMP contracts to prevent the disclosure of servicer-specific data.

A strong AG settlement. Any Attorney General settlement with loan servicers over servicing abuses should include strong terms that *require* sustainable loan modifications that include principal reduction, as well as a mechanism to collect and publicly report data so the public can be assured that fair housing laws are being followed by servicers. The Agreement should include redress for past victims of improper servicer practices, an end to the dual track, funding for housing counselors and legal services offices to support borrowers seeking to vindicate their rights, and a strong enforcement mechanism to ensure settlement terms are honored.

Adopt strong uniform servicing standards. Bank regulators have begun discussions about creating uniform national servicing standards so that all servicers are playing by the same rules. Standards must not only focus on uniformity, but also on requiring fairness and due process to families trying to stay in their homes. An important component of such standards would be devising a new compensation system so that loan servicers do not continue to act contrary to the interests of borrowers, investors, local governments and neighborhoods.

This report was prepared by Kevin Stein and Kristina Bedrossian of CRC. Research and analysis on HAMP data were provided by Steve Spiker, Steve King, and Vinay Murthy of Urban Strategies Council. Helpful comments on earlier versions of this report were given by Arielle Cohen (National Consumer Law Center), Dorothy Herrera Settlage (Legal Aid Foundation of Los Angeles), Alan White (Valpraiso Law School), and James Zahradka (Law Foundation of Silicon Valley), as well as Alan Fisher and Amelia Martinez of CRC. All errors are strictly 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 nearly 300 nonprofit organizations and public agencies across the state.

<u>Appendix A:</u> Counselor Comments Regarding Most Difficult Servicer(s)

Chase

IndyMac. Terrible customer service. Get the run around

JPMorgan Chase

Bank of America; Wells Fargo Bank; One West; Citimtg; Documents not received; long time to receive a response; no structure in the mod; lost documents; individuals on the phone are not trained.

IndyMac. The average processing time is 12 months. They continually request updated documents and state that they never received docs. It's so frustrating. Even when you escalate the file the same results occur, having to update docs continually for months on end.

Chase, extremely long wait times on modification requests and are always changing the analyst reviewing the file which forces the borrower to start the process again. Many times the packet sits there with nobody reviewing it. I normally send an average of 3 packets for every Chase client.

Bank of America. Difficult getting the right contact person to return phone calls. Borrowers receiving incorrect information from representatives. Consistently requesting information that has been faxed and emailed.

Chase and OneWest (Indymac) are in a tie. Both entities string along homeowners with hopes of obtaining a modification and ultimately denying the hardship request due to "excessive forbearance". It almost appears to be done intentionally rather than being a capacity issue.

HSBC - they do not offer permanent mods unless the reason for hardship is death of a borrower. They only offer temporary 6-month assistance.

Bank of America - they simply don't care. You have multiple departments (Advocacy, Home Retention, MHA, collections) who don't communicate with one another. They don't follow through with what they say. Event through the HOPE Loan portal (from the Bank of America side) there is a lack of communication.

HSBC, because they do not offer any long term work out options.

We are having a difficult time with Chase's and IndyMac's customer service representatives. We get an entirely different request each time we call even when the documents are in their system and they can see them. They are not able to explain what else is needed.

CHASE - if there is a problem or discrepancy, (and there are plenty) there is no way to escalate the matter. They don't have an escalation process

BofA - stall tactics, asking for the same paperwork over and over again. (one case more than 1000 pages) Moreover, homeowners continue to be in a trial loan modification limbo for 8 to 24 months. Then, after delaying making the trial permanent, they state that the homeowner failed to provide paperwork in a timely manner - thus, they are being considered for non-HAMP.
CHASE. There is no Executive Resolution team or ever an assigned negotiator.

Bank of America is difficult to work with. It seems as all the departments do not communicate with each other. Modifications are taking too long for review and sale dates are not being postponed.

A few but we can not name them.

Bank of America and its large adjustable loans that are difficult to get modified and guided by investors preferences not government program options.

Hands down it's CHASE!!! With Wells Fargo a close second.

Bank of America & HSBC

Bank of America will tell you they have requested documents when you call and a few days later they will ask for the same documents because they have either expired already or they do not have the information. The client is placed in review for an excess amount of time.

They are all bad but Wells Fargo because they add so much more burden to the client when sending the documents with having the clients sign all paper and having to put account number and Address on each page. FHA owned Loans are the worst to get modified

HSBC only offers 6month modification. IndyMac/One West hardly ever gives loan mods. Bank of America loses paperwork and takes too long to resolve solution

HSBC, Aurora, One West, Saxon, Ocwen, Litton, US bank, Chase.

Indymac Bank / Onewest they constantly loose documents.

Chase - refuses to modify their borrower. Because it is all about the bottom line
- the shareholders

Bank of America!!! They constantly loose documents and borrower needs to resubmit every 90 days. I have a few where we have been on-hold since the beginning of last year!! Even though our organization is non-profit I keep getting transferred to "other" departments and get different information every time I call to follow-up.

BofA, lost documents, long waits, high number of borrowers on trials then denied for permanent

BOFA, trial loan mods that do not become perm. Advocacy department designated for counseling agencies no longer has direct line for counselors. Their internal departments do not communicate with each other.

Indymac. Customer service reps are incompetent, oppositional, and frequently fail to take notes. I have established gross income figures three times on one case only to have the rep on the phone fail to find record in their notes of my previous phone call. Difficult specific RMA forms, and just plain nasty customer service rep attitudes.

JP MORGAN CHASE

Probably Bank of America because, unlike the others, they do not seem willing to provide us with any employee with any clout when we need to escalate cases.

I will say Chase a.k.a. EMC/WAMU because they refused CalHFA/KYHC MRAP offer when they could have saved the borrower from foreclosure.

HSBC is difficult because they only offer a limited modification

BofA is the worst. I have them denying permanent loan mods!

GMAC/Aurora/Litton

Bank of America because every time you call you get different answers until you demand to talk to a manager.

WF/ Aurora/ Chase

Bank of America. They are by far the worst in every way: unnecessary and/or accidental foreclosures, interminable delays in TPPs, wrongful denial, blatant failures to comply with HAMP rules (i.e. not giving borrowers reasons for denial); failure to honor modifications they already offered; repeatedly contacting deceased borrowers; wrongfully charging late fees; pressuring borrowers to "opt out" of HAMP. You name it, I have an example. Also Bank of America, unlike many of the servicers, seems to be getting worse not better.

Wells Fargo. They don't seem to want to follow HAMP guidelines.

Bank of America. We can see that they have no consistency of information and their reps are all over the place. It takes them months to assign a file to a negotiator and when it is assigned the borrower needs to get them updated docs to them in 14 days or they close the file. They mail docs to the client on the day they are due.

Bank of America - it is very difficult to get answers from, and it is always something different, the time that they take to review a case is incredible and at the end most of the time is a denial. They need to do something to better train their people and to work together with Housing Counselors to be able to help the consumer.

BOA, Have 12 files I've been working on for over 1 year, they STALL. Don't want to be bothered, drag their feet, hoping it will end soon. Refuse to post pone sale. No alternatives offered just short sale & foreclosure. Hang ups, missed calls, etc. Make own rules.

Chase takes too long, looses mostly all documents

Wells Fargo-They do not get back with the clients

BofA. It is ridiculous to ask borrowers who are losing their homes to bring in cash and/or sign promissory note in order to close a short sale. If people had cash they would not be losing their homes!!!!

IndyMac is one of the worst. Not willing to work with the homeowner at all.

Chase.

Bank of America - it takes many calls before being able to reach someone that can give a real answer to a question.

Tie: Green Tree and HSBC