Housing Action Illinois
Servicer Accountability Initiative
Final Report: December 2009 – September 2010

housingaction ILLINOIS

Acknowledgements

The primary authors of this report are Ami Shah and Katie Gottschall-Donohue from Housing Action Illinois and was generously supported by the Polk Brothers Foundation. Housing Action Illinois works to increase and preserve the supply of decent, affordable, and accessible housing in Illinois for low- and moderate-income households in our state, particularly for households with the lowest incomes.

We seek to achieve our mission through three programs: Organizing, Policy Advocacy, and Training and Technical Assistance. Housing Action Illinois provides the means by which organizations working with low- and moderate-income households actively influence state and federal housing policy. Supported by Housing Action Illinois, the collective power and influence of our members and allies are more fully realized.

Executive Summary

This report, which was completed as part of Housing Action Illinois' Servicer Accountability Initiative (SAI), provides quantitative and qualitative evidence to support the position that mortgage loan servicers in the Chicago metropolitan area are:

- Not agreeing to affordable loan modifications for the great majority of homeowners facing foreclosure.

- Not committing sufficient resources to respond to homeowners in an accurate and timely manner as required by the directives for the Home Affordable Modification (HAMP) program and other federal loan modification programs.

The SAI report summarizes findings and recommendations based on data collected between December 2009 to September 2010. Over the course of 9 months, major issues were identified based on the treatment of cases from 661 individual homeowners working with a HUD certified counseling agency in the Chicago metro area. The cases included were loans serviced by the top ten servicing companies in the region. Throughout our initiative, we have found that our local results, including challenges expressed by housing counselors, closely resemble the barriers that are present at the national level.

For each servicer, we compiled the number of cases that were approved and denied for a loan modification, as well as the number of pending applications. The four largest servicers in our region, Bank of America (31%), JP Morgan Chase (22%), Wells Fargo (14%), and CitiFinancial (13%), account for 80% of all total cases. The remaining servicers in our sample included GMAC (5%), PNC (4%), HSBC (3%), IndyMac (3%), Ocwen (3%), and Litton (2%).

Of the 516 loan modification applications submitted[1], 44% were approved, 16% were denied and 40% of the applications were still pending as of September this year. Our sample classified any modification as approved if the homeowner was awarded a temporary modification, a forbearance plan, alternative modification, or a permanent modification. However, when the counselor indicated what type of modification was provided by the servicer, they were overwhelmingly HAMP temporary loan modifications opposed to either HAMP or non-HAMP permanent loan modifications. In addition, while HAMP program directives require that servicers must acknowledge receipt of the application within 10 business days and respond within 30 calendar days with an approval of a trial modification, a denial of a modification, or a request for more information — this is simply not occurring. Despite Treasury mandates, the consuming responsibility to obtain status updates repeatedly falls on the counselor and homeowner.

[1] The remaining 145 loans were classified as other outcomes. These cases have not been submitted to the lender for a number of reasons. The majority of these cases are currently in the delinquency counseling process (collecting documentation). Other outcomes also include homeowners' that have dropped out of the process, are ineligible, have been referred to legal and other social services, or have withdrew from the counseling program to pursue other options.

For the four servicers with the most cases included in the study, approval rates were as follows: Bank of America (17%), JP Morgan Chase (18%), Wells Fargo (53%) and CitiFinancial (17%). The percentages of pending applications were Bank of America (28%), JP Morgan Chase (40%), Wells Fargo (26%), and CitiFinancial (38%). However, because of the sample size for any individual servicer, specifically for the servicers that account for a small portion of our sample, we recommend caution in making conclusions regarding the performance of any specific servicer compared to another.

To address the low percentage of permanent loan modification approvals and the high number of pending cases, the report makes 24 specific recommendations in the following 6 categories, many of which are summarized below:

- Servicers need to provide clear and consistent means for communication between homeowners, housing counselors, and servicers throughout the loan modification process.
    - Dedicated phone lines at each servicer that works directly with HUD certified housing counseling agencies, clear channels for escalation requests, and servicers must be required to operate systems that are sophisticated enough to handle intense paperwork associated with modifications.

- Servicers need to increase their capacity to respond to loan modification applications in an accurate and timely manner.
    - Staff level requirements must be instituted to ensure servicers have adequate people to address their number of pending foreclosures, including training for these staff in a relevant and timely manner. In addition, servicers must have the capacity to finalize a modification application within 60 days of submission.

- The federal government needs to more effectively respond to complaints related to servicer compliance with HAMP.
    - There must be greater enforcement of the standard HAMP waterfall process, and foreclosure actions must be halted if applications are in review as required by the HAMP guidelines.

- The federal government needs to make changes to the HAMP program in order to make the program more effective and fair.
    - The NPV test must be made public in advance, the trial period should automatically be converted into a permanent loan modification once the homeowner makes 3 successful payments, and principal reduction, when necessary, should become a mandated requirement of HAMP.

- The federal government must develop means for holding servicers accountable for not complying with HAMP directives.
    - There should be an independent, formal appeals process to handle complaints, the public escalation number for HAMP must be improved, and Treasury should publicly release detailed loan specific data from HAMP immediately.

- Federal, state and local government need to make public policy changes that will generally promote fair and transparent mortgage lending and servicing practices.
    - These include allowing bankruptcy judges to modify loan terms on primary residences, the need to link data on loan performance to the Home Mortgage Disclosure Act (HMDA), supporting the Community Reinvestment Reform Act H.R. 6334, convening an independent foreclosure working group, and continued funding and training support for housing counseling agencies.

These programmatic and policy recommendations have been compiled from participating housing counselors and advocates in order to push forward as a unified group. We believe that aggregating the recommendations from a cohesive voice of housing advocates in our geographic area will have a greater impact in calling for change.

This is the third and final SAI report. Previous reports focused on additional issues including homeowner demographics, loan characteristics, and reasons for loan default. For instance, (1) 67% of the loans in our sample were eligible for a HAMP modifications; (2) the major cause of default was loss of income; (3) a disproportionate number of minority borrowers were affected by foreclosure; and (4) the majority of the cases remain pending months after being opened.

Over the course of the next year, Housing Action Illinois will work with housing counseling agencies to implement the report's recommendations. This will include working collaboratively with local and state policy advocates to advance our collective recommendations.

The 10 HUD-certified counseling agencies participating in the SAI included, The DuPage Homeownership Center, Greater Southwest Development Corporation, Interfaith Housing Center of Northern Suburbs, Neighborhood Housing Services of Chicago, North Side Community Federal Credit Union, Oak Park Regional Housing Center, Resurrection Project, Rogers Park Community Development Corporation, Spanish Coalition for Housing, and Institute for Consumer Credit Education.

Housing Action Illinois
Servicer Accountability Initiative
Final Report Covering December 2009- September 2010

The results of Housing Action Illinois' Servicer Accountability Initiative supports the position that as the national foreclosure crisis continues, without federal government mandates that lenders and loan servicers more significantly modify residential mortgages, millions of additional families will lose their homes to foreclosure, devastating families and communities.

Locally, in the eight-county Chicago area, 19 percent of mortgages, or nearly one in five residential properties are delinquent by at least one month—the largest in any metropolitan area in the country.[1] Moreover, it is estimated that 80 percent of those homes will eventually be lost either through a foreclosure or a short sale.[2] Overall, according to RealityTrac, one in every 314 homes with a mortgage received a foreclosure filing in Illinois in August.[3]

In response to the Chicago region's devastating foreclosure crisis, since December 2009 to September 2010, Housing Action has been carrying out the Servicer Accountability Initiative. This initiative has included evaluating the progression of cases being worked on by 10 HUD-certified housing counseling agencies, analyzing outcomes of these cases, and evaluating how successful servicers are in carrying out their loss mitigation procedures while working with counseling agencies. This quantitative data, combined with housing counselor narratives of their experiences with servicers and their loss-mitigation procedures, has led to clear conclusions on servicer response time within the housing counseling agency community in the Chicago region.

As part of the initiative, Housing Action held two roundtables, one in May and one in August, and published two progress reports in conjunction with these roundtables. These reports were able to track servicer response on the loans in our data set and provided outcome data for a large number of cases across a number of different counseling agencies. In addition, the roundtables provided a forum for various stakeholders to discuss the loan servicing companies' performance, both within the Home Affordable Modification Program (HAMP) as well as other modification tools. While our first progress report focused primarily on demographic data,[4] our second report concluded that few trial modifications are being converted to permanent modifications.[5] In fact, an overwhelming number of cases being tracked in our August progress report were still pending any modification. We concluded that based on our hard data and housing counseling narrative, the lack of servicer compliance with HAMP revealed an urgent need for further oversight.

This final report presents our final outcomes and discusses the implications of leaving the current foreclosure loss mitigation procedures as status quo. As part of this initiative, we have also included programmatic and policy recommendations collected from participating housing counselors to push forward as a unified group. We believe that aggregating the recommendations from a cohesive voice of housing counseling agencies in our geographic region will have a greater impact in calling for change. Moving forward from this initiative, we will be able to take the results and advocate for evidence-based policy and programmatic changes that can potentially decrease the number of foreclosures in the region and call for systemic change.

Current Challenges

Our last two progress reports documented the current challenges with HAMP and discussed opportunities and weaknesses with new initiatives that the Obama Administration revealed in the last several months, including the Principal Reduction Alternative Program (PRA) and the Unemployment Program (UP). Housing Action concluded that ongoing fundamental problems exist with HAMP including, servicer voluntary participation; lack of concrete penalties for servicer noncompliance; the net present value (NPV) test methodology; negative equity and unsustainable loan modifications; and HAMP trial modifications that do not become permanent. The additional programs that have been introduced have also not done enough to address the scale of the foreclosure crisis.

Time and time again, it has been evident that without clear guidelines from Treasury, servicers vary greatly in their quality assurance measures, directly harming homeowners. Treasury has not actively worked to monitor and punish servicers that are not in compliance, and in doing so, have contributed to the on-going crisis. In addition, HAMP has been plagued with lost and outdated documentation and limited servicer staff capacity. Unless these issues are satisfactorily addressed with workable solutions (see recommendations), any subsequent changes to HAMP or adoption of a new program will continue to face numerous barriers in their implementation and effectiveness.

These major issues and the devastating consequences on homeowners and communities have become even more apparent with the recent news about the prevalent mishandling of homeowner evictions by the mortgage industry. In October, it has been uncovered that three of the nation's four largest mortgage lenders have failed to follow basic procedures including reviewing homeowners' documents properly. Employees from Ally Financial (formally know as GMAC), JP Morgan Chase, and Bank of America have all participated in "robo-signing"- an act in which employees signed off on thousands of foreclosures every month without examining the files, as they are legally obligated to. The long-term implications of this are still unclear, and while J.P Morgan Chase is still reviewing home loans and has placed foreclosure sales on hold, Bank of America and Ally Financial have already resumed foreclosure sales just two weeks after they both announced their halt on foreclosure sales in all 50 states.

Consequently, 50 attorney generals of every state have announced that they will be coordinating a multi-state investigation of Bank of America, Ally Financial, J.P Morgan Chase and other large servicers to ascertain whether state laws were broken by these servicers in their effort to hastily evict borrowers out of their homes. Allegations from homeowners' attorneys range from lenders forging signatures as well as improperly notarizing documents – all of which can result in civil penalties if the charges have been found to have merit.[6] Ultimately, the investigation and the statewide findings can be used as an opportunity to push for systemic change in the mortgage industry, including how the industry processes foreclosures and modifies loans.[7]

The Case for Servicers to Do More

As the unemployment rate continues to rise, there has been a shift to portray the foreclosure crisis as an economic challenge that can only be resolved through job creation, rather than directly addressing failing mortgages and helping homeowners caught in unsustainable loans.[8]

During previous times of extremely high unemployment, foreclosure remained essentially flat, and delinquency levels increased, but far less than currently.[9] In past recessions, homeownership was a cushion against loss of income but due to the extensive negative equity issues, this is no longer the case. Programs like Emergency Homeowners Loan Program (HEMAP), which is soon to be expanded nationwide, provide some tools to address this issue, though more needs to be done. Through the Servicer Accountability Initiative outcomes, the recommendations we push forward include advocating for making servicer involvement in modifications mandatory, transparent, and accountable.

Undeniably, loan modifications and servicer compliance (and alternatively servicer sanctions) should be occurring at a much higher rate. Working with homeowners over the long-term to stay in their homes rather than increasing the number of real estate owned properties cluttering neighborhoods is clearly a much better outcome for all involved. And while we understand that the mortgage crisis has been a learning process for participating stakeholders, there is no excuse two years after the fact that servicers have still not implemented correct HAMP guidelines and Treasury has yet to hold these servicers responsible.

As elicited in our recommendations below, servicers must be required to modify loans through principal reduction in order to have a real impact on the foreclosure crisis. With declining home values plaguing the housing market, reducing interest rates and extending loan terms can only do so much to stop foreclosures. In addition, Moody's Investors Service, Inc. projects that 50-70 percent of homeowners receiving HAMP modifications currently will re-default without the implementation of a principal reduction program, as borrowers are simply too deeply underwater.[10]

Data Set

Our latest outcomes, which examine our collected data from December 2009 to September 2010, build upon our initial data from our first two reports. The data is compiled from ten regional HUD certified agencies (Appendix 1) and consists of 516 cases in the Chicago region submitted to the top 10 servicing companies (Appendix 2 and 3). Over the course of the tracking period, the number of total cases varied according to data submission timeliness. Through collecting the sampling of data points ranging from basic demographic profile to specific case details such as loan status, we were able to outline major trends within our sample. In doing so however, some of the challenges we encountered in our data collection analysis included the varying level of data submitted by agencies, which consisted of extremely thorough data to more minimal data.

As shown in Chart A, the top four servicers in our region, Bank of America (32 percent), JP Morgan Chase (21 percent), Wells Fargo (14 percent), and CitiFinancial (14 percent), account for 80 percent of all submitted cases. The smaller servicers, including GMAC (6 percent), PNC (4 percent), HSBC (2 percent), IndyMac (4 percent), Ocwen (3 percent), and Litton (2 percent), represented the remaining sample. For each of these servicers, we looked at their approval, pending, and denial rate and compared our current results to those we reported in our progress report in June.

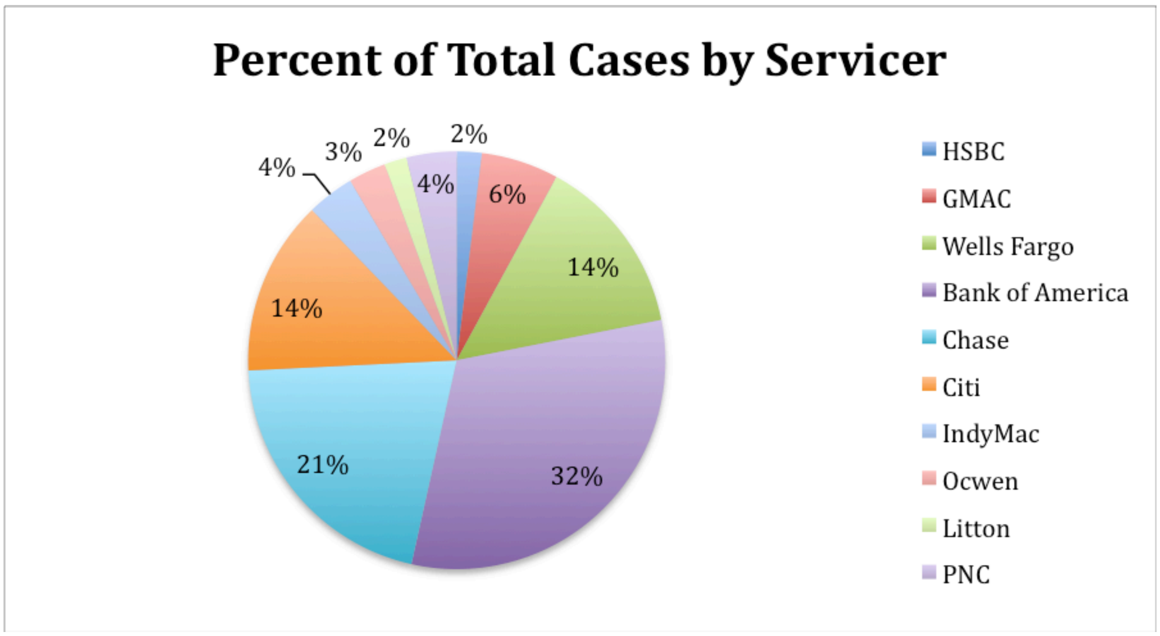

Chart A

Overall Cases Approved, Denied and Pending

Of the 516 loan modification applications submitted, 44% were approved, 16% were denied and 40% of the applications were still pending as of September this year (Chart B). Our sample classified any modification as approved if the homeowner was awarded a temporary modification, a forbearance plan, alternative modification, or a permanent modification.

However, when the counselor indicated what type of modification was provided by the servicer, they were overwhelmingly HAMP temporary loan modifications opposed to either HAMP or non-HAMP permanent loan modifications. In addition, while HAMP program directives require that servicers must acknowledge receipt of the application within 10 business days and respond within 30 calendar days with an approval of a trial modification, a denial of a modification, or a request for more information — this is simply not occurring. Despite Treasury mandates, the consuming responsibility to obtain status updates repeatedly falls on the counselor and homeowner.

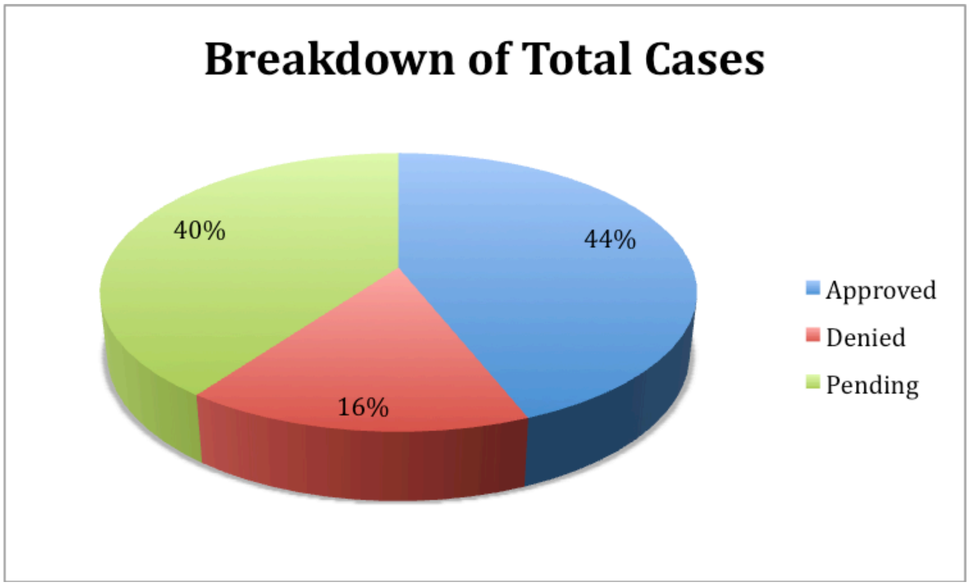

Chart B

Cases Approved by Servicer

Over the course of 10 months, Housing Action saw a substantial increase in the cases that were offered a modification (Chart C). As shown in Chart D, all servicers saw an increase in cases that were approved from our June to September results, except for Litton, which had a decrease in approved cases (likely due to the smallness of this sample size). In fact, all lenders at least doubled their number of cases approved from June, except for Bank of America (34 percent), IndyMac (32 percent), and Litton (22 percent). While this is the case, GMAC and Chase have only 40-50 percent of their total cases approved, while HSBC, Wells Fargo, Citi, Ocwen, and PNC had between 50-60 percent of their total cases approved.

As stated above, the overwhelming majority of the approved modifications in our data set were HAMP temporary modifications. This is a major obstacle that was expressed repeatedly at our roundtables by housing counselors and is recognized as a leading barrier of the HAMP process. None of the modifications in our data set included principal reduction from a servicer, and this combined with the number of temporary modifications leads to real questions around how many of these approvals will result in long-term sustainable homeownership. Additionally, at the second roundtable, many concerns were raised by counselors regarding the payments servicers receive during the temporary period, how they are applied to the homeowner's loan, and the restrictions on homeowners contributing more to their payment when they were able too. While the approval rates were found to improve over time, our data reflects the generalities heard nationwide, that too few are receiving sustainable, permanent loan modifications.

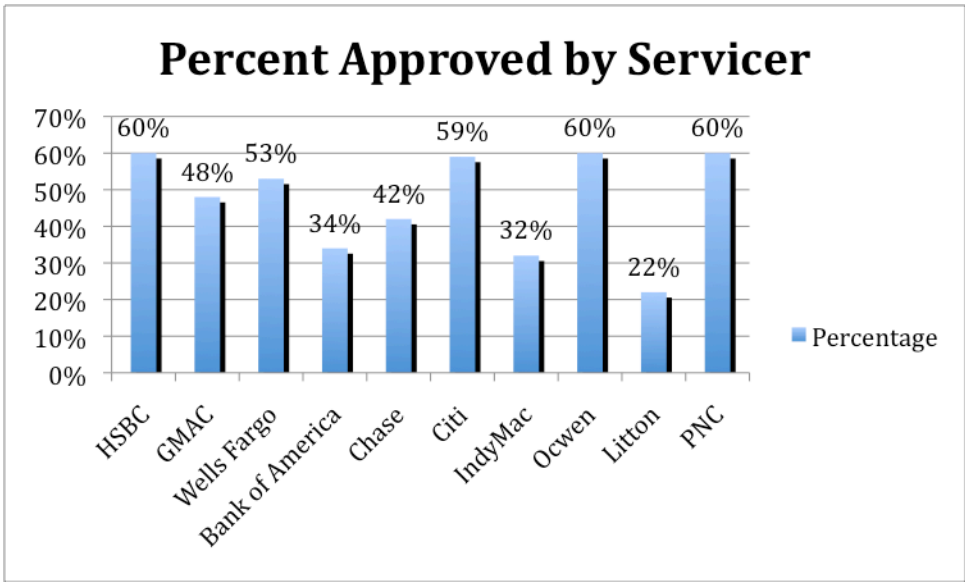

Chart C

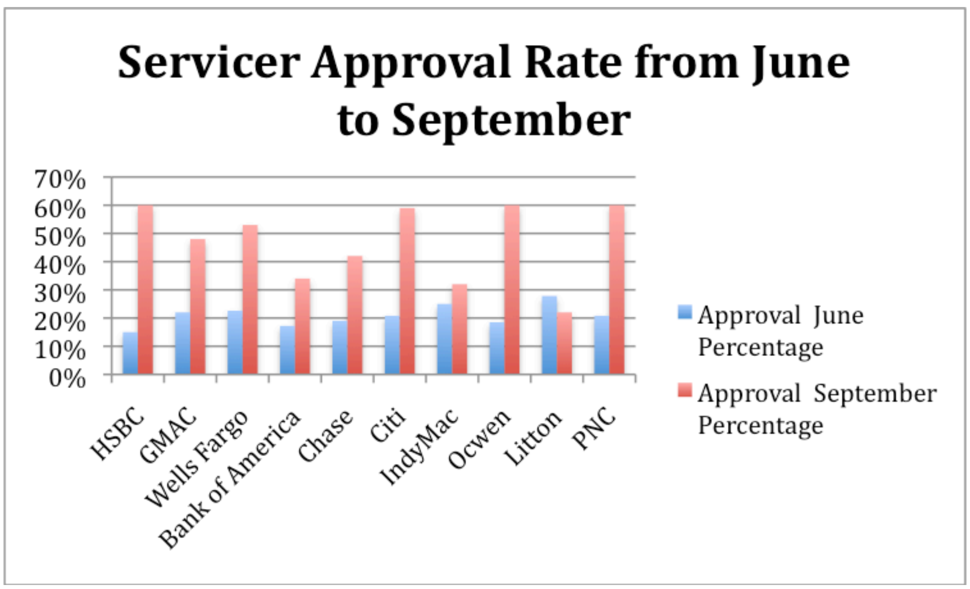

Chart D

Cases Denied by Servicer

As expected, there was also an increase in cases that were denied by servicers, as demonstrated in Charts E and F below. All servicers, except GMAC and Ocwen, saw an increase in the number of cases that were denied. Although this percentage increased, no servicer had more than one third of their total cases denied.

Overwhelmingly, the main reason why cases were denied in our sample was due to loss of income, which also contributed to homeowners being removed from their HAMP trial loan modifications. It appears from counselor narratives that many servicers are beginning to work through their temporary loan modifications and coming back with denials at a greater rate. Many of those who received a temporary loan modification, in some cases verbally, are now facing a foreclosure after spending months in a temporary modification, losing both time and resources in the process.

With record high unemployment rates and underwater mortgages, HAMP is not adequately addressing underlying homeowner foreclosure issues and continues to miss opportunities to prevent countless evictions by providing more modifications with principal write-downs and permanent interest rate reductions. Similarly, when denials are made for those who are truly in an unaffordable situation, homeowners and counseling agencies should be provided the reason for denial in a timely fashion. Counselors at our roundtables attested to the infrequency in which servicers make this information available, particularly when it comes to the servicer sharing the specifics of the NPV results with the homeowner and housing counselor.

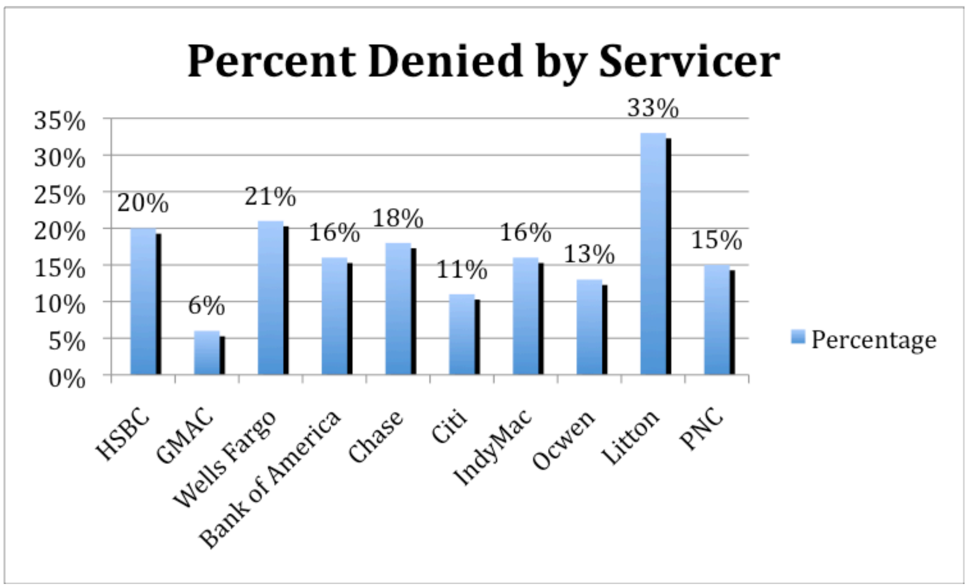

Chart E

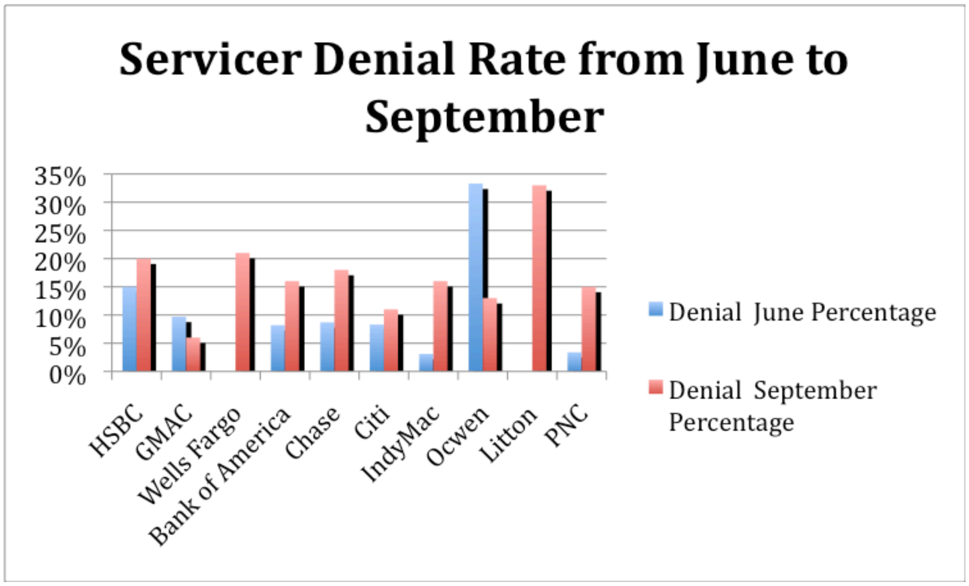

Chart F

Cases Pending by Servicer

Similarly, all lenders saw a decrease in the number of cases they had pending from June to September, which correlates with the increase in both approvals and denials (Chart G and H). However, Bank of America, which accounts for almost 33 percent of our sample size, still has 50 percent of its total cases currently pending. In addition, the next four largest servicers in out data set, Chase, Citi, Wells Fargo, and GMAC, all had more than one fourth of their cases pending. Since HAMP was implemented, housing counselors and homeowners have struggled to obtain timely responses from their servicers.

The number of cases that still remain pending at the end of this local initiative supports that servicers are not moving through modification requests in a timely fashion. This common practice causes undo strain on homeowners and counselors who must spend hours on the phone, sending and re-sending documents, and essentially remaining in limbo for months on end. In order to move through the foreclosure crisis, servicers must begin to be timelier in their responsiveness and face concrete sanctions when they are not (see recommendations below). While not every household will or should be able to save their home, it is to everyone's benefit when fair and timely resolutions are enforced.

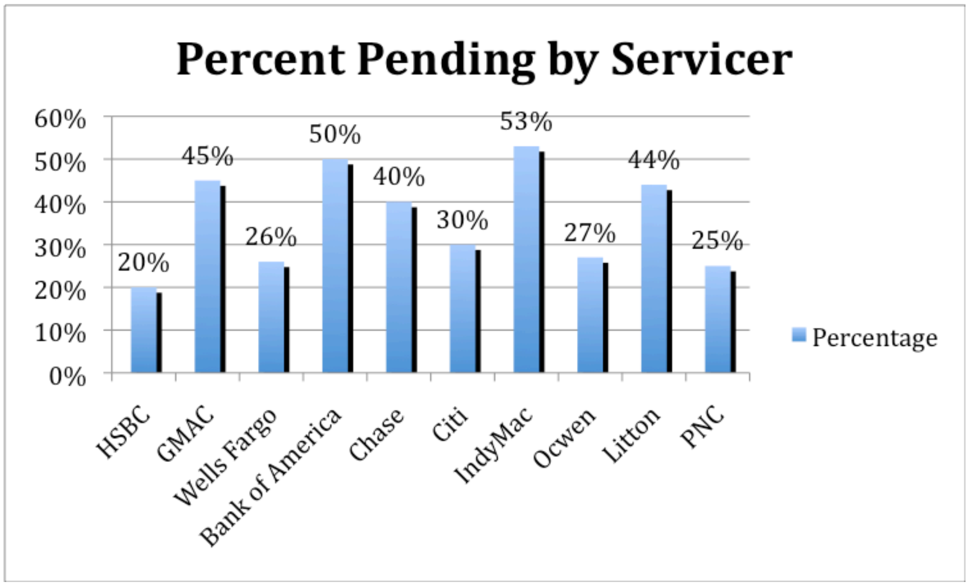

Chart G

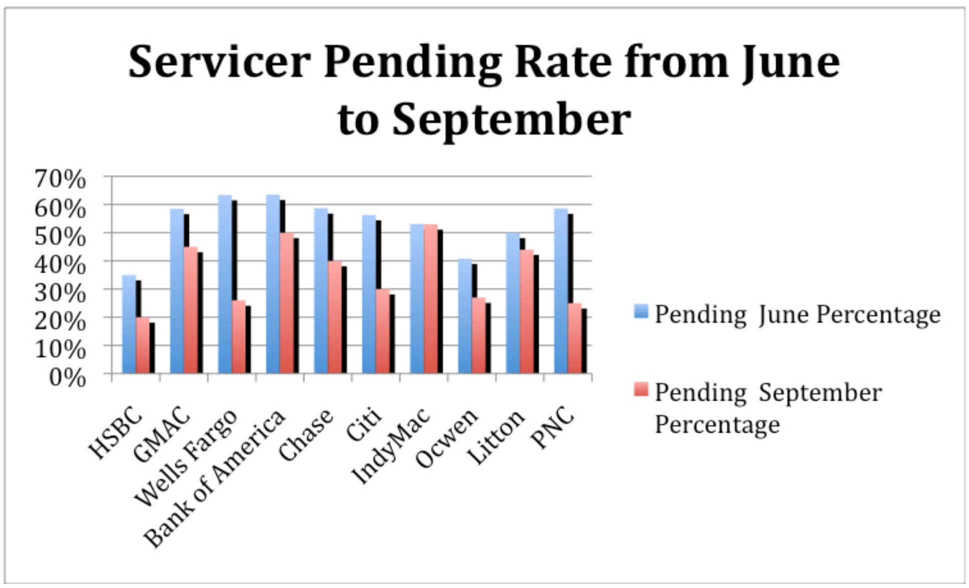

Chart H

Other Outcomes

Our data set did not include "other outcomes" in our total number of cases since these have not been submitted to the lender for a number of reasons. The majority of these cases are currently in the delinquency counseling process (working with the counselor to discuss loss mitigation strategies and collect necessary documentations). Other outcomes also include homeowners that have dropped out of the process (no longer in communication with the counseling agency or did not provide the proper documentation to move forward), are ineligible, have been referred to other social servicer providers, or withdrew from the counseling program to pursue other options.

Throughout our initiative, we have found that our local results, including the challenges expressed by housing counselors, closely resemble barriers that are present at the national level. For example, ProPublica analyzed data submitted by the Treasury Department up to August 31st 2010 and found that out of the total eligible loans of 1,334,548, 8.1 percent of these are in trial loan modifications and 7.1 percent of these are in aged trials, which are trials that have lasted longer than 6 months.[11] Only 33.6 percent have been offered a permanent loan modification while 51.2 percent represents the modifications that have been cancelled during the trial period by the servicer, including permanent modifications that ended because the homeowner defaulted.

ProPublica further examined this data by servicer and indicated that the top four servicers, including Bank of America, Chase, Wells Fargo, and Citi all had at least 50 percent of their total cases as cancelled modifications. Conversely, only one third of these same lenders' cases have received a permanent loan modification.[12] It has become apparent that large servicers have especially struggled and ultimately have been unsuccessful in converting trial modifications to permanent modifications, significantly weakening the odds that a homeowner will sustainably be able to remain in their home.

Recommendations

From Housing Action's work on the Servicer Accountability Initiative over the past 10 months, including our analysis of the data and collective counselor narratives, we have assembled the following recommendations. These recommendations are endorsed by a strong regional group of housing counseling agencies. We have structured our recommendations into three categories: servicer management changes, HAMP changes, and additional policy changes at the local, state, and federal level.

1. Servicer Management Changes

The first category is recommendations for changes within servicing companies. These changes are the basic building blocks for effectively making the later recommendations for HAMP and other policy changes viable. Since the beginning, a great deal of latitude has been given to servicers for their ramp-up time, but issues of capacity (both staff and operationally) still persist across servicers. We must become stricter on servicer compliance in order for any current or future policy initiative around the foreclosure crisis to be successful. While servicers have been given financial incentives, with the voluntary participatory nature of the program, servicers continually violate existing requirements, and have not been held accountable for their actions.

Servicers need to provide clear and consistent means for communication between homeowners, housing counselors, and services throughout the loan modification process.

- A dedicated phone line at each servicer that works directly with HUD certified agencies is needed. These lines should be well staffed and provide a direct connection to negotiators as necessary. These numbers should be kept on a centralized list that all counseling agencies have access to and should be updated on a monthly basis to contend with continuous servicer staff turnover. Below is a documentation of a counselor's frustration with the constant follow-up that is needed with the servicer, a consuming challenge that counselors experience on a daily basis:

  - Client mailed missing docs on 3/23/10… Still waiting for bank's response… 4/12/10: Per lender update: package was received, but missing income docs. I called lender 3 times to inquire on missing docs and kept getting redirected and sent to other departments. The call cut off as well twice - client was asked to try to call on his own. On 6/2/10: client reported that lender reported that there wasn't anything in process. I called the lender to find out the status and were transferred 4 times... 9/12/10: Still pending.

- Clear channels at each servicer for escalation requests, and staff specific point person for counseling agencies pursuing escalation.

- Servicers must be required to have operating systems that are sophisticated enough to handle the intense paperwork associated with modifications. Documents should be able to be emailed, and excessively "losing" documents can no longer be an unsanctioned excuse. A receipt of confirmation should be provided within three days of submission, and a receipt of confirmation in seven days should be provided with a checklist of any missing documentation that is still required.

  - Lost documentation not only delays the modification process by months, but it is also costly to the borrower when the homeowner is responsible for faxing their financial documentation every couple of months at a dollar per page. As such, it is not uncommon for homeowners to spend up to $50.00 each time they are requested by the servicer to fax in their updated documentation. To illustrate, Chase is requesting the exact borrower documentation every 30 days, while Wells Fargo is collecting documentation every 60 days.

Servicers need to increase their capacity to respond to loan modification applications in an accurate and timely manner.

- Staff level requirements must be instituted to ensure servicers have adequate people to address their number of pending foreclosures. Trainings for these staff must be relevant and timely. This could represent an exciting opportunity for cross-training between servicers and counseling agencies.

- Servicers must have the capacity to finalize a modification application in no more than 60 days of initial submission by the housing counseling agency/homeowner. They should face financial consequences if unable to do so.
- Outlandish fees charged to the homeowner during the lengthy modification request process must not be permitted – A local example from counselors includes instances of Bank of America employees driving by homes to ensure the client is in the house, and then charging the homeowner $30 each time.

2. HAMP Changes

The second category of recommendations applies solely to changes within HAMP. Problems continue to plague the program, and changes must be made for it to have a significant impact on the foreclosure crisis.

The federal government needs to make changes to the HAMP program in order to make the program more effective and fair.

- The NPV test must be made public in advance so that homeowners and housing counselors are made aware of the exact process and calculations that led to a denial. In addition, the NPV test should not be based on a statewide average, but should take local community data into account. This would benefit both the homeowner and the servicers with a more accurate result.
- The Trial Period should be modified. With all documentation now required during the application submission, if a homeowner makes the first three payments on time during the trial period, their loan should automatically convert to a permanent modification.
    - As long as the trial period remains in effect, both the homeowner and the counselor must be given a detailed account of where the temporary payments are going during a trial HAMP modification. It should be mandated that these temporary payments are applied toward the balance of the loan, and the difference between the trial period payment and the previous loan payment should not be counted as an arrearage and reported to the credit bureaus. In addition, lenders must account for attorney's fees, broker fees, and inspection fees in order to prevent misapplying fees intended for principal and interest.
- Principal reduction should become a mandated requirement of HAMP. Almost no principal reductions were reported from the data we collected for this initiative, and this pattern was reflected in counselor comments. It is simply not a tool that servicers are utilizing. Principal reduction is ultimately the only way to help the housing market reach equilibrium and begin to recover.[13] Servicers should be required to do at least a portion of their modifications as a principal reduction.

- We do not agree with Treasury's reasoning that a mandatory principal reduction program will instigate moral hazard of strategic defaults. Specifically, there already exist safeguards against moral hazard built into HAMP, including, income verification, hardship affidavits, and the requirement for three years of annual payments before the principal reduction is fully implemented.[14] In addition, Moody's Investors Service, Inc. projects that 50-70 percent of homeowners receiving HAMP modifications will re-default without the implementation of a principal reduction program, as borrowers are simply too deeply underwater.[15] Moreover, a voluntary program is highly susceptible to inconsistent results for similarly positioned borrowers, in which one HAMP participant could receive a principal reduction based on the discretion of the servicer (including preferential treatment based on race), while a neighbor with the same financial position may not.

- Servicers must be required to turnaround final decisions on modification requests, either approving or denying within 60 days of initial submission from the housing counseling agency. There should be financial penalties for not doing so. Countless homeowners are being held in limbo as they wait months for a final response from servicers. Servicers must also be required to publish their response times on modification requests publically on a quarterly basis.

- Require that servicers work with homeowners who are in imminent default. In addition, servicers must uniformly define the eligibility criteria for imminent default so they are unable to provide wrong and misleading information to borrowers and housing counseling agencies.

    - For instance, at our second Roundtable on August 17th, counselors indicated that Chase will only consider homeowners that are least 60 days late to be eligible for imminent default.

The federal government must develop means for holding servicers accountable for not complying with HAMP directives.

- Currently there is widespread violation of HAMP guidelines. There must be greater enforcement of the standard waterfall process that servicers are asked to follow when assessing a homeowner for HAMP. This waterfall, which includes dropping the interest rate down to 2 percent, followed by extending the loan up to a period of 40 years, and then forbearing principal, is not being used uniformly across all servicers.

- Foreclosure action is not always being halted if applications are in review as is required by the HAMP guidelines. Numerous counselors reported this, and it must be stopped.

- If servicers are not meeting modification standards, this should affect their ability to participate in loan sales to the Government Sponsored Enterprises (GSEs) or to maintain standing as an FHA-approved lender.

The federal government needs to more effectively respond to complaints related to servicer compliance with HAMP.

- If a homeowner believes their HAMP application was not handled correctly there should be an independent, formal appeals process to handle the complaint.[16]

- The public escalation number for HAMP must be improved. Many of the counselors in the Chicago-region expressed frustration with the escalation process through HAMP, and reported poor response time and lack of results.

- Treasury must release the detailed loan specific data from HAMP. This data can tell a compelling story as to the HAMP outcomes, and making this available publicly will allow researchers to truly analyze the success of the program. This data should be released quarterly and be on the individual loan level (including race, ethnicity, and sex of borrower).

    - It has been well documented that minorities have been disproportionately affected by the foreclosure crisis. Our first progress report demonstrated that each servicer had an elevated amount of minority borrowers delinquent on their loans (more than 50 percent). In addition, a survey conducted by the National Community Reinvestment Coalition (NCRC) of distressed homeowners, found that loan servicers foreclose upon delinquent African American borrowers more quickly than delinquent White or Hispanic borrowers and that White borrowers were almost 50 percent more likely to receive a modification than African American borrowers.[17]

    - While servicers have been required to collect and submit detailed data on loans they have evaluated for HAMP modifications since 2009, including borrower characteristics, Treasury has still not disclosed this data to the public.[18]

3. Additional Federal, State and Local Policy Changes

Federal, state and local government need to make public policy changes that will generally promote fair and transparent mortgage lending and servicing practices.

These recommendations currently are not part of an existing federal program but we believe should be instituted to improve the foreclosure crisis.

- Allow bankruptcy judges to modify loan terms on primary residences. Prior to his election, President Obama had expressed support for legislation reforming the bankruptcy code to close a loophole so that bankruptcy judges would be able to modify the terms of mortgages on primary residents (which they currently cannot do) just as they are able to modify the terms of mortgages on investment properties and vacation homes. Right now, a loan on a family's primary residence is the only secured debt that cannot be restructured in a Chapter 13 bankruptcy payment plan. Legislation has been proposed by Illinois Senator Richard Durbin several times during the past few years to do this, but these efforts have not yet been successful even though this legislative change would provide a nationwide tool to begin to effectively address the ongoing foreclosure crisis.

- There is a need to link data on loan performance and loan modifications to the Home Mortgage Disclosure Act (HMDA). In addition to data reported on mortgage applications, we believe that data collected on loan performance and on loan modifications should be linked to HMDA data. These data should be linked to the origination using the universal loan identification number required under the financial reform bill so that analysts would be able to track the performance of loans to different segments of the market and with different underwriting and product characteristics. As the foreclosure crisis has shown, loans with high-risk features concentrated in particular communities can have devastating consequences. Linking HMDA data to information on loan modifications would allow for a better understanding of geographic patterns of loan modification activity as well as the characteristics of loans and the borrowers who had their loans modified.[19]

- Support the Community Reinvestment Reform Act (CRA), H.R. 6334, which was introduced during September 2010 by Congressman Luis Gutierrez (IL-4). The bill expands CRA to affiliates and subsidiaries of banks and non-bank financial institutions, including independent mortgage companies, investment banks, and hedge funds--institutions that all played a role in causing the current foreclosure crisis. Moreover, the legislation increases in the rigor of CRA exams and increases CRA ratings transparency. We strongly encourage the next Congress to pass CRA modernization to address the current foreclosure crisis and prevent a future one.

- The Treasury Department should convene a Working Group with relevant housing field experts including policy leaders and housing counselors who will be responsible to monitor the servicers' effectiveness and transparency. The group will also be responsible for implementing best practices for servicer management programmatic changes.

- Housing Action calls for a 3-month foreclosure moratorium in Illinois is response to the widespread potential unlawful practices currently underway by the servicing companies. A short-term moratorium will have minimal impact on the housing market but will compel the servicing companies to clear the backlog of cases as well as convert pending and trial cases to permanent if applicable. During this period, servicers should be expected to implement meaningful programmatic changes and rebuild partnerships with housing counseling agencies.

- There should be an increase in funding of the Hardest Hit Funds for Illinois. This program will directly address the increase in the number of homeowners seeking modifications due to loss of income by providing them with temporary mortgage payment assistance while they work to regain sufficient income to pay their mortgages. These funds are a necessary and important component in fighting foreclosure in Illinois, particularly as unemployment and underemployment rates continue to be high, and an increase in funding should be supported.

- Continued funding and training support for housing counseling agencies. Housing counselors pay a critical role as educators and advocates and have been essential in the foreclosure crisis, particularly through their communications with homeowners and servicers at the ground level. Foreclosure housing counselors primarily assist homeowners through the maze of attaining a modification, but if that fails, in assisting them in a 'graceful' exit and connecting them to community resources to address a broad range of issues. Moving forward, counselors will play a crucial role in assisting foreclosed homeowners in re-building their credit, as well as to transition into effective pre-purchase and post-purchase counseling, which prove to be cost-effective in responding to mortgage delinquency and default.

Local Policy

- The Circuit Court of Cook County Foreclosure Mediation Program has an opportunity to address the foreclosure crisis in Cook County. We continue to advocate for the program to focus on lenders' responsibilities and obligations including that banks negotiate in good faith and on a timely basis or face court imposed sanctions, including the dismissal of the case.

Conclusion

In conclusion, there is a general consensus within the Cook County housing counseling agencies, which is supported by the data, that: (1) servicers are still not converting trial loan modifications to mandatory loan modifications within the time frame required by HAMP; (2) servicers are not providing any principal write downs for underwater homeowners; (3) servicers are still backed up and, as a result, claim to have limited capacity to provide timely notices, updates, and/or modifications; and (4) few servicers have shown any improvement in demonstrating overall implementation of HAMP regulatory updates.

While counselors individually know which servicing companies are the easiest and most difficult to work with, the majority of this information was previously anecdotal. By providing aggregated data tracking on how servicers are actually responding, we are able to back up claims against servicers. These concrete results will allow counselors and policy makers to put pressure on servicing companies doing a poor job, thereby encouraging them to behave more responsibly to help mitigate the foreclosure crisis. This data in conjunction with the narrative feedback from counseling agencies has allowed us to collectively put forth a set of recommendations that call for urgent change in the servicing industry.

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