American Families--and Their Wallets--Win With New Financial Reform Law

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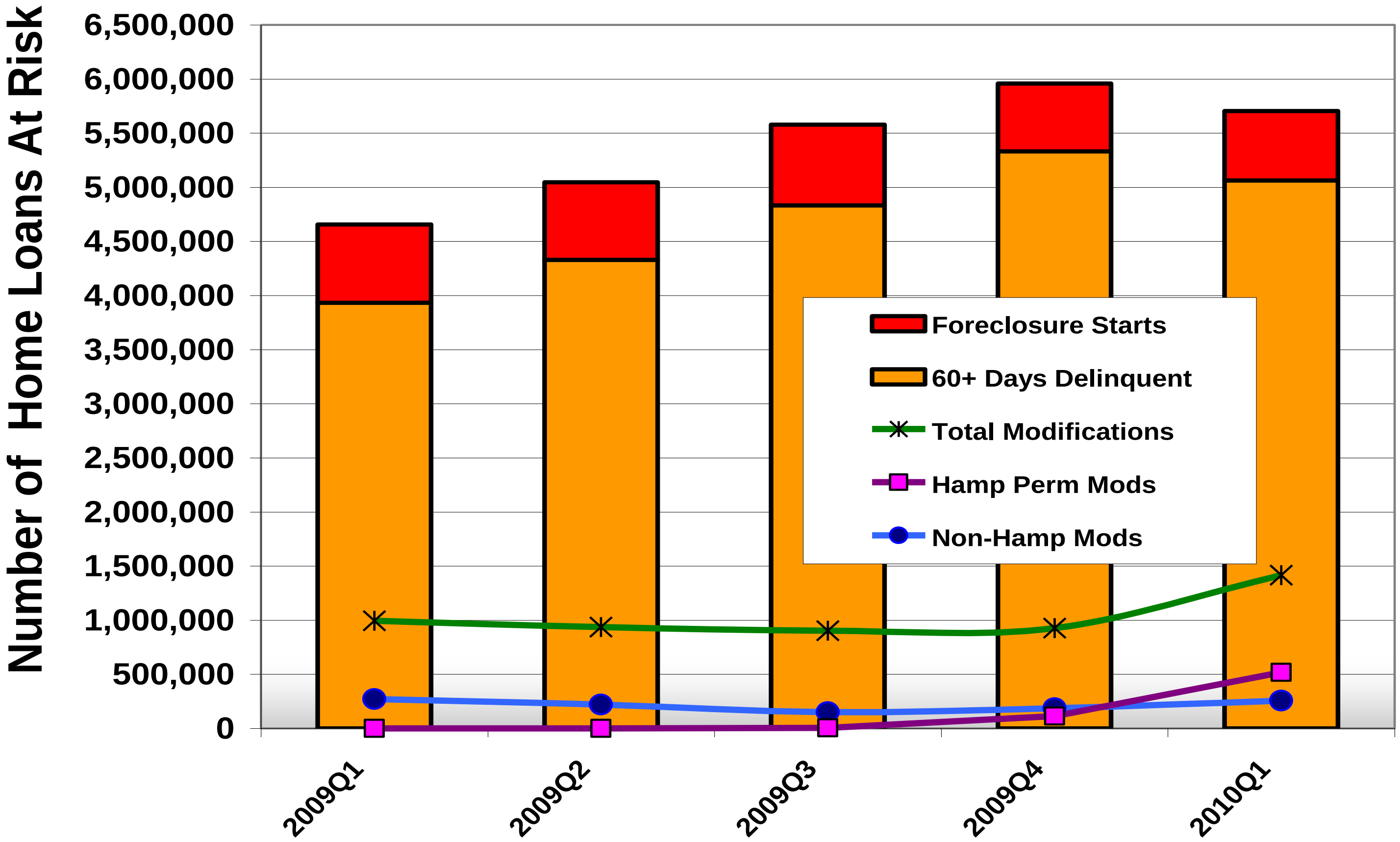
Homes At Risk vs. Loan Modifications



Sources: *MBA National Delinquency Survey, Hope Now, MHAP Servicer Performance Report*

What caused the financial crisis?

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- Dangerous products and practices greatly inflated the housing bubble.
- Wall Street demand for the riskiest, highest-cost loans caused this dangerous lending.
- Federal regulators turned a blind eye to these abuses.
- Overly broad preemption prevented states from acting.

Financial Reform Highlights

- **Prohibitions on abusive mortgage lending practices** such as kickbacks for steering people into high-rate loans when they qualify for lower rates.

- **A Consumer Financial Protection Bureau** (CFPB) to stop unfair practices before they become pervasive and possibly trigger another taxpayer-funded bailout.

- **Stronger foreclosure prevention** including an emergency loan fund to help families at risk of losing their home because of unemployment or illness.

- **State authority:** Permitting states to enact stronger provisions as needed for their residents will help them quickly respond to new problems as they arise on a local basis.

Lessons for States

- Need not wait for federal government to act.
- States still well-positioned to drive next steps, just as they've done historically on lending rules.
- Greater room for state enforcement of bad practices occurring in own borders
- States empowered to address foreclosures to stabilize communities and economies, e.g. loss mitigation standards

Key Mortgage Provisions

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- **Anti-Steering Provisions**
  - yield spread premium limitations
  - additional anti-steering regulatory authority
- **Ability to Repay Standards**
  - common sense requirement that lenders only sell mortgages consumers can afford to repay
  - qualified mortgage safe harbor provides incentive for lenders to make safer loans, without banning specific mortgage products
- **Prepayment Penalty Limitations**
  - banned on adjustable rate, subprime, and other risky mortgages
  - limited on all loans

Key Mortgage Provisions, cont'd

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- **Effective Remedies**
  - damages for borrowers
  - defense to foreclosure
- **High-Cost Loan Protections**
  - the special protections for very high-cost loans have been updated to reflect current interest rates
- **Office of Housing Counseling**
  - new office to support to community organizations that assist homeowners facing foreclosure and future homeowners
- **Appraisal Reform**

The need for an independent consumer agency

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- Federal regulatory failures directly led to enactment of the Consumer Financial Protection Bureau (CFPB) as part of the Dodd-Frank bill.
- Mission entirely consumer-oriented; no conflict with prudential regulation.
- Headed by a single presidentially-appointed director, rather than weaker commission structure.
- Funding independent of appropriations process will create less opportunity for regulated entities to weaken regulations.

Three Areas of Regulatory Work

- Rulewriting
- Consumer Protection Supervision
- Enforcement

Rulewriting Authority

- Organic authority: Preventing "unfair, deceptive or <u>abusive</u> acts and practices" (UDAAP)
- Transferred statutes (TILA, FCRA, FDCPA, EFTA, RESPA, HMDA – but not CRA)
- Ability to regulate or ban forced arbitration
- Prohibition on setting usury cap
- Rulewriting covers almost every financial entity. Exceptions: Merchants partially exempted. Auto dealer rules mostly written by FTC (CFPB retains authority over auto dealers who keep loans in portfolio).

Rulewriting Process

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- Traditional notice and comment with one more requirement: must convene small business panels to comment <u>before</u> proposing a rule.
- This small business requirement could add 4-6 months for some rules and give some actors (e.g., payday lenders) greater influence over what is proposed.

Examination & Enforcement

- For consumer protection matters, CFPB will have exclusive supervisory authority and full enforcement authority over:
  - Depositories with more than $10B in assets.
  - Specified non-banks: Payday lenders, providers of mortgage-related companies (e.g., mortgage brokers and servicers), private student lenders, larger market participants (to be defined by rule).
  - Additional enforcement by state regulators and state AGs.

CFPB Implementation

- Transfer date: 21 July 2011. Substantive rulemaking authority begins on this date.
- Until then, Treasury has authorities that are immediately effective (e.g., organizational issues, scope issues)
- After transfer date, agency will need to get systems in place and implement approximately 25 rules mandated in Dodd-Frank with statutory timeline.
- As a result, it may be some time before the agency is able to focus on its UDAAP authority.

Impact on State Laws

- CFPB rules are generally not preemptive. If a state law directly conflicts with CFPB:
  - Weaker state laws are preempted by CFPB
  - Stronger state laws stay in place
- States can enforce CFPB rules toward national banks and thrifts.
- OCC can preempt on a case-by-case basis only if a state law significantly interferes with the business of banking. This case-by-case preemption subject to less deferential judicial review.

Key Anti-Foreclosure Provisions

- **Assistance for Unemployed Homeowners**
  - $1 billion for low-cost bridge loans
- **Legal Aid Foreclosure Prevention**
  - $35 million to support these nonprofit programs
- **HAMP Improvements**
  - additional transparency with respect to the “net present value” test and servicer data
- **Neighborhood Stabilization Program**:
  - $1 billion for the NSP program in efforts to bring back affordable housing and healthy neighborhoods

Impact on Consumers

- No “race to the bottom” in regulation, because everyone subject to same rules.
- Expectation that agency will use organic UDAAP authority to address abusive financial practices
- Greater research focus will lead way to evidence-based rulemaking, which will take place earlier (before all-out crisis)
- Better enforcement of federal rules, including by states
- States able to better protect their residents through new laws