



Talking It Up

How the Federal Government Can Implement Automatic Foreclosure Mediation to Help Homeowners, Lenders, Investors, and Taxpayers

Alon Cohen January 2011



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Introduction and summary

This is the last of a four-paper series on foreclosure mediation as a tool in responding to the still-troubled U.S. housing market. The most recent papers in the series provided updates on the status of and best practices for state foreclosure mediation programs. This paper addresses the issue at the national level to ask how the federal government, so deeply immersed in the nation's housing markets, can support a solution that is demonstrably valuable to homeowners, the mortgage lenders, investors, servicing companies that handle those single-family mortgages, the local governments now dealing with a steady flood of foreclosures, and ultimately taxpayers who stand behind the majority of these mortgages.

And our solution? Require that all mortgages backed by the U.S. government go through mediation prior to foreclosure and that all lenders participating in the government's so-called Home Affordable Mortgage Program mediate prior to foreclosure. In foreclosure mediation the homeowner and mortgage lender or servicing company sit down for settlement negotiations in the presence of a neutral third party. Even though none of the parties are under any obligation to settle in mediation, in practice they settle more than half the time. We encourage automatic foreclosure mediation in which an administrator automatically schedules mediation sessions for both parties rather than waiting for the homeowner to request it, radically increasing participation rates.

Fannie Mae and Freddie Mac alone have begun over 850,000 foreclosures this year. Automatic foreclosure mediation programs could help hundreds of thousands of these homeowners who through no fault of their own face eviction from their homes. This, in turn, would help communities across our nation cope with a continuing foreclosure crisis. American taxpayers gain, too, because the federal government today insures, guarantees, or holds outright around three of every five family mortgages in our country.¹ In the past year, new mortgage lending depended even more on the federal government, with 90 percent of loans bearing government guarantee or insurance.² Thus, nobody stands to benefit more than the American taxpayer from the greater value and shorter timelines that automatic foreclosure mediation ensures.

So what do we stand to save? The estimates below indicate that for every mortgage modified in mediation, the mortgage servicer cuts its losses by 60 percent. (As in our previous papers, the term mortgage service companies, or “servicers,” will be used here to refer to the party foreclosing on a property because most loans are handled by a third-party servicer acting on behalf of lenders or investors.) Applying that estimate conservatively to the two mortgage finance giants Fannie Mae and Freddie Mac, both of which are operating under government conservatorship, it could represent a savings of over \$6 billion, and more importantly, over 177,000 homeowners that would keep their homes. The spillover effect on communities of all these homes would mean stronger local property tax bases and reduced strains on municipal services—gains that could account to billions of dollars more in savings.

This paper demonstrates how the federal government in all three branches, executive, legislative, and judicial, can support automatic foreclosure mediation across our country. Our proposals would enable this to happen directly by implementing it through the federal government’s main mortgage entities—Fannie and Freddie, the Federal Housing Administration, the Veterans Affairs Administration, and the Department of Agriculture’s Rural Housing Services programs and indirectly by supporting state programs designed to foster automatic mortgage mediation. Here is a summary of our recommendations.

Direct federal involvement

Automatic foreclosure mediation is working in many states and communities around our nation, as the previous papers in this series detailed. To best leverage the power of automatic foreclosure mediation going forward:

- Fannie Mae, Freddie Mac, FHA, and all other federal agencies that make or guarantee loans should require their servicers to implement automatic mediation prior to foreclosure. These “government mortgage entities” should direct the servicers responsible for managing these government-backed loans to add automatic foreclosure mediation to the list of “loss mitigation” activities already required of them.
- The U.S. Department of the Treasury, which runs the federal government’s foreclosure prevention program called the Home Affordable Mortgage Program, should require all financial institutions that signed up to participate in HAMP to automatically mediate potential foreclosures.

- In the absence of action by the government mortgage entities or Treasury, Congress should require automatic foreclosure mediation for mortgages owned, guaranteed, or insured by government mortgage entities as well as of all HAMP signatories.
- Congress should make clear that judges in federal bankruptcy courts have the power to require parties to mediate mortgage issues, just as they have the power to order alternative dispute resolution (such as negotiation or mediation) for any issue at any time.

In this way, the federal government is directly ensuring that automatic mortgage mediation becomes the standard way of dealing with foreclosures. It does not mean all foreclosures will end or that all homeowners will receive a modification. Those in investment properties or those who cannot affordably be provided with a modification will still lose their homes, but hopefully in a faster, less costly, and more dignified matter. Automatic foreclosure mediation provides a better deal to the parties when they can reach a settlement and helps speed up the process even when they don't, contributing to the common good of our communities, our taxpayers, and our economic recovery.

Indirect federal support

To continue the progress of state foreclosure mediation programs, Congress should encourage states and municipalities to create automatic foreclosure mediation programs (both new programs and those moving from opt-in to automatic mediation) through the use of matching funds. States or municipalities with qualifying programs could receive a dollar-for-dollar match, enabling larger more robust programs with better outreach and advertising efforts. The funds needed for these programs can come from existing appropriations, such as the Hardest Hit Funds announced last year.

This paper continues our push for support for automatic foreclosure mediation on multiple fronts. Already, the Department of Housing and Urban Development has adopted our recommendation from "It's Time We Talked." HUD's Community Development Block Grants can now be explicitly used to fund housing counselors involved in helping homeowners through the foreclosure mediation process. These CDBG grants provide basic funding to state housing counselors, who help hundreds of thousands of Americans facing housing difficulties. These housing

counselors are particularly crucial when helping homeowners understand how mediation can help them and what they need to do to participate effectively. Most of these housing counselors have been pushed to their limits by recent demands. These funds provide some relief.

We hope that the recommendations in this report and our other recent work help advance the use of a tool that has already helped thousands of homeowners keep their homes, saved servicers and investors millions in losses, and shored up suffering neighborhoods.

Why automatic foreclosure mediation works

The previous papers in this series detailed the success and growing popularity of foreclosure mediation in states and counties around the country.³ Fully operational programs, such as those in Connecticut and Philadelphia, routinely see settlements in nearly three of four cases that enter mediation, with over half of participating homeowners keeping their homes. Please see those papers for a complete discussion.

We encourage automatic foreclosure mediation, in which mediation is automatically scheduled for both the servicer and the homeowner at the initiation of foreclosure, over opt-in mediation, in which the homeowner does not receive mediation unless he or she actively requests it. States such as Connecticut have shown that 60 percent of all mediation participants stay in their homes regardless of whether entry into the mediation program was automatic or opt-in, so the key to doing the most good is participation.

When Connecticut started its program, it was opt-in and received the maximum participation such programs have seen, around 20 percent.⁴ Thus mediation was affecting a small piece of the foreclosure pie, and homeowners who kept their homes as a result were a subset of that 20 percent, about 12 percent of overall foreclosures. After Connecticut converted to an automatic mediation program, however, 75 percent of homeowners participated. Thus, homeowners who participated and kept their homes in mediation grew to 45 percent of overall foreclosures, more than three times as many. Even Florida, whose judicial circuits are just starting to implement a state-wide automatic program, is seeing participation rates of nearly half, double the highest rate of participation in an opt-in state.⁵

As noted in “Walk the Talk,” foreclosure mediation provides a better deal for the parties:

Foreclosure mediation boasts additional benefits for servicers, homeowners, and government. Servicers benefit from avoiding a full and lengthy foreclosure process as more than 70 percent of mediations reach a settlement. That saves

them the administrative costs of foreclosure, the costs of carrying a nonperforming asset, and legal fees. Moreover, because the parties only settle if it is in their best interest—there is nothing in mediation that requires settlement—servicers are presumably getting greater value in more than 70 percent of cases than they would if they foreclosed.

The benefit to homeowners of a process in which more than half keep their homes is obvious. Those who cannot obtain a sustainable modification can also benefit by negotiating a “graceful exit” that can give the homeowner some say in the move out as well as assistance in transitioning to new housing.⁶

Indeed, mediation helps neighbors and local governments as well, preventing further reduction in property values that underpin property taxes and reducing the burden on local services. Both are detailed in the next section.

Finally, mediation helps both the parties and the community because it shortens the foreclosure process. Program administrators in Connecticut and Florida are now researching this point, and though their findings are preliminary they inform us that automatic foreclosure mediation requires on average just over two sessions and takes approximately 100 days. In both locales, mediation runs parallel to foreclosure, so foreclosure mediation does not slow down the process unless a settlement in mediation stops it altogether. Running in parallel, foreclosures take an average of 271 days in judicial foreclosure states and around 200 days in non-judicial foreclosure states.⁷ Thus, mediation can cut the process by well over half, so the parties save time and money in addition to getting a better deal. As a result, neighborhoods and local governments see fewer vacancies and quick foreclosure sales where homes cannot be saved. And at the highest level, the troubled housing stock is processed more quickly, hastening the stabilization of the market generally.

The cost of foreclosure and the savings from mediation

To understand the benefits of mediation, it helps to understand first what foreclosures cost. The most commonly cited cost per foreclosure is Craig Focardi's study on behalf of TowerGroup Research, concluding that servicers' direct costs are \$58,792, including filings, legal fees, property taxes, holding costs, and maintenance.⁸ The study dates from 2002, so that figure reflects foreclosure costs in a stable housing market, without the extended holding costs or downward price pressure seen commonly today.

To understand the scope of potential savings, it helps to start with Fannie Mae and Freddie Mac. Together, they hold or guarantee over 57 percent of the nation's single-family mortgages and the next section will focus on how they can lead national efforts toward automatic mediation. As of the end of the third quarter of 2010, the two mortgage finance giants have reported 329,739 completed foreclosures, putting them on pace for 439,652 foreclosures on the year.⁹ Using Focardi's figure, Fannie and Freddie stand to lose upwards of \$25.8 billion dollars in 2010 alone.

This is a conservative estimate, perhaps by as much as a factor of two. While Fannie and Freddie have completed over 329,000 foreclosures, they have started 860,000 through September 2010¹⁰ and have an additional 456,000 loans which are seriously delinquent without a current prospect for workout.¹¹

Then there is the effect of foreclosure on surrounding home values. Estimates are that for every foreclosure, other houses on the block lose between 1 and 1.5 percent of their values.¹² The average balance (known as unpaid principal balance or "UPB") on a Fannie Mae mortgage is around \$154,000, while Freddie's is closer to \$150,000.¹³ Even if we assume that a foreclosure only affects five properties on a block, 439,652 foreclosures would erode home values by \$3.4 billion. That in turn, would further erode the state and local property tax base, particularly in those areas where foreclosures are clustered, such as Florida, California, Nevada, and Michigan.

Foreclosures don't just erode the tax base. They also sap public resources due to legal proceedings and the need for inspections and maintenance. A study by the Homeownership Preservation Foundation estimates that every vacant property can result in between \$5,000 and \$20,000 in legal fees, inspections, maintenance, and security borne by the municipality and its taxpayers.¹⁴ Not every foreclosed home is a vacant home, but the resulting costs are also likely to be in the billions nationwide.

Foreclosure mediation's strength is not in making money, but in limiting losses. Indeed, foreclosure mediation costs money and parties do not recover 100 cents on the dollar. Foreclosure mediation limits losses by lowering the cost of the process, shortening it, and netting the parties a better deal than they would receive by foreclosing.

Taking a conservative estimate of property values, interest rates, and mediation costs detailed in Appendix A of this report on page 21, Fannie Mae and Freddie Mac alone could save \$35,848 in losses per loan, or 61 percent, by directing servicers to engage in automatic mediation prior to foreclosure. This does not take into account the effect that keeping 45 percent of eligible homeowners in their home will have on surrounding property values or to municipalities' tax bases and public services.

Taking into account equally conservative estimates of the cost of mediation and the fact that not every loan will settle in mediation, the overall savings could total \$ 6.596 billion. The breakdowns regarding participation appear in the tables below and are also detailed in Appendix A.

This is the savings Fannie and Freddie could have seen just by mediating the 440,000 annualized foreclosures they completed this year. If one bumps the number to the 608,000 annualized overhanging delinquent loans, then the total savings rises to \$ 9.11 billion.¹⁵

And there are the secondary benefits of foreclosure mediation, both monetary and not. To the points above, if foreclosure mediation helped keep around 178,000 homeowners in their homes, it would save \$1.38 billion in home values lost in foreclosure and ensure that these homes would not be vacant, saving municipalities \$890 million in legal and service-related costs.

Automatic foreclosure mediation in practice

Applying the experience of automatic foreclosure mediation programs in states like Connecticut to Fannie and Freddie's annualized foreclosures

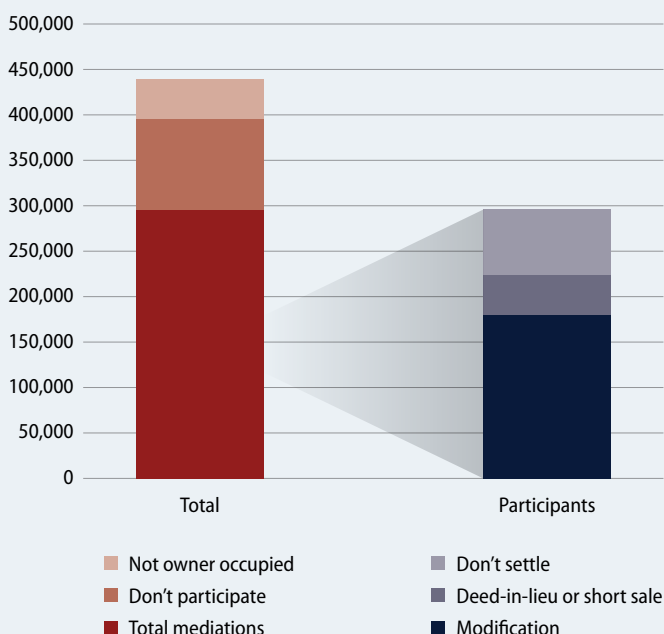
How many homeowners will foreclosure mediation help?

Overlaying the results of an existing program in Connecticut over Fannie and Freddie 2010 foreclosures can help us see the effect. Fannie and Freddie report that about 10 percent of all properties are not owner occupied, so they are not eligible for mediation (there is no homeowner to keep in the home). Existing mediation programs report that approximately 25 percent of eligible homeowners don't participate. The particulars of each case are unknown, but anecdotal evidence suggests that some actively opt out while others lump the offer of mediation in with the deluge of other often spurious offers for mortgage modification assistance. The remaining loans all enter mediation.

The participants table shows the outcomes of these foreclosure cases that went to mediation. Of these, 25 percent didn't settle, 15 percent entered into a deed-in-lieu or short sale transaction, which avoids foreclosure but transitions the homeowner out of the house, and the remaining 60 percent reach a mortgage modification. The upshot: Sixty percent of homeowners that receive a modification in mediation represent about 40 percent to 45 percent of the total foreclosure pool.

Expected results in automatic foreclosure mediation

Average results from mature automatic foreclosure mediation programs in Connecticut and Philadelphia applied to Fannie and Freddie's 2010 annualized foreclosures



And automatic foreclosure mediation's nonmonetary benefits may be just as important as the savings. As noted in "Walk the Talk," foreclosure mediation provides a much-needed appeals process to HAMP and other federal programs while simultaneously reestablishing confidence in the foreclosure process following the "robosigning" scandal and title issues arising from lenders' reliance on the Multistate Electronic Recording System or MERS:

These two benefits of foreclosure mediation are readily evident in the wake of the recent uncertainty about the right of servicers to foreclose. First came the "robosigners" scandal, in which it turns out legally vetted mortgage documentation for foreclosure processing was woefully lacking. That scandal, which broke

in late September, was followed closely by renewed claims that lenders' use of the Mortgage Electronic Registration Systems, or MERS, instead of recording their mortgages with local governments hurt their ability to prove they owned the loans on which they were foreclosing. Then—partly as a consequence of the two previous problems—major mortgage-backed securities investors, including the New York Federal Reserve Bank, notified the lenders who sold them thousands of mortgages that the lenders may have to buy back a sizable portion because they did not meet the standards set for the securities. [citation omitted]

[Foreclosure mediation] serves as a review and appeal of federal Making Home Affordable programs such as the Home Affordable Modification Program, the Home Affordable Foreclosure Alternatives program, and the 2nd Lien Modification Program, and similar state programs. Communication in HAMP, HAFA, and 2MP is primarily carried out on paper and subject to the delays and confusion that occur when hundreds of thousands of complex applications must be processed quickly. These programs rely solely on paper communication and provide the homeowner no chance to appeal. Foreclosure mediation offers the parties a chance to ensure servicer compliance before the homeowner loses his or her home.¹⁶

Government mortgage entities can realize the benefits of mortgage mediation today. We describe how in the next section.

Direct federal involvement

Government mortgage entities already have the power to require mortgage servicers to mediate prior to foreclosure

Fannie Mae, Freddie Mac, and the Federal Housing Administration all have the power to require servicers acting on loans they hold, guarantee, or insure to engage in loss mitigation activities prior to foreclosure. These powers derive from these entities' agreements with their servicers that (using Fannie Mae's contracts as an example) permit:

1.2(13) Changes to Servicing Contracts and the [Issuers Servicing] Guide. The Guide or any Servicing Contract may be more restrictive than the Trust Documents. Changes can be made to the Guide or any Servicing Contract without the approval of any Holder, provided that such changes do not cause the Guide or a Servicing Contract to permit any activity with respect to any Mortgage Loan that conflicts with (other than being more restrictive than) a requirement of the Trust Documents.¹⁷

Indeed, Fannie Mae has already read its master servicing agreement to permit it to alter the Issuer Servicing Guide to require Fannie servicers in Florida to engage in pre-suit foreclosure mediation.¹⁸ The decision arises from a peculiarity in the Florida program. The Supreme Court of Florida contemplated that parties who engaged in pre-suit mediation could be exempt from the automatic mediation imposed by court rule once a foreclosure had been filed (Florida is a judicial foreclosure state, so all foreclosures are filed like normal civil cases). Fannie Mae capped the servicer legal fees for pre-suit mediation at \$550, plans to pay Florida's \$750 charge for mediation, and save the state's \$906 filing fee for cases that settle before ever being filed.

Fannie Mae is reportedly eyeing opportunities to expand the program, having established a National Director of Mediation Strategies and Deployment position. And it has contracted with software provider eMason to tailor its product Clarifire to handle the scheduling, record-keeping, and tracking functions peculiar to foreclosure mediation.

Freddie Mac has similar powers conferred in its Single Family Seller/Servicer Guide, incorporated by reference into the purchase documents with its servicers, as does the FHA.¹⁹ To take the program nationwide, the government mortgage entities should consider the following:

Where there is an existing automatic foreclosure mediation program, require government mortgage entities' servicers to use it

This permits government mortgage entities to support and leverage local programs. That said, in judicial foreclosure states, as in Florida, this may require that servicers pay a foreclosure filing fee and initiate proceedings to reach mediation. In this regard, it would appear to hasten foreclosure. The alternative is even more inefficient, providing the homeowner two guaranteed bites at the mediation apple.

While our research shows that mediation is quicker than foreclosure, I would hesitate to posit that two mediations are still faster than one foreclosure. Certainly we encourage the government mortgage entities to engage those with power to affect the local program—be they the court, the legislature, or the city council—and provide an exemption where the parties have engaged in qualifying foreclosure mediation prior to the foreclosure. Fannie Mae facilitated this in Florida by hiring the Collins Center, the largest entity implementing foreclosure mediation for Florida Courts, to manage Fannie's pre-suit mediation as well.

Where there is no existing automatic foreclosure mediation program in the state, county, or municipality, pre-foreclosure mediation should be required

This does not count opt-in foreclosure mediation programs; the government mortgage entities should create a parallel foreclosure mediation program in those states. We understand that the practical effect of this position to grant homeowners two bites at the mediation apple in jurisdictions with an opt-in mediation program, but the alternative—to piggy-back on local opt-in mediation—would render the program ineffective.

If a nationwide program is to work at all, participation, fueled by automatic scheduling, is the key. Multiple states have shown that opt-in participation is at maximum 20 percent, while participation in automatic mediation is near 75 percent. To require the government entities to use a state's opt-in mediation program

where one exists would in effect be giving up over two thirds of potential participants and, consequently, settlements in those jurisdictions.

We want to promote the opposite. We want to show the local jurisdiction how effective automatic foreclosure mediation is and hope they convert their program. One can even go further and leverage the revenue these jurisdictions lose on foreclosures that never get filed because of pre-suit settlement. States that wish to regain those filing fees have an incentive to move to an automatic foreclosure mediation program.

Develop uniform standards for qualifying local mediation programs

Today, most mediation programs involve family residences that are occupied by the owner to avoid commercial, multifamily, and investment properties.²⁰ The government mortgage entities should adopt this ownership profile as their standard, and add to it a requirement that the program automatically schedule mediation at the inception of the process and report on mediation outcomes as detailed below.

Develop uniform national training standards to which the quirks of particular states' foreclosure processes can be added

There are enough entities, both governments and private contractors, training mediators in jurisdictions with existing programs as well as enough willing mediators that the government mortgage entities should be able to contract with one or more of them to train mediators in each of the 50 states and the District of Columbia.

Require reporting by mediators

As discussed in our prior papers, reporting is the only way program administrators can learn what is and is not working in their programs. Sample lessons learned from reporting have shown that:

- Most mediations don't last just one session.
- Additional mediation sessions (or continuances depending on the particular mechanism of the jurisdiction) were requested just as often by servicers' counsel who needed to run offers by authorized personnel as by homeowners needing to collect more information.

- A good number of participating homeowners settlements out-of-mediation (the relevant analog to “out-of-court” settlement in this context) at the request of servicers.

Armed with this information, program administrators have altered their programs to create schedules that anticipated multiple sessions; changed their assumptions that delays were the fault of homeowners, and recognized that the need for additional sessions could not be blamed on either homeowners or servicers; and realized that not all mediations that ended without a settlement in the context of the program ended with a foreclosure. These significant lessons now inform not just these programs but new programs being set up in other jurisdictions. Reporting is necessary so that we can keep learning about and honing these programs.

The difficulty of reporting here is not merely the national scope. Indeed, the use of a consistent software platform such as eMason’s Clarifire used by Fannie Mae in Florida could be the solution to this problem. Rather, the difficulty arises in what to do in states that have existing programs that may themselves have reporting requirements. While copying or transposing that data into eMason appears wasteful, it may be well worth it.

Most state reporting requirements produce a paper that goes to the program administrator in that state. It does not go to the parties. Fannie, then, would need to produce its own report through its servicers. While the veracity of those reports could be questioned when compared to reports by mediators in these programs, this may be a case where government mortgage entities will need to take the best they can get. The alternative is to contact state administrators and request the reports. Assuming the parties can overcome the privacy and civil procedure concerns of releasing information related to settlements, government mortgage entities would still need to convert this information into a format they can input into their systems. We believe either process—getting reports from one’s servicers or obtaining and entering data from state programs—is worth the relatively modest overhead data entry expense and would provide invaluable data to government mortgage entities monitoring these programs.

Require oversight

Reporting enables oversight. Oversight, particularly timely oversight, helps ensure that all parties are participating effectively. We’ve already seen in HAMP how a program that appears to offer ample benefit to participants can fall short

of its stated objective. I am not asserting that HAMP would have succeeded with closer oversight. What I am saying is that we do not know what went wrong in that program, and that Freddie Mac's review of select documentation several months after the fact has offered us effectively no actionable insight. To avoid that, these programs must have closer scrutiny.

Fannie Mae has created a nationwide position to oversee foreclosure mediation. That is a step in the right direction and every government mortgage entity involved should do it. Further, coordination between the government mortgage entities should provide more resources for this function from which all benefit.

Coordinate efforts between government mortgage entities

There are significant benefits to coordinating the efforts of government mortgage entities rolling out nationwide foreclosure mediation:

- Providing states that have existing programs a single point of contact eases and speeds communication.
- Establishing uniform standards for state and local programs that qualify for exemption makes a single point of contact possible.
- For states that don't have qualifying foreclosure mediation programs that already have training in place, coordinating training standards permits the creation of a single training program shared by all.
- Using common technology lowers adoption costs, creates uniformity in data, enables data sharing and pooling for analysis, and permits coordinated scheduling and similar divisions of resources.

But in keeping with our prior position that the perfect should not be an enemy of the good, we believe that the government mortgage entities should not wait for each other in order to begin their efforts. Indeed, Fannie Mae has begun its efforts already and we encourage each subsequent entity to join it and ramp up as fast as it can.

Treasury should require servicers participating in HAMP to engage in automatic mediation prior to foreclosure

Treasury has modified the Home Affordable Mortgage Program extensively over the past two years, and should now add a requirement that all participating servicers not only consider all borrowers for HAMP eligibility, but also engage

in automatic mediation prior to foreclosure. First of all, these servicers and the lenders and investors they represent would benefit from foreclosure mediation as described above and in our other papers.

Second, many of the servicers who would be required to participate in automatic foreclosure mediation if government mortgage entities implemented are the same ones that participate in HAMP, most prominently among them Bank of America Corp., Citigroup Inc. and Wells Fargo & Co. HAMP represents the non-Fannie and non-Freddie balance of these servicer's portfolios. Requiring automatic foreclosure mediation under HAMP would create a consistent approach of automatic foreclosure mediation across nearly all mortgages for these servicers.

Third, and perhaps most importantly, automatic foreclosure mediation can serve a significant compliance function for HAMP by acting as a *de facto* review/appeal of the otherwise all paper process. Servicers subject to foreclosure mediation in existing state programs are often asked to bring all documentation of any modification attempts. In conversations with program participants, a discussion of the assumptions in these documents regarding the homeowner's income, the property value, and so on are often central points of discussion. Multiple participants report that servicers have incorrect or out of date income assumptions for homeowners, appraisals are inaccurate, and so on.

As a formal part of HAMP, automatic foreclosure mediation would permit each homeowner a chance to make sure he or she was properly considered for a modification *prior* to losing his or her home. Freddie Mac's compliance review covers only a select number of mortgages, and does so at a lag of at least two months, by which time even the subset of homeowners getting a so-called "second look" may have already lost their homes. Moreover, Freddie Mac's review includes no mechanism for homeowners improperly rejected under HAMP to get their homes back. Only Freddie or Fannie can resort to remedies under the Participation Agreement, such as withholding or lowering incentive payments.²¹

Changing HAMP to require automatic foreclosure mediation is in line with (and no more imposing than) the changes Treasury has already made to HAMP, adding requirements regarding:²²

- Discrimination. (Supplemental Directive 09-02)
- Trial period timing. (Supplemental Directive 09-03, et al.); as of December 23, 2009, participating servicers were not permitted to cancel trial modifica-

tions through January 31, 2010, as otherwise permitted under the terms of the program without submitting them to a second review including more detailed status reporting with the goal of converting a greater number to a permanent HAMP modification. (Supplemental Directives 09-10 and 10-01)

- Data collection and reporting. (Supplemental Directive 09-06, et al.)
- Streamlined borrower evaluation. (Supplemental Directive 09-07)
- Expanded notice and outreach to borrowers. (Supplemental Directive 10-02)
- A requirement that homeowners who file for bankruptcy be considered for HAMP modification. (Supplement Directive 10-02)
- Providing a forbearance to unemployed homeowners prior to considering them for HAMP modification. (Supplemental Directive 10-04)

In addition, Treasury has added a whole new program to HAMP signatories providing incentive payments for short sales and deeds-in-lieu of foreclosure known as the Home Affordable Foreclosure Alternatives Program, or HAFA. Unlike the second new program, the Second Lien Modification Program, or 2MP, which required that servicers opt-in, HAFA was implemented directly within HAMP.

Automatic foreclosure mediation would add additional administrative costs and time to participating servicers' loss mitigation and foreclosure processes, though not more than re-reviewing borrowers for conversion to permanent modification in late 2009 or providing forbearances under the unemployed homeowner program. Further, servicers' have already agreed to devote significant administrative resources to permit Treasury to ensure compliance with HAMP through its compliance agent, Freddie Mac and its contractors.²³ Under that agreement, servicers also agreed that Treasury had the power to unilaterally alter compliance requirements.²⁴

The one potential stumbling block is that HAMP signatories have the right under that agreement to receive notice if there is material change to the program and to then opt out.²⁵ While it is possible, there is no record that this power has ever been exercised despite the sweeping changes to program procedure, scope, and costs described above. In fact, none of the HAMP Servicer Workbooks, now in the third revision, have even included procedures for notice of material changes to the HAMP Agreement, let alone the opt-out procedures themselves.

Foreclosure mediation prior to bankruptcy

The 111th Congress considered adding clarifying language to the bankruptcy code indicating that existing efforts by certain federal bankruptcy courts to have the parties mediate a mortgage prior at the beginning of proceedings are a valid use of the court's powers.²⁶ Judges in federal bankruptcy courts in the Southern District and Eastern District of New York and the District of Rhode Island have created a "loss mitigation program" or LMP, in which they set a status conference, identify a mediator, and require that the parties attend and have the power to modify the terms of the mortgage at the session.

The judges created the program pursuant to their authority under Section 105(d) of Title 11 of the United States: "The court, on its own motion or on the request of a party in interest...shall hold such status conferences as are necessary to further the expeditious and

economical resolution of the case." While the mediation is ongoing, the court extends bankruptcy's automatic stay on all actions until after the mediation—or LMP—is complete.

Deutsche Bank, along with other servicers, has challenged the Rhode Island court's power to do so. That case is still pending, though one is hard pressed to understand how a federal bankruptcy court would be acting beyond its powers in this instance when it has such wide latitude to manage the bankruptcy process. This is also not the first time Deutsche Bank has challenged foreclosure mediation in the state. The bank's previous attempt failed. Deutsche Bank claimed the providence did not have the power to create a foreclosure mediation program because it conflicted with state law. The court found that the city had the power to institute the ordinance and fine those who did not comply \$2000 per violation.

Congress should act on existing efforts to promote automatic foreclosure mediation, whether directly or indirectly

Both the House of Representatives and Senate proposed legislation that would support automatic foreclosure mediation either directly through government mortgage entities or indirectly by supporting state efforts. Both approaches are worthwhile.

Direct efforts have centered on requiring automatic foreclosure mediation for any mortgage held, guaranteed, or insured by a government mortgage entity, including FHA, FHFA (via Fannie and Freddie), the Department of Veterans Affairs, and the Rural Development section of the Department of Agriculture. The two-page draft legislation in the Senate is S. 2912, "The Foreclosure Mandatory Mediation Act of 2009," introduced by Sen. Bill Nelson (D-FL) in December 2009. And the House version is H.R. 4635, "The Foreclosure Mandatory Mediation Act of 2010," introduced by Rep. Marcia Fudge (D-OH) in February 2010. Both require automatic foreclosure mediation at the servicer's expense for any mortgage related to the relevant statutes governing these four entities. The legislation does not provide any other detail regarding program parameters. Both bills remained in committee as of the end of the 111th Congress.

Indirect federal involvement

Alternatively, Congress should support automatic foreclosure mediation indirectly

Indirect efforts have sought to support state automatic foreclosure mediation through matching funds for qualifying programs. S 1731, “The Preserving Homes and Communities Act of 2009,” introduced by Sen. Jack Reed (D–RI) in September 2009, would have created a federal grant program funding up to 50 percent of a state or local automatic mediation program meeting certain basic characteristics of existing successful state programs, including:

- Broad eligibility requirements, applying to all owner-occupied one-to-four family residential properties
- Court supervision
- Availability of sanctions
- Neutral third-party mediator
- Requirement that the servicer produces loan origination documents, pooling and servicing agreements if they purportedly prohibit loan modifications, as well as an accounting of all costs and fees
- Free to the parties

Federal encouragement of state action can also be effective

The bill was referred to the Committee on Banking, Housing, and Urban Affairs in September 2009 and remained there through the end of the 110th Congress. In July 2010, Rep. Steve Cohen (R-TN) introduced H.R. 5754, “Preventing Homeowners from Foreclosure Act of 2010,” revisiting S. 1731’s concept of a grant program for state and local foreclosure mediation programs. This bill was shorter, cutting out the requirements for 50 percent state/local matching funds and the characteristics of qualifying programs. It was referred to and remained in the House Committee on Financial Services.

Congresspersons could also support the establishment of automatic foreclosure mediation programs in their home state or district by encouraging all three arms of state government to implement a local program. The most direct route is communication with state legislators who can enact state law and appropriate funds to create a program. While the judiciary can only establish a foreclosure mediation program independently in a judicial foreclosure state, it can play a vital role in both supporting the establishment of a program among its colleagues in the executive and legislative branches and providing case management for mediation in non-judicial foreclosure states.

This was the case in Florida, where representatives in the House taking an active interest in the issue aided in the create of a state-wide mediation program. Experience in Maryland, among other states, shows that the support of the executive branch, in that case the establishment of a foreclosure mediation task force by Governor O'Malley, can create the political groundswell necessary to pass legislation and bring the necessary stakeholders into the process to ensure buy-in from homeowners, lenders, servicers, community groups, and others who are all vital to the success of the program. Thus, communication from Congress to any and all of these groups can do much to spur the creation of a foreclosure mediation program at the state or local level.

Conclusion

Fannie Mae has taken an important step toward implementing automatic foreclosure mediation for government-backed home mortgages. It should learn as much as possible from its experience in Florida and then expand automatic mortgage mediation quickly across the country. Perhaps the next best stop is California, a state with little effective response to the housing crisis despite it being one of the largest states in the union, with one of the highest foreclosure rates to boot. Other government mortgage entities should follow suit.

If the government mortgage entities will not act, then Congress should make them act in this direction. In addition, Congress has the power to enable expansion of foreclosure mediation even further at the state and local level, where it is seeing tremendous success, and, consequently, growth.

And finally, automatic foreclosure mediation can be a powerful part of revitalizing HAMP. Treasury, Congress, or both, should require all HAMP signatories, including all of the largest mortgage lenders and servicers in the country, to automatically enter mediation prior to foreclosure. The move will provide an accuracy and certainty to the process that HAMP has simply lacked to this point.

Appendix A

Calculating estimated savings from foreclosure mediation

There are four simple steps in calculating the estimated cost of foreclosure mediation:

1. Calculate the number of foreclosures eligible for mediation; not every foreclosure is eligible.
2. Estimate the cost of all of those mediations.
3. Calculate the subset of mediations that will actually settle.
4. Compare the cost of settlement in mediation to the cost of foreclosure. That is, for the portion of foreclosures that settle in mediation, subtract loss to the servicer from settlement, from the loss from a standard foreclosure and add the cost of conducting the mediations.

Below is a more detailed description of these calculations, describing the assumptions made, the resulting number, and an explanation of why the assumption was conservative:

Step	Description	Number
1	Estimate the number of mediations	
1.1	Total number of Fannie and Freddie foreclosures. <i>Why it is conservative:</i> Represents the number of completed foreclosures begun by Fannie and Freddie through the third quarter of 2010—329,000—annualized to 12 months. In the mean time, the two organizations have started over double that number of foreclosures over the same period—860,000. ²⁷ Even taking into account Fannie and Freddie’s modification efforts that could cover about 400,000 of these loans at the current page, there are 456,000 loans remaining that are seriously delinquent without prospect for workout. ²⁸	439,652
1.2	10.1 percent of homes are not eligible for foreclosure mediation because they are not owner-occupied. <i>Why it is conservative:</i> Uses Fannie Mae’s owner-occupancy rate of 89.9 percent instead of Freddie Mac’s 91 percent rate or an average. ²⁹ The one percent difference represents \$250 million in UPB.	Subtract 44,404.85
1.3	25 percent of eligible homeowners don’t participate.	Subtract 98,811.79
Total potential mediations		296,435.40

Step	Description	Number
2	Estimate the cost of mediations	
2.1	<p>Cost per mediation: Fannie Mae in its pre-suit foreclosure mediation program in Florida has permitted legal costs of up to \$550.³⁰ In addition there is the cost of mediation. Florida charges servicers the full cost of mediation and has the highest price in the country—\$750. Finally, the filing fee for a foreclosure on a property of the median home value of around \$150,000 is \$906.³¹</p> <p><i>Why it is conservative:</i></p> <p>Fannie Mae's pre-suit foreclosure mediation program limits attorney's fees to \$550 and includes the mediation program cost of \$750. That is the current known cost; it is also among the highest in the nation. Second, mediation in Florida is pre-suit, so the filing fee of \$906 would not normally apply in this case. Rather, we are taking a worst case example—a state that has a qualifying foreclosure mediation program on which to piggy-back, but which requires the government mortgage entity to file a lawsuit before mediation kicks in.</p>	\$2,206.00/ea
2.2	<p>Overhead: Fannie has already created a position to manage mediation of its at-risk loans. A national program will require regional and local oversight; licenses, training, and support for technology, such as eMason's Clarifire, which Fannie is using to manage its pre-suit foreclosure in Florida; and personnel for training, compliance checking, and review of mediation reports. Assuming these represent an additional 20 percent of total mediation costs, they would account for \$440 per mediation, or \$130 million.</p> <p><i>Why it is conservative:</i></p> <p>While oversight costs per mediation may be high during initial roll-out because overhead functions must be in place even though the number of mediations is small, \$130 million is high. It is several times the total funding for the existing state and local mediation programs. For example, it is over 60 times Connecticut's annual budget to operate a program for the entire state.</p>	\$440.00/ea
Total costs of mediation		\$784,367,965.20
3	The number of settlements	296,435.4 mediations
3.1	<p>25 percent of mediations do not result in any settlement. These cases incur the full loss of foreclosure + the additional cost of mediation, calculated above. Losses, as noted above, are taken from Focardi.</p> <p><i>Why it is conservative:</i></p> <p>This is the reported average from Connecticut and Philadelphia, two of the longest-operating and best documented foreclosure programs in the country.</p> <p>Focardi's study, conducted in 2004, did not take into account the stress of a wide-spread foreclosure crisis. Losses during a more stable market are exacerbated in a housing crisis by the downward spiral of housing prices, much longer holding periods, and so on.</p>	74,108.84 × \$58,792
3.2	<p>15 percent of mediations result in a short sale or deed in lieu of foreclosure which limit losses but not to the same extent as a modified, but still performing loan. Focardi estimates these losses at \$44,000 per property.</p> <p><i>Why it is conservative:</i></p> <p>As above, the numbers are taken from Philadelphia and Connecticut and Focardi's numbers are based on relatively stable home prices.</p>	44,465.3 × \$44,000
3.3	<p>60 percent of mediations result in a loan modification. According to the FHFA, the average GSE loan modification sees a 20.4 percent reduction in monthly payment. Fannie Mae's average UPB on its single-family homes as a whole is \$154,561 with an average interest rate of 5 percent. Freddie Mac's average UPB is \$150,033 with an interest rate of 4.94 percent on mortgage related assets. Using Fannie Mae's higher UPB and interest rate we calculate a loss of \$20,994 in net present value of the loan based on a 20.4 percent reduction in monthly payments, a ten year weighted average maturity of the portfolio, and a five percent discount rate.</p> <p><i>Why it is conservative:</i></p> <p>First, we are using Fannie Mae's higher UPB and rate of return, which means that we're taking a percentage of a higher number and taking a larger percentage of that number.</p> <p>Second, Fannie and Freddie do not publish the actual or expected average maturity date of their portfolios. Generally accepted industry figures put average maturity at seven years. We have assumed a ten year maturity as a buffer that enhances the projected loss by approximately 25 percent. This, if nothing else, offsets or stands in for a re-default adjustment in the model. Re-default rates for current modifications averaging 20 percent reductions in payments are in the low teens. The trend in the past several years is toward more and more sustainable modifications. Thus, the 25 percent buffer should offset this adjustment.</p>	177,861.2 × \$22,094

Step	Description	Number
4	Comparing the losses with and without foreclosure mediation	
4.1	Losses without foreclosure mediation: 439,652 foreclosures × \$58,792	\$25.848 billion
4.2	Losses with foreclosure mediation	
	• Losses on 10 percent of homes that don't qualify because they are not owner-occupied: 44,404.85 × \$58,792	\$12.777 billion
	• Losses on 25 percent of remaining homes that don't participate in mediation: 98,811.79 × \$58,792	
	• Losses on 25 percent of remaining homes that don't settle after going through mediation: 74,108.84 × \$58,792	
	Losses on 15 percent of homes that enter deed-in-lieu or short sale transactions after mediation: 44,465.30 × \$44,000	\$1.956 billion
	Losses on 60 percent of homes that enter a modification after mediation: 177,861.2 × 22,094	\$3.734 billion
	Adding in the cost of mediation	\$784,367,965.20
Total loss with foreclosure mediation		\$19.252 billion
Total savings of foreclosure mediation		\$6.596 billion (25.5 percent)

Endnotes

- 1 Freddie Mac, "Form 10-Q for the Third Quarter 2010" (2010), p.7, available at http://www.freddiemac.com/investors/er/pdf/10q_3q10.pdf. Freddie notes that it holds or guarantees 23 percent of the single-family mortgages in the United States. Using that percentage and Freddie's reported book size, one can calculate that Fannie Mae's reported single-family book represents 34.6 percent of the market, for a combined total of 57.6 percent.
- 2 Jeffrey Goldstein, "Moving Forward on Housing Finance Reform," The White House Blog, July 27, 2010, available at <http://www.whitehouse.gov/blog/2010/07/27/moving-forward-housing-finance-reform>.
- 3 Alon Cohen and Andrew Jakabovics, "It's Time We Talked" (Washington: Center for American Progress, 2009), available at http://www.americanprogress.org/issues/2009/06/time_we_talked.html; Alon Cohen and Andrew Jakabovics, "Now We're Talking" (Washington: Center for American Progress, 2010), available at http://www.americanprogress.org/issues/2010/06/foreclosure_mediation.html; and Alon Cohen, "Walk the Talk: Best Practices on the Road to Automatic Foreclosure Mediation" (Washington: Center for American Progress, 2010), available at http://www.americanprogress.org/issues/2010/11/walk_the_talk.html.
- 4 Cohen and Jakabovics, "Now We're Talking," p. 6.
- 5 Youdislaidy Fernandez, "Half in Foreclosure Skip Florida-ordered Mediation," *Miami Today*, September 9, 2010, available at <http://www.miamitodaynews.com/news/100909/story1.shtml>. This was confirmed through conversations with Collins Center officials.
- 6 Cohen, "Walk The Talk," pp. 2-3.
- 7 David Kestenbaum, "How Long Does Foreclosure Take?" NPR Planet Money Blog, Oct. 26, 2010, available at <http://www.npr.org/blogs/money/2010/10/26/130833818/foreclosure>. The post relies on data from RealtyTrac at www.realtytrac.com.
- 8 Craig Focardi, "Servicing Default Management: An Overview of the Process and Underlying Technology" (London: TowerGroup, 2002), [stating that foreclosures cost on average \$58,759 and took 18 months to complete; also stating that short-sales cost \$44,000 on average], cited in Congressional Oversight Panel, "Foreclosure Crisis: Working Toward a Solution, March Oversight Report" (2009), p. 8, , available at <http://cop.senate.gov/documents/cop-030609-report.pdf>. Focardi is also cited by Darryl E. Getter, "CRS Report for Congress: Understanding Mortgage Foreclosure: Recent Events, the Process, and Costs" (Washington: CRS, 2007), p. CRS-11; and in Amy Crews Cutts and Richard K. Green, "Innovative Servicing Technology: Smart Enough to Keep People in Their Houses?" Working Paper #04-03 (Freddie Mac, 2004), available at http://www.freddiemac.com/news/pdf/fmwp_0403_servicing.pdf. The CRS report notes a frustration present here as well: the inability to access parties' proprietary data and assumptions for these estimates. It cites another study by GMAC noting that foreclosures cost the lender \$50,000.
- 9 Freddie Mac, "Form 10-Q for the Third Quarter 2010," p. 70, reporting 113,623 foreclosures complete in 2010. Freddie Mac, "Form 10-Q for the Third Quarter 2010," p. 94, reporting 216,116 foreclosures completed in 2010.
- 10 Federal Housing Finance Agency, "Federal Property Manager's Report" (2010), available at <http://www.fhfa.gov/webfiles/19624/122910FPMReport.pdf>
- 11 Fannie Mae, "Form 10-Q for Third Quarter 2010" (2010), p. 92. Fannie Mae reports that 4.56 percent of its single-family guaranteed mortgages are at least 90 days delinquent. Fannie reports that it has been able to provide workouts in 3.05 percent of its mortgages this year. Assuming it was possible that every delinquent loan could achieve an internal workout, it would leave Fannie Mae with a 1.51 percent overhand of seriously delinquent mortgages, or about 203,000 with no prospect of workout. It is not clear, however, from Fannie Mae's filings whether loans counted as workouts were previously counted as delinquent or not or similarly, whether completed foreclosures were counted in delinquencies. Because of the confusion, I have opted for the more conservative estimate. Freddie Mac's numbers are slightly easier to parse. On page 70 of Freddie Mac's 10-Q for the Third Quarter of 2010 it notes that the company has approximately 464,000 loans delinquent 90 or more days to this point in 2010. Assuming Freddie completed the same number of workouts next year as this (around 210,000), that would still leave 253,000 loans subject to foreclosure.
- 12 This would be in line with the Joint Economic Committee's estimates in April 2007. Senate Joint Economic Committee, "Sheltering Neighborhoods from the Subprime Foreclosure Storm, Special Report by the Joint Economic Committee" (2007), pp. 15-16, (citing Dan Immergluck and Geoff Smith, "The External Costs of Foreclosure: The Impact of Single-family Mortgage Foreclosures on Property Values," *Housing Policy Debate* 17 (1) (2006), available at http://jec.senate.gov/public/?a=Files.Serve&File_id=8c3884e5-2641-4228-af85-b61f8a677c28.
- 13 Fannie Mae, "2010 Third Quarter Credit Supplement" (2010), p. 6, available at http://www.fanniemae.com/ir/pdf/sec/2010/q3credit_summary.pdf. The weighted average interest rate of Fannie Mae's reported Q3 mortgage related assets:

9 months ending Sept. 30, 2010	Average balance	Effective rate earned
Mortgage loans	2,982,899,000	5 percent
Mortgage securities	140,150	4.72 percent

Fannie Mae, "Form 10-Q for Third Quarter 2010" (2010), p. 28.

The average UPB comes from Freddie Mac, "Third Quarter 2010 Financial Results Supplement" (2010), p. 21, available at http://www.freddiemac.com/investors/er/pdf/supplement_3q10.pdf. The weighted average interest rate of Freddie's reported Q3 mortgage related assets:

9 months ending Sept. 30, 2010	Average balance	Effective rate earned
Total mortgage related securities, net	320,400,000	4.52 percent
Mortgage loans held by consolidated trusts	1,738,904,000	5.09 percent
Unsecuritized mortgage loans	198,844	4.32 percent
Weighted average rate		4.94 percent

Freddie Mac, "Form 10-Q for Third Quarter 2010" p. 13.

- 14 William C. Apgar and Mark Duda, "Collateral Damage: The Municipal Impact of Today's Mortgage Foreclosure Boom" (Washington: National Multi-Housing Council, 2005), available at http://www.995hope.org/content/pdf/Apgar_Duda_Study_Short_Version.pdf.
- 15 This is a simple calculation assuming a linear growth in costs and savings $((608,000/440,000) * \$6.5968)$. On the one hand, one should expect lower overhead costs, etc. On the other hand, the wider reach of the program may reach mortgages that are harder to modify sustainably, and so on. Given these largely unquantifiable factors that could affect the number either higher or lower, a simple linear equation appears the most appropriate.
- 16 Alon Cohen, "Walk the Talk," pp. 1-2.
- 17 Fannie Mae, "2009 Single-Family Master Trust Agreement" (2009), Section 10(c).
- 18 Fannie Mae, "Announcement SVC-2010-13, Mandatory Pre-filing Mediation Policy for Mortgage Loans in Florida" (2010), p. 7.
- 19 Freddie Mac, *Single Family Seller/Service Guide 1* (1.2) (2010), available at <http://www.allregs.com/tpl/Main.aspx>. States "However, the Guide may be amended or supplemented generally from time to time by the issuance of revised pages by Freddie Mac or by other written communications from Freddie Mac."; "National Servicing Center," Department of Housing and Urban Development, available at <http://www.hud.gov/offices/hsg/sfh/nsc/nschome.cfm>. Issues guidance to "servicing lender partners" regarding required loss mitigation activities on FHA insured loans.
- 20 The general requirement is (1) owner-occupied, (2) 1-4 family, (3) residential property. There is some variation between states regarding this criterion. Some limit the program to 1-3 family residences. To maintain consistency and flexibility, the rule could be written to include residences of five or fewer families.
- 21 Department of the Treasury, "HAMP Servicer Participation Agreement" (2009), Section 6(B).
- 22 These Supplemental Directives can all be found at <https://www.hmpadmin.com/portal/programs/guidance.jsp> and have all been superseded by and usually made part of the MHA Handbook Version 3.0, available on the Home Affordable Modification Program Administrative Website for Servicers at https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/mhahandbook_30.pdf.
- 23 Department of the Treasury, "Commitment to Purchase Financial Instrument and Servicer Participation Agreement, Financial Instrument Attachment, Sections 4(b) and 5(k) and Commitment attached thereto at Section 10" (2009), available at https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/servicerparticipationagreement.pdf.
- 24 Ibid. at Section 10(B).
- 25 Ibid. at Section 10(C).
- 26 "Mandatory Mediation Programs: Can Bankruptcy Courts Help End the Foreclosure Crisis?" Senate Judiciary Committee's Subcommittee on Administrative Oversight and the Courts, October 28, 2010, available at <http://judiciary.senate.gov/hearings/hearing.cfm?id=4841>.
- 27 Federal Housing Finance Agency, "Federal Property Manager's Report," p. 13.
- 28 Fannie Mae, "Form 10-Q for Third Quarter 2010" (2010), p. 92. Fannie Mae reports that 4.56 percent of its single-family guaranteed mortgages are at least 90 days delinquent. Fannie reports that it has been able to provide workouts in 3.05 percent of its mortgages this year. Assuming it was possible that every delinquent loan could achieve an internal workout, it would leave Fannie Mae with a 1.51 percent overhand of seriously delinquent mortgages, or about 203,000 with no prospect of workout. It is not clear, however, from Fannie Mae's filings whether loans counted as workouts were previously counted as delinquent or not or similarly, whether completed foreclosures were counted in delinquencies. Because of the confusion, I have opted for the more conservative estimate. Freddie Mac's numbers are slightly easier to parse. On page 70 of Freddie Mac's 10-Q for the Third Quarter of 2010 it notes that the company has approximately 464,000 loans delinquent 90 or more days to this point in 2010. Assuming Freddie completed the same number of workouts next year as this (around 210,000), that would still leave 253,000 loans subject to foreclosure..
- 29 Fannie Mae, "2010 Third Quarter Credit Supplement" (2010), p. 6. (Primary residence is 89.9 percent). Freddie Mac "Q3 Supplement," p. 21. (Owner-occupied rate is 91 percent).
- 30 Fannie Mae, "Announcement SVC-2010-13, Mandatory Pre-filing Mediation Policy for Mortgage Loans in Florida."
- 31 Miami-Dade County Clerk of Courts Website, Fees Schedule Page, available at http://www.miami-dadeclerk.com/service_fee_schedule.asp; Palm Beach County Clerk & Comptroller Website, Fee Schedule, available at http://www.mypalmbeachclerk.com/uploadedFiles/Fees_and_Costs/fee_schedule.pdf. Both show a fee of \$906 for foreclosure claims between \$50,000 and \$250,000.
- 32 Fannie Mae, "Form 10-Q for Third Quarter 2010" (2010), p. 28.
- 33 The average UPB comes from Freddie Mac, "Third Quarter 2010 Financial Results Supplement" (2010), p. 21, available at http://www.freddiemac.com/investors/er/pdf/supplement_3q10.pdf. The weighted average interest rate of Freddie's reported Q3 mortgage related assets:

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Freddie Mac, "Form 10-Q for Third Quarter 2010" p. 13.

About the author

Alon Cohen is a consultant on housing issues for the Center for American Progress. He has authored several papers and articles on the subject of foreclosure mediation, and has consulted with congressional staff regarding foreclosure prevention. He was invited to speak to the Maryland Foreclosure Task Force as that group began the process of drafting Maryland's law. And he has testified before the D.C. Council regarding its proposed foreclosure mediation program. He maintains regular contact with state administrators, legislators, and community groups to assess and improve foreclosure response.

Cohen is SVP and general counsel of FightMetric LLC, a Washington, D.C. startup focusing on sports statistics. Prior to that, Cohen was an attorney in private practice for four years focusing on commercial litigation and securities enforcement. He has worked on a variety of matters ranging from lawsuits involving the Department of Energy and the disposal of spent nuclear fuel, to the settlement of regulatory actions related to auction-rate securities and other complex financial products at the center of the current economic downturn. Cohen's publications include a compendium of developments in international securities regulation and an analysis of auditor independence rules issued by the Public Company Accounting Oversight Board.

Cohen is admitted to practice law in Washington, D.C. and Virginia. He holds a B.A. in interactivity and security studies as well as a J.D. from Boston University.

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