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This press release was sent out today by NACBA.

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Near Half of Homeowners in "Loan Modification? Programs Face Higher Monthly Payments; Failure of Voluntary Industry Efforts Hikes Pressure on Incoming Obama Administration, New Congress to Clear Way for Court-Supervised Modifications

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Much hyped "foreclosure prevention programs? relying on voluntary loan modifications are failing to reach a significant number of troubled homeowners and are often backfiring when they do so, according to newly updated research released today by the National Association of Consumer Bankruptcy Attorneys (NACBA). The across-the-board failure of these much ballyhooed "fixes? for the foreclosure crisis are expected to result in the new President and Congress facing considerable new pressure to clear the way for court-supervised loan modifications that will prove more beneficial for homeowners.

The findings released today by NACBA come on the heels of a dire new projection from Credit Suisse that "over 8 million foreclosures (are now) expected? over the next four years in the U.S. That astounding level accounts for 16 percent of all mortgages -- including 59 percent of all subprime mortgages and more than 11 percent of all other mortgages, including Alt-A, options ARMS and even those in the prime category. This new forecast from Credit Suisse is up sharply from the two to six million foreclosure range cited in previous estimates from industry sources.

The new data presented today from Professor Alan White, Valparaiso University School of Law, Valparaiso, IN, is updated through November 2008 (<http://www.hastingsgroup.com/Whiteupdate.pdf>) and shows that:

0. Less than 10 percent of the time do the voluntary programs result in a reduced principal loan balance with more than half of modifications capitalizing unpaid interest and fees into larger and more drawn out debt on the back end of the mortgage; and
0. Only about a third (35 percent) of voluntary mortgage modifications

reduce monthly payment burdens for homeowners, with nearly half (45 percent) actually saddling distressed homeowners with increased payments under the modifications.

Just how badly are the voluntary modification programs flopping? To answer that question NACBA reviewed the publicly available data about the reach to date of the much-hyped programs. In one prominent case - the Hope for Homeowners Act FHA refinancing program passed by Congress with much fanfare earlier this year on the strength of forecasts that 400,000 homeowners would be aided - there have been only 312 applications to date -- and no mortgage modifications whatsoever have taken place. This is consistent with the most recent estimates from the National Association of Attorneys General that "nearly 8 out of 10 seriously delinquent homeowners are not on track for any loss mitigation outcome ... up from 7 in 10 in previous reports.?

Henry Sommer, president, National Association of Consumer Bankruptcy Attorneys, Philadelphia PA., said: "**Court-supervised loan modification is urgently needed to deal with this problem. We call on the incoming Obama administration and the new Congress to adopt this solution without delay. The American home mortgage foreclosure crisis has gone from the danger zone to the full-blown crisis stage. The number of foreclosures is growing rapidly and is reaching well beyond the subprime world to the American middle class. Despite a proliferation of voluntary programs, we are not seeing evidence of a meaningful number of sustainable loan modifications.?**

Professor Alan White, Valparaiso University School of Law, Valparaiso, IN, said: "**American homeowners are carrying 10.5 trillion dollars in mortgage debt, a number that has risen by 250 percent in the past decade. While banks have written down more than half a trillion in mortgages and mortgage-related securities, homeowners have gotten little or no relief. A broad range of economists from Nouriel Roubini to Ben Bernanke to Martin Feldstein have recognized the need to deleverage the American homeowner. The excess mortgage debt is depressing home prices and consumer spending, and acting as a drag on the broader economy. Empirical evidence from mortgage servicer reports to investors shows that for the most part, the necessary deleveraging of homeowners is not happening.?**

Alys Cohen, staff attorney, National Consumer Law Center (NCLC), Washington, DC, said: "**Sadly, the magnitude of the foreclosure crisis dwarfs the response to date from the financial services industry, regulators and lawmakers. The lack of aggressive and meaningful solutions from federal policymakers is baffling, particularly given that most economists, including the Chairman of the Federal Reserve**

Board and the Chair of the FDIC, have recognized that the financial crisis can be resolved by only by dealing with its root cause - the escalating millions of mortgage foreclosures ... The foreclosure crisis will not be resolved through voluntary efforts on the part of the financial services industry alone. Despite widespread efforts to encourage voluntary loan modifications, it is clear that the financial services industry has failed to implement a loan modification strategy on a scale that matches the urgent crisis we are facing. Bankruptcy courts must be empowered to implement economically rational loan modifications where the parties are unwilling or unable to do so on their own. Loan modifications through the bankruptcy courts can help accomplish this on a sufficient scale and timeframe to have a meaningful impact. Congress should lift the ban on judicial modification of primary residence mortgages, as part of the solution to stemming the tide of avoidable foreclosures and stabilizing the housing market and the broader economy. The need is urgent. The time for action is now.?

When NACBA, NCLC, Consumer Federation of America (CFA) and the Center for Responsible Lending (CRL) called on Congress in April 2007 to move aggressively to stem the growing flood of home foreclosures, it was estimated that some 2 million homeowners were at risk of foreclosure. And, at the time, the financial services industry accused the organizations of being overly pessimistic about the likely toll of foreclosures. However, it turns out we were low-balling quite significantly the number of foreclosures.

As of September 2008, a full 1.2 million homeowners with subprime loans already had lost their homes to foreclosure. Another 1.7 million families with subprime loans are seriously delinquent and at risk of losing their homes in the very near future. Credit Suisse ("Foreclosure Update: Over 8 million foreclosures expected," December 2008) now estimates that 8.1 million mortgages will be in foreclosure over the next four years, representing 16 percent of all mortgages. Disturbingly, Credit Suisse finds that the problem has spread from subprime loans to Alt-A, option ARMs, and even prime loans.

FAILURE OF "FORECLOSURE PREVENTION PROGRAMS?"

Bowing to the demands of the financial services industry that created the foreclosure crisis in the first place, every program put in place to prevent foreclosures has relied on the voluntary cooperation of mortgage servicers who handle the mortgages that, in most cases, are owned by securitized

trusts that have issued bonds to investors. It is painfully obvious that these voluntary programs have failed to stem the tide of foreclosures. The few successful attempts at mortgage modification, such as the FDIC efforts with IndyMac, have largely dealt with those rare mortgages that are still owned by a single lender, rather than securitized loans.

Voluntary programs are failing for a variety of reasons that cannot be changed without action by the Obama Administration and new Congress:

0. ***Multiple owners make voluntary modification impossible.*** Many borrowers and even their servicers simply cannot locate the holders of the mortgage to negotiate with, or there are multiple owners all of whom would have to agree to modification; the loans have been sliced and diced so many times that all of the owners cannot be found and brought into the process.
0. ***Fear of investor lawsuits blocks voluntary modifications.*** The servicer has obligations to the investors who have purchased the mortgage-backed securities through pooling and servicing contracts, and the interests of these investors conflict. Servicers are hesitant to modify the loans because they are concerned that it will impact different tranches of the security differently, and thereby raise the risk of investor lawsuits when one or more tranche loses potential income. At least one servicer has already been sued. Under the current system, the legally safest course for the servicer clearly is foreclosure.
0. ***Piggyback seconds block voluntary modifications.*** Perhaps the most intractable problem is the fact that a third to a half of all 2006 subprime borrowers took out piggyback second mortgages on their homes at the same time they took out their first mortgages. In these cases, the holders of the first mortgages have no incentive to provide modifications that would free up borrower resources to make payments on the second mortgages. At the same time, the holders of the second mortgages have no incentive to support effective modifications by waiving their rights, which would likely cause them to face a 100 percent loss. The holders of the second mortgages are better off waiting to see if a borrower can make a few payments before foreclosure.
0. ***Overwhelmed servicers are not set up to negotiate modifications.*** Hundreds of thousands of borrowers are asking for relief from organizations that traditionally have had a "collections? mentality of trying to foreclose as quickly as possible. They know how to foreclose, and

the foreclosure process has been increasingly automated to maximize the fees the servicers receive. Many receive no extra compensation for working on modifications. These servicers are not disposed to postponing foreclosure or equipped to handle case-by-case negotiations. Many also have monetary incentives to foreclose rather than modify.

In practice, these roadblocks - all of which were warned of months ago by NACBA and other groups - have resulted in gridlock in the voluntary modification programs. Consider these examples:

0. **Hope for Homeowners Act** -- This law, passed with much fanfare last spring, provides an FHA refinancing if the servicer agrees to accept slightly less than the value of the home in satisfaction of the debt. The thought was that servicers would agree to accept less than 100% payment if that payment was guaranteed by the government. It was expected that the program would help 400,000 homeowners but since it opened in October, fewer than 312 people have applied for the program and no loans have been modified. The result? As Credit Suisse notes in its December 2008 report: "While loan modifications and similar interventions (such as the Hope for Homeowners FHA refinancing program) could help to reduce the march of foreclosures, the proliferation of generally timid loan mod programs with confusing loan features raises significant doubt as to whether the current loan mod momentum is sufficient to reduce foreclosures materially ... modified loans remain a small percentage of delinquent loans and loans in foreclosure, even though servicers have ramped up their efforts in recent months.?"
0. **Hope Now** -- This voluntary effort by the industry, promoted by the Administration, has produced more public relations than real results. Homeowners have great difficulties getting answers because the services do not have adequate staff to deal with requests. When some accommodation is reached, servicers virtually never reduce loan principal and often enter into repayment agreements that do not even reduce loan payments. Studies have shown that most of the workouts negotiated through Hope Now provide at best temporary short-term relief from foreclosure, and in a large percentage of cases, the homeowner cannot keep up with payments because the agreement does not adequately modify the loan. As of September 2008, Hope Now worked out loan modifications resulting in lower monthly payments for 266,087 homeowners; loan modifications with the same or **HIGHER** monthly

payments for 226,667 families; and 780,000 short term repayment plans.

0. **FDIC/IndyMac** - This effort covers 65,000 borrowers who are more than two months delinquent on their mortgage, but doesn't reduce the outstanding debt in any meaningful way and therefore has not attracted much interest. So far, 7,200 homeowners have modified their loans under this program. And, after a two-month moratorium on foreclosures pending the modification program, IndyMac foreclosures in November skyrocketed 242 percent from October, according to Mark Hanson of the Field Check Group.

Most recently, FDIC Chairwoman Bair has proposed a program that would, like Hope for Homeowners, provide government guarantees as a carrot to entice servicers to make modifications of interest rates and defer principal payments under a formula based on the debtor's ability to pay. If the payments are modified by at least 10 percent, (but only for five years) the government would guarantee 50 percent of the loan losses. The Treasury Department noted that this program could actually give servicers an incentive to make minimal modifications and then foreclose to collect the guarantees.

While NACBA applauds FDIC Chair Bair's commitment to homeowners, it fears that, other than in cases where a planned foreclosure would be more lucrative for the servicer, this program also would have few takers. It is likely that, for all the same reasons plaguing existing programs, servicers would be unwilling to make meaningful modifications of most loans voluntarily. Moreover, the program does nothing to deal with the problem of piggyback second mortgages, often the riskiest loans given by the most irresponsible lenders. Holders of second mortgages can block the modification of the first mortgage, even though the second mortgage typically would be wiped out in a foreclosure sale. Absent reductions in principal, the program will neither sufficiently reduce payments nor prevent later foreclosures when homeowners need to move or cannot refinance to resolve a financial problem. As even Federal Reserve Board Chairman Bernanke has noted, "With low or negative equity ... a stressed borrower has less ability (because there is no home equity to tap) and less financial incentive to try to remain in the home.? At best, the Bair proposal would help only a small number of homeowners and, in most cases, only postpone the foreclosure problem - at considerable expense to taxpayers.

ABOUT NACBA

The National Association of Consumer Bankruptcy Attorneys

(<http://www.nacba.org>) is the only national organization dedicated to serving the needs of consumer bankruptcy attorneys and protecting the rights of consumer debtors in bankruptcy. Formed in 1992, NACBA now has more than 3200 members located in all 50 states and Puerto Rico.

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EDITOR'S NOTE: A streaming audio replay of this news event will be available on the Web at <http://www.nacba.org> as of 6 p.m. ET on December 18, 2008.