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Knowing the Score
By Nancy Trejos
The Washington Post
2:00 a.m. August 2, 2009

TIPS FOR KEEPING YOUR CREDIT SCORE HIGH

- Build up a long history of paying your bills on time. If you do miss a payment, catch up as soon as you can.
- Keep your credit-card balances low. The closer you are to being maxed out, the lower your score will be.
- Don't close unused credit cards. The proportion of credit lines used affects your score.
- Don't open too many new cards too rapidly. You might be tempted to do this to increase your available credit, but it could make you look like a higher risk.
- Don't become delinquent. Call your creditors before you miss payments and ask for a lower rate or other type of workout plan.

As banks tighten their lending standards, one number is playing an increasingly critical role in determining the financial fortunes of consumers: the credit score.

Lenders use them to decide whether to extend credit and at what interest rate. As lenders demand higher scores, more Americans are having trouble getting loans.

Others aren't getting loans at all because their scores have dropped. They may have lost their jobs and not kept up with credit-card and mortgage payments, or in some cases, card companies have taken adverse actions against them. Eager to mitigate risks, card issuers have closed accounts or slashed credit lines, leaving customers with less available credit. Customers who have used up much of their credit then are closer to maxed out, which further hurts their scores.

To add to their crisis, people who try to take matters in hand and pay to find out their credit scores discover that it can be difficult to learn the score that lenders actually use to evaluate them.

“Credit scores have taken on a new degree of importance,” said Scott Talbott, senior vice president for government affairs at the Financial Services Roundtable, an industry group. “In the past, it was a question of 'What will your interest rate be?' and now it's 'Will you even get a loan?' ”

As a result, credit is less available to both low-risk and high-risk consumers at a time when they – and the economy – need it the most.

“The consumer who desperately needs credit right now is in a very bad situation,” said John Ulzheimer, president of consumer education for Credit.com. “The consumer who is remaining consistent, the market is passing them by. You have more cars sitting on car lots, and you have houses with for-sale signs.”

Jane Graver is one of those desperate consumers. Graver once had a credit score of about 700, which before the credit crunch made her a desirable candidate for a loan. Most lenders use the FICO score, which runs on a scale of 300 to 850.

Faced with a divorce, serious illness and tough economy, Graver, a small-business owner, missed a few credit-card payments and used up her home-equity line of credit. She was close to being maxed out. Last year, her score dropped to the mid-500s.

Now that lenders are demanding credit scores of 720 or higher, Graver is considered even more of a risk and cannot get a mortgage – or even find a landlord willing to rent her a home. Her house in Orange, N.J., sold at a price high enough to cover her mortgage and line of credit, but she is struggling with what to do next.

“It is difficult to cope,” said Graver, a mother of two. “I am absolutely unable to get a mortgage.”

As scores become increasingly important, they also have become increasingly perplexing. Consumers have free access to the credit reports used to determine their scores, but they have to pay to check them. With the heightened interest, many borrowers have been doing just that, buying their scores from a variety of Web sites, only to find out that they might be different from the ones lenders use, bank officials and consumer advocates said.

“One of the things consumers have to understand about scores is that there are a number of different scores within the marketplace,” said Norm Magnuson, vice president of public affairs at the Consumer Data Industry Association, a trade group.

The FICO score, which was developed by a company formerly known as Fair Isaac, is the dominant player in the industry. It is calculated based on the information contained in credit reports, which list a consumer's debts and payment history. Three bureaus – TransUnion, Experian and Equifax – keep those credit reports.

To compete with the FICO score, the three bureaus united in 2006 to create VantageScore, which ranges from 501 to 990, which they sell to lenders.

Complicating matters is that Experian and TransUnion have developed their own scores, which the agencies call educational scores because they are intended to help consumers gauge their own creditworthiness. Lenders cannot even buy Experian's score. They can buy TransUnion's but tend to go with the FICO score instead.

On its Web site, FreeCreditReport.com, Experian gives people their Plus score if they pay \$14.95 a month for a credit-monitoring service, which they can cancel after a seven-day trial period. They have to dig through the terms and conditions before getting to this disclosure: "The PLUS Score is not a so-called FICO score, and may differ for a variety of reasons."

TransUnion also offers a \$14.95-a-month credit-monitoring service with a 30-day trial period on TrueCredit.com. That gives consumers access to the bureau's scores. Like Experian, TransUnion discloses on its Web site that its score is not the same as a FICO score.

Equifax gives FICO scores to anyone who pays \$14.95 a month for its credit-monitoring service.

Susan Henson, a spokeswoman for Experian, said the educational scores are still a good tool for consumers, even if they are not what lenders use.

"The most important thing is, they're really measuring the same thing, which is that consumer's level of risk, whether they are an extremely low-risk consumer or whether they are a high-risk consumer," Henson said.

Some consumer advocates say the educational scores are of little use and too expensive.

Ulzheimer likens them to faux designer bags.

"It's like selling a Gucci bag on the streets of New York," he said. It looks like the real thing, but it's not.

"It exposes something two of the three bureaus don't want people to know," he said. "They make a whole lot of money selling scores."

The recession has been a boon for many of the Web sites that sell credit scores. Traffic on FreeCreditReport.com grew 6 percent, to 6.6 million visitors, in March, according to ComScore, which tracks Web sites.

Craig Watts, a spokesman for FICO, recommends getting FICO scores at Equifax.com or myFICO.com.

Other credit-score experts said a better gauge of a consumer's financial health is the credit report. If they have paid bills on time, have no negative public records such as bankruptcies, and have used less than 30 percent of available credit, they probably have a good score, Magnuson said.

Lower scores leave people such as Graver in a precarious position. She is struggling to make her online specialty tea business, DuckyLife.com, a success. To do so, she might need a loan someday, and she probably won't qualify. But her most immediate worry is a home. To Graver, having a lower credit score is "a nightmare."

I've "survived four life-threatening illnesses, six surgeries, divorce – and all as a single mom," she said. "Now I cannot find a place to live."

Bonuses Compound Insanity
Editorial Board
The Everett Herald
Monday, August 3, 2009

Americans can be forgiven for being hyper-cynical and super dubious and for bringing the existing health care system to its knees after suffering a collective concussion from banging their heads against walls after reading the unsurprising yet unbelievable news that: "Bailed-out banks gave millions in exec bonuses, report shows."

On Thursday, New York Attorney General Andrew Cuomo announced the findings of a nine-month investigation, which revealed nine Wall Street banks generously gave a combined \$33 billion in 2008 bonuses to employees despite losing billions of dollars and receiving an unprecedented government bailout.

The report offers straightforward observations, such as: The investigation found that even though banks tout the importance of tying pay to performance, compensation has become "unmoored from the banks' financial performance."

And: "When the banks did well, their employees were paid well," the report said. "And when the banks did very poorly, they were bailed out by taxpayers, and their employees were still paid well."

The report said that Citigroup and Merrill Lynch, which is now owned by Bank of America, received combined government bailouts of \$55 billion and lost \$54

billion last year, but still paid out \$9 billion in 2008 bonuses, USA Today reported. Goldman Sachs, Morgan Stanley and JPMorgan Chase shelled out more in 2008 bonuses than they earned, the investigation found.

Scott Talbott, a senior vice president at the Financial Services Roundtable, which represents large banks, defended the bonuses, telling USA Today that banks have “already moved to strengthen reliance on deferred compensation plans that provide long-term incentives to employees.” And, during a recession, banks’ ability to “attract and retain qualified personnel is all the more important,” Talbott said.

Qualified personnel? Where? Isn't all the evidence to the contrary? Long-term incentives? To do what? The same bad job, because that “earned” a big bonus the last time?

As Yale University law professor Jonathan Macey told USA Today, the banks’ argument that they need hefty pay packages for workers “depends on an erroneous assumption that these people are irreplaceable.”

Exactly. How hard is it to find someone who can lose money and at the same time dole out a government bailout as bonuses ... or receive one?

'Say on Pay' Bill Passes in Largely Party-Line House Vote
By Walter Hamilton and Richard Simon
Los Angeles Times
August 1, 2009

Reporting From New York and Washington -- Responding to the public furor over bonuses paid to Wall Street executives, the House of Representatives has voted to give regulators the authority to ban compensation practices that encourage banks to take excessive risks.

The passage of the measure, which represents the first piece of President Obama's overhaul of financial regulations, comes a day after the release of a report showing that nine big banks paid out a combined \$32.6 billion in bonuses despite taking \$175 billion in taxpayer aid to survive the financial crisis.

"If the last year has taught us anything, it's that the compensation practices of some of our largest corporations have gotten completely out of control," said Rep. Jim McGovern (D-Mass.).

Friday's largely party-line vote sent the Corporate and Financial Institution Compensation Fairness Act to the Senate, which is expected to take up executive

pay this fall as part of broader financial regulatory legislation.

The 237-185 decision came as lawmakers head home for their summer recess, eager to show voters they responded to the outrage over multimillion-dollar bonuses paid out to employees of bailed-out companies such as banking giant Citigroup Inc. and insurer American International Group Inc.

The bill would give shareholders of public companies annual, nonbinding advisory votes on executive pay and so-called golden-parachute severance packages. It also would require that compensation committee members satisfy guidelines ensuring their independence from the managers whose pay they set.

A central element of the bill would allow regulators to prohibit so-called incentive compensation that encourages lenders or traders to take heavy risks that threaten the health of the bank or the financial system.

Critics say the banking meltdown was caused partly by dangerous practices such as the creation of bonds tied to subprime mortgages that minted huge paychecks but carried no accountability for the havoc they eventually wrought on the financial system.

"What this bill explicitly aims at is this practice where people are given bonuses if the gamble pays off, but don't lose anything if it doesn't," said Rep. Barney Frank (D-Mass.), chairman of the House Financial Services Committee and the bill's chief author.

Yet, as with some other provisions of the bill, some experts questioned how much practical benefit it would have. It's unclear how regulators would assess risky practices and whether they would be able to circumscribe pay without micromanaging the banks or intruding upon the traditional workings of the financial system.

By its nature, Wall Street is in the business of risk-taking, and financially innovative products, especially when first developed, can be chancy, said executive-pay expert Brian Foley.

Rather than limiting bonuses, the key to avoiding drastic losses is to ensure that financial institutions understand the magnitude of risks across their various business lines and investment holdings, and manage those risks accordingly, he said.

"The problem isn't with the risk itself," Foley said. "It's with managing the risks and hedging the risks. In the end, pay doesn't impact risk anywhere near as much

as critics think it does."

Legislators left the details of the provision intentionally broad to give regulators the latitude to interpret and implement the rule as needed, said Steve Adamske, a spokesman for the House Financial Services Committee.

The "Say on Pay" measure requiring annual shareholder votes on executive pay packages also has been criticized as potentially ineffective. Those votes would take place months after compensation is paid out and wouldn't force companies to reduce payouts if investors object. And thus far, shareholders have shown little inclination to reverse pay despite the public furor.

At the roughly two dozen U.S. companies that have voluntarily implemented say-on-pay in the last two years, shareholders have never voted down a pay package.

The House bill has been met with stiff resistance from Wall Street.

"It represents the government taking a large step into the day-to-day operations of corporate America," said Scott Talbott, chief lobbyist for the Financial Services Roundtable, an industry trade group that opposes the bill. "This is the beginning of a fundamental shift away from free enterprise and toward government regulation."

Banks already have taken steps to eliminate dangerous compensation practices, Talbott said.

One now-banished practice, he said, is paying bonuses to salespeople who sign home buyers to mortgage loans charging higher interest rates than they could otherwise qualify for.

Aside from the ethical implications, the practice led some home buyers to default on loans whose payments they couldn't afford.

"Companies that made bad decisions and took excessive risks are no longer in business," Talbott said. "The other companies recognize those mistakes and have adjusted their own pay practices to guarantee their own long-term health."

Democrats hailed the measure while Republicans railed against it.

"We've got to act to prevent the next financial meltdown," said supporter Rep. Brad Sherman (D-Sherman Oaks).

Republicans returning to their districts appear certain to portray the legislation -- coming as Democrats work to overhaul healthcare -- as the latest effort by the Democratic-controlled Congress and White House to expand the reach of government.

Rep. Pete Sessions (R-Texas), in a comment echoed by fellow Republicans, assailed the measure as "unprecedented government intervention in the free enterprise system."

Rep. Jeb Hensarling (R-Texas) said sarcastically, "Why doesn't this do anything about Hollywood stars who make \$25 million for a movie, yet the movie loses money?"

A report on Wall Street pay released Thursday by New York Atty. Gen. Andrew Cuomo's office renewed the controversy over bonuses handed out to bankers whose companies took billions in government bailouts.

Nearly 5,000 people received bonuses of \$1 million or more, according to the report, including 738 employees at Citigroup Inc., which got \$45 billion from the government.

Patt Morrison Radio Show
Have You No Shame, Banks?!
July 31, 2009

Scott Talbott speaks about executive compensation practices on the Patt Morrison radio show. Listen to the segment: [here](#).

COMPLIANCE WATCH: Finra Ads Irk Some Brokers, Advocates Article
Email
Suzanne Barlyn
Wall Street Journal A DOW JONES NEWSWIRES COLUMN
August 3, 2009

NEW YORK (Dow Jones)--A Finra marketing campaign is providing common ground for some advisers and investor advocates: They don't like it.

The Financial Industry Regulatory Authority launched the campaign in June on national television and radio, trying to build public awareness of the self regulatory organization and its mission.

"We want people to know there's an entity like Finra out there to protect them," said Finra spokesman Howard Schloss in an interview.

But some financial adviser trade groups are concerned that the ads, with their references to fraud and bad brokers, may hurt the industry's already tarnished reputation. At the same time, investor advocates say the ads don't disclose that Finra receives its funding from member organizations, who happen to be brokerages.

A summer campaign featuring one 60-second and two 30-second TV and radio spots recently concluded. It will resume in the fall, said Schloss.

The ads depict black and white images of Americans engaged in every day activities, while a calm male voice speaks over soothing guitar music. In one, titled "Promises," he intones, "If brokers don't play by the rules, ordinary investors can get hurt."

"That's why the federal government empowered the Financial Industry Regulatory Authority to protect investors from fraud and bad practices," he says. "If brokers break the rules, we can fine them, suspend them, even put them out of business. That's our job."

That spot prompted a recent letter of concern to Finra's chairman and chief executive from executives of trade groups, Financial Services Institute, which represents independent broker dealers, and **The Financial Services Roundtable, representing companies that sell multiple types of financial products. Both groups say the ads place advisers in a negative light.**

The letter, dated July 22, says another part of the "Promises" ad wrongly implies that recent market losses were the fault of brokers. That section tells the public: "We Americans are trusting by nature. We expect promises to be kept. So, when we put money away, we expect it will be there tomorrow."

Schloss says the ad tries to "address the effects of a few very bad apples," such as Ponzi-scheme fraudster Bernard Madoff. Finra, he says, explains on its investor Web site that no one is immune from risk.

For their part, investor advocates are unhappy that the ads don't specify that Finra is a self-regulator for the brokerage industry and funded by brokerages.

Laurence S. Schultz, a securities arbitration attorney in Troy, Mich., who represents investors, believes a viewer or listener could get the wrong impression.

"The ads should include an appropriate statement disclosing that Finra is not an agency of the federal government, and is a membership organization of the brokerage industry with over 4,800 brokerage firm members nation wide who paid for this advertisement," he says.

Theodore G. Eppenstein, a New York-based securities arbitration attorney agrees. "It could give people a false sense of comfort," he says.

Schloss says Finra is a regulator and doesn't collect fees in the same way as a trade group. Federal law requires brokerages to register with and pay fees to Finra, but they don't influence the organization, he said. Finra's authority as a self regulatory authority was established by amendments to the Securities Exchange Act of 1934.

John Coffee, a Columbia Law School professor, says Finra's campaign is likely an effort to improve its position as the government overhauls financial regulation, expanding and redistributing oversight and other powers.

He thinks the ads are "well done."

"I certainly did not detect any material misstatements, but of course people can differ about how effective they believe Finra has been," he says.

Bottom Line

By The Hill Editors

The Hill

Posted: 08/03/09 07:11 PM [ET]

- **ENERGY** — Milestone Consulting is lobbying on behalf of Fuel Cell Energy on fuel and appropriations issues. The firm is tracking energy legislation on fuel cell and fuel cell appropriations, lobbying records show.

- **ENVIRONMENT** — MJ Bradley and Associates is lobbying for the Environmental Services Group on climate change legislation and multipollutant legislation.

Baker Donelson Bearman Caldwell & Berkowitz is lobbying for the American Chemistry Council on chemical manufacturing and transportation issues, according to Senate lobbying records.

- **FINANCIAL SERVICES** — **Lisa Andrews, a former top official at the Treasury Department, is lobbying for the Financial Services Roundtable on efforts to reform the financial-services sector.**

Nappi and Hoppe are lobbying for the Consumer Bankers Association on issues

relating to the Banking and Consumer Financial Protection Act. Rodney Hoppe is a former Republican press secretary to the House Energy and Commerce Committee. Doug Nappi is a former GOP chief counsel to the Senate Banking Committee.

The Duberstein Group is lobbying for the Bank of New York Mellon on regulatory reform and international tax issues.

Citigroup hired Cleary Gottlieb Steen & Hamilton to lobby on financial-services regulatory reform and resolution authority issues.

- OIL — Jessica LeFevre is lobbying on behalf of the Alaska Eskimo Whaling Commission on issues relating to oil and gas development in the Beaufort Sea and North Slope in Alaska. Specific issues include oil spill risk, mitigation of industrial impacts to subsistence uses and the regulation of subsistence hunting, according to lobbying records.
- TOBACCO — The Podesta Group is lobbying on behalf of the Council of Independent Tobacco Manufacturers Association. Specific legislation the firm is lobbying against include the Family Smoking Prevention & Tobacco Control Act, Concerns of Small Manufacturers and the Prevent All Cigarette Trafficking Act.
- TRAVEL — Expedia has hired Jenkins Hill Consulting to lobby on its behalf on tax issues affecting the tourism industry.

How They Fared: Treasury Releases Rankings of Mortgage Units
Peter Barnes, Senior Washington Correspondent
FOX Business
Tuesday, August 04, 2009

Morgan Stanley's mortgage servicing unit, Saxon Mortgage Services, led major servicing companies in providing trial loan modifications to struggling homeowners under the Obama Administration's \$75 billion foreclosure-prevention program, according to the Treasury Department's first monthly report tracking the companies' loan modification efforts.

The rankings were calculated based on the number of modified mortgages as the percentage of total homeowners that the government says were eligible for a loan modification in a company's serving portfolio. Eligible homeowners are those who were more than 60 days late on their monthly payments, and thus were headed into the foreclosure process -- or are already in it.

The report is part of the Administration's new "name and shame" strategy of pushing servicing companies to modify more home loans through more transparency and accountability for participating firms.

Through July 31, Saxon had approved 21,000 -- or 25% -- of its 84,000 eligible homeowners for trial modifications.

Among other big servicers, JPMorganChase tied GMAC Mortgage in approving 20% for trial modifications. Wells Fargo and Bank of America trailed them at 4% and 6% respectively. (Bank of America's results included Countrywide mortgage, which it acquired last year.)

Citigroup's mortgage unit, CitiMortgage, approved 15% of its eligible homeowners for trial modifications.

The average percentage for trial modifications for the more than three dozen large and small servicing companies participating in the Administration's Home Affordable Modification Program was 9%, or 235,000 homeowners out of the 2.7 million who could be eligible, the Treasury report said. Treasury said servicers so far had offered trial modifications to 15% of the eligible homeowners, about 400,000. In most cases, a modification consists of reducing the interest rate on a loan for several years.

In raw numbers of loans modified, JPMorganChase led the industry with 79,000 trial modifications, more than a third of the total. You can see trail HAMP modifications for each servicing company here.

Treasury officials expect servicers to approve many homeowners in the trial modifications for permanent changes starting this month. Last week, after a summit meeting with the companies, officials set an industry goal of 500,000 trial modifications by Nov. 1.

Michael Barr, the Treasury's assistant secretary for financial institutions, would not comment on the results of specific firms. But he said that while "we are encouraged by the overall performance under the program...we're disappointed in the performance of some of the companies. We think they could have ramped up better, faster, more consistently."

The Financial Services Roundtable, which represents 100 of the nation's top financial firms -- including many banks that service mortgages-- said, "This is a significant new program and program requirements have just been provided to servicers in recent weeks. As it becomes more fully implemented, we believe its impact will grow. However, more can be done."

The Treasury has paid more than \$20 billion in Troubled Asset Relief Program bailout funding to the servicing companies to cover their costs of modifying loans, as well as for incentive payments to them, homeowners and lenders to participate in HAMP. Morgan Stanley's Saxon has received \$632 million under the program; JPMorganChase has received \$3.6 billion; Wells Fargo has received \$2.4 billion, GMAC Mortgage has received \$1 billion, and Bank of America/Countrywide has received \$6 billion.

Barr said the report excluded mortgage modifications outside of HAMP. Several banks and servicers have launched their own in-house programs to restructure mortgages for struggling homeowners. **The Financial Services Roundtable program, Hope Now, said its participating banks provided mortgage "workouts" for 310,000 homeowners in June, a 25 percent increase from May.**

But mainly because of rising unemployment, foreclosures are swamping government and industry efforts. So far this year, lenders have pushed 1.5 million homeowners into the foreclosure process, according to a recent report from RealtyTrac. Government officials predict that up to 6 million homes could be lost to foreclosure in the current economic crisis. The unemployment rate hit 9.5% in June, the highest level in 26 years, fueling the rise in foreclosures.

When the Administration announced HAMP in February, it said the program could help three million to four million struggling families.

"We are more than on track to reach three to four million borrowers over the next three years," Barr said after Treasury released the HAMP report. But he said "the proof is going to be in the pudding" with the industry's HAMP efforts, which will continue to be reported on a monthly basis.

Spokespeople for Bank of America and Wells Fargo did not immediately respond to requests for comment.

If more transparency for servicing companies doesn't generate the modification results politicians are looking for, consumer advocates predict Congress could consider new legislation to push companies harder.

Washington Report: Modifying Loans
Kenneth R. Harney
Realty Times
August 4, 2009

The Obama administration put heavy pressure on the country's largest home loan servicers last week to speed up modifications of hundreds of thousands of homeowners' mortgages.

But the series of lender meetings with the Treasury department and HUD was the smiley-face side of a double edged strategy: If lenders and loan servicers don't pick up the pace of modifications dramatically, Congress is poised to force them to do so.

Here's what's taking shape and what it may mean to home owners behind on their loans:

The White House extracted promises from the 25 largest mortgage servicers - including Bank of America, Wells Fargo, and Citigroup - to accelerate the pace of their loan restructurings under the administration's "Home Affordable Modification Program."

The immediate goal is to get at least 500,000 "trial" modifications underway by November 1. The administration first unveiled its program back in April, with the objective of helping three to four million home owners who no longer can afford their payments and are sliding toward foreclosure.

Applicants must first demonstrate that they can handle reduced payments on the modified loan for three months. After that, the new, lower payment terms are finalized, ideally allowing the owners to remain in their properties.

So far, however, only about 200,000 modifications have actually been put into place. That's far too few for the administration.

Servicers and lenders emerging from the Washington meetings last week said they are now committed to shift into high gear and get 500,000 modifications on the books by the target date.

A joint statement from the Mortgage Bankers Association, the Financial Services Roundtable and the Housing Policy Council said their members are "committed to helping at-risk borrowers with workout solutions to help avoid foreclosures."

But on Capitol Hill, skeptics said that's all too little, too late.

Illinois Democratic Senator Dick Durbin said it's "time to revisit" legislation empowering bankruptcy court judges to impose involuntary modifications on lender, including slashing principal balances of delinquent borrowers.

Durbin's bankruptcy bill was defeated earlier this year, but he says the key argument against it at the time was - let's give the industry a chance to modify loans on their own.

But now, says Durbin, "it's time to admit that isn't working."

What's the outlook here for homeowners in need of modifications? They can probably expect banks to be somewhat more accommodating in the weeks ahead.

But at the same time, the heavy artillery will be rolling out on Capitol Hill with the menacing message to lenders: Modify your customers' loans. Or we'll modify the bankruptcy code to make you do it.

The \$75B Foreclosure Prevention Plan May Not Be Paying Off
Nightly Business Hour
PBS
Tuesday, August 04, 2009

SUSIE GHARIB: a lousy report card today on the Obama administration's foreclosure prevention program. Of the millions of Americans delinquent in paying their mortgages, only 9 percent are getting help. That's 235,000 borrowers. The administration launched its making home affordable plan in February, offering financial incentives to banks and other lenders to modify mortgages for struggling borrowers. As Stephanie Dhue reports, the Treasury says those lenders need to do a better job.

STEPHANIE DHUE, NIGHTLY BUSINESS REPORT CORRESPONDENT:
The bills have been piling up for Jean Andre-Sassine. He fell three months behind on his mortgage after he was laid off and his wife had health problems. JEAN ANDRE-SASSINE, BORROWER: We had to choose between paying the mortgage or paying the health premiums, to keep the scheduled surgery going, so we opted for the surgery.

DHUE: He says he's gotten the run-around from Chase Mortgage each time he has called.

SASSINE: Someone takes my name, my loan number and what my monthly income is, what some of my expenses, my utilities and then they say OK, we'll get back to you and then that's it. You never hear from them again.

DHUE: Chase says customers need to submit an application for a loan modification, but it isn't clear Sassine took that step. Sassine says he's done that. JPMorgan Chase has modified 20 percent of its nearly 400,000 delinquent mortgages since the program began this spring. Among other big lenders, GMAC has modified 20 percent, Citi Mortgage 15, Wells Fargo 6 and Bank of America 4. In total, just 235,000 loans have been modified out of the almost three million eligible for the program. Treasury Undersecretary Michael Barr says the industry needs to do more.

MICHAEL BARR, ASSISTANT SECRETARY FOR FINANCIAL INSTITUTIONS, TREASURY DEPT. (BY TELEPHONE): We're disappointed in the performance of some of the servicers. We think they could have ramped up better, faster, more consistently.

DHUE: The industry says the home affordable modification program is just one way to modify loans. Another way, the industry's Hope Now program, which has worked out an additional 300,000 loans since June. Paul Leonard of the Housing Policy Council says some of the banks on the Treasury's list haven't been enrolled in the government program long enough to make a difference.

PAUL LEONARD, VICE PRESIDENT, HOUSING POLICY COUNCIL: What's not reflected in the Treasury's initial announcement is when the company actually signed up for the program (INAUDIBLE) and others, so I think the fall we'll get a better sense of the companies that have really kicked it into gear.

DHUE: The administration wants the industry to modify half a million mortgages under its program by November. But even if that goal can be met, analysts still expect a record number of foreclosures this year. Stephanie Dhue, NIGHTLY BUSINESS REPORT, Washington.

The Repercussions of Reform

By Michael Sisk

US Banker

May, 2009

The nation's financial regulatory system needs fixing, and bankers can be certain changes are coming. But after months of Congressional hearings, debates and some hysterics, that's still about all the industry knows for sure. Only the broadest outlines of the new regulatory regime have emerged, and Capitol Hill watchers say the window for sweeping changes to occur quickly — and some worried in anger — has probably closed. Instead, regulatory reform is shaping up to be a slow grind through Congress that may last a year or more. Some say the real deadline for

passage is not until the summer of 2010, when mid-term campaigning kicks off in earnest.

On balance, this is probably a positive development. Bankers, especially community bankers, fret that a rush to enact reforms — particularly in an industry as complicated, fractured and heavily regulated as financial services — could unfairly target banks that bear little responsibility for the financial crisis. In fact, there is even cautious optimism among some community bankers that the reforms under discussion — from those that would raise the capital levels of too-big-to-fail institutions, to the push for national, uniform standards on regulating particular financial instruments such as mortgages — might actually give outgunned smaller banks a better shot in certain markets and products.

Brian Gardner, a vice president at Keefe, Bruyette & Woods, says, "We could end up with a bifurcated system, with a core banking system [made up of the too-big-to-fail banks] that has more regulations and capital requirements. For smaller banks, that could be beneficial."

Historically, community banks have held more capital than big banks, and larger banks have used their funding advantages and their scale to offer better pricing on loans. Requiring larger banks to hold more capital could change the math on a range of products, bankers say, particularly business-related loans and mortgages, giving community banks a chance to compete for business they have been ceding to big institutions. "The new capital rules will change a lot of business plans," says Tom Hoy, CEO of the \$1.7 billion-asset Arrow Financial Corp., a two-bank holding company in Glens Falls, N.Y. "I think community banks will be very competitive coming out of this. I'm very optimistic."

Smaller banks have been losing market share in virtually every loan category for years, as the biggest banks and nonbank financial institutions consolidated their power and reached deeper into consumer and small-business lending. From 1998 to 2008, commercial banks with \$10 billion of assets or more increased their market share of 1-to-4 family home mortgages from 56.3 percent to 79.7 percent, home equity loans from 66.7 percent to 88.1 percent, and individual loans — including credit cards — from 57.6 percent to 88.6 percent, according to Federal Deposit Insurance Corp figures. Smaller banks even lost ground in their strongest loan categories. From 1998 to 2008, banks with \$100 million to \$10 billion of assets saw their hold on the commercial-loan market fall by 18 percent.

There are no guarantees, of course, that these trends will be markedly reversed under a new regulatory structure, but the prospect of stepped-up capital requirements for large banks is a welcome change for their smaller competitors.

Just a year ago the international community was poised to lower capital ratios for big banks through the Basel II accord; smaller banks protested bitterly that lowering capital requirements for large institutions would crimp their competitiveness even more. That prospect appears to have faded, though Bert Ely, an industry consultant in Alexandria, Va., warns against community banks taking anything for granted so soon in the regulatory reform process. "I understand the argument" that higher capital requirement for big banks could help smaller banks compete, Ely says. "But it's all incredibly fuzzy right now. It's difficult to discuss these [regulatory] proposals at this time because we just don't know the specifics."

And make no mistake, there are many specifics to fill in. Much of what the industry knows for sure about the direction reform is taking comes from Treasury Secretary Tim Geithner's appearance before the House Financial Services Committee in late March; there he outlined the administration's priorities and goals for reform. As expected, he used broad strokes, yet he did frame two linchpin ideas that seem almost certain to wind up in a final bill. One is the creation of a systemic risk overseer of financial institutions considered too big to fail, armed with a mechanism to unwind these institutions; the other is creating a wider regulatory net to capture previously unregulated corners of the "shadow" banking system, such as credit default swaps and hedge funds.

Until recently, quick action on these reforms seemed possible. President Obama hit the ground running in January fueled by ample political capital and the determination to get results on a number of fronts in the first 100 days of his administration. The public was angry about the hundreds of billions being funneled into banks and the administration seemed determined to fix the system, quickly. But while Congress has held a host of hearings, there is little agreement — particularly between House Financial Services Committee chairman Barney Frank (D-Mass.), and Senate Banking Committee chairman Christopher Dodd (D-Conn.) — on what a new regulatory structure should look like.

"There's been a lot of talk, but I doubt things are going to move as fast as many people think," says Ely. "I've been around this town a long time, and there are so many cross-currents. I'm dubious how quickly or dramatically reform will happen. The existing structure, the status quo, has many powerful supporters."

A go-slower approach is a welcome relief for many who support reforms but worry that the entire industry is being painted with the same broad "bailout" brush. "The general public, and I'm afraid Congress, are lumping the banking industry in with all financial institutions into a homogenous pool, and it's not that way," says Arrow Financial's Hoy. "We've been heavily regulated right along, and many of us have not had significant problems."

How the government addresses the systemic risk is a major concern among all bankers; generally speaking, they say the top financial institutions need reining in for the sake of the larger economy, and that new regulations could remedy some unfair leverage and funding advantages the big banks currently enjoy. If different rules apply to the too-big-to-fail banks when they teeter — in the form of government support — they should follow a different set of rules during the good times. Otherwise the risk/reward tradeoff is skewed and healthy competition is difficult. "I don't see why it's so confusing to folks. If you're going to have two sets of rules in the reactive mode, then you need two sets of rules in the proactive mode. It's that simple, and maybe you encourage some banks not to get so big," says Charlie Brown, the CEO at the \$117 million-asset Insignia Bank in Sarasota, Fla.

To control systemic risk, Geithner says that the government should create an independent agency to monitor the risk positions of major institutions or payment systems whose failure could destabilize the economy. He also has proposed that mammoth conglomerate institutions set aside a greater portion of their capital to protect against failure. Additionally, the Treasury secretary pushed for government authority to seize and unwind large nonbank financial institutions that pose systemic risk in the same way the FDIC can now seize banks. Left unsaid was the means to accomplish that: questions abound about what agency would be the systemic risk regulator; what defines "too big to fail"; what those capital levels would be; how they would be determined; and what agency would be responsible for seizing nonbank institutions.

Even former Federal Reserve Chairman Alan Greenspan, hardly a market interventionist, said during a recent speech at the Brookings Institution that institutions with such systemic risk capacity must be regulated differently. Echoing Geithner, Greenspan said regulators could set capital requirement higher for these banks to offset their lower borrowing costs, which they enjoy based on the expectation that creditors will be backed by the government.

According to FDIC data, commercial banks with \$10 billion of assets or more had an average Tier 1 capital ratio of 9.15 percent at Dec. 31, while banks with less than \$100 million of assets, on average, had a Tier 1 ratio of 17.44 percent. Banks in the \$100 million- to \$1 billion-asset class had Tier 1 ratio, on average, of 12.28 percent.

"Big banks have had a huge advantage by not being required to hold the same capital levels because, of course, capital has a cost," says John Puffer, CEO at the \$253 million-asset Pilot Bank, in Tampa. "Requiring big banks to incur those costs would have a tendency to level the playing field."

Puffer says he believes his bank could better compete for commercial and industrial loans if capital requirements are changed.

How exactly regulators would set new capital levels is still one of the many unknowns. Would banks of a certain size — still to be determined — simply be required to hold more capital based just on their size? Or will there be a risk-based approach, where institutions in riskier lines of business hold greater amounts of capital? Will regulators rely on some combination of the two approaches? "If larger banks are getting into more aggressive and riskier lines of business, they should hold more capital," argues Brown. Besides a company's risk profile and size, complexity should also influence capital levels, he says. As the market has learned, complexity, even when intended to remove risk, is difficult to model and can create huge losses.

Many executives at large banks are keeping a low profile these days and have been mum about possible new capital requirements. **But Scott Talbot, senior vice president of government affairs at the Financial Services Roundtable, points out that big banks generally support Basel II's risk-based capital model, so it stands to reason they would favor a similar model under a new regulatory structure.**

Still, Talbot takes issue with community bankers and their representatives who are itching to jack up capital requirements on big banks. "Some of the small guys want high capital ratios not for safety and soundness reasons, but because it's more expensive for the big banks. To me that's the wrong motivation. They're taking a competitive angle as opposed to what's best for the economy."

Of course, regulators today are concerned with plugging regulatory gaps, not giving small banks a handicap. But Hoy argues greater fairness and healthier competition may result. "When competition is weighted by the risk you take," competition is more robust, which means the market itself is healthier. A perfect example is residential mortgages, he says. Mortgage securitization consumed huge volumes of mortgages and didn't require big banks and nonbank originators to hold them on their books; that allowed them to steamroll community banks. Changing the equation means that community banks can better compete for local mortgages, Hoy says.

While the debate around larger institutions centers on controlling the risks they pose, some also question whether the interdependent hazards in a "too big to fail" model can ever be tamed. "We should be trying to eliminate systemic risk, instead of creating elaborate structures to try and regulate it," says Paul Merski, chief

economist at the Independent Community Bankers Association. "Some of these institutions may be too big to fail and too big to regulate."

Proposed regulations of the so-called shadow banking system may also help smaller banks. At the same Congressional hearing in which Geithner outlined his vision for a systemic regulator, he also proposed new regulations for areas of the financial markets that have so far been lightly regulated, or unregulated. Hedge funds, private equity firms and venture capital outfits over a certain size should register with the Securities and Exchange Commission; meanwhile, oversight of derivatives, such as credit default swaps, should increase and a central clearinghouse for trades should be created.

Over time, these nonbank financial players have competed more directly — through mortgage originators and complex securitization products — with Main Street banks for local business. Investment banks, operating at much higher leverage ratios than commercial banks, have steadily moved down the lending chain in business, residential, student and auto loans, "constantly compressing the typical Main Street market," says Curt Hage, CEO of Home Federal Bank in Sioux City, S.D. But even without the new regulations in place, this is changing. The big Wall Street firms have ceased to exist or changed their charters, and in the absence of these active and highly leveraged institutions, Hage and other community bankers says Main Street banks are already winning back some commercial customers.

Some argue that regulatory gaps exploited by these nonbank players and highly leveraged national banks proves that rules should be uniform based on products being sold. Often these firms set up shop in states where regulations were least onerous, so it's no coincidence, that 94 percent of subprime mortgages came from nonbanks, and just six percent from traditional banks, says Edward Kramer, executive vice president of regulatory programs at Wolters Kluwer Financial Services.

Hage says lax regulations outside of traditional banking both encouraged the issuance of these risky mortgages and priced traditional banks out of the market. "If we had the same regulatory requirements for the same kinds of instruments, that would be a start," he says.

An opportunity to rewrite the rules of finance doesn't come along very often and lawmakers and regulators need to synthesize the lessons from the current crisis and get the new reforms right. Thoughtful reform is critical to prevent a repeat of the latest meltdown, and to position the U.S. financial markets to compete effectively in a global economy that did not exist 15 years ago, much less during the 1930s when the last wave of regulatory reform occurred.

"It needs to be a deliberative process. We need to reengineer regulations, not simply add another layer," adds Bob Jones, the chief executive at the \$549 million-asset United Bank in Atmore, Ala. "My concern is we inflict more damage trying to fix the problem. We don't need to come out of this down cycle creating the next down cycle."

'Name and Shame' Reports Begin on Mortgage Servicers

BY KEVIN G. HALL

McClatchy Newspapers

August 4, 2009

The Obama administration on Tuesday offered the first of what will be monthly reports on mortgage modifications, using a "name and shame" approach that found that from February through July, lenders started only 9 percent of eligible homeowners on trial mortgage modifications.

The first report under the Home Affordable Modification Program, involving more than 30 lenders that together collect payments on 85 percent of American mortgages, found an especially dismal performance by two major national banks - Bank of America and Wells Fargo - that received \$45 billion and \$25 billion, respectively, in taxpayers' bailout money.

The report is likely to produce more pressure on these two institutions, because the rescue money spent on them was expected to encourage greater lending and more loan modifications.

In a conference call with reporters, Assistant Treasury Secretary Michael Barr said servicers who collect monthly mortgage payments on behalf of banks and investors that hold pools of mortgages had modified about 230,000 distressed mortgages since mid-February. The administration wants large mortgage servicers to modify 500,000 troubled home loans by Nov. 1.

"I think we've been disappointed ... about their performance in helping people in a timely fashion with the respect they deserve under difficult circumstances," Barr said.

The Center for Responsible Lending, a consumer advocacy organization in Durham, N.C., took a tougher view of lenders.

"The report card issued by the Treasury Department today shows that financial companies deserve a failing grade in their voluntary efforts to modify home loans to help restore the U.S. economy," it said in a statement. "The results reveal that

only 15 of every 100 families who are eligible for a modification of their mortgage have been offered one."

There are numerous indications that the list of eligible homeowners will grow.

"In June of this year alone, there were 254,000 foreclosure starts, which is more than the total number of modifications made to date under the current program," the center said, calling on Congress to allow bankruptcy judges to rework mortgages. "For over three years, lenders have insisted they can handle this crisis on their own, but today's report shows that the time for voluntary action is over."

Most of the homeowners who are falling behind on their mortgage payments are thought to have sub-prime or Alt-A mortgages, those given to weaker borrowers during the housing boom, which was fueled in part by loosened lending standards.

Publishing the first of its monthly reports on the performances of individual lenders and servicers, the Treasury Department found that Bank of America serviced 796,467 mortgages that were thought to be at least 60 days late on payments and potentially eligible for lower monthly rates.

The bank, however, extended modification offers to just 99,649 homeowners, or about 13 percent of those eligible, the Treasury report said, and it began trial loan modifications with only about 4 percent, or 27,985 borrowers.

Bank of America said it was doing plenty outside of the administration's Making Home Affordable effort.

"Importantly, this report is not intended to capture each servicer's progress outside of MHA in stemming the tide of foreclosures," Barbara Desoer, the president of Bank of America Home Loans, said in a statement. "In the first half of 2009, Bank of America completed 150,000 modifications through our own programs as we ramped up to make MHA operational. These 150,000 homeowners were at serious risk of foreclosure, but today remain in their homes with an affordable mortgage payment."

The banking industry, however, uses a broader definition of loan modification that includes merely allowing late payments or lowering payments for a fixed period only.

Wells Fargo led the banking sector's voluntary Hope Now loan-modification program, launched in tandem with the Bush administration. Tuesday's Treasury report, however, showed Wells Fargo in an unfavorable light, noting that while the bank serviced 329,085 mortgages that were 60 days late, it extended

offers to only 38,673 homeowners, or about 12 percent of those eligible, and started trial modifications with another 20,219 loans, about 6 percent of those who were eligible.

Moreover, the Hope Now numbers are misleading, as they include everything from forgiving late payments to rescheduling payments. In fact, Hope Now members put only 96,000 modifications into force in June. That's about 3.5 percent of the 2.7 million borrowers nationwide who are thought to be at least 60 days late on mortgage payments.

In a statement, Wells Fargo said that it had modified more than 240,000 mortgages in the first seven months of this year.

"More than 90 of every 100 Wells Fargo customers have remained current on their mortgage payments," the company said. "And, according to March 31, 2009, Inside Mortgage Finance data, Wells Fargo continues to have the lowest delinquency rate of the top four lenders in the nation. The modifications, which include changes in loan terms, interest rates and principal, were completed with the goal of creating sustainable mortgage payments for consumers facing financial difficulties."

CitiMortgage, part of troubled Citibank, which received \$45 billion in taxpayer life-support, did a bit better, according to the Treasury report. CitiMortgage extended offers of modifications to 21 percent of eligible homeowners and provided trial modifications for 15 percent, the report says. JP Morgan Chase, which has emerged as the nation's strongest bank, extended offers to nearly one in three eligible homeowners and started trial modifications for one in five.

In a statement, the Financial Services Roundtable, which represents most of the nation's biggest financial institutions, offered a different set of numbers. It said the 26 members of its housing council had reported 310,000 workouts to homeowners in June alone and 1.5 million workouts in the first half of this year.

As many as 2.5 million homes may go into foreclosure this year, the result of a three-year crisis in housing that has seen prices tumble nationwide, and especially in states where prices soared in the first half of the decade: Florida, California, Arizona and Nevada.

Mortgage Modifications Can't Catch Foreclosures

By Elise Craig

Business Week

August 4, 2009

With unemployment projected to continue rising, leaving more homeowners without jobs and unable to meet their mortgage payments, Congress can expect an earful from constituents about what it's doing to stem the tide of foreclosures.

Against this backdrop, the Obama Administration on Aug. 4 unveiled an optimistic report on its signature foreclosure initiative: Mortgage companies have offered to adjust more than 406,500 loans under the Making Home Affordable program, and have actually modified more than 235,000. The Treasury Dept. lauded the program's "rapid progress," saying that it "puts the program on track to offer" modifications to 3 million to 4 million homeowners over the next few years, encouraging news for homeowners seeking to keep a roof over their heads.

That's an impressive start for a months-old program, if not the dramatic success many would have liked, analysts said. "The numbers are really good," says Jaret Seiberg, a policy analyst for Concept Capital's Washington Research Group. "This is a classic instance where reality and perception collide in Washington and disappoint everyone."

Some Shortcoming Acknowledged

Although the program has made fast progress, the mortgage modifications are dwarfed by the 1.8 million foreclosures already tallied in the first half of this year by Equifax (EFX) and Moody's Economy.com, and by projections for 3 million to 4 million foreclosures over two years. Not exactly good news for lawmakers to bring home to voters during a summer recess.

John Taylor, head of the National Community Reinvestment Coalition, a network of housing advocacy groups, said that while he's encouraged to see the modifications, he isn't convinced it will make much difference in the economy. "To the extent that people are hoping it will eradicate contributions to the recession [from foreclosures], we've got to see more significant numbers," Taylor says. Dan Clifton, a Washington policy analyst for Strategas Research, says loan modifications to date are "on a scale that's way too small to impact home prices."

Treasury acknowledged some shortcomings in its program—among servicers, there has been "uneven ramp-up and substantial variation in the pace of modifications," the agency said. The numbers show that a half-dozen servicers have modified between 19% and 25% of the mortgages they handle, while many others have modified just 6% or less. Some banks that accepted TARP funds—Wells Fargo (WFC), Bank of America (BAC), and Wachovia among them—fall into the latter category.

Calling for Legislative Measures

Industry officials cautioned against blaming individual companies just yet. "It's probably too early to say who are the good guys and who are the bad guys," says Paul Leonard, an official with the Housing Policy Council and a lobbyist for the Financial Services Roundtable, which represents large financial firms. That's because, as the Administration built its new program, servicers had to hire staff and craft procedures to deal with modifications, which some accomplished faster than others. "You're looking at large institutions that don't turn on a dime," says Andrew Jakabovics, associate director for housing and economics at the Center for American Progress, a Democratic-leaning think tank.

But industry critics have little patience for that kind of reasoning. In a blistering statement, the Center for Responsible Lending, a consumer advocacy group, dubbed the Administration's list of mortgage companies a "Wall of Shame." The group, like other housing and consumer advocates, is calling for legislative measures to force mortgage companies to give struggling homeowners a break.

That includes a provision that would allow judges to alter mortgages in bankruptcy court, often called "cram down" in the housing industry. In addition to forcing modifications in court, supporters say, the threat of these judicial modifications would encourage mortgage companies to make more substantial modifications to more loans. The measure passed handily in the House earlier this year despite fierce opposition from financial interests, but died in the Senate after moderate Democrats voiced concerns.

Bankruptcy Revision Is Possible

Now there are signs the measure could see new life. One senior Democratic Senate aide said party leaders in the chamber are likely to revive it this fall if another solution isn't found soon. And last week, Representative Barney Frank (D-Mass.), the powerful chairman of the House Financial Services Committee, made a similar warning, threatening that legislation the lending industry actually wants will go nowhere in his committee until there is a "significant increase" in modifications or lawmakers tack on the bankruptcy provision.

Without a significant rise in loan modifications, Frank added, "the argument for revising the bankruptcy option will be extremely strong, and I think there is a substantial chance that the outcome will be different."

Few Benefit from Loan Modification Plan

MarketPlace

NPR

August 4, 2009

Kai Ryssdal: When you add it all up, the Obama administration has set aside \$75 billion for its foreclosure prevention programs. So far, though, less than 10 percent of borrowers who are eligible for help have actually gotten any. That was the bottom line today from the Treasury Department's first progress report on the voluntary mortgage modification programs it has. Voluntary being the key word there. Treasury say some banks have ramped up fast to offer lower house payments to those who can afford them. Others haven't been so fast. Here's our senior business correspondent Bob Moon.

BOB MOON: Only a tiny fraction of struggling homeowners received any relief, which may not be all that surprising for a program that's voluntary for the lending institutions. Still, that doesn't mean the government can't name and shame those it thinks aren't trying hard enough.

MICHAEL BARR: We're disappointed in the performance of some of the servicers, and we expect them to do more.

Assistant Treasury Secretary Michael Barr released today's scores.

Among the country's biggest financial institutions, Bank of America modified just 4 percent of eligible delinquent loans; Wells Fargo, six percent.

But Saxon Mortgage Services, which is owned by Morgan Stanley, lowered payments for 25 percent of eligible borrowers, and JPMorgan-Chase, 20 percent.

The Center for American Progress is one of the groups that's pressed for mortgage relief. Housing specialist Andrew Jacobavics is giving lenders the benefit of the doubt. He suggests even Bank of America, which bought troubled sub-prime lender Countrywide, might have reasons for turning in a low score.

ANDREW JACOBAVICS: It may very well be that Bank of America just simply has more difficult loans that just ultimately do not qualify. And so the fact that they have a lower rate is not indicative that they're not up to speed, but simply it's just a function of their portfolio.

Jacobavics says he takes the industry at its word that the goal of half-a-million loan modifications by November is attainable.

Scott Talbott speaks for the Financial Services Roundtable. He says the industry is committed to streamlining the system.

SCOTT TALBOTT: There isn't one-stop shopping for an application. So we're working on creating a Web portal that lets homeowners make one application online, which will help streamline the process for all borrowers.

Asked when that site might be available, Talbott could only say soon.

I'm Bob Moon for Marketplace.

Listen to the story in its entirety: [here](#).

Online Safety – Whose Responsibility is it? Do we Risk the Tragedy of the eCommons?

By Craig Spiegle, Executive Director

Online Trust Alliance

Wednesday, August 05, 2009

Online Safety - do we care enough to embrace it, continue to give it lip service or let others worry about it? I fear we are choosing the latter – and risk approaching a “Tragedy of the eCommons.” Unless we act collectively, for the benefit of online consumers the Internet as we know it today will fail to reach its potential.

For context the “Tragedy of the eCommons” refers to Garrett Hardin’s 1968 article - “The Tragedy of the Commons”. Central to Hardin’s point is the analogy of herders sharing a common parcel of land (the commons or in today’s case the Internet) on which they are all entitled to let their cattle graze. The dilemma occurs when individual herders, incited to put as many cows on the land as they could, ultimately destroy the shared resource, even when it was clear doing so had negative long-term consequences.

Online trust and confidence is today’s commons – our eCommons, and without action, I suggest (and many academics and consumer advocates agree), the effect of businesses acting in their own short-term self interests risks impacting the Internet as we know it today.

Online threats continue to flourish on multiple fronts including increases in identity theft, forged email and unchecked data sharing practices. Compounded by the rise in compromised systems and sensitive data loss, consumer confidence continues to decline. In the current economic environment, online criminals are

increasingly targeting those who are most vulnerable. This includes those who are unemployed, those who have homes in need of refinancing and retirees who are reinvesting to recoup past financial losses.

Fortunately many OTA members and other stakeholders have realized the need for change and are reviewing their business practices. Still, more needs to be done, yet as often is the case, the devil is in the details. For example, with outbound email, can your company, including your CEO, honestly say the frequency of your mailings and subject matter is aligned to the user's expectations when they gave you their email address? Another example: too often consent statements and privacy policies governing email, behavioral targeting and other use of personal data are difficult to understand. Historically they are written by attorneys for attorneys, and understandably are effectively ignored by the consumers they are intended to help. How about your affiliate and data sharing policies? Could your parents or children understand them? Are you creating teachable moments to help and educate your users?

Given the eCommons is in danger, whose responsibility is it to avoid destruction? It is ours – the “herders” sharing today's commons, the Internet. It is brand marketers, site owners, banks, advertising networks, ISPs and service providers who have this responsibility and opportunity. Should we let an infected computer spew threats or spam to only become a problem for those who receive the threats? No. What about an Internet Service Provider who has the ability to analyze potential threats or shut down email servers before damage can occur? They should take action! Web site owners can detect a user with an outdated and vulnerable browser, should they let the consumer know and point them to upgrade? Absolutely!

These issues create a range of complex questions with sometimes equally complex answers; taking action is often hampered by legal, privacy, and cost issues – as well as the potential support burden and customer complaints. Others fear consumers may think businesses are invading their privacy and not believe it is for their welfare.

It should be no surprise that consumer choice, preferences, and control of data are top of mind for regulatory officials around the world. Unless we want more government intervention and regulations, now is the time for action. We need to review and retool our online practices and policies to preserve trust and confidence. As our world economies become increasingly dependent on email, ecommerce and online banking, it is incumbent on us, all stakeholders of the eCommons, to embrace our responsibilities.

We are very encouraged by the spirit of self-regulation apparent in the eCommons today. Along with OTA, many organizations, including the Interactive Advertising Bureau, Better Business Bureau, **BITS/Financial Services**

Roundtable, Merchant Risk Council, ESPC and others, are driving collaboration and providing support. They are examining business practices and seeking opportunities to provide increased user choice, control and transparency. Yet many other organizations and corporations still need to put their self-interests aside and refocus on those of the community at large.

Acting today will help to insure the vitality of ecommerce, online banking and effectiveness of interactive marketing. OTA welcomes all parties to the table to talk, listen and be part of the solution. How can you help?

Wells Prioritizes HAMP, While CRL Calls For Cramdowns
MortgageOrb.com
Wednesday 05 August 2009 - 11:57:28

Several industry members have weighed in on the Treasury's Home Affordable Modification Program (HAMP) report, which showed that 9% of eligible 60+ day delinquencies have begun trial modification plans.

Wells Fargo, for one, says it has recently undertaken steps that enable the company to qualify most borrowers for a HAMP trial mod during the initial point of contact. In a company statement, Co-president Mike Heid conceded that the company has "fallen short of our customer service goals in some cases." Wells Fargo has started trial mods on 20,219 loans, or about 6% of its eligible 60+ day delinquencies.

"Now that the program details are largely complete, our company has been accelerating our use of HAMP," Heid said. "We're confident we can achieve our portion of the government's goal to reach 500,000 HAMP trial modification starts by Nov. 1."

The Financial Services Roundtable released a statement Tuesday saying it believes HAMP's impact will grow as it becomes more fully implemented, but that "more can be done."

"We continue to work hard to provide solutions to homeowners who have a desire and an ability to pay their mortgage with some assistance," the group's statement says. "The HAMP program will be an effective option for a growing number of homeowners."

The Center for Responsible Lending (CRL), meanwhile, argues that servicers deserve a failing grade for their voluntary modification efforts. The CRL, while saying the Treasury's initial performance report was a significant first step, urges

the publication of more detailed modification information. The group also maintained its position that bankruptcy cramdowns be allowed.

“The same lenders who have received a taxpayer bailout have spent millions of dollars lobbying against a reasonable solution to the foreclosure crisis that would require no tax funding: allowing judges to modify primary mortgages in bankruptcy courts,” according to the CRL statement. “For over three years, lenders have insisted they can handle this crisis on their own, but today's report shows that the time for voluntary action is over.”

The New Republic: Sinking Fast like Past Presidents?

John B. Judis

NPR

August 6, 2009

The Obama administration is increasingly being compared to the Carter and Clinton administrations—and the comparisons are not meant to be favorable. Both of those earlier administrations stumbled seriously during their first two years, with dire consequences for their legislative agenda and for their party.

I expect, and hope, that Barack Obama will avoid this fate. Obama has surrounded himself with people far more savvy in the ways of Washington than Jimmy Carter or Bill Clinton initially did. (You get bonus points for remembering the name of Clinton's first chief of staff.) Obama has certainly learned from their failures, and so have the Democrats in Congress, who under Nancy Pelosi have a tougher and more capable leader than the Democrats had in 1993. Still, there is a similarity between the two past administrations and the Obama administration that could signal trouble ahead.

Each of these administrations came into office, along with Democratic majorities in Congress, pledging to pass legislation that would affect the distribution of wealth and (even more important) power between the corporate/financial sector and the rest of America. The Democratic administrations championed what you could call "class legislation," and by doing so, they set off a class struggle that they lost.

Here is a rundown of some of the class legislation that the prior administrations sponsored. Carter and the Democrats favored redistributive tax reform, public campaign financing, a consumer protection agency (that Ralph Nader had long championed), and labor law reform. Clinton and the Democrats had a shorter list of this kind of legislation. It included increased funding for regulatory agencies and limits on executive compensation—but right at the top was national health

insurance reform. Clinton's health bill would have benefited some corporations, but it would have curtailed the prerogatives and very possibly the profits of private insurance companies, and it would have forced large companies that didn't offer health insurance to do so.

A powerful new coalition of Republican conservatives and business groups, including the newly formed Business Roundtable, opposed Carter's measures. As I described in my book, *The Paradox of American Democracy*, they brought pressure not only on politicians, but also on the media, including *The Washington Post*, which reversed its support for the consumer protection agency. Carter got none of this legislation through Congress. And in 1978, the weakened Democrats performed poorly at the polls, setting the stage for the rout of 1980.

Clinton didn't fare much better. He got some of his regulatory funding increases through Congress, but they were rescinded by the Republicans who took over Congress in November 1994. Most importantly, the Republican-business coalition that had destroyed Carter's agenda made sure that Clinton's health care bill never even made it to the floor for a vote. Clinton was re-elected in 1996, but it was a different Bill Clinton. Chastened by defeat, he moved to the "center," which in this case meant that he did not offer any legislation that threatened people and companies at the pinnacles of power.

The Obama administration has already had its share of legislative successes. But these successes, such as the passage of the stimulus program, have not included legislation that threatens class power and wealth. Those bills that do threaten class relations—the administration's proposals for health care reform, executive compensation limits, and financial regulation—are now bottled up in Congress. Another bill, the Employee Free Choice Act, which would have benefited labor unions, seems to have been shelved.

The Republican-business coalition, led by the American Bankers' Association and **the Financial Services Roundtable** (which includes 92 corporations with \$16 trillion in assets), **has taken aim at efforts to create a Consumer Financial Protection Agency**, while the Business Roundtable is leading the fight against regulations that would limit executive compensation. The way they see it, these are provisions designed to curb their power and profits. A similar coalition, including insurance companies, hospitals, and the U.S. Chamber of Commerce, has taken aim at those parts of the health care bill, particularly the public option, that would potentially limit business's powers.

Of course, there is nothing intrinsically meritorious about this kind of power-shifting legislation. It wouldn't make sense, for instance, for the government to nationalize the major computer software firms in the country rather than ensuring

that private competition prevails among them. But health care and finance are two industries that have seen private competition and self-regulation fail miserably in achieving results that benefit the public interest. It's necessary for the government, acting on the public's behalf, to step in.

Obama and the Democratic leadership in Congress seem to understand this. They have already succeeded in doing one thing Carter and Clinton failed to do: divide the ranks of their potential opponents. Obama's health bill generally enjoys some support from the American Medical Association and the drug company lobby, while his financial consumer protection agency is backed by an investors' coalition. And a few Republican senators seem ready to back some kind of health care legislation.

The real danger may be that Obama and the Democrats, particularly in the Senate, will get weak-kneed in the face of the Republican-business coalition and settle—either for health care legislation that increases subsidies, but doesn't rein in the insurance companies (which is what Clinton and the Democrats did after 1994), or for financial regulation that ostensibly imposes new rules, but doesn't strengthen the public's ability to enforce them. A case in point: the administration's proposal that asks the Securities and Exchange Commission to monitor the rating agencies more closely, but does not alter the fact that the SEC is funded by the very banks whose securities they are supposed to evaluate.

Obama has a difficult task ahead of him. The last time Congress passed and a president signed legislation that significantly limited the power of businesses and banks occurred during Richard Nixon's first term, when a host of regulatory agencies were formed. Nixon, of course, was no liberal. But the country was in an uproar, and a coalition of labor, consumers, and the New Left was able to defeat the business opposition. Soon afterwards, business and Republicans joined hands to block any future efforts along these lines. And this coalition has carried the day for over three decades. Can Obama succeed where Carter and Clinton failed? Or will he listen to the sirens of the op-ed pages who urge him to move to the center and avoid the class struggle?

Lost At Sea

John B. Judis

The New Republic (CBS News)

Aug. 7, 2009

The Obama administration is increasingly being compared to the Carter and Clinton administrations--and the comparisons are not meant to be favorable. Both of those earlier administrations stumbled seriously during their first two years, with dire consequences for their legislative agenda and for their party.

I expect, and hope, that Barack Obama will avoid this fate. Obama has surrounded himself with people far more savvy in the ways of Washington than Jimmy Carter or Bill Clinton initially did. (You get bonus points for remembering the name of Clinton's first chief of staff.) Obama has certainly learned from their failures, and so have the Democrats in Congress, who under Nancy Pelosi have a tougher and more capable leader than the Democrats had in 1993. Still, there is a similarity between the two past administrations and the Obama administration that could signal trouble ahead.

Each of these administrations came into office, along with Democratic majorities in Congress, pledging to pass legislation that would affect the distribution of wealth and (even more important) power between the corporate/financial sector and the rest of America. The Democratic administrations championed what you could call "class legislation," and by doing so, they set off a class struggle that they lost.

Here is a rundown of some of the class legislation that the prior administrations sponsored. Carter and the Democrats favored redistributive tax reform, public campaign financing, a consumer protection agency (that Ralph Nader had long championed), and labor law reform. Clinton and the Democrats had a shorter list of this kind of legislation. It included increased funding for regulatory agencies and limits on executive compensation--but right at the top was national health insurance reform. Clinton's health bill would have benefited some corporations, but it would have curtailed the prerogatives and very possibly the profits of private insurance companies, and it would have forced large companies that didn't offer health insurance to do so.

A powerful new coalition of Republican conservatives and business groups, including the newly formed Business Roundtable, opposed Carter's measures. As I described in my book, *The Paradox of American Democracy*, they brought pressure not only on politicians, but also on the media, including *The Washington Post*, which reversed its support for the consumer protection agency. Carter got none of this legislation through Congress. And in 1978, the weakened Democrats performed poorly at the polls, setting the stage for the rout of 1980.

Clinton didn't fare much better. He got some of his regulatory funding increases through Congress, but they were rescinded by the Republicans who took over Congress in November 1994. Most importantly, the Republican-business coalition that had destroyed Carter's agenda made sure that Clinton's health care bill never even made it to the floor for a vote. Clinton was re-elected in 1996, but it was a different Bill Clinton. Chastened by defeat, he moved to the "center," which in this

case meant that he did not offer any legislation that threatened people and companies at the pinnacles of power.

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Dallas-Area Homeowners Fight for Loan Modifications from Swamped Mortgage Servicers

By PAMELA YIP

The Dallas Morning News

Monday, August 10, 2009

After losing his job in January, Stuart Miller has fought hard to keep his home out of foreclosure.

At the end of May, the 55-year-old Plano man began trying to get Wells Fargo & Co. to review his application for a loan modification.

After making repeated calls, he finally was told that the company would place a three-month moratorium on his mortgage payments.

"They're going to give me July, August and September, but I haven't paid June yet," said Miller, a former trainer for a franchise company.

He's among many struggling homeowners who say their attempts to get a loan modification have been met with either long waits to get their case reviewed, no response at all or a runaround.

The Obama administration is leaning on mortgage servicers – the companies that collect and process mortgage payments – to step up modifications.

A report released last week by the Treasury Department showed wide variations in how quickly mortgage companies are helping troubled homeowners avoid foreclosures.

It also found the government's program is helping only a tiny fraction of struggling homeowners. As of July, only 9 percent of eligible borrowers had seen their mortgage payments reduced with modified loans, the report said.

"Much more progress is needed," Treasury Secretary Timothy Geithner and Shaun Donovan, secretary for Housing and Urban Development, wrote in a letter to mortgage companies. "There appears to be substantial variation among servicers in performance and borrower experience, as well as inconsistent results in converting trial modification offers into actual trial modifications."

Mortgage servicers said they're committed to working out more loan modifications, but they're overwhelmed by the number of homeowners all wanting help at the same time.

"It's a new ballgame," said John Dalton, president of the Financial Services Roundtable's Housing Policy Council. "The delay is the fact that we've got 3 million people today who are 60 days past due on their loans. These servicers have not been accustomed to and were not geared up to deal with that many incoming calls with people having difficulty."

The industry also is reinventing itself to add loan modifications to its traditional role as the collector and processor of mortgage payments, he said.

"Loan modifications are a relatively new thing," Dalton said.

A loan modification is different from a traditional mortgage refinancing. When you refinance, you sign a new contract for a new loan. A loan modification involves changing the existing loan by lengthening its term or lowering the interest rate so that you can continue to afford your mortgage payment.

Homeowners may be eligible for a loan modification if they have a mortgage payment greater than 31 percent of their monthly gross income and can document that a financial hardship has made the payment unaffordable.

'At their mercy'

Miller, the Plano homeowner, hopes he will soon receive a confirmation letter from Wells Fargo with the details of his loan modification. He said the process he underwent to get to this point was frustrating.

"My frustration is the time that it takes," Miller said. "They have control of my financial life, and I can't talk to a decision-maker. They literally get to say whether I get to live in my house or my life gets completely turned upside-down, and I am literally at their mercy."

Wells Fargo officials said they're reviewing his situation.

"While the majority of our customers who request help are getting through to us and receiving the help they need, we know we've fallen short of our customer service goals in some cases," Mike Heid, co-president of Wells Fargo Home Mortgage, said this week. "We've recently undertaken new steps that will soon enable us to qualify most borrowers [for a modification]."

After I called a Wells Fargo spokesman for a response to Miller's situation, a company representative contacted him and told him that the financial institution would not report his delinquency to credit bureaus until his situation's resolved.

"I feel better now that I have a name of a person to talk to," Miller said.

Be prepared

Bonnie Mathias of Dallas hopes for a similar outcome. She has applied for a loan modification with her servicer, CitiMortgage.

"It's been a nightmare," said Mathias, a customer service representative at AT&T Advertising Solutions.

Her husband's company, which sold commercial exercise equipment, went out of business last September. He found another job, but his income is lower now.

Mathias applied for a loan modification in February.

"I'm having a difficult time getting my counselor from CitiMortgage to contact me," said Mathias, a chapter leader at ACORN, the community organization that has been putting pressure on mortgage companies to help struggling homeowners. "This is my second counselor, and I have yet to talk to either one of them."

Mathias received a letter last month from a Citi representative saying she had been trying to reach Mathias.

"I have left four messages on her voice mail," she said.

Despite the difficulty, Mathias doesn't plan to give up and advises others to do the same.

"Persistence absolutely is the key," she said. "Do not give up."

When you apply, have at the ready the necessary documents, such as tax returns, pay stubs and a letter describing why your mortgage is unaffordable, and what caused your income to fall or expenses to rise. Not having the necessary documents will gum up the process of getting a loan modification.

And if anyone says you have to be behind on your mortgage payment to be eligible, don't believe them.

Homeowners are eligible if they are "at risk of imminent default."

Unfortunately, many responsible homeowners have been thrown into financial chaos by the sour economy and are now at risk of default.

They're making desperate, good-faith attempts to save their homes. It behooves mortgage servicers to move much faster to help those people.

US Banks' Overdraft Charges Under Fire

By Saskia Scholtes

Financial Times

Sunday, August 9, 2009

"I don't see how they can be allowed to do things like this and then waste the money and expect us to bail them out," wrote Ernestine Brinager of South Williamson, Kentucky in a letter to the Federal Reserve.

Mrs. Brinager's bank had charged her \$175 in overdraft fees by re-ordering her transactions to pay the largest first, incurring the first of five \$35 charges, with the remaining four charges for items that would otherwise have cleared.

EDITOR'S CHOICE

[In depth: US banks - May-07](#)

[Banks make \\$38bn from overdraft fees - Aug-09](#)

"If I screw up and don't total my check register right, I should be liable – but for the one check, not five of them," she wrote.

"If I don't handle my finances right, the government is not going to hand me money. We need to change how banks do business!"

Mrs Brinager, whose comments underscore the depth of popular anger against the banking industry, is one of more than 5,000 consumers who have written to the Fed this year to comment on overdraft fees and express support for new rules that would more closely regulate how banks charge for overdrafts.

The Fed's rules are expected to be finalised later this year, but they promise to be just the first stage in consumer protection efforts that could force banks to make sweeping changes to their overdraft programmes.

The issue has won some influential supporters in Washington, not least President Barack Obama, whose administration would like to place overdraft programmes under the purview of its proposed Consumer Protection Agency.

Chris Dodd, chairman of the Senate banking committee, said if the Fed did not curb overdraft abuses he would "pursue legislative action".

Representative Carolyn Maloney has sponsored legislation requiring banks to get consumers' permission to cover overdrafts, disclose interest rates and pay transactions in a way that does not increase fees.

Changes could also include requiring consumers to "opt-in" for overdraft programmes, rather than automatically enrolling customers when transactions threaten to put them in the red.

Such automatic enrolment in overdraft programmes is now an industry standard, allowing customers to become overdrawn with debit card purchases and even ATM withdrawals. The Federal Deposit Insurance Corporation says a 2006 survey found that three-quarters of large banks had automated overdraft programmes.

Banks are lobbying against strict restrictions because overdraft fees represent about three-quarters of total service charge income. Indeed, according to research from Moebs Services, without overdraft fees 45 per cent of banks and credit unions would not have made money in 2008.

The banks say that overdrafts are a service they provide to their customers to ensure that important payments such as a mortgage or medical bills are made.

The so-called "transaction sorting" at the heart of Mrs Brinager's complaint is also intended as a service to their customers, they say. They add that high fees are intended to discourage customers from mismanaging their finances.

“The fees are very avoidable if you actively manage your account rather than putting it on auto-pilot. Keep track, keep a cushion, link the account to a savings account and arrange to have alerts sent when you fall below a certain balance,” said Nessa Feddis, general counsel of the American Bankers’ Association.

Other industry advocates argue that, without an overdraft service, customers would be charged fees for bouncing checks and failing to make payments.

“Customers have told us they want this service,” said Scott Talbott, chief lobbyist at the Financial Services Roundtable.

“In the old days, if you didn’t have enough money in our account, the transaction would be rejected and you would be charged a fee for a bounced check”.

But Eric Halperin of the Center for Responsible Lending says regulators should examine bank overdraft rules because they “parallel” much-criticised credit card policies for “over-the-limit” spending. These programmes charge consumers for spending beyond their credit limit. A recently enacted credit card law will require banks to give cardholders the choice to opt in to such programmes.

The new credit card rules do not address debit cards, however. At a time when debit cards are fast becoming the payment method of choice for US consumers, almost half of all overdraft items are incurred by debit card payments or ATM withdrawals.

Loan Modification Frustration Continues Banks Are Overwhelmed Blown Mortgage August 10, 2009

The story repeats itself across the nation. Desperate homeowners that need an urgent loan modification to save their home phone their loan providers with little or no result. One borrower in Dallas explains relates how he is on his second counselor and he hasn’t been able to talk to either of them.

A common theme among frustrated borrowers is that they cannot speak to a decision maker. The current financial crisis has thrown people used to being in control of their financial situation into situations they are not used to handle.

Whichever way you look at it and there are a few, loan modifications are moving slowly and there are not clear signs of things changing. Treasury Secretary Timothy Geithner and Shaun Donovan, secretary for Housing and Urban Development have already expressed their opinion that “much more progress is

needed” in a letter to mortgage companies.

What makes things worse for loan providers like Bank of America and Wachovia that are doing poorly in their loan modification turnover is that the performance among banks is inconsistent with some banks showing much healthier figures. The government wants results and is paying a hefty fee to get them, from their perspective it does seem that banks are simply not pulling their weight.

The perspective of banks is of course completely different. They understand the financial pressures everybody is experiencing because most if not all of the large banks have required and accepted financial help from the government to boost their own coffers. However banks will explain that they are simply not geared or designed to be mass producers of loan modifications.

Historically banks have limited themselves to lending, collecting and processing mortgage payments now they are in the process of reinventing themselves as loan modifiers, sometimes rearranging their whole outfits to meet the increasing demand. **As John Dalton, president of the Financial Services Roundtable’s Housing Policy Council says: “It’s a new ballgame”.** The figures are quite scary, there are 3 million people at this moment who are 60 days past due on their loans. Banks are simply not designed to deal with this volume of delinquent debtors.

Although there is no arguing the inconsistency between banks performance it does not require heroic amounts of empathy to understand it is not going to be easy for businesses to rearrange the way they work and provide services.

Think of a lemonade stand that sells readymade lemonade and suddenly has to deal with hundreds of customers who simply want more sugar stirred into their “old” lemonades. You are going to have to hire lemonade sugar adders and stirrers while you are trying to continue your main line of business.

5 Dumb Reasons you Can't Get a Loan Modification

**By Tami Luhby,
CNNMoney.com**

Last Updated: August 11, 2009: 5:16 AM ET

The fax machine is first among problems bedeviling the government's mortgage modification process.

NEW YORK (CNNMoney.com) -- What's holding up servicers from modifying mortgages? The fax machine.

Most loan servicers require that troubled borrowers fax in their applications and supporting documents. Sounds simple enough, but this process is riddled with problems.

The fax isn't the only source of complications. Borrowers and housing counselors complain of endless waits on hold, lost paperwork and incorrect information from customer service representatives.

Many of the pitfalls stem from how quickly the programs were set up, experts said. Mortgage servicers often have 90 days to set up new programs. In this case, they were only given a few weeks.

"The program has been done somewhat on the fly because it's a crisis situation," said Paul Leonard, vice president for government relations for the Housing Policy Council, which represents mortgage lenders, servicers and insurers.

Only [9% of eligible delinquent borrowers](#) have been put into trial modifications, according to a Treasury Department report released last week. The government is putting [increased pressure on servicers](#) to improve their performance as homeowners' complaints mount.

CNNMoney.com looks at five reasons why the loan modification process is so slow.

Reason #1: The fax machine

Having applicants fax their information to servicers has produced a slew of problems. Pages get lost or are cut off at the top or bottom. Servicers provide non-working or incorrect numbers. Applications are routed improperly, leaving files incomplete.

"It seems your stuff goes into a black hole," said Michael van Zalingen, director of homeownership services for Neighborhood Housing Services of Chicago. "It's archaic. Given all the problems we've had with lost faxes, it seems unreasonable to use a fax system."

Servicers acknowledge there is a better way. They'd like to see the government develop a Web portal where borrowers can fill out paperwork and submit documents, Leonard said.

The portal could also enable borrowers and housing counselors to confirm that their applications were received and are complete.

"Homeowners could get a more real-time update on their status and see what else is needed," Leonard said.

Reason #2: Multiple forms

All sides acknowledge that the multitude of forms and documentation requirements is gumming up the works. Servicers have to provide different paperwork depending on whether the borrowers' loan is owned by Freddie Mac ([FRE](#), [Fortune 500](#)) or Fannie Mae ([FNM](#), [Fortune 500](#)). On top of that, many institutions have also developed their own applications.

The lack of a unified application process makes it tough for distressed borrowers - and even housing counselors -- to submit everything that's required.

For instance, some servicers want to see the most recent month's bank statements and pay stubs, while others want to see two months' worth. The self-employed may have to send in six months of business records or a year's worth, depending on their servicer.

"It's not understood what needs to be sent in," said Kathy Conley, housing and finance counselor with GreenPath in Farmington Hills, Mich.

Financial institutions would also like to have the process simplified, Leonard said. They are petitioning the administration to create a standard set of documents and requirements for the program.

Reason #3: Outdated documentation

Since it can take weeks for servicers to process applications, documents such as bank statements and pay stubs can become outdated quickly. Servicers then tell applicants to send in more recent proof of income, often sending them back to square one.

"By the time they get back to you, they say it's stale," van Zalingen said.

Conley always tells her clients to keep their pay stubs handy because they'll likely need to update their files.

If the government reduces the amount of documentation that's needed, servicers can process the applications more quickly, said David Sisko, who heads the default management practice at Deloitte & Touche.

"Nothing servicers have is designed to handle this type of volume," he said.

Reason #4: Poorly trained personnel

Servicers are hiring and training staff by the thousands to handle the flood of applications they are receiving. But borrowers and housing counselors complain bitterly that many customer service representatives are not aware of the modification program's details.

"They are not getting the training to be able to give homeowners the right answers," van Zalingen said. "Their ignorance of the program is almost outrageous."

Take Ryan in Minnesota, who wrote to CNNMoney.com. He has been trying to modify his loan for the past several months.

"Initially every time I called in to find out what the lender could do for us, I got a different answer every time except for them constantly telling me they won't do anything if we are not three months behind in payments, which is an absolutely ridiculous suggestion," he said.

Servicers, who are feeling the heat from the Obama administration, have said they are working on improving their customer service operations. They expect to ramp up the review process by the fall.

Reason #5: Unclear modification offers

Some delinquent borrowers are receiving trial modification offers without ever sending in an application. That's because servicers are culling through their portfolios and reaching out to those who likely qualify for help.

The packet, however, is confusing, van Zalingen said. The offer letter doesn't clearly state that it is part of the administration's loan modification program, and the new monthly payment doesn't appear for several pages.

Many homeowners don't know what to make of the offer and simply throw it away, he said.

Leonard said servicers are looking to increase their response rate.

"Companies are experimenting with the best way to reach people and getting them to respond," he said.

US Govt Ready to get Heavy Handed with Mortgage Providers to Help Boost Real Estate Market
Property Wire
Tuesday, August 11, 2009

Loan providers in the US may be forced by the government to speed up modifications to hundreds of thousands of mortgages aimed at alleviating the real estate crisis in the country.

The Obama administration has held a series of meetings in Washington with mortgage providers to encourage them to accelerate the pace of their loan restructuring programmes which is a key part of the government's plan to boost the property markets.

It believes that if more property owners can be helped then the pace of re-possession will slow and property prices will stabilise. It is estimated that three to four million property owners could be helped.

But so far it is not happy with the reaction from loan providers. 'If lenders and loan servicers don't pick up the pace of modifications dramatically, Congress is poised to force them to do so,' said a government spokesman.

Officials are angry that the biggest 25 loan providers, including Bank of America, Wells Fargo and Citigroup, are not keeping to their promises to increase the pace of their loan restructurings under the administration's Home Affordable Modification Program.

The original goal of having at least 500,000 trial modifications underway by the beginning of November is way behind schedule. So far only about 200,000 modifications have actually been put into place.

Some parts of the industry confirmed that things will speed up. A joint statement from the Mortgage Bankers Association, the Financial Services Roundtable and the Housing Policy Council said their members are 'committed to helping at-risk borrowers with workout solutions to help avoid foreclosures.'

But not everyone is convinced. Some Politicians want the government to force them into keeping their promises. Illinois Democratic Senator Dick Durbin said a voluntary system is not working and he wants bankruptcy court judges to be given

the power to impose involuntary modifications on lenders, including slashing principal balances of delinquent borrowers.

Bankruptcy Judges, Justice Dept. Rip Mortgage Companies

By Karen Weise

ProPublica

Tuesday, August 11, 2009 10:54 am EDT

“Systemic abuse [1].” “Extraordinary incompetence [2].” “Reckless [3].” In a growing body of legal cases, judges and the Justice Department are breaking from legal jargon to starkly chastise mortgage companies.

As mortgage delinquencies rise, more and more homeowners are learning the central role that mortgage servicers play in their lives. The legal cases show that role can be distressing. Judges have found that major mortgages servicers regularly mess up basic accounting, improperly credit payments and charge unwarranted fees. They’ve “not done a very good job of keeping the records,” said Judge Samuel Bufford of California.

Mortgage servicers — typically either bank subsidiaries or independent companies — handle the day-to-day work with homeowners, ranging from collecting monthly payments to determining when to modify or foreclose. Problems with servicing often, but not always, occur once homeowners start having trouble making payments.

Complaints to the government about mortgage servicers have soared in recent years. They’ve risen from 31 percent of the complaints that the Department of Housing and Urban Development received in 2006 to 78 percent in 2008, according to HUD spokesman Lemar Wooley.

Problems Exposed in Bankruptcies

Many homeowners in bankruptcy have legal representation and must settle claims with servicers. As a result, the process has revealed and documented a slew of servicer problems.

In many rulings, judges have shown frustration and even outrage. They’ve ruled that servicers have attempted to collect unjustified fees, charged homeowners for unnecessary insurance, failed to properly credit homeowners’ payments and failed to provide evidence to back up fee requests. In most cases, judges demand that servicers fix the problems and unwind the unjustified fees; sometimes, judges award damages and attorneys’ fees. In one extraordinary case, a judge issued

\$750,000 in emotional and punitive damages. (We've compiled five sample cases and rulings for you to see here [4].)

Take the case of Donald and Phyllis Moffitt of Arkansas. In June 2008, bankruptcy Judge Audrey Evans issued a restraining order against America's Servicing Company, a division of Wells Fargo, saying it must stop attempting to collect payments that the Moffitts did not owe. In a 41-page ruling [2] (PDF), the judge wrote:

“The evidence supports the premise that ASC’s servicing procedures, as exemplified by the Moffitts’ account, are not organized to assure accuracy and accountability. ... ASC misapplied these payments, failed to record the correct information even though Mrs. Moffitt constantly called and talked to ASC’s agents, failed to follow her written instructions, failed to communicate with the Moffitts, sent mortgage statements that were incomprehensible and frightening, began collection calls, and engaged in a litany of mismanagement of the Moffitts’ loan.”

Wells Fargo did not respond to a call for comment.

A 2007 study [5] looked at a majority of Chapter 13 bankruptcy filings in 2006 and found that in 70 percent of the cases studied, mortgage companies claimed homeowners owed an average of \$6,309 more on their loans than homeowners believed.

Problems with servicing are not limited to families filing for bankruptcy, Katherine Porter, an author of the study and an associate professor at the University of Iowa’s law school, testified before Congress last year. She said servicers commonly foreclose when they do not have the legal right to do so, impose unwarranted or illegal fees, and miscalculate how much families owe.

In several instances, judges have taken broad action to address persistent problems with a servicer. This May, Judge Elizabeth Magner in Louisiana said her review of multiple cases involving Ocwen Loan Servicing had shown the servicer regularly acted in “bad faith.” The judge said Ocwen had charged improper fees and attempted to collect bankruptcy-related fees after the court closed a case. In one of the cases, Ocwen took 10 months to provide a full accounting of fees.

The judge wrote that Ocwen’s “systematic abuse” required more than monetary sanctions, which had not stopped the behavior in the past, so Magner issued an order [1] (PDF) forcing Ocwen to follow specific accounting procedures. (We’ve noted before that Ocwen’s servicing procedures have raised eyebrows [6] in the

past). Ocwen's general counsel, Paul Koches, said the company disagrees with the ruling and is pursuing an appeal in U.S. District Court.

Justice Department Takes Action

The Justice Department's United States Trustee Program is a watchdog over the bankruptcy process. Its 21 regional offices oversee more than 1,300 private trustees who mediate between debtors and creditors in individual bankruptcy cases.

The Trustee Program's annual report said combating servicer abuse [7] (PDF) was a top priority last year. The program initiated 68 actions [8] (PDF) against what it calls "systemic abuse" by mortgage servicers, including 25 large servicers such as Countrywide, HSBC and JPMorgan Chase, according to public documents [8] (PDF) and speeches [9] (PDF). The Trustee Program has sued Countrywide in at least six states.

Countrywide, now owned by Bank of America, is the largest participant [10] in the federal Making Home Affordable program to modify troubled mortgages. A recent analysis by the Associated Press found that at least 30 of the 38 mortgage companies [11] that have signed up for the program have been sued over their servicing practices [12].

In response to one U.S. trustee's suit in Ohio, Judge Marilyn Shea-Stonum ruled in May [3] (PDF) that Countrywide had charged fees with "no factual basis" and wrote: "Countrywide's system is reckless. It appears to me designed to allow each actor in the process to act with indifference to the truth, and to rely solely on the limited information made available at each step. ... [The errors in this case] evidence Countrywide's disregard for diligence and accuracy."

The judge is currently determining monetary and other sanctions. Countrywide spokeswoman Shirley Norton said, "We are reviewing the ruling and considering our options."

Private trustees have sued servicers as well. Debra Miller, a private trustee in Indiana, has been active in litigation where servicers haven't complied with federal regulations. Typically, she said, private trustees try to obtain settlements that are more about changing practices than monetary compensation. "Our job is to force mortgage companies to improve their systems," she said.

Both the Justice Department and private trustees have stepped in to fill what they see as a regulatory void covering mortgage servicers, according to Andrea Celli, a private trustee in upstate New York.

Future Oversight Under Debate

Currently, a hodgepodge of agencies oversees mortgage servicing. HUD, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Trade Commission and the Federal Reserve all have partial authority.

Concern over mortgage servicing was part of the early discussions about the proposed new Consumer Financial Protection Agency, according to Eric Stein, the Treasury Department’s deputy assistant secretary for consumer protection. The CFPA, as proposed by the Obama administration, would be the primary watchdog for servicer abuses.

Servicers are resisting the new consumer agency. Paul Leonard, a lobbyist for the Financial Services Roundtable, said his organization’s members believe that there should be better coordination among regulators and that existing agencies can handle the responsibility.

Tara Twomey, a lecturer at Stanford Law School who co-authored the large study of bankruptcy cases, says that more regulation would help, but it would only be a “Band-Aid.” “The more fundamental problem is one of market structure,” she said. “Borrowers don’t get to choose their servicer.”

Homeowners	Servicer	Key findings	From the Judge’s Opinion
Jacalyn Nosek in Massachusetts	Ameriquest	Found overall failure to properly and timely credit Nosek’s payments Forced Ameriquest to pay \$250,000 in emotional distress damages and \$500,000 in punitive damages	In the Mar. 6, 2007 order [13]: - “The Court was outraged by Ameriquest’s actions and found that its failure to maintain accurate accounts exacerbated Nosek’s emotional distress.” - “As for punitive damages, the Court finds that Ameriquest’s accounting practices are

Homeowners	Servicer	Key findings	From the Judge's Opinion
			wholly unacceptable for a national mortgage lender.”
Donald and Phyllis Moffitt in Arkansas	America's Servicing Company (a division of Wells Fargo)	Issued a temporary restraining order stopping ASC from trying to collect undue fees and to send only regular, accurate mortgage statements	In the June 18, 2008 opinion [2]: - “The evidence supports the premise that ASC's servicing procedures, as exemplified by the Moffitt's account, are not organized to assure accuracy and accountability.”
Debra Hight in Texas	Wells Fargo	Found Wells Fargo did not provide evidence to justify the \$675 in attorney's fees for a foreclosure that never went through Found Wells Fargo claimed \$779 in escrow fees for unpaid property taxes that it did not prove it actually paid.	In the Aug. 13, 2008 opinion [14]: - “Wells Fargo has not set forth any evidence that it actually paid the Property Taxes. In contrast, testimony was adduced indicating that... the Property Taxes had not been paid.”
David Collins in Texas	America's Servicing Company (a division of Wells Fargo)	Judge Marvin Isgur grouped together 10 cases that all included America's Servicing Company and found that in six cases, ASC charged fees it could not justify, and in two cases, the attorney for ASC intentionally filed inaccurate fee requests.	In the June 8, 2009 opinion [15]: - “The Court will not authorize payment for conduct that intentionally misled the court.”

Homeowners	Servicer	Key findings	From the Judge's Opinion
Cory and Regina McKain in Louisiana	Ocwen	Judge Elizabeth Magner imposed new accounting procedures after finding Ocwen tried to collect fees it was not owed in one out of every six cases involving Ocwen before the court.	<p>In the May 1, 2009 order [1]:</p> <ul style="list-style-type: none"> - “The Court does not believe Ocwen has taken the steps necessary or appropriate to eliminate or correct its pattern of error.” - “The Court finds that this practice is in bad faith and required greater regulation of Ocwen’s behavior to curtail further abuse of the bankruptcy system.”

Greenville News Editorial: Executive Pay Bill Undermines Free Enterprise System
GreenvilleOnline.com
August 12, 2009

A bill passed by the House would give federal regulators too much control over how much some Wall Street executives are paid. While there's some understandable frustration over some CEO salaries, letting government tell private business how much it can pay is the wrong solution.

The bill, the Corporate and Financial Institution Compensation Fairness Act, passed the House on essentially a party-line vote. It will go to the Senate after the summer recess. If it passes, regulators would be allowed to prohibit incentive-based compensation that encourages lenders or traders to take risks the regulators believe threaten the health of the bank or the financial system, according to a report in the *Los Angeles Times*.

This is a political move by Democratic lawmakers rather than a constructive attempt to reform what ails the financial system. While some aspects of the bill are tolerable — shareholders would be given nonbinding, advisory votes on executive

pay and severance packages — putting the federal government in charge of salary decisions at private companies is overreaching and a mistake.

Scott Talbott, a lobbyist with Financial Services Roundtable, an industry group that opposes the bill, was right on in this quote that appeared in the *Times* : “It represents the government taking a large step into the day-to-day operations of corporate America. This is the beginning of a fundamental shift away from free enterprise and toward government regulation.”

Certainly it's appropriate to give shareholders a say in executive compensation. Shareholders are the owners of a company and have a financial stake in such decisions. That's why the “say-on-pay” provision is appropriate. It gives shareholders an avenue to voice their opinion on executive pay decisions but leaves the ultimate decisions in the hands of boards of directors who would do well to listen to their bosses — the shareholders.

But the ban on risk-based bonuses goes far beyond reasonable. Certainly there are legitimate questions about whether regulators will be able to accurately and objectively assess what counts as unreasonable risk.

Furthermore, it's fair to question whether limiting incentives to take risks could eliminate legitimate risks that lead to economic growth and job creation throughout the U.S. economy.

Finally, on Wall Street, success is based on risk. There are other ways to discourage inordinate risks — such as regulating the derivative trading and credit-default swaps that helped lead to last year's market collapse — without trampling on the free-market system.

While Democrats praised the bill as a pre-emptive strike against future financial collapses, Some Republicans, represented in the *Times* piece by Rep. Pete Sessions of Texas, more aptly saw this bill for what it is: an “unprecedented government intervention in the free enterprise system.”

California AG Clamps Down on Foreclosure Consultants

By Gina Keating

Reuters

Wednesday, August 12, 2009

LOS ANGELES (Reuters) - As mortgage-related fraud claims skyrocket in one of the hardest-hit U.S. real estate markets, California authorities on Wednesday ordered so-called foreclosure consultants to register with the state and unveiled new efforts to put scammers out of business.

U.S. mortgage fraud reports jumped 36 percent last year as desperate homeowners and mortgage industry professionals tried to maintain their standard of living from the boom years. U.S. authorities have described the resulting fraud as rampant and growing.

California, which saw home values soar during the boom and now has one of the nation's top foreclosure rates, is struggling with an explosion of scams by fraudsters who take upfront fees and promise to work with lenders to modify home loans but do little or nothing.

California Attorney General Jerry Brown said on Wednesday the fraud was so rampant that he had ordered nearly 400 foreclosure consultants to register with the state and post \$100,000 bonds within 10 days. Two dozen companies were ordered to prove "suspicious" claims made in advertising.

"It's out of control. It's huge. It's unprecedented," Brown told reporters at a news conference in Los Angeles.

The regulatory action comes a month after Brown and other states attorneys general and the U.S. government filed dozens of lawsuits against dozens of individuals and companies in nationwide crackdown on loan modification scams.

He said then that the growth of the scams was outpacing the state's resources to combat them all.

The state Department of Real Estate and the State Bar of California also announced efforts on Wednesday to pursue real estate agents and lawyers caught scamming homeowners.

Loan modification complaints to the state Department of Real Estate have increased 10-fold over the past year -- more than half originating in Los Angeles county. Complaints against lawyers have spiked to 400 so far this year, from seven last year, authorities said.

The agencies have begun a public service campaign to urge homeowners to try free, government sponsored options, such as **the Hope Now Alliance, at hopenow.com**, and have unveiled a web site to field complaints and verify licenses.

BofA Drops Mandatory Arbitration Clauses: Credit Card, Loan and Banking

Customers Can Sue

By Kathy Chu

USA Today

Friday, August 14, 2009

In the industry's latest shift away from controversial forced arbitration clauses, Bank of America said Thursday that it will no longer require credit card, bank account and auto loan customers to sign away their right to sue.

The change comes as mandatory arbitration clauses — common in credit card, cellphone and, increasingly, employment contracts — come under fire from regulators and Congress. Last month, Minnesota Attorney General Lori Swanson sued a major dispute-resolution firm, National Arbitration Forum, charging that it hid its ties to the debt-collection industry. Since then, a growing number of dispute-resolution firms and credit card companies have backed away from arbitration.

Chase last month said it would no longer file new arbitration claims on consumer credit card disputes. BofA's move is broader because it will no longer require mandatory arbitration for banking and loan customers. That means customers can now sue the bank rather than having the dispute handled by a former judge or legal expert behind closed doors.

"This is a major victory for consumers," says Ed Mierzwinski, consumer program director at the U.S. Public Interest Research Group. "If banks know they won't be shielded by arbitration, it will lead to fairer (product) terms."

Some banks may review their use of arbitration to compete with their peers, says Scott Talbott, senior vice president of the Financial Services Roundtable, which represents large banks. Citizens Bank now says it's reviewing mandatory arbitration clauses in credit card contracts.

Meanwhile, American Express is "reassessing" its options related to arbitration forums, says spokeswoman Joanna Lambert.

While the industry still believes arbitration is a fair process, Talbott says, it has unfairly "become sort of a lightning rod" for criticism.

BofA says it decided to ax arbitration partly because of customer complaints. While it no longer requires arbitration for new disputes, it will determine whether individual existing disputes can go to court. Eric Gertz, 39, who has an arbitration hearing scheduled in September against BofA related to \$18,000 in disputed charges, says it would be "unfair" if he couldn't sue the bank since other customers now can. BofA declined comment on his case.

Michael LeRoy, a law professor at the University of Illinois, says while he understands consumers' relief to have an option besides arbitration, they shouldn't expect the "delayed and over-taxed" court system to be a cure-all.

Obama Wants Big Banks to Pay More for Oversight: Fees Would Fund New Regulators

By David Cho

Washington Post

Friday, August 14, 2009

The Obama administration is pressing ahead with its broad overhaul of financial regulation by proposing to hike the fees big financial firms pay for federal oversight while easing the burden for smaller ones, officials said.

The new two-tiered, pay-for-regulation approach is intended to partly cover the costs of more vigorous bank regulation and a new consumer financial protection agency. It reflects the administration's view that large banks and lenders should pay more because they are more complex and expensive to regulate, a Treasury Department official said.

The new fee structure is part of the administration's effort to rework the relationship between Wall Street and Washington. Legislation is now before Congress, which is set to take up the massive regulatory overhaul in the fall.

But the plan has run into opposition from some Republicans and federal regulators who do not want to be stripped of their powers or merged into other agencies. In addition, industry officials have been working vigorously on Capitol Hill to block the creation of a new consumer protection agency. On Thursday, advocates for big financial firms warned that any higher fees imposed by the federal government may be passed on to consumers.

Even as administration officials sent reams of legislative language to Congress, they were still ironing out some details, including the new fee structure to fund many of the proposed regulatory changes, officials said.

Under the latest plan, any bank with more than \$10 billion in assets would face an increase in fees from its existing regulator and the new consumer protection agency.

Financial firms with less than \$10 billion in assets might see lower fees. Currently, such banks pay different rates depending on whether they answer to federal or state officials. Federally chartered banks pay more than firms supervised by state

officials. Under the administration's plan, the federal fees would be lowered to match state rates.

Meanwhile, unregulated consumer financial firms, such as mortgage lenders, would have to pay for their oversight for the first time. Banks have long complained that these unregulated companies have a competitive advantage because they do not have to pay fees or answer to a federal supervisor. The administration's plan aims to level the playing field, officials said.

"We think the funding mechanism makes sense, though I understand not everyone in the industry is going to like it," said Michael S. Barr, assistant Treasury secretary for financial institutions. "The fee assessment is based on the risks and costs of supervision. The larger institutions require greater oversight, and in terms of consumers, they are reaching many, many more with more complicated products."

Industry officials from big firms called the uneven assessment of fees unfair.

"We think that it's outrageous to disproportionately and unevenly impose the cost of new regulation on the top banks," said Scott E. Talbott, the senior vice president of the Financial Services Roundtable, which represents the largest financial firms. The largest banks, he added, "should not be forced by the government to . . . pay the larger share of the funding costs of the [consumer financial protection agency] and regulatory oversight."

Not every industry official was unhappy with the proposal.

"It is important that community banks are not burdened with new fees," said Paul G. Merski, senior vice president of the Independent Community Bankers of America. "There are additional concerns with the proposed [consumer agency] as crafted, and community banks feel it would be unfair to bear the burden of onerous new regulations when they did not engage in the activities that caused the financial meltdown."

Tips for Avoiding Bank Fees
Fox Business
Published Tuesday, August 11, 2009

Scott Talbott of the Financial Services Roundtable says bank fees are not unfair but offers tips to avoid them.

To see Scott on Fox Business click on the link below:
(2.33 min, Scott's segment is 15 seconds into the video)

<http://www.foxbusiness.com/search-results/m/25692493/tips-for-avoiding-bank-fees.htm#q=Scott+Talbot>

Obama Seeks Shift of Regulatory Costs to Big Banks

By Kathy Chu

USA TODAY

Friday, August 14, 2009

The Obama administration plans to charge large banks higher fees than small banks to pay for tighter regulation and to fund a consumer financial protection agency.

The proposal, which needs Congress' approval, means banks with assets of more than \$10 billion would pay more for "prudential and consumer supervision," while community banks would pay the same as they do today, said Treasury spokesman Andrew Williams in a statement.

Other financial firms, such as mortgage lenders, will be charged fees for the first time to pay for the cost of regulation, including company audits. The plan was welcomed Thursday by small banks but denounced by large ones.

Scott Talbott of the Financial Services Roundtable, which represents big banks, called the administration's proposal "outrageous" and warned that "overtaxing the major players will create competitive inequalities and will hinder the industry and the economy."