
HERE WE GO AGAIN

COMMUNITIES OF COLOR, THE FORECLOSURE CRISIS,
AND LOAN SERVICING FAILURES



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The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with more than 500,000 members dedicated to the principles of liberty and equality embodied in the Constitution and this nation's civil rights laws. The ACLU's Racial Justice Program engages in a nationwide program of litigation and advocacy on behalf of people who have been historically denied their constitutional and civil rights on the basis of race in housing, lending, and other areas.



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MFY Legal Services, Inc. (MFY), a non profit legal services organization, envisions a society in which no one is denied justice because he or she cannot afford an attorney. For over 50 years, MFY has provided free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and underserved populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. In 2014, MFY assisted over 10,000 New York City residents, a number of whom were facing foreclosure.

Cover photo: The Boyd family in their Bedford-Stuyvesant home. Learn more about the problems they faced when they sought a modification of their subprime loan on page 20.

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Executive Summary

During the subprime lending boom of the early 2000s, communities of color were targeted for the riskiest, most predatory mortgages. Since the housing bubble burst in 2008, homeowners in these communities have disproportionately struggled with default and foreclosure. These are the communities that most desperately need solutions to the foreclosure crisis. Instead, new data obtained from the Consumer Financial Protection Bureau (“CFPB”) by MFY Legal Services, Inc. (“MFY”) and the American Civil Liberties Union (“ACLU”) supports the conclusion that loan modification programs are failing homeowners in communities of color, as several prior studies have also indicated. This data, concerning mortgage complaints filed with the CFPB, reveals a number of disturbing trends:

Loan modification failures prompted many of the complaints.

More than 1 in 4 New York homeowners mentioned having a permanent modification denied, and nearly 1 in 8 mentioned being asked repeatedly and inappropriately for documents to support their modification applications.

Complaints come from all communities.

While 65% of the coded complaints in our sample came from predominantly white communities, the remaining 35% came from communities that are majority black, Latino, and Asian. 11% of the coded complaints came from hyper-segregated communities, with populations more than 90% black, Latino, and Asian.

Different communities are filing different complaints.

Overall, 57% of the coded complaints coming from predominantly white communities raised issues that put the borrower at immediate risk of losing his home; that number was nearly 68% in hyper-segregated communities.

Communities of color are filing more complaints about loan modification problems.

While 25% of the coded complaints from predominantly white communities concern permanent modification denials, that issue is mentioned in nearly 36% of the complaints from hyper-segregated communities. Of complaints concerning communication issues with mortgage



William Boyd in front of the Bedford-Stuyvesant home where he has lived since childhood. Loan servicing failures almost caused him to lose it to foreclosure.

servicers, 25% of those from predominantly white communities discussed never being informed of the decision on a loan modification application; that number was 39% in hyper-segregated communities.

Complaints about some servicers vary significantly by community.

In predominantly white communities, 4.3% of coded complaints about Nationstar discussed issues that put the borrower at immediate risk of losing her home; in hyper-segregated communities, that number was 6.4%. There were also notable jumps in the share of serious complaints about Wells Fargo and Ocwen in hyper-segregated communities.

* * *

This report concludes by recommending a number of concrete steps that federal, state, and local authorities must take to expose, address, and ultimately correct these disparities. It is imperative that we begin to pay close attention to the current experiences of communities of color so that these communities no longer bear the brunt of systemic failures.

How Did We Get Here?

Reverse Redlining and the Subprime Boom

Discrimination by mortgage lenders against communities of color is not new. For much of the twentieth century, banks refused to issue mortgages in neighborhoods where people of color lived, literally drawing a red line around these neighborhoods on lending maps.¹ The 1968 Fair Housing Act sought to end discriminatory housing practices like redlining, but decades after its passage, communities of color still lacked access to responsible lending products.² As a result, these communities were ripe for exploitation by predatory lenders during the subprime lending boom of the late 1990s and early 2000s.³

What is mortgage securitization? When a residential mortgage is securitized, the original mortgage lender immediately sells it to an investment bank, which pools the mortgage with thousands of others to create a Residential Mortgage-Backed Security. Shares in the security are sold to investors, including hedge funds, pension funds and sovereign wealth funds. As a result, these investors own many of the country's home mortgages.

During this period, lenders and investment banks sought to profit from the exploding mortgage securitization business, seeking new markets for subprime mortgage products.⁴ Lenders pushed these subprime products, with increasingly unfavorable and risky loan terms, in neighborhoods of color—a practice that became known as “reverse redlining.” During the subprime boom, a borrower of color was 30% more likely than a white borrower to receive a

1 Charles L. Nier, III, *Perpetuation of Segregation: Toward a New Historical And Legal Interpretation of Redlining Under the Fair Housing Act*, 32 J. Marshall L. Rev. 617, 619-27 (1999); Jacob S. Rugh & Douglas S. Massey, *Racial Segregation and the American Foreclosure Crisis*, 75 Am. Soc. Rev. 629, 630-31 (2010). Instances of redlining appear to be on the rise in recent years. In September 2014, New York State Attorney General brought a lawsuit against Evans Bank in Buffalo, New York claiming that it redlined by denying mortgages in predominantly African-American neighborhoods. Press Release, A.G. Schneiderman Announces Redlining Lawsuit Alleging Bank Refused To Make Mortgages Available In Buffalo's Predominantly African-American Neighborhoods (Sept. 2, 2014), available at <http://tinyurl.com/n8l5ezd>.

2 Nier, *supra* note 1, at 635-38.

3 Financial Crisis Inquiry Commission, *Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* 105-06 (Jan. 2011), available at <http://tinyurl.com/44pkjn3>.

4 Financial Crisis Inquiry Commission, *supra* note 3, at 102-04. In 2003, subprime lending accounted for 8% of all mortgage lending. By 2005, it accounted for 20% of the market. *Id.* at 104.

subprime product, even when those two borrowers' profiles, including factors like credit score and employment, were identical.⁵

These subprime products were stacked with predatory features. Among other things, interest rates often reached double digits, and loan amounts were based on inflated property values.⁶ Some featured an extremely low “teaser” interest rate for the first several years, after which the rate would jump significantly.⁷ Similarly, interest-only mortgages initially kept monthly payments low, but prevented homeowners from gaining any equity in their homes and exposed them to payment shock when principal payments came due.⁸ As long as property values continued to increase, homeowners were able to refinance when monthly mortgage payments became unaffordable, but the housing bubble could not last forever.⁹

Cynthia Colbert is an African-American homeowner living in Southeast Queens. In September 2008, just days before the economy crashed, Ms. Colbert refinanced her mortgage. Her credit score was over 700, meaning that she was well-qualified for a traditional, low-risk lending product. But, like so many other African Americans with solid credit, she received a predatory mortgage rife with risky features like an adjustable rate and interest-only payments. Ms. Colbert has fallen behind on this predatory mortgage, and she is currently defending her home in a foreclosure action.

Attempting to Combat the Foreclosure Crisis with Mortgage Modifications

The subprime lending boom came to a spectacular end in 2008, leading to an unprecedented foreclosure crisis.¹⁰ That crisis hit communities of color especially hard. During the first several years, African Americans and Latinos were nearly 50% more likely to be facing foreclosure

⁵ Debbie Gruenstein Bocian, Keith S. Ernst & Wei Li, *Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages*, Ctr. for Responsible Lending 3-4 (May 2006), available at <http://tinyurl.com/ltr4lhf>.

⁶ Financial Crisis Inquiry Commission, *supra* note 3, at 91-92.

⁷ *Id.* at 107-08.

⁸ *See id.* at 105.

⁹ *See id.* at 165.

¹⁰ In the first quarter of 2006, seriously delinquent mortgages (at least 90 days late and possibly in foreclosure) accounted for 1.93% of all mortgages nationally. By the end of the first quarter 2010, that number jumped to 9.54% of all mortgages. In the subprime mortgage sector, seriously delinquent mortgages shot up from 6.22% of the subprime market in the first quarter of 2006 to 30.21% in the first quarter of 2010. Mortgage Bankers Association, *National Delinquency Survey Q1 2010 4* (May 2010), available at <http://tinyurl.com/nzxtfa7>.

than whites, regardless of income.¹¹ And foreclosure rates were directly related to residential segregation: the more segregated a metropolitan area, the higher the foreclosure rate it experienced.¹² With home equity plummeting, particularly in communities of color,¹³ and with many homeowners trapped in unaffordable mortgages, mortgage modifications emerged as one key piece of the solution.

In a modification, the mortgage servicer and the homeowner agree on new terms for the existing mortgage.¹⁴ The new terms provide the homeowner with an affordable monthly mortgage payment, allowing the homeowner to get back on track and keep the home out of foreclosure. Providing modifications that allow families to avoid foreclosure is not just good for those families. It also makes sense for the owner or owners of the mortgage, because the borrower will resume making payments, and the costly foreclosure process can be avoided.¹⁵ Neighborhoods also benefit from loan modifications, since the presence of foreclosed homes drives down the value of neighboring properties, even when the owners of those properties are current on their mortgages.¹⁶

What is a mortgage servicer? Mortgages held in a mortgage-backed security are pooled together and owned by multiple investors. The investors hire a middleman to accept the homeowner's monthly payments, pay property taxes and homeowner's insurance, and, if the homeowner defaults, work with the homeowner to modify the mortgage or foreclose on the home. This middleman is the "mortgage servicer." Many of the country's largest banks—Bank of America, Chase, Wells Fargo, Citibank—have mortgage servicing arms. Recently, "non-bank servicers," companies whose sole business is mortgage servicing, have become increasingly prevalent.

In February 2009, the federal government announced the creation of its modification program, intended to stem the foreclosure crisis. Participation in the Home Affordable Modification

11 Debbie Gruenstein Bocian, Keith S. Ernst Wei Li & Keith S. Ernst Wei Li, *Foreclosures by Race and Ethnicity: The Demographics of a Crisis*, Ctr. for Responsible Lending 9-10 (June 2010), available at <http://tinyurl.com/ldnzl7v>.

12 Rugh & Massey, *supra* note 1, at 644.

13 Between 2005 and 2008, African Americans experienced a decline in household wealth of 52% and Latinos a decline of 66%. Whites experienced a decline of 16% during the same time period. Much of this differential impact can be attributed to the fact that home equity accounts for 92% of African-American families' net worth and 67% of net worth for Latinos. For white families, home equity accounts for just 58% of net worth. Peter Dreier, Saqib Bhatti, Rob Call, Alex Schwartz & Gregory Squires, *Underwater America: How the So-Called Housing "Recovery" is Bypassing Many American Communities*, Haas Inst. for A Fair and Inclusive Society 5 (May 2014), available at <http://tinyurl.com/ka3xa7g>.

14 Diane E. Thompson, *Why Servicers Foreclose When They Should Modify and Other Puzzles of Servicer Behavior: Servicer Compensation and its Consequences* Nat'l Consumer Law Ctr. 1 (Oct. 2009), available at <http://tinyurl.com/oaqjgv8>.

15 See Adam J. Levitin & Tara Twomey, *Mortgage Servicing*, 28 Yale J. on Reg. 1, 70-71 (2011).

16 Ctr. for Responsible Lending, *2013 Update: The Spillover Effects of Foreclosures* 1 (Aug. 2013), available at <http://tinyurl.com/nqmxguh> ("On average, families affected by nearby foreclosures have already lost or will lose \$23,150 in household wealth, representing 8.8 percent of their home value. . . . Families impacted in minority neighborhoods have lost or will lose, on average, \$40,297 or 16 percent of their home value.").

Program (“HAMP”) was voluntary, but the majority of mortgage servicers opted in.¹⁷ The Obama Administration anticipated that the program could help as many as 3 to 4 million homeowners who were behind or at imminent risk of falling behind on payments.¹⁸

The U.S. Treasury Department sets forth the specific HAMP procedures in the “Making Home Affordable Handbook.”¹⁹ The handbook defines an affordable modification as one that produces a monthly mortgage payment—inclusive of principal, interest, taxes and insurance—that is 31% of the homeowner’s gross monthly income. To reach that target payment, HAMP requires the mortgage servicer to take a number of specific steps to reduce the monthly cost to the homeowner.²⁰ If these steps yield that affordable target payment, the servicer will likely be required to provide a modification.²¹

To apply for a HAMP modification, the homeowner must provide the servicer with extensive documentation of income, including paystubs, bank statements, and tax returns.²² Within thirty days of receiving the homeowner’s application and income documentation, the servicer is supposed to review and respond to the homeowner’s application for a HAMP modification.²³ If it is possible to reach the affordable target payment, the homeowner should be placed on a three-month trial payment plan. Then, assuming the homeowner makes the trial payments, the mortgage servicer should make the trial modification permanent.²⁴

Although HAMP is the highest-quality modification program, many mortgage servicers also offer their own, in-house modification programs. These modifications are subject to similar

17 HAMP was initially available only for owner-occupied homes. In June 2012, the federal government rolled out “HAMP Tier 2,” which allows for modifications on investment properties. HAMP Tier 1, which produces a more affordable payment, is still only available for owner-occupied homes. Making Home Affordable, *Supplemental Directive 12-02: Making Home Affordable Program—MHA Extension and Expansion 4–6* (Mar. 9, 2012), available at <http://tinyurl.com/ppjkjwq>.

18 President Barack Obama, *Remarks by the President on the Home Mortgage Crisis* (Feb. 18, 2009), available at <http://tinyurl.com/3bcadq4>.

19 Making Home Affordable Program, *Handbook for Servicers of Non-GSE Mortgages*, v. 4.4 (Mar. 2014) (hereinafter “MHA Handbook”), available at <http://tinyurl.com/q7qncdr>. The MHA Handbook only pertains to mortgages that are not guaranteed by one of the government-sponsored enterprises (“GSEs”) (i.e., Federal National Mortgage Association (“Fannie Mae” or “FNMA”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac” or “FDIC”)). However, both Fannie Mae and Freddie Mac have their own guidelines that mirror those found in the MHA Handbook. Mortgage modifications offered by Fannie Mae and Freddie Mac are also termed “HAMP” modifications, and their numbers are included in Treasury’s quarterly Making Home Affordable Program Performance Report, which analyzes HAMP performance.

20 The servicer must first (1) add any arrears to the unpaid principal balance; then (2) lower the interest rate to a floor of 2%; next (3) extend the term of the loan to no more than 40 years; and, if necessary (4) forbear a portion of the new, capitalized principal balance—up to 30%—as a non-interest bearing balloon payment due at the end of the loan. MHA Handbook, *supra* note 19, at 111–13.

21 The servicer has one more action to perform before it can offer a HAMP modification: the Net Present Value (“NPV”) test. The NPV test evaluates whether the investors who own the mortgage are economically better off offering the modification or foreclosing. If the NPV test reveals that a modification is better for the investors then the servicer *must* offer the HAMP modification. If the NPV test is negative, the servicer is not required to offer the HAMP modification. MHA Handbook, *supra* note 19, at 122–26. Thus, under HAMP, the owners of the mortgage will never lose money on a modification.

22 MHA Handbook, *supra* note 19, at 100–07.

23 MHA Handbook, *supra* note 19, at 97.

24 MHA Handbook, *supra* note 19, at 126, 130.

regulations, most notably the recent amendments to the Real Estate Settlement Procedures Act (“RESPA”), a federal law that governs servicers, and for certain servicers, the 2012 National Mortgage Settlement (“NMS”). Like HAMP, RESPA and the NMS require the covered mortgage servicers to review a modification application and render a decision within thirty days.²⁵

Modification Failures

HAMP is a well-designed program, but its execution has been far from perfect. As a result of problems that have plagued HAMP since its inception, HAMP modifications have been completed for just 1.3 million homeowners by June 2014, far fewer than the 3 to 4 million originally estimated to be eligible.²⁶ Other modification programs, including the NMS announced in March 2012,²⁷ have produced equally dismal results. Under the NMS, which covers four of the largest loan servicers, only 69,123 homeowners have received a home-saving modification.²⁸

Despite the fact that the foreclosure crisis has disproportionately impacted homeowners and communities of color,²⁹ no modification program, including HAMP, has taken steps to ensure that help is reaching these homeowners and communities. In fact, previous studies suggest that people of color are disproportionately experiencing problems securing loan modifications.³⁰ That conclusion is further supported by this report’s analysis of mortgage complaint data from the Consumer Financial Protection Bureau (“CFPB”). As the next section details, people living in communities of color who submit complaints to CFPB are far more likely to raise serious flaws in the modification process than those in predominantly white communities. They are also more likely to raise a host of other serious issues with loan servicing.

25 These NMS requirements are embodied in Consent Judgments between various government entities (both state and federal) and the nation’s five largest servicers: Ally/GMAC, Bank of America, CitiBank, JPMorgan Chase and Wells Fargo. The Consent Judgments and accompanying documents are available at <http://www.nationalmortgagesettlement.com>. See Exhibit A to the Consent Judgment for Each Servicer, § IV.F(4). The RESPA amendments that regulate the modification process are codified at 12 C.F.R. § 1024.

26 *Making Home Affordable, Program Performance Report Through the Second Quarter of 2014* 5 (Sept. 2014) [hereinafter “September 2014 HAMP Report”], available at <http://tinyurl.com/p59bnwt>. This number only includes modifications under HAMP Tier 1, the only program that was available until June 2012. See note 17, *supra*. As Tier 1 was the only modification program available in 2009, it is the metric that is used to determine if the Administration has met its goal.

27 See generally National Mortgage Settlement, *supra* note 25.

28 The NMS has instead incentivized mortgage servicers to grant “short sales” (in which the homeowner sells the home for less than the value of the mortgage) and to forgive second mortgages that the bank would likely not otherwise have been able to collect. As of June 2013, 184,005 homeowners were granted a short sale and 213,073 homeowners had a second mortgage forgiven under the NMS. See Office of Mortgage Settlement Oversight, *Final Progress Report* (Aug. 2013), available at <http://tinyurl.com/mfjq4pn>. While both short sales and the forgiveness of the second mortgage benefit the homeowner, neither provide the home-saving or neighborhood-stabilizing solution of a first mortgage modification. See Elizabeth M. Lynch, *Second Mortgage Shell Game*, N.Y. Times, Feb. 17, 2013, at A17, available at <http://tinyurl.com/kue2nnm>.

29 Gruenstein Bocian et al., *supra* note 11, at 8–10; see also Dreier et al., *supra* note 13, at 9–11.

30 See, e.g., U.S. Gov’t Accountability Office, *Troubled Asset Relief Program: More Efforts Needed on Fair Lending Controls and Access for Non-English Speakers in Housing Programs* (Feb. 2014) (“GAO Report”), available at <http://tinyurl.com/mebl8cu>; California Reinvestment Coalition, *Race to the Bottom: An Analysis of HAMP Loan Modification Outcomes by Race and Ethnicity for California* (July 2011) (“CRC Report”), available at <http://tinyurl.com/qg5e97p>.

Different Neighborhoods, Different Servicing Failures: Analysis Of CFPB Complaint Data

The Complaints: Background

Consumers can file complaints with CFPB about a range of financial products, including mortgages and mortgage servicing. CFPB’s online complaint form includes a blank box for a “narrative,” in which the complainant can describe issues in detail. Currently, CFPB does not make these narratives public, making it impossible to know with any specificity what the consumer complained about.³¹ However, in response to our Freedom of Information Act (“FOIA”) request (see Appendix 1), CFPB agreed to code New York State mortgage and mortgage servicing complaints based on categories provided by MFY and the ACLU (see Appendix 2).

Between July 1, 2012 and May 31, 2014, CFPB received 5,985 complaints about mortgages and mortgage servicing that it believed came from New Yorkers. However, 108 of those complaints did not correspond to a residential zip code in New York and as a result were excluded from our review. Of the remaining complaints, 2,399 were not coded, either because the consumer left the narrative field blank or because the narrative did not correspond to any of the identified categories (Chart 1). The remaining 3,520 complaints were coded with one or more of the category codes listed in Appendix 2 (Chart 2). These 3,520 “Coded Complaints” are the focus of this analysis.

³¹ Part of CFPB’s mandate is to provide “timely and understandable information to make responsible decisions about financial transactions” and to ensure transparency and efficiency in the financial products market. 12 U.S.C. 5511(b)(1) & (5). To fulfill that mandate, CFPB publishes a searchable database of consumer complaints, including complaints about mortgages and modifications. While this database includes the complainant’s zip code, the name of the servicer and other information, CFPB has not, as of the date of this report, released the complaint narratives. Disclosure of Consumer Complaint Data 78 Fed. Reg. 69 (April 10, 2013). CFPB has proposed, however, to expand its publicly searchable database to include these narratives for all consumers that opt in. Disclosure of Consumer Complaint Narrative Data 79 Fed. Reg. 149 (Aug. 4, 2014). CFPB requested public comment regarding the proposed policy change in summer 2014, and the American Civil Liberties Union and MFY Legal Services, Inc. submitted comments in support of the proposal. See ACLU Comment to the CFPB on Release of Consumer Complaint Narratives (Sept. 22, 2014), available at <http://tinyurl.com/p2z89hn>; MFY Comment on Release of Consumer Complaint Narratives (Sept. 22, 2014), available at <http://tinyurl.com/no6udkz>.

CHART 1

Proportion of Complaints Coded

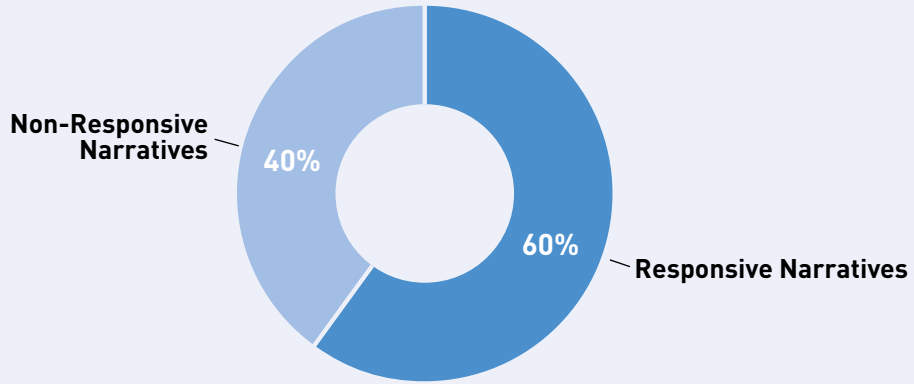


CHART 2

Frequent Complaint Codes

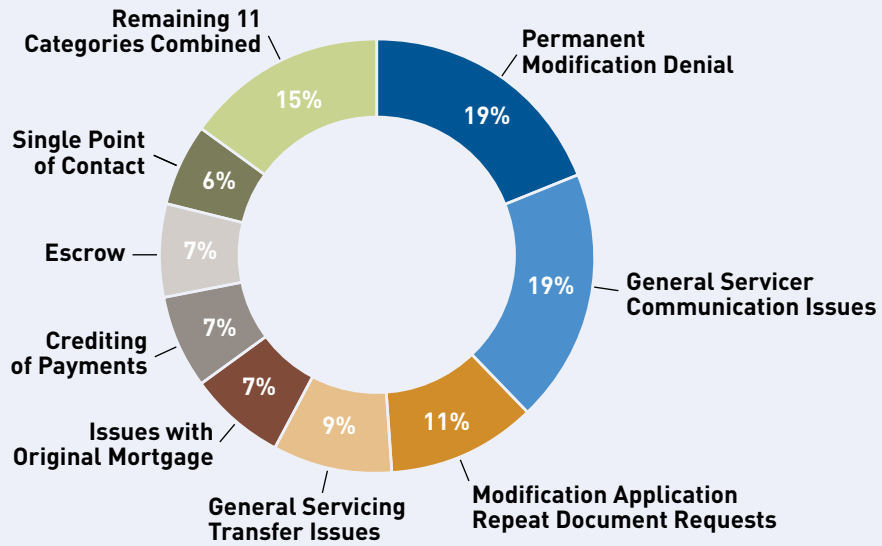


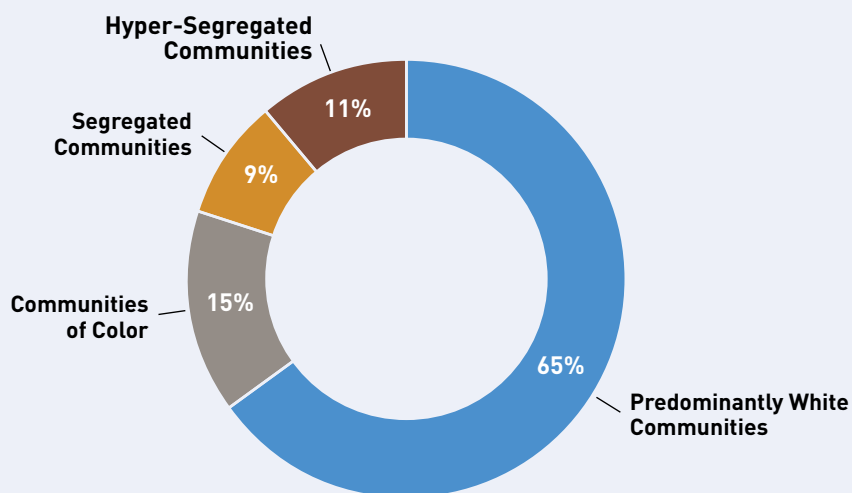
TABLE 1**Top 10 Banks Identified in Coded Complaints**

	Frequency	Percent
Bank of America	697	20%
Wells Fargo	493	14%
Ocwen	396	11%
JPMorgan Chase	355	10%
Citibank	215	6%
HSBC	209	6%
Nationstar Mortgage	184	5%
Green Tree Servicing, LLC	116	3%
Select Portfolio Servicing, Inc	48	1%
M&T Bank	39	1%
Other/No Bank Identified	768	22%
Total	3520	100%

The Coded Complaints came from 921 different zip codes in New York State. These zip codes have very different demographics: 65% of the complaints came from zip codes with populations that were majority white, called “predominantly white communities” here. About 14% came from zip codes where between 50% and 75% of the population were black, Latino or Asian, called “communities of color.” About 9% of the complaints came from zip codes with populations that were more than 75% but less than 90% people of color, called “segregated communities.” Finally, 11.5% came from zip codes that were more than 90% people of color, called “hyper-segregated communities.” The Coded Complaints also discussed a range of banks and servicers (Table 1).

CHART 3

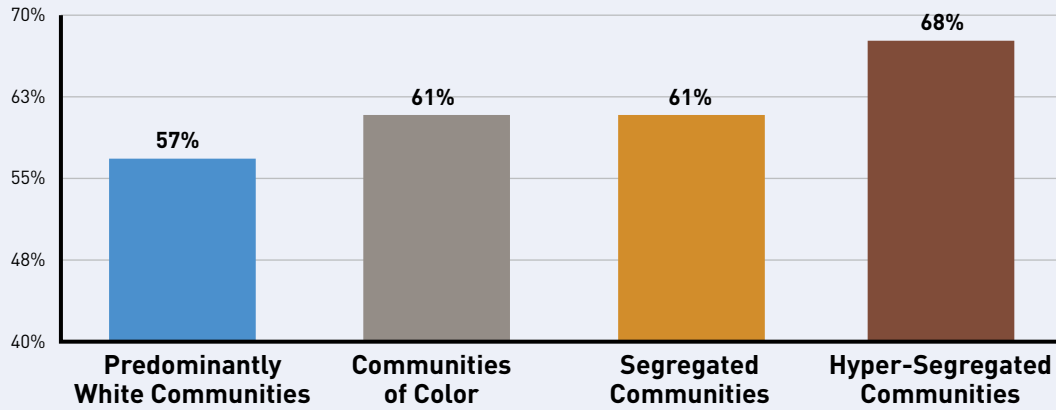
Coded Complaints—Community Demographics



Immediate Risk of Home Loss

This report focuses on mortgage modification programs, which are intended to keep borrowers from losing their homes to foreclosure. As a result, we are most concerned with complaint categories that reflect an immediate risk of home loss and harm for borrowers trying to remain in their homes. To reflect that concern, we divided the complaint categories into two groups: (1) those that significantly increased the risk of losing a home, and (2) those that did not (see Appendix 2, column entitled “Likely Damage to Homeowner”). For example, a complaint about a permanent modification denial reflects a situation in which home loss is an imminent risk. By definition, a homeowner who is seeking a modification cannot afford her current payment, and now she has been unable to get that payment changed. Conversely, a complaint about issues communicating with a servicer does not mean that the homeowner is necessarily at immediate risk of losing his home.

Overall, 59% of the Coded Complaints reflect immediate home-loss risks, but this number is significantly different depending upon the demographics of the communities that the complaints come from. While about 57% of Coded Complaints from predominantly white communities reflected immediate home loss risks, nearly 68% of the complaints from hyper segregated communities did (Chart 4).

CHART 4**Share of Complaints Reflecting Immediate Home-Loss Risk, By Community**

It's also worth noting that these numbers vary depending on the bank or servicer which is the subject of the complaint. As Table 2 shows, the proportion of complaints which are in this most-harmful category jumps as the population of color rises for a few servicers in particular. Wells Fargo, Ocwen, and Nationstar all have significantly higher rates of complaints reflecting immediate risk of home loss in hyper-segregated communities than they do in predominantly white communities.

TABLE 2**Share of Complaints Reflecting Immediate Home-Loss Risk, By Bank and Community**

	All Coded Complaints		Predominantly White Comms		Communities of Color		Segregated Communities		Hyper-Segregated Communities	
	#	%	#	%	#	%	#	%	#	%
Bank of America	697	21.07	296	23.81	81	26.38	37	21.26	54	21.6
Wells Fargo	493	14.9	181	14.56	59	19.22	33	18.97	45	18
Ocwen	396	11.97	149	11.99	31	10.1	26	14.94	37	14.8
JPMorgan Chase	355	10.73	126	10.14	33	10.75	14	8.05	20	8
Citibank	215	6.5	87	7	22	7.17	9	5.17	18	7.2
HSBC	209	6.32	83	6.68	10	3.26	11	6.32	9	3.6
Nationstar Mortgage	184	5.56	54	4.34	10	3.26	12	6.9	16	6.4

TABLE 3**Complaint Categories**

Each of the 3,520 Coded Complaints was assigned up to five codes, resulting in 4,994 total complaint codes:

	Number of Complaints	Share of 3,520 Coded Complaints Including this Code	Percentage of Total 4,994 Complaint Codes
Permanent Modification Denials	969	27.53%	19.40%
General Servicer Communication Issues	963	27.36%	19.28%
Modification Application Repeat Document Requests	530	15.06%	10.61%
General Servicing Transfer Issues	430	12.22%	8.61%
Issues with Original Mortgage	373	10.60%	7.47%
Crediting of Payments	338	9.60%	6.77%
Escrow	328	9.32%	6.57%
Single Point of Contact	315	8.95%	6.31%
Remaining 11 Categories Combined	748	21.25%	14.98%

Permanent modification denials

More than one quarter of all Coded Complaints concerned permanent modification denials. These are the complaints that reveal a borrower to be at the clearest risk of home loss—the homeowner has provided the documentation needed to show that he cannot afford his original monthly payment, but has been denied a modification. He must now pay the original monthly amount or face default and foreclosure. In MFY’s experience, the vast majority of these denials are erroneous.³² Often the servicer has incorrectly calculated the household income, resulting in an amount that cannot support a modification. Sometimes the servicer will state with little or no explanation that there is an “investor restriction,” meaning that the terms of the security into

32 MFY’s Foreclosure Prevention Project represents and assists Brooklyn, Queens and Staten Island homeowners facing foreclosure. Created in 2008, MFY has assisted 1500 homeowners and has helped 200 homeowners obtain a modification or some other loss mitigation solution. MFY’s extensive experience forms the basis of its opinions in this report.

which the mortgage has been bundled do not permit modifications. This also is usually untrue.³³ Sometimes a homeowner will be making monthly payments on a permanent modification and the mortgage servicer will randomly reject payments or arbitrarily revoke the modification.

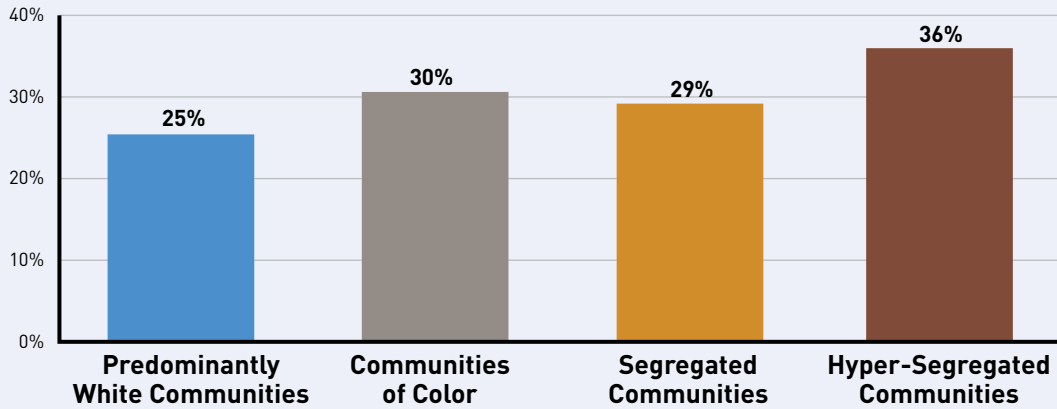
Rhoda Carter, an African-American homeowner in Queens, has lived in her cherished home for almost 40 years. After a major investment bank laid her off from her job as a word processor in 2008, Ms. Carter cashed in her retirement savings to make her monthly mortgage payments. She repeatedly contacted her mortgage servicer, ASC—a subsidiary of Wells Fargo—seeking help. In October 2009, Wells Fargo informed Ms. Carter that it would put her on a forbearance plan, with lower monthly payments, while it considered whether to grant her a loan modification. Ms. Carter made these payments from October 2009 through September 2010 when Wells Fargo unilaterally rejected her payment. Instead, while it was still allegedly considering a modification, in September 2010, Wells Fargo sued her in foreclosure. Although that foreclosure action was dismissed, Wells Fargo continued to stall on Ms. Carter’s application even after she regained employment. It was not until 2014, after many modification applications, that Wells Fargo finally offered Ms. Carter a modification. But, with four years of fees, delinquent interest and other foreclosure-related costs rolled into the new principal balance, Ms. Carter’s mortgage is significantly more expensive than it would have been had Wells Fargo made a timely decision four years prior. Ms. Carter’s prized possession—her home—is now a painful reminder of Wells Fargo’s negligence and delay.

Unsurprisingly, given the racial and spatial geography of the mortgage crisis, the share of complaints that concerned permanent modification denials varies significantly depending upon the demographics of the communities from which those complaints arose (Chart 5). The relationship between racial demographics and the share of complaints in this category is statistically significant. Complaints from predominantly white communities are less likely to report permanent modification denials than those from communities with a higher proportion of residents of color, and that difference is particularly stark looking at hyper-segregated communities. Complaints from these communities were more likely to report permanent modification denials than white communities by a margin of more than ten percent.

³³ The existence of an investor restriction can be determined by reviewing the S.E.C. filings concerning the mortgage-backed security. One study found that only 8% of mortgage-backed securities expressly bar mortgage modifications. See John Patrick Hunt, *Loan Modification Restrictions in Subprime Securitization Pooling and Servicing Agreements from 2006: Final Results*, UC Davis School of Law 2 (2010), available at <http://tinyurl.com/myq7qnd>.

CHART 5

Share of Complaints Concerning Permanent Modification Denials, By Community

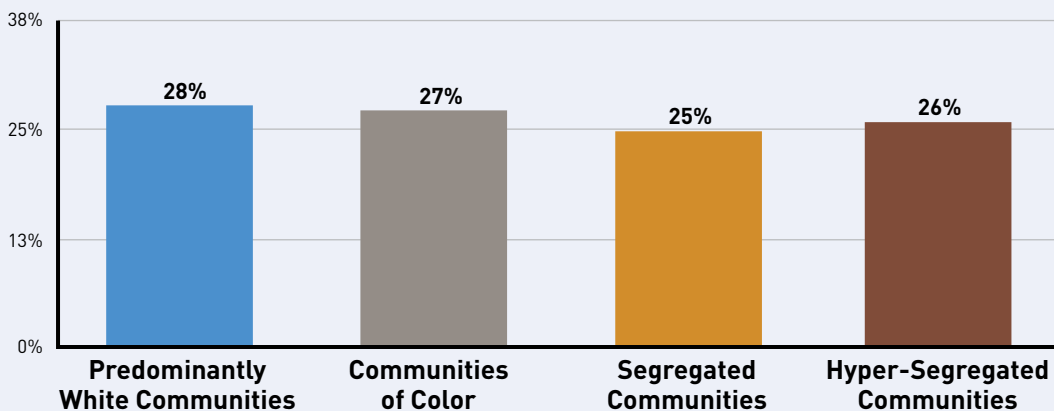


General servicer communication issues

There are a similarly high number of complaints about general servicer communication issues. Although quite frustrating to borrowers, most of these types of complaints do not reveal an immediate risk of home loss. These complaints encompass, among other things, servicers' failure to keep borrowers informed about the progress of their modification applications or to provide payment histories or payoff letters when requested. These sorts of complaints make up a larger share of the complaints from predominantly white communities than they do from the other communities, although this trend is not statistically significant:

CHART 6

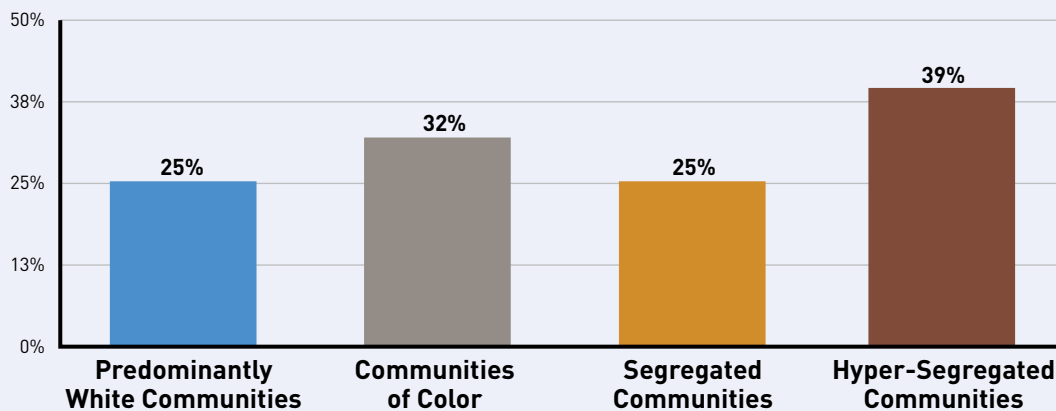
Share of Complaints Concerning General Servicer Communication Issues, By Community



There is, however, one sub-category within general servicer communication issues tied to an immediate risk of home loss: complaints concerning a consumer who was “never informed of the decision on an unspecified modification application or a trial modification application.” (See Appendix 2, Category 11). These complaints make up a higher share of complaints from communities of color than they did from white communities, and this relationship is statistically significant. Once again, here, people in communities of color and hyper-segregated communities were more likely to complain about a serious loan modification problem that immediately threatened their ability to stay in their home.

CHART 7

Share of Complaints Concerning General Servicer Communication Issues Indicating Home-Loss Risk, By Community



Modification application repeat document requests

More than 500 complaints mention mortgage servicers’ repeated requests for the same documents, which often result in lengthy delays in processing modification applications. In assessing the homeowner’s gross monthly income, the servicer needs paystubs, bank statements, taxes and other financial documents. However, mortgage servicers often require homeowners to resubmit paystubs and bank statements, or ask questions that have already been answered. With little regulatory enforcement, mortgage servicers have been able to delay modification reviews indefinitely.³⁴

³⁴ As an example of ineffective regulatory enforcement, at one point, in June 2011, the Treasury Department, which oversees the HAMP program, withheld HAMP incentives from Chase and Bank of America for their poor compliance. But, in early 2012, in order to encourage Chase and Bank of America to agree to the National Mortgage Settlement, Treasury released these withheld incentives. Office of the Special Inspector General for the Troubled Asset Relief Program, Quarterly Report to Congress 189-90 (Apr. 2012), available at <http://tinyurl.com/nu9xqb3>.



William Boyd, a Vietnam-era veteran and resident of the historically African-American Bedford-Stuyvesant neighborhood in Brooklyn, lives in his childhood home with his wife and their two grandchildren. With Mrs. Boyd's retirement, the Boyds' monthly income dropped lower than they expected and caused them to fall behind on their already expensive subprime mortgage. Wells Fargo sued the Boyds in foreclosure. After the Boyds submitted a complete application for a modification, Wells Fargo waited seven months to issue a response, even though regulations allow them only thirty days. Wells Fargo then delayed the modification further by making repetitive document requests, mailing contradictory letters to the Boyds, and requiring documentation outside the bounds of HAMP. These dilatory tactics added hefty fees to the balance due on their mortgage loan. While the Boyds were eventually able to obtain a modification, that modification was more expensive than it should have been, since it included the interest and fees that accrued during Wells Fargo's delay.

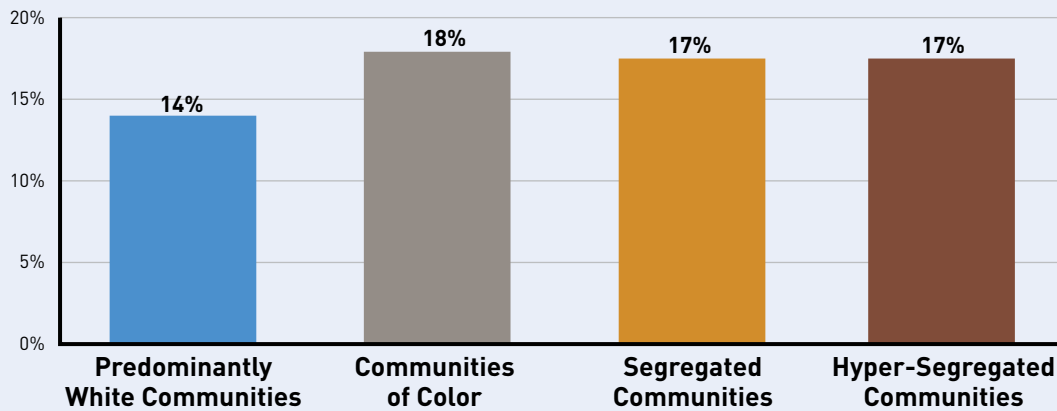
These delays place homeowners at immediate risk of losing their homes. Every month that a mortgage servicer delays its decision, delinquent interest and foreclosure-related fees accrue to the homeowner's arrears. At some point, the arrears become so large that a new

modified principal balance cannot fit within the confines of any of the modification programs.³⁵ Acknowledging the danger that delay creates, HAMP, the NMS and recent amendments to RESPA all require the mortgage servicer to make a decision on a homeowner's modification application within thirty days of receiving a complete application.³⁶ But servicers rarely comply with this timeline; in May 2014, 221,000 homeowners had been waiting up to a year or more for a decision on their HAMP applications.³⁷

Once again, the share of these complaints in predominantly white communities was lower than the share in communities with more residents of color. The relationship between racial demographics and the share of complaints in this category is statistically significant.

CHART 8

Share of Complaints Concerning Repeat Document Requests, By Community



General servicing transfer issues

More than 400 complaints reported general servicing transfer issues, including problems when servicing was transferred in the midst of the modification process. These numbers comport with

35 See Written Testimony of Debby Goldberg (National Fair Housing Alliance) Before the Subcommittee on Housing, Transportation and Community Development of the United States Senate Committee on Banking, Housing and Urban Affairs, *Helping Homeowners Harmed by Foreclosures: Ensuring Accountability and Transparency in Foreclosure Reviews Part II 6* (Apr. 17, 2013), available at <http://tinyurl.com/nwqqe67>.

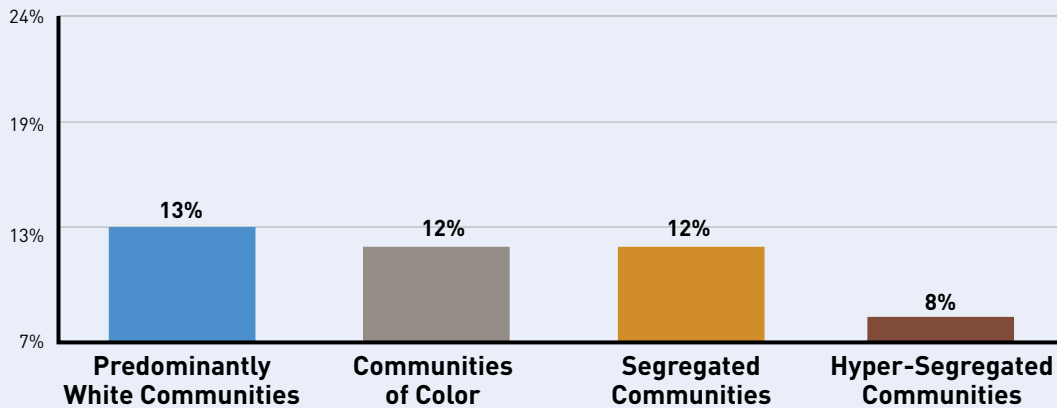
36 For HAMP, see MHA Handbook, *supra* note 19, at 97; for the NMS, see Exhibit A, § IV.F(4), *supra* note 25; for RESPA, see 12 C.F.R. §1024.41(c).

37 Office of the Special Inspector General for the Troubled Asset Relief Program, Quarterly Report to Congress 70 (Oct. 2014) ("October 2014 SIGTARP Report"), available at <http://tinyurl.com/o7ebkfb>. See also Plaintiff New York Attorney General's Memorandum of Law in Support of Motion to Enforce the Consent Judgment Against Wells Fargo Defendants, *United States et al. v. Bank of America Corp. et al*, 12-cv-361 (RMC) at 15 (D.D.C. Oct. 2, 2013), available at <http://tinyurl.com/ljh8udq>.

federal findings that consumers are increasingly frustrated with mortgage servicing transfers.³⁸ Overall, these complaints made up a higher share of predominantly white communities' complaints, and the relationship between racial demographics and the share of servicing transfer complaints is statistically significant:

CHART 9

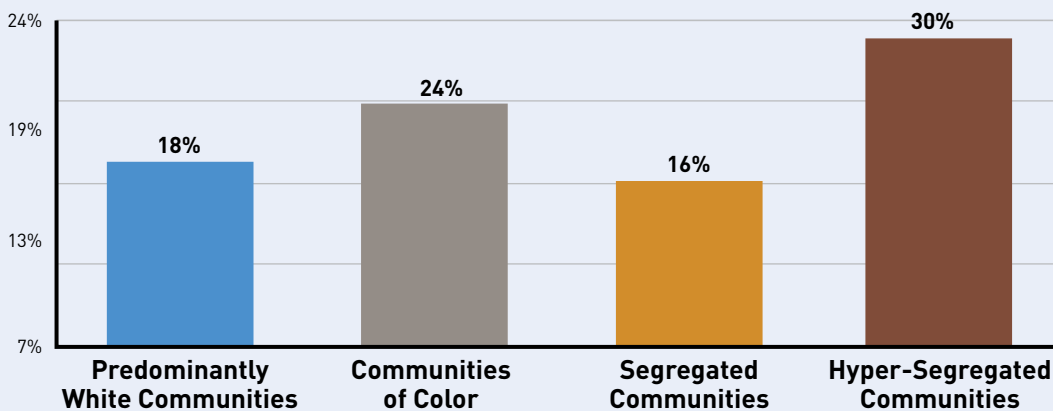
Share of Complaints Concerning General Servicing Transfer Issues, By Community



But those servicing transfer complaints that showed a homeowner at immediate risk of home loss—being required to submit an entirely new application to a new servicer or having a trial or permanent modification plan rejected by a new servicer—came disproportionately from communities of color, and especially hyper-segregated communities.

CHART 10

Share of Complaints Concerning General Servicing Transfer Issues Indicating Home-Loss Risk, By Community



38 October 2014 SIGTARP Report, *supra* note 37, at 106–08.

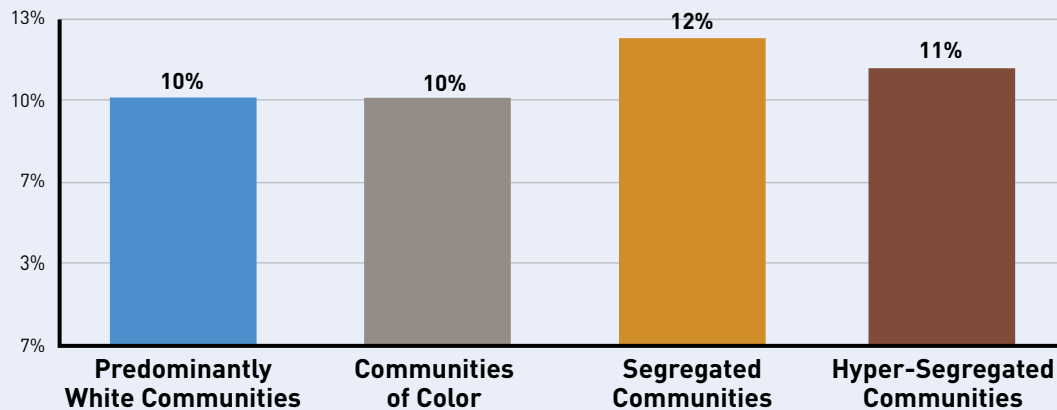
The notion that servicing transfer can be especially perilous for homeowners seeking modifications is evidenced by the fact that HAMP, the NMS and RESPA each contain regulations aimed at requiring a new servicer to step directly into the shoes of the servicer it is replacing: the new servicer must resume review for a modification, and it must abide by any trial or permanent modification the prior servicer offered the homeowner.³⁹

Issues with original mortgage

The next largest group of complaints concerns either the terms of the original mortgage or trouble getting a mortgage. It is difficult to know how to interpret the complaints in this category, since consumers may be complaining about the predatory terms of a mortgage they received during the subprime boom, or difficulty obtaining a mortgage in the current era of tight credit. Such a complaint could certainly be prompted by the modification process: when a homeowner becomes unable to make payments, she may realize how unaffordable the mortgage was from the start or learn about terms that were not explicitly disclosed at the loan closing. But without more information, it is hard to draw any conclusions. The share of complaints in this category does not vary much based on demographics:

CHART 11

Share of Complaints Concerning Issues with Original Mortgage, By Community



³⁹ MHA Handbook, *supra* note 19, at 24, 26-27; NMS, *supra* note 25, Exhibit A, § IV.M; RESPA, *supra* note 25, 12 C.F.R § 1024.33. Further, the Special Inspector General for the Troubled Asset Relief Program (“TARP”), the program that funds HAMP, dedicated a section of her most recent Quarterly Report to analysis of the negative impact that mortgage servicing transfers has on homeowners. See October 2014 SIGTARP Report, *supra* note 37, at 99-112.

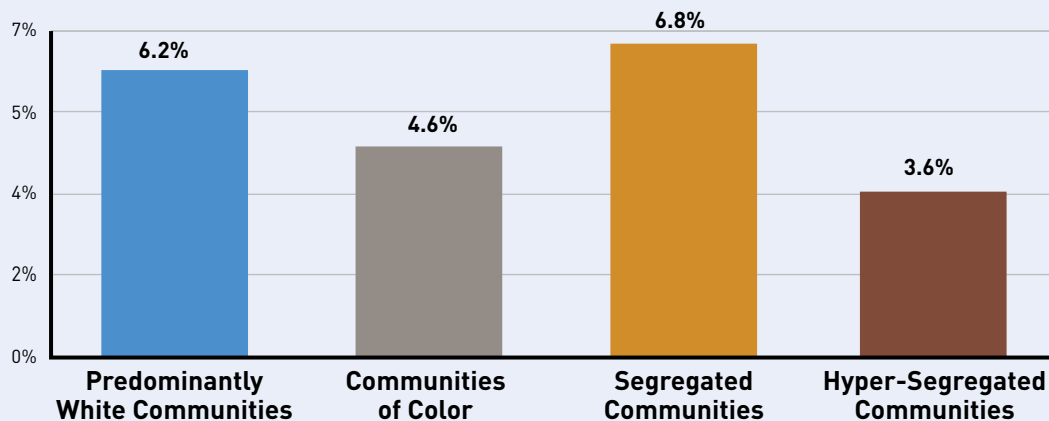
Crediting of payments

338 complaints mentioned problems with the crediting of payments. According to most mortgages, mortgage servicers are required to credit monthly mortgage payments first to interest, then to principal, then to taxes and insurance (“escrow”) and finally to any outstanding fees. If a bank does not credit these payments properly, the homeowner is not paying down his mortgage in accordance with the mortgage contract. In general, though, while the improper crediting of mortgage payments injures the homeowner, it does not place the homeowner in imminent risk of losing her home.

Complaints about crediting of payments made up a slightly larger share of those coming from predominantly white communities than from other communities, and the relationship between demographics and the share of these complaints is statistically significant:

CHART 12

Share of Complaints Concerning Crediting of Payments, By Community



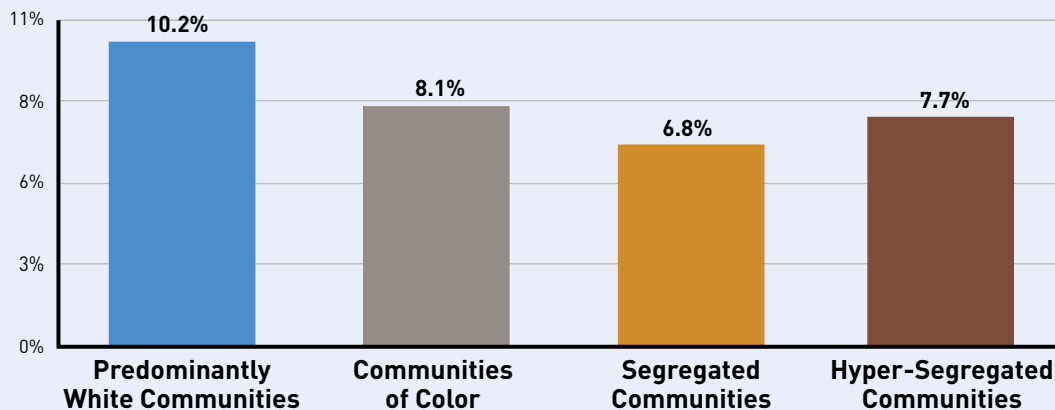
Dual tracking—Dual tracking occurs when the mortgage servicer moves forward with a foreclosure while the homeowner is in a trial modification or actively applying for a modification. Dual tracking, of course, causes real harm, and as a result HAMP, NMS, and the new RESPA amendments all seek to prevent dual tracking. In our data, there were only 143 dual tracking complaints, too few to draw any conclusions. But there appears to be some relationship between the share of dual tracking complaints and neighborhood demographics: 3.89% of complaints from white communities concern dual tracking, versus 3.64% from communities of color, 4.53% from segregated communities and 5.21% from hyper-segregated communities.

Escrow

Consumers submitted approximately the same number of complaints related to escrow, including property tax issues, as they did concerning the crediting of payments. These complaints are likely to come from homeowners who are current on their mortgages—a homeowner would have to be closely monitoring monthly mortgage statements to discover that the servicer did not properly pay the escrow. Escrow issues, by themselves, do not increase the likelihood that a home will be lost. Escrow complaints made up a larger share of complaints from predominantly white communities than of complaints from communities of color.

CHART 13

Share of Complaints Concerning Escrow, By Community



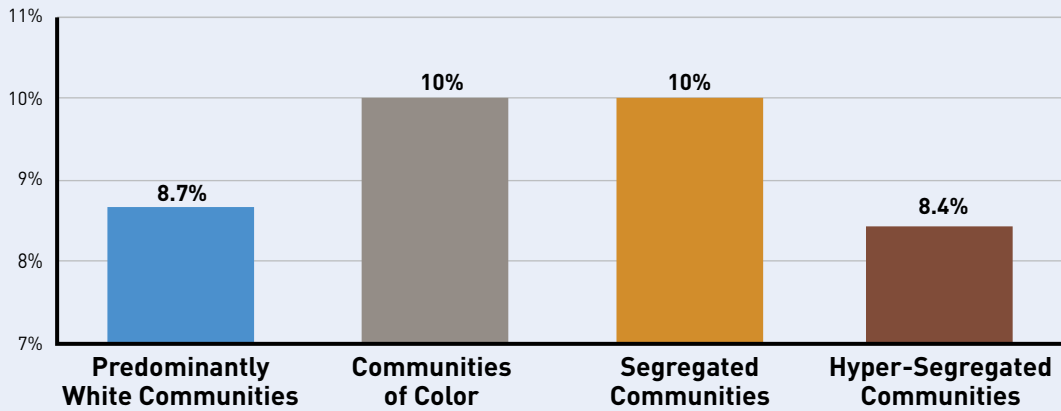
Single point of contact

315 complaints mentioned issues with the Single Point of Contact (“SPOC”). Under HAMP, the NMS and RESPA, mortgage servicers are required to provide homeowners in default with the name of one person who serves as the SPOC to explain the homeowner’s options and assist with a modification application.⁴⁰ Theoretically, the homeowner can call the SPOC with questions, because the SPOC should be familiar with the homeowner’s application status. However, turnover among SPOCs is high, with homeowners often receiving monthly letters that their SPOC has changed. SPOCs are often wholly unfamiliar with a homeowner’s pending modification application. Although SPOCs’ pervasive lack of knowledge is frustrating and often emblematic of larger problems with the servicer, the likelihood that SPOC issues alone will lead to home loss is minimal. The share of complaints in this category did not vary in any linear way based on demographics.

⁴⁰ MHA Handbook, *supra* note 19, at 64–66; NMS, *supra* note 25, Exhibit A, § IV.C; 12 C.F.R § 1024.40 (RESPA).

CHART 14

Share of Complaints Concerning Single Point of Contact, By Community



Thomas Lee, an Asian-American homeowner in Queens, had been approved for the Home Affordable Unemployment Program, a branch of HAMP offered to homeowners who had lost their jobs as a result of the economic downturn. Then, in 2011, Chase initiated dual-tracking against Mr. Lee by suing him in foreclosure while he was on the HAMP unemployment program. Trying to save his childhood home, Mr. Lee responded promptly to Chase’s foreclosure suit and applied for a standard HAMP modification as soon as he secured regular employment in 2012. Although Mr. Lee is an ideal candidate for a modification given his income, he still has not received a modification. Instead, over the course of the past three years, Mr. Lee has complied with Chase’s multiple demands for documents, submitting eight complete Request for Mortgage Assistance application packages, in addition to updating his bank statement submission 14 separate times, his income clarification 15 times, and his paystubs 12 times. Although Chase has long had all the documents it needs to process Mr. Lee’s modification application, it continues to delay by requesting more documents and seeking answers to questions that have already been answered, adding thousands of dollars in arrears to his balance.

Conclusion: In Mortgage Complaints, Race Matters

Analysis of the CFPB's mortgage complaint data reveals a pattern: complaints about the types of servicer misconduct that increase the likelihood of home loss make up a larger share of complaints from communities where people of color live than from predominately white communities. Of course, this complaint data cannot provide a perfect snapshot of the mortgage and servicing issues that consumers experience, as many homeowners never file complaints.

But what we do know is that people in these communities were targeted during the subprime boom, were more likely to receive predatory mortgage products regardless of their creditworthiness, and are therefore more likely to be struggling with default and foreclosure. Accordingly, these are the communities where functioning mortgage modification programs are most desperately needed. Instead, the data here suggest that those communities may, once again, be bearing the brunt of systemic failures. Further investigation and enforcement of existing regulations and agreements are necessary to ensure that communities of color are not being disproportionately harmed by poor quality servicing, and that these communities benefit equally from modification programs.

Recommendations

This study's conclusion—that there are racial disparities in the modification process—is not new. Prior studies reviewing loan-level data and housing counselor surveys provide evidence that minority borrowers have more difficulty in obtaining mortgage modifications and thus stand a greater chance of unnecessarily losing their home to foreclosure.⁴¹ But this study is the first to give voice to the homeowners themselves by analyzing the CFPB complaint narratives.

So far, the government is failing to pay attention. Five years into the HAMP program, the U.S. Treasury Department, which supervises HAMP, has yet to review the participating mortgage servicers for fair lending compliance.⁴² Although consumer advocates have formally requested that the NMS Monitor collect and review zip code-level data about modifications to determine that relief was reaching communities of color, the Monitor refuses, citing lack of authority.⁴³ Only the most recent of the major federal government mortgage-related settlements with banks requires the bank to provide community-level data about modifications.⁴⁴

There are a number of concrete steps that regulators and servicers need to take now to ensure that modification assistance reaches all communities, particularly hard-hit communities of color:

Increase Federal and State Enforcement of Modification Standards and Fair Lending Laws

For years, servicers have constantly violated the requirements of HAMP and the NMS, as well as other modification standards, with little sanction from the regulatory agencies overseeing them. The Treasury Department has authority over HAMP participants, the state Attorneys General can enforce the NMS, and the CFPB has jurisdiction over other regulations; each must begin to rigorously enforce modification requirements, some of which are quite strong on paper.

These regulatory authorities have also failed to enforce fair lending laws with respect to mortgage loan modifications. Federal law, including the Fair Housing Act (FHA) and the Equal

41 See, e.g., GAO Report, *supra* note 30; CRC Report, *supra* note 30.

42 GAO Report, *supra* note 30, at 21. MFY called and emailed the Treasury Department to confirm that the facts stated in the 2014 GAO Report are still accurate. Treasury did not respond to our inquiries. Thus, to the best of our knowledge, as of the date of this report, the U.S. Treasury Department has yet to review HAMP data for fair lending compliance.

43 Kate Berry, *Consumer Groups Want Fair Lending Data Added to Mortgage Settlement*, Nat'l Mortgage News (Oct. 31, 2012), available at <http://tinyurl.com/m3cg88y>.

44 There have been five such settlements. See Chase Settlement, available at <http://tinyurl.com/mssdc3s>; Ocwen Settlement, available at <http://tinyurl.com/n232vx9>; Suntrust Settlement, available at <http://tinyurl.com/lngq8fg>; Citi Group Settlement, available at <http://tinyurl.com/ldzy6du>; and Bank of America Settlement, available at <http://tinyurl.com/kvurb3x>. Only the settlement with Bank of America requires census tract-level data. Ken Lovett, *NYS set for another windfall thanks to Bank of America settlement*, N.Y. Daily News (Aug. 21, 2014), available at <http://tinyurl.com/mopcpcce>.

Credit Opportunity Act (ECOA), forbids discrimination in mortgage lending decisions. But much of the data necessary to analyze the racial impact of modifications is not even reaching the responsible agencies.⁴⁵ Currently, eight different federal agencies are tasked with oversight and enforcement of fair lending laws, and this diffusion of power has led to inaction.⁴⁶ The Obama Administration must either task one agency with the responsibility or guarantee that loan-level mortgage modification data is quickly and easily shared among these agencies. As a first step, Treasury must immediately provide loan-level HAMP data to CFPB, enabling it to perform a fair lending review. The U.S. Department of Housing and Urban Development (HUD) must also expedite the results of its fair lending review of HAMP data.

Additionally, most states have laws forbidding discrimination in lending. In New York, the Attorney General should use both the New York State Human Rights Law and the New York City Human Rights Law to address discrimination in mortgage modification.

The agencies enforcing these laws must assess monetary penalties against non-compliant servicers that are significant enough to deter them from continuously violating various modification regulations. While many government modification programs offer the servicers compensation for providing modifications, this compensation has been insufficient to overcome the economic benefit to servicers of delaying modification or foreclosing.⁴⁷

CFPB Should Provide the Public with Data Necessary to Assess Whether Community-Level Disparities in Modification Exist

Given that regulators have been slow to explore fair lending issues in the context of the foreclosure crisis and mortgage modification programs, it is imperative that data on modification denials and approvals be publicly available in forms that will allow for assessment of fair lending compliance.

First, CFPB should make complaint narratives public, continuing to release records with five-digit zip code and mortgage servicer data. CFPB currently publishes a database of consumers'

45 In March 2013, four years after the implementation of HAMP, Treasury entered into an interagency agreement with HUD and a third-party vendor to conduct a fair lending analysis of HAMP modifications. GAO Report, *supra* note 30, at 22. Although HUD secured a third-party vendor in September 2013, it is unclear if that vendor has begun its review. MFY's phone and email inquiries to the Treasury Department were not returned. Similarly, although the CFPB is the exclusive regulator of ECOA, as of the 2014 GAO Report, Treasury still does not provide CFPB with loan-level HAMP data that would enable it to analyze fair lending issues. *Id.* at 22, n.37. Treasury did not return recent emails and phone calls on this topic.

46 GAO Report, *supra* note 30, at 8.

47 Thompson, *supra* note 14, at 4. Mortgage servicers have three major income streams: (1) a servicing fee—usually a fixed percentage of the unpaid principal balance of all the mortgages in the trust; (2) the interest income from holding borrowers' monthly payments for a short time until the payments are transferred to the trust (this is known as the "float"); and (3) fees charged to the borrower, including fees associated with default. *Id.* at 4–5. These default-related fees—including late monthly late fees, broker-price inspection fees, "corporate advances," appraisal fees, and legal fees—can quickly accumulate. *See also* Levitin & Twomey, *supra* note 15, at 70–71 (noting that servicers are incentivized to foreclose because whereas the servicing fee and the float are both flat-rate fees, the fees generated by defaulted mortgages are on a cost-plus basis and the servicer can recoup more the longer the loan is in default).

complaints which includes those important data points but excludes the narratives. In July 2014, the CFPB proposed altering its consumer complaint database to give homeowners the ability to opt in and permit their narratives be published.⁴⁸ The CFPB should enact that policy. Access to the narratives is necessary so that researchers and the public can understand the nature of consumers' specific complaints. And the information must continue to be available with servicer and zip code information so that it is possible to assess whether servicers are employing redlining-style practices that disadvantage communities of color.

Second, CFPB should also amend its Home Mortgage Disclosure Act ("HMDA") regulations⁴⁹ to require servicers to submit loan modification data, by servicer and census tract.⁵⁰ HMDA currently provides valuable data about mortgage originations, allowing researchers and advocates to identify potential patterns of discrimination so that they can be addressed. It would be similarly effective as a tool for monitoring the issuance of loan modifications.

New York City Should Use the Responsible Banking Act to Encourage Servicers to Disclose Detailed Modification Data

Local governments, which often feel the brunt of foreclosures through lost property tax revenue, should be empowered to seek the information necessary to determine if banks are meeting their responsibilities, especially in communities of color. In 2012, New York City passed a Responsible Banking Act ("RBA") that is now in effect.⁵¹ The RBA currently requests that banks provide some modification information at the community level, but New York City should seek more. For every modification denial, banks should be encouraged to state the reason for the denial in addition to the community district. For a permanent modification granted, banks should be encouraged to provide the type of modification, the interest rate, the amount of a balloon payment (if any), and the amount of principal forgiveness (if any). All this data should be publicly available.

CFPB Should Immediately Investigate Nationstar, Ocwen & Wells Fargo for Fair Lending Issues in their Modification Programs

Although this study analyzes the limited universe of New York State mortgage complaints filed with CFPB, the data demonstrates the need for immediate investigations of loan modification failures by Nationstar, Ocwen and Wells Fargo, which appear to be inflicting particular harm in communities of color.⁵² The data show that, as the proportion of people of color living in a neighborhood increases, the share of complaints about these servicers reflecting an immediate risk of home loss rapidly increases.

48 Disclosure of Consumer Complaint Narrative Data 79 Fed. Reg. 141 [July 23, 2014]. See also note 31 and sources cited therein.

49 Home Mortgage Disclosure (Regulation C) 79 Fed. Reg. 168 [Aug. 29, 2014].

50 CRC Report, *supra* note 30, at 37.

51 Local Law 38 of 2012, *available at* <http://tinyurl.com/mgzutzy>. Former New York City mayor Michael Bloomberg refused to implement the RBA; Mayor Bill de Blasio, however, is moving forward with enforcement. Chris Bragg, *NYC law opposed by banks to move forward*, Crain's (Apr. 8, 2014), *available at* <http://tinyurl.com/mfej3tx>.

52 See text accompanying footnotes, *infra* notes 53-56.

In the past year, these three companies have been reprimanded and investigated for mismanaged mortgage servicing. In the most recent HAMP report, out of the 81 participating servicers, these three were among seven singled out as needing improvement.⁵³ In December 2013, Ocwen entered into a \$2 billion settlement with CFPB and state authorities based on its deficient servicing practices, and New York State's recent review of Ocwen revealed further serious problems.⁵⁴ In March 2014, New York's Department of Financial Services began investigating Nationstar for mismanagement of its mortgage servicing portfolio.⁵⁵ Rep. Maxine Waters has also called for better oversight of non-bank servicers like Ocwen.⁵⁶

Yet none of these investigations has focused on possible racial disparities in these companies' mortgage servicing. CFPB should immediately investigate Wells Fargo, Ocwen and Nationstar's modification programs to determine if they are complying with fair lending laws or if minority homeowners disproportionately bear the burden of these companies' mortgage servicing mismanagement.

Future Mortgage Settlements Should Require Disclosure of Community-Level Data and Provide for a Private Right of Action

Of the five national mortgage settlements, only the most recent requires the bank to submit information about where, geographically, mortgage relief is going.⁵⁷ Government agencies need to ensure that the provision of zip code- or census tract-level data, which is crucial for evaluating fair lending compliance, is part of every future settlement. This data should also be made publicly available so that researchers and advocates can monitor whether community-level disparities persist.

Future settlements should also provide for a private right of action for homeowners, allowing them to sue servicers directly if they violate the terms of HAMP or the NMS. This would allow homeowners to serve as private attorneys general, ensuring that the rules are enforced against servicers regardless of whether government agencies devote resources to monitoring compliance.

⁵³ September 2014 HAMP Report, *supra* note 26, at 2. In its most recent report, SIGTARP noted that the number of servicers participating in HAMP decreased from 145 servicers in October 2010 to 81 in September 2014. October 2014 SIGTARP Report, *supra* note 37, at 133.

⁵⁴ Press Release, Consumer Financial Protection Bureau, CFPB, State Authorities Order Ocwen to Provide \$2 Billion in Relief to Homeowners for Servicing Wrongs (Dec. 19, 2013), *available at* <http://tinyurl.com/n232vx9>; Letter from Benjamin M. Lawsky, NYS Superintendent of Financial Services, to Timothy Hayes, General Counsel of Ocwen (Oct. 21, 2014), *available at* <http://tinyurl.com/qz3heow>.

⁵⁵ Letter from Benjamin M. Lawsky, NYS Superintendent of Financial Services, to Jesse Bray, President and CEO of Nationstar (Mar. 5, 2014), *available at* <http://tinyurl.com/myxfgks>.

⁵⁶ Letter from Maxine Waters, Ranking Member of the House Comm. on Financial Services, to Thomas J. Curry, Comptroller of the Currency, and Joseph A. Smith, Monitor of the National Mortgage Settlement (Feb. 19, 2014), *available at* <http://tinyurl.com/mqmmmlun>.

⁵⁷ See *supra* note 44. Although Bank of America is required to provide this data to its settlement monitor, it is unclear if this data will be released to the general public.

Appendix 1

Methodology—The FOIA Process

The CFPB's public complaint database (published on its website) does not include the "narrative" portion of a consumer's complaint, which contains the substance of the complaint. Instead, the Complaint Database only allows for marking a general subcategory of complaint that is far from descriptive.

On April 5, 2013, MFY filed a Freedom of Information Act ("FOIA") request with the CFPB seeking complaint narratives filed with the CFPB concerning mortgage products, loan modifications, collection, or foreclosure between December 1, 2011, and April 5, 2013, for mortgage products located in New York State.

On April 24, 2013, and in response to MFY's request, the CFPB produced a spreadsheet containing information concerning 6,040 complaints responsive to MFY's request, but it withheld the complaint narratives. The CFPB claimed that the complaint narratives were withheld pursuant to the Privacy Act, 5 U.S.C. § 552a, which prohibits disclosure of information about individuals where such information is subject to a FOIA exemption, and pursuant to FOIA Exemption 6, 5 U.S.C. § 552(b) (6). The CFPB stated that it would not release even portions of narratives "that are seemingly innocuous" until it determined that it could "reliably and efficiently recognize and redact" all personally-identifiable information.

MFY retained the ACLU to represent it in its administrative appeal, filed on June 7, 2013. On July 22, 2013, CFPB's Legal Division remanded the request to the FOIA Office on other grounds. On remand, the FOIA Office released additional data but did not alter the determination to withhold complaint narratives.

Beginning on that date, ACLU, MFY, and CFPB's Legal Division discussed ways for MFY to obtain sufficient data from the narratives without compromising the consumers' privacy. On July 3, 2014, ACLU, MFY, and the CFPB entered into an agreement under which CFPB would analyze the complaint narratives and code them with categories that MFY defined. See Appendix 2. In exchange, the ACLU and MFY agreed to compensate the CFPB for the hours logged reviewing and categorizing the responsive complaints.

On July 7, 2014, MFY resubmitted its FOIA request for the complaint narratives but, as agreed, changed the time period to cover New York State mortgage complaints filed between July 1, 2012, and May 31, 2014.

On September 15, 2014, the CFPB produced to ACLU and MFY the complaint database for New York State mortgage complaints filed with the CFPB between July 1, 2012, and May 31, 2014. This database coded the complaints in accordance with the categories provided by MFY and detailed in Appendix 2.

Appendix 2

0 = Minimal Risk
Of Home Loss;
1 = Increased Risk
Of Home Loss

Mortgage Complaint Codes, With Risk Of Home Loss

Main Category	Subcategories Description	Coding No.	Likely Damage To Homeowner
PERMANENT MODIFICATION DENIAL	General Denial: homeowner was denied a permanent modification (no reason given or reason does not fit into any of the following categories)	1	1
	- homeowner complained that s/he should have received a modification but was denied	1.a	1
	- modification was denied because of a prior trial plan default even though homeowner claims that it was the bank that stopped taking payments	1.b	1
	- modification denial had no numbers or values by which a homeowner could appeal (i.e. income use, amount of debt, fees charged)	1.c	1
	- modification denied based upon an “investor or owner restriction”	1.d	1
	- modification denied when some of the values that were used (homeowner’s income, property value, homeowner’s debt, pay off amount) were wrong	1.e	1
	- modification denied on the basis of homeowner’s disability/public assistance income (social security; food stamps; Medicaid; Medicare)	1.f	1
PERMANENT MODIFICATION DENIED AFTER TRIAL PLAN	- after making payments on a trial plan of an unknown duration, servicer denies permanent modification	2	1
	- after making payments on a trial plan for 3 months or less, servicer denies permanent modification	2.a	0
	- after making payments on a trial plan for 3 to fewer than 6 months, servicer denies permanent modification	2.b	1
	- after making payments on a trial plan for 6 to fewer than 12 months, servicer denies permanent modification	2.c	1
	- after making payments on a trial plan for 12 months or more, servicer denies permanent modification	2.d	1

Main Category	Subcategories Description	Coding No.	Likely Damage To Homeowner
STILL IN AN TRIAL MODIFICATION PLAN (EXTENDED TRIAL PLAN)	- been making payments on trial modification for an unknown period and still no decision on permanent modification	3	1
	- been making payments on trial modification for 6 months or less and still no decision on permanent modification	3.a	1
	- been making payments on a trial modification for 6 to fewer than 12 months and still no decision on permanent modification	3.b	1
	- been making payment on a trial modification for more than 12 months and still no decision on permanent modification	3.c	1
BROADER ISSUES WITH MILITARY SERVICE	- homeowner makes a general complaint related to (1) active military service or serving in the reserves and applying for a modification or (2) is in foreclosure which complaint does not fit into any of the following categories	4	0
	- servicer filed for foreclosure or moved forward with foreclosure even though homeowner was on active military duty	4.a	1
	- servicer foreclosed or auctioned home while service member was either (1) serving in a combat zone regardless of when mortgage was taken out or (2) was on active military status and mortgage was taken out before homeowner was on active military duty	4.b	1
	- servicer moved forward with foreclosure even though homeowner was within the 9 month return grace period from active military duty	4.c	1
	- servicer did not provide a representative familiar with the Servicemembers Civil Relief Act to answer military homeowner's questions	4.d	0
	- servicer did not decrease interest rate to 6% or below when military personnel requested decrease while on active duty	4.e	1

Main Category	Subcategories Description	Coding No.	Likely Damage To Homeowner
MODIFICATION AND FORECLOSURE DUAL TRACKING	- homeowner mentions dual tracking but unclear what stage of the foreclosure process or modification process	5	1
	- servicer initiated a foreclosure proceeding or moved forward with an already initiated foreclosure proceeding while a homeowner's modification application was pending	5.a	1
	- servicer initiated a foreclosure proceeding or moved forward with an already initiated foreclosure proceeding while homeowner was in a trial modification	5.b	1
	- servicer initiated a foreclosure proceeding or moved forward with an already initiated foreclosure proceeding even though homeowner received a permanent modification	5.c	1
MODIFICATION APPLICATION REPEAT DOCUMENT REQUESTS	- servicer requested missing or updated documents at an unknown point after modification application was originally submitted	6	1
	- servicer requested missing or updated documents fewer than 30 days after modification application was submitted	6.a	0
	- servicer requested missing or updated documents between 31 days and fewer than 3 months after modification application was originally submitted	6.b	1
	- servicer requested missing or updated documents between 3 months and fewer than 6 months after modification application was originally submitted	6.c	1
	- servicer requested missing or updated documents between 6 months and fewer than 12 months after modification application was originally submitted	6.d	1
	- servicer requested missing or updated documents 12 months or more after modification application was originally submitted	6.e	1
INAPPROPRIATE DOCUMENT REQUESTS	- homeowner found servicer's request for documents unreasonable, intrusive or inappropriate (e.g. want income documents from tenant, want too much information from another individual who is independently providing funds for the mortgage transaction, etc.)	7.a	1
	- homeowner receives government benefit income (food stamps, Social Security Retirement, Social Security Disability (SSD), Social Security Insurance (SSI)) and found servicer's inquiry about that benefit income status unreasonable, intrusive or inappropriate. (Note that government pensions would not fall under government benefit income for purposes of this coding category)	7.b	1

Main Category	Subcategories Description	Coding No.	Likely Damage To Homeowner
TRIAL MODIFICATION PLAN OFFER DELAY	- servicer provided trial plan after waiting a period of time but homeowner fails to provide the time	8	1
	- servicer provided trial plan offer 30 days or less after application submitted	8.a	0
	- servicer provided trial plan between 31 days and fewer than 3 months after application submitted	8.b	1
	- servicer provided trial plan between 3 months and fewer than 6 months after application submitted	8.c	1
	- servicer provided trial plan between 6 months and fewer than 12 months after application submitted	8.d	1
	- servicer provided trial plan 12 months or more after application submitted	8.e	1
FOREBEARANCE PLAN OFFERED	- homeowner's complaint is about a forbearance plan and does not fit into either of the following categories	9	0
	- homeowner was offered a forbearance plan even though homeowner had applied for a modification	9.a	0
	- homeowner was in a forbearance plan that the servicer said that it would make into a trial or permanent modification but servicer did not do so	9.b	1
SINGLE POINT OF CONTACT	- homeowner has issues with Single Point of Contact but unclear what issues or does not fit into any of the following categories	10	0
	- homeowner is never provided with a Single Point of Contact	10.a	0
	- Single Point of Contact has changed	10.b	0
	- Unable to reach Single Point of Contract	10.c	0
	- Single Point of Contact is not informed about the homeowner's modification application history	10.d	0

Main Category	Subcategories Description	Coding No.	Likely Damage To Homeowner
GENERAL SERVICER COMMUNICATION ISSUES	- homeowner's complaint is about poor communication with the servicer and does not fit into any of the following categories	11	0
	- servicer failed to acknowledge receipt of modification application within 10 days	11.a	0
	- servicer did not provide a detailed payoff letter/ delineation of the debt when requested or it took more than 30 days to provide that information to homeowner	11.b	0
	- servicer did not provide a payment history within 60 days	11.c	0
	- payment history, payoff letter or other communications from servicer were not clear	11.d	0
	- consumer never informed of the decision on an unspecified modification application or a trial modification application.	11.e	1
GENERAL SERVICING TRANSFER ISSUES	- consumer notes a general issue with the transfer of servicing which does not fit into any of the following categories	12	0
	- servicing was transferred in the middle of a modification application	12.a	1
	- when servicing was transferred, new servicer required that homeowner submit new modification application	12.b	1
	- when servicing was transferred, new servicer no longer accepted trial period payments or rejected trial period plan	12.c	1
	- when servicing was transferred, new servicer rejected payments on a permanent modification or stated that it was not going to abide by permanent modification	12.d	1
INAPPROPRIATE FORECLOSURE FEES	- homeowner has a general complaint about fees such as "too high" or "inappropriate" or "unclear"	13	1
	- fees were less than \$5,000	13.a	0
	- fees were \$5,001 to \$10,000	13.b	1
	- fees were between \$10,001 to \$15,000	13.c	1
	- fees were \$15,001 or above	13.d	1
SHORT SALE COMPLAINTS	- homeowner complaint involves issues with a short sale	14	0
DEED IN LIEU COMPLAINTS	- homeowner complains about a deed-in-lieu transaction	15	0

Main Category	Subcategories Description	Coding No.	Likely Damage To Homeowner
CREDITING OF PAYMENTS	- homeowner complains that servicer did not properly post his payments to his account	16	1
ESCROW	- homeowner complains about issues with escrow or with the property taxes	17	0
FORCE PLACED INSURANCE	- homeowner complains that bank gave him force placed insurance or that the homeowner's insurance increased	18	1
ISSUES WITH ORIGINAL MORTGAGE	- homeowner complains about the terms of the original mortgage or trying to get a mortgage	19	0
NON-RESPONSIVE NARRATIVES	- no narrative included; narrative is not related to any of the above issues; or cannot understand narrative.	20	0

Appendix 3

Methodology—Data Analysis

CFPB produced a database of complaints in the form of an Excel spreadsheet that contained 5,985 complaints (“observations”) and 145 related variables, including a twelve-digit unique identifier under the variable “Case #.” These records constitute the full universe of complaints filed with the CFPB concerning mortgage products, loan modifications, collection, or foreclosure between July 1, 2012, and May 31, 2014. The complaints were broken up into six distinct “parts” as a result of “system limitations on the number of columns allowed for data export at one time.” We imported the segments of the CFPB Database labeled Part 1 & Part 2 into STATA, a statistical software program, and merged the two segments on the unique identifier “Case #.” This resulted in a database of 5,985 observations and 91 associated variables. The variables included in Parts 3–6 were not immediately relevant to our analysis.

Next, we retrieved demographic information from the U.S. Census using the American Fact Finder. We pulled file DP-1, Profile of General Population and Housing Characteristics: 2010, which featured data concerning race, ethnicity and housing in New York State, delineated by Zip Code Tabulation Area (ZCTA). This data file contained 1,795 ZCTAs and 375 associated variables. Of those variables, we were primarily concerned with the category “Hispanic or Latino and Race.” We removed the 26 ZCTAs for which the total residential population was listed as zero.

Using the U.S. Census data, we created a dummy variable that represented the combined percentage of each ZCTA’s population that identified as “Hispanic or Latino (any race),” “Not Hispanic or Latino—Black or African American alone,” or “Not Hispanic or Latino—Asian alone.” We isolated these populations given their historic experience of harm in accessing mortgage-related credit and relief.

Next, we merged the census file with the CFPB database on the CFPB database variable “Mailing Zip Code,” which lists a five-digit zip code for the homeowner/complainant, and the census file variable “GEO.id2,” which lists a five-digit ZCTA. Of the original CFPB database, 108 complaints listed zip codes that did not correspond to ZCTAs with residential populations in New York State, and those observations were removed. Of the census file, 847 of the ZCTAs in New York State were not represented in the CFPB database, and thus their corresponding demographic data was also removed.

The remaining merged file contained 5,872 observations. Within our merged dataset, we created a binary variable for four mutually-exclusive categories reflecting a neighborhood’s racial demographics, labeling each observation or complaint for whether it came from a Mailing Zip

Code assigned a ZCTA with a population that was less than 50%, 50-75%, 75-90%, or more than 90% black, Latino and Asian combined. This process identified 3,907 complaints from ZCTAs less than 50% people of color; 830 complaints from ZCTAs between 50-75% people of color; 497 complaints from ZCTAs with 75-90% people of color; and 638 complaints from ZCTAs with more than 90% people of color.

As a result of the CFPB coding process, each observation or complaint was coded for the issues that the homeowner described in the narrative section. Given that each complaint received up to five issue codes, we parsed the data included in the “Coding” variable into five separate variables, and then converted those into individual binary dummy variables for each of the 71 possible issue codes. This step allowed us to interpret data at the individual homeowner level and to understand the aggregate number of complaints about any given issue or combination of issues. Dummy variables were also generated for the thirteen larger categories that housed several issue codes (*i.e.* Category 1 included codes 1, 1a, 1b, 1c, 1d, 1e and 1f). If no narrative was included, the narrative was not related to any of the identified issue codes, or if the CFPB could not understand the narrative, the CFPB labeled it Code 20.

Of the 5,872 observations, 2,399—or just over 40%—were tagged by the CFPB with the Code 20. Unless explicitly noted, the analysis in this paper excludes these observations as they offered no insight as to the content of the complaint. This leaves 3,520 observations with narrative codes.

In order to better understand the experiences of complainants contacting the CFPB, we assigned a binary value to describe each of the issues outlined in complaint narratives as either particularly harmful to homeowners by indicating an immediate risk of home loss (a value of “1”) or less harmful by indicating less immediate risk of home loss (a value of “0”). For example, a Permanent Modification Denial was deemed harmful under any circumstance and assigned a value of 1, whereas homeowner issues with Single Point of Contact were not, on their own, considered indicative of immediate home loss risk and were thus assigned a value of zero. Appendix 2 lists these classifications under the “Likely Damage to Homeowner” column of the categorization scheme.

Within the universe of 3,520 complaints with narrative codes:

Demographics

- 2,286 (64.94%) came from ZCTAs with fewer than 50% people of color
- 522 (14.83%) came from ZCTAs with 50-75% people of color
- 309 (8.78%) came from ZCTAs with 75-90% people of color
- 403 (11.45%) came from ZCTAs with more than 90% people of color

Harm

- 2,078 (59.03%) complaints featured at least one issue indicating immediate risk of home loss
- 1,442 (40.97%) complaints featured issues indicating less risk of home loss

