



## CMIS NEWS UPDATE WITH OBSERVATION NOTES September 30 2009

### New REED Bill re No-Fault-No-Income Assistance; Court Mediation; Mandatory Modification Evaluations; Face-to-Face Alternatives to Foreclosures; Foreclosure Process Regulation; Part 1 New Bill Introduction

United States Senator Jack Reed of Rhode Island introduced the Preserving Homes and Communities Act of 2009, cosponsored by Senators Dick Durbin (D-IL), Sheldon Whitehouse (D-RI), and Jeff Merkley (D-OR). The bill is intended to help address the housing crisis by requiring *loan modification evaluations* and loan modification offers to qualified homeowners; establishing a new mortgage *payment assistance program*; and incentivizing states and local governments to *create strong mediation programs*, which allow homeowners and servicers to meet face to face to try to find an alternative to foreclosure.

The press release indicates that the Preserving Homes and Communities Act of 2009 will:

#### **Expand and Improve Loan Modification Programs and Rein in Costly Fees**

Requires lenders and servicers to evaluate homeowners for affordable modifications prior to initiating foreclosure, and offering approved modifications to homeowners if the net present value of modification is greater than that of foreclosure.

2. Establishes meaningful penalties by making noncompliance a defense to foreclosure.
3. Places limits on when foreclosure fees can be charged and prohibits costly mark-ups.

**Observation:** This is of particular import as foreclosure initiation would be delayed precluding parallel evaluation/foreclosure processing channels, causing great delays in the processing of foreclosures including foreclosure attorney and related vendor staffing, and compliance with the Act (modification evaluation and offer) would effectively become a procedural and or substantive jurisdictional pre-requisite to foreclosure, or at least a complete defense to foreclosure. The evaluation process however could become exponentially costly if face-to-face meetings become the norm, unless a new automated

system of loss mitigation resolution is infused into the process. The Bill assumes all mediations require face-to-face meetings, which most mandatory mediations would, unless the process affords fast track resolution prior to in-person face-to-face meetings through preparatory meetings (i.e.: on the phone) or outcome determinative centralized pre-processing. However, the Bill requires net present value calculations (NPV) be done to arrive at potential eligibility for a modification and the supervision of the mediation by the state court, and selection and training of a neutral by the State or local authorities. Moreover, the Act would define limitations for charging foreclosure fees and costs.

### **Provide Targeted Mortgage Payment Assistance**

1. Assists homeowners experiencing a sharp reduction in income through no fault of their own.
2. Authorizes \$6.375 billion in formula funding to states to create revolving loan funds to offer homeowners grants or subsidized loans.
3. Requires states to carefully steward federal dollars by requiring programs to abide by commonsense guidelines such as **evaluating applicants' employment prospects and capping maximum loan amounts.**

**Observation:** This is of particular import as the Waters bill concepts of assisting homeowners without income (due to under or unemployment) is taking hold in this bill as a *no-fault no-income assistance package*. The bill would place guideline standards upon the lender/servicer which may not be **subjectively unobtainable** unless objectively designed especially when evaluating employment prospects.

### **Encourage Strong Mediation Programs**

1. Authorizes \$80 million in competitive federal matching funds for states and localities to establish mandatory mediation programs.

**Observation:** This is of particular import as state court mediation programs from states and judicial orders are rushing to the printers, this federal law would incentivize the states with much needed funding to establish **mandatory mediation programs**. Mandatory mediation is at the industry's doorstep.

### **Establish a National Database on Foreclosures**

1. Authorizes \$5 million for the Department of Housing and Urban Development, in conjunction with other agencies, to develop a single database that will enable better monitoring of mortgage markets.

**Observation:** This is of particular import, as state court mediation programs do not currently provide a meaningful database of the programs, but as the programs are integrated, the data reporting will become required and centralized. This is step one.

## **Capitalize the National Housing Trust Fund**

1. Provides \$1 billion for the building, preservation, and rehabilitation of affordable housing from the proceeds of the warrants provisions in the Emergency Economic Stabilization Act.

**Observation:** This is of particular import, as property preservation and related building and rehab efforts need sufficient funding to avoid unnecessary blight, and this may defray costs or advances burdening lender/servicers.

### **LINKS:**

The Press Release entitled: “Reed Introduces Bill to Keep Families in Their Homes and Stabilize the Housing Market” is found at: <http://reed.senate.gov/newsroom/details.cfm?id=318453>

Text of the Bill: **S.1731 Preserving Homes and Communities Act of 2009**; and STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS -- (Senate - September 30, 2009) are found at:

<http://www.safeguardproperties.com/pub/PreservingHomesandCommunitiesAct.doc>  
or at [www.CMISMortgageCoalition.org](http://www.CMISMortgageCoalition.org)

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**September 30, 2009**

Press Release

## Reed Introduces Bill to Keep Families in Their Homes and Stabilize the Housing Market

**WASHINGTON, DC** – In an effort to curb record-high foreclosure rates across the country and stabilize the housing market, U.S. Senator Jack Reed today introduced legislation that will help keep families in their homes and prevent communities from deteriorating as a result of skyrocketing mortgage defaults. Reed’s Preserving Homes and Communities Act of 2009, cosponsored by Senators Dick Durbin (D-IL), Sheldon Whitehouse (D-RI), and Jeff Merkley (D-OR), will help address the housing crisis by requiring that qualified homeowners are evaluated for and offered loan modifications; establishing a new mortgage payment assistance program; and incentivizing states and local governments to create strong mediation programs, which allow homeowners and servicers to meet face to face to try to find an alternative to foreclosure.

“In the last year, the federal government has taken decisive action and devoted substantial financial resources to shoring up financial markets, averting a potential national and global financial meltdown. Despite federal efforts, the number of foreclosures continues to rise at an alarming rate on pace to surpass last year’s foreclosures by a third. The Preserving Homes and Communities Act will ensure that we are taking similarly aggressive actions to address the housing crisis, which has devastated families, crippled local communities, and dragged down the broader economy,” said Reed. “More and more households are finding that even with a fixed-rate mortgage that they could afford before the recession, they are just one pink slip away from losing their biggest investment. My bill provides targeted relief to qualified homeowners so that more families can keep their homes, protects communities from suffering even greater financial losses, and sets us on the path to stabilizing the housing sector as a foundation for lasting economic recovery.”

Moodys.com suggests that the number of mortgages in default could rise to four million this year alone. According to the Mortgage Bankers Association (MBA), more than a third of the overall increase in the start of foreclosures in the second quarter was attributable to prime, fixed rate loans. And the number of homeowners at least one payment past due is more than one in eight—the highest level since the MBA began keeping track.

“As foreclosure rates continue to climb, a lasting economic recovery becomes harder to reach,” said Durbin. “Until we stabilize the housing market, we simply won’t get a handle on the broader economic crisis. Voluntary efforts to keep families in their homes have failed. This bill will force lenders to modify qualified mortgages, create a homeowners assistance program and give states a bigger role in mediation efforts. It’s long past time for the Senate to step up to keep families in their homes and to help lead the way toward economic recovery. This bill will help achieve those goals.”

“As I travel around our state, I often hear concerns from Rhode Islanders affected by our

nation's housing crisis,” said Whitehouse. “It is clear to me that Congress must do more to level the field for struggling American homeowners. Jack Reed has been a leader on this issue, and I’m proud to support this new legislation to help families in Rhode Island and across the nation to keep their homes.”

“Millions of American families continue to be at-risk of losing their homes due to the current economic crisis,” said Merkley. “The Preserving Homes and Communities Act of 2009 will encourage lenders to do right by homeowners in need and give states assistance to prevent further foreclosures. We must stem the tide of foreclosures that continue to wreak havoc on American families and local communities.”

The Preserving Homes and Communities Act of 2009 builds on Senator Reed’s requests to the Secretaries of Treasury and Housing and Urban Development urging the agencies to hold banks and lenders accountable for providing relief to qualified homeowners, by requiring lenders to make good on their promises to evaluate eligible homeowners and offer loan modifications to those who qualify.

The bill would improve the current loan modification program by expanding it to more qualified homeowners; giving these homeowners protection against all foreclosure proceedings while waiting for a loan modification analysis, not just against a foreclosure sale; and providing these homeowners with the legal tools to help save their homes when lenders fail to follow the program’s rules. It would also help establish state mortgage assistance programs nationally and encourage mandatory mediation programs.

The Preserving Homes and Communities Act of 2009 will:

### **Expand and Improve Loan Modification Programs and Rein in Costly Fees**

- Requires lenders and servicers to evaluate homeowners for affordable modifications prior to initiating foreclosure, and offering approved modifications to homeowners if the net present value of modification is greater than that of foreclosure.
- Establishes meaningful penalties by making noncompliance a defense to foreclosure.
- Places limits on when foreclosure fees can be charged and prohibits costly mark-ups.

### **Provide Targeted Mortgage Payment Assistance**

- Assists homeowners experiencing a sharp reduction in income through no fault of their own.
- Authorizes \$6.375 billion in formula funding to states to create revolving loan funds to offer homeowners grants or subsidized loans.
- Requires states to carefully steward federal dollars by requiring programs to abide by commonsense guidelines such as evaluating applicants’ employment prospects and capping maximum loan amounts.

### **Encourage Strong Mediation Programs**

- Authorizes \$80 million in competitive federal matching funds for states and localities to establish mandatory mediation programs.

### **Establish a National Database on Foreclosures**

- Authorizes \$5 million for the Department of Housing and Urban Development, in conjunction with other agencies, to develop a single database that will enable better monitoring of mortgage markets.

### **Capitalize the National Housing Trust Fund**

- Provides \$1 billion for the building, preservation, and rehabilitation of affordable housing from the proceeds of the warrants provisions in the Emergency Economic Stabilization Act.

<http://reed.senate.gov/newsroom/details.cfm?id=318453>

## **Preserving Homes and Communities Act**

REED Bill S 1731 Mediation, Modification, etc.

STATEMENTS & TEXT OF BILL:

### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS -- (Senate - September 30, 2009)

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The Preserving Homes and Communities Act creates an incentive for lenders to more quickly evaluate whether homeowners qualify for modifications by requiring that homeowners be evaluated for a loan modification that conforms with the Administration's programs before a bank can initiate foreclosure. It also states that homeowners who qualify must be offered a modification. My bill prevents costly fees from piling up while qualified homeowners wait to be granted more affordable mortgages, and no longer will homeowners be left out in the cold if their particular loan servicer chooses not to participate in the government program. And if lenders fail to follow the rules, this bill will allow homeowners to use servicers' noncompliance as a defense to foreclosure. The bill also places prudent limits on the fees that homeowners can be charged--particularly foreclosure-related fees.

My legislation provides \$80 million as an incentive for more States and local governments to create strong mediation programs, an additional tool to help homeowners facing foreclosure. Mediation programs allow homeowners and servicers to meet, face to face, to try to find an alternative to foreclosure. These programs have shown promise in several state and local settings for helping homeowners avoid foreclosure, and this legislation will provide matching funds to help establish new mediation initiatives. This bill also sets aside \$5 million for the creation of a Federal database on defaults and foreclosures to improve oversight of public and private efforts to sustain homeownership.

Finally, we know that these tough economic times are impacting renters as well. Competition for already-scarce affordable housing has increased. With the poverty rate at its highest level in 11 years, more individuals and families with limited incomes are at risk of homelessness. For this reason, the Preserving Homes and Communities Act uses proceeds from the warrant provisions I crafted for the financial rescue package to capitalize the National Housing Trust Fund. These warrant provisions are allowing taxpayers to benefit from the upside of our investments in faltering financial institutions. My view is that some of these returns from providing a firmer foundation for our financial institutions would be put to good use by providing a firmer foundation for affordable housing in our country. The National Housing Trust Fund, which I worked to establish in the Housing and Economic Recovery Act, will enable the building, preservation, and rehabilitation of affordable housing.

I am introducing the Preserving Homes and Communities Act because when homes get foreclosed on, it does not just affect individual borrowers and lenders. Whole neighborhoods pay the price. Housing industry experts estimate that for every foreclosure within an eighth of a mile of a house, two

and a half city blocks in every direction, the property value of surrounding homes drops by about 1 percent.

I believe that the Federal Government has a role to play in ensuring that millions of Americans, including neighbors who avoided risky loans and have sacrificed and saved to pay their bills on time, are protected from further declines in property values and the blight of abandoned homes.

This legislation is targeted relief that will help more families keep their homes and protect communities from even greater losses. The Preserving Homes and Communities Act will set us on the path to stabilizing the housing sector as a foundation of lasting economic recovery. I hope my colleagues will join me and Senators DURBIN, WHITEHOUSE, and MERKLEY in supporting this bill and other foreclosure prevention efforts.

Mr. President, I ask unanimous consent that the text of the bill be printed in the *Record*.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

**S . 1731**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Preserving Homes and Communities Act of 2009".

SEC. 2. LOAN MODIFICATION REQUIREMENTS.

(a) *Definitions.*--In this section--

(1) the term "covered mortgage" means--

- (A) a mortgagee under a federally related mortgage loan; and
- (B) the agent of a mortgagee under a federally related mortgage loan;

(2) the term "covered mortgagor" means an individual who is a mortgagor under a federally related mortgage loan--

- (A) made by a covered mortgagee;
- (B) secured by the principal residence of the mortgagor; and
- (C) on which the mortgagor cannot make payments due to financial hardship, as determined by the Secretary;

(3) the term "federally related mortgage loan" has the same meaning as in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602);

(4) the term "home loan modification protocol" means a home loan modification protocol that is developed under a home loan modification program put into effect by the Secretary of the Treasury or the Secretary;

(5) the term "qualified loan modification" means a modification to the terms of a mortgage agreement between a covered mortgagee and a covered mortgagor that is made pursuant to a determination by the covered mortgagee using a home loan modification protocol that a modification would produce a greater net present value than foreclosure to--

- (A) the covered mortgagee; or
- (B) in the aggregate, all persons that hold an interest in the mortgage agreement; and

(6) the term "Secretary" means the Secretary of Housing and Urban Development.

(b) *Loan Modification Required.*--

(1) IN GENERAL.--A covered mortgagee may not initiate or continue a foreclosure proceeding against a covered mortgagor that is otherwise authorized under State law unless--

(A) the covered mortgagee has determined whether the covered mortgagor is eligible for a qualified loan modification;

(B) in the case of a covered mortgagor who the covered mortgagee determines is eligible for a qualified loan modification, the covered mortgagee has offered a qualified loan modification to the covered mortgagor; and

(C) in the case of a covered mortgagor who the covered mortgagee determines is not eligible for a qualified loan modification, the covered mortgagee has made available to the covered mortgagor the note, deed of trust, or any other document necessary to establish the right of the mortgagee to foreclose on the mortgage.

(2) NO WAIVER OF RIGHTS.--A covered mortgagee may not require a covered mortgagor to waive any right of the covered mortgagor as a condition of making a qualified loan modification.

(3) SALE OF REAL PROPERTY SECURING MORTGAGE.--

(A) SALE.--A covered mortgagee may not sell the real property securing the mortgage of a covered mortgagor unless the covered mortgagee submits to the appropriate State entity in the State in which the real property is located, a certification that the covered mortgagee has made a determination under paragraph (1)(A).

(B) ACTION BY PURCHASER.--A person that purchases from a covered mortgagee the real property securing the mortgage of a covered mortgagor may not recover possession of the real property unless the covered mortgagee submits to the appropriate State entity in the State in which the real property is located, a certification that the covered mortgagee has made a determination under paragraph (1)(A).

(C) CERTIFICATION STANDARDS.--The Secretary shall establish minimum standards for the certification required under this paragraph.

(4) DEFENSE TO FORECLOSURE.--Failure to comply with this subsection shall be a defense to foreclosure.

(5) RULE OF CONSTRUCTION.--Nothing in this subsection may be construed to prevent a covered mortgagee from offering or making a loan modification with a lower payment, lower interest rate, or principal reduction beyond that required by a modification made using a home loan modification protocol with respect to a covered mortgagor.

(c) *Fees Prohibited.*--

(1) LOAN MODIFICATION FEES PROHIBITED.--A covered mortgagee may not charge a fee to a covered mortgagor for carrying out the requirements under subsection (b).

(2) FORECLOSURE-RELATED FEES.--

(A) IN GENERAL.--Except as provided in subparagraph (B), a mortgagee may not charge a foreclosure-related fee to a mortgagor before--

- (i) the mortgagee has made a determination under subsection (b)(1); and
- (ii) the mortgage has entered the foreclosure process.

(B) DELINQUENCY FEES.--A mortgagee may charge a delinquency fee for late payment by the mortgagor.

(3) FEES NOT IN CONTRACT.--A mortgagee may charge to a mortgagor only such fees as have been specified in advance by the mortgage agreement.

(4) FEES FOR EXPENSES INCURRED.--A mortgagee may charge a fee to a mortgagor only for services actually performed by the mortgagee or a third party in relation to the mortgage agreement. For purposes of this paragraph, the term "third party" does not include an affiliate or subsidiary of the mortgagee.

(5) PENALTY.--The Secretary shall collect from any mortgagee that charges a fee in violation of this subsection an amount equal to \$6,000 for each such fee.

(d) *Regulations*.--Not later than 3 months after the date of enactment of this Act, the Secretary shall issue by notice any requirements to carry out this section. The Secretary shall subsequently issue, after notice and comment, final regulations to carry out this section.

### SEC. 3. GRANTS TO STATES TO ASSIST HOMEOWNERS IN DEFAULT.

Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x) is amended by adding at the end the following:

“(g) *Grants to States to Assist Homeowners in Default*.--

“(1) DEFINITIONS.--In this subsection--

“(A) the term ‘eligible agency’ means a State housing finance agency or an agency designated by the State as an eligible agency;

“(B) the term ‘eligible homeowner’ means a mortgagor who--

“(i) is a permanent resident of the State in which the principal residence of the mortgagor is located;

“(ii) agrees to seek counseling from a counseling agency approved by the Secretary if the eligible homeowner receives a loan or grant made using funds under this subsection;

“(iii) is suffering from financial hardship which is unexpected or due to circumstances beyond the control of the mortgagor;

“(iv) is unable to correct any delinquency on any amounts past due on the home loan of such mortgagor within a reasonable time without financial assistance;

“(v) has requested a loan modification from the mortgagee;

“(vi) is unable to make full payment on any home loan payment due for all liens within the 30-day period following the date of the application by the mortgagor for a loan or grant using funds under this subsection;

“(vii) the eligible agency determines has a reasonable probability of resuming full payments due for all liens on the mortgage of such mortgagor not later than 15 months after the date on which the mortgagor receives a loan or grant using funds under this subsection; and

“(viii) has not previously received a loan or grant using funds under this subsection; and

“(C) the term ‘mortgagor’ means a mortgagor under a mortgage--

`` (i) secured by a 1- to 4-family owner-occupied residence (including a 1-family unit in a condominium project and a membership interest and occupancy agreement in a cooperative housing project) that is used as the principal residence of the mortgagor;

`` (ii) with an interest rate that does not exceed the prime rate of interest at the time of loan origination, as such prime rate is determined by not less than 75 percent of the 30 largest depository institutions in the United States; and

`` (iii) for an amount that does not exceed the conforming loan limit for conventional mortgages, as determined under section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)).

`` (2) GRANT PROGRAM ESTABLISHED.--The Secretary shall award grants to eligible agencies, to enable eligible agencies to provide--

`` (A) 1-time emergency grants or subsidized loans to eligible homeowners to assist such eligible homeowners in satisfying any amounts past due on their home loans;

`` (B) grants or subsidized loans to eligible homeowners for a specified number of future mortgage payments by the eligible homeowners; and

`` (C) stipends of not more than \$1,500 to assist with relocation expenses for homeowners not eligible for the program.

`` (3) ADDITIONAL SERVICES PROVIDED BY ELIGIBLE AGENCY.--An eligible agency that receives a grant under this subsection shall provide--

`` (A) a readily accessible source for information on, and referral to, public services available to assist a homeowner who is in default on their home loan;

`` (B) a homeowner with referrals to counseling agencies approved by the Department of Housing and Urban Development that may be able to assist that homeowner, if that homeowner is in default on their home loan;

`` (C) information to homeowners on available community resources relating to homeownership, including--

`` (i) public assistance or benefits programs;

`` (ii) mortgage assistance programs, including programs that help homeowners prepare documents for loan modification applications;

`` (iii) home repair assistance programs;

`` (iv) legal assistance programs;

`` (v) utility assistance programs;

`` (vi) food assistance programs; and

`` (vii) other Federal, State, or local government funded social services;

and

`` (D) staff who--

`` (i) are able to conduct a brief assessment of the situation of a homeowner; and

`` (ii) based on such assessment, make appropriate referrals to, and provide application information regarding, programs that can provide assistance to such homeowner.

`` (4) FORMULA.--Not later than 3 months after the date of enactment of the Preserving Homes and Communities Act of 2009, the Secretary shall

develop a formula for the award of funds under this subsection that includes the following factors:

- `` (A) The population of the State, as determined by the Bureau of the Census in most recent estimate of the resident population of the State.
- `` (B) The rate of mortgages in the State that are delinquent more than 90 days.
- `` (C) The ratio of foreclosures to owner-occupied households in the State.
- `` (D) The change, if any, in the rate of unemployment in the State between 2007 and 2008.
- `` (5) PROGRAM REQUIREMENTS.--
  - `` (A) SELECTION CRITERIA.--
    - `` (i) IN GENERAL.--Each eligible entity that receives a grant under this subsection shall develop selection criteria for eligible homeowners seeking a grant or subsidized loan under this subsection.
    - `` (ii) INCOME REPORTING.--A mortgagor that receives a grant or subsidized loan under this subsection shall be required, in accordance with criteria prescribed by the eligible agency, to report any increase in income.
  - `` (B) LOAN REQUIREMENTS.--
    - `` (i) INTEREST RATE.--Any loan made using a grant under this subsection shall carry a simple annual percentage rate of interest which shall not exceed the prime rate of interest, as such prime rate is determined from time to time by not less than 75 percent of the 30 largest depository institutions in the United States.
    - `` (ii) COMPOUND INTEREST PROHIBITED.--Interest on the outstanding principal balance of any loan under this subsection shall not compound.
  - `` (iii) BALANCE DUE.--
    - `` (I) IN GENERAL.--The principal of any loan made under this paragraph, including any interest accrued on such principal, shall not be due and payable unless the real property securing such loan is sold or transferred.
    - `` (II) DEPOSIT OF BALANCE DUE.--If an event described in subclause (I) occurs, the principal of any loan made under this subsection, including any interest accrued on such principal, shall immediately become due and payable to the eligible agency from which the loan originated.
  - `` (iv) PREPAYMENT.--Any eligible homeowner who receives a loan using a grant made under this subsection may repay the loan in full, without penalty, by lump sum or by installment payments, at any time prior to the loan becoming due and payable.
  - `` (v) MAXIMUM AMOUNT.--The amount of any loan to any 1 eligible homeowner under this subsection may not exceed 20 percent of the original mortgage amount borrowed by the eligible homeowner.
  - `` (vi) SUBORDINATION.--Any loan made using a grant under this subsection will be subordinated to any refinancing of the first mortgage, any preexisting subordinate financing, any purchase money mortgage, or subordinated for any other reason, as determined by the eligible agency.
- `` (6) SEPARATE ACCOUNT.--

`` (A) SEPARATE ACCOUNT.--An eligible agency that receives a grant under this subsection shall establish a separate account in which to hold amounts received under this subsection.

`` (B) REPAYMENT OF LOANS.--Any amounts repaid on a subsidized loan made under this subsection shall be deposited in the account established under subparagraph (A).

`` (C) OTHER FUNDING.--Amounts donated or otherwise directed to be used for purposes of this subsection may be deposited in the account established under subparagraph (A) to help capitalize such account.

`` (7) USE OF GRANT FUNDS.--

`` (A) IN GENERAL.--Subject to subparagraph (B), any amounts made available for purposes of this subsection may be used only for the purposes described in paragraph (2).

`` (B) EXCEPTION FOR ADMINISTRATIVE COSTS.--An eligible agency may use not more than 5 percent of any funds received under this subsection for administrative costs relating to activities carried out under paragraph (2).

`` (8) EXISTING LOAN FUNDS.--Any eligible agency with a previously existing fund established to make loans to assist homeowners in satisfying any amounts past due on their home loan or for future payments may use funds appropriated for purposes of this subsection for that existing loan fund, even if the eligibility, application, program, or use requirements for that loan program differ from the eligibility, application, program, and use requirements of this subsection, unless such use is expressly determined by the Secretary to be inappropriate.

`` (9) AUTHORIZATION OF APPROPRIATIONS.--There are authorized to be appropriated to carry out this section--

`` (A) \$6,375,000,000 for fiscal year 2010; and

`` (B) such sums as may be necessary for each of fiscal years 2011 through 2013."

#### SEC. 4. MEDIATION INITIATIVES.

(a) *Definitions*.--In this section--

(1) the term "mortgagee" includes the agent of a mortgagee; and

(2) the term "Secretary" means the Secretary of Housing and Urban Development.

(b) *Grant Program Established*.--The Secretary shall establish a grant program to make competitive grants to State and local governments to establish mediation programs that assist mortgagors facing foreclosure.

(c) *Mediation Programs*.--A mediation program established using a grant under this section shall--

(1) require participation in the program by--

(A) any mortgagee that initiates a foreclosure proceeding; and

(B) any mortgagor who is subject to a foreclosure proceeding;

(2) require any mortgagee or mortgagor required to participate in the program to make a good faith effort to resolve issues relating to foreclosure proceedings through mediation;

(3) if mediation is not made available to the mortgagor before a foreclosure proceeding is initiated, allow the mortgagor to request mediation at any time before a foreclosure sale;

(4) provide for--

(A) supervision by a State court (or a State court in conjunction with an agency or department of a State or local government) of the mediation program;

(B) selection and training of neutral, third-party mediators by a State court (or an agency or department of the State or local government);

(C) penalties to be imposed by a State court, or an agency or department of a State or local government, if a mortgagee fails to comply with an order to participate in mediation; and

(D) consideration by a State court (or an agency or department of a State or local government) of recommendations by a mediator relating to penalties for failure to fulfill the requirements of the mediation program;

(5) require that each mortgagee that participates in the mediation program make available to the mortgagor, before and during participation in the mediation program, documentation of--

(A) a loan modification calculation or net present value calculation made by the mortgagee in relation to the mortgage using a home loan modification protocol--

(i) developed under a home loan modification program put into effect by the Secretary of the Treasury or the Secretary; or

(ii) approved by the Secretary;

(B) the loan origination, including any note, deed of trust, or other document necessary to establish the right of the mortgagee to foreclose on the mortgage;

(C) any pooling and servicing agreement that the mortgagee believes prohibits a loan modification;

(D) the payment history of the mortgagor and a detailed accounting of any costs or fees associated with the account of the mortgagor; and

(E) the specific alternatives to foreclosure considered by the mortgagee, including loan modifications, workout agreements, and short sales;

(6) prohibit a mortgagee from shifting the costs of participation in the mediation program, including the attorney's fees of the mortgagee, to a mortgagor;

(7) provide that--

(A) any holder of a junior lien against the property that secures a mortgage that is the subject of a mediation--

(i) be notified of the mediation; and

(ii) be permitted to participate in the mediation; and

(B) any proceeding initiated by a holder of a junior lien against the property that secures a mortgage that is the subject of a mediation be stayed pending the mediation;

(8) provide information to mortgagors about housing counselors approved by the Secretary; and

(9) be free of charge to the mortgagor and mortgagee.

(d) *Record Keeping.*--A State or local government that receives a grant under this section shall keep a record of the outcome of each mediation carried out under the mediation program, including the nature of any loan modification made as a result of participation in the mediation program.

(e) *Targeting.*--A State that receives a grant under this section may establish--

- (1) a State-wide mediation program; or
- (2) a mediation program in a specific locality that the State determines has a high need for such program due to--
  - (A) the number of foreclosures in the locality; or
  - (B) other characteristics of the locality that contribute to the number of foreclosures in the locality.

(f) *Federal Share.*--The Federal share of the cost of a mediation program established using a grant under this section may not exceed 50 percent.

(g) *Authorization of Appropriations.*--There are authorized to be appropriated to carry out this section--

- (1) \$80,000,000 for fiscal year 2010; and
- (2) such sums as may be necessary for each of fiscal years 2011 through 2013.

## SEC. 5. OVERSIGHT OF PUBLIC AND PRIVATE EFFORTS TO REDUCE MORTGAGE DEFAULTS AND FORECLOSURES.

(a) *Definitions.*--In this section--

- (1) the term "heads of appropriate agencies" means the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Director of the Office of Thrift Supervision, and a representative of State banking regulators selected by the Secretary of Housing and Urban Development;
- (2) the term "mortgagee" means--
  - (A) an original lender under a mortgage;
  - (B) any servicers, affiliates, agents, subsidiaries, successors, or assignees of an original lender; and
  - (C) any subsequent purchaser, trustee, or transferee of any mortgage or credit instrument issued by an original lender;
- (3) the term "Secretary" means the Secretary of Housing and Urban Development; and
- (4) the term "servicer" means any person who collects on a home loan, whether such person is the owner, the holder, the assignee, the nominee for the loan, or the beneficiary of a trust, or any person acting on behalf of such person.

(b) *Monitoring of Home Loans.*--

- (1) IN GENERAL.--The Secretary, in consultation with the heads of appropriate agencies, shall develop and implement a plan to monitor--
  - (A) conditions and trends in homeownership and the mortgage industry, in order to predict trends in foreclosures to better understand other critical aspects of the mortgage market; and
  - (B) the effectiveness of public efforts to reduce mortgage defaults and foreclosures.
- (2) REPORT TO CONGRESS.--Not later than 1 year after the development of the plan under paragraph (1), and each year thereafter, the Secretary shall submit a report to Congress that--

(A) summarizes and describes the findings of the monitoring required under paragraph (1); and

(B) includes recommendations or proposals for legislative or administrative action necessary--

(i) to increase the authority of the Secretary to levy penalties against any mortgagee, or other person or entity, who fails to comply with the requirements described in this section;

(ii) to improve coordination between public and private initiatives to reduce the overall rate of mortgage defaults and foreclosures; and

(iii) to improve coordination between initiatives undertaken by Federal, State, and local governments.

(c) *National Database on Defaults and Foreclosures.*--

(1) IN GENERAL.--The Secretary, in consultation with the heads of appropriate agencies, shall develop recommendations for a national database on mortgage defaults and foreclosures that--

(A) provides information to Federal regulatory agencies on--

(i) mortgagees that generate home loans that go into default or foreclosure at a rate significantly higher than the national average for such mortgagees;

(ii) the factors associated with such higher rates; and

(iii) other factors and indicators that the Secretary determines are critical to monitoring the mortgage markets; and

(B) provides information to Federal, State, and local governments on loans, defaults, foreclosure initiations, foreclosure completions, and sheriff sales that--

(i) is not otherwise readily available;

(ii) would allow for a better understanding of local, regional, and national trends in delinquencies, defaults, and foreclosures; and

(iii) helps improve public policies that reduce defaults and foreclosures.

(2) CONSIDERATIONS.--In developing the recommendations under paragraph (1), the Secretary shall take into consideration privacy concerns and legal issues relating to such concerns, including the advisability of establishing rules relating to access to information obtained under subsection (d).

(3) REPORT TO CONGRESS ON NATIONAL DATABASE.--Not later than 12 months after the date of enactment of this Act, the Secretary shall submit a report to Congress that contains--

(A) the recommendations developed under paragraph (1); and

(B) an estimate of the cost of maintaining the database described in paragraph (1).

(d) *Provision of Data.*--

(1) DATA REPORT REQUIRED.--Not later than 18 months after the date of enactment of this Act, the Secretary, in consultation with the heads of appropriate agencies, shall issue final rules that require each mortgagee or servicer that originates or services not fewer than 100 loans in a calendar year (or any other person that the Secretary determines can effectively provide the data described in paragraph (2)) to submit a report to the

Secretary not less frequently than once each quarter that contains data the Secretary determines are necessary to carry out this section.

(2) CONTENTS OF REPORT.--Each report submitted under paragraph (1) shall contain data that--

(A) for each loan, use the identification requirements that are established under the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.) for data reporting, including--

- (i) the year of origination;
- (ii) the agency code of the originator;
- (iii) the respondent identification number of the originator; and
- (iv) the identifying number for the loan;

(B) describe the characteristics of each home loan originated in the preceding 12 months by the mortgagee or servicer (or, in the case of the first report required to be submitted under this subsection, all active loans originated by the mortgagee or servicer), including--

(i) the loan-to-value ratio at the time of origination for each mortgage on the property;

(ii) the type of mortgage, such as a fixed-rate or adjustable-rate mortgage; and

(iii) any other loan or loan underwriting characteristics determined by the Secretary to be necessary in order to meet the requirements of paragraph (1) and that are not already available to the Secretary through a national mortgage database;

(C) include the performance outcome of each home loan originated in the preceding 12 months by the mortgagee or servicer (or, in the case of the first report required to be submitted under this subsection, all active loans originated by the mortgagee or servicer), including--

(i) whether such home loan was in delinquency at any point in such 12-month period; and

(ii) whether any foreclosure proceeding was initiated on such home loan during such 12-month period;

(D) are sufficient to establish for each home loan that at any point during the preceding 12 months had become 60 or more days delinquent with respect to a payment on any amount due under the home loan, or for which a foreclosure proceeding was initiated, the interest rate on such home loan at the time of such delinquency or foreclosure;

(E) include information relating to foreclosures, including--

(i) the date of all foreclosures initiated by the mortgagee or servicer; and

(ii) the combined loan-to-value ratio of all mortgages on a home at the time foreclosure proceedings were initiated;

(F) for a home loan that is in foreclosure, include information on all actions, including

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loan modifications, taken to resolve the problem that led to the initiation of foreclosure proceedings and all actions undertaken prior to initiation of a foreclosure proceeding to resolve a delinquency or default;

(G) identify each home loan for which a foreclosure proceeding was completed in the preceding 12 months, including--

(i) foreclosure proceedings initiated in such 12-month period; and  
(ii) the date of the foreclosure completion; and  
(H) include any other information that the Secretary determines is necessary to carry out this section.

(3) COMPLIANCE PLAN AND REPORT.--The Secretary, in consultation with the heads of appropriate agencies, shall--

(A) develop a plan to monitor the compliance with the requirements established in this subsection by mortgagees and servicers; and

(B) submit to Congress a report on such plan.

(e) *Consolidated Database*.--The Federal Financial Institutions Examination Council shall create a consolidated database that establishes a connection between the data provided under the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.) and the data provided under this subsection.

(f) *Authorization of Appropriations*.--There are authorized to be appropriated to carry out this section--

(1) \$5,000,000 for fiscal year 2010; and

(2) such sums as may be necessary for each of fiscal years 2011 through 2013.

#### SEC. 6. HOUSING TRUST FUND.

From funds received by the Secretary of the Treasury from the sale of warrants under title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211 et seq.), the Secretary of the Treasury shall transfer and credit \$1,000,000,000 to the Housing Trust Fund established under section 1338 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4568) for use in accordance with such section