



The **Opportunity** Agenda

*Building the National Will
to Expand Opportunity in America*

*Progress and Peril: A Status
Report on the Compact for
Home Opportunity*

January 2013

Acknowledgments

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About The Opportunity Agenda

The Opportunity Agenda was founded in 2004 with the mission of building the national will to expand opportunity in America. Focused on moving hearts, minds, and policy over time, the organization works with social justice groups, leaders, and movements to advance solutions that expand opportunity for everyone. Through active partnerships, The Opportunity Agenda synthesizes and translates research on barriers to opportunity and corresponding solutions; uses communications and media to understand and influence public opinion; and identifies and advocates for policies that improve people's lives. To learn more about The Opportunity Agenda, go to our website at www.opportunityagenda.org.

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Executive Summary

This report describes progress in 2012 toward implementation of the *Compact for Home Opportunity*, a compilation of policies designed to stem foreclosures, restore communities, protect fair housing, and ensure that homeownership is an accessible pathway to American opportunity. The report, which covers the period from the release of the Compact in February 2012 through August 31, 2012, finds considerable forward progress on several fronts, but also delay and recalcitrance on others, particularly by Congress.

Major findings include the following:

Preventing Foreclosures

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Make Mediation Mandatory: There has been mixed progress overall. No progress was made by the federal government. However, several states have passed measures that require servicers to participate in mandatory mediation.
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Invest in Pre- and Post-Purchase Counseling: There has been mixed progress overall, including modest action by the Obama administration, with non-profit actors taking up some of the slack.
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Reform Servicing Guidelines: Significant progress has been made, largely as a result of the national mortgage servicing settlement (AG settlement), which covers only the five large banks involved in the settlement. The Federal Housing Finance Agency backed away from its proposal for a new compensation structure for loan servicers after industry opposition to the plan. A series of new mortgage servicing rules proposed by the Consumer Financial Protection Bureau (CFPB), if finalized, would have significant implications for the loan servicing industry. Advocates also see a need, however, for the CFPB to ensure that it has the tools necessary to identify, track, and take action to eliminate discrimination in mortgage servicing.
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Reform and Expand the Making Home Affordable Program: There has been modest progress overall. There have been modest changes to the Home Affordable Modification Program (HAMP), including an expansion of the program that, among other things, allows borrowers to modify mortgages where the debt-to-income ratio is between 25 and 42 percent, and that extends coverage for borrowers struggling with long-term unemployment. But there has been little progress in the enforcement of HAMP rules violations.
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Improve Legal Assistance: There has been mixed progress. There has been no federal action to remove funding restrictions on legal representation of homeowners for purposes of civil litigation under the Housing and Economic Recovery Act. Some states, however, are using AG settlement funds for legal services.
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Require Principal Reductions: There has been mixed progress. While the AG settlement required the covered servicers to prioritize loan modifications, the pace of principal corrections has been disappointing. In the face of mounting pressure, the Federal Housing Finance Agency (FHFA) has refused to expand principal corrections to loans owned or backed by Fannie Mae and Freddie Mac. In a sign of modest progress, some servicers, such as Ocwen Financial Corp., have successfully reduced principal for a large number of borrowers. In addition, the Preserving American Homeownership Act, a bipartisan bill, was

introduced in June 2012 by Reps. Peters (D-MI), Campbell (R-CA), and Ellison (D-MN) that would direct FHFA and the Federal Housing Administration to implement pilot programs. Finally, states such as Massachusetts and California have implemented principal corrections programs.

Refinancing Legislation: There has been modest progress, with several bills introduced in Congress in 2012 that would address refinancing of mortgages.

Allow Mortgages to be Restructured in Bankruptcy: There has been no progress. No progress has been made by Congress, although the Bankruptcy Equity Act of 2012 was introduced in February 2012 by Rep. Blumenauer (D-OR).

Ensuring Fair and Sustainable Mortgages

Enact Positive Reform of Government-Sponsored Enterprises: There has been no progress by Congress.

Issue an Accessible Definition of Qualified Residential Mortgages (QRM) that Preserves Access to Credit for Middle-Class Families: There has been regression on this issue. Progress has been delayed in finalizing the definition of QRM, which may be positive, considering a harmful proposed rule issued by the Treasury Department's Office of the Comptroller of the Currency, the Federal Reserve, the FDIC, FHFA, the SEC, and HUD in April 2011 that would impose a 20 percent down payment requirement as part of the QRM standard.

Increase Consumer Protections: There has been major progress. With an anticipated budget increase of almost 300 percent, the Consumer Financial Protection Bureau (CFPB) has been ramping up action for 2013. The Department of Justice requested a budget increase for 2013 to fund its new financial and mortgage fraud enforcement efforts, including the work by the DOJ-led interagency Financial Fraud Enforcement Task Force.

Ensure Consumer Readiness: There has been no discernible progress in asset-building policies.

Improve Credit Scoring Mechanisms: There has been modest progress. There have been some interesting industry-specific developments, with a new credit scoring system developed by credit scoring company FICO and data provider CoreLogic. However, this new system is unproven and has not yet been approved for Fannie Mae or Freddie Mac loans.

Improve Federal Housing Administration Practices and Oversight: There has been modest progress. The Obama administration reduced FHA costs and fees. As part of the AG settlement, the U.S. Attorney for the Eastern District of New York filed a \$1 billion settlement with Bank of America and Countrywide, pursuant to which Bank of America must comply with the new servicing standards under the AG settlement.

Promote Flexible Housing Tenures (such as lease-to-own): There has been modest progress. While there has been no progress by federal agencies, there has been some experimentation by states and municipalities with lease-to-own programs.

Restoring Neighborhoods

- ▶ **Support Creation of Land Banks:** There has been modest progress. Some states and localities, including New York and St. Paul, Minnesota, have created land banks.
- ▶ **Require Vacant Property Registration:** There has been mixed progress. Cities such as Oakland, California, have passed new ordinances requiring banks to inspect vacant and occupied properties at risk of foreclosure and have expanded registration requirements for bank-owned foreclosed properties. Cities like Los Angeles and Cleveland have filed lawsuits against banks in cases where the lenders are on the foreclosed properties' deed as the lawful owner. A National Fair Housing Alliance report found inadequate and unequal maintenance of REO properties, particularly in communities of color.
- ▶ **Support Community Development Programs:** There has been mixed progress. In the FY 2013 bill passed by the House in June 2012 (which was pending Senate consideration as of August 2012), there was an increase in funding for the HOME and Community Development Block Grant programs, but a reduction for project-based Section 8 funding.
- ▶ **Encourage Mixed-Use Zoning:** There has been mixed progress. The Department of Housing and Urban Development requested an increase for the Community Challenge Planning Grant Program for FY 2013. No action has been taken by state or local entities.
- ▶ **Promote Responsible and Productive Disposition of Real Estate Owned (REO) Properties:** There has been modest progress. In March 2012, Sen. Reed (D-RI) introduced the Project Rebuild Act, providing for the redevelopment of abandoned and foreclosed properties. In April 2012, the Federal Reserve Board issued a policy statement on the rental of REO properties. In addition, some states and localities are using Neighborhood Stabilization Program funds to acquire and rehabilitate vacant properties.
- **Modernize the Community Reinvestment Act:** There has been no progress.

Rebuilding Economic Security

- ▶ **Expand Owner Re-Sale Seed Capital Programs:** There has been mixed progress. Congress has not enacted legislation to expand such programs. However, the FHFA is advancing its pilot program promoting the sale of REO properties to investors.
- ▶ **Expand Own-to-Rent Programs:** There has been modest progress. While there has been no action by Congress to expand own-to-rent programs, some banks have launched pilot programs. Fannie Mae introduced a pilot program known as "Rehab-to-Rent" (not the same as own-to-rent), but Freddie Mac has not followed Fannie Mae's lead.
- ▶ **Make the Protecting Tenants at Foreclosure Act Permanent, with a Private Right of Action:** There has been mixed progress. In December 2011, Rep. Ellison (D-MN) introduced the Permanently Protecting Tenants at Foreclosure Act of 2011, which would create a private right of action, but Congress has not acted on making this law permanent. California's Homeowner Bill of Rights provides additional protections for tenants in foreclosed homes.
- ▶ **Expand Homelessness Prevention Programs:** There has been modest progress. In its 2012 budget submission, HUD unveiled new initiatives and requested an increase in Emergency Solutions Grants (ESG) funding. In its report accompanying the FY 2013 appropriations bill for HUD, the House Appropriations Committee allocated the full amount of HUD's request for ESG. In July 2012, the VA announced grants for homeless veterans. Despite the expiration of federal stimulus money for state homeless prevention programs in June 2012, some localities are using city funding to extend the life of these programs.



Provide Credit Protection for Former Owners: There has been no progress. Federal Housing Administration and Veterans Affairs “second chance” loans have been seen as less attractive than conventional mortgages.

Fostering Fair Housing



Strengthen Fair Housing Regulations: There has been mixed progress. HUD has taken no action on the disparate impact rule proposed in November 2011, nor has it issued regulations affirmatively furthering fair housing in federal housing and community development programs. The Treasury Department has similarly failed to promulgate rules implementing either the Fair Housing Act of 1968 or the Civil Rights Act of 1964. But in a positive development, the Federal Reserve Board revised its guidance on banks’ treatment of REO properties with regard to fair housing laws. For its part, the CFPB announced that it will pursue lending discrimination enforcement. There has been no action taken by Congress or the states.



Improve Coordination of Equal Opportunity Enforcement Among Federal Agencies, State and Local Governments: There has been significant progress in the coordinated enforcement of anti-discrimination laws relating to housing and credit by federal agencies, including DOJ and HUD, which reached settlements in several major lending discrimination cases. These settlements complement ongoing efforts to coordinate the investigation and prosecution of financial crimes by the interagency Financial Fraud Enforcement Task Force. Congress enacted no new legislation regarding the coordination of equal opportunity enforcement. There have been only a few recent instances of state enforcement of fair housing and fair lending laws.



Develop Robust Consumer Financial Protection Bureau Regulations: There has been modest progress, with CFPB issuance of a compliance bulletin regarding the Equal Credit Opportunity Act. However, the agency has been slow to finalize rules geared toward protecting consumers. In June 2012, the CFPB launched a Consumer Complaint Database (still in beta format), which collects complaints against certain credit card companies.



Incentivize Inclusionary Zoning: There has been modest progress overall. The federal government has made significant progress in incentivizing inclusionary zoning, with a monitor filing a motion to compel New York’s Westchester County to provide information on local zoning practices that are potentially racially discriminatory, and HUD and the city of Baltimore filing a settlement agreement of a class action brought by public housing residents. Congress took no new action to foster inclusionary zoning. States and localities have made modest progress (e.g., the first apartments subject to inclusionary zoning laws in Washington, D.C., hitting the market, and a positive New Jersey state appeals court ruling invalidating a state agency policy that allowed municipalities to pass zoning ordinances that excluded working families). However, a municipal court invalidated the city of San Jose’s inclusionary housing ordinance.

Introduction

Access to an affordable home under fair and sustainable terms is central to the American promise of opportunity, a source of security and pride. But years of misconduct by banks and lenders, inadequate rules and enforcement, and record unemployment have ravaged the ideal of Home Opportunity that is central to the American Dream. Rebuilding that dream is in our national interest and crucial to our economic recovery.

Some nine million people have lost their homes since 2007, and three million remain in or near foreclosure. Nearly 12 million families collectively owe \$600 billion more on their mortgages than their homes are worth.¹ Behind those numbers are senior citizens who have lost a lifetime of economic security, children and families uprooted, neighborhoods blighted with vacant properties, and a continuing body blow to our national prosperity. Looking forward, the very future of homeownership and affordable housing remains in doubt.

Despite the progress we've made as a nation, unequal opportunity and racial discrimination by banks, brokers, and others have meant that communities of color are among those hardest hit by this crisis. The net worth of Latinos has declined by two-thirds during the crisis, with Asian-American and African-American wealth dropping by more than half.²

Fortunately, however, experts and affected communities have identified a range of proven and practical solutions that can stem foreclosures, restore communities, protect fair housing, and ensure that homeownership is an accessible pathway to American opportunity. In early 2012, The Opportunity Agenda and its partners proposed a *Compact for Home Opportunity* that assembled and explained the most promising of those solutions in plain terms. The Compact is intended to propel these much-needed proposals into the public and political discourse and to inform concrete policymaking.

Editor's Note:

This status report covers the period from February 1, 2012 through August 31, 2012. Accordingly, it does not incorporate developments over the last several months, which will be covered in a future status report.

Most significantly, as this report was going to print, it was announced on January 7, 2013 that 10 of the largest mortgage servicers agreed to pay \$8.5 billion to end a review of foreclosure abuses by federal agencies led by the Office of the Comptroller of the Currency.

(Silver-Greenberg, Jessica. "Banks Reach Settlement on Mortgages." *New York Times*, January 7, 2013. <http://dealbook.nytimes.com/2013/01/07/bank-of-america-to-pay-10-billion-in-settlement-with-fannie-mae>.)

On the same day, under a separate agreement with Fannie Mae, Bank of America agreed to pay more than \$11 billion to settle claims over bad mortgage loans, mostly those issued by the bank's Countrywide Financial Corp. subsidiary.

(Silver-Greenberg, Jessica, and Peter Eavis. "In Deal, Bank of America Extends Retreat from Mortgages." *New York Times*, January 7, 2013. <http://dealbook.nytimes.com/2013/01/07/bank-of-america-extends-retreat-from-mortgages>.)

In addition, on January 10, 2013, the Consumer Financial Protection Bureau issued new rules that, among other things, change the standards defining a "qualified mortgage" that would provide immunity to banks from lawsuits.

(Wyatt, Edward. "U.S. Consumer Watchdog to Issue Mortgage Rules." *New York Times*, January 10, 2013. <http://www.nytimes.com/2013/01/10/business/consumers-win-some-mortgage-safety-in-new-rules.html>.)

While each of these developments contributes to some degree toward fulfillment of the Compact for Home Opportunity, experts continue to analyze their positive and negative dimensions and how they will work in practice. Future reports on the status of the Compact will more fully discuss these and other developments.

This report updates the status of the Compact’s recommendations, documenting the progress that has been made around the country in adopting and implementing these proposals. With each recommendation we provide an overall update on specific actions taken—or not taken—by such relevant actors as the Obama administration, Congress, states and municipalities, and the lending industry.

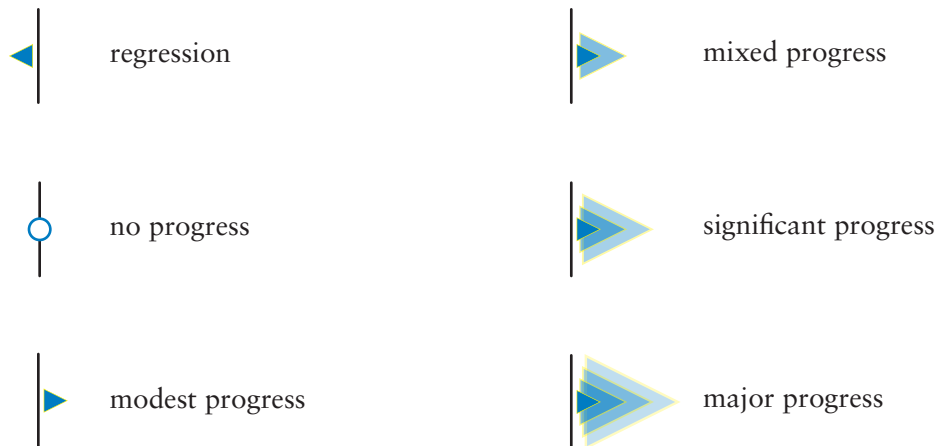
As we describe below, there has been significant progress, frustrating delays, and even recalcitrance by some actors. Positive developments include the national mortgage servicing settlement reached by the federal government and 49 state attorneys general with the nation’s five largest mortgage servicers; major federal fair lending settlements against numerous large banks; and a comprehensive Homeowner’s Bill of Rights in the state of California. Yet some important solutions, such as an expansion of housing counseling, changes to bankruptcy law, and principal correction for mortgages backed by Fannie Mae and Freddie Mac, remain stubbornly out of reach. At this critical moment, this status report provides a roadmap to the progress made, and the work still to be done.

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1. “The Mortgage Challenge,” *New York Times*, December 2, 2012, http://www.nytimes.com/2012/12/02/opinion/sunday/the-mortgage-challenge.html?_r=0.
 2. James H. Carr, “A Bolder Vision for the Secondary Mortgage Market,” *Shelterforce* (blog), October 22, 2012, http://www.shelterforce.org/article/2915/a_bolder_vision_for_the_secondary_mortgage_market.

Methodology

This status report covers the period from the release of the Compact in February 2012 through August 31, 2012. It is based on public data from federal agencies, including the Departments of Justice, Housing and Urban Development, and Treasury, and the Consumer Financial Protection Bureau; the legal database LexisNexis; the Library of Congress's Thomas database (<http://thomas.loc.gov/home/thomas.php>); and the private legislative tracking site GovTrack.us. Additional sources included media reporting cited herein and consultation with nonprofit housing and consumer affairs organizations, including the Center for Responsible Lending, the National Fair Housing Alliance, and the National Council of La Raza.

Key to graphics in this report: The degree of progress or regression that has been made in adopting and implementing the Compact's policy recommendations during the time period noted above is represented by blue arrows to the right or left, respectively, of a vertical line that serves as the axis. A blank circle at the center of the axis indicates no progress. The number of arrows shown measures the level of progress corresponding to a fixed set of terms:



Preventing Foreclosures

Foreclosures continue to be a national crisis, with more than one million filings in just the first six months of 2012 and with a particularly harsh impact on communities of color.¹ The Compact offers a range of policy solutions to address the ongoing foreclosure crisis.

Specifically, the Compact recommends:

- ▶ Making mediation a mandatory part of the foreclosures process
- ▶ Investing in pre- and post-purchase counseling
- ▶ Reforming servicing guidelines
- ▶ Reforming and expanding the Making Home Affordable Program
- ▶ Improving legal assistance
- ▶ Requiring principal reductions
- ▶ Allowing mortgages to be restructured in bankruptcy

While the overall results are mixed, there has been significant progress in reducing foreclosures through methods recommended by the Compact, particularly as a result of the mortgage fraud settlement with five big banks (Bank of America, JPMorgan Chase, Wells Fargo, Citigroup, and Ally Financial) by the Obama administration and 49 state attorneys general (AG settlement). The settlement introduced important new servicing guidelines, for example, as well as limited principal corrections and other reforms. Individual states have also taken important steps forward with regard to housing counseling and other recommendations. At the same time, however, Congress largely failed to act on any of the recommended measures, and the Federal Housing Finance Agency remained recalcitrant with regard to principal corrections for mortgages backed by Fannie Mae and Freddie Mac. The executive branch as a whole made only modest progress, such as minor changes to the Making Home Affordable Program.

Make Mediation a Mandatory Part of the Foreclosures Process

Overall Status of Recommendation

Progress in making mediation mandatory has been mixed. Banks and mortgage servicers have not shown a propensity to voluntarily participate in formal mediation with borrowers, and the federal government has not required servicers to engage in mediation. Many states and localities, however, passed measures that require servicers to participate in mandatory mediation.

Banks and Mortgage Servicers
Banks and mortgage servicers did not voluntarily participate in mediation to any significant degree.

The Executive Branch
The federal government did not require servicers to engage in mediation.

States and Localities

There has been considerable progress by a number of states and localities in passing measures that require mandatory mediation for lenders operating in those states. As an example, Massachusetts passed the Foreclosure Prevention Act in August 2012. This law requires mortgage lenders to attempt to offer loan modifications and mediation to qualified borrowers.² Mediation is now required between banks and borrowers before banks can foreclose on homes in parts of more than 20 states, including Illinois, Maryland, Missouri, Oregon, and Washington. The St. Louis County Council in Missouri is one of the most recent municipalities to pass a measure that would require banks to participate in and pay for professional mediation.³ Under this ordinance, which was opposed by the mortgage industry, although banks would not be forced to agree to a compromise (e.g., a payment reduction), they would face a \$1,000 fine if they refused to mediate or if the mediator believed they acted in bad faith.⁴ Based on the experience of mediation programs around the country, however, only about 15–20 percent of homeowners facing foreclosure are likely to opt for mediation.⁵

In Oregon, the foreclosure rate decreased by nearly one-half in July. RealtyTrac, a real estate research firm, identified this reduction as the likely result of Oregon’s new law guaranteeing homeowners the right to request mediation, describing it as an example of how such laws could lengthen the foreclosure process and result in a temporary reduction in foreclosure activity.⁶ The state’s contractor responsible for managing the Oregon mediation program reported in late August 2012 on the refusal by private mortgage servicers, who are not penalized for not participating in mediation with “at-risk” borrowers, to participate in the new program. In order to avoid mediation, lenders have stopped filing out-of-court foreclosures, proceeding instead with the slower and more costly process of court-supervised foreclosures.⁷

Invest in Pre- and Post-Purchase Counseling

Counseling programs help potential and current homeowners attain the financial literacy they need to navigate complex mortgage transactions, make their payments, and save for the future. Counseling has been found extremely effective in helping borrowers, but more resources are needed.

Overall Status of Recommendation

Progress on housing counseling has been mixed, with the Obama administration taking modest action, Congress failing to act on funding for FY 2013, and nonprofit actors taking up some of the slack.

Congress

Congress did not act on housing counseling for FY 2013 between February and August of 2012 (the time frame of this report).⁸

The Executive Branch

After Congress partially restored funding in 2011 for FY 2012—to \$45 million from \$88 million in FY 2010⁹—HUD acted quickly to distribute funds on an expedited basis. By March 2012 it had distributed \$42 million, 70 percent faster than the previous year’s funding, according to HUD Secretary Shaun Donovan.¹⁰

In its request for 2013 funding HUD sought \$55 million, which, even if fully funded, would be inadequate and below the pre-2011 threshold.¹¹ Moreover, appropriations have historically fallen short of HUD requests.¹²

NOTE: An important complement to HUD's counseling program is the National Foreclosure Mitigation Counseling (NFMC) program, which is administered by NeighborWorks America. In November 2011, Congress appropriated \$80 million for the NFMC program, an increase of just over \$15 million as compared to fiscal year 2011.¹³ On March 19, 2012, the NFMC awarded \$73.8 million in grants for foreclosure counseling to 18 HUD-Approved Housing Counseling Intermediaries, 32 State Housing Finance Agencies, and 86 NeighborWorks organizations.¹⁴

Reform Servicing Guidelines

Mortgage servicers act as the managers of mortgage loans, collecting payments that they forward to the mortgage owner and conducting the foreclosure process. Despite their important role in the process, servicers lack comprehensive guidelines and incentives that would move them toward fair, transparent service and avoiding foreclosures where possible. For example, servicing contracts often fail to clearly define the obligations of servicers to minimize losses on defaulting loans, and servicers' flat fee compensation structure does not incentivize servicers to invest the time necessary to prevent foreclosures.

Regulatory agencies, including the Federal Housing Finance Agency, should develop improved servicing standards that would serve the needs of vulnerable communities; one example of that would be making sure that servicers are compensated for work on loan modifications.

Overall Status of Recommendation

There has been significant progress in reforming servicing standards, largely as a result of the AG settlement. The settlement, however, covers only the five banks noted. After opposition by the banking industry, the Federal Housing Finance Agency backed away from its proposed reforms to the current compensation structure for loan servicers, which pays servicers to foreclose, instead of for the time they spend on loan modifications. In August 2012, the Consumer Financial Protection Bureau proposed a series of new mortgage servicing rules, which, if finalized, will have a significant impact on the mortgage servicing industry.

The Executive Branch and States

Under the AG settlement, the banks were required to implement changes in the way they service mortgage loans, including new servicing standards that provide for strict oversight of the processing of foreclosures by the servicer. The reforms were designed to prevent repetition of past foreclosure abuses such as robo-signing, improper documentation, and lost paperwork. In addition, the new servicing standards make foreclosure a last resort by requiring servicers to evaluate homeowners for other loss mitigation options first. The AG settlement also required the servicers to make a \$5 billion cash payment to the states and the federal government. Of the \$5 billion, \$1.5 billion was allocated to set up a Borrower Payment Fund that provided cash payments to borrowers whose homes were sold or foreclosed from January 1, 2008, through December 31, 2011. The remaining funds were disbursed to states and the federal government to be used to repay public funds lost as a result of the servicers' misconduct, to fund housing counselors and legal aid, and for other similar purposes determined by the state attorneys general.¹⁵ Collectively, these five servicers control close to 60 percent of the mortgage servicing market.¹⁶

After proposing a new compensation structure for mortgage servicers, the Federal Housing Finance Agency (FHFA) backed away from its proposal after industry opposition to the plan. However, the Consumer Financial Protection Bureau (CFPB) proposed regulations containing similar provisions to the National Servicing Standards established by the AG settlement. In August 2012 the CFPB, which has supervisory authority over servicers, proposed a series of

new mortgage servicing rules. Under the proposed rules, which have similar provisions to the National Servicing Standards established by the AG settlement, servicers would be required to: 1) provide borrowers with detailed periodic mortgage statements (for closed-end residential mortgage loans); 2) notify borrowers with adjustable rate mortgages 60–120 days prior to an adjustment that causes the payment to change, and an earlier notice 210–240 days prior to the first rate adjustment; 3) credit payments promptly, generally on the date of receipt, and to send an accurate payoff balance no later than seven business days after receipt of a borrower’s written request; 4) advise consumers about, and provide options for, avoiding “force-placed” hazard insurance before charging borrowers; 5) establish procedures for prompt responses to information requests and complaints of errors (e.g., billing disputes); 6) establish policies and procedures for providing and maintaining accurate information to borrowers and the courts, and creating a mortgage servicing file for each loan containing certain specified documents and information; 7) make good-faith efforts to notify delinquent borrowers of loss mitigation programs; 8) provide delinquent borrowers with access to personnel to assist them with loss mitigation options and to assign dedicated contact personnel for borrower; and 9) implement procedures to ensure that complete loss mitigation applications are reasonably evaluated before proceeding with a scheduled foreclosure sale.¹⁷

In view of the CFPB’s broad enforcement powers, which include the ability to conduct joint investigations with other agencies, litigate civil actions, and refer criminal matters to the Department of Justice, these proposed regulations, if finalized, will have a significant impact on the mortgage servicing industry. Advocates see a need, however, for the CFPB also to ensure that it has the tools, such as data collection, that it needs to identify, track, and take action to eliminate discrimination in mortgage servicing based on race, gender, national origin, etc.

Banks and Mortgage Servicers

The banking industry actively worked to prevent reform to servicing standards. In the fall of 2011, the FHFA proposed a new compensation structure for mortgage servicers, issuing a discussion paper that was the outcome of a joint initiative with the Department of Housing and Urban Development (HUD). In offering two alternative plans, the FHFA’s stated goal was to propose a new servicing compensation structure that would: 1) improve service for borrowers; 2) reduce financial risk to servicers; and 3) provide flexibility to guarantors to better manage non-performing loans while promoting continued liquidity in the mortgage securities market.¹⁸ Among other things, the paper proposed to reduce the minimum servicing fee to a fixed dollar amount based on compensation if the loan is current.

In response to the FHFA’s “white paper,” the Mortgage Bankers Association and others in the mortgage servicing industry criticized the plan to overhaul the minimum servicing fees paid on Fannie Mae and Freddie Mac loans, stating that it was lacking guidance on what a servicer would earn if a loan became delinquent. After across-the-board industry opposition to the plan, the FHFA has been reported to be backing away from its plan.¹⁹ A recent analysis of the role of the current mortgage servicing compensation structures in the foreclosure crisis noted that an inherent conflict of interest exists between servicers and investors in mortgage-backed securities, and that homeowners, and indirectly, communities, bear the costs of this conflict.²⁰

Reform and Expand the Making Home Affordable Program

Federal efforts to address the foreclosure crisis include the administration’s Making Home Affordable Program, an initiative developed by the Treasury Department, which includes the Home Affordable Modification Program (HAMP). HAMP is intended to help eligible homeowners modify their mortgages, make payments more affordable, and avoid default. But it needs improvements to work effectively.

Treasury should adjust its modification programs to make them work for borrowers, including giving homeowners an appeals process for modification denials, requiring banks and servicers to provide clear data on modification denials, and penalizing servicers proven to have violated HAMP rules, including failure to conduct Net Present Value (NPV) analyses (which determine whether investors profit more from a loan modification or a foreclosure).

The Executive Branch

There has been only modest progress in reforming and expanding the 2009 Making Home Affordable Program. Effective June 1, 2012, and extended to December 31, 2013, the HAMP program was expanded by allowing borrowers to modify up to three mortgages (as opposed to one under the previous regime), to modify mortgages for homes that are not primary residences, and to modify mortgages where the debt-to-income ratio is between 25 percent and 42 percent. Moreover, HAMP coverage was expanded for borrowers struggling with prolonged unemployment. Treasury also addressed some of the concerns of the Compact recommendations by delineating more concrete rules as to how modifications should be made. Eligibility requires a 10 percent or greater reduction in monthly principal and interest payments after modification.

However, there has been no evidence of effective enforcement against violators of HAMP rules. Clear data on key issues as to how modification denials are being made, and an option to appeal such denials, still do not exist. In a recent decision, the U.S. Court of Appeals for the Seventh Circuit overruled a lower court ruling that had dismissed a HAMP civil suit by a homeowner against Wells Fargo Bank.²¹ Although the decision failed to recognize a private right of action in cases of wrongful HAMP denials, the result may cause mortgage servicers to be more cautious with regard to representations made to borrowers in “Trial Period Plan” agreements and pursuing loan modification.²² Note, however, that the Eleventh Circuit reached the opposite conclusion in another case, finding that borrowers lacked standing to pursue state law claims to the extent that they’re based on the loan servicer’s breach of HAMP obligations.²³ Prior to the Seventh Circuit decision, the only true options available to appeal a HAMP denial have been to file a complaint with MHA Help, a team of housing counselors dedicated exclusively to working with borrowers and servicers to resolve escalated cases under the Making Home Affordable program, after appealing internally to the lender within 30 days of notice of denial (which reportedly is very difficult for most borrowers, because in most cases they receive the “runaround” from lenders for many months).²⁴ The Seventh Circuit ruling is potentially a step in the right direction for borrowers to challenge loan modification denials based on state law claims.

Based on current monthly rates of loan modification, HAMP’s original goal of modifying loans for three to four million struggling homeowners will fall short. Using data from more than 30 million mortgage loans from the Treasury Department covering approximately 60 percent of all mortgages, a new academic paper quantifies just how limited HAMP’s impact will be, absent additional changes.²⁵ The economists and researchers who worked on the paper found that the program will increase the number of loan modifications that banks and servicers make by about 0.7 percent, or 1.2 million modifications—just one-third of the original goal. Finding a large discrepancy among the servicers that implement HAMP, the researchers concluded that the low renegotiation activity of a few large servicers reflects servicer-specific factors that appear to be related to their organizational capabilities (e.g., hiring and training servicing staff to renegotiate loans) prior to the introduction of the program. Because the mortgage servicing market is heavily concentrated—75 percent of loans are serviced by large banks—the researchers estimate that the program’s impact will be substantially limited.²⁶

Improve Legal Assistance

Large numbers of individuals face foreclosure proceedings, and many lack the legal representation they need in order to understand the relevant claims, defenses, and court procedures. This means that borrowers are unfairly disadvantaged in these proceedings and vulnerable to misconduct by mortgage owners. Congress should amend the Housing and Economic Recovery Act to remove funding restrictions that undercut effective legal advocacy for homeowners and tenants, such as limits on legal service organizations' abilities to bring class actions. State and federal laws are needed to combat fraudulent practices and to help borrowers achieve loan modifications when they qualify.

Overall Status of Recommendation

There has been only mixed progress in improving legal assistance to distressed homeowners. Congress has failed to act, although action has been taken by several states.

Congress

Congress did not take any action on removing funding restrictions on legal assistance for distressed borrowers.

States and Localities

States and localities made significant progress in passing measures that expand access to legal assistance. For example, Massachusetts' HomeCorps program helps borrowers through modification initiatives, borrower recovery, and legal assistance. This foreclosure prevention program is funded by the state's share of the AG settlement.²⁷

States including Illinois, New York, Washington, and New Hampshire are also using the funds they received from the AG settlement to pay for greater access to legal assistance for homeowners facing foreclosure.²⁸

NOTE: In 2007, the Center for Responsible Lending established the Institute for Foreclosure Legal Assistance (IFLA) to provide funding and training to groups that offer legal representation to families facing foreclosure due to abusive subprime mortgages. The project has been managed by the National Association of Consumer Advocates. With an initial \$15 million grant from investment management firm Paulson & Co. Inc., the majority of the Institute's funds have consisted of grants to support direct legal assistance, including litigation, provided by nonprofit legal aid groups and law school clinics to borrowers in at least 10 states.²⁹

Require Principal Reductions

Loan modifications that allow homeowners the opportunity to obtain mortgage principal corrections are more likely to be successful and ultimately avoid default. This type of modification reduces the amount due on the mortgage as well as the monthly payments. The Compact calls on the federal government to require consideration of principal corrections and recommends that servicers take meaningful, systematic measures to avoid foreclosure, such as offering a voluntary moratorium while they evaluate whether foreclosure is necessary and work toward loan modifications, and that they have sufficient staff and resources devoted to modifying loans. It calls on all servicers to implement these reforms, even where not required by the AG settlement.

Overall Status of Recommendation

There has been mixed progress in requiring principal corrections. Mortgage servicers have been slow to prioritize loan modifications, including under the AG settlement. Despite pressure from housing advocates and the Treasury Department, the Federal Housing Finance Agency (FHFA) has refused to expand principal corrections to loans owned by the government-sponsored enterprises (Fannie Mae and

Freddie Mac), which were not covered by the AG settlement. California, Massachusetts, and Nevada are examples of states that have made significant progress in seeking to enforce the terms of the AG settlement agreement with loan servicers and enacting legislation requiring servicers to engage in good faith loan modification efforts.



Banks and Mortgage Servicers

There has been modest progress. Under the AG settlement, at least \$10 billion was dedicated to reducing principal for borrowers who owe more on their mortgages than their homes are worth and are either behind in their payments or at risk of default.³⁰ Ocwen Financial Corp., the largest servicer of subprime mortgages, has been widely acknowledged for reducing principal for close to 20,000 borrowers by an average of \$75,500 per loan, with almost 60,000 modifications completed since launching its nationwide shared-appreciation program in July 2011.³¹ Under this program, Ocwen reduces the underlying principal balance to reflect the current market value of the house and writes off the amounts of the original debt balance that it reduced. In exchange, the borrower must stay current on his or her loan payments and agree to let the company share 25 percent of any future gain that the borrower makes on the house upon re-sale.³²


Otherwise, use of principal corrections under the AG settlement was disappointing. In the first progress report issued on August 29, 2012, by the Office of Mortgage Settlement Oversight (the monitor of the AG settlement), the servicers involved in the settlement reported that, from March 1 to June 30, 2012, they provided \$10.5 billion in debt relief to 137,846 borrowers. Of that total amount, 7,093 borrowers completed a first lien modification and received \$749.4 million in loan principal corrections, whereas an additional 5,500 borrowers received forgiveness of pre-March 1, 2012, forbearance (forgiveness of deferred principal from pre-settlement permanent modifications of first lien mortgages) of approximately \$348.9 million.³³

In addition, 74,614 borrowers had a short sale completed during this period, or the lender agreed to accept a deed in lieu of foreclosure. The servicers reported that the largest part of the debt relief comprised approximately \$8.67 billion in short sales, in which lenders allow homeowners to sell their homes for less than what they owe but, of course, the borrowers must relinquish their home to a new buyer.³⁴ By contrast, the banks and servicers reported only \$750 million in principal corrections, a key component of the settlement.³⁵



The Executive Branch

Despite pressure from housing advocates, the Obama administration and other federal agencies such as the Treasury Department and the Federal Housing Finance Agency (FHFA, the agency that oversees Fannie Mae and Freddie Mac), refused to expand principal corrections to loans owned by the government-sponsored enterprises.³⁶ Despite his own agency's finding that principal write-downs would result in significant net savings, the FHFA Acting Director Ed DeMarco based his objections to principal corrections on the cost to taxpayers and the potential risk of as many as 19,000 borrowers strategically defaulting on their loans.³⁷ Experts have found that principal correction is critical to keeping families in their homes, which, in turn, helps taxpayers by speeding the recovery of the housing market and broader economy. James Carr, a senior policy fellow with The Opportunity Agenda, argues that the agency can ensure that a positive return goes directly to taxpayers by allowing Fannie and Freddie to share some portion of future price appreciation on properties that receive principal corrections.³⁸



Congress

In response to the reluctance of the FHFA director to act on principal corrections, Reps. Gary Peters (D-MI), John Campbell (R-CA), and Keith Ellison (D-MN) introduced the Preserving American Homeownership Act of 2012, H.R. 5940, on June 8, 2012, which would implement a principal corrections program to allow eligible homeowners to have their underwater properties revalued at a more accurate level. The bipartisan bill was referred to committee on the same day. The Congressional Research Service provided the following summary of this bill:

Requires the Director of the Federal Housing Finance Agency and the Federal Housing Commissioner each to establish a pilot program to encourage through assistance provided under the Home Affordable Modification Program (HAMP) under the Secretary of the Treasury's Making Home Affordable initiative, the use of shared appreciation mortgage modifications that: (1) are designed to return greater cash flow to investors than other loss-mitigation activities, including foreclosure; and (2) result in positive net present value for the investor . . .³⁹

GovTrack.us gave the bill a 1 percent chance of being enacted.⁴⁰



States and Localities

Loan modification programs were successful at the state level, and this could be replicated by other states as well as by lenders.

The AG settlement required covered servicers to provide large-scale loan modifications, including at least \$10 billion (of the \$20 billion allocated to various forms of relief) toward principal corrections for borrowers with underwater mortgages.

On August 3, 2012, Massachusetts Governor Deval Patrick signed the Foreclosure Prevention Act, which went into effect on November 1, 2012. This law makes significant changes to existing foreclosure practices, requiring, among other things, that creditors, including Fannie Mae and Freddie Mac, take commercially reasonable steps to avoid certain mortgage loans from entering foreclosure. These steps include the requirement that lenders attempt to offer loan modifications and mediation to qualified borrowers instead of foreclosing. Specifically, the law requires a lender to offer modification if the net present value of a modified mortgage exceeds the anticipated net recovery at foreclosure.⁴¹ However, banks continue to fight to roll back a series of Massachusetts Supreme Judicial Court decisions that require the banks to comply with state foreclosure laws.⁴²

Since 2011, the Federal Housing Finance Agency (FHFA) has only allowed Fannie Mae and Freddie Mac to participate in principal corrections programs as long as 100 percent of the cost of the write-down is covered by another source. State housing agencies in California and Nevada have taken up the FHFA's offer by using money from the Treasury Department's "Hardest Hit Fund" to cover the cost of principal write-downs.⁴³ Of the major servicers, Bank of America was the only one participating in the principal corrections component of state foreclosure prevention programs such as "Keep Your Home California," a \$2 billion program run by the California Housing Finance Agency that uses federal TARP funds to help homeowners obtain principal corrections and other modifications to loans. To address low lender participation, the state made a significant change to the program by eliminating the requirement that banks match taxpayer funds when homeowners are granted principal corrections.⁴⁴

In a policy brief released on June 25, 2012, the Center for Responsible Lending estimated that there were nearly 700,000 California homeowners who were at least 30 days delinquent or in the foreclosure process. According to RealtyTrac's foreclosure data for July 2012, California

ranked highest in foreclosures in the United States.⁴⁵ While not all of those impending foreclosures could have been prevented, this analysis provides insight into the impact of loan modifications on preventing avoidable foreclosures and how many and which California homeowners are at risk. According to the CRL policy brief, homeowners at risk of foreclosure constituted close to 11 percent of all mortgage loans in California, with people of color and middle-income families most likely to be at risk.⁴⁶

Refinancing Legislation

Although the Compact did not make specific recommendations with regard to the ability of borrowers to refinance home loans, this is a critical step in making homeownership accessible to working- and middle-class Americans.

Congress

A bill tracking search showed that some bills were introduced in Congress in 2012 that address refinancing mortgages. The following are examples of proposed legislation:

1. Fairness for Military Homeowners Act of 2012, H.R. 4740, was introduced on April 25, 2012, by Rep. Duncan Hunter (R-CA). Status: Introduced and referred to committee. The following description is provided on GovTrack.us: The bill aims “to amend the Servicemembers Civil Relief Act to ensure that relocation of a service member to serve on active duty away from the servicemember’s principal residence does not prevent the servicemember from refinancing a mortgage on that principal residence.”⁴⁷
2. Expanding Refinancing Opportunities Act of 2012, S. 3047, was introduced on May 9, 2012, by Sen. Dianne Feinstein (D-CA). Status: Read twice and referred to the Committee on Banking, Housing, and Urban Affairs. Stated purpose: A bill to encourage responsible homeowners to refinance mortgages, and for other purposes.⁴⁸
3. Responsible Homeowners Refinancing Act of 2012, S. 3085, was introduced by Senators Robert Melendez (D-NJ) and Barbara Boxer (D-CA) on May 10, 2012. The bill would require Fannie Mae and Freddie Mac to adopt specific criteria relating to borrower eligibility in implementing the Home Affordable Refinance Program (HARP) and would, among other things, raise the “cap” on eligibility to those with at least 20 percent equity in their homes. Status: Committee on Banking, Housing, and Urban Affairs held hearings on the bill.⁴⁹

It is to be hoped that the Obama administration and Congress will make it a priority to take up refinancing legislation.

Allow Mortgages to be Restructured in Bankruptcy

Currently, a loan owed on a primary residence cannot be restructured in bankruptcy. Congress should pass legislation amending the bankruptcy code to allow bankruptcy courts to refinance primary residence mortgages when restructuring debt. This would allow borrowers to potentially keep their homes, while the debt would be restructured to make continuing payments possible.

Overall Status of Recommendation

There has been modest progress overall. No progress was made by Congress to enact legislation that would allow mortgages to be restructured in bankruptcy. The Bankruptcy Equity Act of 2012, H.R. 4058, was introduced in the House on February 16, 2012, by Rep. Earl Blumenauer (D-OR). Status: Introduced and referred to committee. As provided on GovTrack.us, the purpose of the bill is “to amend Title 11

of the United States Code to provide authority to modify certain mortgages on principal residences of debtors to prevent foreclosure; and for other purposes.”⁵⁰ GovTrack.us gave the bill a 1 percent chance of being enacted.

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Ensuring Fair and Sustainable Mortgages

As loan securitization policies and practices shape the extent to which sustainable mortgages are reliably available, equitable reform of the secondary mortgage market is a crucial step to ensuring inclusive, accurate lending.

Specifically, the Compact recommends:

- ▶ Enacting positive reform of government-sponsored enterprises
- ▶ Issuing an accessible definition of qualified residential mortgages (QRM) that preserves access to credit for middle-class families
- ▶ Increasing consumer protections
- ▶ Ensuring consumer readiness
- ▶ Improving credit scoring mechanisms
- ▶ Improving Federal Housing Administration practices and oversight
- ▶ Promoting flexible housing tenures (such as lease-to-own)

Much to the disappointment of fair housing advocates, Congress failed to act on reform of Fannie Mae and Freddie Mac and pass legislation that would, among other things, change the housing finance system to eliminate the dual credit market. In addition, progress was stalled in finalizing a definition of qualified residential mortgages that preserves access to credit for middle-class families. In a positive indicator for enhancing consumer protections, funding for the Consumer Financial Protection Bureau, which is not subject to the Congressional appropriations process, increased significantly from 2011 to 2012 and is also expected to increase in 2013. There was only modest progress made by loan servicers in improving credit scoring mechanisms, as well as modest progress made by states and localities in promoting lease-to-own programs. In a positive development for the enforcement of fair lending practices, the United States Attorney General for the Eastern District of New York reached a \$1 billion settlement with the Bank of America and Countrywide, resolving claims that Countrywide engaged in making loans insured by the Federal Housing Administration to unqualified home buyers.

Enact Positive Reform of Government-Sponsored Enterprises (GSEs)

Congress should pass legislation that will continue government engagement in the secondary mortgage market to support both stability (by ensuring constant and stable funding) and coverage (by ensuring the availability of financing for sustainable loans to all qualified home buyers and owners) in mortgage lending.



Congress

Congress has failed to act on reform of GSEs and was not expected to do so in 2012.

NOTE: Fair housing advocates have come up with recommendations for reform of GSEs. A national coalition of more than 20 civil rights organizations issued a statement of eight guiding principles for secondary market reform, which would provide equal access to mainstream

financial services and affordable rental and owner-occupied housing. These principles include the alignment of federal housing finance policy with, and support of, longstanding federal housing goals to protect against discrimination, and a reformed housing finance system that eliminates the dual credit market.¹ In addition, the Center for American Progress released a report in June 2012 containing detailed comments on the Federal Housing Finance Agency’s draft strategic plan for fiscal years 2013–2017 (as well as calling on Congress and the Obama administration to address several key public policy questions).²

On December 24, 2009, pursuant to Treasury Secretary Timothy Geithner’s authority under the Housing and Economic Recovery Act of 2008, the Treasury Department allocated essentially unlimited funds to keep the GSEs solvent by amending its preferred stock purchase agreements with Fannie Mae and Freddie Mac.³ This support was scheduled to expire in December 2012, after which the funding reverted to the older agreements of \$200 billion total support for each GSE.⁴

Issue an Accessible Definition of Qualified Residential Mortgages (QRM) that Preserves Access to Credit for Middle-Class Families

The Dodd-Frank financial reform legislation requires financial firms to retain five percent of the risk on loans, with the exception of loans designated as “qualified residential mortgages,” or QRMs. QRMs are loans deemed to be low-risk, but the terms are left largely undefined by the legislation and are currently under debate. The definition of QRMs was under consideration by the federal banking agencies, the Securities and Exchange Commission, the Department of Housing and Urban Development, and the Federal Housing Finance Agency. These agencies should issue a definition that does not include prohibitively high down payment requirements because these would disproportionately exclude low- to middle-income borrowers, including many minorities, without significantly reducing risk.

The Executive Branch

There has been regression on this issue overall. Progress was delayed in finalizing the definition of QRM and some pending proposals are troubling. Regulators are considering requiring minimum down payments as part of the QRM standard. The rule proposed by the Treasury Department’s Office of the Comptroller of the Currency, the Federal Reserve, the FDIC, Federal Housing Finance Agency, SEC, and HUD in April 2011 called for a 20 percent down payment.⁵ Even if this were reduced to 10 percent, it would unnecessarily stifle the mortgage market for working- and middle-class Americans (and particularly people of color) who could otherwise be successful homeowners. However, complaints from mortgage industry groups and consumers that the QRM proposal would hurt the housing market delayed the issuance of a final rule. In all likelihood, a rule will be finalized sometime around the Dodd-Frank mandated deadline of January 21, 2013.⁶

The Consumer Financial Protection Bureau (CFPB), together with other federal agencies, is currently developing underwriting guidelines for home loans. The CFPB had originally intended to issue a rule for “qualified mortgages” (QM), outlining what types of loans would be available to most borrowers and providing banks with some level of protection against lawsuits, in the summer of 2012, but it delayed finalizing the rule. The limit or cap for the DTI (debt-to-income) ratio—the ratio of the borrower’s monthly housing payments to the borrower’s monthly income—on qualified residential mortgages has yet to be determined. (One proposal was to limit the mortgage payment to 28 percent of the borrower’s gross monthly income.) The April 2011 proposed regulations outlined new standards for these high-quality mortgages that would be exempt from new requirements for banks to retain some of the risk in the sale of mortgage-backed securities.⁷

NOTE: Weighing in on the proposed rule on implementing credit risk retention requirements, an issue brief recently released by the Center for Responsible Lending (CRL) urged regulators to create a QRM standard that balances the need to prohibit dangerous loan features with fair access to safe affordable loans for creditworthy borrowers. Citing data from a study by the University of North Carolina’s (UNC) Center for Community Capital and CRL, the brief argued that “the high costs of a 10 percent down payment requirement far outweigh the sparse marginal benefits.” Examining a large sample of mortgages originated between 2000 and 2008, the UNC/CRL study demonstrated that although a 10 percent down payment requirement would have reduced the default rate from 5.8 percent to 4.7 percent, it would have locked 30 percent of all borrowers out of the market and excluded nine borrowers who are current in their mortgage payments for every foreclosure it would have excluded. The study also found that a 10 percent down payment standard would have particularly affected communities of color because 60 percent of African-American borrowers and 50 percent of Latino borrowers who are successfully paying their mortgages would have been excluded from the mainstream mortgage market. Thus, the UNC/CRL study concluded that lower- and middle-income families who could be successful homeowners would be locked out of the lower-cost, mainstream housing market, leading to a widening of the wealth disparities that already exist between whites and communities of color.⁸

Increase Consumer Protections

Congress should take steps to provide better consumer protections by supporting robust enforcement of predatory lending and fair housing laws. Adequate funding needs to be provided for the Consumer Financial Protection Bureau, Department of Justice, and other agencies to undertake strong supervision and enforcement of these laws, and Congress should engage in oversight of federal agencies to ensure that they are vigorously enforcing the law.



The Executive Branch

Funding for the Consumer Financial Protection Bureau is not subject to the Congressional appropriations process. The budget of the CFPB is expected to increase in 2013, after seeing an increase of almost 300 percent from 2011 (approximately \$123 million) to 2012 (approximately \$360 million).⁹ This increase would ensure that the CFPB has sufficient resources to supervise and examine consumer financial service providers for compliance with federal consumer financial law.

As for funding for the Department of Justice’s role in the interagency enforcement of predatory lending laws, in its 2013 budget request, DOJ requested a total program increase of \$55 million for its new financial and mortgage fraud enforcement initiative. According to the budget request, this increase would fund economic fraud enforcement efforts, including the work being undertaken by DOJ members of President Obama’s Financial Fraud Enforcement Task Force (FFETF). Of the total \$55 million proposed program increase, \$37.4 million would be used to increase criminal enforcement efforts and \$17.6 million to increase civil enforcement efforts.¹⁰ In anticipation of implementing this new enforcement initiative in the 2013 fiscal year, the Attorney General announced in late January 2012 the establishment of the Residential Mortgage-Backed Securities Working Group, which works across federal law enforcement and regulatory agencies and with state and local partners, to bolster efforts to combat consumer-related fraud, including schemes targeting vulnerable populations.¹¹ This working group, which was formed under the auspices of the FFETF and is supported by existing FY 2012 resources, is leveraging state and federal resources to strengthen existing and future efforts to investigate and prosecute wrongful conduct in the residential mortgage-backed securities market. Also created by the FFETF was the Consumer Protection Working Group.¹²

 *Congress*


Congress did not act on DOJ appropriations for FY 2013 between February and August 2012.¹³

Ensure Consumer Readiness

Many families aspire to homeownership and have the potential to become successful homeowners, but they need help navigating the financial aspects. The federal government can aid in consumer readiness by increasing opportunities for low-income households to save for a down payment. Approaches to this include helping families access savings by increasing the maximum homeownership withdrawal amount for IRAs and other retirement accounts, and facilitating down payment savings by scaling up asset-building programs. This would match savings (up to a capped amount) by low-income households. Congress and states could pass legislation to scale up such programs, which can complement consumer education and counseling initiatives.

 **Overall Status of Recommendation**

There has been no discernible progress.

 *Congress*

Congress took no action to protect or enhance consumer readiness.

NOTE: In its recently released *Assets Report 2012*, the New America Foundation found that whereas the home mortgage interest deduction represents the largest investment in homeownership in the federal budget, lower-income families for whom a home is their greatest asset receive much less support in building assets. Such families include Latino and black households who were hit the hardest during the recession from 2005 to 2009. In the FY 2013 budget, almost \$200 billion is allocated to support homeownership in the form of the mortgage interest deduction, little of which goes to families with low or modest incomes (with the number of returns claiming the mortgage income tax deduction being highest for income groups above \$100K).¹⁴ As an alternative approach that would redirect federal support for homeownership from subsidizing debt to supporting savings, the Foundation proposed offering the option of rental assistance asset accounts in rental assistance programs, which would allow families to divert a portion of their rent into a savings account that could be used for multiple purposes, including a down payment on a home.¹⁵

 *States and Localities*

Although there has been no significant change in states' role in increasing opportunities for low-income potential homeowners, several states, such as Wisconsin¹⁶ and California,¹⁷ have maintained extensive resources to aid their residents.

Improve Credit Scoring Mechanisms

Credit scoring systems should be adjusted to more accurately determine the creditworthiness of borrowers and should be made more transparent. The Consumer Financial Protection Bureau has already taken steps to examine how the scores produced by the consumer reporting agencies are used by lenders and should also research and recommend elements of a consistent, nondiscriminatory, more accurate scoring system. The Federal Housing Finance Agency should ensure that Fannie Mae and Freddie Mac implement this improved system in their underwriting, as should the Federal Housing Administration for the loans it ensures. The CFPB should promote fair scoring systems and be vigilant for violations of the Equal Credit Opportunity Act. Consumer reporting agencies should also be advised to monitor their own practices for discriminatory effects, and revise them as necessary.

Overall Status of Recommendation

There has been only modest progress overall. Banks and mortgage servicers made limited progress in using improved credit scoring criteria, but it is unclear whether the new scoring criteria will help more individuals get mortgages. The CFPB made no progress in proposing elements of a consistent, nondiscriminatory, more accurate credit scoring system.

Banks and Mortgage Servicers

There was only modest progress made by mortgage servicers in using improved credit scoring criteria. One of the major issues in credit scoring is the fact that a foreclosure has a negative impact on an individual's score, yet the scoring models do not address the extent to which mortgage defaults are related to the risky features of the loans that were made, rather than the borrower's behavior. This has a particularly adverse effect on borrowers of color, who were targeted for loans with such risky features and who have experienced foreclosures at higher rates than white borrowers. In light of the huge number of people who have gone through foreclosure, failure to address this problem has significant implications for mortgage lending in the future.

FICO, a credit scoring company, in conjunction with data provider, CoreLogic, has developed a new credit scoring system designed specifically for mortgage lenders, to provide lenders with more confidence in managing risk and homebuyers with more credit for good financial decisions. Validation studies run by FICO found that the scoring was 7.5 times more predictive of loan risk performance than current models. In addition to traditional credit information, variables used include property transaction data, landlord and tenant information, borrower-specific public information, and other alternative credit data. Approximately 25 lenders use this new scoring system as a key component of making decisions on whether to grant loans for private lending and for their own portfolios. This system has not yet been approved for Fannie Mae or Freddie Mac loans. It is unclear whether the new scoring criteria will help more individuals get mortgages.¹⁸

The Executive Branch

There was no progress made by the CFPB, which is the sole agency that now has oversight responsibility. Under Regulation V of the Fair Credit Reporting Act, the CFPB has been tasked with the responsibility of oversight over the credit agencies; however, it has yet to enact any rules. Essentially, the Fair Credit Reporting Act consolidated and streamlined this oversight responsibility to one agency (the CFPB), whereas it used to be managed by many different agencies.

NOTE: In a recent report, the National Consumer Law Center detailed the disproportionate harm caused to low-income consumers in using full utility credit reporting.¹⁹ Under such reporting, many low-income utility customers would receive negative credit reporting marks for a 30- or 60-day late payment during months when utility costs were high, even though they would eventually catch up when expenses were lower. The extent to which this would have an adverse impact on their credit scores is reflected by the fact that a single 30-day late payment damages a credit score by as much as 60 to 110 points. NCLC thus concluded that full utility credit reporting should be prohibited by federal and state policymakers absent a consumer opt-in mechanism.

The direction of credit scoring reform remains hotly debated. For example, in February 2012, the Occupy Wall Street movement issued its recommendation for credit scoring reform, focusing on transparency of criteria and free and unlimited access to scores.²⁰

Improve Federal Housing Administration Practices and Oversight

The role of the Federal Housing Administration (FHA) in making homeownership accessible to working-class Americans, including many families of color, has been a mixed one. Because the FHA will continue to have a role in serving working families, including families of color, it is important to improve FHA policies and practices while ensuring (through effective secondary mortgage market reform) that the FHA does not become the only provider for these communities. The Department of Housing and Urban Development should engage in robust FHA oversight, and the Consumer Financial Protection Bureau and Department of Justice should ensure that FHA-insured loans are fairly and sustainably offered.

The Executive Branch

In February 2012, as part of the national AG settlement, the United States Attorney for the Eastern District of New York announced that the government was filing a \$1 billion settlement—the largest ever False Claims Act settlement—with Bank of America, Countrywide Financial Corporation, and certain Countrywide subsidiaries and affiliates, resolving its claims that Countrywide, once one of the nation’s largest single-family mortgage lenders, engaged in underwriting and origination mortgage fraud. Since 2009, the U.S. Attorney’s Office had been investigating Bank of America’s lending practices to determine whether the bank, through Countrywide, which the bank acquired in 2008, knowingly made loans insured by the FHA to unqualified home buyers.

Under the terms of the consent judgment that was filed with the U.S. District and Bankruptcy Courts of the District of Columbia on April 4, 2012, Bank of America must comply with the new servicing standards under the AG settlement. In addition, the bank was required to make a payment of \$2.38 billion in a settlement amount, approximately \$1.5 billion for cash payments to be made by the settlement administrator to foreclosed borrowers, and \$8.58 billion in relief to existing borrowers.²¹

On March 6, 2012, President Obama announced that the FHA was reducing the up-front premium to 0.01 percent for streamlined refinancing of loans originated prior to June 1, 2009, and cutting in half its annual fee for these refinancings, to 0.55 percent. These reductions could save the typical FHA borrower several hundred dollars per year.²²

NOTE: In a policy brief issued on August 31, 2012, the National Consumer Law Center (NCLC) urged HUD to reform the sale of FHA loans in order to promote sustainable homeownership. Citing the unprecedented numbers of these government- insured loans that were in seriously delinquent status as of April 2012 (9.5 percent of FHA-insured loans were three or more full monthly payments in arrears), NCLC made several recommendations that addressed HUD’s role in supervising private lenders who own FHA-insured loans and HUD’s accountability for dispositions of these loans, including strengthening FHA’s enforcement of its loss mitigation rules.²³

Promote Flexible Housing Tenures (such as lease-to-own)

Lease-to-own programs allow occupants to lease their home for a specified period while a portion of the rent goes toward a down payment. These programs offer a “stepping stone” between renting and buying, and they can be effective tools to rebuild the homeownership market. States and municipalities should expand on existing models for such programs.

Federal agencies can encourage sustainable programs that help people move toward homeownership, such as shared equity and lease purchase models. For example, HUD could provide incentives for such products in federal programs, such as the Community Development Block Grant program. Tax credit programs, administered by Treasury, could also be used for this purpose.

States and Localities

Modest progress was made by states and localities in promoting flexible housing tenures. For example, in an effort to address the devastating effect of the foreclosure crisis on Milwaukee neighborhoods, the city expanded a \$5.8 million tax credit project for renovating vacant foreclosed homes into rent-to-own single-family homes in the city's Near South Side. The project was a partnership among the Layton Boulevard West Neighbors; Impact Seven, a large nonprofit developer of affordable housing in Wisconsin; and Wisconsin Redevelopment.²⁴

NOTE: Citing a study conducted by the Demand Institute, a nonprofit consumer research organization, an article in the *Las Vegas Review-Journal* pointed out that although lease-to-own programs are gaining popularity, many of them have problems because “these contracts may require the renter to pay a higher monthly rent, with the extra money going into a fund toward a later purchase . . . [or] the home to be purchased may not have clear title or the renter doesn't have a realistic chance of getting a mortgage at the end of the option period.”²⁵

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Restoring Neighborhoods

The compound effect of concentrated foreclosures, particularly in minority neighborhoods, results in destabilized communities, damaged property values and tax revenue, and physical deterioration. In addition to addressing individual foreclosures, it is important to address the neighborhood effects, giving due attention to innovative solutions that have been shown to restore areas at risk.

Specifically, the Compact recommends:

- ▶ Supporting creation of land banks
- ▶ Requiring vacant property registration
- ▶ Supporting community development programs
- ▶ Encouraging mixed-use zoning
- ▶ Promoting responsible and productive disposition of Real Estate Owned (REO) properties
- ▶ Modernizing the Community Reinvestment Act

There has been modest progress in the creation of land banks by some states. Localities have taken different but more proactive approaches with regard to requiring registration of vacant foreclosed properties. In an April 2012 investigative report, the National Fair Housing Alliance found a large discrepancy in the maintenance and marketing of foreclosed homes based on the racial composition of neighborhoods.

Support Creation of Land Banks

Land banks offer a productive means of dealing with widespread foreclosures. Properties placed in a land bank are rehabilitated and eventually transferred to homeowners or developers, who return those properties to productive use. Where there is no private market for the properties, they can be donated to the municipality as green space or community gardens. Municipalities should seek to develop land banks where possible. States can help fund land banks and can pass land bank-enabling legislation that facilitates municipalities' abilities to efficiently form and operate land banks.

States and Localities

- ▶ In May 2012, New York Governor Andrew M. Cuomo approved the creation of five land banks.¹ He stated that the creation of land banks is integral to his administration's "urban agenda to help transform our struggling urban communities."² There is similar anecdotal evidence of the relative success of land banks and their efforts to rehabilitate abandoned commercial properties in communities affected by the recent economic downturn (e.g., the Twin Cities Community Land Bank's financial assistance to a local nonprofit to develop a mixed-income housing development in St. Paul, Minnesota).³

Require Vacant Property Registration

Vacant property registration requires owners of vacant properties (such as banks that have foreclosed on mortgages) to register those properties so that they can be held accountable for maintenance. These registration systems, currently required by a number of municipal ordinances, have been successful at the local level and should be expanded into other states and municipalities. This would facilitate neighborhood stabilization by enabling municipalities to hold owners responsible for neglecting properties, and to charge a fee for long-term vacancies. States should pass legislation requiring banks and other federally-regulated financial institutions foreclosing on a home to register the vacant property with the local municipality, and Congress should explore the feasibility of expanding property registration requirements nationwide through legislation. The Federal Housing Administration currently has minimum property maintenance standards for loans it insures, including mold prevention, and should ensure that these are being enforced.

Lenders and servicers should also responsibly maintain the properties they own. As part of this effort, they should contract with diverse, local companies to provide maintenance, security, and other necessary services.

Overall Status of Recommendation

Foreclosed properties owned by banks and servicers have been found to be insufficiently maintained. (See recommendation to banks and servicers on responsibly maintaining REO properties in foreclosure under “Restoring Neighborhoods.”) Municipalities have taken different approaches to registration and other requirements for bank-owned foreclosed properties. In an April 2012 report the National Fair Housing Alliance (NFHA), a fair housing advocacy group, found that although many REO properties are insufficiently maintained, there is also a large discrepancy between the upkeep of the foreclosed homes in white communities and those in communities of color.

States and Localities

In the report “The Banks Are Back—Our Neighborhoods Are Not: Discrimination in the Maintenance and Marketing of REO Properties,” NFHA documented the results of research evaluating banks, lenders, investors, and other entities that manage Real Estate Owned (REO) properties. The evaluations considered 39 different aspects of the maintenance and marketing of each property, “including curb appeal, structure, signage, indications of water damage, and condition of paint, siding and gutters.” Generally, the report indicated that REOs in virtually all communities are insufficiently maintained and that there are large discrepancies in the upkeep of foreclosed homes, depending on the community. Results showed that REOs in communities of color were far less likely to be properly maintained than those in white communities. For example, in the former, REOs were 42 percent more likely to have more than 15 maintenance problems than properties in the latter.⁴

Localities have taken two different positions with regard to foreclosed properties. The first group of cities, such as Oakland, California; Flint, Michigan; Kansas City, Missouri; and Cleveland, Ohio, have expanded registration requirements for bank-owned, foreclosed properties. Oakland, for example, has instituted a blight program that would require banks to register, inspect, and maintain homes that are in foreclosure. Oakland’s new ordinance, which was passed on June 19, 2012, requires banks to inspect vacant and occupied properties that are in default on a monthly basis. The expanded ordinance was promoted by several members of the ReFund CA coalition, which includes nonprofits and the local chapter of the SEIU.⁵

The other group of cities—which most prominently includes Los Angeles, California, and Cleveland, Ohio—have brought suits against the banks themselves in cases where the lenders are on the foreclosed households’ deeds as the lawful owners. In its suit filed in Los Angeles County Superior Court in July 2012, the Los Angeles city attorney’s office accused U.S. Bancorp (US Bank) of becoming “one of the largest slumlords in the city” by allowing hundreds of foreclosed properties to fall into disrepair. In response, US Bank said it is merely the trustee for the houses, not the owner, and that servicers “have the duty to maintain foreclosed properties.” The L.A. city attorney’s spokesman, Frank Mateljan, stated that he thought the lawsuit against US Bank, as well as a suit previously filed against Deutsche Bank in 2011, constitutes a test of the concept that trustees are responsible for maintenance. Such a precedent would be important because trusts are the vehicle through which mortgages are bundled and thousands of now-failed mortgages were bundled and securitized.⁶

On behalf of smaller communities, the National Fair Housing Alliance took similar actions, though under federal law. In April 2012, NFHA filed suits against US Bank⁷ and Wells Fargo & Co.⁸ under the Fair Housing Act in what would be another test for the concept that the trustee may not delegate its fair housing responsibilities to another group.

According to Prentiss Cox, a University of Minnesota law professor and former assistant attorney general of Minnesota, this fight is becoming more local. “There’s a lot of movement to push the local government to become more aggressive on these issues,” Cox said. “We’re down to local actions.”⁹

Support Community Development Programs

Existing community development programs need to be strengthened to effectively stabilize communities. These programs can help both owners and renters retain housing and provide jobs and other public benefits. For example, Congress should increase investment in the Neighborhood Stabilization Program, which provides funding for states and localities to redevelop foreclosed properties; the National Housing Trust Fund, which can help develop and preserve rental housing; and Community Development Block Grants, which can help promote lease-to-own and other programs.

Overall Status of Recommendation

The House passed an appropriations bill for the Departments of Transportation and Housing and Urban Development for 2013, which was pending consideration by the Senate as of August 2012. Congress also did not act on a HUD request for an increase in the allocation of funds to the Community Challenge Planning Grant Program for the new fiscal year.



Congress

In June 2012, after attempts by Republicans to cut approximately nine percent of the \$51.6 billion spending bill for the Departments of Transportation and Housing and Urban Development for FY 2013,¹⁰ the House passed a bill that increased funding for community development grants to local governments. Aimed at clearing “slums,” revitalizing downtowns, and building neighborhood centers, the \$3.3 billion community development grants program will still be left more than \$600 million short of the 2010 budget passed by a Democratic-controlled Congress. Another proposed cut worth mentioning would eliminate a \$150 million program to rehabilitate blighted housing projects.¹¹ The House bill was pending while the HUD funding bill passed by the Senate Appropriations Committee, S. 2322, had not gone to the Senate floor.¹²

In the FY 2013 bill passed by the House on June 29, 2012¹³:


- ▶ \$200 million more (\$1.2 billion) was earmarked for the HOME program than in 2012.
- ▶ \$8.7 billion (\$640 million less than 2012) was set aside for project-based Section 8 funding.
- ▶ \$17.2 billion was earmarked for Housing Choice Voucher renewals, \$257 million less than the Senate Appropriations Committee-passed bill, equal to the Administration's FY 2013 request, and \$4 million less than the FY 2012 funding level.
- ▶ \$3.3 billion was set aside for the Community Development Block Grant (CDBG) program, \$244 million more than the Senate Committee-passed bill and \$396 million more than both the Administration's request and its FY 2012 funding level of \$2.9 billion.¹⁴


Encourage Mixed-Use Zoning

Flexibility in development aids community renewal by providing broader options for land use. Local zoning ordinances that restrict what type of land use is allowed to occur in certain areas (e.g., strictly residential use) can impede this process. Congress should expand the Community Challenge Planning Grant Program run by HUD, which supports municipalities' efforts to create affordable, sustainable communities through mixed-use zoning and other reforms. This would aid community renewal by providing broader options for land use. Municipal governments should consider passing more flexible zoning regulations that allow for more mixed-use zoning. This would help facilitate the conversion of foreclosed and abandoned housing to other potential neighborhood stabilization uses, and has other benefits such as creating more pedestrian-friendly neighborhoods.

Overall Status of Recommendation

HUD requested an increase in the allocation of funds by Congress to the Community Challenge Planning Grant Program for FY 2013. As of August 2012, Congress has not acted on this request. We were unable to identify any action taken by state and local governments.

 *Congress*
In 2011, roughly \$30 million was allocated to the Community Challenge Planning Grant Program for FY 2012. In its FY 2013 budget, HUD requested that that number be increased to roughly \$46 million.¹⁵ Congress has not acted on that request.

 *States and Localities*
We were unable to identify any action on this front by state or local entities since the Compact was released.

Promote Responsible and Productive Disposition of Real Estate Owned (REO) Properties

Nonprofit organizations can redevelop foreclosed properties and return them to productive use, including as affordable housing for sale or rent. In addition to stabilizing neighborhoods by preventing vacancies, this can provide badly needed affordable housing. However, these organizations are likely to encounter barriers in this process, including lenders and servicers who are unresponsive or unwilling to negotiate prices, and financial challenges with property maintenance and restoration. Banks should keep the properties in good, safe condition, and should consider selling the properties at a fair price to community

organizations and nonprofits. HUD's Neighborhood Stabilization Program provides some support for real estate owned property redevelopment, and Congress should authorize increased funding for this area.

Overall Status of Recommendation

No action has been taken by Congress, although it should be noted that Senator Reed introduced a bill in the Senate in March 2012 called the Project Rebuild Act, which was pending as of August 2012.

As a result of the federal Neighborhood Stabilization Program, states and localities have increased or started successful efforts at acquiring and rehabilitating vacant properties. In the April 2012 investigative report by the National Fair Housing Alliance (NFHA), one of its findings was that some banks market REO properties in communities of color as "foreclosures" or "distressed sales" or don't market them at all. As a result, such properties linger on the market longer and are more likely to be sold to investors instead of owner-occupants. NFHA recommended that banks be responsible for improving their maintenance and marketing policies and practices and making sales to owner-occupants a priority.¹⁶

Banks and Mortgage Servicers

We were unable to identify any progress by banks in their marketing practices with respect to REO properties.

Congress

In March 2012, Sen. Jack Reed (D-RI) introduced the Project Rebuild Act, S. 2162, providing for the redevelopment of abandoned and foreclosed properties. The bill was introduced and referred to committee on March 6, 2012.¹⁷

The Executive Branch

In September 2011, in response to a Request for Information by FHFA and HUD on how to dispose of an inventory of REO foreclosed homes, the Foreclosure Prevention and Neighborhood Stabilization Task Force, a cross-industry group of local and national organizations working to address the impacts of the foreclosure crisis on communities, issued a set of principles for the responsible disposition of REO properties. These principles include having REO property disposition complement and build on existing Neighborhood Stabilization Program (NSP) strategies, and the federal government requiring bulk acquirers to manage responsibly the entire portfolio acquired, which can include renovation, conversion to rental, disposition, or demolition, but cannot include abandonment or neglect.¹⁸

In April 2012, the Federal Reserve Board (FRB) issued a policy statement on the rental of residential foreclosed properties owned by lenders (also known as real estate owned or "REO" properties), including single-family homes, reminding banking organizations and examiners that they are allowed to rent REO properties to third-party tenants and they should make good-faith efforts to dispose of such properties at the earliest practicable date. In the section of the policy statement addressing specific expectations for large-scale residential REO rentals, the FRB indicates that banking organizations with large inventories of REO properties should have formal policies and procedures in place. These include processes for determining whether the properties are meeting local building code requirements and are otherwise habitable and whether improvements are needed in order to market them for rent, and policies and procedures that establish operational standards for the organizations' rental activities, including that "expenditures on improvements are appropriate to the value of the property and to prevailing norms in the local market."¹⁹

As noted above, the National Fair Housing Alliance’s April 2012 report found that whereas REO properties are insufficiently maintained in virtually all communities, there is a large discrepancy between the upkeep of the foreclosed homes in white communities and those in communities of color, which were much less well maintained.²⁰

In light of NFHA’s investigation findings, the Federal Reserve Board revised its guidance to banks on their treatment of REO properties, including questions specifically relating to compliance with fair housing laws. In a question on the steps that institutions should take to comply with existing laws protecting tenants, the FRB stated that they should “have controls in place to comply with all federal, state, and local laws related to protecting the rights of tenants, including the federal Protecting Tenants at Foreclosure Act of 2009 (CA letter 09-5), Servicemembers Civil Relief Act (CA letter 05-3), the Fair Housing Act, and the Americans with Disabilities Act.” In addition, the guidance cites “first look” programs as an example of incentives for institutions to sell residential REO properties to owner-occupants and groups involved in neighborhood stabilization efforts before considering selling to investors. Such programs give prospective homeowners a brief exclusive opportunity to purchase bank-owned properties in certain neighborhoods so that these homes can be rehabilitated, rented, resold, or demolished.²¹


States and Localities

Modest progress has been made. According to the Center for Housing Policy’s website at www.foreclosure-response.org, several states and localities have increased, or in some cases begun, efforts to acquire and rehabilitate vacant properties as a result of the federal Neighborhood Stabilization Program (NSP). NSP’s three rounds of funding from 2008 through 2010 placed close to \$7 billion into the hands of states, localities, regional consortiums, and nonprofit organizations to acquire, rehabilitate, land bank, or demolish foreclosed properties.²² As a resource for states and municipalities seeking NSP funds, the National Housing Conference, in partnership with Enterprise Community Partners and NeighborWorks America, produced a handout with examples from across the United States of how NSP funds are helping to develop and revitalize some of the country’s hardest hit communities.²³

NOTE: A report released in June 2012 by the Urban Strategies Council provided new details on the massive transfer of wealth in post-foreclosure Oakland, California, from local homeowners to out-of-town speculators. The report revealed that individuals and families are rarely able to bid on properties at trustee sale auctions, where companies pay cash for properties. However, families have demonstrated a significant demand for affordable homeownership opportunities through purchases of foreclosed properties directly from banks (i.e., 55 percent of the REO properties sold by banks were purchased by individuals and families). The report found that these individuals and families were six times more likely than investors to retain ownership of their foreclosure acquisitions, suggesting the stabilizing effect of owner-occupancy in struggling neighborhoods.²⁴

Modernize the Community Reinvestment Act

The Community Reinvestment Act (CRA) requires federally insured banks and thrifts to offer credit to qualified borrowers throughout the neighborhoods from which they take deposits, and rates those institutions on the basis of their lending performance in those neighborhoods. This has helped reduce discriminatory credit practices (“redlining”) that have historically excluded low-income communities. Congress should revise and expand the CRA to apply to a broader array of institutions, with a more nuanced rating system.



Congress

There have been no material changes to the Community Reinvestment Act since the Compact was released.

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Rebuilding Economic Security

Rising foreclosures have resulted in mass evictions, in which entire communities suffer. Families that have been displaced or even left homeless will have damaged credit and few options for the future. Programs designed to stabilize occupancy help to keep neighborhoods intact and homes occupied, and give residents a foothold to help them rebuild their lives during a time of economic turbulence.

Specifically, the Compact recommends:

- ▶ Expanding owner re-sale seed capital programs
- ▶ Expanding own-to-rent programs
- ▶ Making the Protecting Tenants at Foreclosure Act permanent, with a private right of action
- ▶ Expanding homelessness prevention programs
- ▶ Providing credit protection for former owners

Congress made no progress in enacting legislation to expand owner re-sale programs. There has been mixed progress with regard to own-to-rent (or sale-leaseback) programs that allow former homeowners to stay in their homes and rent after foreclosure, with some banks launching own-to-rent pilot programs and Fannie Mae introducing a pilot “Rehab-to-Rent” program in early 2012. Although Congress did not act to make the Protecting Tenants at Foreclosure Act permanent, California enacted the “Homeowner Bill of Rights,” allowing distressed tenants to stay in their homes. Congress did not act on the Department of Housing and Urban Development’s request for \$286 million for the Emergency Solutions Grant program for 2013. Access to credit remains a major problem for potential homebuyers and former homeowners.

Expand Owner Re-Sale Seed Capital Programs

Owner re-sale programs involve a third party that purchases a foreclosed property and re-sells it to the former owner at a reasonable price, as in Boston Community Capital’s SUN program. Such local-level efforts would benefit from Congressional involvement to bring them to scale through new legislation and investment that would support expansion of the BCC model. In a positive step, the Treasury Department recently issued guidance allowing nonprofits to buy properties through a short sale and convey them back to former owners. Other nonprofits, with the support of foundations, can seek to expand on the BCC model and build additional owner re-sale programs.

Overall Status of Recommendation

While Congress did not enact any measures to expand owner re-sale programs, the Federal Housing Finance Agency recently announced next steps in its pilot initiative to promote the sale of real estate owned (REO) properties.

The Executive Branch

The Federal Housing Finance Agency announced in July 2012 the next steps in its real estate owned (REO) pilot initiative, which promotes the sale of REO properties to investors. The winning bidders have been chosen to purchase approximately 2,500 single-family Fannie Mae foreclosed properties. This initiative, developed by FHFA in conjunction with the Department

of Treasury, HUD, the Federal Deposit Insurance Corporation, the Federal Reserve System, Fannie Mae, and Freddie Mac, is a result of evaluating the numerous responses to the Request for Information on how to sell REO properties of Fannie Mae, Freddie Mac, and the Federal Housing Administration.¹

Congress

No federal legislation has been enacted to expand owner re-sale programs.

Expand Own-to-Rent Programs

Own-to-rent (or sale-leaseback) programs allow former homeowners to stay in place and rent their residence after foreclosure. This allows owners facing foreclosure to avoid displacement and maintain family and neighborhood stability. The National Community Reinvestment Coalition and the Center for Economic and Policy Research have recommended a residential sale-leaseback arrangement called the “Right to Rent” plan, in which an investor purchases a property and immediately rents it to the previous owner. Congress, states, and localities could implement such plans by passing legislation that would give former owners the right to remain in their homes at market rate rent for a significant length of time. While Fannie Mae and Freddie Mac currently have small own-to-rent programs in place, they should expand these programs to cover a larger number of mortgages.

Overall Status of Recommendation

Some banks have launched own-to-rent pilot programs, but Congress has not taken action to expand the practice. Fannie Mae introduced a pilot program, known as “Rehab-to-Rent,” in early 2012, which appears promising. At present, these programs have not yet been taken up by state or federal governments.

Banks and Mortgage Servicers

Some banks have begun pilot own-to-rent programs. In March 2012, it was announced that Bank of America would be starting the “Mortgage to Lease” program, which would be available to fewer than one thousand of their customers in just three states: Arizona, Nevada, and New York.² In what would essentially be a “soft foreclosure,” the low-equity owners would transfer their home’s title to the bank, which would then forgive outstanding mortgage debt. In Bank of America’s scheme, the participants would be allowed to remain in their homes for three years before, presumably, the bank would be free to sell the property and evict the owners.³ In addition, CitiMortgage announced in early August that it would be launching a Home Rental Program, which was developed by CitiMortgage, Carrington Capital Management, and Carrington Mortgage Services, a company that specializes in servicing distressed residential real estate assets. Created as an alternative to foreclosure, this pilot program was designed to allow eligible borrowers to stay in their homes by entering into deed-for-lease home agreements and establishing leases. Beginning in August 2012, the program was going to be tested and evaluated for its effectiveness in the following six states, most of which were severely affected by the housing crisis: Arizona, California, Texas, Florida, Nevada, and Georgia. Although lease payments were to be determined by local market rates, it was anticipated that they would be lower than the borrower’s current mortgage obligation.⁴

Congress

Congress did not enact any new programs using the own-to-rent formula.

The Executive Branch

Fannie Mae and Freddie Mac did not expand their own-to-rent programs. However, there has been some progress—namely the “Rehab-to-Rent” program introduced by Fannie Mae in early 2012. Unfortunately, Freddie Mac has not followed suit.

In March 2012, Fannie Mae began a pilot program that has been unofficially labeled “Rehab-to-Rent.” While not exactly an Own-to-Rent program, in many ways it is similar—especially by enabling families in foreclosed homes to remain in those homes, thus fostering community stability. The pilot offers pools of Fannie-reposessed homes—most of which are already occupied with tenants, who will remain in the properties—to eligible investors looking to rent them out for a certain period. The goal is to stabilize communities that have many foreclosed or reposessed buildings on the market. In doing so, Fannie Mae hopes to expand the affordable rental market, thus providing further stability for low-income families.

Investors and nonprofit groups will be able to bid on homes in eight locations: Los Angeles and Riverside, California, which account for approximately 23 percent of the units being marketed; Atlanta (21 percent); southeast Florida (15 percent); Phoenix (14 percent); Las Vegas (9 percent); Florida’s west coast (7 percent); central and northeast Florida (7 percent); and Chicago (4 percent). Investors not only will be able to submit bids on the entire portfolio of properties, but also will be able to submit offers on all of the properties in any given market.⁵

A program that closely resembles this initiative was originally conceived—and recommended by—the Center for American Progress (CAP). Thus far, CAP believes that Fannie Mae’s program has been successful in meeting three out of CAP’s six key benchmarks: (1) tailor strategy to the specific needs and market conditions of the community; (2) ensure bidders have a track record and viable plans to rehabilitate and rent the units; and (3) acquire properties for Rehab-to-Rent in a manner that will maximize long-term returns to taxpayers and stabilize housing markets. In evaluating the “Rehab-to-Rent” program based on all six of the benchmarks, CAP is monitoring, and reserving judgment on, whether the program will meet the following three benchmarks: (1) expand the affordable rental housing market; (2) provide incentives to property owners to properly maintain and improve the properties; and (3) ensure that adequate measures are in place to monitor compliance with program requirements for rehabilitation, affordability, and hold periods.⁶

States and Localities

States did not act to pass laws that would allow former homeowners to rent their residence post-foreclosure.

Make the Protecting Tenants at Foreclosure Act Permanent, with a Private Right of Action

Renters suffer from foreclosure too. As rental properties are transferred among owners, evictions and poor building maintenance often result. Renters in foreclosed properties are protected from eviction by the Protecting Tenants at Foreclosure Act (PTFA), passed in 2009 and effective through 2014. The Act provides that tenants may see out the term of their lease and that 90 days’ notice must be provided before eviction. The PTFA needs to be made permanent and strengthened, including with a private right of action for tenants to enforce it. Additionally, foreclosed properties owned by Fannie Mae are subject to a Tenant-in-Place policy, which allows renters to remain in occupancy. Renters currently have some degree of protection under the federal PTFA, but states and localities should also pass laws protecting tenants and notifying them of their rights during foreclosures.

Overall Status of Recommendation

Congress has not acted to make the Protecting Tenants at Foreclosure Act permanent. However, California has enacted the “Homeowner Bill of Rights,” which would help distressed tenants remain in their homes.⁷

Congress

In December 2011, Representative Keith Ellison (D-MN) introduced the Permanently Protecting Tenants at Foreclosure Act of 2011, H.R. 3619, which would make permanent the Protecting Tenants at Foreclosure Act and establish a private right of action to enforce compliance with the law. This bill has made no progress since it was introduced and referred to committee, and GovTrack.us has given it a 1 percent chance of being enacted.⁸

States and Localities

As part of the California Homeowner Bill of Rights legislative package, one of the bills that was approved by the Governor separately on September 25, 2012 provides increased protections for tenants in foreclosed homes. These protections include the requirement that the resident of a property upon which a notice of sale has been posted be advised that, if the individual is renting the property, the new owner can either give the tenant a new lease or rental agreement, or provide the tenant with a 90-day eviction notice.⁹

Expand Homelessness Prevention Programs

Congress can help prevent homelessness among displaced households by expanding federal grant programs. In particular, Congress should invest in the Emergency Solutions Grants administered by HUD, which provide funding to local governments and nonprofits to operate transitional housing and shelter programs and to help prevent homelessness.

Congress allocates funding to the Emergency Solutions Grants program, which replaced the Emergency Shelter program as of January 4, 2012, on an annual basis. Although federal stimulus money for state homeless prevention and rapid re-housing (housing relocation and stabilization services and rental assistance) programs established by local governments expired on June 30, 2012, many localities have reported success with the program and some municipalities such as Durham, North Carolina, are even using city funding to extend the life of these programs.¹⁰

The Executive Branch

In connection with the Community Planning and Development Homeless Assistance Grants (HAG) portion of HUD’s 2012 budget submission/proposal (issued before Congress finalized the budget allocations), HUD submitted a “2012 Summary Statement and Initiatives” report outlining the status of HAG and new federal initiatives as well as a breakdown of the President’s proposed budgets. The report explains and outlines the various programs that fall within HAG. The Emergency Solutions Grants (ESG) program, as authorized by the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH), is allocated as a percentage of the overall HAG appropriation.

With regard to ESG, the report states: “The 2012 [President’s] Budget requests \$286 million for ESG, \$126 million more than was funded in fiscal year 2010 and \$86 million more than the 2011 Budget request . . . [T]his amount does not fully fund HEARTH as authorized. The HEARTH Act requires 20 percent of total appropriations to be set-aside for ESG. HUD is requesting a significant increase to ESG but not the full 20 percent.”¹¹ In its report accompanying the FY 2013 appropriations bill for the Departments of Transportation and Housing and

Urban Development and related agencies (H.R. 5972), which is currently pending, the House Appropriations Committee allocated to ESG the full amount of HUD's \$286 million request.¹²

Secretary of Veterans Affairs Eric Shinseki announced on July 17, 2012, that nearly \$100 million in grants would be awarded to homeless and at-risk veterans. "These grants will help VA and community organizations reach out and prevent at-risk Veterans from losing their homes," Shinseki's office said.¹³

Provide Credit Protection for Former Owners

Many former homeowners have badly and unfairly damaged credit following foreclosures at a time when they are struggling to rebuild their lives. Tight credit has many ramifications, meaning that people may no longer be able to make simple, necessary transactions. The Federal Housing Administration and Veterans Administration should offer "second chance" loans, designed to help borrowers repair their credit.

Overall Status of Recommendation

"Tight credit" remains a major problem for potential homebuyers, many of whose credit ratings are well above the score of 660, considered "subprime." This has resulted in far fewer mortgages being awarded, and an increasing number of those actually securing them having perfect or near-perfect credit. According to a 2012 Morgan Stanley report, "[A]ccess to credit for borrowers with less than spotless credit is severely limited," and a "good chunk" of American households "are cut off from mortgage credit on this count alone." According to a prominent mortgage banker, a good deal of the difficulty has to do with stringent regulations put in place by Washington after the housing crash.¹⁴

The Executive Branch

Hopes have dwindled for Federal Housing Administration and Veterans Administration "second chance" loans to help solve the problem. Although conventional mortgages require a slightly larger down payment, they are still seen as more attractive to homebuyers because of less red tape.¹⁵

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Fostering Fair Housing

Research and experience show that, despite the progress we've made as a nation toward equal opportunity for all, housing and lending discrimination continue to be significant problems, and contributed substantially to the financial meltdown and housing crisis. Inadequate fair housing and lending protections, particularly in the use of federal funds, exacerbated the harm to communities of color, and to the economy as a whole. In addition, longstanding problems of residential segregation and structurally unequal barriers continue to hamper home opportunity for millions of Americans.

Specifically, the Compact recommends:

- ▶ Strengthening fair housing regulations
- ▶ Improving coordination of equal opportunity enforcement among federal agencies, state and local governments
- ▶ Developing robust Consumer Financial Protection Bureau regulations
- ▶ Incentivizing inclusionary zoning

There has been modest progress in fostering fair housing and lending, mostly in the form of anti-discrimination settlements and lawsuits led by the Justice Department and the gradual ramp-up of the Consumer Financial Protection Bureau. But despite a promising proposed rule from the Department of Housing and Urban Development (HUD) on disparate impact discrimination, it is anticipated that HUD will fail to finalize any fair housing regulations before the election. The Treasury Department has similarly failed for yet another year to promulgate regulations enforcing the Fair Housing Act of 1968 or the Civil Rights Act of 1964.

Strengthen Fair Housing Regulations

Overall Status of Recommendation

There has been mixed progress in strengthening fair housing regulations. The U.S. Department of Housing and Urban Development has not taken any action on the disparate impact rule that it proposed in November 2011, nor has the agency issued regulations affirmatively furthering fair housing in federal housing and community development programs. The Treasury Department has similarly failed to promulgate rules implementing either the Fair Housing Act of 1968 or the Civil Rights Act of 1964. In a positive development, the Federal Reserve Board revised its guidance to banks on their treatment of REO properties, including specific guidance on compliance with fair housing laws. For its part, the Consumer Financial Protection Bureau announced in April 2012 that it would pursue enforcement actions against discriminatory lenders.

The Executive Branch

On November 16, 2011, the U.S. Department of Housing and Urban Development published a proposed rule regarding disparate impact discrimination under the Fair Housing Act.¹ The proposed rule contained important elements and was particularly critical in light of a recently settled Supreme Court case that would have considered the viability of disparate impact under the Act. Unfortunately, however, HUD was not expected to finalize the rule before the 2012 elections. In addition, HUD failed to issue long-awaited regulations implementing the Fair Housing Act's mandate that federal housing and community development programs affirmatively further fair housing.

The Treasury Department similarly failed to promulgate regulations or other rules implementing either the Fair Housing Act of 1968 or the Civil Rights Act of 1964, more than four decades after those statutes were enacted.

On a positive note, the Federal Reserve Board (FRB) revised its guidance to banks on their treatment of other real estate owned (REO) properties, including questions specifically relating to compliance with fair housing laws. In a question on the steps that institutions should take to comply with existing laws protecting tenants, the FRB stated that they should “have controls in place to comply with all federal, state, and local laws related to protecting the rights of tenants, including the federal Protecting Tenants at Foreclosure Act of 2009 (CA letter 09-5), Servicemembers Civil Relief Act (CA letter 05-3), the Fair Housing Act, and the Americans with Disabilities Act.”²

For its part, the Consumer Financial Protection Bureau (CFPB) issued a press release on April 18, 2012, entitled “Consumer Financial Protection Bureau to pursue discriminatory lenders,” announcing that it would use all legal avenues, including disparate impact, to pursue discriminatory lending and better equip consumers with tips for spotting signs of discriminatory practices.

“We want consumers to avoid the marketplace’s silent pickpocket—discrimination,” said CFPB Director Richard Cordray. “We cannot afford to tolerate practices, intentional or not, that unlawfully price out or cut off segments of the population from the credit markets. That’s why the CFPB is educating consumers about their fair lending rights and pursuing lenders whose practices are discriminatory.”³

The CFPB also issued a compliance bulletin reaffirming its commitment to the Equal Credit Opportunity Act (ECOA) and monitoring discriminatory practices.⁴

Note: The Consumer Financial Protection Bureau provides internal guidance to its supervisory staff on how the CFPB will supervise and examine consumer financial service providers in a manual that employs the FFIEC Interagency Fair Lending Examination Procedures.⁵

Congress

Congress passed no new legislation, nor did it conduct oversight hearings, regarding fair housing or fair lending.

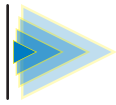
States and Localities

We identified no new state or municipal laws or regulations protecting fair housing or addressing lending discrimination.

Improve Coordination of Equal Opportunity Enforcement Among Federal Agencies, State and Local Governments

Overall Status of Recommendation

As noted, HUD squandered an important opportunity to better coordinate federal fair housing efforts by failing to promulgate final regulations on affirmatively furthering fair housing or disparate impact discrimination. Nor did Treasury issue civil rights regulations. Nonetheless, there has been significant progress regarding the coordination of equal opportunity enforcement, as well as major enforcement actions by the U.S. Department of Justice. State and local governments have also made modest progress in this area.



The Executive Branch

Despite the lack of new HUD or Treasury civil rights regulations, federal agencies made significant progress in the coordinated enforcement of anti-discrimination laws relating to housing and credit. Agencies, including HUD and the Department of Justice (DOJ), continue to coordinate their enforcement efforts under the Fair Housing Act and anti-discrimination laws. In addition, the establishment of an interagency Financial Fraud Enforcement Task Force by the Obama administration in November 2009 was a sign of progress in this area.

Working in conjunction with other federal agencies and state attorneys general, DOJ recently reached settlements in several major cases involving allegations of discrimination in housing and lending. These include:

1. The May 31, 2012 settlement of a \$21 million lending discrimination lawsuit filed by DOJ, following a referral by the Federal Reserve's Board of Governors, against SunTrust Mortgage, the mortgage lending subsidiary of SunTrust Bank, the country's eleventh largest commercial bank;⁶
2. A July 12, 2012 \$175 million settlement filed by DOJ to resolve allegations that Wells Fargo Bank, the largest residential home mortgage originator, engaged in a pattern or practice of discrimination against African-American and Hispanic wholesale borrowers in its mortgage lending from 2004 through 2009, following a referral by the Office of the Comptroller of the Currency, which conducted a parallel investigation of the bank's lending practices;⁷ and
3. The August 28, 2012 settlement of a \$3.5 million lending discrimination lawsuit filed by DOJ and the U.S. Attorney's Office for the Southern District of New York against GFI Mortgage Bankers Inc., a large home mortgage company that concentrates on the New York, New Jersey, and Florida markets.⁸

These cases built on the Justice Department's \$335 million settlement of lending discrimination charges against Countrywide Financial Corp., the largest residential fair lending settlement in history, filed in December 2011.⁹

The settlements were part of ongoing efforts to coordinate the investigation and prosecution of financial crimes by the Financial Fraud Enforcement Task Force,¹⁰ which includes representatives from a broad range of federal agencies, regulatory authorities, inspectors general, and state and local law enforcement (including several Department of Justice components; the Departments of Treasury, Housing and Urban Development, Commerce, Labor, and Homeland Security; the Securities and Exchange Commission; the Commodity Futures Trading Commission; the Federal Deposit Insurance Corporation; the Federal Home Finance Agency; the Financial Crimes Enforcement Network; the Federal Reserve Board; the Federal Trade Commission; the Internal Revenue Service–Criminal Investigation; the Office of the Comptroller of the Currency; the Office of Thrift Supervision; the Recovery Accountability and Transparency Board; the Special Inspector General for the Troubled Asset Relief Program; and state attorneys general).

The Task Force was directed to focus on the full range of wrongful conduct that occurred during the financial crisis including, among other things, securities and commodities fraud, bank fraud, mail and wire fraud, mortgage fraud, discrimination, and other financial crimes and violations. Under the Executive Order, the task force has a mandate, using the criminal and civil enforcement resources of the federal government, to pursue the following five-part mission: 1) to investigate and prosecute financial crimes and other violations relating to the current financial crisis and economic recovery efforts; 2) to recover the proceeds for such crimes and violations; 3) to address discrimination in the lending and financial markets; 4) to

enhance coordination and cooperation among federal, state, and local authorities responsible for the investigation and prosecution of financial crimes and violations; and 5) to conduct outreach to the public, victims, financial institutions, nonprofit organizations, state and local governments and agencies, and other interested partners to enhance detection and prevention of financial fraud schemes.¹¹

In another important example of inter-agency coordination around fair housing and lending, a federal monitor filed a motion in July 2012 to compel New York state's Westchester County to provide information about local zoning practices that might be racially discriminatory, for purposes of enforcing a civil rights agreement that required Westchester County to analyze barriers to fair housing.¹² Under this agreement, originally reached in August 2009, the county had committed itself to promoting legislation that prohibited housing discrimination based on a family's source of income.¹³ A range of housing experts and independent media outlets had reported on Westchester's failure to comply with the terms of that agreement.¹⁴

Congress

Congress enacted no new legislation regarding the coordination of equal opportunity enforcement.

States and Localities

There have been only a few recent instances of state agencies pursuing fair housing and fair lending enforcement under the federal Fair Housing Act or state fair housing and fair lending laws. Using the Pennsylvania Human Relations Act (PHRA), for example, the Pennsylvania Human Relations Commission (PHRC) investigated a complaint brought by individuals who were personally liable for commercial loans against a finance company and its president, alleging that the company discriminated against them based on their race in the terms and conditions of loans and of real estate-related transactions. The PHRC found that the complainants had proved unlawful discrimination under the PHRA and issued an order requiring that the company cease and desist from discriminating against clients because of their race, directing the petitioners to pay money damages to the clients and directing the petitioners to provide employees with training in nondiscriminatory practices. The Commonwealth Court of Pennsylvania affirmed the Commission's order.¹⁵

Develop Robust Consumer Financial Protection Bureau Regulations

Overall Status of Recommendation

There has been modest progress in this area, with the CFPB beginning to ramp up its regulatory activity.

The Executive Branch

As noted, the CFPB also issued a compliance bulletin reaffirming its commitment to the Equal Credit Opportunity Act (ECOA) and monitoring discriminatory practices.¹⁶ More broadly, the implementation of CFPB rules has been slow; the agency was created nearly two years ago. The bureau has been relatively slow in its rollout of finalized rules geared toward protecting consumers. Nonetheless, the CFPB has been active in some spheres, which is worth highlighting below.

In June 2012, the CFPB launched the Consumer Complaint Database. The database is a searchable collection of complaints received by the CFPB against certain credit card companies, the goal presumably to provide greater accountability of credit card agencies and greater knowledge for consumers.¹⁷ In May 2012, the CFPB proposed new rules intended to simplify mortgage points and fees. These rules include a proposal to require that any discount point must be "bona fide," meaning that consumers must receive at least a certain minimum

reduction of the interest rate in return for paying the point; such a change can ensure lower mortgage payments. Additionally, the proposal would ban variable “origination points” in favor of “flat origination points,” which would address an issue often confusing to consumers. The proposal would also set certain qualification and screening standards for loan originators. The CFPB hoped to finalize the rules by January 2013.¹⁸ In April 2012, the CFPB reaffirmed that it would hotly pursue discriminatory lenders, and issued a tips bulletin to help consumers avoid discriminatory lending.¹⁹

All signs indicate that this newly formed agency is using innovation to attack the issue. The focus appears to be on using technology (such as the database referred to above) to gather information and communicate it to consumers easily and directly. For example, the Agency recently created a “Design & Technology Fellowship” aimed at young developers and graphic designers, intended to attract talent to the CFPB to develop new, efficient technologies. The Fellowship is advertised as the intersection of government and start-up.²⁰

In August 2012, the CFPB issued a series of proposed rules addressing the servicing of mortgage loans. These rules are designed to protect homeowners from being adversely affected by costly surprises and getting the runaround from their mortgage servicers.²¹ Comments were due on or before October 9, 2012, and the CFPB planned to finalize the rules by January 2013.

Incentivize Inclusionary Zoning

Overall Status of Recommendation

The federal government has made modest progress in incentivizing inclusionary zoning while state courts have invalidated several instances of exclusionary zoning ordinances that posed obstacles to fair housing.

The Executive and Judicial Branches

As noted above, in July 2012, a federal monitor filed a motion to compel Westchester County to provide information about local zoning practices that might be racially discriminatory, for purposes of enforcing a civil rights agreement that required Westchester County to analyze barriers to fair housing. Under this agreement reached in August 2009, the county committed itself to promoting legislation that prohibited housing discrimination based on a family’s source of income.

In a long-running legal battle over fair housing options in Baltimore, in August 2012 the U.S. Department of Housing and Urban Development and the city of Baltimore’s housing department filed a proposed settlement agreement of a class action in *Thompson vs. HUD*,²² brought by public housing residents. The conditions of the agreement included the continuation of the Baltimore Housing Mobility Program, which voluntarily places public housing tenants throughout the city or in the suburbs. Started in 2003, the program has helped more than 1,800 families move to new areas; the agreement would fund vouchers and counseling for up to 2,600 additional families over seven years. The next step is for the U.S. District Court judge to review the proposed settlement agreement and hold a hearing.²³

Congress

Congress took no new action to foster inclusionary zoning or discourage exclusionary zoning.

States and Localities

There are indications of modest progress by some municipalities and state courts on this front. Earlier in 2012, for example, some of the first apartments and condominiums subject to inclusionary zoning (IZ) laws in Washington, D.C., began to hit the market, as detailed by Emily Washington and Stephen Smith.²⁴ An earlier article about the District of Columbia’s

inclusionary zoning program, which began in 2009, indicates its growing scale and potential impact:

As of 2011, the DC housing market's strong recovery is in full swing. The third annual report on IZ notes that DC's overall development pipeline is going gangbusters with permits to build 4,726 units issued in 2011, which far exceeds 2010's total of 1454 units, and is nearly double the number of residential building permits issued during the last peak year of 2005.²⁵

In New Jersey, a state appeals court invalidated the policy of a state agency, the Council on Affordable Housing, which allowed municipalities to pass zoning ordinances that excluded families working in entry-level jobs.²⁶

There was at least one instance of regression at the municipal level, however: On July 11, 2012, the Santa Clara County Superior Court declared invalid the City of San Jose's inclusionary housing ordinance, citing the City's failure to provide "a legally sufficient evidentiary showing to demonstrate justification for the ordinance's exactions of privately subsidized homes or substantial fees in lieu of such housing exactions."²⁷ The judgment enjoined the city from enforcing the inclusionary housing ordinance. Recent court decisions have made more explicit the constitutional requirements for demonstrating justification for these ordinances and a "nexus" between "development exactions and alleged development impacts."²⁸

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Conclusion

With the 2012 elections concluded and the major decision makers set, now is the time to aggressively pursue home opportunity for all Americans. At all levels of government and in the private sector, the *Compact for Home Opportunity* offers effective solutions for achieving that goal. While important aspects of the Compact have been adopted in many places, significant work remains to move from an enduring crisis to a rapid and robust recovery.



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