

INCOMING!!!!

Mortgage Servicing Under Fire



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NOTE

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$_____ (this amount is called "Principal"), plus interest, to the order of the Lender. I will make all payments under this Note in the form of cash, check or money order.

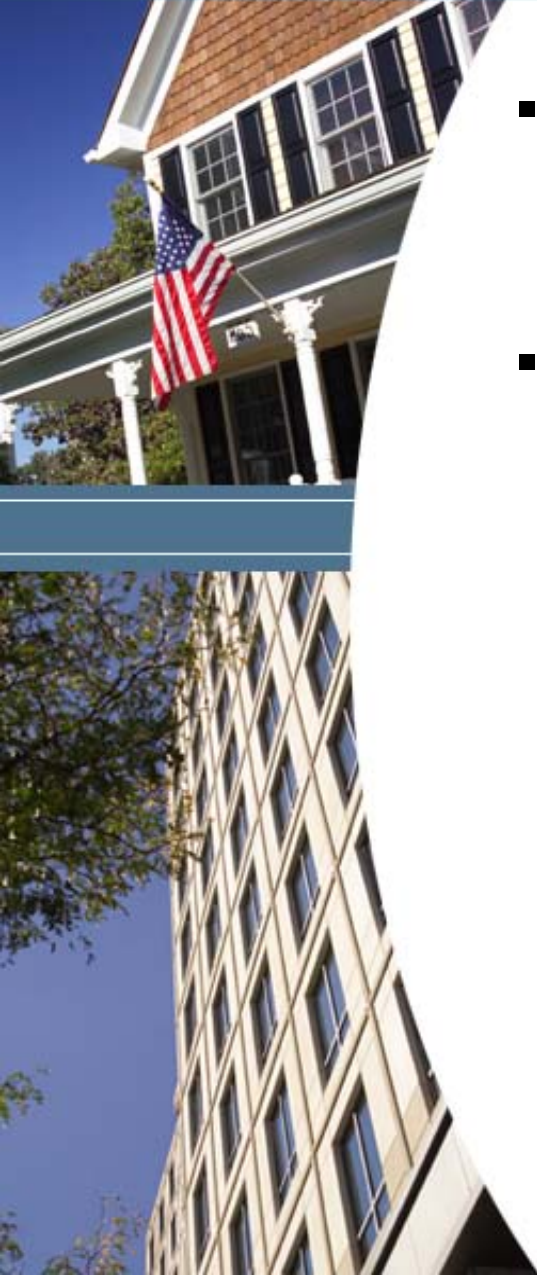
2. INTEREST

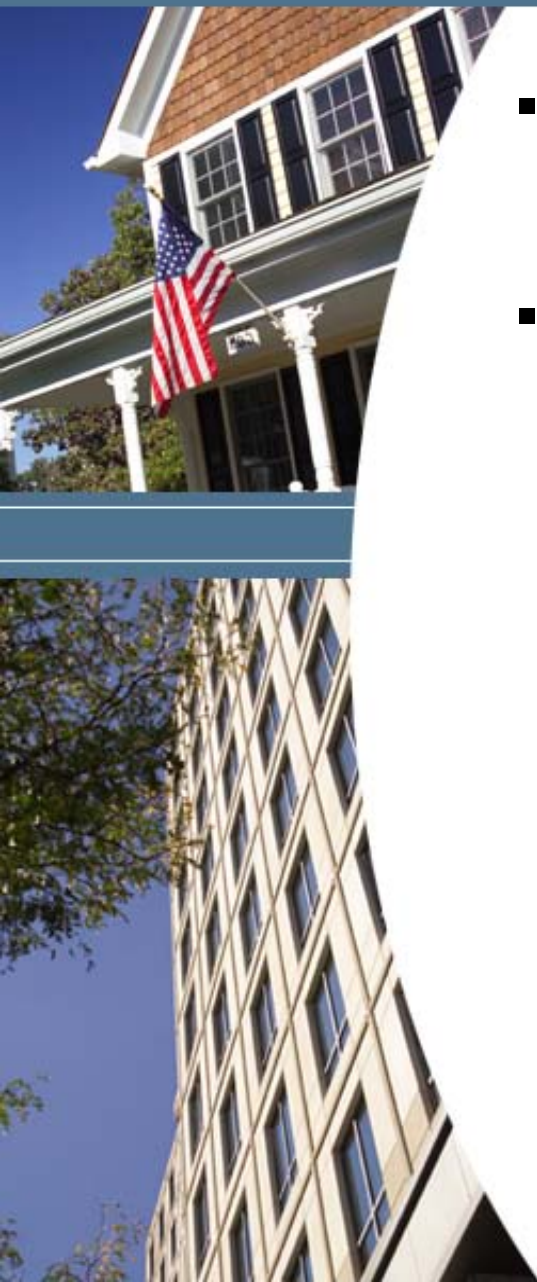
Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of _____%.

3. LENDER'S PROMISE TO MODIFY

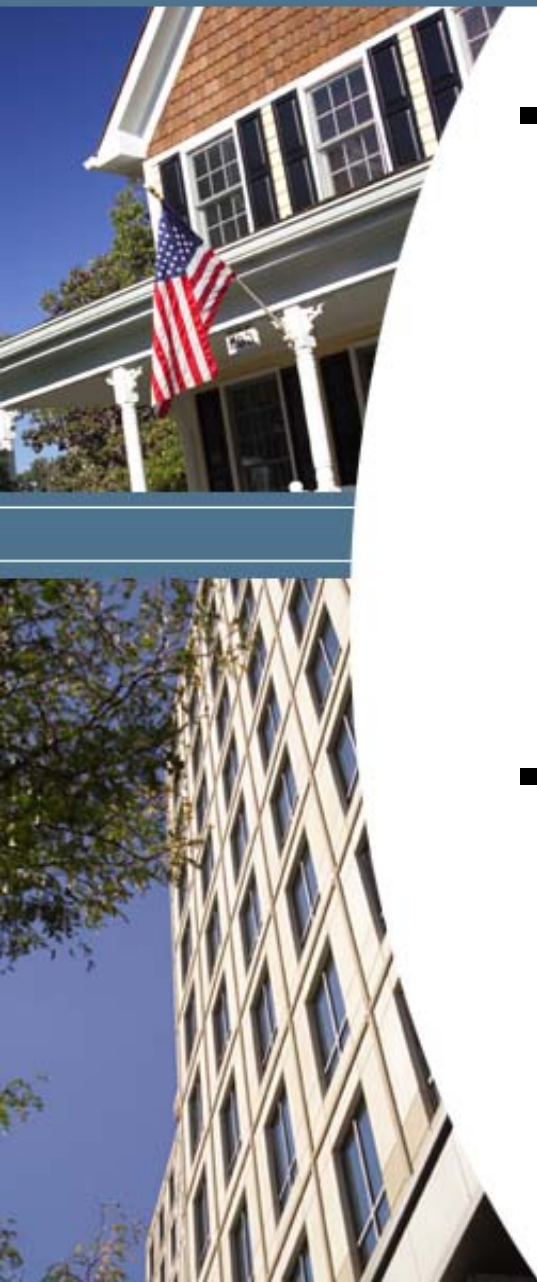
If for whatever reason I violate my promise to pay, Lender promises to modify this Note to reduce the interest rate, the unpaid principal balance, or any other term of this loan as necessary to ensure that I can enjoy the lifestyle to which your loan accustomed me. Lender shall forbear in its enforcement of any related security instrument until I inform lender of the terms of my modification, if any.

Overview

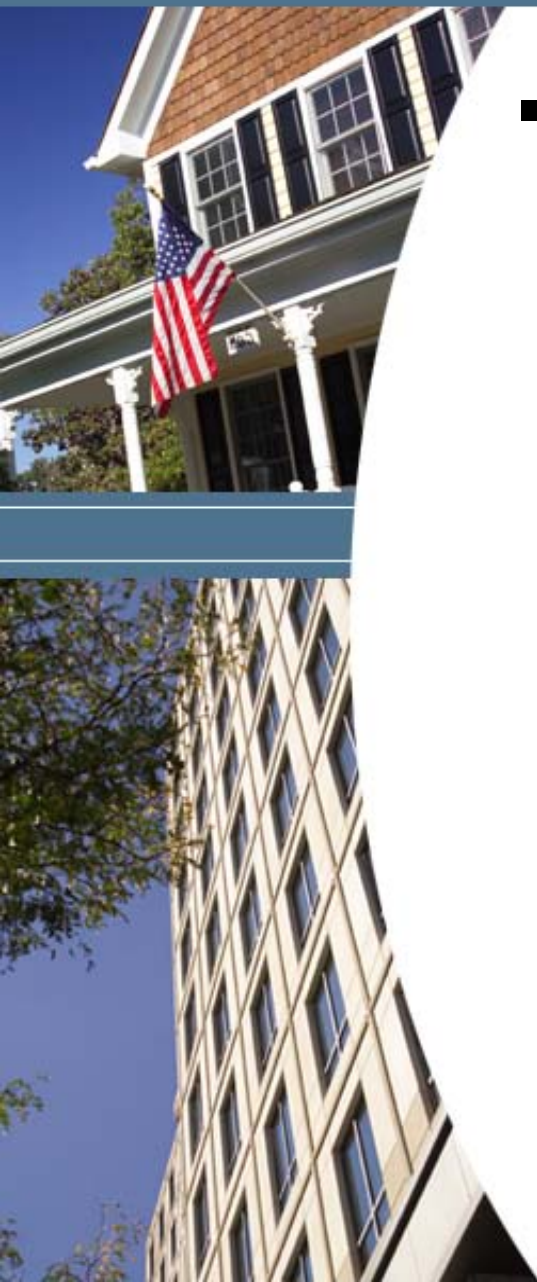
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- Unprecedented levels of defaults and foreclosures have led to heightened scrutiny of mortgage loan servicing.
 - Significant focus by Federal regulators, state regulators, and private litigants on:
 - Unfair and deceptive servicing practices, particularly regarding loans in default;
 - “Fair Servicing;” and
 - Preserving homeownership.

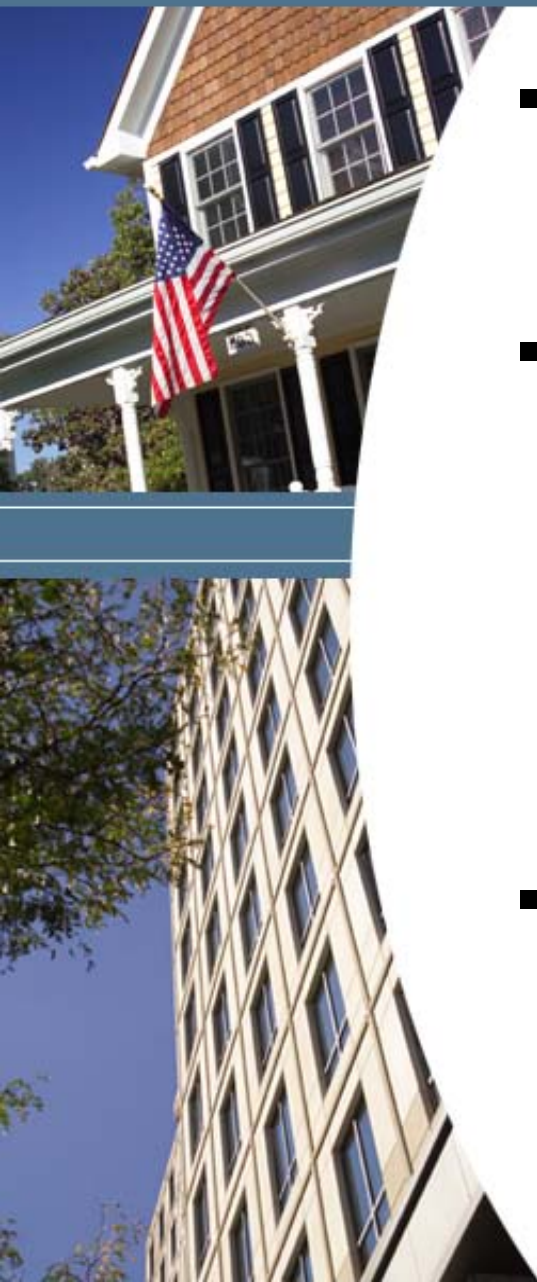


- **Sufficiency of workout procedures and other foreclosure prevention measures receiving significant attention from government regulators.**
- **State Attorneys General very active with respect to investigations and related litigation.**
 - **Connecticut Attorney General investigating relationship between servicers and independent contractors.**
 - **Other State Attorneys General conducting servicing investigations.**
 - **Bank regulators probing issues related to unfair and deceptive servicing practices in examinations and other inquiries.**
 - **National Bank Act preemption being questioned by some Attorneys General.**



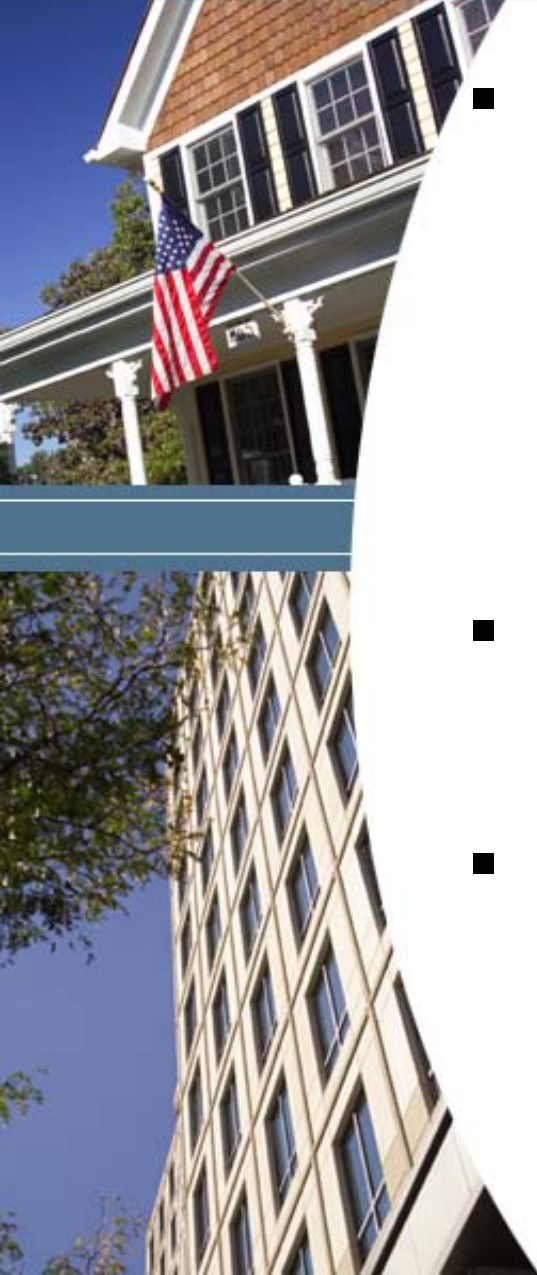
- Default servicing practices being scrutinized include:
 - Servicing fees and other charges;
 - “Profits” in connection with default servicing; and
 - Affiliate provider relationships, including issues such as those raised in the Federal Trade Commission’s (“FTC”) settlement with Fairbanks Capital Corp.
- Regulators applying Fair Debt Collection Practices Act “authorized by the contract” standard.

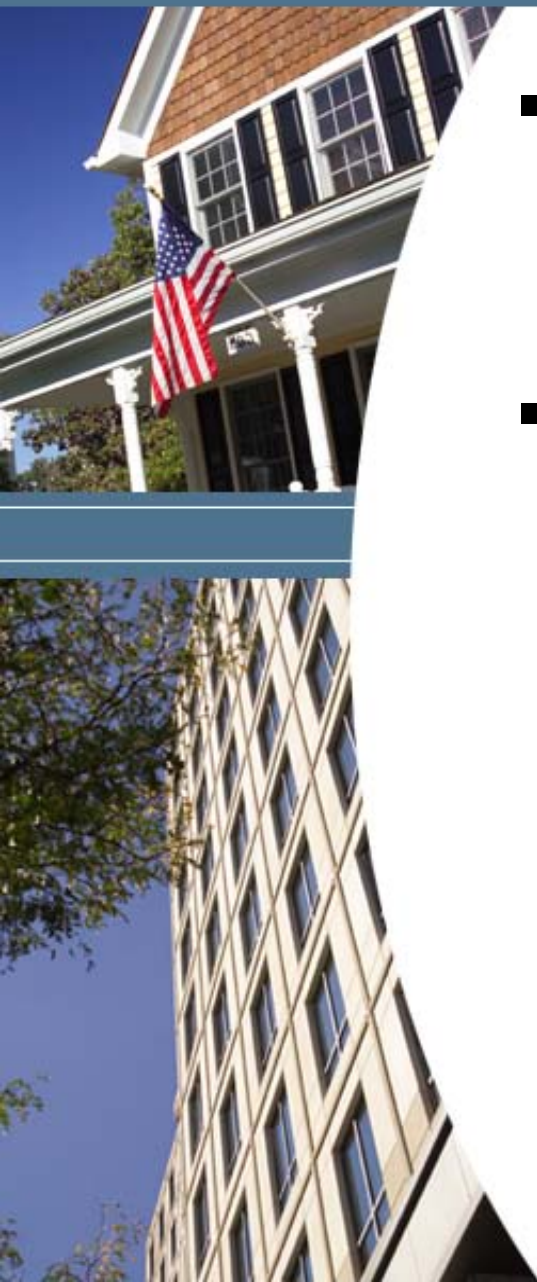
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- Foreclosure and bankruptcy filings being challenged by government regulators, judges, and private litigants.
 - Department of Justice (“DOJ”) investigation of LPS highlights emerging trend of data integrity presenting impediment to foreclosure.
 - Office of United States Trustee investigating accuracy of filings by mortgage servicers in bankruptcy courts.
 - Bankruptcy courts challenging improper, undisclosed, or otherwise questionable fees charged by servicer when borrower defaults.



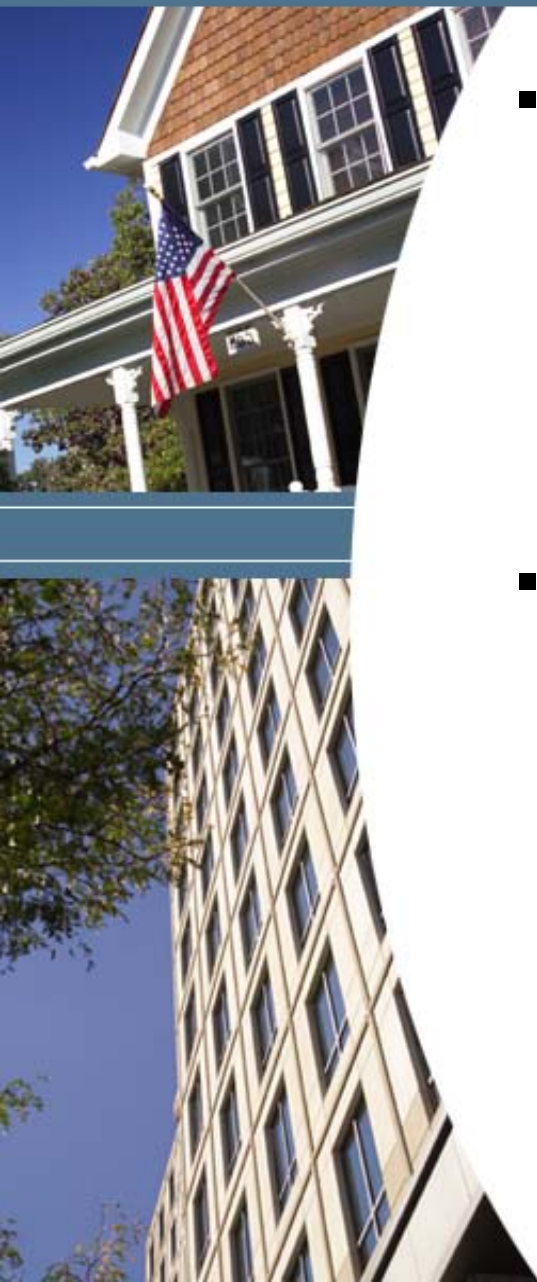
- **FTC seeking to codify in its Mortgage Acts and Practices (“MAP”) rulemaking the servicing prohibitions and restrictions that formed the basis of settlements in the Fairbanks and EMC cases.**
- **FTC signaled interest in loan performance, loss mitigation, and servicing of loans in bankruptcy.**
 - **Mandated pre-foreclosure verification of loan information and dispute resolution?**
 - **Mandated pre-foreclosure counseling or mediation?**
 - **Prohibition on requiring consumer to release all claims in connection with workout**
 - **Prohibition on workout without regard for ability to repay?**
- **Comment period closed in 2009 with no further action to date. Recent FTC submission to Congress indicated that the servicing rule is going forward.**

Fair Servicing: The New Frontier

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- Foreclosure crisis seen as disproportionately affecting minority communities
 - NY Times Op-Ed
 - “During the peak of the housing bubble, Chicago’s African American and Latino neighborhoods became ground zero for the worst of the mortgage industry’s toxic loans.” Illinois Attorney General Madigan
 - Inaccurate political expectation that minority borrowers will not receive a fair opportunity to prevent foreclosure.
 - Regulators poised to investigate potential racial disparities in servicing practices and take action.

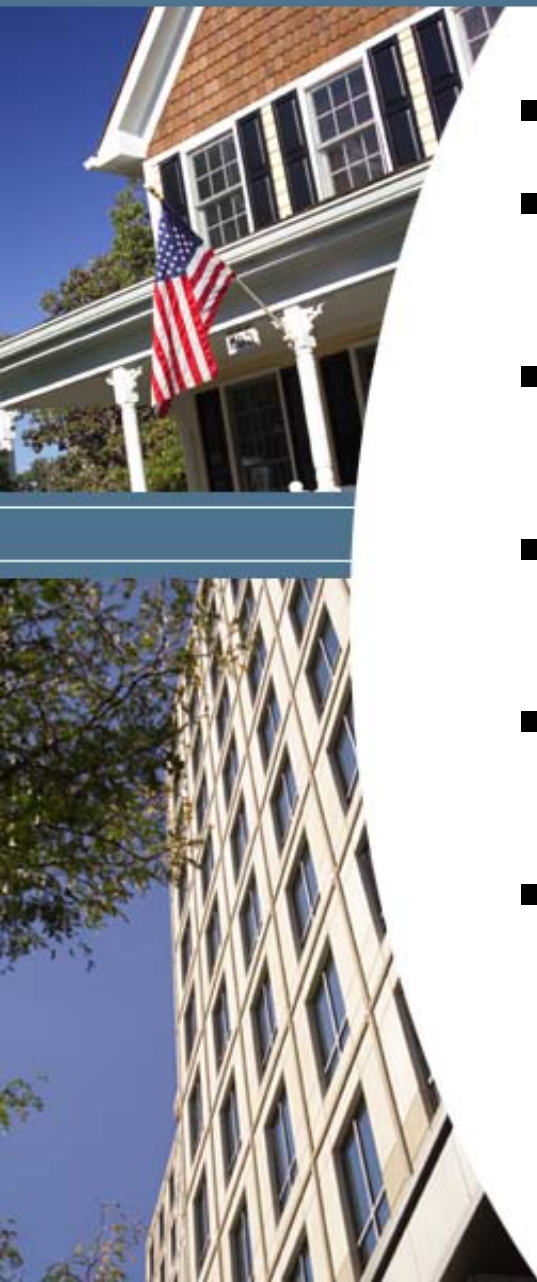
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- New Fair Lending Unit within the Civil Rights Division of the DOJ to focus on discrimination in loan modification by examining Treasury HAMP data.
 - Office of Comptroller of the Currency (“OCC”) prioritizing fair servicing, particularly in default context.
 - OCC Revised Fair Lending booklet to prohibit treating borrowers differently in servicing a loan or invoking default remedies based on prohibited factors.
 - OCC initiated several fair servicing reviews in first quarter of 2010.

Fair Servicing As The New Frontier

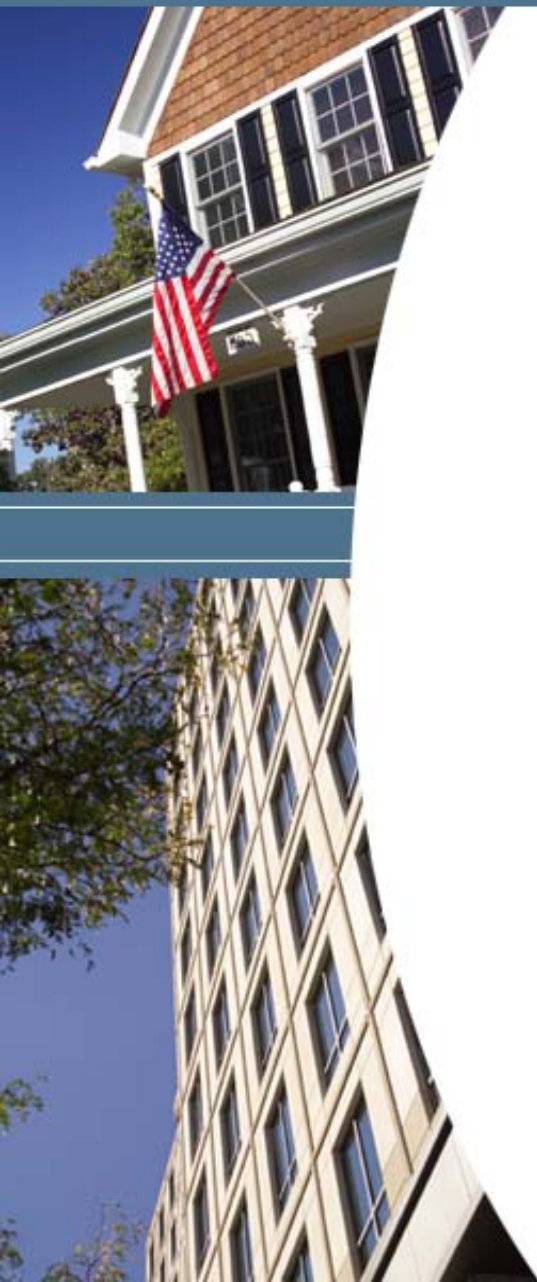


- **Significant factual impediments to viability of such actions, but same challenges make self-policing difficult.**
 - ❑ Servicers rarely have race and ethnicity data as a matter of course.
 - ❑ High non-compliance by borrowers with HAMP race data collection.
 - ❑ Borrower comparisons may be difficult. *All loan applicants want a loan, but all delinquent borrowers may not want to stay in homes.*
- **Providing discretion is a double-edged sword with respect to success of modification programs.**
 - ❑ Some of the servicers with the most successful modification programs provide greatest discretion for customer service and workout personnel.
 - ❑ Historically, discretion used against financial institutions in fair lending context. If past is prologue, the greater the level of discretion, the higher the potential for race-based disparities in outcomes.

Risk Mitigation Strategies for Servicers



- Quality controls and data integrity checks.
- Communication and training in loan modification processes and procedures.
- Monitoring workout practices, including consumer complaints and litigation.
- Self-assessment of loan modification data where possible.
- Due diligence and compliance review of third-party service providers.
- Comprehensive internal procedures for monitoring legal compliance.



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